

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged: Originating Application Starting a Representative Proceeding under Part IVA  
Federal Court of Australia Act 1976 [Human Rights Div 2.4 Exemption] - Form  
19 - Rule 9.32

Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)

Date of Lodgment: 24/09/2025 2:08:00 PM AWST

Date Accepted for Filing: 24/10/2025 2:11:02 PM AWST

File Number: WAD251/2022

File Title: ALEXANDRA WALTERS & ANOR v STATE OF WESTERN AUSTRALIA

Registry: WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Reason for Listing: To Be Advised

Time and date for hearing: To Be Advised

Place: To Be Advised

Order dated 24/9/2025 - A/OA to be taken as filed 11/7/2025



*Sia Lagos*

Registrar

### Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



## Annexure A

Form 19; Rule 9.32; Form 116; Rule 34.163(1)

### **Amended Originating Application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976 and under the Australian Human Rights Commission Act 1986**

Amended pursuant to leave granted by Justice Abraham on 3 July 2025

No: WAD251/2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**Alexandra Walters and another person identified in the schedule**

Applicants

**State of Western Australia**

Respondent

To the Respondent

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Peter Durack Commonwealth Law Courts, Building 1, Victoria Avenue, Perth

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of	Applicants		
Law firm	Levitt Robinson		
Tel	(02) 9286 3133	Fax	(02) 9283 0005
Email	slevitt@levittrobinson.com		
Address for service	C/- Levitt Robinson, Ground Floor, 162 Goulburn Street, Surry Hills, NSW, 2010		

**Representative action**

1. The Applicants bring this proceeding on their own behalf and as representative parties pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth).
2. ~~The Applicants and the Group Members are persons who:~~
  - (a) ~~are, or have been at any time on or after 5 September 1997 until the commencement of this proceeding (**Relevant Period**), detained in a place declared to be a detention centre under section 13 of the *Young Offenders Act 1994* (WA) (**YO Act**); and~~
  - (b) ~~while in detention, suffered or claim to have suffered, false imprisonment, assault and/or battery (including unlawful strip searching, unlawful use of restraints or unlawful use of force), breach of duty of care in relation to rehabilitation and/or education of the Applicants and Group Members and/or the failure to prevent psychiatric or psychological injury to the Applicants and to Group Members and/or unlawful disability discrimination by an act or omission of:~~
    - (i) ~~the Minister of the Crown in right of Western Australia who was, at the relevant time, responsible for the administration of the YO Act (**Minister**);~~
    - (ii) ~~the chief executive officer of the department of the Government of Western Australia that was, at the relevant time, principally assisting the responsible Minister in the administration of the YO Act (**CEO**);~~
    - (iii) ~~a superintendent of a detention centre at the relevant time or a person who was performing, or purporting to perform, the functions of a superintendent under the Act in respect of a detention centre at the relevant time (**Superintendent**); and/or~~
    - (iv) ~~an officer performing functions under the YO Act in respect of a detention centre or a person purporting to perform those functions (**Officer**).~~
2. The Applicants and the Group Members are persons who are, or have been at any time on or after 18 August 2005 until the date of the filing of this Amended Originating Application (**Relevant Period**), detained in the following youth detention centres (**Detention Centres**) being places that have been or were declared to be a detention centre under section 13 of the *Young Offenders Act 1994* (WA) (**YO Act**):
  - (a) Rangeview Juvenile Remand Centre (**Rangeview**);
  - (b) Banksia Hill Detention Centre (**BHDC**); and/or
  - (c) Hakea Prison (**Hakea**);

and are a member of one or both of the sub-groups described in paragraph 3 below.
3. The Applicants represent Group Members who during the Relevant Period when they were a detainee in a Detention Centre:

(a) suffered, and/or claim to have suffered, : unlawful disability discrimination under one or more of sections 5, 6, 22, 24, 32, 37 and 39 of the *Disability Discrimination Act 1992 (Cth) (DDA)*.

(DDA sub-group), and/or

(b) suffered, and/or claim to have suffered:

(i) false imprisonment;

(ii) assault and/or battery (including by unlawful strip searches, unlawful use of restraints and/or unlawful use of force) but not including claims of "child sexual abuse" within the meaning of section 6A of the Limitation Act 2005 (WA); and/or

(iii) loss or injury caused by a breach of a duty of care (including by failing to take reasonable steps to prevent injury to the mental health, including psychiatric injury), to the Applicants and this sub-group of Group Members but not including by failing to take reasonable steps to prevent injury from "child sexual abuse" within the meaning of section 6A of the *Limitation Act 2005 (WA)*

(Tort sub-group);

(collectively, **Group Members**)

(c) by an act or omission of:

(i) the Respondent;

(ii) the Minister of the Crown in right of Western Australia who was, at the relevant time, responsible for the administration of the YO Act (**Minister**);

(iii) the chief executive officer of the department of the Government of Western Australia that was, at the relevant time, principally assisting the responsible Minister in the administration of the YO Act (**CEO**);

(iv) a superintendent of a Detention Centre ~~detention-centre~~ at the relevant time or a person who was performing, or purporting to perform, the functions of a superintendent under the YO Act in respect of a Detention Centre at the relevant time (**Superintendent**); and/or

(v) an officer performing functions under the YO Act in respect of a Detention Centre or a person purporting to perform those functions (**Officer**).

#### Details of claim and remedies sought



On the grounds stated in the accompanying affidavit of Stewart Levitt sworn on 28 November 2002 amended statement of claim and the accompanying complaint, the Applicants, on their own behalf and on behalf of the Group Members, seek the relief set out in A and B below.

**A Relief under s 46PO(4) of the Australian Human Rights Commission Act 1975 (Cth)**

1. A declaration that, during that part of the Relevant Period concluding on 15 February 2024, the Minister, the CEO, Superintendents and/or Officers engaged in unlawful disability discrimination under sections 5, 6, 22, 24, ~~and 31~~ 32, 37 and 39 of the DDA in relation to the Applicants and the ~~Group Members~~ DDA sub-group members, for which the Respondent is vicariously liable.
2. Orders requiring the Respondent to pay to the Applicants and to ~~Group Members~~ the DDA sub-group members damages by way of compensation for loss and damage suffered by the Applicants and the DDA sub-group members because of the unlawful disability discrimination referred to paragraph A1 above.
3. Such further or other orders under s 46PO(4) of the Australian Human Rights Commission Act 1975 (Cth), including orders for costs and interest, as the Court thinks fit.

**B Other relief**

1. Declarations that, during the Relevant Period, the Respondent, the Minister, the CEO, Superintendents and/or Officers engaged in conduct in relation to the Applicants and the ~~Group Members~~ Tort sub-group members which constituted:
  - (a) false imprisonment;
  - (b) assault and/or battery (including by unlawful strip searches, unlawful use of restraints and unlawful use of force); and/or
  - ~~(c) breaches of the duty of care owed to the Applicants and to Group Members (including by failing to take reasonable steps to prevent psychiatric or psychological injury to, and to provide for the rehabilitation and education of, the Applicants and the Group Members);~~
  - (c) breaches of duties of care owed to the Applicants and to the Tort sub-group members (including by failing to take reasonable steps to prevent psychiatric injury to the Applicants and the Tort sub group members).

for which the Respondent is vicariously liable.

- 1A. A declaration that, during the Relevant Period, the Respondent engaged in conduct in



relation to the Applicants and the Tort sub-group members which constituted breaches of the non-delegable duty of care owed to the Applicants and to the Tort sub-group members (including by failing to take reasonable steps to prevent psychiatric injury to the Applicants and the Tort sub group members).

2. Damages
3. Aggravated damages
4. Exemplary damages
5. Interest on compensatory damages
6. Costs
7. Such further or other orders, including orders for costs and interest, as the Court thinks fit.

**Questions common to claims of Group Members and sub-group members**

The questions of law or fact common to the claims of the Group Members and sub-group members are:

1. Whether the Minister, the CEO, Superintendents and/or Officers engaged in unlawful disability discrimination under sections 5, 6, 22, 24, 34-32, 37 and/or 39 of the DDA in relation to the DDA sub-group members.
- ~~2. Whether the Respondent is vicariously liable for the unlawful disability discrimination referred to in question 1.~~
2. Whether in the Relevant Period each Detention Centre was an educational institution within the meaning of the DDA and the *Disability Standards for Education 2005 (Cth) (DSE)*.
- 2A. Whether in the Relevant Period each Superintendent and Officer was a member of the staff of an educational institution within the meaning of the DDA and the DSE.
- 2B. Whether during the Relevant Period the Respondent was, in respect of each Detention Centre, within the meaning of the DDA and the DSE:
  - (a) An educational authority; and
  - (b) An education provider.
- 2C. Whether the Behavioural Regime defined in the amended statement of claim was applied to Group Members in the relevant period.
3. Whether the Minister, the CEO, Superintendents and/or Officers falsely imprisoned the Tort sub-group members by confining the Tort sub-group members to their cells other

than in accordance with the YO Act and the *Young Offenders Regulations 1995 (WA) (YO Regulations)*.

4. Whether the Minister, the CEO, Superintendents and/or Officers assaulted and/or battered the Tort sub-group members by strip searching them other than in accordance with YO Act and the YO Regulations.
5. Whether the Minister, the CEO, Superintendents and/or Officers assaulted and/or battered the Tort sub-group members by applying restraints other than in accordance with the YO Act and the YO Regulations.
6. Whether the Respondent, the Minister, the CEO, Superintendents and/or Officers owed the Tort sub-group members the duties of care alleged in this proceeding, a duty to take reasonable care to avoid causing the Group Members injury, loss or damage and to protect the Group Members from suffering, injury, loss or damage in connection with their detention.
7. Whether the scope of the duty duties referred to in question 6 extended to taking reasonable steps to ensure that the detention of the Tort sub-group members did not cause or exacerbate any psychiatric injuries.
  - ~~(a) the detention of the Group Members did not cause or exacerbate any psychiatric or psychological injuries.~~
  - ~~(b) the Group Members had reasonable access to educational programs and opportunities; and/or~~
  - ~~(c) the Group Members had reasonable access to rehabilitation programs and opportunities.~~
8. Whether the Respondent's duties duty referred to in question 6 were was non-delegable.
9. Whether, during the Relevant Period, the Respondent, the Minister, the CEO, Superintendents and/or Officers breached the duty duties referred to in question 6 by failing to take reasonable steps to ensure that that the detention of the Tort sub-group members did not cause or exacerbate any psychiatric injuries.
  - ~~(a) the detention of the Group Members did not cause or exacerbate any psychiatric or psychological injuries.~~
  - ~~(b) the Tort sub-group members had reasonable access to educational programs and opportunities; and/or~~
  - ~~(c) the Tort sub-group members had reasonable access to rehabilitation programs and opportunities.~~

10. Whether the Respondent is vicariously liable for the unlawful conduct and/or breaches of duty of care of the Minister, the CEO, Superintendents and/or Officers ~~in the administration of the YO Act and the YO Regulations~~, including the conduct referred to in questions 1, 3, 4, 5 and 9.
11. Whether the Limitation Act 2005 (WA) applies to the claims in this proceeding and, if so, whether section 33 of the Limitation Act 2005 (WA) operates to extend the time in which the claims of the Group Members for false imprisonment, assault, battery and breach of a duty of care can be commenced.
12. Whether the Limitation Act 2005 (WA):
  - (a) limits the time in which the DDA sub-group members may claim relief for breaches of the DDA;
  - (b) or any section of it, operates to suspend or extend the time in which the claims of the Group Members can be commenced;
  - (c) or any section of it operates to enable Group Members to seek leave to commence their claims even though the limitation period has expired.
13. Whether the DDA sub-group and/or the Tort sub-group members are entitled to the relief being sought in this proceeding.

### Legislation

The Applicants claim that the disability discrimination complained of is unlawful under sections 5, 6, 22, 24, ~~31~~32, 37 and ~~39~~43 of the DDA.

### Accompanying documents

On 22 June 2022, the Applicants lodged a representative complaint with the Australian Human Rights Commission (AHRC) in which they alleged that their treatment, and the treatment of those on whose behalf the representative complaint was lodged, in Rangeview and/or BHDC in Western Australia from 5 September 1997 up to that date breached, among other things, the DDA. A copy of the complaint is annexed hereto (**First Complaint**).

The notice of termination of the First Complaint was given by the delegate of the President of the AHRC on 14 November 2022. This and the delegate's reasons for the decision is annexed hereto.

On 14 July 2023, the Applicants lodged a further representative complaint with the AHRC in which they alleged that their treatment, and the treatment of those on whose behalf the representative complaint was lodged, in BHDC, Rangeview and/or Hakea in Western Australia from 5 September 1997 up to that date breached, among other things, the DDA, including that



it breached s 32 of the DDA (Further Complaint).

On 16 November 2023, the Applicants lodged amendments to the Further Complaint (Amended Further Complaint).

The notice of termination of the Further Complaint as amended by the Amended Further Complaint was given by the delegate of the President of the AHRC on 15 February 2024. This and the delegate's reasons for the decision are annexed hereto.

#### Extension of time

Date of issue of notice under section 46PH(2) of the *Australian Human Rights Commission Act 1986* (Cth) in response to the First Complaint: 14 November 2022.

Date of issue of notice under section 46PH(2) of the *Australian Human Rights Commission Act 1986* (Cth) in response to the Further Complaint as amended by the Amended Further Complaint: 14 November 2022 and 15 February 2024.

An extension of time under the *Australian Human Rights Commission Act 1986* (Cth) is not required.

To the extent necessary, the Applicants seek orders pursuant to sections 39, 41 and 42 of the *Limitation Act 2005* (WA) to extend the time in which the claims of the Applicants and the Group Members can be commenced.

#### Applicants' addresses

The Applicants' address for service is:

Place: Levitt Robinson  
Ground Floor, 162 Goulburn Street  
Surry Hills, NSW, 2010

Email: [slevitt@levittrobinson.com](mailto:slevitt@levittrobinson.com)

The First and Second Applicants' addresses are:

C/- Levitt Robinson  
Ground Floor, 162 Goulburn Street  
Surry Hills, NSW, 2010

#### Service on the Respondent

It is intended to serve this application on the Respondent.



11<sup>th</sup> July  
Date: ## June 2025

A large, stylized handwritten signature in blue ink, written over a horizontal dotted line.

Stewart Levitt  
Lawyer for the Applicant



**SCHEDULE OF PARTIES**

**Alexandra Walters**

First Applicant

**Joel Vida**

Second Applicant

**State of Western Australia**

Respondent



**From:** Hyun Joo Lee  
**To:** Stewart Levitt; Dana Levitt  
**Cc:** Angelique Gebrayel; Caroline Tjoa  
**Subject:** Termination of the complaint (AHRC Ref: 2022-10859, 2022-11417 and 2022-11418)  
[SEC=OFFICIAL:Sensitive]  
**Date:** Monday, 14 November 2022 10:48:04 AM  
**Attachments:** image001.png  
2022-10859 Notice of Termination.pdf  
2022-10859 Attachment B.pdf  
2022-10859 Attachment A.pdf

Dear Dana and Stewart,

I refer to the complaint which has been accepted and progressed as a representative complaint against the State of Western Australia (Department of Justice) made by Ms Alexandra "Lexie" Walters, [REDACTED], Mr Joel Vida, [REDACTED] and [REDACTED] on their own behalf and on behalf of a wider class of people all of whom are current or former detainees of Banksia Hill Detention Centre and Rangeview Juvenile Remand Centre, both facilities operating under the *Young Offender's Act 1994* (WA). The complaint alleges unlawful discrimination under the *Racial Discrimination Act 1975* (Cth), the *Age Discrimination Act 2004* (Cth) and the *Disability Discrimination Act 1992* (Cth).

I am writing on behalf of my colleague, Caroline Tjoa, the case officer handling the matter, as she is currently on leave.

Please find **attached**:

Termination Notice issued by the President's Delegate of today's date;  
The Delegate's termination decision (Attachment A); and  
A copy of the complaint (Attachment B).

Thank you.

Kind regards,

HJ Lee, Accredited Mediator NMAS  
Pronouns: she/her  
**Principal Investigator/Conciliator**  
**Australian Human Rights Commission**

**Tel:** +61 2 9284 9687 or 1300 369 711 **Fax:** +61 2 9284 9611

**Email:** [hyunjoo.lee@humanrights.gov.au](mailto:hyunjoo.lee@humanrights.gov.au)

*We acknowledge the traditional custodians of this land,  
the Gadigal peoples of the Eora Nation, and pay  
our respects to their Elders, past, present and future.*



\*\*\*\*\*

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## ATTACHMENT A

Our ref: 2022-10859, 2022-11417 and 2022-11418

14 November 2022

Mr Stewart Levitt  
Senior Partner  
Levitt Robinson Solicitors  
Sent by email only: [slevitt@levittrobinson.com](mailto:slevitt@levittrobinson.com)

Dear Mr Levitt

### Termination of the complaint

I am writing to advise you of my decision regarding the complaint which has been accepted and progressed as a representative complaint against the State of Western Australia (Department of Justice) (the Department) made by Ms Alexandra "Lexie" Walters, [REDACTED], Mr Joel Vida, [REDACTED] and [REDACTED] (together the 'Named Complainants') on their own behalf and on behalf of a wider class of people (the 'Group' or 'Group Members') all of whom are current or former detainees of Banksia Hill Detention Centre ('BHDC') and Rangeview Juvenile Remand Centre, both facilities operating under the *Young Offender's Act 1994 (WA)* ('YOA').

The complaint alleges that from the opening of BHDC on 1 September 1997, the Named Complainants and/or Group Members on one or more occasion suffered discriminatory treatment and/or harassment because of their:

- a) Race (in breach of the *Racial Discrimination Act 1975 (Cth)* ('RDA')); and/or,
- b) Age (in breach of the *Age Discrimination Act 2004 (Cth)* ('ADA')); and/or,
- c) Disability (in breach of the *Disability Discrimination Act 1992 (Cth)* ('DDA')).

The summary of representative complaint document states: "All of the Complainants allege discrimination against the same Respondents in respect of age; all but [REDACTED] allege discrimination against the same



Respondents in respect of disability; and all but Alexandra (“Lexie”) Walters and [REDACTED] allege discrimination against the same Respondents in respect of their Aboriginal race.

A copy of the complaint was provided to the West Australian State Solicitor’s Office (SSO), representing the Department, on 28 July 2022.

### **Respondent to the complaint**

The complaint documents list the following entities and organisations as respondents:

- The State of Western Australia
- The Department of Justice
- The Department of Corrective Services – located within Department of Justice.
- The Youth Justice Board.
- The Commissioner of the Department of Corrective Services, as Chairman of the Youth Justice Board.

The Youth Justice Board and Commissioner of the Department of Corrective Services have not been accepted as respondents to the complaint as there are insufficient details of a reasonably arguable claim of unlawful discrimination under the RDA, DDA and/or ADA against these entities.

As the Department of Corrective Services is located within the Department of Justice, I consider that the correct respondent entity is the Department of Justice. Therefore, the complaint has been accepted and progressed as a complaint against the State of Western Australia (Department of Justice) only.

### **Scope of the accepted complaint**

The accepted complaint of age discrimination under the ADA does not include alleged acts, omissions or practices which occurred prior to the commencement of the ADA on 23 June 2004.

The complaint documents also make reference to alleged breaches of human rights and refer to various international human rights instruments. The Commission only has the power to inquire into complaints alleging a breach of human rights under the *Australian Human Rights Commission Act 1986* (Cth) (AHRCA) when they involve an act or practice by or on behalf of the Commonwealth. This complaint has not been accepted as a complaint alleging a breach of human rights under the AHRCA, as it relates to acts and practices of the State of Western Australia which is not the Commonwealth.



To the extent that the complaint is about sentencing decisions or acts of courts, please note that the Commission does not have the power to inquire into the judicial actions of judges, courts or tribunals. This is because judges and tribunal members are afforded 'judicial immunity' from civil action, including claims of unlawful discrimination.

## **My decision**

Under sections 46PF(1)(b) and 46PH(1B)(b) of the AHRCA the President must terminate a complaint if satisfied that there is no reasonable prospect of the matter being settled by conciliation.

The Commission asked the parties to advise of their views regarding conciliation and the upfront termination of the complaint on the basis that there is no reasonable prospect of the matter being settled by conciliation. In summary, the following information has been provided to the Commission:

- In a letter dated 14 September 2022 you state that you spoke with the Senior Assistant State Solicitor for the State of Western Australia on 1 September 2022. Since then you have written directly to the Premier of the State of Western Australia, requesting humane and constructive engagement to resolve the matters covered by the complaints, but there has been no response from the Premier's Office; neither has there been any further engagement from the SSO. You advise that prior to 1 September 2022, weeks had passed without an indication being forthcoming of willingness to conciliate. You advise that you consider there is likely to be no utility in conciliation with the State through the Commission and request the complaint be terminated. You reiterate this request that the complaint be terminated in emails/letters dated 20 and 30 September 2022, 12 and 21 October 2022 and 4 November 2022.
- In particular, in your letter dated 30 September 2022 you state that recent actions by the Western Australian Government on the ground make it counterintuitive that conciliation would have any reasonable prospects of success and request that the complaint is terminated under section 46PH(1B)(b).
- In your letter dated 12 October 2022 you state that notwithstanding your invitation to the Premier and his Government to work with you to resolve these issues, you received a disingenuous response from the Premier on 3 October 2022, in which he wrote, "I have asked the Department of Justice



through the Minister for Corrective Services to investigate the matters you have raised". You request that the complaint is terminated with immediate effect.

- In a letter dated 14 October 2022 the SSO noted issues regarding the complaint and recommended that a decision on termination be delayed so that the parties could engage in direct discussions regarding a possible further substituted complaint being submitted. A copy of this letter was provided to your office on 17 October 2022.
- In a letter dated 21 October 2022 you state that the Complainants and Group Members maintain their previously stated position that they want the complaint to be terminated because there is no reasonable prospect of the matters being complained of being settled by conciliation. You advise that the Complainants and Group Members reject any suggestion, if made, that the probability of a settlement being reached will be improved if the complaint was redrafted or the issues raised by the complaint are clarified.
- In a letter dated 2 November 2022 the SSO advise that it has sought to engage with Levitt Robinson, by way of letter, in relation to the 'deficiencies in the complaint' but have not received a response to that letter. This letter of 2 November 2022 states that "as it appears there is an unwillingness on the part of the complainant's solicitors to undertake steps to enable the State to meaningfully engage in conciliation, it is now a matter for the Commission as to whether the complaint should be terminated." A copy of this letter was provided to you on 3 November 2022.
- In a letter dated 4 November 2022 you advise that you 'reject the notion that there is any deficiency in the Complaints as lodged'. You again request that the complaint be terminated.

There is no information currently before me to support that the complaint is able to be resolved through conciliation at the Commission. In all the circumstances, I have decided to terminate the complaint under sections 46PF(1)(b) and 46PH(1B)(b) of the AHRCA, as I am satisfied that there is no reasonable prospect of the matter being settled by conciliation.



### **Possible further action**

The AHRCA says that after a complaint is terminated, the person(s) affected by the alleged discrimination may be able to apply to the Federal Circuit and Family Court of Australia (FCFCOA) or the Federal Court of Australia (FCA) to have the allegations decided by the court.

If the complainants apply to the FCFCOA or the FCA, they will need to attach the following documents to the application:

- this letter;
- the enclosed Notice of Termination; and
- the enclosed copy of the complaint.

Any application to the court must be made within 60 days of the date on the Notice of Termination.

If a matter proceeds to court, the FCFCOA and FCA can award costs against either party. Information about the court or the court process is available from a court registry or from its websites at [www.fcfcOA.gov.au](http://www.fcfcOA.gov.au) and [www.fedcourt.gov.au](http://www.fedcourt.gov.au).

Please provide a copy of this letter to your clients for their records.

Yours sincerely

Jodie Ball  
**Delegate of the President**



levitt robinson

SOLICITORS



Our ref: SAL:DL:200301\_251

27 June 2022

Ms Caroline Tjoa  
Principal Investigator/Conciliator  
Investigation and Conciliation Services  
Australian Human Rights Commission  
GPO Box 5218  
SYDNEY NSW 2000

By email: [caroline.tjoa@humanrights.gov.au](mailto:caroline.tjoa@humanrights.gov.au)

Dear Caroline

Re: **Banksia Hill Juvenile Detention Centre**

**Australian Human Rights Commission Complaint under Section 46P (1B)(2)(b)(ii), and Section 46PB of the Australian Human Rights Commission Act (C'th) 1986**

Representative Complaint lodged by Levitt Robinson Solicitors for:

Alexandra ("Lexie") Walters; [REDACTED]; Joel Vida; [REDACTED];  
[REDACTED]; and [REDACTED].

With respect to Alexandra "Lexie" Walters, Walter's [REDACTED], [REDACTED] and concerning [REDACTED], his mother, [REDACTED], have both respectively agreed to act as "Next Friend", and we have **attached** their signed authorities for us to act, as part of Annexure "A" appearing as documents "G" and "H".

We have the instructions of each of the Complainants to withdraw the Complaint material previously submitted on their joint behalves and to replace it with the **attached** Joint Complaint, together with all annexures and appendices, **attached**.

This message contains confidential information and is intended only for the individual named. If you are not the intended recipient you should not disseminate, distribute or copy this email/fax. Please notify the sender immediately by email/fax if you have received this email/fax by mistake and delete this email/fax from your system. Email/fax transmission cannot be guaranteed to be secure or error free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or contain viruses. The sender does not accept liability for any errors or omissions in the content or the receipt of this message which may arise or otherwise as a result of email/fax transmission. If verification is required, please request a hard copy.

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Please do not hesitate to call the writer if you have any concerns or enquiries.

With kind regards

Yours faithfully  
**LEVITT ROBINSON**

**Stewart A Levitt**  
Senior Partner

A handwritten signature in black ink, appearing to be "S. Levitt", written over a faint, larger version of the same signature.

(Telephone: mobile 0407 323 737)

cc: **Ms Angelique Gebrayel**  
**agebrayel@levittrobinson.com**

**Ms Dana Levitt**  
**dlevitt@levittrobinson.com**



**Australian  
Human Rights  
Commission**

## COMPLAINT FORM \*

The Australian Human Rights Commission investigates and conciliates complaints about discrimination and breaches of human rights.

We will need to contact you about your complaint, so please provide your name and contact details, including one contact number if possible. If you do not provide this information we may not be able to deal with your complaint.

We will use the information you provide to assess, investigate and/or conciliate your complaint. We will usually provide a copy of your complaint (excluding your contact details) to the person or organisation you are complaining about and, if necessary, others who have relevant information about your complaint. By completing and submitting this form you consent to the Commission using your information for these purposes. If you have any questions about this or need help to complete this form please contact our National Information Service on 1300 656 419 or 02 9284 9600.

Your personal information will be used and stored in accordance with the *Privacy Act 1988* (Cth). The Commission's privacy policy is available at [www.humanrights.gov.au](http://www.humanrights.gov.au).

\*\*\*\*\*

### Part A – About you, the complainant \*

Title: Ms.  
 First name: Alexandra  
 Last name: Walters  
 Address: c/o - Levitt Robinson, Ground Floor, 162 Goulburn St  
 Suburb: Surry Hills  
 State/Territory: NSW  
 Postcode: 2010  
 Email: [dlevitt@levittrobinson.com](mailto:dlevitt@levittrobinson.com)  
 Phone (AH):  
 Phone (BH): (02) 9286 3133  
 Mobile: 0406 252 404  
 Fax: (02) 9283 0005  
 TTY:

If you require assistance to participate in the complaint process, please outline the assistance you require:



**If you are complaining on behalf of someone else, please provide the following details about this person.**

Title: Other persons matching the description of "Group Members"  
appearing at Annexure A

First name:

Last name:

Address:

Suburb:

State/Territory:

Postcode:

What is their relationship to you?

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:

**If someone is assisting you with the complaint, for example, a legal representative, advocate or union representative, please provide the following details about this person. \***

Title: Mr

First name: Stewart

Last name: Levitt

Position: Solicitor

Organisation: Levitt Robinson

Address: Ground Floor, 162 Goulburn Street

Suburb: Surry Hills

State/Territory: NSW

Postcode: 2010

Email: [slevitt@levittrobinson.com](mailto:slevitt@levittrobinson.com); [dlevitt@levittrobinson.com](mailto:dlevitt@levittrobinson.com)

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY:

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:



## **Part B – Who is the complaint about? \***

### **Respondent 1 \***

Name of person or organisation: The Department of Justice

ABN of organisation (if relevant):

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone (BH): 13 67 57/ (08) 9264 1600

Mobile:

Fax:

TTY:

What is your relationship to this respondent? Government Department in charge of the Complainant while in its custody and under its care and control.

### **Respondent 2 \***

Name of person or organisation: The Department of Corrective Services

ABN of organisation (if relevant):

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone (BH): 13 67 57/ (08) 9264 1600

Mobile:

Fax:

TTY:

What is your relationship to this respondent? Government Department in charge of the Complainant while in its custody and under its care and control.



Note: If you are complaining about more than two people or organisations, please provide information about each additional person or organisation. (see attached sheet with details of additional Respondents)

## Part C – What are you complaining about? \*

For information about the types of complaints the Commission can consider, please go to <https://www.humanrights.gov.au/complaints/complaint-guides/information-people-making-complaints>.

I am complaining because I believe:  
(Please select at least one reason below)

- I have been discriminated against because of my**
  - Age  
What is your age? Please refer to Annexure A
  - Disability  
What is your disability? Please refer to Annexure A
  - Association with a person with a disability  
What is the person's disability?
  - Status as a person with a disability who uses an assistance animal or disability aid or has a carer
  - Sex  
What is your sex?
  - Pregnancy
  - Breastfeeding
  - Marital or relationship status  
What is your marital or relationship status?
  - Family responsibilities
  - Sexual orientation  
What is your sexual orientation?
  - Gender identity  
What gender do you identify as?
  - Intersex status



- Race (this includes colour, national origin, descent or ethnic origin)  
What is your race/national or ethnic origin/descent? Please refer to

Annexure A

- I have been sexually harassed**

- I have experienced racial hatred**

What is your race/national or ethnic origin/descent?

- I have been discriminated against in my employment because of my**

- Trade union activity

- Criminal record  
What is your criminal record?

- Religion  
What is your religion?

- Political opinion  
What is your political opinion?

- My human rights have been breached by a Commonwealth government body.**

- I have been victimised because I made, or tried to make, a complaint about discrimination**

**When did the alleged event(s) happen? Please refer to Annexure A**

Note: The President of the Commission can decide not to investigate into a complaint alleging unlawful discrimination where the complaint is lodged more than six months after the alleged events(s) happened. If the event(s) being complained about happened more than six months ago, please explain the reasons for the delay in making a complaint to the Commission.

For complaints alleging human rights breaches and discrimination in employment under the ILO Convention, the relevant time frame is twelve months.

Reason(s) for delay: Please refer to Annexure A

**What happened?**

Describe the event(s) that you want to complain about. We need to know what you say happened, where it happened and who was involved. Please give us all the dates and other details that you can remember.

If you are complaining about employment, please tell us when you commenced employment, your job title and whether you are still employed.

Please refer to Annexure A



### Supporting documents

Please attach copies of any documents that support the claims in your complaint. For example - letters, separation certificate, doctors certificate. If you cannot do this, please tell us about the documents or other information and how this information can be obtained.

Please refer to Annexure A

### How do you think this complaint could be resolved?

For example, a complaint may be resolved with an agreement that a respondent will change its procedures, introduce training or policies on anti-discrimination, take other action to prevent possible discrimination and/or by payment of compensation.

Please refer to Annexure A

### Have you made a complaint to another organisation?

For example, a state anti-discrimination or equal opportunity agency, a worker's compensation agency, an ombudsman or the Fair Work Commission.

Yes

If yes, you must provide the name of the agency, the date the complaint was made, the status of the complaint, or outcome of the complaint. Please also attach copies of relevant documents, including a copy of your complaint and any letters you have received from the agency.

No

### Were you referred to the Commission by another organisation?


If so, what organisation?

## Part D – Lodging the complaint \* \*

Please send the complaint form to the Commission by:

Post: Australian Human Rights Commission  
GPO Box 5218  
Sydney NSW 2001  
Fax: 02 9284 9611  
Email: [complaints@humanrights.gov.au](mailto:complaints@humanrights.gov.au)

Signature:

  
STEWART A. LEVITA  
Senior Counselor

Date:

27/6/22

7





### Respondent 3

Name of person or organization: The Youth Justice Board

Address: Department of Justice Head Office, David Malcolm Justice Centre,  
Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone: 13 67 57/ (08) 9264 160

What is your relationship to this respondent? Party responsible for oversight of the Youth Justice Division of the Department of Corrective Services

### Respondent 4

Name of person or organization: The Commissioner of the Department of Corrective Services

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone: 13 67 57/ (08) 9264 160

What is your relationship to this respondent? Party responsible for oversight of delivery of Corrective Services



## COMPLAINT FORM \*

The Australian Human Rights Commission investigates and conciliates complaints about discrimination and breaches of human rights.

We will need to contact you about your complaint, so please provide your name and contact details, including one contact number if possible. If you do not provide this information we may not be able to deal with your complaint.

We will use the information you provide to assess, investigate and/or conciliate your complaint. We will usually provide a copy of your complaint (excluding your contact details) to the person or organisation you are complaining about and, if necessary, others who have relevant information about your complaint. By completing and submitting this form you consent to the Commission using your information for these purposes. If you have any questions about this or need help to complete this form please contact our National Information Service on 1300 656 419 or 02 9284 9600.

Your personal information will be used and stored in accordance with the *Privacy Act 1988* (Cth). The Commission's privacy policy is available at [www.humanrights.gov.au](http://www.humanrights.gov.au).

\*\*\*\*\*

### Part A – About you, the complainant \*

Title: Mr.

First name: [REDACTED] (known as [REDACTED])

Last name: [REDACTED]

Address: c/o - Levitt Robinson, Ground Floor, 162 Goulburn St

Suburb: Surry Hills

State/Territory: NSW

Postcode: 2010

Email: [slevitt@levittrobinson.com](mailto:slevitt@levittrobinson.com); [dlevitt@levittrobinson.com](mailto:dlevitt@levittrobinson.com)

Phone (AH):

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY:

If you require assistance to participate in the complaint process, please outline the assistance you require:



**If you are complaining on behalf of someone else, please provide the following details about this person. \***

Title: Other persons matching the description of "Group Members"

appearing at Annexure A

First name:

Last name:

Address:

Suburb:

State/Territory:

Postcode:

What is their relationship to you?

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:

**If someone is assisting you with the complaint, for example, a legal representative, advocate or union representative, please provide the following details about this person. \***

Title: Mr

First name: Stewart

Last name: Levitt

Position: Solicitor

Organisation: Levitt Robinson

Address: Ground Floor, 162 Goulburn Street

Suburb: Surry Hills

State/Territory: NSW

Postcode: 2010

Email: [slevitt@levittrobinson.com](mailto:slevitt@levittrobinson.com); [dlevitt@levittrobinson.com](mailto:dlevitt@levittrobinson.com)

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY:

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:



## Part B – Who is the complaint about? \*

---

### Respondent 1 \*

Name of person or organisation: The Department of Justice

ABN of organisation (if relevant):

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone (BH): 13 67 57 / (08) 9264 1600

Mobile:

Fax:

TTY:

What is your relationship to this respondent? Government Department in charge of the Complainant while in its custody and under its care and control.

### Respondent 2 \*

Name of person or organisation: The Department of Corrective Services

ABN of organisation (if relevant):

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone (BH): 13 67 57 / (08) 9264 1600

Mobile:

Fax:

TTY:

What is your relationship to this respondent? Government Department in charge of the Complainant while in its custody and under its care and control.



Note: If you are complaining about more than two people or organisations, please provide information about each additional person or organisation. (see attached sheet with details of additional Respondents)

## Part C – What are you complaining about? \*

For information about the types of complaints the Commission can consider, please go to <https://www.humanrights.gov.au/complaints/complaint-guides/information-people-making-complaints>.

I am complaining because I believe:  
(Please select at least one reason below)

- I have been discriminated against because of my**
  - Age  
What is your age? Please see Annexure A
  - Disability  
What is your disability? Please see Annexure A
  - Association with a person with a disability  
What is the person's disability?
  - Status as a person with a disability who uses an assistance animal or disability aid or has a carer
  - Sex  
What is your sex?
  - Pregnancy
  - Breastfeeding
  - Marital or relationship status  
What is your marital or relationship status?
  - Family responsibilities
  - Sexual orientation  
What is your sexual orientation?
  - Gender identity  
What gender do you identify as?
  - Intersex status



- Race (this includes colour, national origin, descent or ethnic origin)  
What is your race/national or ethnic origin/descent? Please see

Annexure A

**I have been sexually harassed**

**I have experienced racial hatred**

What is your race/national or ethnic origin/descent? Indigenous Australian

**I have been discriminated against in my employment because of my**

Trade union activity

Criminal record  
What is your criminal record?

Religion  
What is your religion?

Political opinion  
What is your political opinion?

**My human rights have been breached by a Commonwealth government body.**

**I have been victimised because I made, or tried to make, a complaint about discrimination**

**When did the alleged event(s) happen? Please see Annexure A**

Note: The President of the Commission can decide not to investigate into a complaint alleging unlawful discrimination where the complaint is lodged more than six months after the alleged events(s) happened. If the event(s) being complained about happened more than six months ago, please explain the reasons for the delay in making a complaint to the Commission.

For complaints alleging human rights breaches and discrimination in employment under the ILO Convention, the relevant time frame is twelve months.

Reason(s) for delay: Please see Annexure A

**What happened?**

Describe the event(s) that you want to complain about. We need to know what you say happened, where it happened and who was involved. Please give us all the dates and other details that you can remember.

If you are complaining about employment, please tell us when you commenced employment, your job title and whether you are still employed.

Please see Annexure A



### Supporting documents

Please attach copies of any documents that support the claims in your complaint. For example - letters, separation certificate, doctors certificate. If you cannot do this, please tell us about the documents or other information and how this information can be obtained.

Please see Annexure A

### How do you think this complaint could be resolved?

For example, a complaint may be resolved with an agreement that a respondent will change its procedures, introduce training or policies on anti-discrimination, take other action to prevent possible discrimination and/or by payment of compensation.

Please see Annexure A

### Have you made a complaint to another organisation?

For example, a state anti-discrimination or equal opportunity agency, a worker's compensation agency, an ombudsman or the Fair Work Commission.

Yes

If yes, you must provide the name of the agency, the date the complaint was made, the status of the complaint, or outcome of the complaint. Please also attach copies of relevant documents, including a copy of your complaint and any letters you have received from the agency.

No

### Were you referred to the Commission by another organisation?


If so, what organisation?

## Part D – Lodging the complaint \* \*

Please send the complaint form to the Commission by:

Post: Australian Human Rights Commission  
GPO Box 5218  
Sydney NSW 2001  
Fax: 02 9284 9611  
Email: [complaints@humanrights.gov.au](mailto:complaints@humanrights.gov.au)

Signature:

  
STEWART A. LEVITT  
Submitter 37 to Complainant

Date:

27/6/2022



**Respondent 3**

Name of person or organization: The Youth Justice Board

Address: Department of Justice Head Office, David Malcolm Justice Centre,  
Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone: 13 67 57/ (08) 9264 160

What is your relationship to this respondent? Party responsible for oversight of the Youth Justice Division of the Department of Corrective Services

**Respondent 4**

Name of person or organization: The Commissioner of the Department of Corrective Services

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone: 13 67 57/ (08) 9264 160

What is your relationship to this respondent? Party responsible for oversight of delivery of Corrective Services



**Australian  
Human Rights  
Commission**

## COMPLAINT FORM \*

The Australian Human Rights Commission investigates and conciliates complaints about discrimination and breaches of human rights.

We will need to contact you about your complaint, so please provide your name and contact details, including one contact number if possible. If you do not provide this information we may not be able to deal with your complaint.

We will use the information you provide to assess, investigate and/or conciliate your complaint. We will usually provide a copy of your complaint (excluding your contact details) to the person or organisation you are complaining about and, if necessary, others who have relevant information about your complaint. By completing and submitting this form you consent to the Commission using your information for these purposes. If you have any questions about this or need help to complete this form please contact our National Information Service on 1300 656 419 or 02 9284 9600.

Your personal information will be used and stored in accordance with the *Privacy Act 1988* (Cth). The Commission's privacy policy is available at [www.humanrights.gov.au](http://www.humanrights.gov.au).

\*\*\*\*\*

### Part A – About you, the complainant \*

Title: Mr.

First name: Joel

Last name: Vida

Address: c/o - Levitt Robinson, Ground Floor, 162 Goulburn St

Suburb: Surry Hills

State/Territory: NSW

Postcode: 2010

Email: [slevitt@levittrobinson.com](mailto:slevitt@levittrobinson.com); [dlevitt@levittrobinson.com](mailto:dlevitt@levittrobinson.com)

Phone (AH):

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY:

If you require assistance to participate in the complaint process, please outline the assistance you require:



**If you are complaining on behalf of someone else, please provide the following details about this person. \***

Title: Other persons matching the description of "Group Members"

appearing at Annexure A

First name:

Last name:

Address:

Suburb:

State/Territory:

Postcode:

What is their relationship to you?

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:

**If someone is assisting you with the complaint, for example, a legal representative, advocate or union representative, please provide the following details about this person. \***

Title: Mr

First name: Stewart

Last name: Levitt

Position: Solicitor

Organisation: Levitt Robinson

Address: Ground Floor, 162 Goulburn Street

Suburb: Surry Hills

State/Territory: NSW

Postcode: 2010

Email: slevitt@levittrobinson.com; dlevitt@levittrobinson.com

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY:

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:



## **Part B – Who is the complaint about? \***

### **Respondent 1 \***

Name of person or organisation: The Department of Justice

ABN of organisation (if relevant):

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone (BH): 13 67 57 / (08) 9264 1600

Mobile:

Fax:

TTY:

What is your relationship to this respondent? Government Department in charge of the Complainant while in its custody and under its care and control.

### **Respondent 2 \***

Name of person or organisation: The Department of Corrective Services

ABN of organisation (if relevant):

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode:

Email:

Phone (BH): 13 67 57 / (08) 9264 1600

Mobile:

Fax:

TTY:

What is your relationship to this respondent? Government Department in charge of the Complainant while in its custody and under its care and control.



Note: If you are complaining about more than two people or organisations, please provide information about each additional person or organisation. (see attached sheet with details of additional Respondents)

## Part C – What are you complaining about? \*

For information about the types of complaints the Commission can consider, please go to <https://www.humanrights.gov.au/complaints/complaint-guides/information-people-making-complaints>.

I am complaining because I believe:  
(Please select at least one reason below)

- I have been discriminated against because of my**
  - Age  
What is your age? Please see Annexure A
  - Disability  
What is your disability? Please see Annexure A
  - Association with a person with a disability  
What is the person's disability?
  - Status as a person with a disability who uses an assistance animal or disability aid or has a carer
  - Sex  
What is your sex?
  - Pregnancy
  - Breastfeeding
  - Marital or relationship status  
What is your marital or relationship status?
  - Family responsibilities
  - Sexual orientation  
What is your sexual orientation?
  - Gender identity  
What gender do you identify as?
  - Intersex status



- Race (this includes colour, national origin, descent or ethnic origin)  
What is your race/national or ethnic origin/descent? Please see

Annexure A

**I have been sexually harassed**

**I have experienced racial hatred**

What is your race/national or ethnic origin/descent?

**I have been discriminated against in my employment because of my**

Trade union activity

Criminal record  
What is your criminal record?

Religion  
What is your religion?

Political opinion  
What is your political opinion?

**My human rights have been breached by a Commonwealth government body.**

**I have been victimised because I made, or tried to make, a complaint about discrimination**

**When did the alleged event(s) happen? Please see Annexure A**

Note: The President of the Commission can decide not to investigate into a complaint alleging unlawful discrimination where the complaint is lodged more than six months after the alleged events(s) happened. If the event(s) being complained about happened more than six months ago, please explain the reasons for the delay in making a complaint to the Commission.

For complaints alleging human rights breaches and discrimination in employment under the ILO Convention, the relevant time frame is twelve months.

Reason(s) for delay: Please see Annexure A

**What happened?**

Describe the event(s) that you want to complain about. We need to know what you say happened, where it happened and who was involved. Please give us all the dates and other details that you can remember.

If you are complaining about employment, please tell us when you commenced employment, your job title and whether you are still employed.

Please see Annexure A



### Supporting documents

Please attach copies of any documents that support the claims in your complaint. For example - letters, separation certificate, doctors certificate. If you cannot do this, please tell us about the documents or other information and how this information can be obtained.

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### How do you think this complaint could be resolved?

For example, a complaint may be resolved with an agreement that a respondent will change its procedures, introduce training or policies on anti-discrimination, take other action to prevent possible discrimination and/or by payment of compensation.

Please see Annexure A

### Have you made a complaint to another organisation?

For example, a state anti-discrimination or equal opportunity agency, a worker's compensation agency, an ombudsman or the Fair Work Commission.

Yes

If yes, you must provide the name of the agency, the date the complaint was made, the status of the complaint, or outcome of the complaint. Please also attach copies of relevant documents, including a copy of your complaint and any letters you have received from the agency.

No

### Were you referred to the Commission by another organisation?

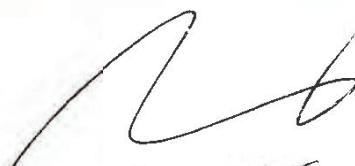
If so, what organisation?

## Part D – Lodging the complaint \* \*

Please send the complaint form to the Commission by:

Post: Australian Human Rights Commission  
GPO Box 5218  
Sydney NSW 2001  
Fax: 02 9284 9611  
Email: [complaints@humanrights.gov.au](mailto:complaints@humanrights.gov.au)

Signature:

  
STEWART A. LEVITT  
Solicitor 45 for complainant

Date: 27/06/2022



**Respondent 3**

Name of person or organization: The Youth Justice Board

Address: Department of Justice Head Office, David Malcolm Justice Centre,  
Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone: 13 67 57/ (08) 9264 160

What is your relationship to this respondent? Party responsible for oversight of the Youth Justice Division of the Department of Corrective Services

**Respondent 4**

Name of person or organization: The Commissioner of the Department of Corrective Services

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone: 13 67 57/ (08) 9264 160

What is your relationship to this respondent? Party responsible for oversight of delivery of Corrective Services



**Australian  
Human Rights  
Commission**

## COMPLAINT FORM \*

The Australian Human Rights Commission investigates and conciliates complaints about discrimination and breaches of human rights.

We will need to contact you about your complaint, so please provide your name and contact details, including one contact number if possible. If you do not provide this information we may not be able to deal with your complaint.

We will use the information you provide to assess, investigate and/or conciliate your complaint. We will usually provide a copy of your complaint (excluding your contact details) to the person or organisation you are complaining about and, if necessary, others who have relevant information about your complaint. By completing and submitting this form you consent to the Commission using your information for these purposes. If you have any questions about this or need help to complete this form please contact our National Information Service on 1300 656 419 or 02 9284 9600.

Your personal information will be used and stored in accordance with the *Privacy Act 1988* (Cth). The Commission's privacy policy is available at [www.humanrights.gov.au](http://www.humanrights.gov.au).

\*\*\*\*\*

### Part A – About you, the complainant \*

Title: Ms  
 First name: [REDACTED]  
 Last name: [REDACTED]  
 Address: c/o - Levitt Robinson, Ground Floor, 162 Goulburn St  
 Suburb: Surry Hills  
 State/Territory: NSW  
 Postcode: 2010  
 Email: [slevitt@levittrobinson.com](mailto:slevitt@levittrobinson.com); [dlevitt@levittrobinson.com](mailto:dlevitt@levittrobinson.com)  
 Phone (AH):  
 Phone (BH): (02) 9286 3133  
 Mobile: 0406 252 404  
 Fax: (02) 9283 0005  
 TTY:

If you require assistance to participate in the complaint process, please outline the assistance you require:



**If you are complaining on behalf of someone else, please provide the following details about this person. \***

Title: Other persons matching the description of "Group Members"

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Last name:

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State/Territory:

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Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:

**If someone is assisting you with the complaint, for example, a legal representative, advocate or union representative, please provide the following details about this person. \***

Title: Mr

First name: Stewart

Last name: Levitt

Position: Solicitor

Organisation: Levitt Robinson

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Suburb: Surry Hills

State/Territory: NSW

Postcode: 2010

Email: [slevitt@levittrobinson.com](mailto:slevitt@levittrobinson.com); [dlevitt@levittrobinson.com](mailto:dlevitt@levittrobinson.com)

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY:

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:



## **Part B – Who is the complaint about? \***

### **Respondent 1 \***

Name of person or organisation: The Department of Justice

ABN of organisation (if relevant):

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone (BH): 13 67 57 / (08) 9264 1600

Mobile:

Fax:

TTY:

What is your relationship to this respondent? Government Department in charge of the Complainant while in its custody and under its care and control.

### **Respondent 2 \***

Name of person or organisation: The Department of Corrective Services

ABN of organisation (if relevant):

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone (BH): 13 67 57 / (08) 9264 1600

Mobile:

Fax:

TTY:

What is your relationship to this respondent? Government Department in charge of the Complainant while in its custody and under its care and control.



Note: If you are complaining about more than two people or organisations, please provide information about each additional person or organisation. (see attached sheet with details of additional Respondents)

## Part C – What are you complaining about? \*

For information about the types of complaints the Commission can consider, please go to <https://www.humanrights.gov.au/complaints/complaint-guides/information-people-making-complaints>.

I am complaining because I believe:  
(Please select at least one reason below)

- I have been discriminated against because of my**
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What is your age? Please see Annexure A
  - Disability  
What is your disability?
  - Association with a person with a disability  
What is the person's disability?
  - Status as a person with a disability who uses an assistance animal or disability aid or has a carer
  - Sex  
What is your sex?
  - Pregnancy
  - Breastfeeding
  - Marital or relationship status  
What is your marital or relationship status?
  - Family responsibilities
  - Sexual orientation  
What is your sexual orientation?
  - Gender identity  
What gender do you identify as?
  - Intersex status



- Race (this includes colour, national origin, descent or ethnic origin)  
What is your race/national or ethnic origin/descent? Please see

Annexure A

I have been sexually harassed

I have experienced racial hatred

What is your race/national or ethnic origin/descent?

I have been discriminated against in my employment because of my

Trade union activity

Criminal record  
What is your criminal record?

Religion  
What is your religion?

Political opinion  
What is your political opinion?

My human rights have been breached by a Commonwealth government body.

I have been victimised because I made, or tried to make, a complaint about discrimination

**When did the alleged event(s) happen? Please see Annexure A**

Note: The President of the Commission can decide not to investigate into a complaint alleging unlawful discrimination where the complaint is lodged more than six months after the alleged events(s) happened. If the event(s) being complained about happened more than six months ago, please explain the reasons for the delay in making a complaint to the Commission.

For complaints alleging human rights breaches and discrimination in employment under the ILO Convention, the relevant time frame is twelve months.

Reason(s) for delay: Please see Annexure A

**What happened?**

Describe the event(s) that you want to complain about. We need to know what you say happened, where it happened and who was involved. Please give us all the dates and other details that you can remember.

If you are complaining about employment, please tell us when you commenced employment, your job title and whether you are still employed.

Please see Annexure A



### Supporting documents

Please attach copies of any documents that support the claims in your complaint. For example - letters, separation certificate, doctors certificate. If you cannot do this, please tell us about the documents or other information and how this information can be obtained.

Please see Annexure A

### How do you think this complaint could be resolved?

For example, a complaint may be resolved with an agreement that a respondent will change its procedures, introduce training or policies on anti-discrimination, take other action to prevent possible discrimination and/or by payment of compensation.

Please see Annexure A

### Have you made a complaint to another organisation?

For example, a state anti-discrimination or equal opportunity agency, a worker's compensation agency, an ombudsman or the Fair Work Commission.

Yes

If yes, you must provide the name of the agency, the date the complaint was made, the status of the complaint, or outcome of the complaint. Please also attach copies of relevant documents, including a copy of your complaint and any letters you have received from the agency.

No

### Were you referred to the Commission by another organisation?


If so, what organisation?

## Part D – Lodging the complaint \* \*

Please send the complaint form to the Commission by:

Post: Australian Human Rights Commission  
GPO Box 5218  
Sydney NSW 2001  
Fax: 02 9284 9611  
Email: [complaints@humanrights.gov.au](mailto:complaints@humanrights.gov.au)

Signature:

  
STEWART A. LEVITT  
Solicitor 53 for the complainant

Date:

27/06/22



**Respondent 3**

Name of person or organization: The Youth Justice Board

Address: Department of Justice Head Office, David Malcolm Justice Centre,  
Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone: 13 67 57/ (08) 9264 160

What is your relationship to this respondent? Party responsible for oversight of the Youth Justice Division of the Department of Corrective Services

**Respondent 4**

Name of person or organization: The Commissioner of the Department of Corrective Services

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone: 13 67 57/ (08) 9264 160

What is your relationship to this respondent? Party responsible for oversight of delivery of Corrective Services



**Australian  
Human Rights  
Commission**

## COMPLAINT FORM \*

The Australian Human Rights Commission investigates and conciliates complaints about discrimination and breaches of human rights.

We will need to contact you about your complaint, so please provide your name and contact details, including one contact number if possible. If you do not provide this information we may not be able to deal with your complaint.

We will use the information you provide to assess, investigate and/or conciliate your complaint. We will usually provide a copy of your complaint (excluding your contact details) to the person or organisation you are complaining about and, if necessary, others who have relevant information about your complaint. By completing and submitting this form you consent to the Commission using your information for these purposes. If you have any questions about this or need help to complete this form please contact our National Information Service on 1300 656 419 or 02 9284 9600.

Your personal information will be used and stored in accordance with the *Privacy Act 1988* (Cth). The Commission's privacy policy is available at [www.humanrights.gov.au](http://www.humanrights.gov.au).

\*\*\*\*\*

### Part A – About you, the complainant \*

Title: Mr

First name: [REDACTED]

Last name: [REDACTED]

Address: c/o - Levitt Robinson, Ground Floor, 162 Goulburn St

Suburb: Surry Hills

State/Territory: NSW

Postcode: 2010

Email: [slevitt@levittrobinson.com](mailto:slevitt@levittrobinson.com); [dlevitt@levittrobinson.com](mailto:dlevitt@levittrobinson.com)

Phone (AH):

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY:

If you require assistance to participate in the complaint process, please outline the assistance you require:



**If you are complaining on behalf of someone else, please provide the following details about this person. \***

Title: Other persons matching the description of "Group Members" appearing at Annexure A

First name:

Last name:

Address:

Suburb:

State/Territory:

Postcode:

What is their relationship to you?

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:

**If someone is assisting you with the complaint, for example, a legal representative, advocate or union representative, please provide the following details about this person. \***

Title: Mr  
 First name: Stewart  
 Last name: Levitt  
 Position: Solicitor  
 Organisation: Levitt Robinson  
 Address: Ground Floor, 162 Goulburn Street  
 Suburb: Surry Hills  
 State/Territory: NSW  
 Postcode: 2010  
 Email: slevitt@levittrobinson.com; dlevitt@levittrobinson.com  
 Phone (BH): (02) 9286 3133  
 Mobile: 0406 252 404  
 Fax: (02) 9283 0005  
 TTY:

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:



## **Part B – Who is the complaint about? \***

### **Respondent 1 \***

Name of person or organisation: The Department of Justice

ABN of organisation (if relevant):

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone (BH): 13 67 57 / (08) 9264 1600

Mobile:

Fax:

TTY:

What is your relationship to this respondent? Government Department in charge of the Complainant while in its custody and under its care and control.

### **Respondent 2 \***

Name of person or organisation: The Department of Corrective Services

ABN of organisation (if relevant):

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone (BH): 13 67 57 / (08) 9264 1600

Mobile:

Fax:

TTY:

What is your relationship to this respondent? Government Department in charge of the Complainant while in its custody and under its care and control.



Note: If you are complaining about more than two people or organisations, please provide information about each additional person or organisation. (see attached sheet with details of additional Respondents)

## Part C – What are you complaining about? \*

For information about the types of complaints the Commission can consider, please go to <https://www.humanrights.gov.au/complaints/complaint-guides/information-people-making-complaints>.

I am complaining because I believe:  
(Please select at least one reason below)

- I have been discriminated against because of my**
  - Age  
What is your age? Please see Annexure A
  - Disability  
What is your disability? Please see Annexure A
  - Association with a person with a disability  
What is the person's disability?
  - Status as a person with a disability who uses an assistance animal or disability aid or has a carer
  - Sex  
What is your sex?
  - Pregnancy
  - Breastfeeding
  - Marital or relationship status  
What is your marital or relationship status?
  - Family responsibilities
  - Sexual orientation  
What is your sexual orientation?
  - Gender identity  
What gender do you identify as?
  - Intersex status



- Race (this includes colour, national origin, descent or ethnic origin)  
What is your race/national or ethnic origin/descent?
- I have been sexually harassed**
- I have experienced racial hatred**  
What is your race/national or ethnic origin/descent?
- I have been discriminated against in my employment because of my**
- Trade union activity
- Criminal record  
What is your criminal record?
- Religion  
What is your religion?
- Political opinion  
What is your political opinion?
- My human rights have been breached by a Commonwealth government body.**
- I have been victimised because I made, or tried to make, a complaint about discrimination**

**When did the alleged event(s) happen? Please see Annexure A**

Note: The President of the Commission can decide not to investigate into a complaint alleging unlawful discrimination where the complaint is lodged more than six months after the alleged events(s) happened. If the event(s) being complained about happened more than six months ago, please explain the reasons for the delay in making a complaint to the Commission.

For complaints alleging human rights breaches and discrimination in employment under the ILO Convention, the relevant time frame is twelve months.

Reason(s) for delay: Please see Annexure A

**What happened?**

Describe the event(s) that you want to complain about. We need to know what you say happened, where it happened and who was involved. Please give us all the dates and other details that you can remember.

If you are complaining about employment, please tell us when you commenced employment, your job title and whether you are still employed.

Please see Annexure A



### Supporting documents

Please attach copies of any documents that support the claims in your complaint. For example - letters, separation certificate, doctors certificate. If you cannot do this, please tell us about the documents or other information and how this information can be obtained.

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### How do you think this complaint could be resolved?

For example, a complaint may be resolved with an agreement that a respondent will change its procedures, introduce training or policies on anti-discrimination, take other action to prevent possible discrimination and/or by payment of compensation.

Please see Annexure A

### Have you made a complaint to another organisation?

For example, a state anti-discrimination or equal opportunity agency, a worker's compensation agency, an ombudsman or the Fair Work Commission.

Yes

If yes, you must provide the name of the agency, the date the complaint was made, the status of the complaint, or outcome of the complaint. Please also attach copies of relevant documents, including a copy of your complaint and any letters you have received from the agency.

No

### Were you referred to the Commission by another organisation?

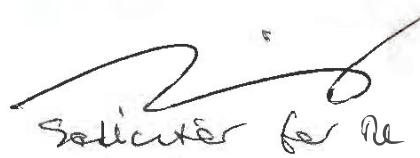
If so, what organisation?

## Part D – Lodging the complaint \* \*

Please send the complaint form to the Commission by:

Post: Australian Human Rights Commission  
GPO Box 5218  
Sydney NSW 2001  
Fax: 02 9284 9611  
Email: [complaints@humanrights.gov.au](mailto:complaints@humanrights.gov.au)

Signature:

 STEWART A. LEVITT  
Solicitor for the Complainant

Date:

27.06.22

**Respondent 3**

Name of person or organization: The Youth Justice Board

Address: Department of Justice Head Office, David Malcolm Justice Centre,  
Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone: 13 67 57/ (08) 9264 160

What is your relationship to this respondent? Party responsible for oversight of the Youth Justice Division of the Department of Corrective Services

**Respondent 4**

Name of person or organization: The Commissioner of the Department of Corrective Services

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone: 13 67 57/ (08) 9264 160

What is your relationship to this respondent? Party responsible for oversight of delivery of Corrective Services



**Australian  
Human Rights  
Commission**

## COMPLAINT FORM \*

The Australian Human Rights Commission investigates and conciliates complaints about discrimination and breaches of human rights.

We will need to contact you about your complaint, so please provide your name and contact details, including one contact number if possible. If you do not provide this information we may not be able to deal with your complaint.

We will use the information you provide to assess, investigate and/or conciliate your complaint. We will usually provide a copy of your complaint (excluding your contact details) to the person or organisation you are complaining about and, if necessary, others who have relevant information about your complaint. By completing and submitting this form you consent to the Commission using your information for these purposes. If you have any questions about this or need help to complete this form please contact our National Information Service on 1300 656 419 or 02 9284 9600.

Your personal information will be used and stored in accordance with the *Privacy Act 1988* (Cth). The Commission's privacy policy is available at [www.humanrights.gov.au](http://www.humanrights.gov.au).

\*\*\*\*\*

### Part A – About you, the complainant \*

Title: Ms  
 First name: [REDACTED]  
 Last name: [REDACTED]  
 Address: c/o - Levitt Robinson, Ground Floor, 162 Goulburn St  
 Suburb: Surry Hills  
 State/Territory: NSW  
 Postcode: 2010  
 Email: slevitt@levittrobinson.com; dlevitt@levittrobinson.com  
 Phone (AH):  
 Phone (BH): (02) 9286 3133  
 Mobile: 0406 252 404  
 Fax: (02) 9283 0005  
 TTY:

If you require assistance to participate in the complaint process, please outline the assistance you require:



**If you are complaining on behalf of someone else, please provide the following details about this person. \***

Title: Other persons matching the description of "Group Members"  
appearing at Annexure A

First name:

Last name:

Address:

Suburb:

State/Territory:

Postcode:

What is their relationship to you?

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:

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Organisation: Levitt Robinson

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State/Territory: NSW

Postcode: 2010

Email: slevitt@levittrobinson.com; dlevitt@levittrobinson.com

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY:

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:



## **Part B – Who is the complaint about? \***

### **Respondent 1 \***

Name of person or organisation: The Department of Justice

ABN of organisation (if relevant):

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone (BH): 13 67 57 / (08) 9264 1600

Mobile:

Fax:

TTY:

What is your relationship to this respondent? Government Department in charge of the Complainant while in its custody and under its care and control.

### **Respondent 2 \***

Name of person or organisation: The Department of Corrective Services

ABN of organisation (if relevant):

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone (BH): 13 67 57 / (08) 9264 1600

Mobile:

Fax:

TTY:

What is your relationship to this respondent? Government Department in charge of the Complainant while in its custody and under its care and control.



Note: If you are complaining about more than two people or organisations, please provide information about each additional person or organisation. (see attached sheet with details of additional Respondents)

## Part C – What are you complaining about? \*

For information about the types of complaints the Commission can consider, please go to <https://www.humanrights.gov.au/complaints/complaint-guides/information-people-making-complaints>.

I am complaining because I believe:  
(Please select at least one reason below)

- I have been discriminated against because of my**
  - Age  
What is your age? Please see Annexure A
  - Disability  
What is your disability? Please see Annexure A
  - Association with a person with a disability  
What is the person's disability?
  - Status as a person with a disability who uses an assistance animal or disability aid or has a carer
  - Sex  
What is your sex?
  - Pregnancy
  - Breastfeeding
  - Marital or relationship status  
What is your marital or relationship status?
  - Family responsibilities
  - Sexual orientation  
What is your sexual orientation?
  - Gender identity  
What gender do you identify as?
  - Intersex status



- Race (this includes colour, national origin, descent or ethnic origin)**  
What is your race/national or ethnic origin/descent? Please see

Annexure A

**I have been sexually harassed**

**I have experienced racial hatred**

What is your race/national or ethnic origin/descent?

**I have been discriminated against in my employment because of my**

Trade union activity

Criminal record  
What is your criminal record?

Religion  
What is your religion?

Political opinion  
What is your political opinion?

**My human rights have been breached by a Commonwealth government body.**

**I have been victimised because I made, or tried to make, a complaint about discrimination**

**When did the alleged event(s) happen? Please see Annexure A**

Note: The President of the Commission can decide not to investigate into a complaint alleging unlawful discrimination where the complaint is lodged more than six months after the alleged events(s) happened. If the event(s) being complained about happened more than six months ago, please explain the reasons for the delay in making a complaint to the Commission.

For complaints alleging human rights breaches and discrimination in employment under the ILO Convention, the relevant time frame is twelve months.

Reason(s) for delay: Please see Annexure A

**What happened?**

Describe the event(s) that you want to complain about. We need to know what you say happened, where it happened and who was involved. Please give us all the dates and other details that you can remember.

If you are complaining about employment, please tell us when you commenced employment, your job title and whether you are still employed.

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### Supporting documents

Please attach copies of any documents that support the claims in your complaint. For example - letters, separation certificate, doctors certificate. If you cannot do this, please tell us about the documents or other information and how this information can be obtained.

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### How do you think this complaint could be resolved?

For example, a complaint may be resolved with an agreement that a respondent will change its procedures, introduce training or policies on anti-discrimination, take other action to prevent possible discrimination and/or by payment of compensation.

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### Have you made a complaint to another organisation?

For example, a state anti-discrimination or equal opportunity agency, a worker's compensation agency, an ombudsman or the Fair Work Commission.

Yes

If yes, you must provide the name of the agency, the date the complaint was made, the status of the complaint, or outcome of the complaint. Please also attach copies of relevant documents, including a copy of your complaint and any letters you have received from the agency.

No

### Were you referred to the Commission by another organisation?


If so, what organisation?

## Part D – Lodging the complaint \* \*

Please send the complaint form to the Commission by:

Post: Australian Human Rights Commission  
GPO Box 5218  
Sydney NSW 2001  
Fax: 02 9284 9611  
Email: [complaints@humanrights.gov.au](mailto:complaints@humanrights.gov.au)

Signature:

  
STEWART A. LEVITT  
Solicitor 68 de Compensat

Date:

27/06/22

46



**Respondent 3**

Name of person or organization: The Youth Justice Board

Address: Department of Justice Head Office, David Malcolm Justice Centre,  
Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone: 13 67 57/ (08) 9264 160

What is your relationship to this respondent? Party responsible for oversight of the Youth Justice Division of the Department of Corrective Services

**Respondent 4**

Name of person or organization: The Commissioner of the Department of Corrective Services

Address: Department of Justice Head Office, David Malcolm Justice  
Centre, Level 23, 28 Barrack Street

Suburb: Perth

State/Territory: Western Australia

Postcode: 6000

Email:

Phone: 13 67 57/ (08) 9264 160

What is your relationship to this respondent? Party responsible for oversight of delivery of Corrective Services



## ANNEXURE A

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**A. SUMMARY OF REPRESENTATIVE COMPLAINT LODGED UNDER S. 46PB(1B)(2)(b)(ii) & S. 46PB OF THE AUSTRALIAN HUMAN RIGHTS COMMISSION ACT 1986 (CTH).**

1. This is a joint Representative Complaint made by Ms. Alexandra (“Lexie”) Walters, [REDACTED], [REDACTED], Mr. Joel Vida, [REDACTED], [REDACTED] and [REDACTED]; (together the ‘Named Complainants’) on behalf of a wider class of people (the ‘Group’ or ‘Group Members’) all of whom are current or former detainees<sup>1</sup> of Banksia Hill Detention Centre (‘BHDC’) and Rangeview Juvenile Remand Centre,<sup>2</sup> both facilities operating under the *Young Offender’s Act 1994* (WA) (‘YOA’), and from the opening of BHDC on 1 September 1997, and, who – on one or more occasion suffered discriminatory treatment and/or harassment *because of* their:
  - a. Race (in breach of the *Racial Discrimination Act 1975* (Cth) (‘RDA’)); and/or,
  - b. Age (in breach of the *Age Discrimination Act 2004* (Cth) (‘ADA’)); and/or,
  - c. Disability (in breach of the *Disability Discrimination Act 1992* (Cth) (‘DDA’)).

(the ‘Representative Complaint’ – for which several hundred individual testimonies have been taken from detainees both current and former).
  
2. All of the Complainants allege discrimination against the same Respondents in respect of age; all but [REDACTED] allege discrimination against the same Respondents in respect of disability; and all but Alexandra (“Lexie”) Walters and [REDACTED] allege discrimination against the same Respondents in respect of their Aboriginal race.

***A.1 Period subject to the complaints***

3. The Named Complainants submit that their complaints should span the period from the opening of the BHDC on 1 September 1997, and include the operations of Rangeview Remand Centre, during an intersecting period from 1 September 1997 to November 2012, and up to the present in respect of BHDC, since the discriminatory conduct complained of is and has been of a continuing nature.

<sup>1</sup> YOA, s 4, defines “detainee” as a “(young) person who is detained in a detention centre.” The term also describes a young person, who is alleged to be an offender and/or who is remanded in custody, prior to being dealt with by the Courts.

<sup>2</sup> In 2012, the facility closed, and the detainees were moved to BHDC.



4. It is submitted that there has been no material delay in bringing the complaints, because of the continuing nature of the matters that are the subject of the complaints in respect of the Group Members, being all persons who were sentenced to and served a term of detention/imprisonment at BHDC or Rangeview Remand Centre, since BHDC commenced to function as a juvenile detention centre, to include the discriminatory treatment of current inmates and abuse of their human rights.

#### *A.2 Respondents – Relevant Governmental Departments & Agencies*

5. The Representative Complaint is made against the State of Western Australia ('WA')<sup>3</sup> (the Government of Western Australia<sup>4</sup>) which is, and was at all material times, able to be sued pursuant to sections 3 and 5 of the *Crown Suits Act 1947* (WA).
6. The Respondents to the complaints based upon racial discrimination and/or disability discrimination and/or age discrimination are:
  - a. The Department of Justice ('DOJ') from September 1997 to 1 July 2001, and from 1 July 2017 and continuing.
  - b. The Department of Corrective Services ('DCS') from 2006 and continuing, which is located within the 'Community and Juvenile Justice Division' of the DOJ, covering all juvenile remand and detention services in WA's Juvenile Custodial Services Directorate, responsible for the governance, administration, and regulation of Youth Justice Services ('YJS').
  - c. The Youth Justice Board from 2 April 2014, created to oversee the work of the Youth Justice Division of the Department of Corrective Services, to engage with the community, particularly the Aboriginal community, around Youth Justice issues and to ensure continuous improvement in youth detention.
  - d. The Commissioner of the Department of Corrective Services, as Chairman of the Youth Justice Board, since 2 April 2014.
7. Although not included as Respondents to the joint discrimination complaint, it is intended additionally to join as Respondents to any Federal Court proceedings:
  - a. the Department of Communities ('DOC') from 1 July 2017, including Disability Justice

<sup>3</sup> *Crown Suits Act 1947* (WA) s 5(2).

<sup>4</sup> *Ibid*, s 3.



Services ('DJS') responsible for the provision of 'in-reach services', tailored supports and/or alternative placements for justice involved with "intellectual disability, cognitive impairment, or autism"<sup>5</sup> covering inmates at BHDC; and

- b. the Department for Child Protection and Family Support (2013 - 2017) and the Department for Child Protection and Family Support ('DCPFS') created on 17 May 2013, as a new name for the Department for Child Protection and including under all its iterations since September 1997 (hereinafter, (a) and (b) – the '**Relevant Juvenile Justice Agencies**').

### *A.3 Relevant international human rights instruments, declarations, principles, and standards*

8. The discriminatory conduct particularized by reference, respectively to age, disability and/or race toward the Named Complainants and also directed towards the wider Group Members, by the Relevant Juvenile Justice Agencies and Respondents, also contravenes the following international human rights instruments, declarations, principles, and standards, to which the Commonwealth of Australia is a contracting party, and has ratified, and on whom the obligations are binding at international law such as:
  - a. The **Convention on the Rights of the Child** (UNGA resolution 44/25, entry into force 2 September 1990) A/44/49('CRC');
  - b. The **Convention on the Rights of Persons with Disabilities** (UNGA resolution 61/106, entry into force 3 May 2008) A/RES/61/106 ('CRPD');
  - c. The **Optional Protocol to the Convention on the Rights of Persons with Disabilities** which the Australian Commonwealth Government acceded to on 21 August 2009 and which allows people within Australia to make complaints to the UN Committee on the Rights of Persons with Disabilities about breaches of the CRPD by Australia.
  - d. The **International Covenant on Civil and Political Rights** (UNGA Resolution 2200A (XXI), 16 December 1966, entry into force 23 March 1976) 999 UNTS 171. Australia signed: 18 December 1972, ratified on 13 August 1980 (ICCPR).
  - e. The **First Optional Protocol to the ICCPR** which the Australian Commonwealth Government acceded to in 1991 and allows people within Australia to make complaints to the UN Human Rights Committee about breaches of the ICCPR by Australia.

<sup>5</sup> WA Government, Department of Communities, Disability Justice Service Brochure (February 2020).



- f. The **International Covenant on Economic, Social and Cultural Rights** (UNGA resolution 2200A (XXI), 16 December 1966, entry into force 3 January 1976) 993 UNTS 3. Australia signed: 18 Dec 1972, ratified: 10 Dec 1975 (ICESCR).
  - g. The **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (UNGA resolution 39/46, entry into force 26 June 1987) A/39/51 (1984) ('CAT' or 'International Torture Convention') and Australia accepted the individual complaints procedures to the CAT Committee on 28 January 1993.
  - h. the **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** ('OPCAT') (which aims to improve how people's human rights are protected when they are detained. It does this by providing for a rigorous process of independent inspections of all places of detention wherever located internationally. In so doing, OPCAT enables a light to be shone on the conditions experienced by people in detention)<sup>9</sup> ratified by the Australian government on 21 December 2017.
  - i. the **International Convention on the Elimination of All Forms of Racial Discrimination** (UNGA resolution 2106 (XX), entry into force 4 January 1969) 660 UNTS 195 ('CERD') and Australia accepted the individual complaints procedures to the CERD Committee on 28 January 1993.
9. It is important to recognise that the suite of Commonwealth Anti-Discrimination legislation was enacted to implement the Commonwealth's binding obligations at international law and domestically implement the content of the various international human rights instruments that it had signed and ratified, namely pursuant to the principle of *Pacta Sunt Servanda*' ('Every treaty in force is binding upon the parties to it and must be performed by them in good faith') as provided by Article 26 of the 1969 of the *Vienna Convention of the Law on Treaties* which came into force internationally on 27 January 1980 and Australia acceded to on 13 June 1974 (**Vienna Convention**).
10. Relevantly, Article 27 of the Vienna Convention provides that "*Internal Law and Observance of Treaties: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.* Notwithstanding Australia is a federation of largely legislatively autonomous States and Territories, nonetheless, there exists an overriding obligation at international law (as well as in principle and morally as basic standards of human dignity and decency reasonably expected by persons living in liberal and civilised democracies under the rule of law) that all Australian governments must govern, legislate, regulate and implement and enforce legislation and



- regulation consistent with principles of international human rights law in particular those IHL instruments that are binding on Australia in international law.
11. Other relevant international human rights instruments that are not technically binding at international law, but which are arguably binding through the principles of customary international law and which Australia has endorsed and approved in its voting capacity in the UN General Assembly or UN Human Rights Council including:
    - a. the 1948 **Universal Declaration on Human Rights** ('UDHR') which Australia voted in favour of its adoption on 10 December 1948;
    - b. the 2007 **United Nations Declaration on the Rights of Indigenous Peoples** ('UNDRIP') which Australia endorsed in 2009;
    - c. the 2011 **UN Guiding Principles on Business and Human Rights** ('UNGPs'), Australia co-sponsored the resolution at the UN to adopt the UNGPs, and in early 2016, in response to Australia's November 2015 Universal Periodic Review, the Government committed to progress national consultations on further implementation of the UN Guiding Principles on Business and Human Rights.<sup>6</sup>
  12. The principles in the above conventions are supplemented by several other United Nations instruments. Among these are the Standard Minimum Rules for the Administration of Juvenile Justice 1985 (**Beijing Rules**), the Guidelines for the Prevention of Juvenile Delinquency 1990 (**Riyadh Guidelines**) and the Rules for the Protection of Juveniles Deprived of their Liberty 1990 (**Havana Rules**). These three instruments do not have the same status as the CRC. They are not regarded as treaties, but they are internationally accepted minimum standards to which States should have regard when setting up or amending their existing juvenile justice system. Setting policies and drafting legislation that incorporates the minimum standards assists States to comply with the obligations imposed upon them by the CRC.
    - a. The **Beijing Rules** are expressly acknowledged in the Preamble to the CRC. Relevantly, the Rules state that: the juvenile justice system shall emphasise the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence (Rule 5.1); juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults (Rule 13.4); and while in custody, juveniles shall receive care, protection and all necessary individual

<sup>6</sup> See Department of Foreign Affairs and Trade webpage 'Business and Human Rights'. Available: <https://www.dfat.gov.au/international-relations/themes/humanrights/business/Pages/default.aspx?text=The%20Australian%20Government%20believes%20that,incluing%20businesses%2C%20respect%20human%20rights>.



assistance - social, educational, vocational, psychological, medical and physical that they may require in view of their age, sex and personality (Rule 13.5).

- b. The **Havana Rules** also acknowledge the Beijing Rules in a statement of 'Fundamental Perspectives' and rules 28 to 30 relevantly provide that: The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations; In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned; and Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures.
- c. **The Riyadh Guidelines** require that emphasis be placed on prevention policies that facilitate the successful socialisation and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and work, as well as through voluntary organisations. Prevention programmes should include support for particularly vulnerable families and the involvement of schools in teaching basic values, including information about the rights and responsibilities of children and parents under the law.

#### ***A.4 Remedies sought***

13. Declarations that the named Respondents have respectively engaged in conduct which contravenes the *Racial Discrimination Act 1975* (Cth), the *Disability Discrimination Act 1992* (Cth) and the *Age Discrimination Act 2004* (Cth).
14. Orders restraining the named Respondents from continuing to engage in the impeached discriminatory conduct.
15. Damages, including for:
  - a. Hurt, humiliation and distress; and
  - b. Aggravated and/or exemplary damages.
16. A statement of regret by the State of Western Australia for the pain and suffering, hurt, humiliation and distress, caused by the impeached discriminatory conduct.
17. Costs and ancillary orders.



## B. NAMED (“LEAD”) COMPLAINANTS

### B.1 Ms. Alexandra (“Lexie”) Walters; Date of Birth, 8 October 2004; Caucasian Female

#### *Relevant background*

18. Ms. Alexandra “Lexie” Walters, white Caucasian female, born on 8 April 2004. She has a twin sister. Lexie is female, with a disability, and in 2012, at the age of 8, was diagnosed with **severe autism spectrum disorder** (“ASD”). Lexie was detained in BHDC for approximately 16 months on at least seven (7) separate occasions between the ages of 13 and 17. She also holds the record for the longest continuous period of confinement in the Cue Unit – the female equivalent of ISU.<sup>7</sup>
19. Lexie’s disability presented in primary school as *“she found it difficult to connect with other students and struggled to keep up academically.”* Despite “many attempts” to arrange a psychiatric assessment through the Department of Communities, her [REDACTED] (hereafter referred to as [REDACTED]), organized and paid for Lexie’s assessment by Dr [REDACTED] at Fiona Stanley Hospital, who diagnosed Lexie with severe ASD at the age of 8 years old.
20. Despite his best efforts to obtain psychiatric and/or psychosocial support, [REDACTED] was unable to prevent Lexie committing her first offence.
21. In the second-half of 2017, [REDACTED] found Lexie’s journal, in which she outlined her plan to kill the school bully, before taking her own life. As he recounts: *“She began to write a journal / diary of her feelings and actions, one of significance discovered is that she planned to kill the bully and then take her own life after. Upon discovering this she was taken to the doctor as she was not coping normally and was acting very irrationally.”*
22. By mid-2018, Lexie’s condition had deteriorated to the extent that [REDACTED] once again sought to have her assessed at a psychiatric hospital. He first attended the Midland Clinic, who referred him on to the Royal Perth Children Hospital, where she was referred onto Bentley Hospital to see a clinical psychologist. As [REDACTED] recounts: *“Communities and Disabilities WA still refused to take Lexie on, they only became involved once she was in detention. They thought she didn’t need protection because she had parents.”*
23. In 2017, Lexie started secondary school and the gap between Lexie and the other students widened, as she lacked the emotional and academic capacity to keep up with other students. [REDACTED]

<sup>7</sup> See Alexandra Walters Cell Placement History



- again sought the advice of various medical professionals including Lexie's General Practitioner; as well as the Department of Communities' disability services; and Bentley Hospital in Perth, only to have his concerns minimised, and the deterioration in Lexie's condition dismissed as '*normal teenage behaviour*.' In fact, it is not until Lexie is held in BHDC on remand after stabbing the high-school bully in the manner contemplated in her journal, that she is assessed by a pediatric neuropsychologist on 26 July 2018.
24. On 22 May 2018, Lexie was charged with attempted murder, and remanded to custody at BHDC.
  25. On 15 November 2018, Lexie was sentenced to 16-months detention with 12 months non-parole which she served as a detainee at BHDC. She was released from BHDC on 29 April 2019 – subject to a Violence Restraining Order (VRO) and Juvenile Conditional Release Order (JCRO).
  26. During her time at BHDC, Lexie accumulates an additional 38 charges for 'detention offences', including, 'refusing an order'; 'assaulting public officer'; self-harm, and 'abusing and threatening behaviour', all of which demonstrate the extent to which BHDC exacerbates Lexie's condition.
  27. During the period May and July 2019, whilst subject to a JCRO, Lexie accumulated an additional 11 counts of assaulting public officer to which she plead guilty and is released on conditional bail to the custody of her father.
  28. On 29 August 2019, Lexie was further remanded on bail at BHDC pending a court appearance for the purpose of "preparing an updated Youth Justice and Department of Communities Report", prepared by youth justice psychologist [REDACTED].

### ***Breaches of Anti-Discrimination Legislation in respect of Lexie Walters***

#### ***Disability discrimination***

29. It is alleged that in respect of Lexie Walters the Western Australian Department of Communities did not make reasonable adjustment by way of ensuring that she had appropriate clinical or mental health treatment or support even though it was foreseeable that, because of her disability,



without such adjustments and support she would be treated less favourably than a person without the disability in a similar situation, in contravention of Section 5 (2) of the *Disability & Discrimination Act 1992* (Cth).

30. The Department of Communities required Lexie to conduct and comport herself in a way which was beyond her capacity because of her disability and by requiring to do so without making reasonable adjustments.
31. The Department of Communities engaged in indirect disability discrimination in contravention of Section 6 of the *Disability & Discrimination Act 1992* (Cth).
32. The West Australian police indirectly discriminated against Lexie in contravention of Section 6 of the *Disability & Discrimination Act 1992* (Cth) because, despite being informed of her disability by her [REDACTED], they have required Lexie to comply with requirements or conditions which, because of her disability, it is predictable and foreseeable that Lexie could not, or would not be able to comply, and as a consequence of her predictable and foreseeable reaction to the imposition of the requirement or condition, she is likely to behave in a way that results in the imposition of punitive treatment under the Western Australian Criminal Justice System in contravention of Section 6 of the *Disability & Discrimination Act 1992* (Cth).

***Particulars***

33. The police, even apprised of her disability, behaved towards to her in a way that foreseeably would illicit a response that is a function of her disability, without making any allowance or adjustment; and
34. The police consistently exercised their discretion not to divert her to a forensic juvenile mental facility where she would be supported by trained medical staff, equipped to deal with her disability as they have the discretion to do, under Section 7 of the *Young Offenders Act 1994* (WA). It is alleged that the failure to exercise such discretion occurred after Lexie had committed acts for which she may not have been criminally responsible for, but for which she was sentenced to the term of imprisonment at BHDC, in respect of which no reasonable attention was paid to whether she had the requisite mental capacity to be criminally responsible.
35. In 2019, as a result of the failure of the department which operates the Banksia Hill Detention



Centre to make or refuse to make reasonable adjustments for the fact that Lexie suffered from a mental health disability led to her being treated less favourably than a person without the disability would be treated because she was incapable of complying with directions given which persons without her disability could have complied such that she suffered direct disability discrimination pursuant to Section 5 of the *Disability & Discrimination Act 1992* (Cth).

36. Further, by imposing such requirements or conditions on Lexie, the Department of Corrective Services knew that she would not be able to comply or would not comply with the requirements and condition and by imposing the requirement or condition on her, it was entirely foreseeable and predictable that she would be disadvantaged because she would be dealt with in a punitive manner:
37. For recalcitrant behaviour, which is a function of her mental disability, Lexie was confined to the CUE Unit for a continuous period of seven (7) months during which time she typically spent twenty-three hours locked in her cell with one (1) hour rec time “indoors” and when moved outside was confined to a cycle wire fully covered cage with only concrete and a brick wall measuring three (3) metres by three (3) metres.
38. Lexie was incarcerated at Banksia Hill on seven (7) occasions between the age of 13 and 17 for an aggregate period of sixteen (16) months.

***Age discrimination***

39. As a consequence of that incarceration and the treatment which she received during her adolescents, coinciding with her being aged 13 to 17 years of age, Lexie was subjected to indirect discrimination on the ground of her age in contravention of Section 15 of the *Age Discrimination Act 2004* (Cth) because the conditions to which she was subjected by the Department of Corrective Services deprived her of reasonable educational opportunity as mandated under the United Nations Convention on the rights of the child ratified by Australia in December 1990 and despite school attendance being compulsory in the State of Western Australia for children from the ages of 5 to 16 and representations on the Western Australian Department of Education website that “*Every child from pre-primary to year 12 is guaranteed a place at the local public school.*”
40. The WA Department of Communities, the WA Department of Justice; Department of



Corrective Services and the WA Commission of Mature and Young People, are jointly and severally liable for indirect age discrimination in that they imposed conditions or requirements or practices which were not reasonable having regard to the emotional, social and psychological development of Lexie when it was foreseeable that by doing so, she would be disadvantaged by reason of the treatment to which she would be subjected and was in fact subjected at Banksia Hill Detention Centre in contravention of Section 15 of the *Age Discrimination Act 2004* (Commonwealth).

41. By denying Lexie reasonable access to academic education, Corrective Services breached section 13 of the International Covenant on Economic, Social and Cultural Rights (NY, 1972), articles 13, 17 28 and 29 of the Convention on the Rights of the Child (NY, 1989) and articles 9, 21, 24 and 26 of the Convention on the Rights of Persons with Disabilities (NY, 2008), all of which Australia had ratified. It also contravened section 9(1) with respect to education being compulsory for children during the “compulsory education period”, as defined in section 6 of the School Education Act, 1999 (W.A.).

**B.2** [REDACTED] *Date of Birth*, [REDACTED]  
**Indigenous Male**

***Relevant background***

42. [REDACTED] is an Indigenous male born [REDACTED]. He has been diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”). [REDACTED] has been and currently is, an inmate at Banksia Hill since 3<sup>rd</sup> August 2021.

***Breaches of Anti-Discrimination Legislation particularised in respect o*** [REDACTED]

***Racial Discrimination***

43. [REDACTED] alleges that his incarceration at BHDC which is 23 hours and 9 minutes (2,223.5 kilometres) via National Highway 1 and National Highway 95, from his home in Broome, in the Kimberley, constitutes racial discrimination in that, as an Indigenous Australian his association to his land and connection to his family community is well known.



44. As a young adolescent male, the isolation from his kith and kin and family roots had resulted in his suffering emotional deprivation and much more limited access to family support than would be available to an inmate whose family lived within closer proximity and visiting distance to the Banksia Hill facility.
45. Even his telephone access to his mother, [REDACTED], herself Indigenous, is curtailed by the “operational” requirements of the facility and there has been no reasonable attempt to make an adjustment for the inability of his closest family to visit him at reasonable intervals, by increased telephone access. Visitation rights by close family members have been restricted or curtailed for alleged operational reasons.
46. A substantial proportion (approximately half) of the inmates at Banksia Hill are Indigenous children from the Pilbara or Kimberley; a majority of the inmates at Banksia Hill Detention Centre are Indigenous.
47. It was known to the Department of Corrective Services, the Disability Justice Service, the Department of Communities, and the Department of Child Protection (DCP) that [REDACTED] is a person with a disability by reason of his diagnosis of ADHD and the fact that his mother [REDACTED], herself indigenous, had notified the Department of Child Protection that [REDACTED] was a “person at risk” prior to his committal to Banksia Hill Detention Centre.
48. In the circumstances, the requirement that he be imprisoned in a facility so far from his home, roots and family; the undue restriction on his contact and communication with his close parental family and having regard to his disability, and to the fact that his disability is likely to be aggravated by emotional deprivation, such as described, constitutes racial discrimination in that such isolation and disconnection is imposed on Indigenous children who are known to come from Kimberley, which Caucasian children do not suffer, given that the proportion of Caucasian children at Banksia Hill Detention Centre who are non-Indigenous, from remote regions of W.A., is negligible. In 2020, 53 percent of the prisoner population at Banksia Hill Detention Centre is indigenous. While only 4 percent of WA’s population is indigenous, 41.6 percent of the population of Kimberley is indigenous.



49. It is alleged that the conduct of the Respondents named in the above paragraph contravenes Section 9 of the *Racial Discrimination Act 1975* (Cth).

***Disability Discrimination***

50. The treatment described above alleged to constitute racial discrimination, is also alleged against the same parties to constitute disability discrimination in that, because of the emotional deprivation which [REDACTED] has suffered, it becomes more likely that, as has eventuated, his emotional and mental condition would deteriorate, and that he would engage in self-harm and develop suicidal ideation.
51. In contravention of section 5 of the *Disability Discrimination Act 1992* (Cth) (“**DDA**”) by failing to make reasonable adjustment for [REDACTED] at BHDC, the aforesaid parties have directly discriminated against him, in that he:
- a. is isolated from his roots and family with severe and undue restrictions on human contact, particularly with close family members and most significantly, his mother;
  - b. is locked in his cell for extended periods due to rolling lockdowns;
  - c. is insufficiently treated by appropriately qualified and skilled clinicians for his manifestations/symptoms of mental illness;
  - d. has received inadequate treatment for physical injuries suffered at Banksia Hill Detention Centre (through self-harm);
  - e. is subjected to bullying and goading in respect of his mental health disability; and
  - f. is denied access to basic academic education, which he is required by reason of his age, to have, by law;

all of which have resulted in his being treated less favourably than an inmate at BHDC without his disability.

52. The particulars given support an allegation that [REDACTED] is subject both to unlawful, direct and indirect disability discrimination contravening *section 5 of the Disability and Discrimination Act 1992* (Cth), as he has been made to comply with requirements or conditions with which, because of his disability, he is unable to meet or comply so that the requirement or condition results in responses and reactions which foreseeably have the effect of disadvantaging him as a person



subjected to the punitive regime operating at BHDC. The Department of Corrective Services have failed to make reasonable adjustments to ensure that he is not subject to suffering, by reason of his disability.

53. [REDACTED] also relies on the claim of institutional/systemic racism, particularised at page 69 of which he avers that he is a victim.

*Age Discrimination*

54. The denial of reasonable access to academic education to [REDACTED] constitutes age discrimination under the *Age Discrimination Act 2004* (Cth) (“ADA”), given the harsh conditions, including being required to be confined in his cell or ISU for extended periods, constitute unlawful age discrimination under Section 15 of the ADA.
55. YCO’s mistreatment of [REDACTED] is based upon their belief in:
- a. his immaturity, and/or
  - b. his being disturbed, and/or
  - c. his lack of appreciation for his civil rights, because of his youth and inexperience, and/or
  - d. his lack credibility because of his situation, and/or
  - e. owing to the poor record keeping, lack of transparency and lack of documentation of incidents involving prisoner abuse, they are not likely to be held accountable.
56. By denying [REDACTED] reasonable access to education, the Department of Corrective Services breached section 13 of the International Covenant on Economic, Social and Cultural Rights (NY, 1972), articles 13, 17 28 and 29 of the Convention on the Rights of the Child (NY, 1989) and articles 9, 21, 24 and 26 of the Convention on the Rights of Persons with Disabilities (NY, 2008), all of which Australia had ratified. It also contravened section 9(1) with respect to education being compulsory for children during the “compulsory education period”, as defined in section 6 of the School Education Act, 1999 (W.A.).

***B.3 Mr. Joel Vida; Date of Birth, 23 May 2002; Indigenous Male***

*Relevant background*



57. Joel Vida has been Diagnosed with the following mental disorders and/or cognitive impairments:

- (a) mania with psychotic symptoms;
- (b) intellectual disability;
- (c) THC and alcohol abuse;
- (d) facial features symptomatic of fetal alcohol syndrome; and
- (e) Schizophrenia (diagnosed 26 April 2018).

***Breaches of Anti-Discrimination Legislation particularised in respect of Joel Vida***

***Disability Discrimination***

58. The Department of Corrective Services between 2014 and 2020 kept Joel Vida in custody at Banksia Hill Detention Centre for a total of 55.73 days despite his being patently mentally disordered and disturbed and having been diagnosed as schizophrenia by [REDACTED] on 26 April 2018, at Banksia Hill Detention Centre. He was within a two-year period for post-diagnosis and notwithstanding obvious evidence of physical, psychological and emotional challenges in the period between 2014 and 2018, Joel was:

- (a) deprived of visits from his mother and grandmother; no additional opportunity was provided for him to have external emotional support from his mother and grandmother including by extending the opportunity for 5-minute telephone calls on a daily basis.
- (b) He was not given any or any adequate treatment for his mental illness which, at times, presented as being acute;
- (c) deprived of educational opportunity;
- (d) nutritionally deprived and periodically placed in the ISU where he was sensorily deprived; and
- (e) mocked and goaded by Corrective Services Officers about his physical and mental disabilities.

59. The conduct of the Department of Corrective Services Officers which the State of Western Australia is legally responsible constitute both direct and indirect disability discrimination under Sections 5 and 6 of the *Disabilities Discrimination Act 1992* (Commonwealth) (“DDA”).

***Age Discrimination***



60. Joel suffered direct age discrimination in breach of section 14 of the *Age Discrimination Act 2004* (Cth) (“**ADA**”), because of his:
- a. youth;
  - b. inexperience;
  - c. vulnerability;
  - d. ignorance of his civil rights;
  - e. immaturity; and
  - f. lack of credibility,

all of which were incidents of Joel’s age, and, due to these factors, the YCOs believed (also having regard to the nugatory documentation of incidents of abuse of prisoners by YCOs at Banksia Hill), that they could treat him less favourably than they would have been able to treat an adult prisoner.

61. By denying Joel reasonable access to academic education, Corrective Services breached section 13 of the International Covenant on Economic, Social and Cultural Rights (NY, 1972), articles 13, 17, 28 and 29 of the Convention on the Rights of the Child (NY, 1989) and articles 9, 21, 24 and 26 of the Convention on the Rights of Persons with Disabilities (NY, 2008), all of which Australia had ratified. It also contravened section 9(1) with respect to education being compulsory for children during the “compulsory education period”, as defined in section 6 of the School Education Act, 1999 (W.A.).
62. Joel also claims that he is a victim of systemic/institutional racial discrimination (see page 69).

**B.4** [REDACTED] *Date of Birth*, [REDACTED] *Indigenous Female*

*Relevant background*

63. From approximately the age of twelve, from c. 2010 to c.2013, [REDACTED] spent three (3) years in and out of Banksia Hill Detention Centre.

*Breaches of Anti-Discrimination Legislation particularised in respect of* [REDACTED]

*Age Discrimination*



64. ■■■ reports having been strip-searched in the Banksia Hill Detention Centre by a male officer in the presence of a female officer for reasons which were punitive and disciplinary rather than because of any reasonable belief that she had any prohibited item on her person within the Banksia Hill complex. It is alleged that this constituted both direct and indirect discrimination on the ground of ■■■'s age in that the requirement that her clothes be removed as a form of punishment is not a requirement which would be imposed on an adult female in her circumstances, which is in contravention of section 14 of the *Age Discrimination Act 2004* (Cth) (“ADA”).
65. The strip searches conducted on ■■■ were not reasonable in the circumstances and were reasonably likely to traumatize ■■■ as an adolescent girl, likely to have adverse consequences for her mental health, and in contravention of section 15 of the ADA.
66. ■■■, though still pre-menstrual, had a contraceptive rod implant inserted into her arm without her consent or the consent of her parents in Banksia Hill Detention Centre, upon the pretext that the contraceptive device would “keep her out of trouble”. She repeatedly requested that the rod be removed and eventually removed it herself, self-harming at the same time. This was deemed by the Corrective Services Authorities to be “self-harm” which led directly to her solitary confinement in CUE.
67. It is alleged against the WA Department of Justice, Corrective Services that, by reason of her age, the condition that she receive a contraceptive implant without her consent was treatment in the nature of a condition or requirement, which would not be applied to a person who was not a minor, and that it was imposed on her both because it was perceived that by reason of her age and gender, within the terms of section 14(b) of the ADA, she was:
- a. of child-bearing age and likely fertile;
  - b. adolescent and likely to be sexually promiscuous because of her age and situation and her hormonal status referable to her age.
68. The trespass against ■■■ occurred pursuant to a Corrective Services operational requirement or condition, that infringed ■■■'s human rights and constituted unlawful age discrimination, both direct and indirect within the meaning of both sections 14 and 15 of the *Age Discrimination Act 2004* (Cth).
69. By denying ■■■ reasonable access to academic education, the Department of Justice, Corrective Services breached section 13 of the International Covenant on Economic, Social and Cultural Rights (NY, 1972), articles 13, 17 28 and 29 of the Convention on the Rights of the Child (NY,



1989) and articles 9, 21, 24 and 26 of the Convention on the Rights of Persons with Disabilities (NY, 2008), all of which Australia had ratified. It also contravened section 9(1) with respect to education being compulsory for children during the “compulsory education period”, as defined in section 6 of the School Education Act, 1999 (W.A.).

70. [REDACTED] also claims that she is a victim of systemic/institutional racial discrimination (see page 69).

**B.5 [REDACTED]; Date of Birth, [REDACTED] Caucasian Male**

***Relevant background***

71. [REDACTED], Caucasian male, born [REDACTED], was imprisoned, first at Rangeview Remand Centre and then at Banksia Hill Detention Centre, respectively between 2000 and 2002 and at both facilities, was deprived of his ADHD medication having been diagnosed with ADHD when he was 12 years old (1996), for which he was prescribed with Ritalin and Clonidine for Anxiety. As such, he was known to suffer with a disability.

***Breaches of Anti-Discrimination Legislation particularised in respect of [REDACTED]***

***Disability discrimination***

72. It is contended that by reason of Section 5(2) of the *Disability Discrimination Act 1992* (Cth) (“DDA”) by requiring [REDACTED] to comply with a requirement or condition with which, by reason of his disability, [REDACTED] could only have complied if the Department of Corrective Services had made a reasonable adjustment for him, that being by ensuring that he was provided with the medication which he needed to deal with his ADHD and Anxiety, the Department of Corrective Services, through its Youth Custodial Officers (YCOs), breached the DDA. [REDACTED] was unable to comply with the YCOs requirements and conditions and was punished for his failure to do so, whereby the Department of Corrective Services is culpable for indirect disability discrimination in contravention of Section 6(2) of the DDA.

73. The Corrective Services Officers at Banksia Hill Detention Centre knew from [REDACTED]’s record that he was a victim of child sexual assault and suffered from ADHD and Anxiety for which he was medicated.



74. In 2001, he was required to provide a urine sample in the presence of YCO's and, by reason of his Anxiety, he was unable to do so. He was confined to an ISU for failing to urinate before an audience as punishment even though he had previously protested at his inability to urinate in front of others and requested to be able to do so privately, in order to provide the sample.
75. The refusal of the YCO's to permit him to urinate in a private cubicle as he requested to be able to do while they could have stood guard outside of the cubicle, contravened Section 5(2) of the DDA in that by refusing to make the reasonable adjustment requested, [REDACTED] was unable to perform the function required of him and treated less favourably than a person without his disability would have been treated in such circumstances, by being punished with solitary confinement and sensory deprivation.
76. Upon his admission to BHDC, his record included the fact that he had an Opioid Addiction.
77. During the course of his custodial sentence at Banksia Hill, YCOs routinely berated, abused and disparaged him with typecasting epithets including "Junkie" and "Junkie Piece of Shit", in contravention Section 5(1) of the DDA, Opioid Addiction being a recognised disability<sup>8</sup>
78. By denying [REDACTED] reasonable access to academic education, Corrective Services breached section 13 of the International Covenant on Economic, Social and Cultural Rights (NY, 1972), articles 13, 17 28 and 29 of the Convention on the Rights of the Child (NY, 1989), all of which Australia had ratified. It also contravened section 9(1) with respect to education being compulsory for children during the "compulsory education period", as defined in section 6 of the School Education Act, 1999 (W.A.).

**B.6 [REDACTED] Date of Birth, [REDACTED] Indigenous Female**

***Relevant background***

<sup>8</sup> *Marsden v Human Rights & Equal Opportunity Commission, Coffs Harbour and District Ex-Service Men & Women, Memorial Club Ltd* [2000] FCA 1619.



79. At age 9, █████ and her two sisters were removed from their mother's care and placed into the care of the Department of Child Protection ("DCP"). █████ and her sisters repeatedly asked DCP for them to be placed within reasonable proximity of one another. They were not.
80. DCP's failure to keep █████ and her siblings within a reasonable distance of one another meant that contact became difficult, resulting in emotional deprivation. The break-up of her family and lost contact was heartbreaking for her.
81. █████ has struggled with addiction to both drugs and alcohol from the age of 14, which led to her committing a series of assaults under the influence of drugs and alcohol, including by not limited to methamphetamines. She has been in and out of Banksia Hill Detention Centre from about 2012.
82. █████ was subject to W.A.'s mandatory sentencing regime.

***Breaches of Anti-Discrimination Legislation particularised in respect of █████***

***Disability discrimination***

83. Neither the Department of Communities ("DOC"), nor the Department of Corrective Services ("DCS"), assisted █████ with respect to her addiction disability. They made no reasonable attempt to rehabilitate her from her alcohol and drug addiction, resulting in her suffering periods of increased physical and mental instability and agitation. This in turn, was met with her confinement to the Cue Unit for protracted periods. She was not assisted by the provision of reasonable clinical support from drug and alcohol rehabilitation clinicians, although she clearly satisfied the criteria for DSM-5, Substance Use Disorder, namely impaired control, physical dependence, social problems, and risky use. This was known to the DOC and to DCS and by reason of these facts, their treatment of █████ contravened Section 5 and 6 of the *Disability Discrimination Act 1992* (Cth) ("DDA").
84. Because of her disability, █████ suffered due to her inability to comply with the requirements and conditions imposed by Youth Custodial Officers, which led to her being solitarily confined in a Cue Unit, in contravention of Section 6 of the DDS.

***Age discrimination***



85. By denying [REDACTED] reasonable access to academic education, Corrective Services breached section 13 of the International Covenant on Economic, Social and Cultural Rights (NY, 1972), articles 13, 17, 28 and 29 of the Convention on the Rights of the Child (NY, 1989) and articles 9, 21, 24 and 26 of the Convention on the Rights of Persons with Disabilities (NY, 2008), all of which Australia had ratified. It also contravened section 9(1) with respect to education being compulsory for children during the “compulsory education period”, as defined in section 6 of the School Education Act, 1999 (W.A.).
86. [REDACTED] also claims to be a victim of systemic/institutional racism (see page 69).

**C. SYSTEMIC/INSTITUTIONAL RACIAL DISCRIMINATION UNDER SECTION 9 OF THE *RACIAL DISCRIMINATION ACT 1975* (CTH)**

87. The following Named Complainants – Mr. Joel Vida, [REDACTED], [REDACTED], [REDACTED] and [REDACTED] – bring their complaints as representative complaints in respect of institutional or systemic racial discrimination, supplementary to their other complaints particularised herein.
88. Between 2017 and 2022, 70 - 80% of the total population of BHDC comprised of Indigenous Australians.<sup>9</sup>
89. As Indigenous Australians, each of the forenamed Complainants suffered special disadvantage because of:
- a. the brutal mistreatment of their forebears;
  - b. transgenerational trauma;
  - c. systemic disadvantage in the delivery of essential services to them, including access to public health, education, and support for them and their families.
  - d. They are vulnerable people because of their own and their families’ inferior access to financial and community resources, and to educational opportunity which would facilitate vocational opportunity.
  - e. They do not have equal access to bespoke, independent legal representation.

<sup>9</sup> See Appendix 1: The Office of the Inspector of Custodial Services, 2017 *Inspection of Banksia Hill Detention Centre*, page iii, published February 2018; and Appendix 2: The Office of the Inspector of Custodial Services, 2021 *Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, page 24, published April 2021. The racial breakdown within BHDC and Rangeview has been consistently of this order, whereas the Indigenous population of Western Australia has been just under 4% of the total population of the State.



- f. They have diminished capacity to organise, access and pay for (where required) mental health support/psycho-social support, specific to their individual needs.
90. In the case of [REDACTED] and other detainees from Kimberley, where the Indigenous population exceeds 40 percent of the total population, transportation to BHDC, over 2000 km away, involved removal from family, country, culture and is analogous to imprisonment in a Siberian Gulag.
91. The combined effect of the foregoing nullifies or impairs the abovementioned Indigenous Complainants' recognition, enjoyment, or exercise on an equal footing, of access to practical equality before the law; access to educational and vocational opportunity; to social and cultural development; and to mental health and growth, based upon their Aboriginal descent.

**D. INSTITUTIONAL/SYSTEMIC AGEISM IN BREACH OF SECTIONS 14 AND 15 OF THE AGE DISCRIMINATION ACT 2004 (CTH)**

92. [REDACTED], [REDACTED], Joel Vida, [REDACTED], and Lexie Walters, in addition to the other claims made herein, bring a Representative Complaint in respect of institutional ageism constituted by the named Respondents' willful policy of ignoring the separate age-related interests of children, by making no or no adequate allowance for the needs of children under their care, including the named Complainants and Group Members, to grow, develop and mature, disrespecting their right to healthy physical and mental development.
93. By reason of the fact that the Respondents, knowing that education is a mandatory and an essential ingredient for the development of children into adulthood, have impaired the Complainants' access to foundational knowledge and skills, and frustrated their future ability to realise vocational opportunities, willfully stifling the Complainants' access to education and its consequential benefits.
94. The Respondents failed to treat the following Complainants – [REDACTED], [REDACTED], Joel Vida, [REDACTED], and Lexie Walters – each of whom is, or has been under the Respondents' control – differently from adults in similar circumstances; and without regard for their individual immaturity, inexperience, and underdeveloped behavioural and social skills, all referable to their age; and imposed conditions and/or required them to behave and/or to be



subjected to practices which, particularised in the body of these complaints, have been likely to have and in fact, have had and do have, the effect of disadvantaging them and persons of their age, because of the foreseeably traumatic effect on their healthy development of such conditions, requirements and practices, at BHDC and Rangeview.

#### **E. DISABILITY DISCRIMINATION UNDER SECTIONS 5 AND 6 OF THE *DISABILITY DISCRIMINATION ACT 1992 (CTH)***

95. As at January 2018, *“more than a third of BHDC’s total population had Fetal Alcohol Spectrum Disorder (FASD) and 90 per cent had significant neurodevelopmental impairment,”*<sup>10</sup> and this position has not materially altered.
96. By reason of that fact, the Named Complainants claim against the Respondents for institutional/systemic disability discrimination both within the purview 5(2) and 6 of the *Disability Discrimination Act 1992 (Cth)* (“DDA”) on their own behalves, and on behalf of the wider Group Members, who had or have cognitive impairments or mental disorders, for which they:
- a. did not receive diagnostic services or clinical treatment which it was their human right to receive;
  - b. did not receive any/or any adequate treatment or adjustment, to optimise or facilitate their beneficial development.
  - c. They were and have been subjected to physical and psychological abuse and/or trauma by YCOs engaged by the DCS, who lacked the appropriate training and skills, and whose conduct towards them included the imposition of conditions or requirements contraindicated for children afflicted with such impairments and disorders (“disabilities”).

#### **F. CONCLUSION**

97. The abovementioned complaint evidences the intersection of unlawful discrimination based on age and/or race and/or disability. The named Complainants’, along with Group Members, have suffered loss and damage because of the Respondents’ impeached conduct, based on one or more of the aforementioned ‘heads of discrimination’, as is enshrined in Commonwealth anti-discrimination legislation. This, compounded with their inherent disadvantage based on their age

<sup>10</sup> Ibid, footnote 9.



(and consequent immaturity) and/or race, and/or disability, exacerbates pre-existing conditions, compounding trauma, within and across generations, including ‘intergenerational trauma’, and perpetuates a cycle of criminal offending, incarceration, and institutionalization into adulthood.

98. This, combined with the Respondents’ continued failure to implement recommendations made by both Australian and international oversight bodies year-on-year – all of which are well-founded and empirically based – flies in the face of the YOA’s stated objectives, as well the Respondents’ obligations under international law.
99. The implementation of urgent legislative and policy reform to establish a new, independent, Department of Youth Rehabilitative Justice – independent of, and separated from, the adult justice system and the DOJ and Corrective Services – is the only means by which the continued and persistent unlawful mistreatment and discrimination of children and young offenders – based upon race, age, disability (or any combination thereof) – can be prevented.

**G. AUTHORITY TO ACT SIGNED BY [REDACTED], MOTHER OF [REDACTED]**



**AUTHORITY TO ACT**

**TO: STEWART LEVITT, LEVITT ROBINSON SOLICITORS**

I, [REDACTED], HEREBY APPOINT Stewart Alan Levitt of **LEVITT ROBINSON SOLICITORS**, Ground Floor, 162 Goulburn Street, Surry Hills, NSW 2010, as my lawyer, to act on my behalf in relation to preparing and conducting either individual or representative proceedings, as advised, seeking compensation in a claim against the Western Australian Government, Western Australia Correctional Services and Department of Justice, Western Australia Department of Child Protection and/or the Western Australia Department of Communities, regarding my treatment and detention in Banksia Hill Detention Centre.

I hereby authorise and direct any and all service providers and organisations I have been involved with to provide to my legal representatives, Levitt Robinson Solicitors, any and all information, documents, reports and records of whatsoever kind and nature and whether (and both) in hard or soft copy, relating to or referring to my health (mental or physical), and to the provision of legal or other services to me.

Partner: Stewart A Levitt

Solicitors: Dana Levitt and Angelique Gebrayel

[REDACTED]

[REDACTED]

[REDACTED]

Dated: 27/06/2022



H. AUTHORITY TO ACT SIGNED BY [REDACTED] OF ALEXANDRA  
("LEXIE") WALTERS



**AUTHORITY TO ACT**

**TO: STEWART LEVITT, LEVITT ROBINSON SOLICITORS**

I, **Alexandra Walters** (DOB 8/10/04). HEREBY APPOINT **Stewart Alan Levitt** of **LEVITT ROBINSON SOLICITORS**, Ground Floor, 162 Goulburn Street, Surry Hills, NSW 2010, as my lawyer, to act on my behalf in relation to preparing and conducting either individual or representative proceedings, as advised, seeking compensation in a claim against the Western Australian Government, Western Australia Correctional Services and Department of Justice, Western Australia Department of Child Protection and/or the Western Australia Department of Communities, regarding my treatment and detention in Banksia Hill Detention Centre.

I hereby authorise and direct any and all service providers and organisations I have been involved with to provide to my legal representatives, Levitt Robinson Solicitors, any and all information, documents, reports and records of whatsoever kind and nature and whether (and both) in hard or soft copy, relating to or referring to my health (mental or physical), and to the provision of lead or other services to me.

Partner: Stewart A Levitt

Solicitors: Dana Levitt and Georgia McGlennon (Graduate)

[Redacted signature block]

**Alexandra Walters**

Dated: 13-12-21

[Redacted signature block]

[Redacted signature block]

Dated: 13-12-21



**I. APPENDIX 1**



GOVERNMENT OF  
WESTERN AUSTRALIA



OFFICE OF THE INSPECTOR  
OF CUSTODIAL SERVICES

**2017 INSPECTION OF  
BANKSIA HILL DETENTION CENTRE**

**116**

**FEBRUARY 2018**

*Independent oversight  
that contributes to a more  
accountable public sector*



## 2017 Inspection of Banksia Hill Detention Centre

Office of the Inspector of Custodial Services  
Level 5, Albert Facey House  
469 Wellington Street  
Perth WA 6000

[www.oics.wa.gov.au](http://www.oics.wa.gov.au)

February 2018

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## Inspector's Overview

SIGNS OF IMPROVEMENT AT BANKSIA HILL, BUT WILL IT LAST?

### BANKSIA HILL IS THE STATE'S MOST COMPLEX CUSTODIAL FACILITY

This is the report of an inspection of Banksia Hill Detention Centre ('Banksia Hill') in July 2017. As a result of the previous government's decision to re-purpose the Rangeview Remand Centre, Banksia Hill has been the State's only juvenile detention centre since 2012.

The inspection took place at a difficult but important time. The centre had been unstable for most of the previous seven years, and particularly volatile for the last 12 months. We had also just released a report on behaviour management practices that had attracted considerable media support (OICS, 2017). We concluded that Banksia Hill had not worked as a one-stop shop, and called for a major overhaul of youth custodial services, including more placement options.

Banksia Hill's population is complex, diverse, and challenging. In the last five years, the centre has generally held 140–150 young people but numbers have been trending upwards, and recently went over 170. It holds both males and females and, at the time of the inspection, a young transgender person who identified as female. Some detainees are as young as 10, others are 18 or more. And they come from all parts of the State, many from as far away as the Kimberley, the Pilbara, and the Ngaanyatjarra Lands. **Aboriginal children comprise 70 per cent of the total population, and almost all of the younger and regional children.**

The young people at Banksia Hill invariably face major social and developmental challenges, and the majority have experienced abuse or trauma. **The Telethon Kids Institute recently concluded that more than a third have Fetal Alcohol Spectrum Disorder (FASD) and 90 per cent have significant neurodevelopmental impairment (Bower et al, 2018).**

Despite this complexity, Western Australia holds all the young people in one place and has no separation or dispersal options. For good reason, no other State or Territory believes it is appropriate to hold such a large and diverse group of young people in one place.

I am required to report on Banksia Hill every three years, but the centre's problems have been such that this is now my sixth report in six years. I have also recently been directed by the Minister to review allegations made by Amnesty International about the treatment of two young men in the centre's Intensive Support Unit (ISU). This report was prepared before those allegations were made. It includes some discussion of the ISU as at July 2017, but does not address Amnesty International's allegations. We will report separately on those later this year.

### 2016 TO MAY 2017: VOLATILITY, DYSFUNCTION, AND A FAILED TRANSFORMATION

It is not possible to understand the current situation at Banksia Hill without understanding the recent past.

The badly-managed project to amalgamate Rangeview and Banksia Hill was a key causal factor in a major riot in January 2013 (OICS, 2013). The riot caused so much damage that most of the male detainees were moved to the nearby Hakea Prison until October 2013. During 2014 and 2015 there were signs of more stability, but many areas were still under-developed (OICS, 2015).



**J. APPENDIX 2**



GOVERNMENT OF  
WESTERN AUSTRALIA



OFFICE OF THE INSPECTOR  
OF CUSTODIAL SERVICES



2020 INSPECTION OF BANKSIA  
HILL DETENTION CENTRE

135

APRIL 2021

*Independent oversight  
that contributes to a more  
accountable public sector*



## 2020 Inspection of Banksia Hill Detention Centre

Office of the Inspector of Custodial Services  
Level 5, Albert Facey House  
469 Wellington Street  
Perth WA 6000

[www.oics.wa.gov.au](http://www.oics.wa.gov.au)

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## SERVICES

teacher, an Aboriginal Welfare Officer, a Senior Case Manager, a psychologist, and a nurse. They also saw various YCOs in their unit, including the Unit Manager. Despite this, some young people expressed to us that it was some time before they had an opportunity to properly discuss their situation. It is likely that the young person was not ready to talk or was more likely to talk only to certain people they grew to trust. But it may be possible to coordinate among staff more closely to ensure each young person has a chance to talk more fully with someone in the first few days.

### 4.2 ABORIGINAL SERVICES

#### Some areas focused strongly on Aboriginal culture, but this was inconsistent

Aboriginal young people continued to be overrepresented at Banksia Hill, making up 74 per cent of the population at the time of our inspection. We have previously stated the need for Banksia Hill to reflect Aboriginal culture, and deliver services in a culturally relevant way (OICS, 2015, pp. 16–19; OICS, 2018a, pp. 34–36). There were certainly some services and aspects of the centre that included good recognition of Aboriginal culture, but in other areas this was lacking, and there were some missed opportunities.

In education, there had been a push to include more Aboriginal content in the curriculum. Aboriginal artworks and learning materials were prominent in classrooms, and around the education buildings. There was a new mural depicting the six Noongar seasons at the entrance to the main education centre, and the new school logo incorporated the native biara flower. Several of the urban art pieces around the wider centre incorporated depictions of country and Aboriginal motifs.

There had been efforts to bring Aboriginal service providers from the community into the centre. The Wirrpanda Foundation had been successfully delivering services to Aboriginal young people at Banksia Hill for several years. Wungening Aboriginal Corporation was a key partner in the Beyond YJS consortium that held the main re-entry services contract for Banksia Hill and contributed valuable culturally appropriate programs. During mid-2020, when many services had ceased because of COVID-19 restrictions, the Department contracted short-term programs from the Indigenous Players Alliance and the National Suicide Prevention and Trauma Recovery Project. Both utilised cultural connections and brought Aboriginal facilitators and mentors into the centre [see further discussion below at 5.4 and 6.3].

Staff from the Aboriginal Visitors Scheme attended the centre three days a week, and there were occasional visits from an Aboriginal elder. Banksia Hill itself employed 18 Aboriginal people, making up around five per cent of the workforce. This included 12 custodial staff, four AWOs, and two Aboriginal Education Officers. All provided a crucial link to community and culture for young people. All felt the burden of balancing community and cultural obligations with their work responsibilities. While they provided support to each other informally, there was no structured committee or support group for Aboriginal staff.



**K. APPENDIX 3**



# Youth detention population in Australia 2021





The AIHW is an independent statutory Australian Government agency producing authoritative and accessible information and statistics to inform and support better policy and service delivery decisions, leading to better health and wellbeing for all Australians.

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Chief Executive Officer

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Please note that there is the potential for minor revisions of data in this report.  
Please check the online version at [www.aihw.gov.au](http://www.aihw.gov.au) for any amendments.

### Sentenced and unsentenced detention

On an average night in the June quarter 2021, the rate of young people aged 10–17:

- in unsentenced detention ranged from 0.9 per 10,000 in South Australia to 14 per 10,000 in the Northern Territory
- in sentenced detention ranged from 0.2 per 10,000 in Victoria to 1.9 per 10,000 in the Northern Territory (among the states and territories for which data is available, Table 5.1).

Over the 4-year period, the rate of young people in unsentenced detention on an average night declined in New South Wales (2.1 to 1.4 per 10,000) and in South Australia (from 2.1 to 0.9 per 10,000) (Table 5.1). Trends could not be reliably determined in Tasmania and the Australian Capital Territory, while other states showed no clear trend.

In the Northern Territory and Queensland, the rate of young people in unsentenced detention on an average night increased from the June quarter 2020 to the June quarter 2021 (Table 5.1).

Between the June quarter 2017 and the June quarter 2021, the rate of young people in sentenced detention fell in New South Wales, Victoria, Queensland, Western Australia, and the Northern Territory. Trends could not be reliably determined in Tasmania and the Australian Capital Territory, while there was no clear trend in South Australia.

### Young Aboriginal and Torres Strait Islander people

On an average night in the June quarter 2021, the rate of young Indigenous Australians aged 10–17 in detention ranged from 10 per 10,000 (or 16 young people) in Victoria to 43 per 10,000 (or 86 young people) in Western Australia.

The non-Indigenous rate ranged from 0.6 per 10,000 (or 10 young people) in South Australia to 1.8 per 10,000 (or 95 young people) in Queensland (tables S1, S4, and S10).

Among the states and territories for which rate ratios could be calculated, the rate ratio ranged from 7.3 times the non-Indigenous rate in Victoria to 54 times in Western Australia in the June quarter 2021 (Table S10).

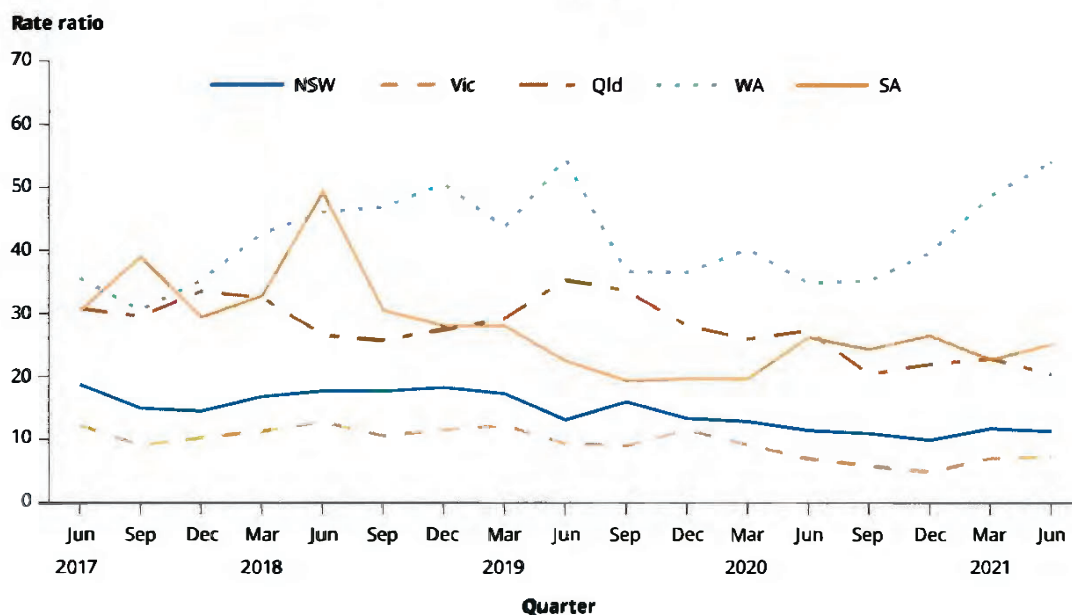
Over the 4-year period, the rate of young Indigenous Australians aged 10–17 in detention fell in New South Wales, Victoria, Western Australia, and South Australia; leading to subsequent declines in the rate ratios for these states except Western Australia (Table S10). The rate ratio was lowest in Victoria, at 5.0–13, and highest in Western Australia, at 31–54 (Figure 5.3).

Due to the small rates of young non-Indigenous Australians in detention, notably in Western Australia and South Australia, variances can cause large fluctuations in the rate ratio.

Rate ratios could not be calculated for:

- Tasmania and the Australian Capital Territory, due to the small number of Indigenous Australians
- the Northern Territory, due to the small number of non-Indigenous Australians.

**Figure 5.3: Young Indigenous people aged 10–17 in detention, by selected states, June quarter 2017 to June quarter 2021 (rate ratio)**



**Notes**

1. Rate ratio is calculated by dividing the Indigenous rate by the non-Indigenous rate.
2. Rates (and the resulting rate ratios) are calculated from the unrounded average nightly population, and are not published when there were fewer than 5 young people in the numerator. There might be instances when a numerator is presented as 5, and the rate is not calculated due to rounding (see 'Technical Notes'). In this figure, rate ratios are not published for Tasmania, the Australian Capital Territory, and the Northern Territory.
3. Trends among small populations should be interpreted with caution. Numbers tend to fluctuate from quarter to quarter due to random variation, and this might affect the appearance and interpretation of trends.

Source: Table S10.



A handwritten signature in black ink, appearing to read "Stewart Levitt".

Yours Faithfully,

**LEVITT ROBINSON**

28/06/22

**Stewart Levitt**

Solicitor

Email: [slevitt@levittrobinson.com](mailto:slevitt@levittrobinson.com); [dlevitt@levittrobinson.com](mailto:dlevitt@levittrobinson.com)

Tel: (02) 9286 3133

Mob: 0407 323 737



## AUSTRALIAN HUMAN RIGHTS COMMISSION

**FILE NO:** 2023-11949  
2023-12255

### **BETWEEN**

Alexandra Walters,  
Joel Vida,  
[REDACTED],  
[REDACTED], and  
[REDACTED]  
(together, the '**Complainants**'),

on their own behalf and on behalf of a group of persons who are referred as the '**Group Members**' all of whom are or have been detained in juvenile detention in Western Australia between 18 August 2005 and the date of making this complaint (**Relevant Period**) at one or more of the following detention centres declared to be a detention centre under section 13 of the *Young Offenders Act 1994* (WA):

Banksia Hill Detention Centre  
Rangeview Juvenile Remand Centre,  
Hakea Juvenile Facility, or  
Unit 18 at Casuarina Prison

and who allege unlawful discrimination under the *Disability Discrimination Act 1992* (Cth) or the *Age Discrimination Act 2004* (Cth) on one or more occasions while so detained.

### **Complainants**

### **AND**

State of Western Australia  
(Department of Justice)

### **Respondent**



## NOTICE OF TERMINATION

**Issued under section 46PH(2) of the *Australian Human Rights Commission Act 1986 (Cth) (AHRCA)*.**

This representative complaint alleging unlawful discrimination under the *Disability Discrimination Act 1992 (Cth)* and the *Age Discrimination Act 2004 (Cth)* has been terminated under sections 46PF(1)(b) and 46PH(1B)(b) of the AHRCA on the ground that I am satisfied that there is no reasonable prospect of the matter being settled by conciliation.

Section 46PO(1) of the AHRCA provides that if a complaint has been terminated under section 46PH(1B)(b) of the AHRCA, an affected person may make an application to the Federal Circuit and Family Court of Australia (**FCFCOA**) or Federal Court of Australia (**FCA**) alleging unlawful discrimination by one or more of the respondents to the terminated complaint.

The FCFCOA and FCA can award costs against either party in proceedings under section 46PO of the AHRCA.

Any application to the court must be made within 60 days of the date on this Notice of Termination.

Reasons for this decision are provided in Attachment A.

A copy of the complaint is provided at Attachment B.

A copy of the amendment to the complaint is provided at Attachment C

DATED 15 February 2024

A handwritten signature in black ink, appearing to be 'RH' followed by a stylized flourish.

Rachel Holt

**Delegate of the President**

## ATTACHMENT A

Our ref: 2023-11949; 2023-12255

15 February 2024

Blaise Prentice-Davidson  
Human Rights Counsel  
Levitt Robinson Solicitors  
Sent by email: [bprentice-davidson@levittrobinson.com](mailto:bprentice-davidson@levittrobinson.com) ·  
Copy to: [banksia@levittrobinson.com](mailto:banksia@levittrobinson.com)

Dear Mr Prentice-Davidson

### Termination of the representative complaint

I am writing to advise you of my decision regarding the representative complaint (**complaint**) to the Australian Human Rights Commission (**the Commission**) against the State of Western Australia (Department of Justice)<sup>1</sup> by:

- Alexandra Walters,
  - Joel Vida,
  - [REDACTED],
  - [REDACTED], and
  - [REDACTED]
- (together, the '**Complainants**'),

on their own behalf and on behalf of a group of persons who are referred as the '**Group Members**', all of whom are or have been detained in juvenile detention in Western Australia between 18 August 2005 and the date of making this complaint (**Relevant Period**) at one or more of the following detention centres

---

<sup>1</sup>The Complainants name the Respondent as being the State of Western Australia. On the information before the Commission, the Commission has assessed the Respondent as being the State of Western Australia (Department of Justice). The complaint has been finalised accordingly.



declared to be a detention centre under section 13 of the *Young Offenders Act 1994* (WA) (**YOA**):

- Banksia Hill Detention Centre (**BDHC**),
- Rangeview Juvenile Remand Centre (**Rangeview**),
- Hakea Juvenile Facility (**Hakea JF**), or
- Unit 18 at Casuarina Prison (**Unit 18**)

and who allege unlawful discrimination under the *Disability Discrimination Act 1992* (Cth) (**DDA**) or the *Age Discrimination Act 2004* (Cth) (**ADA**) on one or more occasions while so detained.

## Complaint

The complaint totals 117 pages. A collated copy of the complaint was emailed to your colleague on 10 October 2023. Another copy is provided with this letter, marked as '**Attachment B**'.

The Commission wrote to your colleague by email about the scope of the accepted complaint on 16 October 2023. This included that the accepted complaint of age discrimination does not include alleged acts, omissions or practices which occurred prior to the commencement of the ADA on 23 June 2004 nor alleged contraventions of disability standards under the DDA prior to the commencement of the *Disability Standards for Education* (Cth) (**DSE**) on 18 August 2005.

## Amendment

On 16 November 2023, the Commission received a request from the Complainants to amend the complaint (total 135 pages). A collated copy of the amendment request was provided to you on 15 December 2023. Another is provided with this letter, marked as '**Attachment C**'.

On 15 December 2023, in accordance with section 46PA of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRCA**) I granted leave for the Complainants to amend the complaint against the Department as requested, and you were provided with a copy of my decision on that date.

The effect of the above amendment is that the representative complaint is against the State of Western Australia (Department of Justice) by:

- Alexandra Walters,
- Joel Vida,

- [REDACTED],
- [REDACTED], and
- [REDACTED] (together, the '**Complainants**')

on their own behalf and on behalf of the Group Members, all of whom are or have been detained in juvenile detention in Western Australia between 18 August 2005 and the date of making this complaint (**Relevant Period**) at one or more of the following detention centres declared to be a detention centre under section 13 of the **YOA**:

- BHDC
- Rangeview,
- Hakea JF, or
- Unit 18,

and alleging unlawful discrimination under the DDA or the ADA in relation to the Complainants and/or the Group Members as outlined in the amendment request.

### **Notification**

A copy of the complaint and amendment request was provided to the Department's representative on 22 November 2023. A copy of the amendment request and amendment decision was provided to the Department's representative on 15 December 2023.

### **My decision**

Under sections 46PF(1)(b) and 46PH(1B)(b) of the **AHRCA** the President must terminate a complaint without inquiry if satisfied that there is no reasonable prospect of the matter being settled by conciliation.

I note that the Complainants' representatives requested on 13 October 2023 and 31 January 2024 that the complaint be terminated without inquiry. I also note that the Department's representative advised the Commission on 15 January 2024 that its client's position is that upfront termination of the amended complaint is a matter for the Commission and it does not propose to make any submissions.

I have therefore decided to terminate the complaint under sections 46PF(1)(b) and 46PH(1B)(b) of the AHRCA as I am satisfied that there is no reasonable prospect of the matter being settled by conciliation.



## Possible further action

The AHRCA says that after a complaint is terminated, the person affected by the alleged discrimination may be able to apply to the Federal Circuit and Family Court of Australia (**FCFCOA**) or the Federal Court of Australia (**FCA**) to have the allegations decided by the court.

If the Complainants on behalf of themselves and the Group Members apply to the FCFCOA or the FCA, they will need to attach the following documents to the application:

- Notice of Termination (enclosed)
- Attachment A (this letter)
- Attachment B (the complaint, as enclosed)
- Attachment C (the amendment to the complaint, as enclosed).

Any application to the court must be made within 60 days of the date on the Notice of Termination.

If a matter proceeds to court, the [FCFCOA](#) and [FCA](#) can award costs against either party. Information about the court or the court process is available from a court registry or from its websites.

Please provide a copy of this letter to your client for their records.

Yours sincerely

A handwritten signature in black ink, appearing to be 'RH' with a long horizontal stroke extending to the right.

Rachel Holt

**Delegate of the President**



Australian  
Human Rights  
Commission

## COMPLAINT FORM



The Australian Human Rights Commission investigates and conciliates complaints about discrimination and breaches of human rights.

We will need to contact you about your complaint, so please provide your name and contact details, including one contact number if possible. If you do not provide this information we may not be able to deal with your complaint.

We will use the information you provide to assess, investigate and/or conciliate your complaint. We will usually provide a copy of your complaint (excluding your contact details) to the person or organisation you are complaining about and, if necessary, others who have relevant information about your complaint. By completing and submitting this form you consent to the Commission using your information for these purposes. If you have any questions about this or need help to complete this form please contact our National Information Service on 1300 656 419 or 02 9284 9600.

Your personal information will be used and stored in accordance with the Privacy Act 1988 (Cth). The Commission's privacy policy is available on our website at [www.humanrights.gov.au](http://www.humanrights.gov.au).

### **Part A – About you, the complainant**

---

#### First complainant

Title: Ms.

First name: Alexandra

Last name: Walters

Address: c/o – Levitt Robinson, Ground Floor, 162 Goulburn St

Suburb: Surry Hills

State/Territory: NSW

Postcode: 2010

Email: [agebrayel@levittrobinson.com](mailto:agebrayel@levittrobinson.com)

Phone (AH):

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY:



Second complainant

Title: Mr.

First name: Joel

Last name: Vida

Address: c/o – Levitt Robinson, Ground Floor, 162 Goulburn St

Suburb: Surry Hills

State/Territory: NSW

Postcode: 2010

Email: [agebrayel@levittrobinson.com](mailto:agebrayel@levittrobinson.com)

Phone (AH):

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY:

Third complainant

Title: Mr.

First name: [REDACTED]

Last name: [REDACTED]

Address: c/o – Levitt Robinson, Ground Floor, 162 Goulburn St

Suburb: Surry Hills

State/Territory: NSW

Postcode: 2010

Email: [agebrayel@levittrobinson.com](mailto:agebrayel@levittrobinson.com)

Phone (AH):

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY:

Fourth complainant



Title: Mr.

First name: [REDACTED]

Last name: [REDACTED]

Address: c/o – Levitt Robinson, Ground Floor, 162 Goulburn St

Suburb: Surry Hills

State/Territory: NSW

Postcode: 2010

Email: [agebrayel@levittrobinson.com](mailto:agebrayel@levittrobinson.com)

Phone (AH):

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY:

Fifth complainant

Title: Mr

First name: [REDACTED]

Last name: [REDACTED]

Address: c/o – Levitt Robinson, Ground Floor, 162 Goulburn St

Suburb: Surry Hills

State/Territory: NSW

Postcode: 2010

Email: [agebrayel@levittrobinson.com](mailto:agebrayel@levittrobinson.com)

Phone (AH):

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY:



### **Acting on behalf of another person**

If you are complaining on behalf of someone else, please provide the following details about this person.

Title

First name

Last name

Address

Suburb

State/Territory

Postcode

What is their relationship to you?

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need

### **Your representative**

If someone is assisting you with the complaint, for example, a legal representative, advocate or union representative, please provide the following details about this person.

Title: Mr

First name: Stewart

Last name: Levitt

Position: Solicitor

Organisation: Levitt Robinson

Address: Ground Floor, 162 Goulburn Street

Suburb: Surry Hills

State/Territory: NSW

Postcode: 2010

Email: [slevitt@levittrobinson.com](mailto:slevitt@levittrobinson.com); [dlevitt@levittrobinson.com](mailto:dlevitt@levittrobinson.com)

Phone (BH): (02) 9286 3133

Mobile: 0406 252 404

Fax: (02) 9283 0005

TTY

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:



## **Part B – Who is the complaint about?**

### **Respondent 1**

Name of person or organization: State of Western Australia c/o Crown Solicitors Office  
of Western Australia

ABN of organization:

Address: David Malcolm Justice Centre, 28 Barrack Street

Suburb: Perth

State/Territory: WA

Postcode: 6000

Email: [sso@sso.wa.gov.au](mailto:sso@sso.wa.gov.au)

Phone (BH): (08) 9264 1888

Mobile:

Fax: (08) 9264 1440

TTY:

What is your relationship to this respondent? Citizen

### **Respondent 2**

Name of person or organisation

ABN of organisation

Address

Suburb

State/Territory

Postcode

Email

Phone (BH)

Mobile

Fax

TTY

What is your relationship to this respondent?

Note: If you are complaining about more than two people or organisations, please provide information about each additional person or organisation



## Part C – What are you complaining about?

For information about the types of complaints the Australian Human Rights Commission can consider please go to [AHRC Complaints webpage](#).

Please select the appropriate box/boxes below.

I believe I have been discriminated against because of my

age

1. Ms. Alexandra Walters: 18 years
2. Mr. Joel Vida: 21 years
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

See Annexure 1.

disability

1. Ms. Alexandra Walters: Autism spectrum disorder
2. Mr. Joel Vida: Schizophrenia and an intellectual disability
3. [REDACTED] Neurological injury, severe claustrophobia, and suicidal ideation
4. [REDACTED] Attention deficit hyperactivity disorder, with prominent inattention, anxiety, panic attacks, oppositional defiance traits, executive functioning problems, and social skills difficulties
5. [REDACTED] Attention deficit hyperactivity disorder and drug addiction

See Annexure 1.

association with a person with a disability  
what is the person's disability?

status as a person with a disability who uses an assistance animal or disability aid or has a carer

sex  
what is your sex?

pregnancy

marital or relationship status  
what is your marital or relationship status?

family responsibilities

sexual orientation



what is your sexual orientation?

gender identity  
what gender do you identify as?

intersex status

race (this includes race, colour, national origin, descent, ethnicity and immigrant status)  
what is your race?

**I believe I have been sexually harassed**

**I believe I have experienced racial hatred**

What is your race?



- I believe I have been discriminated against in my employment because of my:**
- trade union activity
  - criminal record  
what is your criminal record?
  - religion  
what is your religion?
  - political opinion  
what is your political opinion?
- I believe my human rights have been breached by a Commonwealth government body**
- I believe I have been victimised because I made a complaint or tried to make a complaint about discrimination**

**When did the alleged event/s happen? Please refer to Annexure 1.**

The President of the Commission can decide not to investigate into a complaint where the complaint is lodged more than 12 months after the alleged event(s) happened. If the event(s) being complained about happened more than 12 months ago, please explain the reasons for the delay in making a complaint to the Commission.

Note: For events that have taken place after 13 April 2017, the timeframe for lodging complaints alleging unlawful discrimination will be 6 months.

Reasons for the delay in lodgement: Please refer to Annexure 1.



### **What happened?**

Describe the event that you want to complain about. We need to know what you say happened, where it happened and who was involved. Please give us all the dates and other details that you can remember.

If you are complaining about employment, please ensure you tell us when you commenced employment, your job title and whether you are still employed.

Please refer to Annexure 1.



### Supporting documents

Please attach copies of any documents that support the claims in your complaint. For example, letters, separation certificate, doctors certificate. If you cannot do this, please tell us about the documents or other information and how this information can be obtained.

Annexure 1 – Details of complaint

### How do you think this complaint could be resolved?

For example, a complaint may be resolved with an agreement that a respondent will change its procedures and/or introduce training or policies on anti-discrimination and/or take other action to prevent possible discrimination.

<u>Please refer to Annexure 1.</u>

### Have you made a complaint to another organisation?

For example, a state anti-discrimination or equal opportunity agency, a workers compensation agency, the Fair Work Commission and/or an Ombudsman.

- Yes
- No

If yes, you must provide the name of the agency, the date the complaint was made and the outcome of the complaint, if any. Please also attach copies of any letters you have received from the agency.

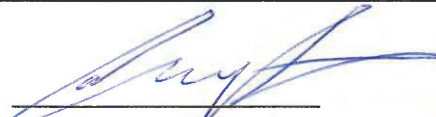



**Were you referred to the Commission by another organisation?**

If you were referred, please advise the organisation that referred you


**Part D – Lodging the complaint**

Name/Signature:



Date:

14/7/2023

Please send the complaint form to the Commission by:

Post: Australian Human Rights Commission  
GPO Box 5218  
Sydney NSW 2001  
Fax: 02 9284 9611  
Email: [complaints@humanrights.gov.au](mailto:complaints@humanrights.gov.au)



1. **ANNEXURE 1 – DETAILS OF COMPLAINT**

A. **Introduction**

A1 *Parties*

1 This complaint is made by:

- a. Ms Alexandra Walters (born 8 October 2004);
- b. Mr Joel Vida (born 23 May 2002);
- c. Mr [REDACTED] (born [REDACTED]);
- d. Mr [REDACTED] (born [REDACTED]);
- e. Mr [REDACTED] (born [REDACTED])

(together, the **Complainants**).

2 This complaint is a representative complaint made pursuant to section 46PB(1) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRCA**), on behalf of a group of persons set out in paragraph 3 below (who are referred to herein as the **Group Members**).

3 The Group Members are persons who:

- a. are or have been detained in juvenile detention in Western Australia between 5 September 1997 and the making of this complaint (**Relevant Period**) at one or more of the following detention centres declared to be a detention centre under section 13 of the *Young Offenders Act 1994* (WA) (**YOA**):
  - i. Banksia Hill Detention Centre (**BHDC**);
  - ii. Rangeview Juvenile Remand Centre (**Rangeview**);
  - iii. Hakea Juvenile Facility (**Hakea**); or
  - iv. Unit 18 at Casuarina Prison; (**Unit 18**)

and who

- b. claim to have suffered unlawful disability and/or age discrimination on one or more occasions while so detained by an act or omission of:
  - i. the Minister of the Crown in right of Western Australia who was, at the relevant time, responsible for the administration of the YO Act (**Minister**);



- ii. the chief executive officer of the department of the Government of Western Australia (**CEO**) who was, at the relevant time, principally assisting the responsible Minister in the administration of the YO Act;
- iii. a superintendent of a detention centre at the relevant time or a person who was performing, or purporting to perform, the functions of a superintendent under the YO Act in respect of a detention centre at the relevant time (**Superintendent**); and/or
- iv. an officer performing functions under the YO Act in respect of a detention centre or a person purporting to perform those functions (**Officer**).

4 This complaint is made against the State of Western Australia (**Western Australia**).

5 Western Australia is, and was at all material times, able to be sued pursuant to section 5 of *Crowns Suits Act 1947* (WA).

A2 *Overview of Complaint and Background of Previous Complaints*

6 In overview, the complaint is that Western Australia, through the Department of Justice and its officers and agents, has:

- a. engaged in unlawful disability discrimination contrary to the *Disability Discrimination Act 1992* (Cth) (the **DDA**) against detainees at the detention centres listed in paragraph 3a above; and
- b. engaged in unlawful age discrimination contrary to the *Age Discrimination Act 2004* (Cth) (the **ADA**) against detainees at Hakea and Unit 18.

7 This complaint of unlawful discrimination is lodged pursuant to section 46P(2)(b) of the AHRCA, by persons aggrieved by that unlawful discrimination.

Relationship to Previous Complaints

8 Three of the complainants have previously made complaints to the Australian Human Rights Commission in relation to their treatment within juvenile detention, as follows:

- a. Ms Walters and Mr Vida were complainants under a complaint lodged with the Australian Human Rights Commission which was allocated Complaint Numbers 2022-10859, 2022-11417 and 2022-11418 (**First Complaint**);



b. Mr [REDACTED] was a complainant under a complaint lodged with the Australian Human Rights Commission which was allocated Complaint Numbers 2022-15309, 2022-15509, and 2022-1511 (**Second Complaint**),

(together, the **Two Previous Complaints**).

- 9 Further, Mr [REDACTED] was an affected person within the meaning of s 3(1) of the AHRCA in relation to the Second Complaint, while Mr [REDACTED] was an affected person in relation to the First Complaint.
- 10 In summary, the First Complaint alleged unlawful disability, age and racial discrimination in relation to the treatment of juvenile detainees at BHDC and Rangeview, occurring from 5 September 1997 onwards and ongoing as at the date of the lodging of the First Complaint.
- 11 In summary, the Second Complaint alleged unlawful disability, age and racial discrimination in relation to the treatment of juvenile detainees at BHDC and at Unit 18 at Casuarina Prison, from 13 July 2022 onwards and ongoing as at the date of lodging of the Second Complaint.
- 12 The First Complaint was terminated on 14 November 2022. Following the termination of the First Complaint, Ms Walters and Mr Vida commenced proceedings against Western Australia in the Federal Court of Australia seeking, among other things, remedies under s 46PO of the AHRCA.
- 13 The Second Complaint was terminated on 6 March 2023. Following the termination of the Second Complaint, Mr [REDACTED] and Mr [REDACTED] commenced proceedings against Western Australia in the Federal Court of Australia seeking, among other things, remedies under s 46PO of the AHRCA.
- 14 The Complainants apprehend that there may be an argument in relation to such Federal Court Proceedings relating to whether the descriptions in the First and Second Complaints of the unlawful discrimination alleged therein:
- a. provided sufficient details of the unlawful discrimination complained of; and/or
  - b. were sufficiently broad or included sufficient reference to relevant matters,
- so as to provide the Federal Court of Australia with jurisdiction consistently with the requirements of s 46PO(3) of the AHRCA, to enable the Court to entertain an application for relief in respect of that alleged unlawful discrimination.



- 15 To the extent that the unlawful discrimination alleged in this Complaint extends beyond the unlawful discrimination alleged in either the First or Second Complaints, as the case may be, the Complainants now make this further complaint in respect of that further alleged discrimination.
- 16 Moreover, the Complainants apprehend that the operation of s 46PO(3) may be such that the Court only has jurisdiction to entertain an application for relief in respect of unlawful discrimination alleged to have occurred up to the date of the termination of the First and Second Complaints, but not thereafter.
- 17 Because, in the case of both the First and Second Complaints, the unlawful discrimination complained of is and was continuing, the Complainants now make this further complaint in order to extend the period in respect of which they allege that unlawful discrimination occurred, so as to “top-up” the First and Second Complaints.

#### Banksia and Rangeview

- 18 BHDC commenced operation as a detention centre on or about 5 September 1997 while Rangeview commenced operation in 1994.
- 19 Rangeview operated until around 5 October 2012. BHDC continues to operate to this day.
- 20 The Complainants allege that detainees at BHDC and Rangeview were subject to unlawful disability discrimination, as set out below in relation to the Complainants in this complaint.

#### Hakea and Unit 18

- 21 On 22 January 2013, the Minister declared, under section 13 of the YO Act, those buildings and enclosures situated on Reserve 50756, being Lot 501 on Deposited Plan 69593 (held by the Western Australian Land Information Authority established by the Land Information Authority Act 2006) known as Units 5 and 12 of the Hakea Prison, but not being parts of a prison under the Prisons Act 1981, to be a detention centre, which commenced operation immediately.
- 22 Hakea was utilised as a detention centre after a riot at BHDC on 20 January 2013 resulted in significant damage to the cells and facilities at BHDC, following which the Minister at the time determined that detainees be detained in an alternate location.
- 23 Detainees detained at Hakea had limited access to services, facilities and education as compared to detainees in BHDC or Rangeview and as compared to the services and facilities made available to adult prisoners within Hakea Prison.

- 24 Similarly, on 13 July 2022, the Minister declared, under section 13 of the YOA, those buildings and enclosures situated within Casuarina Prison and known as Unit 18 to be a detention centre, which commenced operation on 14 July 2022.
- 25 On 20 July 2022, approximately 20 detainees, who had immediately prior to that point been detained in BHDC, were transferred to Unit 18.
- 26 According to a media release by the Department of Justice, the detainees initially transferred to Unit 18 were selected for transfer on the basis that they had “exhibited complex needs, had significant offending histories and for months had been destroying infrastructure, assaulting staff and harming themselves”.
- 27 Thereafter, Unit 18 has been operated as a detention centre for the duration of the Relevant Period, during which the Applicants and Group Members were detained there.
- 28 The accommodation for detainees in Unit 18 in the Relevant Period included:
- a. a number of residential cells comprising general accommodation cells; and
  - b. a number of multi-purpose cells, observation and isolation cells, together referred to as the Multi-Purpose Unit (MPU).
- 29 MPU cells are primarily used for punishment, confinement and observation of detainees. They are usually completely empty, with no television or radio, no books or other reading material, and no personal items such as photographs.
- 30 Detainees detained at Unit 18 had limited access to services, facilities and education as compared to detainees in BHDC and as compared to the services and facilities made available to adult prisoners within Casuarina Prison.
- 31 The Complainants allege that detainees at Hakea and Unit 18:
- a. were subject to the same kinds of unlawful disability discrimination as detainees detained in BHDC and Rangeview; and
  - b. were also subject to unlawful age discrimination, as set out below in relation to Mr [REDACTED], Mr [REDACTED] and Mr [REDACTED], as complainants in this complaint.

## **B. Areas of Discrimination**

### *Areas for Disability Discrimination under Divisions 2 and 2A of Part 2 of the DDA*

- 32 At all times during the Relevant Period, Western Australia was an educational authority and an education provider within the meaning of ss 4 and 22 of the DDA.

33 At all times during the Relevant Period, Western Australia provided goods and/or services and/or made facilities available to detainees in Detention Centres within the meaning of s 24 of the DDA, including:

- a. space and time within which detainees could receive visits from friends, relatives and legal advisers;
- b. telephone facilities for communicating with friends, relatives and legal advisers;
- c. space and time for recreation and/or exercise;
- d. goods and facilities for recreation, including:
  - i. fitness and gymnasium facilities;
  - ii. sport equipment and facilities; and
  - iii. art and craft materials and classes.
  - iv. access to television and radio for entertainment and recreation;
- e. medical services, including medical treatment;
- f. a canteen;
- g. rehabilitation and vocational programs including general cognitive skills programs;
- h. protection from risk of physical harm, including self-harm, battery and/or assault by other detainees.

34 At all times from 18 August 2005 onwards, the Detention Centres were educational institutions within the meaning of section 4 of the DDA. Pursuant to the *Disability Standards for Education 2005 (Cth) (DSE)*, standards formulated pursuant to s 31 of the DDA applied to Western Australia as an education provider to detainees in Detention Centres.

*Areas of Age Discrimination under Division 3 of Part 4 of the ADA*

35 At all times during the Relevant Period, Western Australia was an educational authority and an education provider within the meaning of s 26 of the ADA.

36 At all times during the Relevant Period, Western Australia provided goods and/or services and/or made facilities available to detainees in Detention Centres within the meaning of s 28 of the ADA, including:

- a. space and time within which detainees could receive visits from friends, relatives and legal advisers;
- b. telephone facilities for communicating with friends, relatives and legal advisers;
- c. space and time for recreation and/or exercise;
- d. goods and facilities for recreation, including:
  - i. fitness and gymnasium facilities;
  - ii. sport equipment and facilities;
  - iii. art and craft materials and classes; and
  - iv. access to television and radio for entertainment and recreation;
- e. medical services, including medical treatment;
- f. a canteen;
- g. rehabilitation and vocational programs including general cognitive skills programs;
- h. protection from risk of physical harm, including self-harm, battery and/or assault by other detainees.

37 At all times during the Relevant Period, Western Australia provided goods and/or services and/or made facilities available to prisoners in prisons within the meaning of s 28 of the ADA, including:

- a. space and time within which detainees could receive visits from friends, relatives and legal advisers;
- b. telephone facilities for communicating with friends, relatives and legal advisers;
- c. space and time for recreation and/or exercise;
- d. goods and facilities for recreation, including:
  - i. fitness and gymnasium facilities;



- ii. sport equipment and facilities;
- iii. art and craft materials and classes; and
- iv. access to television and radio for entertainment and recreation;
- e. medical services, including medical treatment;
- f. a canteen;
- g. rehabilitation and vocational programs including general cognitive skills programs;
- h. protection from risk of physical harm, including self-harm, battery and/or assault by other detainees.

**C. Ms Walters**

38 Ms Walters has autism spectrum disorder (**ASD**). ASD is a disability within the meaning of the DDA.

39 Ms Walters was detained in BHDC for the following periods:

- a. 23 May 2018 to 29 April 2019;
- b. 17 July 2019 to 18 July 2019;
- c. 26 August 2019 to 27 August 2019;
- d. 3 September 2019 to 4 September 2019;
- e. 3 December 2019 to 6 December 2019; and
- f. 20 March 2020 to 21 March 2020.

40 While in BHDC, Ms Walters engaged in the following kinds of behaviour that were symptoms or manifestations of her disability:

- a. refusal to comply with directions from Officers that she:
  - i. submit to strip searches;
  - ii. submit to being placed in handcuffs;
  - iii. return to the Cue Unit from less restrictive areas of BHDC;
  - iv. return to her cell in the Cue Unit from common areas of the Cue Unit;

- v. submit to being placed in a cell that was dirty;
  - vi. surrender clothes that she had been wearing for laundering (because of her aversion to stained or dirty clothing provided from the common pool of clothing);
- b. resisted the threat of use of force and use of force by Officers, including by:
- i. attempting to evade Officers who wished to take hold of her;
  - ii. using objects, such as sharpened sticks or twigs to threaten Officers;
  - iii. striking, or attempting to strike Officers;
- c. engaging in repetitive acts of self-harm, particularly by using objects such as staples removed from books, and broken pieces of plastic, to scratch or cut her skin;
- d. engaging in obsessive:
- i. drawing of images of violence, such as knives and stabbing;
  - ii. writing words such as “kill” and “die” with reference to herself and/or Officers and the images referred to in sub-paragraph i above.

#### *Unlawful Disability Discrimination*

- 41 Ms Walters alleges that she was subject to unlawful indirect disability discrimination as defined under s 6 of the DDA in relation to:
- a. education under s 22 of the DDA; and
  - b. goods, services and facilities under s 24 of the DDA.
- 42 Ms Walters also alleges that she was subject to unlawful contraventions of the DSE under s 31 of the DDA.
- 43 As set out in the First Complaint, Ms Walters alleges that Officers responded to her behaviour, set out in paragraph 40 above, in a punitive manner and that this resulted in Ms Walters being confined to a cell in the Cue Unit, typically receiving as little as one hour of time outside her cell for recreation, which was spent in a small wire cage. By virtue of being so confined, Ms Walters was also deprived of access to any goods, services or facilities, access to which required leaving her cell.
- 44 By way of further elaboration on the matters raised in the First Complaint, Ms Walters alleges as follows.



- 45 Officers' responses to her behaviour, set out in paragraph 40 above, included:
- a. using force against Ms Walters, handcuffing her and confining her to her cell for extended periods of time, particularly in the Cue Unit, but also in the Yeeda unit and elsewhere;
  - b. placing Ms Walters in an observation cell or other type of cell in the Cue unit as her accommodation at BHDC for extended periods;
  - c. requiring Ms Walters to be handcuffed for all movements to and from the Cue unit for an extended period; and
  - d. denying or restricting Ms Walters' access to programs and facilities, including those set out in paragraph 33 above.

- 46 Officers required Ms Walters to:
- a. obey all commands, directions and orders given or made by the Superintendent and Officers;
  - b. refrain from self-harm; and
  - c. refrain from making images involving violence and writing words such as "kill" and "die".

47 Ms Walters was not able to comply with those requirements as a result of her disability. Ms Walters would only have been able to comply with those requirements if the CEO, the Superintendent and Officers had made adjustments in dealing with Ms Walters, including by:

- a. providing Ms Walters with appropriate mental health treatment, counselling and support;
- b. providing Ms Walters with behavioural therapy to assist her to learn to, and to better regulate her emotions and behaviour;
- c. training Officers about ASD and in techniques and approaches to communicating with Ms Walters to reduce confrontation and escalation;
- d. providing Ms Walters with, and assisting her to implement, an individual behaviour plan to reduce confrontation and escalation;
- e. providing Ms Walters with an appropriately qualified support worker to assist her in her interactions with Officers and detainees.

48 Those kinds of adjustments were not made for Ms Walters, notwithstanding her evident need for those kinds of adjustments by reason of her disability. As a result, she was



wrongly characterised as wilfully recalcitrant and subject to punitive responses and thereby disadvantaged.

- 49 The requirements in paragraph 46 above were not reasonable having regard to the circumstances of the case.

*Discrimination in Relation to Education – s 22 DDA; s 37 DDA*

- 50 When Ms Walters was confined in her cell, she was often not permitted to attend school and given no access to education or rehabilitation programs. When Ms Walters was provided with some educational instruction while confined, she was given individual instruction by a teacher attending the Cue Unit, in the company of two (2) custodial officers. Ms Walters was also subjected to a lack of routine in her education and rehabilitation. Ms Walters was thereby disadvantaged in her access to, and effective enjoyment of, the benefit of education contrary to s 22 of the DDA.
- 51 When Ms Walters was provided with access to education, she was provided with educational instruction using a curriculum and educational materials, including reading materials, which were unsuitable by reference to her academic capacity and/or existing level of academic attainment. Further, she was not provided with any specific assistance as a result of her disability, including specialist expertise, personal educational support and/or support for personal and medical care. She was thereby subjected to detriment in relation to her enjoyment of the benefit of education contrary to s 22 of the DDA.
- 52 Ms Walters was sometimes refused access to specific educational programs and materials on the grounds of her disability. In one instance, Ms Walters was denied access to books which contained staples as Ms Walters was known to use staples to self-harm. Ms Walters was also deprived of access to art programs and art supplies on several occasions as punishment for Ms Walters depicting images of self-harm. This was despite it being known to Officers that artistic expression was a manifestation of Ms Walters' disability. On occasions where Ms Walters produced drawings which were manifestations of her disability, Officers threatened Ms Walters with use of force and denial of privileges. By denying Ms Walters access to specific educational programs used throughout BHDC, Ms Walters was subjected to detriment in relation to her enjoyment of an educational benefit which was offered to other students in the facility, contrary to s 22 of the DDA.
- 53 Ms Walters' name was written on a board in the office of BHDC next to the word, "Autistic". The board was in full view of officers, teachers and students at BHDC and the words "Alexandra Walters" and "Autistic" remained on the board despite Ms

Walters' complaints that they were offensive, insulting and humiliating and her requests that they be removed. She was thereby subjected to harassment on the basis of her disability, contrary to s 37 of the DDA.

*Contravention of DSE*

- 54 By reason of Ms Walters being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 50 above, Ms Walters was prevented from participating in education on the same basis as a student without a disability, in contravention of Part 5 of the DSE and in particular section 5.2.
- 55 By reason of Ms Walters being provided with a curriculum and educational materials which were unsuitable by reference to her academic capacity and/or existing level of academic attainment as set out in paragraph 51 above, Ms Walters was not allowed to participate in education on the same basis as a student without a disability, in contravention of Part 6 of the DSE and in particular section 6.2.
- 56 By reason of Ms Walters being denied access to specialised support services to accommodate her disability, as set out in paragraph 51 above, Ms Walters was prevented from participating in education on the same basis as a student without a disability, in contravention of Part 7 of the DSE and in particular section 7.2.
- 57 Ms Walters would have been able to participate in education if adjustments had been made for her by reason of her disability, including:
  - a. appropriately assessing Ms Walters' literacy and numeracy competency on admission to BHDC;
  - b. developing a curriculum, learning plan and other educational material tailored to Ms Walters' competency level and designed to encourage Ms Walters' participation, accommodate her style of learning and encourage Ms Walters' educational progress and achievement;
  - c. adopting techniques and approaches to communicating with Ms Walters to reduce confrontation and escalation;
  - d. adopting disciplinary practices within educational settings which accommodated the behavioural manifestations of her disability rather than adopting punitive responses thereto;
  - e. adjusting the mode of education provided to Ms Walters to accommodate her disability;



- f. taking steps to allow Ms Walters to continue having lessons with the few educational instructors with whom she had developed a good rapport; and
- g. taking steps to arrange for and/or facilitate the provision of specialised support services to Ms Walters to accommodate her disability.

58 However, in contravention of Part 3 of the DSE and in particular sections 3.5, 3.6 and 3.7 of the DSE:

- a. adjustments, including those set out in paragraph 57 above, were not made for Ms Walters, at all or within a reasonable time; and
- b. Ms Walters was not consulted about the making of adjustments, including adjustments of the kind set out in paragraph 57 above.

59 By reason of the Officers' conduct set out in paragraph 52 above, Ms Walters suffered harassment within the meaning of section 8.1 of the DSE.

60 In circumstances where it was known to Officers that artistic expression was a manifestation of Ms Walters' disability, it was reasonably foreseeable that depriving Ms Walters of access to art supplies as described in paragraph 52 above would cause her distress. Ms Walters thereby suffered harassment on the basis of her disability, in contravention of section 8.3 of the DSE.

61 By reason of the Officers' conduct set out in paragraph 53 above, Ms Walters was harassed on the basis of her disability. In contravention of section 8.3 of the DSE, the Officers failed to implement strategies to prevent Ms Walters from being harassed, failed to take appropriate action after the harassment of Ms Walters occurred and failed to ensure Ms Walters had access to complaint mechanisms available to her.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

62 By reason of the conduct of Officers set out in paragraph 45 above, Ms Walters was disadvantaged in her access to the facilities and services provided in detention, set out in paragraph 33 above.

63 Ms Walters was disadvantaged by being punished for alleged misbehaviour by loss of program placement, loss of recreation time, loss of access to the fitness room, loss of canteen privileges and/or loss of television privileges.

64 She was also disadvantaged by being required to be handcuffed for movements within BHDC, and particularly to and from the Cue Unit, including in order to:

- a. attend visits from members of her family, including her parents;



- b. attend medical services at BHDC;
- c. access telephone facilities for communicating with her family; and
- d. make use of:
  - i. recreation areas outside the Cue Unit;
  - ii. goods and facilities for recreation and/or therapy outside the Cue Unit, including:
    - i) fitness and gymnasium facilities;
    - ii) sport equipment and facilities; and
    - iii) art and craft materials and classes;
  - iii. the canteen.

65 Further, she was disadvantaged by being subjected to the unjustified and unlawful use of force and threats of use of force.

*Pleading in WAD251 of 2021*

66 As explained at paragraph 12 above, the Ms Walters has already commenced proceedings against the Respondent under s 46PO of the AHRC Act, following the termination of the First Complaint.

67 Ms Walters's claims in that proceeding are set out in the Statement of Claim in that proceeding and in the Proposed Amended Originating Application in that proceeding, both dated 17 May 2023. Copies of those documents are attached to this complaint and marked "A" and "B" respectively.

68 As explained at paragraphs 14 to 17 above, to the extent that any of the unlawful discrimination to which Ms Walters alleges that she and the group members were subjected as set out above or set out in attachments A and B extends beyond the unlawful discrimination set out in the First Complaint, Ms Walters now makes this further complaint in respect of that unlawful discrimination, on her own behalf and on behalf of the group members.

**D. Mr Vida**

69 At all material times during the Relevant Period, Mr Vida has had schizophrenia and an intellectual disability. These are disabilities within the meaning of the DDA.

70 Mr Vida was detained at BHDC for the following periods:

- a. 7 March 2014 to 8 March 2014;
- b. 9 March 2016 to 10 March 2016;
- c. 11 March 2016 to 12 March 2016;
- d. 29 September 2016 from 1:21 am to 12:23 pm;
- e. 28 November 2016 to 30 November 2016;
- f. 31 July 2017 to 1 August 2017;
- g. 21 March 2018 to 22 March 2018;
- h. 28 March 2018 to 19 April 2018;
- i. 16 April 2019 to 30 April 2019; and
- j. 21 April 2020 to 22 April 2020.

71 While in BHDC, Mr Vida engaged in the following kinds of behaviour that were symptoms or manifestations of his disability:

- a. behaving in a disinhibited manner, including removing his clothes;
- b. being irritable and thought-disordered;
- c. being verbally aggressive and demanding;
- d. being emotionally labile;
- e. failing to follow instructions or commands; and
- f. damaging property.

*Unlawful Disability Discrimination*

72 As set out in the First Complaint, Mr Vida alleges that Officers responded to his behaviour, set out in paragraph 71 above, in a punitive manner and that this resulted in Mr Vida frequently being confined to his cell in the Intensive Support Unit (**ISU**), also known as the Harding Unit, and being deprived of access to goods, services or facilities, including visits, telephone calls, medical and psychological treatment, and education. Mr Vida was also specifically goaded and mocked about his disabilities.

73 By way of further elaboration on the matters raised in the First Complaint, Mr Vida alleges as follows.

74 Officers' responses to his behaviour, set out in paragraph 71 above, included:

- a. confining Mr Vida in the ISU/Harding Unit;

- b. restricting Mr Vida's recreation time out of his cell;
- c. the use of force and handcuffing against Mr Vida;
- d. calling Mr Vida names, including "spastic", "retard", "mental", and "not all right in the head".

75 Officers required Mr Vida to:

- a. obey all commands, directions and orders given or made by the Superintendent and Officers;
- b. refrain from being verbally aggressive.

76 Mr Vida was not able to comply with those requirements as a result of his disabilities. Mr Vida would only have been able to comply with those requirements if the CEO, the Superintendent and Officers had made adjustments in dealing with Mr Vida, including by:

- a. providing Mr Vida with appropriate mental health treatment, counselling and support;
- b. providing Mr Vida with appropriate behavioural therapy to assist him to learn to better regulate his emotions and behaviour;
- c. training Officers about schizophrenia and in techniques and approaches to communication with Mr Vida to reduce confrontation and escalation;
- d. providing Mr Vida with an individual behaviour plan to reduce confrontation and escalation;
- e. providing Mr Vida with an appropriate individual support worker to assist him in his interactions with Officers and detainees.

77 Those kinds of adjustments were not made for Mr Vida, notwithstanding his evident need for those kinds of adjustments by reason of his disabilities. As a result, he was wrongly characterised as wilfully recalcitrant and subject to punitive responses and thereby disadvantaged.

78 The requirements referred to in paragraph 75 were not reasonable having regard to the circumstances of the case.

*Discrimination in Relation to Education – s 22 DDA; s 37 DDA*

79 When Mr Vida was confined to his cell, including in the ISU, Mr Vida was not permitted to attend school and given no access to education or rehabilitation programs. He was thereby denied access to the benefit of education, contrary to s 22 of the DDA.



80 In the extremely limited circumstances in which education was provided to Mr Vida, Mr Vida was provided educational packs which consisted of educational materials that were not tailored to his level of competence. Further, he was not provided with any specific assistance as a result of his disability, including specialist expertise, personal educational support and/or support for personal and medical care. He was thereby subjected to detriment in relation to his enjoyment of the benefit of education contrary to s 22 of the DDA.

81 Staff at BHDC regularly called Mr Vida names including “spastic”, “retard”, “mental”, and “not all right in the head”. Staff repeatedly used these names to describe Mr Vida despite it being reasonably foreseeable that the use of such names would have the effect of offending, insulting or humiliating him, and in spite of his repeated complaints. Mr Vida was thereby subjected to harassment on the basis of his disability, contrary to s 37 of the DDA.

#### *Contravention of DSE*

82 By reason of Mr Vida being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 79 above, Mr Vida was prevented from participating in education on the same basis as a student without a disability, in contravention of Part 5 of the DSE and in particular section 5.2.

83 By reason of Mr Vida being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 80 above, Mr Vida was prevented from participating in education on the same basis as a student without a disability in contravention of Part 6 of the DSE and in particular section 6.2.

84 By reason of Mr Vida being denied access to specialised support services to accommodate his disability, as set out in paragraph 80 above, Mr Vida was prevented from participating in education on the same basis as a student without a disability, in contravention of Part 7 of the DSE and in particular section 7.2.

85 Mr Vida would have been able to participate in education if adjustments had been made for him by reason of his disability, including:

- a. appropriately assessing Mr Vida’s literacy and numeracy competency on admission to BHDC;
- b. developing a curriculum, learning plan and other educational material tailored to Mr Vida’s competency level, designed to encourage Mr Vida’s participation and accommodate his style of learning;



- c. taking steps to adjust the materials or the mode of education provided to Mr Vida (in the extremely limited circumstances in which any education was even provided) to accommodate his disability; and
- d. taking steps to arrange for and/or facilitate the provision of specialised support services to Mr Vida to accommodate his disability.

86 However, in contravention of Part 3 of the DSE and in particular sections 3.5, 3.6 and 3.7 of the DSE:

- a. adjustments, including those set out in paragraph 85 above, were not made for Mr Vida, at all or within a reasonable time; and
- b. Mr Vida was not consulted about the making of adjustments, including those set out in paragraph 84 above.

87 By reason of the Officers' conduct set out in paragraph 81 above, Mr Vida was harassed on the basis of his disability. In contravention of section 8.3 of the DSE, Western Australia as the education provider:

- a. failed to implement strategies to prevent Mr Vida from being harassed;
- b. failed to take appropriate action after the harassment occurred; and
- c. failed to ensure that appropriate and adequate complaint mechanisms were available to Mr Vida.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

88 By reason of the conduct of Officers set out in paragraph 74 above, Mr Vida was disadvantaged in his access to the facilities and services provided in detention, set out in paragraph 33 above. Mr Vida was not permitted access to services and facilities outside the ISU, including the canteen and sport and recreation facilities and equipment, and was thereby disadvantaged.

89 Mr Vida was also disadvantaged by being subjected to unjustified and unlawful uses of force and handcuffing on numerous occasions.

90 Further, Officers called Mr Vida "spastic", "retard", "mental", and "not all right in the head" and would not have done so had they been dealing with a detainee who did not have schizophrenia or an intellectual disability. Officers thereby engaged in differential treatment of Mr Vida, which disadvantaged him.

91 Mr Vida was subject to confinement, the unlawful use of force and handcuffing on many occasions as set out above. It is to be inferred from the conduct of Officers in specifically abusing Mr Vida on the basis of his disability that they also engaged in that



unlawful conduct towards Mr Vida by reason of his disability and would not have treated a person without a disability in the same manner.

92 Mr Vida was thus discriminated against by Officers who treated him less favourably than they would have treated a person without Mr Vida's disability in circumstances that were not materially different.

*Pleading in WAD251 of 2022*

93 As explained at paragraph 12 above, Mr Vida has already commenced proceedings against the Respondent under s 46PO of the AHRC Act, following the termination of the First Complaint.

94 Mr Vida's claims in that proceeding are set out in the Statement of Claim in that proceeding and in the Proposed Amended Originating Application in that proceeding, both dated 17 May 2023. Copies of those documents are attached to this complaint and marked "A" and "B" respectively.

95 As explained at paragraphs 14 to 17 above, to the extent that any of the unlawful discrimination to which Mr Vida alleges that he and the group members were subjected as set out above extends beyond the unlawful discrimination set out in the First Complaint, Mr Vida now makes this further complaint in respect of that unlawful discrimination, on his own behalf and on behalf of the group members.

E. Mr [REDACTED]

96 Mr [REDACTED] has a neurological injury sustained in a motorcycle accident, as well as severe claustrophobia and suicidal ideation. These are disabilities within the meaning of the DDA.

97 Mr [REDACTED] was initially detained at BHDC but on 20 July 2022, Mr [REDACTED] was transferred from BHDC to Unit 18 at Casuarina Prison, which otherwise housed only adult prisoners.

98 Mr [REDACTED] was detained at Unit 18 for the following periods:

- a. 20 July 2022 to 23 August 2022,
- b. 28 September 2022 to 16 December 2022.

99 Mr [REDACTED] was then detained at BHDC between 3 January 2023 and May 2023. He was then transferred again to Unit 18, where he remains detained to the present day.



- 100 While in detention at each place, Mr [REDACTED] has spent a significant amount of his time placed within:
- a. the ISU at BHDC; and
  - b. the MPU at Unit 18.
- 101 While in BHDC, Mr [REDACTED] engaged in the following kinds of behaviour that were a symptoms or manifestations of his disability:
- a. destroying property;
  - b. self-harming;
  - c. lack of thought and/or concern for the consequences of his actions;
  - d. difficulty controlling his impulses;
  - e. difficulty refraining from the above behaviour;
  - f. difficulty regulating his emotions; and
  - g. refusing to follow instructions.

*Unlawful Disability Discrimination*

- 102 As set out in the Second Complaint, Mr [REDACTED] was subjected to confinement in his cell for extended periods, which exacerbated his mental illness. He was not provided with appropriate therapeutic support or treatment.
- 103 By way of further elaboration on the matters raised in the Second Complaint, Mr [REDACTED] alleges as follows.
- 104 Mr [REDACTED]'s disabilities meant that he had significant difficulty coping with protracted periods of lockdown in his cell and his resultant limited access to programs, activities, and socialisation. These factors trigger feelings of boredom, frustration, isolation, distress, and desperation, acts of self-harm and attempted suicide. His confinement in his cell within Unit 18 thus exacerbated the manifestations of his disabilities described at paragraph 100 above.
- 105 Officers' responses to Mr [REDACTED]'s behaviour, set out in paragraph 101 above, included:
- a. confining him in his cell;
  - b. restricting his recreation time out of his cell;
  - c. the use of force and restraints, including three-point restraints, rip proof garments and handcuffing;

- d. subjecting him to strip searches; and
- e. denying or restricting his access to services and facilities, including education and other programs.

106 Officers required Mr [REDACTED] to:

- a. obey all commands, directions and orders given or made by the Superintendent and Officers;
- b. refrain from being verbally aggressive; and
- c. refrain from damaging property.

107 Mr [REDACTED] was not able to comply with those requirements as a result of his disabilities. Mr [REDACTED] would only have been able to comply with those requirements if the CEO, the Superintendent and Officers had made adjustments in dealing with Mr [REDACTED], including by:

- a. providing Mr [REDACTED] with appropriate mental health treatment, counselling and support;
- b. providing Mr [REDACTED] with appropriate behavioural therapy to assist him to learn to better regulate his emotions and behaviour;
- c. training Officers about neurological injury and in techniques and approaches to communicating with Mr [REDACTED] to reduce confrontation and escalation;
- d. providing Mr [REDACTED] with an individual behaviour plan to reduce confrontation and escalation;
- e. providing Mr [REDACTED] with an appropriate individual support worker to assist him in his interactions with Officers and detainees.

108 Those kinds of adjustments were not made for Mr [REDACTED], notwithstanding his evident need for those kinds of adjustments by reason of his disabilities. As a result, he was wrongly characterised as wilfully recalcitrant and subject to punitive responses and thereby disadvantaged.

109 The requirements referred to in paragraph 106 were not reasonable having regard to the circumstances of the case.

110 For example, between 21 July 2022 and 19 August 2022, Mr [REDACTED] was confined to his cell for a total of 203 hours and 54 minutes, or an average of 7 hours and 50 minutes per day, in addition to the 13 hours of standard night-time lockdown between the hours



of 18:45 and 07:45. During this period, Mr [REDACTED] therefore spent a daily average of 20 hours and 50 minutes locked down in his cell.

- 111 Mr [REDACTED]'s disabilities mean he has significant difficulty coping with protracted periods of lockdown and consequential limited access to programs, activities, and socialisation. This difficulty triggers feelings of boredom, frustration, isolation, distress, and desperation, acts of self-harm and attempted suicide.

*Discrimination in Relation to Education – s 22 DDA; s 37 DDA*

- 112 When Mr [REDACTED] was confined to his cell and placed in the ISU and MPU for extended periods, he was not permitted to attend school and given no access to education or rehabilitation programs. In fact, Mr [REDACTED]'s detention management report indicates that he received no hours of education in 2022. He was thereby denied access to the benefit of education, contrary to s 22 of the DDA.

- 113 To the extent that Mr [REDACTED] has received education while detained in Unit 18, it has comprised of limited face-to-face education. For the most part, Mr [REDACTED] was supplied with an education pack while confined to his cell. The education pack consisted of general worksheets that were not tailored to Mr [REDACTED]'s level of competence. Further, Mr [REDACTED] was not provided with any specific assistance as a result of his disability. Instead, the teacher spent minimal time speaking with Mr [REDACTED] from outside his cell door. Mr [REDACTED] was thereby denied access to the benefit of education, contrary to s 22 of the DDA.

- 114 In the limited circumstances in which education was provided to Mr [REDACTED] outside of his cell at Unit 18, Mr [REDACTED] was handcuffed for the duration of the class. In addition to restricting Mr [REDACTED]'s access to the benefit of education, contrary to s 22 of the DDA, the act of forcing Mr [REDACTED] to participate in class, whilst being handcuffed, had the effect of humiliating, offending, intimidating and/or distressing Mr [REDACTED]. Mr [REDACTED] was thereby subjected to harassment, contrary to s 37 of the DDA.

*Contravention of DSE*

- 115 By reason of Mr [REDACTED] being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 112 above, Mr [REDACTED] was prevented from participating in education on the same basis as a student without a disability, in contravention of Part 5 of the DSE and in particular section 5.2.

- 116 By reason of Mr [REDACTED] being provided with a curriculum and educational materials which were not tailored to his level of competence, as set out in paragraph 113 above,

Mr [REDACTED] was not allowed to participate in education on the same basis as a student without a disability, in contravention of Part 6 of the DSE and in particular section 6.2.

117 By reason of Mr [REDACTED] being denied access to specialised support services to accommodate his disability, as set out in paragraph 113 above, Mr [REDACTED] was prevented from participating in education on the same basis as a student without a disability, in contravention of Part 7 of the DSE and in particular section 7.2.

118 Mr [REDACTED] would have been able to participate in education if adjustments had been made for him by reason of his disability, including:

- a. appropriately assessing Mr [REDACTED]'s literacy and numeracy competency on admission to BHDC;
- b. developing a curriculum, learning plan and other educational material tailored to Mr [REDACTED]'s competency level, designed to encourage Mr [REDACTED]'s participation and accommodate his style of learning;
- c. taking steps to arrange for and/or facilitate the provision of specialised support services to Mr [REDACTED] to accommodate his disability;
- d. providing sufficient access to teachers and substitute teachers; and
- e. adjusting the materials, or the mode of education provided to Mr [REDACTED] (in the limited circumstances in which any education was even provided) to accommodate his disability.

119 However, in contravention of Part 3 of the DSE and in particular section 3.5, 3.6 and 3.7:

- a. adjustments, including those set out in paragraph 118 above, were not made for Mr [REDACTED] at all or within a reasonable time; and
- b. Mr [REDACTED] was not consulted about the making of adjustments, including those set out in paragraph 118 above, notwithstanding the evident need for adjustments to be made to accommodate the behavioural manifestations of his disability.

120 By reason of the Officers' conduct set out in paragraph 114 above, Mr [REDACTED] was harassed on the basis of his disability. In contravention of section 8.3 of the DSE, the Officers failed to implement strategies to prevent Mr [REDACTED] from being harassed and failed to take appropriate action after the harassment occurred.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

- 121 When Mr ██████ was confined in his cell and placed in the ISU in BHDC, he was disadvantaged in his access to the facilities and services provided in detention, set out in paragraph 33 above.
- 122 When Mr ██████ was confined in his cell and placed in the MPU in Unit 18, he was disadvantaged in his access to the facilities and services provided in detention, set out in paragraph 33 above.
- 123 Thus, in addition to being confined in his cell, Mr ██████ was regularly subjected to punishments, including in response to suicide attempts and incidents of self-harm, involving the loss of privileges and/or program placements, including restricting Mr ██████'s access, either in part or in full to:
- a. a television or radio;
  - b. educational worksheets or other reading material;
  - c. education or rehabilitation programs;
  - d. sport, exercise, games or recreation;
  - e. the ability to eat or socialise with other detainees;
  - f. in-person contact with visitors or any other person aside from custodial staff;
  - g. telephone contact with family members;
  - h. a towel, shampoo, bodywash, toothbrush or other hygiene products;
  - i. the opportunity to take a shower.
- 124 These punishments further exacerbated manifestations of Mr ██████'s disabilities, which were treated by Officers as incidents of poor behaviour rather than as manifestations of a disability, precipitating a rapid decline in the mental and physical health of Mr ██████. In one instance, Mr ██████ fashioned a noose out of the rip-proof gown he was forced to wear. Officers responded by removing the gown, and then left Mr ██████ naked, in solitary confinement in an MPU cell, with only a rip-proof doona for comfort.
- 125 On another occasion, by reason of being wrongly characterised as wilfully recalcitrant, Mr ██████ was subjected to punitive uses of force such as being folded up, including on one occasion being folded up so as to cause such extreme pain to his neck that he was then taken to hospital for an X-ray.



126 Mr [REDACTED] was frequently subject to routine and excessive uses of force including the use of restraints, strip searches and solitary confinement. On one occasion, Mr [REDACTED] was forced to eat dinner while still in a three-point restraint, for no justifiable reason. This was inhumane and degrading and amounted to forcing Mr [REDACTED] to eat like an animal.

*Unlawful Age Discrimination*

127 As set out in the Second Complaint, after being moved to Unit 18, Mr [REDACTED] was denied access to family visits and telephone calls and to educational programs.

128 By way of further elaboration on the matters raised in the Second Complaint, Mr [REDACTED] alleges as follows.

129 While confined in Unit 18, Mr [REDACTED] has had extremely limited access to services and facilities as compared both to detainees at BHDC and prisoners within the adult population at Casuarina Prison. Mr [REDACTED] was regularly unable to access services and facilities provided in Casuarina Prison by reason of it being an adult facility and his status as a child detainee under the YOA.

130 Even when Mr [REDACTED] was not confined within his cell while detained in Unit 18, he still received little to no access to education or any programs for rehabilitation by reason of the failure by the CEO, Superintendent and/or Officers to:

- a. provide sufficient access to teachers and substitute teachers;
- b. adequately resource education at Unit 18;
- c. adequately staff Unit 18 to facilitate the minimum 9.8 hours out of cell each day required for standard program delivery.

131 When Mr [REDACTED] has received education in Unit 18, it has been limited to the provision of simplistic worksheets and has not included face-to-face education. Mr [REDACTED] has not been informed when, if ever, or on what conditions, he may be able to access face-to-face education during the continuation of his detention.

132 He has thereby been disadvantaged in his access to education by reason of his age.

133 Further, for the reasons referred to in paragraph 129 above, Mr [REDACTED] has been disadvantaged in his ability to access services and facilities, including facing ongoing difficulties in accessing psycho-social supports such as:

- a. face-to-face visits with his aunt [REDACTED];
- b. e-visits with family and friends;



- c. access to psychologists, mentors, and other non-custodial staff, due to a lack of confidential spaces in which to speak; and
- d. when welfare checks and/or psychological assessments did occur, being subjected to them being completed through a grille on the door of his cell.

134 Mr [REDACTED] has also been denied access to rehabilitation programs, which have on occasion been scheduled for detainees, but have subsequently been cancelled without explanation (a circumstance which is itself debilitating for a detainee relying on such programs). He has not been able to access a cognitive behavioural therapy program, as all three scheduled sessions were cancelled, as was a program based on engagement with youths through Hip Hop music. Mr [REDACTED] has ultimately been entirely prevented from engaging in any formal rehabilitation programs while detained at Unit 18.

135 As explained at paragraph 13 above, Mr [REDACTED] commenced proceedings under s 46PO of the AHRC Act, following the termination of the Second Complaint.

136 As explained at paragraph 14 to 17 above, to the extent that any of the unlawful discrimination to which Mr [REDACTED] alleges that he and the group members were subjected, as set out above, extends beyond the unlawful discrimination set out in the Second Complaint, Mr [REDACTED] now makes this further complaint in respect of that unlawful discrimination, on his own behalf and on behalf of the group members.

**F. Mr [REDACTED]**

137 Mr [REDACTED] has attention deficit hyperactivity disorder (**ADHD**) with prominent inattention, anxiety, panic attacks, oppositional defiance traits, executive functioning problems, and social skills difficulties. These are disabilities within the meaning of the DDA.

138 Mr [REDACTED] was detained in a juvenile justice facility for the following periods:

- a. 5 November 2021 to 8 September 2022;
- b. 17 October 2022 to the present.

139 Mr [REDACTED] was initially detained at BHDC. On 20 July 2022 he was transferred from BHDC to Unit 18 at Casuarina Prison, which otherwise housed only adult prisoners.

140 Since 20 July 2022, Mr [REDACTED] has spent the following periods at each place:

- a. at BHDC:
  - i. 10 August 2022 to 15 August 2022; and



ii. 13 January 2023 to 27 January 2023;

b. Unit 18:

i. 20 July 2022 to 10 August 2022;

ii. 15 August 2022 to 8 September 2022;

iii. 17 October 2022 to 13 January 2023; and

iv. 27 January 2023 to the present.

141 While in detention at each place, Mr [REDACTED] has spent a significant amount of his time placed within:

a. the ISU at BHDC;

b. the MPU at Unit 18.

142 Mr [REDACTED]'s disabilities manifest themselves in various ways, including in behaviour consistent with pyromania, kleptomania, oppositional defiant disorder, and impulse control disorder. Mr [REDACTED]'s disabilities affect his ability to cope with stress, boredom, anger, and frustration.

143 While in BHDC, Mr [REDACTED] engaged in the following kinds of behaviour that were symptoms or manifestations of his disability:

a. setting fires;

b. destroying others' property;

c. lack of thought and/or concern for the consequences of his actions;

d. difficulty controlling his impulses;

e. difficulty refraining from the above behaviour;

f. difficulty regulating his emotions;

g. self-harming; and

h. refusing to follow instructions.

#### *Unlawful Disability Discrimination*

144 Mr [REDACTED] has been confined to his cell for extended periods and subjected to other punishments and disadvantageous treatment as a result of Officers enforcing disciplinary policies which were and are unsuitable for Mr [REDACTED] because of his disabilities.

145 Officers responded to the behaviour of Mr [REDACTED] as described in paragraph 142 above by:

- a. the use of force and threats of use of force against him;
- b. the use of restrains including handcuffs, leg shackles and three-point restraints, including requiring Mr [REDACTED] to be handcuffed for all movements with BHDC;
- c. placing Mr [REDACTED] in the ISU or MPU for extended periods;
- d. confining Mr [REDACTED] in his cell for extended periods, particularly in the ISU or MPU;
- e. subjecting Mr [REDACTED] to strip searches; and
- f. denying or restricting his access to education and programs.

146 While he has been at BHDC and Unit 18, the Superintendent and Officers have imposed the following requirements or conditions on Mr [REDACTED]:

- a. to obey all commands, directions and orders given or made by the Superintendent and Officers;
- b. to refrain from self-harm;
- c. to refrain from damaging property.

147 Mr [REDACTED] was not able to comply with those requirements as a result of his disabilities. Mr [REDACTED] would only have been able to comply with those requirements if the CEO, the Superintendent and Officers had made adjustments in dealing with Mr [REDACTED] including by:

- a. providing Mr [REDACTED] with appropriate mental health treatment, counselling and support;
- b. providing Mr [REDACTED] with appropriate behavioural therapy to assist him to learn to better regulate his emotions and behaviour;
- c. training Officers about ADHD and in techniques and approaches to communicating with Mr [REDACTED] to reduce confrontation and escalation;
- d. providing Mr [REDACTED] with an individual behaviour plan to reduce confrontation and escalation;
- e. providing Mr [REDACTED] with an appropriate individual support worker to assist him in his interactions with Officers and detainees.

148 Those kinds of adjustments were not made for Mr [REDACTED] notwithstanding his evident need for those kinds of adjustments by reason of his disabilities. As a result, he was wrongly characterised as wilfully recalcitrant and subjected to punitive responses, and thereby disadvantaged.

149 The requirements referred to in paragraph 147 were not reasonable having regard to the circumstances of the case.

*Discrimination in Relation to Education – s 22 DDA*

150 Mr [REDACTED] was confined in his cell and placed in the ISU and MPU for extended periods. When he was so confined, he was either not permitted to attend school or given no access to education. Mr [REDACTED] was also subjected to a lack of routine in his education and rehabilitation. He was thereby disadvantaged in his access to, and effective enjoyment of, the benefit of education, contrary to s 22 of the DDA.

151 When Mr [REDACTED] did receive education, it was extremely basic education regarding literacy and numeracy which did not advance Mr [REDACTED]'s level of educational attainment. The curriculum was haphazardly applied and there was little to no continuity between lessons, making it almost impossible for Mr [REDACTED] to gain any benefit from the limited education provided. Further, he was not provided with any specific assistance as a result of his disability, including specialist expertise, personal educational support and/or support for personal and medical care. He was thereby subjected to detriment in relation to his enjoyment of the benefit of education contrary to s 22 of the DDA.

*Contravention of DSE*

152 By reason of Mr [REDACTED] being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 150 above, Mr [REDACTED] was prevented from participating in education on the same basis as a student without a disability, in contravention of Part 5 of the DSE and in particular section 5.2.

153 By reason of Mr [REDACTED] being provided with a curriculum and educational materials which were below his level of competence, as set out in paragraph 151 above, Mr [REDACTED] was not allowed to participate in education on the same basis as a student without a disability, in contravention of Part 6 of the DSE and in particular section 6.2.

154 By reason of Mr [REDACTED] being denied access to specialised support services to accommodate his disability, as set out in paragraph 151 above, Mr [REDACTED] was prevented from participating in education on the same basis as a student without a disability, in contravention of Part 7 of the DSE and in particular section 7.2.

155 No attempt was made to adjust the materials, or the mode of education provided to Mr [REDACTED] (in the limited circumstances in which any education was even provided) to accommodate his disability. Mr [REDACTED] was not consulted about any such adjustments. That was notwithstanding that Mr [REDACTED] had previously been the subject of an assessment outside of detention, which had determined that he would benefit from the following kinds of adjustments:

- a. ensuring that Mr [REDACTED] is given clear and consistent instructions;
- b. providing positive feedback from staff; and
- c. providing close guidance with initial tasks to increase understanding of what is expected of him.

156 In contravention of Part 3 of the DSE and in particular sections 3.5, 3.6 and 3.7 of the DSE:

- a. adjustments, including those set out in paragraph 155 above, were not made for Mr [REDACTED] at all or within a reasonable time; and
- b. Mr [REDACTED] was not consulted about the making of adjustments, including those set out in paragraph 155 above.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

157 Mr [REDACTED] was disadvantaged by being punished for alleged misbehaviour by loss of program placement, loss of recreation time, loss of access to the fitness room, loss of canteen privileges and/or loss of television privileges. This has resulted in Mr [REDACTED] being without access to television, radio, reading material or any other form of entertainment or amusement or method of passing the time.

158 He was also disadvantaged by being subjected to restraints, including being handcuffed or placed in shackles for movements within BHDC and Unit 18, and by being subjected to the unjustified and unlawful use of force and threats of use of force. Mr [REDACTED] was regularly restrained and subjected to uses of force without appropriate justification, including being “folded up” on numerous occasions.

159 On one occasion, Mr [REDACTED] was restrained in three-point restraints and left on the floor of his cell for 9 hours without being released from the restraints and without being provided with water, t-shirt or blanket, being left in extreme cold and discomfort, in conditions tantamount to torture. On another occasion, he was pepper-sprayed while in his cell and posing no threat, in apparent retaliation for an incident involving other detainees, in which Mr [REDACTED] was not involved. He was then left in his cell for



between one and two hours without being permitted to wash the pepper-spray out of his eyes, which caused serious blistering and a rash to form on his skin.

160 Mr [REDACTED] has also had charges brought against him in respect of his responses to such unlawful assaults. On one occasion, after a suicide attempt, he was assaulted and “folded-up”, causing a dislocated shoulder, and then left in three-point restraints, following which Mr [REDACTED] was himself charged with assault. The charge was subsequently withdrawn after the video footage of Mr [REDACTED] being assaulted was shown in court.

161 Further, Mr [REDACTED] was subjected to unnecessary searches, for example for an object which had in fact (to the knowledge of the Officer conducting the search) already been located, which was in those circumstances a punitive measure unlawfully applied against Mr [REDACTED]

#### *Unlawful Age Discrimination*

162 While detained in Unit 18, Mr [REDACTED] had extremely limited access to services and facilities as compared both to detainees at BHDC and prisoners within the adult population at Casuarina Prison. Mr [REDACTED] was regularly unable to access services and facilities provided in Casuarina Prison by reason of it being an adult facility and Mr [REDACTED] not being able to interact with the adult prison population.

163 Mr [REDACTED] has thereby been subject to differential treatment by reason of his age and was thereby disadvantaged in his access to services and facilities. In the circumstances, he was and would only have been able to access services and facilities ordinarily provided to detainees after first being transferred back to BHDC from Unit 18.

164 Even when Mr [REDACTED] was not confined within his cell while detained in Unit 18, he still received little to no access to education or any programs for rehabilitation by reason of the failure by the CEO, Superintendent and/or Officers to:

- a. provide sufficient access to teachers and substitute teachers;
- b. adequately resource education at Unit 18;
- c. adequately staff Unit 18 to facilitate the minimum 9.8 hours out of cell each day required for standard program delivery.

165 He has thereby been disadvantaged in his access to education by reason of his age.

166 Further, Mr [REDACTED] was disadvantaged by reason of his age in his ability to access services and facilities including:

- a. access to entertainment and reading material (which is also important for self-educational purposes, particularly in light of the lack of education provided);
- b. telephone calls and e-visits with family, friends and relevant professionals such as case workers or lawyers;
- c. medical services, including for disability, including the provision of medicine and psychological and psychiatric assessments and prescriptions;
- d. basic aspects of hygiene including showers, toilet paper for toileting, being able to cut his nails, and so on.

167 While detained in Unit 18, Mr [REDACTED] was regularly denied access to the services and facilities listed in paragraph 166. For example:

- a. He would only be provided with meagre amounts of toilet paper on request.
- b. Showers were regularly broken, limiting access to them.
- c. Mr [REDACTED] was often denied access to working showers on a punitive basis including as part of solitary confinement.
- d. For certain periods, he was provided with no medication.
- e. At other times, he was provided with medication but without proper assessment by a psychologist or psychiatrist despite Mr [REDACTED] specifically requesting access to such assessments.
- f. Visits were very limited, and Mr [REDACTED] was often forced to choose between, for example, receiving a visit from his mother or from his lawyer. He was even forced to choose between these things and showering at times, due to a perverse and unlawful application of the idea of “out of cell time”.
- g. He was denied access to telephone calls generally.
- h. When he was confined in the MPU he was unable to receive any entertainment material and so was unable even to educate or amuse himself by reading.

168 The combined effect of these conditions resulted in a serious deterioration in Mr [REDACTED]'s mental health, causing an increase in panic and anxiety attacks. He has also suffered from significant insomnia, which has a cyclical debilitating effect, as solitary confinement becomes more difficult to withstand as one's ability to sleep decreases.

169 As explained at paragraph 13 above, Mr [REDACTED] commenced proceedings against the Respondent under s 46PO of the AHRC Act, following the termination of the Second Complaint.

170 As explained at paragraphs 14 to 17 above, to the extent that any of the unlawful discrimination to which Mr [REDACTED] alleges that he and the group members were subjected, as set out above, extends beyond the unlawful discrimination set out in the

Second Complaint, Mr [REDACTED] now makes this further complaint in respect of that unlawful discrimination, on his own behalf and on behalf of the group members.

171 Mr [REDACTED] has submitted several complaints regarding his treatment in BHDC and Unit 18, which provide more details about his treatment in those facilities and the unlawful discrimination he has suffered. A collated copy of those complaints is attached to this complaint and marked "C".

**G. Mr [REDACTED]**

172 At all material times, Mr [REDACTED] had and has ADHD and drug addiction. These are disabilities within the meaning of the DDA.

173 Mr [REDACTED] was initially detained at Rangeview and BHDC but in or around January 2013, Mr [REDACTED] was transferred from BHDC to Hakea, located in the Hakea Prison, which otherwise housed only adult prisoners.

174 Mr [REDACTED] was detained at Hakea for a period of approximately one year.

175 While detained in BHDC, Rangeview and in Hakea, Mr [REDACTED] engaged in the following kinds of behaviour that were symptoms or manifestations of his disability:

- a. lack of thought and/or concern for the consequences of his actions;
- b. difficulty controlling his impulses;
- c. difficulty refraining from the above behaviour;
- d. difficulty regulating his emotions;
- e. being irritable and thought-disordered;
- f. being verbally aggressive and demanding;
- g. refusal to follow instructions;
- h. engaging in paranoid patterns of thought and corresponding behaviours;
- i. exhibiting distrust of others and their motivations;
- j. experiencing repetitive and intrusive patterns of thought and associated behaviours; and
- k. difficulty sleeping.

*Unlawful Disability Discrimination*

176 In response to Mr [REDACTED]'s behaviour set out in paragraph 175 above, Officers implemented the following responses and imposed the following restrictions on him:

- a. subjected him to the use of force and threats of the use of force;
- b. subjected him to restraints, including handcuffing;
- c. confined him in his cell;
- d. denied or restricted his access to services and facilities including recreation, education and programs;
- e. denied or restricted his access to in-person visits with family and friends;
- f. purported to prescribe Mr [REDACTED] with Seroquel, which:
  - i. made him sleepy and docile,
  - ii. was not prescribed by a doctor or psychologist, and
  - iii. did not provide any effective treatment for Mr [REDACTED], but rather had the effect of making him more compliant in the interests of Officers.

177 While he was detained in BHDC and Hakea, Mr [REDACTED] was required by Officers to:

- a. obey all commands, directions and orders given or made by the Superintendent and Officers;
- b. refrain from engaging in property damage;
- c. refrain from being verbally aggressive; and
- d. refrain from offending Officers in any way, including by making trivial requests or displaying negative affect to any degree in response to commands or directions.

178 As a result of his disabilities, Mr [REDACTED] was not able to comply with those requirements. He would only have been able to comply with those requirements if the CEO, the Superintendent and Officers had made adjustments in dealing with him, including by:

- a. providing him with appropriate mental health treatment, including medication, counselling and support;
- b. providing him with appropriate behavioural therapy to assist him to learn to better regulate his emotions and behaviour;

- c. training Officers about ADHD and in techniques and approaches to communicating with Mr [REDACTED] to reduce confrontation and escalation; and
- d. providing Mr [REDACTED] with an individual behaviour plan to reduce confrontation and escalation.

- 179 Those kinds of adjustments were not made for Mr [REDACTED] notwithstanding his evident need for those kinds of adjustments by reason of his disabilities. As a result, he was wrongly characterised as wilfully recalcitrant and subjected to punitive responses, and thereby disadvantaged.
- 180 The requirements referred to in paragraph 177 were not reasonable having regard to the circumstances of the case.
- 181 Mr [REDACTED] was disadvantaged by being confined to his cell, where he was often required to spend about 18 hours per day, regularly being confined for 6 hours of ordinary unlock time which should have applied each day. On one occasion, Mr [REDACTED] was detained in the ISU in BHDC for about 9 weeks.
- 182 When so confined in his cell, Mr [REDACTED] was regularly unable to access services and facilities and was usually only allowed 30-60 minutes of recreation time per day. On some occasions, he was not allowed out at all for consecutive days. In either case, at those times, he was not permitted to attend school and given no access to education. He was thereby disadvantaged in his access to, and effective enjoyment of, the benefit of education. He was also thereby subjected to a lack of routine in his education and rehabilitation and was prevented from participating in education on the same basis as a student without a disability. For extended periods of time, Mr [REDACTED] received no education at all, whether from a teacher or by way of worksheet exercises.
- 183 Mr [REDACTED] was also disadvantaged by reason of him being subjected to uses of force and threats of uses of force. Mr [REDACTED] was routinely threatened by Officers, including being threatened with being pepper-sprayed in the eyes for behaviour as trivial as allegedly smirking. He was repeatedly subject to "folding up" for trivial incidents and continues to suffer symptoms of physical injuries caused by those uses of force, including his knee being liable to dislocate easily. In one incident, he was subjected to force and restrained and placed into a rip-proof gown after asking for a cup of water. In another, his face was slammed into the ground causing him to begin to bleed from above his eye.



*Discrimination in Relation to Education – s 22 DDA*

184 Mr [REDACTED] was disadvantaged by being confined in his cell, as set out in paragraphs 181 to 182 above. When he was so confined, he was either not permitted to attend school or given no access to education. Mr [REDACTED] was also subjected to a lack of routine in his education and rehabilitation. He was thereby disadvantaged in his access to, and effective enjoyment of, the benefit of education, contrary to s 22 of the DDA.

185 In the limited circumstances when Mr [REDACTED] was provided with access to education, he was provided with educational instruction using a curriculum and educational materials, including reading materials, which were not tailored to his level of competence. Further, he was not provided with any specific assistance as a result of his disability, including specialist expertise, personal educational support and/or support for personal and medical care. He was thereby subjected to detriment in relation to his enjoyment of the benefit of education contrary to s 22 of the DDA.

*Contravention of DSE*

186 By reason of Mr [REDACTED] being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraphs 184 and 185 above, Mr [REDACTED] was prevented from participating in education on the same basis as a student without a disability, in contravention of Part 5 of the DSE and in particular section 5.2 of the DSE.

187 By reason of Mr [REDACTED] being provided with a curriculum and educational materials which were below his level of competence, as set out in paragraph 185 above, Mr [REDACTED] was not allowed to participate in education on the same basis as a student without a disability, in contravention of Part 6 of the DSE and in particular section 6.2.

188 By reason of Mr [REDACTED] being denied access to specialised support services to accommodate his disability, as set out in paragraph 185 above, Mr [REDACTED] was prevented from participating in education on the same basis as a student without a disability, in contravention of Part 7 of the DSE and in particular section 7.2.

189 No attempt was made to adjust the materials, or the mode of education provided to Mr [REDACTED] (in the limited circumstances in which any education was provided) to accommodate his disability. Mr [REDACTED] was not consulted about any such adjustments, despite his ADHD being known to staff at BHDC.

190 Mr [REDACTED] would have been able to participate in education if adjustments had been made for him by reason of his disability, including:

- a. appropriately assessing Mr [REDACTED]'s literacy and numeracy competency on admission into Rangeview and/or BHDC;

- b. developing a curriculum, learning plan and other educational material tailored to Mr [REDACTED]'s competency level and designed to encourage his participation and accommodate his style of learning;
- c. adopting techniques and approaches to communicating with Mr [REDACTED] to reduce confrontation and escalation;
- d. adopting disciplinary practices within educational settings which accommodated the behavioural manifestations of his disability rather than adopting punitive responses thereto;
- e. adjusting the mode of education provided to Mr [REDACTED] to accommodate his disability;
- f. taking steps to arrange for and/or facilitate the provision of specialised support services to Mr [REDACTED] to accommodate his disability, including appropriate ADHD medication;
- g. provide sufficient access to teachers and substitute teachers; and
- h. taking steps to adjust the materials or the mode of education provided to Mr [REDACTED] (in the extremely limited circumstances in which any education was provided) to accommodate his disability.

191 However, in contravention of Part 3 of the DSE and in particular sections 3.5, 3.6 and 3.7 of the DSE:

- a. adjustments, including those set out in paragraph 190 above, were not made for Mr [REDACTED] at all or within a reasonable time; and
- b. Mr [REDACTED] was not consulted about the making of adjustments, including those set out in paragraph 189 above.

*Unlawful Age Discrimination*

192 While detained in Hakea, Mr [REDACTED] had extremely limited access to services and facilities as compared both to detainees at BHDC and prisoners within the adult population at Hakea Prison. He was regularly unable to access services and facilities provided in Hakea Prison by reason of it being an adult facility and the fact that he was a child.

193 Even when Mr [REDACTED] was not confined within his cell while detained in Hakea, he still received little to no access to education or any programs for rehabilitation by reason of the failure by the CEO, Superintendent and/or Officers to:

- a. provide sufficient access to teachers and substitute teachers or those responsible for delivering rehabilitation programs;
- b. adequately resource education and rehabilitation programs at Hakea;
- c. adequately staff Hakea to facilitate the minimum 9.8 hours out of cell each day, required for standard program delivery.

194 The education which Mr [REDACTED] did receive was haphazard. Whereas while at BHDC and Rangeview, Mr [REDACTED] received little to no education as a result of his punitive treatment as a result of his disability, at Hakea, he did receive slightly more time for education, but still no more than twice a week by reason of the restrictions imposed on the detainees as a result of Hakea being within an adult prison.

195 Mr [REDACTED] was thereby disadvantaged in his access to education by reason of his age.

196 In each of Rangeview, BHDC or Hakea, when Mr [REDACTED] did receive limited access to education, it was simplistic and no attempt was made to adjust the materials or the mode of education provided to accommodate Mr [REDACTED]'s disability, nor was Mr [REDACTED] consulted about the possibility of such adjustments being made.

197 Further, while at Hakea, Mr [REDACTED] was disadvantaged in his ability to access services and facilities by reason of his age. In particular, Mr [REDACTED] was only able to receive visits on weekends, rather than during the week, as was possible at both BHDC and Rangeview.

198 Further, the following programs or facilities were not available at all at Hakea:

- a. sports facilities;
- b. educational programs for the attainment of workplace qualifications; and
- c. rehabilitation programs.

199 Mr [REDACTED] was thereby subject to differential treatment by reason of his age and was thereby disadvantaged in his access to services and facilities and to education.

200 As a result of the conditions of his detention involving the unlawful discrimination set out above, Mr [REDACTED]'s mental health deteriorated significantly, including his experiencing suicidal ideation and extreme feelings of hopelessness, which he did not experience prior to his detention.



**H. Group member claims**

- 201 Group members suffered unlawful disability and/or unlawful age discrimination in the Relevant Period while in detention in one or more of the detention centres referred to in paragraph 3a above by reason of the acts or omissions of the Minister, the CEO, the Superintendent and/or Officers which Western Australia is taken to have engaged in and for which Western Australia is vicariously liable.
- 202 The acts or omissions referred to in paragraph 201 include acts or omissions of the kind described in the individual complaints of the Complainants and arise out of similar and related circumstances having occurred in detention centres under the control of Western Australia in the course of systemic behaviour by the Minister, the CEO, the Superintendent and/or Officers.

**I. Vicarious Liability**

- 203 The Complainants allege that Western Australia is vicariously liable for the unlawful discrimination alleged in this Complaint and arising from the conduct of its employees and agents, being the Minister, CEO, Superintendent and Officers.

**J. Relief sought by the Complainants**

- 204 The Complainants, on behalf of the Group Members, seek relief in the following forms for themselves and the Group Members:
- a. public apologies;
  - b. declarations and/or acknowledgements that Western Australia and the Minister, CEO, Superintendents and Officers engaged in unlawful disability discrimination and/or unlawful age discrimination;
  - c. compensation for unlawful disability discrimination and/or unlawful age discrimination;
  - d. such other relief as may be awarded under s 46PO(4) of the AHRCA, including compensation in the way of aggravated and/or exemplary damages.
  - e. orders prohibiting the continuation of the unlawful discrimination and/or henceforth restraining the Respondent from the unlawful discrimination.

With kind regards.



Yours sincerely

**LEVITT ROBINSON**

A handwritten signature in blue ink, appearing to read 'S. Levitt', written over the printed name.

**Stewart A Levitt**

Senior Partner

# Annexure A



## NOTICE OF FILING

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 17/05/2023 4:26:52 PM AWST  
Date Accepted for Filing: 18/05/2023 11:20:47 AM AWST  
File Number: WAD251/2022  
File Title: ALEXANDRA WALTERS & ANOR v STATE OF WESTERN AUSTRALIA  
Registry: WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

### Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



## Statement of Claim

No: WAD251/2022

Federal Court of Australia  
District Registry: Western Australia  
Division: General

**ALEXANDRA WALTERS** and another person identified in the schedule  
Applicants

**STATE OF WESTERN AUSTRALIA**  
Respondent

### A. PRELIMINARY

1. Defined Terms in this Statement of Claim have the same meaning as in the **Amended Originating Application**.

### B. THE APPLICANTS

2. The first applicant, **Ms Walters**, was born on 8 October 2004.
3. Ms Walters has **Autism Spectrum Disorder (ASD)**.
4. Ms Walters was detained at **Banksia Hill** Detention Centre for the following periods:
  - (a) 23 May 2018 to 29 April 2019;
  - (b) 17 July 2019 to 18 July 2019;
  - (c) 26 August 2019 to 27 August 2019;
  - (d) 3 September 2019 to 4 September 2019;
  - (e) 3 December 2019 to 6 December 2019; and
  - (f) 20 March 2020 to 21 March 2020.
5. At all relevant times while she was detained in Banksia Hill, Ms Walters was a child of 13 to 15 years of age.

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Filed on behalf of (name & role of party)	Applicants
Prepared by (name of person/lawyer)	Stewart Levitt
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6. The second applicant, **Mr Vida**, was born on 23 May 2002.
7. Mr Vida has schizophrenia and an intellectual disability.
8. Mr Vida was detained at Banksia Hill for the following periods:
  - (a) 7 March 2014 to 8 March 2014;
  - (b) 9 March 2016 to 10 March 2016;
  - (c) 11 March 2016 to 12 March 2016;
  - (d) 29 September 2016 from 1.217 am to 12.23 pm;
  - (e) 28 November 2016 to 30 November 2016;
  - (f) 31 July 2017 to 1 August 2017;
  - (g) 21 March 2018 to 22 March 2018;
  - (h) 28 March 2018 to 19 April 2018;
  - (i) 16 April 2019 to 30 April 2019; and
  - (j) 21 April 2020 to 22 April 2020.
9. Mr Vida is Aboriginal and, at all relevant times while he was detained at BHDC, he was a child of 11 to 17 years of age.

### C. THE GROUP MEMBERS

10. Ms Walters and Mr Vida each bring this proceeding seeking the relief set out in the Amended Originating Application, on their own behalf and as representative parties pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) for the **Group Members** defined in paragraphs 2 and 3 of the Amended Originating Application.
11. At the date of this Statement of Claim, and as at the date of commencement of this proceeding seven or more Group Members have claims against the respondent, the **State of Western Australia**.

### D. THE RESPONDENT

12. The State of WA is sued under the title 'State of Western Australia', pursuant to s 5(2) of the *Crown Suits Act 1947* (WA).
13. Each **Minister**, **CEO**, **Superintendent**, and **Officer** (as defined in the Amended Originating Application):
  - (a) implementing or administering;



- (b) exercising a power or duty under; or
- (c) assisting in the exercise of any power or duty under;

the **Young Offenders Act 1994 (WA) (YO Act)** was at all relevant times:

- (d) in the service of, or an agent of, the State of WA;
- (e) acting in the performance or purported performance of his or her functions; and
- (f) acting in the service of, or as an agent of, the State of WA when the performance of his or her functions was in the course of service to the State of WA, or was an incident of that service; and/or
- (g) acting within the scope of his or her actual, implied or apparent authority.

14. By reason of the matters pleaded in paragraph [13], the State of WA is:

- (a) vicariously liable for the tortious conduct alleged in this proceeding to have been committed by reason of an act or omission of a Minister, CEO, Superintendent, or Officer referred to in paragraph [13]; and
- (b) taken to have engaged in the conduct in contravention of the **Disability Discrimination Act 1992 (Cth) (DDA)** alleged in this Statement of Claim to have been committed by a Minister, CEO, Superintendent or Officer.

#### E. DETENTION CENTRES

15. In the Relevant Period the State of WA operated the following **Detention Centres** declared pursuant to s 13 of the YO Act and in which the Applicants and Group Members were detained:

- (a) **Rangeview** Juvenile Remand Centre, in operation until 30 October 2012;
- (b) Banksia Hill, in operation from 5 September 1997 to date;
- (c) **Hakea** Juvenile Facility, in operation from 22 January 2013 to 6 December 2013; and
- (d) **Unit 18** of Casuarina Prison, in operation from 13 July 2022 to date.

#### F. RELEVANT PROVISIONS OF THE YO ACT AND YO REGULATIONS

16. The provisions of the YO Act and the **Young Offenders Regulations 1995 (WA) (YO Regulations)** that are material to the matters pleaded in this Statement of Claim are pleaded in paragraphs [18] to [42] below.



17. Sections 11 to 11B and 11C to 11F of the YO Act and regulations 70 to 86 of the YO Regulations referred to below commenced operation on 1 July 2005.

***Objectives and principles***

18. Section 6 sets out the main objectives of the YO Act:
- (a) to provide for the administration of juvenile justice; and
  - (b) to set out provisions, embodying the general principles of juvenile justice, for dealing with young persons who have, or are alleged to have, committed offences; and
  - (c) to ensure that the legal rights of young persons involved with the criminal justice system are observed; and
  - (d) to enhance and reinforce the roles of responsible adults, families, and communities in —
    - (i) minimising the incidence of juvenile crime; and
    - (ii) punishing and managing young persons who have committed offences; and
    - (iii) rehabilitating young persons who have committed offences towards the goal of their becoming responsible citizens; and
  - (e) to integrate young persons who have committed offences into the community; and
  - (f) to ensure that young persons are dealt with in a manner that is culturally appropriate, and which recognises and enhances their cultural identity.
19. Section 7 sets out the general principles to be observed in performing functions under the YO Act:
- (a) there should be special provision to ensure the fair treatment of young persons who have, or are alleged to have, committed offences; and
  - (b) a young person who commits an offence is to be dealt with, either formally or informally, in a way that encourages the young person to accept responsibility for his or her conduct; and
  - (c) a young person who commits an offence is not to be treated more severely because of the offence than the person would have been treated if an adult; and
  - (d) the community must be protected from illegal behaviour; and



- (e) victims of offences committed by young persons should be given the opportunity to participate in the process of dealing with the offenders to the extent that the law provides for them to do so; and
- (f) responsible adults should be encouraged to fulfil their responsibility for the care and supervision of young persons, and supported in their efforts to do so; and
- (g) consideration should be given, when dealing with a young person for an offence, to the possibility of taking measures other than judicial proceedings for the offence if the circumstances of the case and the background of the alleged offender make it appropriate to dispose of the matter in that way and it would not jeopardise the protection of the community to do so; and
- (h) detaining a young person in custody for an offence, whether before or after the person is found to have committed the offence, should only be used as a last resort and, if required, is only to be for as short a time as is necessary; and
- (i) detention of a young person in custody, if required, is to be in a facility that is suitable for a young person and at which the young person is not exposed to contact with any adult detained in the facility, although a young person who has reached the age of 16 years may be held in a prison for adults but is not to share living quarters with an adult prisoner; and
- (j) punishment of a young person for an offence should be designed so as to give the offender an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways; and
- (k) a young person who is dealt with for an offence should be dealt with in a time frame that is appropriate to the young person's sense of time; and
- (l) in dealing with a young person for an offence, the age, maturity, and cultural background of the offender are to be considered; and
- (m) a young person who commits an offence is to be dealt with in a way that:
  - (i) strengthens the family and family group of the young person; and
  - (ii) fosters the ability of families and family groups to develop their own means of dealing with offending by their young persons; and
  - (iii) recognises the right of the young person to belong to a family.



***Detainees, key persons and administration***

20. Under s 3 of the YO Act, a **detainee** is “a person who is detained in a detention centre”.
21. In respect of each Detention Centre, the key persons responsible for administering the YO Act and the YO Regulations are:
- (a) the relevant Minister;
  - (b) the CEO of the Department of the Public Service principally assisting the Minister in the administration of the YO Act, who is, subject to the Minister’s direction, required “to carry into operation the provisions of [the YO] Act so far as the duty is not expressly committed to any other person” (s 9);
  - (c) the relevant Superintendent, who is the person in charge of the relevant Detention Centre (s 3);
  - (d) Officers and other persons appointed by the CEO to implement or administer the Act (s 11(1)); and
  - (e) Custodial Officers appointed by the CEO for primarily non-administrative functions (s 11(1a)).
22. Under s 11B of the YO Act a custodial Officer among other things:
- (a) has a responsibility to maintain the security of the Detention Centre where he or she is employed (s 11B(a));
  - (b) must obey all lawful orders given to him or her by the Officer under whose control or supervision he or she is placed (s 11B(c)); and
  - (c) may issue to a detainee such orders as are necessary for the purposes of the YO Act, including the security, good order, or management of a Detention Centre, and may use such force as is prescribed under section 11C of the YO Act as is necessary to ensure that lawful orders given to a detainee are complied with (s 11B(d)).
23. Under s 11E of the YO Act a prison officer:
- (a) may assist in the exercise or performance of any power or duty under the YO Act if requested to do so by the CEO or the Superintendent;
  - (b) when assisting, has the powers, duties, and protection from liability of a custodial Officer in addition to the powers and duties conferred or imposed on the prison officer under any other law;



- (c) when assisting, may use such force as may be used by a custodial Officer and with the approval of the CEO may use such weapons as are necessary in the circumstances.

24. Under s 11F of the YO Act a police officer:

- (a) may assist in the exercise or performance of any power or duty under the YO Act if requested to do so by the CEO or the Superintendent;
- (b) when assisting, has the powers, duties, and protection from liability of a custodial Officer in addition to the powers and duties conferred or imposed on the police officer under any other law;

25. Section 13(1) of the YO Act empowers the Minister to declare a place to be a “detention centre”. The YO Act distinguishes detention centres from prisons established under the *Prisons Act 1981* (WA). Section 118A(1) provides that, if a person under 18 years old is sentenced to a term of imprisonment, they must, subject to limited exceptions, serve that sentence in a detention centre and not in a prison.

26. Section 181(1) of the YO Act empowers the CEO, subject to the approval of the Minister, to make “rules for the management, control, and security of detention centres generally or a specified detention centre and for the management, control, and security of detainees and the management of officers of the Department”. The YO Regulations prevail over the rules, to the extent of any inconsistency.

### ***Orders, force, restraint and confinement***

#### Power to give orders

27. Under s 11B(d) of the YO Act, a custodial officer may issue to a detainee such orders as are necessary for the purposes of the YO Act, including the security, good order, or management of a detention centre and may use such force as is prescribed under s 11C as is necessary to ensure that lawful orders given to a detainee are complied with.

#### Use of force

28. Under s 11C of the YO Act:

- (a) a custodial officer may use “no more than prescribed force” in the management, control and security of a detention centre; and
- (b) force may only be used “in the prescribed circumstances”.

29. The requirements of s 11C of the YO Act are given content by regulations 71 and 72 of the YO Regulations:



- (a) The “prescribed force” which may be used under s 11C(1) is defined as “the degree of physical force which is the minimum required to control a detainee’s behaviour in the circumstances”: reg 71(1).
- (b) A person cannot use a physical restraint hold when applying prescribed force unless they have received instruction in the proper use of that hold, and the use of that type of hold has been authorised by the superintendent: reg 71(2).
- (c) The “prescribed circumstances” in which force may be used under s 11C(1) are defined as meaning “an immediate period when a detainee is imminently presenting a risk of physical injury to himself or herself, other detainees or staff”: reg 72(1). As soon as the imminent risk has passed and the detainee has been stabilised, prescribed circumstances for the use of force no longer exist: reg 72(2).

### Restraint

- 30. Under s 11D(1), the CEO or the superintendent may authorise and direct the restraint of a young offender where, in their opinion, such restraint is necessary:
  - (a) to prevent the young offender injuring himself or herself, or any other person;
  - (b) upon considering advice from a medical practitioner, on medical grounds; or
  - (c) to prevent the escape of a young offender during his or her movement to or from a facility or detention centre, or during his or her temporary absence from a facility or detention centre.
- 31. Restraint involving the use of medication must not be used on medical grounds unless the approval of a medical practitioner is obtained first: s 11D(2).
- 32. The Superintendent is required to report to the CEO if restraint is used on a detainee for a continuing period of more than 24 hours: s 11D(3).

### Confinement

- 33. The term “**confine**” and its cognates have their ordinary meaning in the YO Act and the YO Regulations and are so used in this Statement of Claim, as follows:
  - (a) “**confine**” has its ordinary meaning of “to enclose within bounds” and “to shut up or keep in”;
  - (b) “**confined**” has its ordinary meaning of “enclosed within bounds” and “shut up or kept in”;
  - (c) “**confinement**” has its ordinary meaning of “the state of being confined”; and



- (d) “**confine**” and its cognates refer to actions and the consequence of actions by the CEO, Superintendent or Officers requiring a detainee to remain in their sleeping quarters or a designated room during ‘unlock hours’, as defined in reg 73 of the YO Regulations;
34. The term “**unlock hours**” is defined in reg 73 as meaning the “period during which detainees who are not subject to confinement or restraint are able to leave their sleeping quarters”, being the hours in the ordinary routine of a Detention Centre when detainees, other than those subject to lawful confinement or restraint, are permitted to be outside their sleeping rooms.
35. Where a **detention offence** by a detainee is admitted or found to be proved, s 173 of the YO Act empowers a Superintendent or visiting justice, among other things, to order that the detainee be confined to the detainee’s sleeping quarters, or to a designated room:
- (a) for a period not exceeding 24 hours if the order is made by the superintendent; or
  - (b) for a period not exceeding 48 hours if the order is made by a visiting justice;
36. Section 196(1) of the YO Act empowers the Governor to make regulations. Section 196(2)(e) provides that, without limiting s 196(1), regulations may be made conferring authority on a superintendent “to order that a detainee be confined to the detainee’s sleeping quarters, or to a designated room, for a period not exceeding 24 hours in order to maintain good government, good order or security in a detention centre”.
37. Part 9 of the YO Regulations is entitled “Confinement of detainees”. It provides for two types of confinement:
- (a) a superintendent or a visiting justice may order that a detainee be confined to their sleeping quarters or to a designated room if they have been found to have committed a detention offence (**detention offence confinement**): reg 74(1).
  - (b) a superintendent may order that a detainee be confined to their sleeping quarters or to a designated room in order to maintain good government, good order or security in a detention centre (**security confinement**): reg 74(2).
38. Divisions 2 and 3 of Part 9 of the YO Regulations set out procedures and safeguards that apply to detention offence confinement and security confinement, respectively, including:
- (a) a superintendent must make and maintain a record of an order to confine a detainee: regs 76(1), 79(1);



- (b) where confinement is ordered to take place in a designated room, the superintendent must assess the room to be of an appropriate size and sufficiently lit and ventilated that the detainee can be confined without injury to health;
- (c) a detainee under detention offence confinement is entitled to fresh air, exercise and staff company for a period of at least 30 minutes every 3 hours during unlock hours: reg 76(3);
- (d) a detainee who is held in security confinement for 12 hours or longer is entitled to at least 1 hour of exercise each 6 hours during unlock hours: reg 79(4).

### Search

- 39. Section 196(3) of the YO Act empowers the Governor to make regulations conferring authority on a Superintendent, among other things, for search of and seizure of things from detainees.
- 40. Regulation 82(1) authorises the Superintendent to search any detainee “in accordance with this Part” and take from them any illegal or unauthorised thing found on their person: reg 82(1). The Superintendent is authorised to use such force as is reasonably necessary to perform that search and seizure. The Superintendent may direct an officer to undertake the search on their behalf.
- 41. Regulation 85 sets out when a search under reg 82(1) may occur:
  - (a) A detainee should be searched:
    - (i) on admission to the detention centre;
    - (ii) immediately before discharge from the detention centre;
    - (iii) on leaving or returning to a detention centre; and
    - (iv) when transferring from one detention centre to another.
  - (b) A detainee may be searched at any time, and in such a manner, as is considered necessary at the time by the superintendent.’
- 42. Regulation 86 sets out how a search under reg 82(1) may occur:
  - (a) A detainee may be searched using either a “pat” or “strip” search depending on the circumstances surrounding the requirement of the search.
  - (b) A detainee should be “strip” searched if there are circumstances giving rise to a reasonable suspicion that the detainee may be in possession of an item that could:
    - (i) jeopardise the safety, good order or security of the detention centre; or



- (ii) be used for self-harm.
- (c) At least 2 officers must be present during a search of a detainee.
- (d) A detainee must not be “strip” searched in the sight or immediate presence of a person of the opposite gender.
- (e) Where practicable, a detainee should not be “strip” searched in the immediate presence of another detainee.
- (f) Any search of a detainee must be conducted with due regard to the decency and self-respect of the detainee.
- (g) Despite sub-regulation (4), a superintendent may direct that a search is to be carried out in the presence of a medical practitioner or a nurse.
- (h) Whenever a detainee is “strip” searched, each officer taking a role in that search must forward a written report of the search to the superintendent.

#### G. RESIDUAL LIBERTY

- 43. At all times while Ms Walters and Mr Vida and Group Members were lawfully in detention in Detention Centres, they retained a right to residual liberty, being the right to enjoy all civil liberties that were not taken away expressly or by necessary implication by the lawful administration of the terms and conditions of their detention.
- 44. In this Statement of Claim:
  - (a) “**lockdown**” refers to the practice in Detention Centres of locking detainees in their sleeping quarters during unlock hours;
  - (b) “**rolling lockdown**” refers to the practice in Detention Centres of locking detainees in their sleeping quarters during unlock hours and opening an individual wing or part of the Detention Centre for a short period before returning it to lockdown and successively opening for short periods and returning to lockdown the remaining wings or parts of the Detention Centre.
- 45. By reason of the matters in paragraphs [33] to [38] and [43] and [44], each of the following constitutes wrongful imprisonment of a detainee:
  - (a) the confinement of a detainee in a room during unlock hours other than:
    - (i) detention offence confinement not exceeding 24 hours, lawfully ordered by the Superintendent;
    - (ii) detention offence confinement not exceeding 48 hours, lawfully ordered by a visiting justice;



- (iii) security confinement not exceeding 24 hours, lawfully ordered by the Superintendent;
- (b) detention offence confinement for which the Superintendent has failed to make and maintain a record of the order to confine the detainee
- (c) security confinement for which the Superintendent has failed to make and maintain a record of the order to confine the detainee;
- (d) detention offence confinement or security confinement in a designated room not assessed by the Superintendent to be of an appropriate size and sufficiently ventilated and lit that the detainee can be confined in that room without injury to health;
- (e) security confinement where the Superintendent has failed to inform the detainee of the reason for the confinement;
- (f) failure to give a detainee subject to detention offence confinement fresh air, exercise and staff company for a period of at least 30 minutes every 3 hours during unlock hours;
- (g) failure to give a detainee subject to security confinement fresh air, exercise and staff company for a period of at least 1 hour every 6 hours during unlock hours;
- (h) purported security confinement which is not reasonably necessary to maintain good government, good order or security in a Detention Centre; and
- (i) the confinement of detainees in a room by a lockdown or rolling lockdown other than for dealing with a disturbance or a hazard from which the detainees need to be protected.

#### H. BATTERY AND/OR ASSAULT

46. By reason of the matters in paragraphs [28] to [32] and [39] to [42], each of the following constitutes a battery of a detainee:
- (a) except in connection with the proper exercise of the power to search under regs 85 to 87 of the YO Regulations, the use of force on a detainee when the detainee is not imminently presenting a risk of physical injury to himself or herself, other detainees, or staff contrary to s 11C of the YO Act and reg 72(1) of the YO Regulations.
- (b) the use of force on a detainee after an imminent risk of physical injury to the detainee, other detainees, or staff has passed, contrary to s 11C of the YO Act and reg 72(2) of the YO Regulations.



- (c) the use of force on a detainee exceeding the degree of physical force which is the minimum required to control the detainee's behaviour in the circumstances, contrary to s 11C of the YO Act and reg 71(1) of the YO Regulations.
- (d) the use of a physical restraint hold on a detainee by an Officer when:
- (i) the Officer has not received instruction in the proper use of that physical restraint hold; or
  - (ii) the Superintendent has not authorised the use of that type of physical restraint hold;
- contrary to s 11C of the YO Act and reg 71(2) of the YO Regulations.
- (e) the restraint of a detainee other than authorised or directed by the CEO or Superintendent in the following circumstances permitted under s 11D of the YO Act:
- (i) such restraint as is necessary in the lawfully-formed opinion of the CEO or Superintendent to prevent the detainee from injuring himself, herself, or any other person;
  - (ii) such restraint as is necessary in the lawfully-formed opinion of the CEO or Superintendent on medical grounds advised and approved by a medical practitioner in advance of the use of the restraint;
  - (iii) such restraint as is necessary in the lawfully-formed opinion of the CEO or Superintendent to prevent the escape of a detainee:
    - 1. during his or her movement to or from a detention centre; or
    - 2. during his or her temporary absence from a detention centre;
- (f) the search of a detainee that involves physical contact with the person of the detainee in circumstances or in a manner not authorised by regs 85 to 87 of the YO Regulations,
- (g) a strip search involving physical contact with the person of the detainee conducted as a matter of routine practice and/or in the absence of circumstances giving rise to a reasonable suspicion that the detainee may be in possession of an item that could:
- (i) jeopardise the safety, good order or security of the detention centre; or
  - (ii) be used for self-harm.



47. By reason of the matters in paragraphs [28] to [32] and [39] to [42], each of the following constitutes an assault of a detainee:
- (a) conduct of the Superintendent or an Officer that caused a detainee to apprehend that the Superintendent or Officer might make or cause physical contact with the detainee in the circumstances set out in paragraph [46];
  - (b) the “strip” search of a detainee, not involving physical contact with the person of the detainee, conducted as a matter of routine practice and in the absence of circumstances giving rise to a reasonable suspicion that the detainee may be in possession of an item that could:
    - (i) jeopardise the safety, good order or security of the detention centre; or
    - (ii) be used for self-harm; and
 the detainee apprehended that if he or she did not submit to the strip search, physical force would be used against him or her;
  - (c) the strip search of a detainee not involving physical contact with the person of the detainee, conducted in a manner not authorised by reg 86 of the YO Regulations.

## I. DUTY OF CARE

### *Foreseeable Risk of Harm*

48. Each detainee, including Ms Walters and Mr Vida, was, while in detention in a Detention Centre:
- (a) a child, or a young adult who had commenced to be a detainee while a child;
  - (b) under the control of the Minister, the CEO, the Superintendent and Officers;
  - (c) without freedom or capacity to provide for their own needs for food, clothing, shelter, medical treatment, other health and welfare, and education or rehabilitation;
  - (d) separated from their parents or guardians who were, accordingly, unable to provide for their needs for food, clothing, shelter, medical treatment, other health and welfare, and education;
  - (e) dependant on the CEO, Superintendent and Officers to provide for their needs for food, clothing, shelter, medical treatment, other health and welfare, and education;
  - (f) likely to have experienced trauma, abuse or neglect both before and after becoming a detainee;



- (g) had, or was likely to have, at least one domain of neurodevelopmental impairment including one or more of:
- (i) cognitive impairment;
  - (ii) behavioural disorders; and
  - (iii) other mental health conditions.
- (h) vulnerable to psychiatric injury, including exacerbation of existing mental health conditions;
- (i) vulnerable to physical and psychiatric injury from self-harm and/or attempts at self-harm;
- (j) vulnerable to suffering economic loss as a consequence of:
- (i) lack of access to reasonable education or rehabilitation programs; and/or
  - (ii) lack of reasonable opportunity for rehabilitation towards the goals of developing a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways.

(together and severally **Detainee Characteristics**).

***Control over risk of harm***

49. At all material times during the Relevant Period:
- (a) in the circumstances set out in paragraph [48], the Minister, the CEO, the Superintendent and Officers knew, or ought reasonably to have known, that, or to the effect that, detainees were children who had, or were likely to have, the Detainee Characteristics;
  - (b) the Minister, the CEO, the Superintendent and some Officers had the right and ability to determine who was employed in a Detention Centre, what skills were required, what training and procedures would be followed, and what persons would be allowed into a Detention Centre;
  - (c) the CEO, the Superintendent and Officers had the right and ability to determine how and when detainees were exposed to contact with other detainees.

***Vulnerability***

50. The Detainee Characteristics meant that the detainees were vulnerable individuals.

***State duty of care***



51. By reason of the matters in paragraphs [48] – [50] above, at all material times during the Relevant Period, the State of WA was liable to detainees in respect of the following duties of care:

- (a) a duty by the Minister, the CEO, the Superintendent and Officers to take reasonable care; and
- (b) a non-delegable duty by the State of WA to take reasonable steps to ensure that reasonable care was taken by the Minister, the CEO, the Superintendent, Officers and any third party who entered a Detention Centre,

to avoid the risks of harm to detainees described in paragraph [53] during their detention.

***Minister, the CEO, the Superintendent and Officers Duty of Care***

52. The relationship of the Minister, the CEO, the Superintendent and Officers with detainees under their control, including Ms Walters and Mr Vida, was such that each of them was under a duty to take reasonable care to avoid acts or omissions which a reasonable person in the position of the Minister, the CEO, the Superintendent and Officers could reasonably foresee would be likely to harm the detainee.

53. By reason of the matters in paragraphs [48] to [52], the State of WA, the Minister, the CEO, the Superintendent and Officers owed the detainees, including Ms Walters and Mr Vida, a duty to take reasonable care, and to take reasonable precautions, to avoid acts or omissions which it was reasonably foreseeable could cause harm of the following kinds to detainees:

- (a) physical and psychiatric injury suffered by them during their detention;
- (b) exacerbation of existing mental health conditions or disabilities;
- (c) physical and/or psychiatric injury from self-harm and/or attempted self-harm;
- (d) physical and/or psychiatric injury from conduct of other detainees or Officers;
- (e) economic loss as a consequence of lack of access to reasonable education; and
- (f) economic loss as a consequence of lack of access to a reasonable opportunity for rehabilitation towards the goals of developing a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways.

**J. RELEVANT AREAS UNDER PART 2 DIVISION 2 OF THE DDA**

54. During the Relevant Period, the State of WA was an educational authority and an education provider within the meaning of ss 4 and 22 of the DDA.

**Particulars**



- (a) *During the relevant period, each Detention Centre was an institution at which education or training was provided to detainees.*
- (b) *The State of WA by its servants and agents, the Minister, the CEO, the Superintendent and Officers, administered each Detention Centre, including as regards education and training provided to detainees.*
55. During the Relevant Period, the State of WA provided goods and/or services and/or made facilities available to detainees in Detention Centres within the meaning of s 24 of the DDA, including:
- (a) space and time within which detainees could receive visits from friends, relatives and legal advisers;
  - (b) telephone facilities for communicating with friends, relatives and legal advisers;
  - (c) space and time for recreation and/or exercise;
  - (d) goods and facilities for recreation, including:
    - (i) fitness and gymnasium facilities;
    - (ii) sport equipment and facilities; and
    - (iii) art and craft materials and classes.
  - (e) access to television and radio for entertainment and recreation;
  - (f) medical services, including medical treatment;
  - (g) a canteen;
  - (h) protection from risk of physical harm, including self-harm, battery and/or assault by other detainees.

## **K. CLAIMS OF MS WALTERS**

### **K.1 False Imprisonment, assault and battery**

#### ***False imprisonment***

56. During the time Ms Walters was detained at Banksia Hill, the CEO and the Superintendent frequently used “lockdowns” and “rolling lockdowns” in the management of Banksia Hill for operational reasons, including staff shortages.

#### ***Particulars***

*Particulars of lockdowns and rolling lockdowns during the time that Ms Walters was detained at Banksia Hill will be provided following discovery.*



57. When a lockdown referred to in paragraph [56] was in effect, Ms Walters was locked in her accommodation cell for the duration of the lockdown.
58. When a rolling lockdown was in effect, Ms Walters was locked in her accommodation cell during the period in which her unit was subject to the rolling lockdown.
59. When Ms Walters was locked in her cell during lockdowns or rolling lockdowns, she was subjected to confinement within the meaning of the YO Act.

### ***Particulars***

*Particulars of confinement of Ms Walters during lockdowns and rolling lockdowns will be provided following discovery.*

60. The confinement of Ms Walters in her cell during the lockdowns and rolling lockdowns referred to in paragraphs [56] to [59] was not detention offence confinement or security confinement.
61. The confinement of Ms Walters in her cell during the lockdowns and rolling lockdowns deprived Ms Walters of her residual liberty.
62. By reason of the matters in paragraphs [43], [45] and [56] to [61], the CEO, the Superintendent and Officers falsely imprisoned Ms Walters when she was confined in a cell during lockdowns and rolling lockdowns.
63. During the time that Ms Walters was detained at Banksia Hill, the unit where female detainees were standardly detained was known as the “**Yeeda Unit**”, while the intensive support unit for female detainees was known as the “**Cue Unit**”.
64. In addition to the matters in paragraphs [56] to [62], on dozens of occasions while Ms Walters was detained at Banksia Hill, Ms Walters was confined in her sleeping quarters or other designated rooms outside unlock hours, including in the following circumstances:
  - (a) on 23 and 24 May 2018, following her first admission to Banksia Hill;
  - (b) when Officers wanted to limit or prevent interaction between Ms Walters and other detainees in her unit;
  - (c) following incidents of use of force by Officers or threatened use of force by Officers;
  - (d) following incidents of self-harm or threatened self-harm by Ms Walters;
  - (e) when Officers assigned to supervise Ms Walters during unlock hours were unavailable; and



- (f) on other occasions and in circumstances in respect of which further details will be provided.

**Particulars**

- (i) *Ms Walters was confined in observation cell 2 in the Cue Unit following her first admission in the circumstances particularised in the Statement of Particulars, Part 1, Paragraph 1.*
- (ii) *Ms Walters was also confined in a cell on occasions including the occasions particularised in the Statement of Particulars, Part 2, Paragraph 1.*
- (iii) *Of the occasions particularised in the Statement of Particulars Part 2 Paragraph 1,*
- 1. Occasions when Officers wanted to limit or prevent interaction between Ms Walters and other detainees in her unit are particularised in Part 2, Paragraph 3.*
  - 2. Occasions when Ms Walters' confinement followed following the use of force by officers or threatened use of force by officers are particularised in Part 2, Paragraph 2.*
  - 3. Occasions when Ms Walters' confinement followed incidents of self-harm or threatened self-harm by Ms Walters are particularised in Part 2, Paragraph 3.*
  - 4. Occasions when Ms Walters was confined when officers assigned to supervise Ms Walters were unavailable are particularised in Part 2, Paragraph 4.*
- (iv) *Particulars of other occasions on which Ms Walters was confined in a cell, including in the kinds of circumstances already particularised, will be provided following discovery.*
65. The confinement of Ms Walters in her cell on each of the occasions referred to in paragraph [64] was not detention offence confinement.
66. The confinement of Ms Walters in her cell on each of the occasions referred to in paragraph [64] deprived Ms Walters of her residual liberty.
67. The confinement of Ms Walters on the occasions referred to in paragraph [64] was not justified.



### **Particulars**

(i) *If the confinement of Ms Walters in the circumstances referred to in paragraph [63] purported to be security confinement, the confinement was unlawful for one or more of the following reasons:*

1. *it was not directed by the Superintendent;*
2. *the Superintendent failed to make and maintain a record of the order to confine Ms Walters;*
3. *it was not reasonably necessary to maintain good government, good order or security at Banksia Hill;*
4. *the Superintendent failed to inform Ms Walters of the reason for the confinement;*
5. *Ms Walters was not given fresh air, exercise and staff company for a period of at least 1 hour every 6 hours during unlock hours.*

(ii) *If the confinement of Ms Walters in the circumstances referred to in paragraph [63] did not purport to be security confinement, it was unlawful because it deprived Ms Walters of her residual liberty without authority under the YO Act and without lawful justification.*

68. By reason of the matters in paragraphs [65] to [67], the State of WA falsely imprisoned Ms Walters.

#### *Strip searches*

69. Ms Walters was subjected to a strip search on several occasions during her time in detention at Banksia Hill.

### **Particulars**

*Ms Walters was strip searched:*

- (a) *at or shortly after the time of her admission on each occasion she was admitted to Banksia Hill;*
- (b) *on about 20 June 2018 at about 6.30 pm in the circumstances described in the Statement of Particulars, Part 1, Paragraph 5;*
- (c) *on about 27 June 2018 at about 9.44 am in the circumstances described in the Statement of Particulars, Part 1, Paragraph 8;*
- (d) *on about 26 February 2019 at about 9.30 pm in the circumstances described in the Statement of Particulars, Part 1, Paragraph 73;*



- (e) *further particulars of strip searches of Ms Walters will be provided following discovery.*

70. On each occasion referred to in paragraph [69]:
- (a) Ms Walters apprehended that if she did not submit to a strip search, Officers would immediately use force on her and make unwanted physical contact with her body;
  - (b) Ms Walters did not freely consent to being strip searched and submitted to strip search out of fear that physical force would be used on her;
  - (c) the Superintendent did not have a reasonable suspicion that Ms Walters might have possession of an item that could jeopardise the safety, good order or security of Banksia Hill or be used for self-harm.
71. By reason of the matters in paragraphs [47(b)], [69] and [69(e)], Officers assaulted Ms Walters when they required her to submit to a strip search.
72. On about 29 January 2019 at about 11.25 am:
- (a) Ms Walters returned to Banksia Hill in the rear pod of a transport vehicle following a court appearance;
  - (b) Ms Walters had been escorted by Officers for the duration of her absence from Banksia Hill for the court appearance;
  - (c) Officers instructed Ms Walters to come out of the pod to undergo a strip search before being escorted to the Yeeda Unit;
  - (d) Ms Walters objected to being strip searched;
  - (e) Officers told her she would be subject to use of force unless she came voluntarily out of the pod and submitted to a strip search;
  - (f) Ms Walters refused to come out of the pod;
  - (g) an Officer entered the pod and used physical force to remove her from the vehicle;
  - (h) that Officer and additional Officers used force and restraint on Ms Walters in order to attempt to strip search her after she was removed from the transport vehicle.
73. Ms Walters' claims of battery arising from the incident referred to in paragraph [72] are included in the claims pleaded in paragraphs [77] to [81] below.
74. In the circumstances referred to in paragraph [72]:



- (a) before the Officer entered the pod, Ms Walters apprehended that Officers would immediately use physical force on her and make unwanted physical contact with her body;
- (b) the Superintendent did not have a reasonable suspicion that Ms Walters might have possession of an item that could jeopardise the safety, good order or security of Banksia Hill or be used for self-harm.

75. By reason of the matters in paragraphs [47(b)], [72] and [74], Officers assaulted Ms Walters.

***Use of force***

76. While Ms Walters was detained at Banksia Hill, she was subjected to the use of force by Officers in which Officers made unwanted physical contact with Ms Walters' body, including the following kinds of force:

- (a) a single Officer taking hold of one of Ms Walters' arms;
- (b) two Officers taking hold of Ms Walters by Ms Walters' arms, each officer holding an opposite arm;
- (c) a "wrist weave", where an Officer held Ms Walters' arm with one hand, placed the Officer's other arm at the inner side of Ms Walters' elbow joint and using the first hand bent her arm at the elbow around the Officers' wrist;
- (d) a "wrist weave" performed by 2 Officers, each Officer holding an opposite arm;
- (e) an "under hook and pike" hold, where an Officer inserted one arm under Ms Walters' arm, held Ms Walters' shoulder with the hand of that Officer's first arm and applied downwards pressure on the back of Ms Walters' neck with the Officers' other hand;
- (f) an Officer taking hold of Ms Walters' legs;
- (g) one or more Officers forcing Ms Walters to the ground;
- (h) one or more Officers holding Ms Walters face down on the ground or on a mattress on the ground;
- (i) one or more Officers holding Ms Walters by the legs in a "figure 4" position while she was face down on the ground, such that Ms Walters legs were interwoven in a pattern resembling the numeral 4: with one leg bent to the side and the other leg bent upwards folded over the first leg;



- (j) “folding up”, where one or more Officers would hold each of Ms Walters’ arms and kick her legs out from under her; one Officer would then position themselves at Ms Walters’ head, using their hands to hold her face down, while placing their knee either on or near her neck; the other Officers would then stretch Ms Walters’ arms behind her back and fold her legs up at the knees, using their weight to hold her ankles down at her buttocks;
  - (k) holding Ms Walters in one of the ways described above while handcuffs were applied to or removed from Ms Walters’ wrists;
  - (l) an Officer pushing Ms Walters in the back or shoulder;
  - (m) one or more Officers pushing or otherwise applying force to Ms Walters with a hard shield;
  - (n) one or more Officers pushing or otherwise applying force to Ms Walters with a soft shield.
77. Force of the kind described in paragraph [76] was used on Ms Walters on dozens of occasions.

#### ***Particulars***

- (a) *Force was used on Ms Walters in the circumstances particularised in Part 3 of the Statement of Particulars to this Statement of Claim.*
  - (b) *Further particulars may be provided following discovery.*
78. Ms Walters did not consent to physical contact being made with her body when force was used on her on the occasions referred to in paragraph [77].
79. Ms Walters had a continuing apprehension that imminent physical contact would be made with her body by Officers on the occasions referred to in paragraph [77].
80. The use of force on Ms Walters was unlawful on those occasions referred to in paragraph [77]:
- (a) particularised in the Statement of Particulars, Part 3, Paragraph 1 as use of force when it was not in an immediate period when Ms Walters was imminently presenting a risk of injury to herself or other detainees or staff;
  - (b) particularised in the Statement of Particulars, Part 3, Paragraph 2 as use of force after imminent risk of injury has passed and Ms Walters had been stabilised; and



- (c) particularised in the Statement of Particulars, Part 3, Paragraph 3 as the use of more than the degree of physical force which was the minimum to control Ms Walters' behaviour.

81. By reason of the matters in subparagraphs [46(a)] to [46(c)] and [76] to [80] Officers assaulted and battered Ms Walters on the occasions referred to in paragraph [77].

**Handcuffing**

82. While Ms Walters was detained at Banksia Hill, she was subjected to handcuffing on dozens of occasions.

**Particulars**

- (a) *For extended periods when Ms Walters was housed in the Cue Unit, she was required to be in handcuffs for all movements to and from her cell, including on the occasions particularised in the Statement of Particulars, Part 4, paragraph 1.*
- (b) *Further particulars of the requirement referred to in particular (a) will be provided following discovery.*
- (c) *Ms Walters was handcuffed during incidents involving the use of force particularised in the Statement of Particulars to this statement of claim as particularised in the Statement of Particulars, Part 4.*
- (d) *Further particulars of the handcuffing of Ms Walters may be provided following discovery.*

83. The handcuffing of Ms Walters referred to in paragraph [82] was unlawful.

**Particulars**

- (a) *On the occasions referred to in particulars (a) and (c) to paragraph [82]:*
- (i) *the CEO or the Superintendent did not authorise and direct the restraint of Ms Walters;*
- (ii) *alternatively, if the CEO or the Superintendent did authorise and direct the restraint of Ms Walters, the CEO or the Superintendent did not form the opinion that the restraint of Ms Walters was necessary to prevent injury to herself or any other person;*
- (iii) *alternatively, if the CEO or the Superintendent did form the opinion that the handcuffing of Ms Walters was necessary to prevent injury, the opinion of the CEO or the Superintendent was not reasonable.*



- (b) *On the occasions referred to in particular (c) to paragraph [82] the use of force, including the handcuffing of Ms Walters, was unlawful for the reasons referred to in paragraph [80];*
- (c) *Further particulars of the unlawful handcuffing of Ms Walters may be provided following discovery.*

84. Ms Walters did not consent to physical contact being made with her body when she was put in handcuffs on the occasions referred to in paragraph [82] and submitted to handcuffing either as a result of:

- (a) fear that additional physical force would be used on her if she did not submit; or
- (b) Officers using force to physically hold and restrain her while handcuffs were put on her.

85. Ms Walters had a continuing apprehension that imminent physical contact would be made with her body by Officers on the occasions referred to in paragraph [82].

86. By reason of the matters in paragraphs [46(e)] and [82] to [85], Officers assaulted and battered Ms Walters.

## **K.2 Breach of duty of care**

87. By reason of the matters in paragraphs [48] to [53] the State of WA, the Minister, the CEO, the Superintendent, and Officers owed Ms Walters the duty of care referred to in paragraph [53].

88. Ms Walters has and always had ASD, which was diagnosed in 2017.

89. Ms Walters' ASD is a disorder that affects Ms Walters' thought processes, emotions and judgment such that:

- (a) when confronted with peremptory, complex or unpleasant commands, she was and is likely to react with heightened emotional and physical responses;
- (b) she was and is very concerned with hygiene and became and becomes anxious and upset about dirty or stained clothing, bedding furniture and rooms;
- (c) she engaged and engages in restricted repetitive behaviours;
- (d) she required and requires consistency and routine and becomes anxious and upset with departures from routine.

90. By reason of the matters in paragraph [89], Ms Walters had complex support needs while she was in detention at Banksia Hill.



91. The matters set out in paragraph [89] are common and well-known circumstances that are likely to arise with persons who have ASD.
92. In breach of the duty of care owed to Ms Walters, the State of WA, the Minister, the CEO, the Superintendent and Officers failed to take reasonable care to avoid acts or omissions which it was reasonably foreseeable could cause harm of the following kinds to Ms Walters:
- (a) psychiatric injury, including exacerbation of pre-existing psychiatric disabilities;
  - (b) physical and/or psychiatric injury from self-harm and/or attempted self-harm; and
  - (c) physical and/or psychiatric injury from conduct of other detainees or Officers.

#### Particulars

- (i) *Failing to provide adequate assessment of Ms Walters' complex support needs arising from her ASD.*
- (ii) *Failing to provide adequate mental health services.*
- (iii) *Failing to provide adequate crisis care facilities.*
- (iv) *Failing to provide Ms Walters with adequate access to clean and unstained clothing, bedding, furniture and accommodation, including as particularised in the Statement of Particulars, Part 5, paragraph 1.*
- (v) *Failing to adequately modify the behaviour and discipline policies at Banksia Hill to reduce the occasions of stress, anxiety and upset for Ms Walters, including as particularised in the Statement of Particulars, Part 5, paragraph 2.*
- (vi) *Failing to ensure that Officers interacting with Ms Walters did not give Ms Walters peremptory, complex or unpleasant commands, including as particularised in the Statement of Particulars, Part 5, paragraph 3.*
- (vii) *Subjecting Ms Walters to use of force and restraint when she reacted with heightened emotional and physical responses to directions, commands and stressful situations, including as particularised in the Statement of Particulars, Part 5, paragraph 4.*
- (viii) *Subjecting Ms Walters to extended periods in which she was required to submit to handcuffs for movements within Banksia Hill, including as pleaded in paragraph [82].*



- (ix) *Subjecting Ms Walters to extended periods of confinement as pleaded in paragraphs [56] and [64].*

93. As a result of the breaches of duty of care described in paragraph [92], Ms Walters has suffered injury and damage.

**Particulars**

- (i) *Psychiatric injury, including anxiety, mental distress, suicidal ideation, self-harm and attempted self-harm.*
- (ii) *Physical injury including pain and suffering from cuts, abrasions and scarring to her body from numerous episodes of self-harm, including in the circumstances particularised in the Statement of Particulars, Part 6, paragraph 1.*
- (iii) *Physical injury including pain and suffering from being subjected to use of force by Officers, including in the circumstances particularised in the Statement of Particulars, Part 3.*
- (iv) *Further particulars may be provided following discovery and/or information obtained from health service providers.*

94. Further, in breach of the duty of care owed to Ms Walters, the State of WA, the Minister, the CEO, the Superintendent and Officers failed to take reasonable care to avoid acts or omissions which it was reasonably foreseeable could cause economic loss to Ms Walters as a consequence of lack of access to reasonable education and a reasonable opportunity for rehabilitation.

**Particulars**

- (i) *Depriving Ms Walters of reasonable access to education and rehabilitation programs by confining her for extended periods, including as pleaded in paragraphs [56] and [64].*
- (ii) *Subjecting Ms Walters to lockdowns and rolling lockdowns, as pleaded in paragraph [56], which disrupted her access to education and rehabilitation programs.*
- (iii) *Failing to provide Ms Walters with sufficient support for her disabilities to enable her to learn adequately.*
- (iv) *Failing to provide teaching, teaching resources and materials appropriate to Ms Walters' level of education attainment.*



- (v) *Frequently withdrawing Ms Walters' access to visual art as a punishment of Ms Walters.*
- (vi) *Failing to provide rehabilitation programs.*

95. As a result of the breaches of duty of care described in paragraph [94], Ms Walters suffered loss and damage.

#### **Particulars**

- (i) *At the age of 18 years, Ms Walters has only attained the literacy and numeracy levels of an average 12-year-old (year 7) student;*
- (ii) *Ms Walters has suffered economic loss as a result of failing to progress in her level of educational attainment during the time she was detained at Banksia Hill, having the consequence that Ms Walters has diminished employment opportunities and prospects;*
- (iii) *Ms Walters has suffered economic loss as a result of the loss of a chance of a better outcome in her level of educational attainment during the time she was detained at Banksia Hill, having the consequence that Ms Walters has diminished employment opportunities and prospects.*

### **K.3 Disability Discrimination Act Claims**

96. Ms Walters' ASD is a disability within the meaning of the DDA.

97. While in Banksia Hill, Ms Walters engaged in the following kinds of behaviour, that were a symptoms or manifestations of her disability:

- (a) Refusal to comply with directions from Officers that she:
  - (i) submit to strip searches;
  - (ii) submit to being placed in handcuffs;
  - (iii) return to the Cue Unit from less restrictive areas of Banksia Hill;
  - (iv) submit to being placed in a cell that was dirty;
  - (v) surrender clothes that she had been wearing for laundering (because of her aversion to stained or dirty clothing provided from the common pool of clothing).
- (b) Resistance to the threat of use of force and use of force by Officers including by:
  - (i) attempting to evade Officers who wished to take hold of her;
  - (ii) using objects, such as sharpened sticks or twigs to threaten Officers;



- (iii) punching or kicking Officers, or attempting to do so.
  - (c) Engaging in repetitive acts of self-harm, particularly by using objects such as staples removed from books and broken pieces of plastic to scratch or cut her skin.
  - (d) Engaging in obsessive:
    - (i) drawing of images of violence such as knives and stabbing;
    - (ii) writing words such as “kill” and “die” with reference to herself and/or Officers and the images referred to in sub-paragraph [97(d)(i)].
98. Officers responded to the behaviour of Ms Walters described in paragraphs [89] and [97] by:
- (a) the use of force against Ms Walters, use of handcuffs, and confinement of Ms Walters in the Cue Unit described above in section K1 and particularised in the Statement of Particulars Parts 2, 3 and 4;
  - (b) allocating Ms Walters an observation cell in the Cue unit as her accommodation at Banksia Hill for extended periods as described in paragraph [64];
  - (c) requiring Ms Walters to be handcuffed for all movements to and from the Cue unit for an extended period as referred to in paragraph [82(a)]; and
  - (d) by denying or restricting Ms Walters’ access to programs as particularised in the Statement of Particulars, Part 7.
99. While Ms Walters was at Banksia Hill, the Superintendent and Officers imposed the following requirements or conditions on Ms Walters:
- (a) she was required to obey all commands, directions and orders given or made by the Superintendent and Officers;
  - (b) she was required to refrain from self-harm;
  - (c) she was required to refrain from making images involving violence and writing words such as “kill” and “die”.
100. Because of Ms Walters’ ASD she would only comply or be able to comply with the requirements or conditions referred to in paragraph [99] if the CEO, the Superintendent and Officers made the following reasonable adjustments for Ms Walters:
- (a) providing Ms Walters with appropriate mental health treatment, counselling and support;
  - (b) providing Ms Walters with behavioural therapy to assist her to learn to, and to, better regulate her emotions and behaviour;



- (c) training Officers about ASD and in techniques and approaches to communicating with Ms Walters to reduce confrontation and escalation;
  - (d) providing Ms Walters with, and assisting her to implement, an individual behaviour plan to reduce confrontation and escalation;
  - (e) providing Ms Walters with an appropriately qualified support worker to assist her in her interactions with Officers and detainees.
101. The CEO, the Superintendent and Officers did not make the reasonable adjustments referred to in paragraph [100].
102. The failure to make the reasonable adjustments referred to in paragraph [100] had the effect of disadvantaging Ms Walters.

### **Particulars**

- (a) *Ms Walters engaged in the behaviour described in paragraph [97] throughout her time in detention at Banksia Hill.*
- (b) *Because of Ms Walters' disability, the threat of use of force, use of force, restraint, and confinement of Ms Walters and the restriction of Ms Walters' access to programs:*
  - (i) *were not effective, or appropriately adapted, to improve Ms Walters' ability to regulate her emotions and to refrain from the behaviour described in paragraph [97]; and*
  - (ii) *exacerbated Ms Walters' inability to regulate her emotions and refrain from the behaviour described in paragraph [97].*
- (c) *Ms Walters' ability to regulate her emotions and refrain from the behaviour described in paragraph [97] declined over the time that she was detained in Banksia Hill.*
- (d) *Ms Walters was disadvantaged:*
  - (i) *in her access to education and rehabilitation programs from the State of WA;*
  - (ii) *by being subjected to detriment in connection with her education and rehabilitation from the State of WA;*
  - (iii) *in her access to goods, services and facilities provided to detainees at Banksia Hill;*

*as pleaded and particularised in paragraphs [105] and [106] below.*



103. The requirements or conditions referred to in paragraph [99] were not reasonable having regard to the circumstances of the case.
104. By reason of the matters in paragraphs [13], [14], and [96] to [103], the State of WA discriminated against Ms Walters on the ground of her disability within the meaning of s 6(2) of the DDA.

***Discrimination in education***

105. When Ms Walters was confined in the Cue Unit as a consequence of her behaviour as referred to in paragraphs [97] and [98]:
- (a) she was often not permitted to attend school and given no access to education or rehabilitation programs;
  - (b) at other times, while confined, Ms Walters was given individual instruction by a teacher attending the Cue Unit.

***Particulars***

- (i) *Particulars of the occasions when Ms Walters was confined in the Cue Unit as a consequence of her behaviour and not permitted to attend school will be provided following discovery.*
  - (ii) *Ms Walters received some instruction by a teacher in the Cue Unit instead of attending school on 31 October 2018.*
  - (iii) *Further particulars of other occasions on which Ms Walters was given individual instruction in the Cue Unit instead of attending school will be provided following discovery.*
106. By reason of the matters in paragraphs [54], [104] and [105], the State of WA, by its servants and agents, the Superintendent and Officers, unlawfully discriminated against Ms Walters on the ground of her ASD:
- (a) in contravention of s 22(2)(a) of the DDA, by denying or limiting Ms Walters' access to, or effective enjoyment of, the benefit of:
    - (i) education on those occasions when Ms Walters was not permitted to attend school while she was confined in the Cue unit for misbehaviour;
    - (ii) education in a classroom on those occasions when she was confined in the Cue unit for misbehaviour and given individual instruction by a teacher;
  - (b) in contravention of s 22(2)(c) of the DDA, by subjecting Ms Walters to the following other detriments:



- (i) disruptions and lack of routine in her education and rehabilitation;
- (ii) a curriculum, when being taught, that was below her level of competence;
- (iii) being given educational materials, including reading material, that was below her level of competence.

### **Goods, services and facilities**

107. While Ms Walters was detained at Banksia Hill, the State of WA provided and/or made available to detainees the goods, services and facilities referred to in paragraph [55].
108. By reason of the matters in paragraphs [55], [104] and [107], on the occasions particularised in the Statement of Particulars Part 6 when Ms Walters was punished for alleged misbehaviour by loss of program placement, loss of recreation time, loss of access to the fitness room, loss of canteen privileges and/or loss of television privileges, the State of WA by its servants or agents, the Superintendent and Officers, refused to provide Ms Walters with goods, services or facilities on the ground of her ASD in contravention of s 24(a) of the DDA.

### **Particulars**

- (a) *The punishment of Ms Walters for misbehaviour by loss of program placement, loss of recreation time and loss of privileges had the effect of denying Ms Walters access to recreational and/or therapeutic activities, facilities and goods, including art classes and art materials.*
  - (b) *Ms Walters was punished for alleged misbehaviour by loss of program placement and/or loss of privileges as particularised in the Statement of Particulars, Part 7.*
  - (c) *Further particulars of loss of program placement and/or loss of privileges will be provided following discovery.*
109. By reason of the matters in paragraphs [55], [104] and [107], when Ms Walters was required to be handcuffed for movement to and from the Cue Unit, the State of WA by its servants and agents, the Superintendent and Officers, in contravention of s 24(b) of the DDA unlawfully discriminated against Ms Walters on the ground of her ASD in the terms or conditions on which the State of WA provided Ms Walters with goods or services or made facilities available to Ms Walters as follows:
- (a) Ms Walters was required to submit to handcuffs in order to receive visits from members of her family, including her parents;
  - (b) Ms Walters was required to submit to handcuffs in order to attend medical services at Banksia Hill;



- (c) Ms Walters was required to submit to handcuffs in order to access telephone facilities for communicating with her family;
- (d) Ms Walters was required to submit to handcuffs in order to make use of:
  - (i) recreation areas outside the Cue Unit;
  - (ii) goods and facilities for recreation and/or therapy outside the Cue Unit, including:
    1. fitness and gymnasium facilities;
    2. sport equipment and facilities; and
    3. art and craft materials and classes.
  - (iii) the canteen.

### ***Particulars***

- (a) *The occasions on which Ms Walters was housed in the Cue Unit and required to be in handcuffs for all movements to and from the Cue Unit include the circumstances particularised in the Statement of Particulars, Part 4, paragraph 1.*
- (b) *Further particulars of the periods when Ms Walters was housed in the Cue Unit and was required to be in handcuffs for all movements to and from the Cue Unit will be provided following discovery.*

#### **K.4 Remedies**

- 110. In respect of the matters in section K1 and K2, Ms Walters seeks the declarations referred to in Part B item 1 of the Originating Application.
- 111. In respect of the matters in section K3, Ms Walters seeks the declarations in Part A item 1 of the Originating Application.
- 112. By reason of the matters in paragraphs [56] to [68], Ms Walters suffered deprivation of residual liberty, anxiety, distress, discomfort, humiliation, helplessness, indignity, frustration and outrage.
- 113. By reason of the matters in paragraphs [69] to [86], Ms Walters suffered, pain, discomfort, anxiety, distress, humiliation, helplessness, indignity, frustration and outrage.
- 114. Further, Ms Walters claims aggravated damages for false imprisonment, assault and battery.

### ***Particulars***



- (a) *At the time of the matters described in paragraphs [56] to [86] Ms Walters was a child between the ages of 13 years and 15 years.*
- (b) *Ms Walters' pain, discomfort, anxiety, distress, humiliation, helplessness, indignity, frustration and outrage caused by the matters in paragraphs [56] to [86] were exacerbated by:*
- (i) *Ms Walters' ASD;*
  - (ii) *her status as a child in detention with no parent or other relative or friend to comfort her.*
- (c) *The conduct of the Superintendent and Officers described in paragraphs [56] to [86] disregarded the limits on the power of the Superintendent and Officers.*
- (d) *Ms Walters' pain, discomfort, anxiety, distress, humiliation, helplessness, indignity, frustration and outrage caused by her confinement in an observation cell in the Cue Unit were exacerbated by the conditions in the observation cells including:*
- (i) *They were smaller than the cells in the general accommodation area of the Yeeda Unit;*
  - (ii) *They had a metal toilet bowl and a small sink with one wall being half concrete and half Perspex;*
  - (iii) *They had closed circuit television cameras placed in the cell, enabling constant surveillance of the detainee in the cell;*
  - (iv) *It was not possible to use the toilet in privacy;*
  - (v) *When Ms Walters was first placed in an observation cell after being placed elsewhere, each observation cell had dirt and stains on the walls and floors and each mattress was stained and dirty;*
  - (vi) *Ms Walters was required to communicate with Officers by intercom when she needed help, and her intercom calls were frequently ignored.*
- (e) *Further particulars may be provided following discovery.*

115. Further, in relation to the matters in paragraphs [56] to [86], Ms Walters was treated with contumelious disregard of her personal circumstances, including her ASD, and Ms Walters claims exemplary damages.

### **Particulars**



- (a) *The conduct of the Officers described in paragraphs [56] to [86] showed a cruel and reckless disregard of the comfort and dignity of Ms Walters;*
  - (b) *The conduct of the Officers described in paragraphs [56] to [86] disregarded the limits on the power of the Superintendent and Officers;*
  - (c) *Ms Walters refers to and repeats particulars (a) to (d) to paragraph [114];*
  - (d) *Further particulars may be provided following discovery.*
116. By reason of the matters in paragraph [93], Ms Walters claims damages for personal injury.
117. By reason of the matters in paragraph [95], Ms Walters claims damages for economic loss.
118. By reason of the matters in paragraphs [106], [108] and [109], Ms Walters suffered loss and damage.

**Particulars**

- (a) *Hurt, humiliation and injury to feelings;*
  - (b) *Educational disadvantage;*
  - (c) *Exacerbation of her symptoms of ASD;*
  - (d) *Further particulars may be provided following discovery and/or information obtained from health service providers.*
119. By reason of the matters in paragraph [118], Ms Walters claims damages by way of compensation pursuant to s 46PO(4)(d) of the *Australian Human Rights Commission Act 1975* (Cth) (**AHRC Act**).
120. Further, Ms Walters claims aggravated damages pursuant to s 46PO(4) of the AHRC Act.

**Particulars**

- (a) *At the time of the matters described in paragraphs [96] to [109] Ms Walters was a child between the ages of 13 years and 15 years.*
- (b) *Ms Walters' hurt, humiliation and injury to feeling caused by the matters in paragraphs [96] to [109] were exacerbated by:*
  - (i) *Ms Walters' ASD;*
  - (ii) *her status as a child in detention with no parent or other relative or friend to comfort her;*



- (iii) *the arbitrariness of loss of program placements and/or loss of privileges;*
  - (iv) *the boredom and frustration of being confined in a cell while being subjected to loss of program placement and/or loss of privileges;*
- (c) *Further particulars may be provided following discovery.*

## **L. CLAIMS OF MR VIDA**

### **L.1 False Imprisonment, assault and battery**

#### ***False imprisonment***

121. During the time that Mr Vida was detained at Banksia Hill, he was usually accommodated in the intensive support unit, which was called "Harding Unit" from 2014 to 2017 and then called "Intensive Support Unit" or "**ISU**" from 2017 onwards.

#### ***Particulars***

- (a) *Mr Vida was accommodated in the Harding Unit for the following periods:*
  - (i) *8 March 2014;*
  - (ii) *9 to 12 March 2016;*
  - (iii) *29 September 2016;*
- (b) *Mr Vida was accommodated in the ISU for the following periods:*
  - (i) *21 to 22 March 2018;*
  - (ii) *28 March 2018 to 5 April 2018;*
  - (iii) *18 to 19 April 2018;*
  - (iv) *16 to 17 April 2019;*
  - (v) *29 to 30 April 2019.*
- (c) *Mr Vida was accommodated elsewhere at Banksia Hill for the following periods:*
  - (i) *In the Karakin Unit from 28 to 30 November 2016.*
  - (ii) *In the Jasper Unit from 31 July 2017 to 2 August 2017.*

122. For almost all the time that Mr Vida was accommodated in the Harding Unit or the ISU, Mr Vida was confined in his cell except for brief periods of time out of the cell for recreation, showering and for telephone calls.

123. Mr Vida was not told the reason for his confinement in his cell in the Harding Unit or the ISU.



124. Mr Vida does not know the reason for his confinement in his cell in the Harding Unit or the ISU.
125. The confinement of Mr Vida in his cell in the Harding Unit or the ISU was not detention offence confinement.
126. The confinement of Mr Vida in his cell in the Harding Unit or the ISU deprived Mr Vida of his residual liberty.
127. The confinement of Mr Vida in his cell in the Harding Unit or the ISU was not justified.

**Particulars**

(a) *If the confinement of Mr Vida in the circumstances referred to in paragraph [122] purported to be security confinement, the confinement was unlawful for one or more of the following reasons:*

- (i) *It was not directed by the Superintendent;*
- (ii) *The Superintendent failed to make and maintain a record of the order to confine Mr Vida;*
- (iii) *It was not reasonably necessary to maintain good government, good order or security at Banksia Hill;*
- (iv) *The Superintendent failed to inform Mr Vida of the reason for the confinement;*
- (v) *Mr Vida was not given fresh air, exercise and staff company for a period of at least 1 hour every 6 hours during unlock hours.*

(b) *If the confinement of Mr Vida in the circumstances referred to in paragraph [122] did not purport to be security confinement, it was unlawful because it deprived Mr Vida of his residual liberty without lawful authority under the YO Act and without lawful justification.*

128. By reason of the matters in paragraphs [121] to [127], the State of WA falsely imprisoned Mr Vida.

*Strip search*

129. Mr Vida was subjected to a strip search on a number of occasions during his time in detention at Banksia Hill.

**Particulars**

*Mr Vida was strip searched:*



- (a) *at or shortly after the time of his admission on each occasion he was admitted to Banksia Hill;*
- (b) *before and after each transport to or from Banksia Hill for Court appearances or medical assessment or treatment;*
- (c) *further particulars of strip searches of Mr Vida will be provided following discovery.*

130. On each occasion referred to in paragraph [129]:

- (a) Mr Vida apprehended on reasonable grounds that if he did not submit to a strip search, Officers would immediately use force on him and make unwanted physical contact with his body;
- (b) Mr Vida did not freely consent to being strip searched and submitted to strip search out of fear that physical force would be used on him;
- (c) the Superintendent did not have a reasonable suspicion that Mr Vida might have possession of an item that could jeopardise the safety, good order or security of Banksia Hill or be used for self-harm.

131. By reason of the matters in paragraphs [47(b)], [129] and [130] Officers assaulted Mr Vida when they required him to submit to a strip search.

*Other assault and battery*

132. At about 2 pm on 3 April 2018:

- (a) Mr Vida was escorted by Officers from his cell in the ISU to the recreation area of the ISU, known colloquially as “the **cage**”. Mr Vida was permitted to use the telephone in the cage to make a telephone call. Mr Vida estimates that he had been out of his cell for about 10 to 15 minutes when he was told by Officers to return to his cell;
- (b) Mr Vida pleaded with Officers to be allowed some more recreation time out of his cell;
- (c) an officer told Mr Vida that he had to return to his cell;
- (d) Mr Vida did not immediately comply with the direction to return to his cell.

133. Immediately following the matters described in paragraph [132], Officers and Recovery Officers physically restrained Mr Vida by:

- (a) putting physical pressure on Mr Vida’s hands, arms, neck, head and legs;
- (b) kicking Mr Vida’s feet from under him so that he fell to the ground;



- (c) holding Mr Vida's face down on the ground and, while Mr Vida was on the ground;
  - (i) pinning Mr Vida's arms behind his back;
  - (ii) folding Mr Vida's legs up and towards Mr Vida's arms; and
  - (iii) sitting on Mr Vida's folded legs to keep Mr Vida in a figure 4 position.
- 134. Mr Vida felt immense pain and struggled to breathe. He called out to the Officers with words to the effect of: "I can't breathe"; and "Let me get up".
- 135. The Officers then half-carried, and half-dragged Mr Vida to his cell, and restrained him on the floor of the cell while they each left the cell in turn.
- 136. On 17 April 2019 about 1 hour after Mr Vida had been locked in a cell in the ISU following his admission to Banksia Hill, several Officers entered Mr Vida's cell, folded him up, held him to the floor in a figure 4, handcuffed him and dragged him to a transport van.
- 137. Mr Vida did not consent to physical contact being made with his body when force was used on him on the occasions referred to in paragraphs [132] to [136].
- 138. Mr Vida had a continuing apprehension that imminent physical contact would be made with his body by Officers on the occasions referred to in paragraphs [132] to [136].
- 139. The use of force on Mr Vida was unlawful on the occasions referred to in paragraphs [132] to [136].

#### ***Particulars***

- (a) *Force was used when it was not in a period when Mr Vida was imminently presenting a risk of injury to himself or other detainees or staff.*
  - (b) *Alternatively, force was used after any imminent risk of injury had passed and Mr Vida had been stabilised.*
  - (c) *The force used was more than the degree of physical force which was necessary to control Vida's behaviour.*
140. The handcuffing of Mr Vida described in paragraph [136] was unlawful because:
- (a) The CEO or the Superintendent did not lawfully authorise and direct the restraint of Mr Vida;
  - (b) alternatively, if the CEO or the Superintendent did lawfully authorise and direct the restraint of Mr Vida, the CEO or the Superintendent did not form the opinion that the restraint of Mr Vida was necessary to prevent injury to herself or any other person;



- (c) alternatively, if the CEO or the Superintendent did lawfully form the opinion that the handcuffing of Mr Vida was necessary to prevent injury, the opinion of the CEO or the Superintendent was not reasonable or based on reasonable grounds.

141. Mr Vida did not consent to physical contact being made with his body when he was handcuffed.
142. By reason of the matters in subparagraphs [46(a)] to [46(c)], [46(e)] and [137] to [141], Officers assaulted and battered Mr Vida on the occasions referred to in paragraphs [132] to [136].

## **L.2 Breach of duty of care**

143. By reason of the matters in paragraphs [48] to [53], the State of WA, the Minister, the CEO, the Superintendent, and Officers owed Mr Vida the duty of care referred to in paragraph [53].
144. Throughout the time that he was detained at Banksia Hill and continuing, Mr Vida had and has schizophrenia and an intellectual disability.
145. Mr Vida's schizophrenia and/or intellectual disability is a disorder that affects Mr Vida's thought processes, emotions, behaviour and judgement such that Mr Vida:
- (a) sometimes behaves in an uninhibited manner, including removing his clothes;
  - (b) appears at times to be irritable, thought-disordered and aggressive;
  - (c) can be paranoid and suspicious; and
  - (d) has difficulty regulating his emotions and behaviour.
146. By reason of the matters in paragraph [145], Mr Vida had complex support needs while he was in detention at Banksia Hill.
147. In breach of the duty of care owed to Mr Vida, the Minister, the CEO, the Superintendent and Officers failed to take reasonable care to avoid acts or omissions which it was reasonably foreseeable could cause harm of the following kinds to Mr Vida:
- (a) psychiatric injury, including exacerbation of pre-existing psychiatric conditions;
  - (b) physical and/or psychiatric injury from self-harm and/or attempted self-harm; and
  - (c) physical and/or psychiatric injury from the conduct of other detainees or Officers.

### ***Particulars***

- (i) *Failing to provide proper or adequate assessment of Mr Vida's complex support needs arising from his schizophrenia and intellectual disability;*



- (ii) *Failing to provide proper or adequate mental health services;*
- (iii) *Failing to provide proper or adequate crisis care facilities;*
- (iv) *Failing to adequately modify the behaviour and discipline policies at Banksia Hill to reduce the occasions of stress, anxiety and upset for Mr Vida;*
- (v) *Failing to ensure that Officers interacting with Mr Vida used appropriate de-escalation techniques before resorting to use of force;*
- (vi) *Subjecting Mr Vida to use of force and restraint when he reacted with heightened emotional and physical responses to instructions from Officers and stressful situations;*
- (vii) *Subjecting Mr Vida to extended periods of confinement without access to fresh air, recreation or therapeutic activity.*

148. As a result of the breaches of duty of care described in paragraph [147], Mr Vida has suffered injury and damage.

**Particulars**

- (a) *Psychiatric injury, including exacerbation of psychotic symptoms;*
- (b) *Physical injury including pain and suffering from being subjected to use of force by Officers*
- (c) *Further particulars may be provided following discovery and/or information obtained from health service providers.*

149. Further, in breach of the duty of care owed to Mr Vida, the State of WA, the Minister, the CEO, the Superintendent and Officers failed to take reasonable care to avoid acts or omissions which it was reasonably foreseeable could cause economic loss to Mr Vida as a consequence of lack of access to reasonable education and a reasonable opportunity for rehabilitation.

**Particulars**

- (a) *Depriving Mr Vida of reasonable access to education or vocational training by confining him for extended periods;*
- (b) *Failing to provide Mr Vida with sufficient support for his disabilities to enable him to learn adequately;*
- (c) *Failing to provide teaching, teaching resources and materials appropriate to Mr Vida's level of education attainment;*
- (d) *Failing to provide rehabilitation programs.*



150. As a result of the breaches of duty of care described in paragraph [149], Mr Vida suffered loss and damage.

### **Particulars**

- (a) *Mr Vida has suffered economic loss as a result of failing to progress in his level of educational attainment during the time he was detained at Banksia Hill, having the consequence that Mr Vida has diminished employment opportunities and prospects;*
- (b) *Mr Vida has suffered economic loss as a result of the loss of a chance of a better outcome in his level of educational attainment or vocational training during the time he was detained at Banksia Hill, having the consequence that Mr Vida has diminished employment opportunities and prospects.*

### **L.3 Disability Discrimination Act Claims**

151. While in Banksia Hill, Mr Vida engaged in the following kinds of behaviour that were a symptoms or manifestations of his disability:
- (a) behaving in a disinhibited manner, including removing his clothes;
  - (b) being irritable and thought-disordered
  - (c) being verbally aggressive and demanding;
  - (d) being emotionally labile;
  - (e) failing to follow instructions or commands; and
  - (f) damaging property.
152. Officers responded to the behaviour of Mr Vida described in paragraph [151] by:
- (a) confining Mr Vida in the Harding Unit and the ISU as described in paragraphs [121] and [122].
  - (b) restricting Mr Vida's recreation time out of his cell.
  - (c) the use of force and handcuffing against Mr Vida described in paragraphs [132] to [136].
  - (d) calling Mr Vida names, including: "spastic", "retard", "mental", and "not all right in the head".
153. While Mr Vida was at Banksia Hill, the Superintendent and Officers imposed the following requirements or conditions on Mr Vida:



- (a) he was required to obey all commands, directions and orders given or made by the Superintendent and Officers;
- (b) he was required to refrain from being verbally aggressive.
154. Because of Mr Vida's schizophrenia and intellectual disability he would only comply or be able to comply with the requirements or conditions referred to in paragraph [153] if the CEO, the Superintendent and Officers made the following reasonable adjustments for Mr Vida:
- (a) Providing Mr Vida with appropriate mental health treatment, counselling and support;
- (b) Providing Mr Vida with appropriate behavioural therapy to assist him to learn to better regulate his emotions and behaviour;
- (c) Training Officers about schizophrenia and in techniques and approaches to communicating with Mr Vida to reduce confrontation and escalation;
- (d) Providing Mr Vida with an individual behaviour plan to reduce confrontation and escalation;
- (e) Providing Mr Vida with an appropriate individual support worker to assist him in his interactions with Officers and detainees.
155. The CEO, the Superintendent and Officers did not make the reasonable adjustments referred to in paragraph [154].
156. The failure to make the reasonable adjustments referred to in paragraph [154] had the effect of disadvantaging Mr Vida.

### ***Particulars***

- (a) *Mr Vida engaged in the behaviour described in paragraph [151] in his periods of detention in Banksia Hill in 2018 to 2020.*
- (b) *Because of Mr Vida's disability, the confinement of Mr Vida and the restriction of Mr Vida's access to programs:*
- (i) *were not effective to improve Mr Vida's ability to regulate his emotions and to refrain from the behaviour described in paragraph [151]; and*
- (ii) *exacerbated Mr Vida's inability to regulate his emotions and refrain from the behaviour described in paragraph [151].*
- (c) *Mr Vida was disadvantaged:*
- (i) *in his access to education from the State of WA;*



- (ii) *by being subjected to detriment in connection with his education from the State of WA;*
- (iii) *in his access to goods, services and facilities provided to detainees at Banksia Hill;*

*as pleaded and particularised in paragraphs [159] to [163] below.*

157. The requirements or conditions referred to in paragraph [153] were not reasonable having regard to the circumstances of the case.
158. By reason of the matters in paragraphs [13], [14] and [151] to [157], the State of WA discriminated against Mr Vida on the ground of his disability within the meaning of s 6(2) of the DDA.

***Discrimination in education***

159. When Mr Vida was confined in the ISU as a consequence of his behaviour as referred to in paragraphs [151] and [152], Mr Vida was not permitted to attend school and given no access to education or rehabilitation programs.
160. By reason of the matters in paragraphs [54], [158] and [159], the State of WA, by its servants and agents, the Superintendent and Officers, unlawfully discriminated against Mr Vida on the ground of his schizophrenia and intellectual disability in contravention of s 22(2)(a) of the DDA by denying Mr Vida access to the benefit of education.

***Goods, services and facilities***

161. While Mr Vida was detained at Banksia Hill, the State of WA provided and/or made available to detainees the goods, services and facilities referred to in paragraph [55].

***Indirect discrimination***

162. When Mr Vida was confined in the ISU as a consequence of his behaviour as referred to in paragraphs [151] and [152] Mr Vida was not permitted access to services and facilities outside the ISU, including sport and recreation facilities and equipment, and the canteen.
163. By reason of the matters in paragraphs [161] and [162], the Superintendent and Officers refused to provide Mr Vida with goods, services or facilities on the ground of his schizophrenia and intellectual disability in contravention of s 24(a) of the DDA.

***Direct discrimination***



164. Further, or in the alternative to paragraphs [162] and [163], Officers engaged in the behaviour described in paragraph [152(d)] while escorting Mr Vida between his cell in the ISU and “the cage”.
165. Officers called Mr Vida “spastic”, “retard”, “mental”, and “not all right in the head” in the circumstances referred to in paragraph [164] because of his schizophrenia and intellectual disability.
166. The Officers, had they been escorting a detainee who did not have schizophrenia and an intellectual disability between an ISU cell and the cage, would not have called that detainee names such as, “spastic”, “retard”, “mental”, and “not all right in the head”.
167. By reason of the matters in paragraphs [152 151], and [164] to [166], Officers treated Mr Vida less favourably than they would have treated a person without Mr Vida’s disability in circumstances that are not materially different.
168. By reason of the matters in paragraphs [13], [14], [161], and [164] to [167], the State of WA unlawfully discriminated against Mr Vida within the meaning of s 5(1) of the DDA in the manner in which it provided Mr Vida with the service and facility of recreation in the ISU in contravention of s 24(c) of the DDA.

#### **L.4 Remedies**

169. In respect of the matters in section L.1 and L.2, Mr Vida seeks the declarations referred to in Part B item 1 of the Originating Application.
170. In respect of the matters in section L.3, Mr Vida seeks the declarations in Part A item 1 of the Originating Application.
171. By reason of the matters in paragraphs [121] to [128], Mr Vida suffered deprivation of residual liberty, anxiety, distress, discomfort, humiliation, helplessness, indignity, frustration and outrage.
172. By reason of the matters in paragraphs [129] to [142], Mr Vida suffered, pain, discomfort, anxiety, distress, humiliation, helplessness, indignity, frustration and outrage.
173. Further, Mr Vida claims aggravated damages for false imprisonment, assault and battery.

#### ***Particulars***

- (a) *At the time of the matters described in paragraphs [121] to [142] Mr Vida was an Aboriginal child between the ages of 11 years and 17 years.*



- (b) *Mr Vida's pain, discomfort, anxiety, distress, humiliation, helplessness, indignity, frustration and outrage caused by the matters in paragraphs [121] to [142] were exacerbated by:*
- (i) *Mr Vida's schizophrenia and intellectual disability;*
- (ii) *his status as an Aboriginal child in detention with no parent or grandparent or other senior family member to comfort him.*
- (c) *The conduct of the Superintendent and Officers described in paragraphs [121] to [142] disregarded the limits on the power of the Superintendent and Officers.*
- (d) *Mr Vida's pain, discomfort, anxiety, distress, humiliation, helplessness, indignity, frustration and outrage caused by his confinement in a cell in the ISU were exacerbated by the conditions in the observation cells.*
- (e) *Further particulars may be provided following discovery.*
174. Further, in relation to the matters in paragraphs [121] to [142], Mr Vida was treated with contemptuous disregard of his personal circumstances and Mr Vida claims exemplary damages.

***Particulars***

- (a) *The conduct of the Officers described in paragraphs [121] to [142] showed a cruel and reckless disregard of the comfort and dignity of Mr Vida;*
- (b) *The conduct of the Officers described in paragraphs [121] to [142] disregarded the limits on the power of the Superintendent and Officers;*
- (c) *Mr Vida refers to and repeats particulars (a) to (d) to paragraph [173];*
- (d) *Further particulars may be provided following discovery.*
175. By reason of the matters in paragraph [148], Mr Vida claims damages for personal injury.
176. By reason of the matters in paragraph [150], Vida claims damages for economic loss.
177. By reason of the matters in paragraphs [160], [163], and [168], Mr Vida suffered loss and damage.

***Particulars***

- (a) *Hurt, humiliation and injury to feelings;*
- (b) *Educational disadvantage;*
- (c) *Exacerbation of his symptoms of schizophrenia;*



- (d) *Further particulars may be provided following discovery and/or information obtained from health service providers.*

178. By reason of the matters in paragraph [177], Mr Vida claims damages pursuant to s 46PO(4) of the *Australian Human Rights Commission Act 1975* (Cth) (**AHRC Act**).

179. Further, Mr Vida claims aggravated damages pursuant to s 46PO(4) of the AHRC Act.

### **Particulars**

- (a) *At the time of the matters described in paragraphs [151] to [168], Mr Vida was a child between the ages of 14 years and 17 years.*
- (b) *Mr Vida's hurt, humiliation and injury to feeling caused by the matters in paragraphs [151] to [168] were exacerbated by:*
- (i) *Mr Vida's schizophrenia and intellectual disability;*
  - (ii) *his status as an Aboriginal child in detention with no parent, grandparent or other senior family member to comfort him; and*
  - (iii) *the boredom and frustration of being confined in a cell while being denied access to activities, services and facilities;*
- (c) *Further particulars may be provided following discovery.*

## **M. CLAIMS OF GROUP MEMBERS**

180. Group Members while in detention in Detention Centres, suffered:

- (a) false imprisonment; and/or
- (b) assault and/or battery (including by unlawful strip searches, unlawful use of restraints and/or unlawful use of force);

by an act or omission of the Minister, the CEO, the Superintendent and/or Officers for which the State of WA is vicariously liable.

181. Group Members within the Tort sub-group, while in detention in Detention Centres, suffered breach of a duty of care by the State of WA, the Minister, the CEO, the Superintendent and/or Officers failing to take reasonable steps to prevent physical and/or psychiatric or psychological injury to, and to provide for the rehabilitation and education of, the Applicants and the Group Members by an act or omission of the State of WA, the Minister, the CEO, the Superintendent and/or Officers.



182. The State of WA is vicariously liable for the breaches of duty described in paragraph [181] by the Minister, the CEO, the Superintendent and/or Officers.
183. Group Members within the DDA sub-group have, while in detention, suffered unlawful disability discrimination under ss 5, 6, 22 and 24 of the DDA by an act or omission of the Minister, the CEO, the Superintendent and/or Officers which the State of WA is taken to have engaged in, and for which the State of WA is vicariously liable.
184. The acts or omissions described in paragraphs [180], [181] and [183] include acts and omissions of the kind which is the subject of the claims herein by the applicants.
185. Leave will be sought for the claims of Group Members set out in paragraphs [180] to [183] which arise from:
- (a) the false imprisonment, assault, and/or battery of Group Members;
  - (b) the breaches of duty of care owed to Group Members; and
  - (c) the unlawful disability discrimination suffered by Group Members;
- to be pleaded and particularised after the determination of the common questions in a trial of the claims of the Applicants and other sample or representative group members in accordance with directions to be given by the Court.

Date: 17 March 2023

A handwritten signature in blue ink, appearing to read 'Blaise PD', written over a horizontal line.

Signed by Blaise Prentice-Davidson  
Lawyer for the Applicant

This pleading was prepared by Paul Batley and Ben Slade of Counsel and settled by Ronald Merkel of Senior Counsel.



### Certificate of lawyer

I, Blaise Prentice-Davidson, certify to the Court that, in relation to the 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: 17 March 2023

A handwritten signature in blue ink, appearing to read 'Blaise', written over a horizontal line.

Signed by Blaise Prentice-Davidson  
Lawyer for the Applicant



## SCHEDULE OF PARTIES

**Alexandra Walters**

First Applicant

**Joel Vida**

Second Applicant

**State of Western Australia**

Respondent

# Annexure B



## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged: Interlocutory Application (Human Rights Div 2.4 Exemption) - Form 35 - Rule 17.01(1)(a)  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 17/05/2023 4:26:52 PM AWST  
Date Accepted for Filing: 18/05/2023 11:20:42 AM AWST  
File Number: WAD251/2022  
File Title: ALEXANDRA WALTERS & ANOR v STATE OF WESTERN AUSTRALIA  
Registry: WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA  
Reason for Listing: To Be Advised  
Time and date for hearing: To Be Advised  
Place: To Be Advised



*Sia Lagos*

Registrar

### Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



## Interlocutory application

No. WAD251 of 2022

Federal Court of Australia  
District Registry: Western Australia  
Division: General

**Alexandra Walters** and another person identified in the schedule

Applicants

**State of Western Australia**

Respondent

To the Respondent

The Applicant applies for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

**Time and date for hearing:**

**Place:** Peter Durack Commonwealth Law Courts, Building 1, Victoria Avenue, Perth Western Australia 6000

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable]

Date:

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of \_\_\_\_\_ Applicants \_\_\_\_\_  
Law firm \_\_\_\_\_ Levitt Robinson Solicitors \_\_\_\_\_  
Tel (02) 9286 3133 \_\_\_\_\_ Fax \_\_\_\_\_  
Email \_\_\_\_\_ slevitt@levittrobinson.com \_\_\_\_\_  
**Address for service** PO Box 850 Darlinghurst NSW 1300  
(include state and postcode) \_\_\_\_\_

[Form approved 01/08/2011]



### Interlocutory orders sought

1. Leave be granted to the applicants pursuant to *Federal Court Rules 2011* (Cth) (**FCR**) 8.21 to amend the originating application filed on 6 December 2022 in the form of the proposed amended originating application annexed to this application.
2. Leave be granted to the applicants pursuant to s 33K of the *Federal Court of Australia Act 1976* (Cth) to amend the originating application so as to alter the description of the represented group in the terms set out on pages 2 to 3 of the proposed amended originating application annexed to this interlocutory application and marked "A".
3. Leave be granted to the applicants pursuant to FCR 1.40 and 1.41 to waive the requirements in FCR 16.59 with respect to making alterations on the amended originating application.
4. Costs of this application be costs in the cause.

### Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 17 May 2023

A handwritten signature in blue ink, appearing to read 'Blaise Prentice-Davidson', written over a horizontal line.

Signed by Blaise Prentice-Davidson  
Lawyer for the Applicants



Form 19; Rule 9.32; Form 116; Rule 34.163(1)

**Amended Originating Application starting a representative proceeding under Part IVA  
of the Federal Court of Australia Act 1976 and under the Australian Human Rights  
Commission Act 1986**

Amended pursuant to leave granted by Justice Banks-Smith on

No: WAD251 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**Alexandra Walters and another person identified in the schedule**

Applicants

**State of Western Australia**

Respondent

To the Respondent

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Peter Durack Commonwealth Law Courts, Building 1, Victoria Avenue, Perth

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of	Applicants		
Law firm	Levitt Robinson		
Tel	(02) 9286 3133	Fax	(02) 9283 0005
Email	slevitt@levittrobinson.com		
Address for service	C/- Levitt Robinson, Ground Floor, 162 Goulburn Street, Surry Hills, NSW, 2010		



### Representative action

1. The Applicants bring this proceeding on their own behalf and as representative parties pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth).
2. The Applicants and the Group Members are persons who are, or have been at any time on or after 5 September 1997 until the date of the filing of this Amended Originating Application (**Relevant Period**), detained in a place declared to be a detention centre under section 13 of the *Young Offenders Act 1994* (WA) (**YO Act**), and are a member of one or both of the sub-groups described in paragraph 3 below.
3. The Applicants represent:
  - (a) Group Members who during the Relevant Period were in detention at:
    - (i) Rangeview Juvenile Remand Centre (**Rangeview**);
    - (ii) Banksia Hill Detention Centre (**BHDC**);
    - (iii) Hakea Juvenile Facility (**Hakea**); and/or
    - (iv) Unit 18 at Casuarina Prison (**Unit 18**); and

claim to have suffered, and/or suffered, unlawful disability discrimination under one or more of sections 5, 6, 22 and 24 of the *Disability Discrimination Act 1992* (Cth) (**DDA**).

**(DDA sub-group)**, and
  - (b) Group Members who at any time between 1 July 2005 until the date of the filing of this Amended Originating Application were detained in a place declared to be a detention centre under section 13 of the *Young Offenders Act 1994* (WA) (**YO Act**) and claim to have suffered, and/or suffered:
    - (i) false imprisonment;
    - (ii) assault and/or battery (including by unlawful strip searches, unlawful use of restraints and/or unlawful use of force); and/or
    - (iii) loss or injury caused by a breach of a duty of care (including by failing to take reasonable steps to prevent psychiatric or psychological injury to, and to provide for the rehabilitation and education of, the Applicants and of this sub-group of Group Members)

**(Tort sub-group)**;



- (c) by an act or omission of:
- (i) the Minister of the Crown in right of Western Australia who was, at the relevant time, responsible for the administration of the YO Act (**Minister**);
  - (ii) the chief executive officer of the department of the Government of Western Australia that was, at the relevant time, principally assisting the responsible Minister in the administration of the YO Act (**CEO**);
  - (iii) a superintendent of a detention centre at the relevant time or a person who was performing, or purporting to perform, the functions of a superintendent under the YO Act in respect of a detention centre referred to in paragraph 3(a) (**Detention Centre**) at the relevant time (**Superintendent**); and/or
  - (iv) an officer performing functions under the YO Act in respect of a Detention Centre or a person purporting to perform those functions (**Officer**),
- (collectively, **Group Members**).

#### **Details of claim and remedies sought**

On the grounds stated in the accompanying statement of claim and the accompanying complaint, the Applicants, on their own behalf and on behalf of the Group Members, seek the relief set out in A and B below.

#### **A Relief under s 46PO(4) of the *Australian Human Rights Commission Act 1975* (Cth)**

1. A declaration that, during that part of the Relevant Period concluding on 22 June 2022, the Minister, the CEO, Superintendents and/or Officers engaged in unlawful disability discrimination under sections 5, 6, 22 and 24 of the DDA in relation to the Applicants and the DDA sub-group members, for which the Respondent is vicariously liable.
2. Orders requiring the Respondent to pay to the Applicants and to the DDA sub-group members damages by way of compensation for loss and damage suffered by the Applicants and the DDA sub-group members because of the unlawful disability discrimination referred to paragraph A1 above.
3. Such further or other orders under s 46PO(4) of the *Australian Human Rights Commission Act 1975* (Cth), including orders for costs and interest, as the Court thinks fit.

**B Other relief**

4. Declarations that, during that part of the Relevant Period commencing on 1 July 2005, the Minister, the CEO, Superintendents and/or Officers engaged in conduct in relation to the Applicants and the Tort subgroup members which constituted:
  - (a) false imprisonment;
  - (b) assault and/or battery (including by unlawful strip searches, unlawful use of restraints and unlawful use of force); and/or
  - (c) breaches of the duty of care owed to the Applicants and to the Tort sub-group members (including by failing to take reasonable steps to prevent psychiatric or psychological injury to, and to provide for the rehabilitation and education of, the Applicants and the Tort sub-group members),  
for which the Respondent is vicariously liable.
5. A declaration that, during that part of the Relevant Period commencing on 1 July 2005, the Respondent engaged in conduct in relation to the Applicants and the Tort subgroup members which constituted breaches of the non-delegable duty of care owed to the Applicants and to the Tort sub-group members (including by failing to take reasonable steps to prevent psychiatric or psychological injury to, and to provide for the rehabilitation and education of, the Applicants and the Tort sub-group members), for which the Respondent is vicariously liable.
6. Damages
7. Aggravated damages
8. Exemplary damages
9. Interest on compensatory damages
10. Costs
11. Such further or other orders, including orders for costs and interest, as the Court thinks fit.



## Questions common to claims of Group Members and sub-group members

The questions of law or fact common to the claims of the Group Members and sub-group members are:

1. Whether the Minister, the CEO, Superintendents and/or Officers engaged in unlawful disability discrimination under sections 5, 6, 22 and 24 of the DDA in relation to the DDA sub-group members.
2. Whether the Minister, the CEO, Superintendents and/or Officers falsely imprisoned the Tort sub-group members by confining the Tort sub-group members to their cells other than in accordance with the YO Act and the *Young Offenders Regulations 1995 (WA) (YO Regulations)*.
3. Whether the Minister, the CEO, Superintendents and/or Officers assaulted and/or battered the Tort sub-group members by strip searching them other than in accordance with YO Act and the YO Regulations.
4. Whether the Minister, the CEO, Superintendents and/or Officers assaulted and/or battered the Tort sub-group members by applying restraints other than in accordance with the YO Act and the YO Regulations.
5. Whether the Respondent, the Minister, the CEO, Superintendents and/or Officers owed the Tort sub-group members a duty to take reasonable care to avoid causing the Tort sub-group members, injury, loss and damage and to protect the Tort sub-group members from suffering, injury, loss or damage in connection with their detention.
6. Whether the scope of the duty referred to in question 5 extended to taking reasonable steps to ensure that:
  - (a) the detention of the Tort sub-group members did not cause or exacerbate any psychiatric or psychological injuries;
  - (b) the Tort sub-group members had reasonable access to educational programs and opportunities; and/or
  - (c) the Tort sub-group members had reasonable access to rehabilitation programs and opportunities.
7. Whether the duty referred to in question 5 and in question 6 was non-delegable.



8. Whether, during the Relevant Period, the Respondent, the Minister, the CEO, Superintendents and/or Officers breached the duty referred to in questions 5 and 6 by failing to take reasonable steps to ensure that:
- (a) the detention of the Tort sub-group members did not cause or exacerbate any psychiatric or psychological injuries;
  - (b) the Tort sub-group members had reasonable access to educational programs and opportunities; and/or
  - (c) the Tort sub-group members had reasonable access to rehabilitation programs and opportunities.
9. Whether the Respondent is vicariously liable for the unlawful conduct and breaches of duty of the Minister, the CEO, Superintendents and/or Officers in the administration of the YO Act and the YO Regulations, including the conduct referred to in questions 1, 2, 3, 4, 5, 6 and 8.
10. Whether the *Limitation Act 2005* (WA) applies to the claims in this matter and, if so, whether:
- (a) it limits the time in which the DDA sub-group members may claim relief for breaches of the DDA;
  - (b) any section of the *Limitation Act 2005* (WA) operates to suspend or extend the time in which the claims of the Group Members can be commenced;
  - (c) any section of the *Limitation Act 2005* (WA) operates to enable Group Members to seek leave to commence their claims even though the limitation period has expired.
11. Whether the DDA sub-group and/or the Tort sub-group members are entitled to the relief being sought in this proceeding.

## Legislation

The Applicants claim that the disability discrimination complained of is unlawful under sections 5, 6, 22 and 24 of the DDA.



### **Accompanying documents**

On 22 June 2022, the Applicants lodged a representative complaint with the Australian Human Rights Commission (**AHRC**) in which they alleged that their treatment, and the treatment of those on whose behalf the representative complaint was lodged, in Rangeview and/or BHDC in Western Australia from 5 September 1997 up to that date breached, among other things, the DDA. A copy of the complaint is annexed hereto.

The notice of termination of the complaints was given by the delegate of the President of the AHRC on 14 November 2022. This and the delegate's reasons for the decision is annexed hereto.

### **Extension of time**

Date of issue of notice under section 46PH(2) of the *Australian Human Rights Commission Act 1986* (Cth): 14 November 2022.

An extension of time under the *Australian Human Rights Commission Act 1986* (Cth) is not required.

To the extent necessary, the Applicants seek orders pursuant to sections 39, 41 and 42 of the *Limitation Act 2005* (WA) to extend the time in which the claims of the Applicants and the Group Members can be commenced.



**Applicants' addresses**

The Applicants' address for service is:

Place: Levitt Robinson  
Ground Floor, 162 Goulburn Street  
Surry Hills< NSW, 2010

Email: [slevitt@levittrobinson.com](mailto:slevitt@levittrobinson.com)

The First and Second Applicants' addresses are:

C/- Levitt Robinson  
Ground Floor, 162 Goulburn Street  
Surry Hills NSW, 2010

**Service on the Respondent**

It is intended to serve this application on the Respondent.

Date:

.....

Stewart Levitt

Lawyer for the Applicant



## SCHEDULE OF PARTIES

**Alexandra Walters**

First Applicant

**Joel Vida**

Second Applicant

**State of Western Australia**

Respondent

## Annexure C



Allegation no.	Summary of allegation/s	Complaint ref:
Allegation 1	<p>On 5.03.2023 – Alleged misuse of force - YP claims he was “slung with force to the ground, by his arm, into the pavement.”  <i>The location of the excessive use of force was near the basketball court. Officers then proceeded to pull his hair and repeatedly slam his face and head into the pavement.</i>  <i>Photographic evidence of the use of force was not obtained.</i></p> <p><i>The officers then took him to his cell and closed the door. █████ became frustrated and threw an item at the door. Officers opened the cell door and entered, although █████ was not harming himself or others, and sprayed pepper-spray into his face. Several officers in riot face masks watched as one officer sprayed █████ He was then instructed to put his hands through the hatch so he could be handcuffed and escorted to another cell.</i></p>	CF230323
Allegation 2	<p>On 5 March 2023, █████ was then detained, without a reason being provided, for two days in MPU. He was then moved to another cell, which was not in MPU but also was used as a punishment cell, as they removed all of his personal possessions.  <i>Since then, █████ has not had a television, without a formal loss of privileges, and his personal property was not returned. Officers informed █████ his personal property has been misplaced and cannot be located. His personal property includes photographs of his family.</i>  <i>Further, he had his body shampoo and other hygiene products removed. He has not showered since Wednesday 8 March 2023, as he has not been provided with a towel or his body wash.</i></p>	N/A
Allegation 3	<p>On 9 March 2023, █████ was not provided with his anti-psychotic and anti-anxiety medication, given the staff strike and resultant staff shortages. This is of importance, as █████ had a seizure in 2020, prior to Court, after DCS failed to provide the same medication.  █████ currently receives Seroquel, Mirtazapine and Clonazepam.  Without this medication, █████ is more likely to self-harm and/or become involved in incidents.</p>	N/A
Allegation 4	<p>In 2022, one month prior to his transfer to Unit 18, █████ was put in three-point restraints by Youth Custodial Officer █████.  █████ was kept in three-point restraints from 10pm to 7am, in his cell. He had made no attempts at self-harm and given he was in his cell, was not a risk to staff.  Despite this, they kept him in the restraints, which limited his range of movement to approximately 15cm.  He was also only wearing shorts, in winter, without bedding, whilst shackled and could not maintain adequate body temperature.  Three other young people were witnesses to this occurring, namely brothers █████ and █████, and █████.</p>	CF230324
Allegation 5	<p>Previously, in August 2022, whilst in Unit 18, █████ was ‘folded up’ after sprinklers had been damaged, and his face was pushed down into the water when restrained.  █████ was physically restrained by several officers, during which he was screaming due to the pain caused to his shoulder, as a result of excessive force.  He was then put in shackles whereby his arms and legs were restrained with this restraint behind his back, rather than in front of his body. He was carried to another cell, where he used the restraint, which was consequently too long, to attempt suicide by choking.</p>	CF230325
Allegation 6	<p>Approximately two to three weeks ago, in February 2023, █████ was strip searched after an e-visit by YCO █████.  The weapon they were allegedly attempting to locate had already been located.</p>	CF230324

	<p>█ had also not had contact with the young person who had made the weapon. Despite the above and the lack of reasonable suspicion, he was strip searched. Prior to the search, YCO █ was acting in an inappropriate and aggressive manner, which intimidated the young person to the degree he repeatedly asked for the body cam to be activated, and then he would remove his clothing. The Young Person concedes it is also unlikely the Superintendent had authorised the search.</p>	
<p>Allegation 7</p>	<p>On Friday 31 March 2023, at approximately 1200 hours, █ was having his recreation time in the yard outside when a Use of Force incident occurred. It is alleged that following an exchange re: his damaged TV and returning to his cell, the two YCO's activated their body cam and █ knew he would be restrained. █ stood on a wall edge, behind a handrail, with a 2m drop behind him. Two YCO's reportedly pulled his upper body. They then shifted █'s body forward so they could remove his trapped foot and then continued to pull him between the bars. This all occurred whilst █ was at the edge of a 2m high drop. █ was then forced onto the floor, on the pavement, in a crawling position when an officer pushed him down onto his face on the concrete. █ has a large burn/graze to the right-hand side of his face and screamed when it occurred. They then handcuffed █ and dragged him, by grabbing and holding under his restrained arms. They took him to a cell, not returning him to his own cell.</p> <p>The officers did not take a photo of the injury after the Use of Force, as per policy.</p>	
<p>Allegation 8</p>	<p>It is alleged that YP █ (following the above-mentioned incident) was placed in a cell downstairs at Unit 18 that had a broken cell-call button. The cell-call continually and repeatedly made loud siren/activation noises for 24 hours. The button had not been touched by █, and was broken by the time he was placed in that cell. He asked to be moved to another cell, given the continual noise was preventing him from sleeping all night, and officers refused. This also placed █ in harm's way, given if he needed to use the cell-call button, it would not have been operational. After 24 hours of continual noise and lack of sleep, █ became distraught.</p> <p>At midday on Saturday 1 April 2023, █ used the light switch wires to start a fire in his cell. His sheets were set alight, and smoke filled his cell until he could not see. He could not use the cell-call button to call for help, should he have wished to. █ did not call out to officers, because he was hoping he would fall asleep as a result of the smoke and at that time, had no concern for his own welfare. Other detainees called out to officers who came to █'s cell. By this time █ had burnt fingers and smoke inhalation and low oxygen levels. He was seen by the nurse who said his oxygen levels were 'three times lower than they should have been.' █ was taken to hospital by ambulance where he remained until 0100am on Sunday 3 April 2023. When █ was returned to Unit 18, officers attempted to return him to the same cell where the fire had occurred and the cell-call button was still damaged, not operational, but making noises. A 'security manager' told the officers █ could not be placed in the same fire damaged cell again, as the officers intended.</p> <p>█'s hands are burnt and blistered and as at 3 April 2023 he still does not have any bandage or medical intervention/treatment to prevent infection. This needs to be remedied.</p> <p>Please note, █ has also had a toothache for the past two weeks and his dental appointment was cancelled last week, without reason. █ requires dental attention and this needs to be remedied.</p>	<p>CF230403</p>

<p>Allegation 9</p>	<p>██████████ has been previously assessed by a psychiatrist whilst detained. This psychiatrist prescribed certain medication, namely Clonazepam, Seroquel and Mirtazapine.</p> <p>We have previously reported (Our Reference: Allegation 3 and Your Reference N/A – Referred to BHDC) that when his medication is not provided ██████████ is more likely to self-harm and/or become involved in incidents.</p> <p>Two weeks ago ██████████ was seen by a GP who halved his primary medication Mirtazapine given he had ‘gained weight’. Being mindful that ██████████ receives limited access to physical activity, let alone time out of cell, it is of no surprise that this 18 year old has gained weight. However, despite his protests that he requires his medication, coupled with his assertion that his psychiatrist prescribed his current medication, the GP still reduced the prescription.</p> <p>Since then, ██████████ has been unable to sleep and has become involved in incidents. Then, as a result of these incidents, he has been placed in a cell with no access to running water. This needs to be reviewed and addressed immediately, prior to ██████████ self-harming or becoming involved in additional incidents, likely to result in further charges.</p> <p>██████████ is currently eligible for release in around six weeks. If his medication is tampered with, and ultimately, limits his ability to comply with instructions, given his exacerbated mental health issues, this is likely to increase recidivism and lengthen his current term of detention, and/or serious harm to himself or others.</p> <p>Therefore, please review the following requests:</p> <ol style="list-style-type: none"> <li>1. ██████████ needs to be reviewed by a psychiatrist and his recent medication adjustment examined</li> <li>2. ██████████ needs to have his TV returned</li> <li>3. ██████████ needs access to running water, or at the very least, more water</li> <li>4. ██████████ needs to have his tonsillitis reviewed, given this is the second time he has become unwell with tonsillitis in the past six months and as he has a medical history involving boils and teeth issues, he may have a more significant illness such as quinsy and/or may require medical intervention such as a tonsillectomy.</li> </ol>	<p>N/A</p>
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Our ref: SAL:BPD:DL:AG:200301\_1184



levitt robinson  
solicitors



16 November 2023

## ATTACHMENT C

Rosalind Croucher  
President of the Australian Human Rights Commission  
GPO Box 5218  
SYDNEY NSW 2001

Attention: Vanessa Crawford  
A/g Principal Investigator/Conciliator  
Australian Human Rights Commission

**By email:** [vanessa.crawford@humanrights.gov.au](mailto:vanessa.crawford@humanrights.gov.au)

Dear Ms Crawford,

### Complaint on behalf of Ms Walters & Ors (AHRC 2023-11949; 2023-12255) (Complaint)

We refer to your email dated 16 October 2023.

#### *Amendment Request*

Please find **enclosed** a copy of an amended Annexure 1 to the above complaint to the Australian Human Rights Commission (**Amended Complaint**). The Complainants seek the leave of the President to amend their complaint in the form of the enclosed amended Annexure 1, pursuant to s 46PA of the *Australian Human Rights Commission Act 1986* (Cth).

#### *Explanation of Amendments*

For the benefit of the Commission and the Respondent to the Complaint, as well as by way of addressing the matters raised in your email dated 16 October 2023, we explain the proposed amendments as set out below.

1. The start date for the group member definition in paragraph 3 is now 18 August 2005. Although the Complaint as originally lodged (the **Original Complaint**) did include as group members any persons detained in Rangeview prior to 2005, the Complainants no longer seek to include those persons as group members.
2. A paragraph has been inserted at 30A to clarify that all child detainees in youth detention were exposed to the risk of being held in a detention centre within an adult prison, while Hakea JF and Unit 18 were and have been in operation.
3. Paragraph 32A has been inserted to clarify the status of the detention centres and their staff under the *Disability Standards for Education 2005* (Cth) (**DSE**).

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4. Paragraphs 33 and 36 have been amended to clarify the goods, services and facilities available in detention centres.
5. Paragraphs 34A to 34C have been inserted to indicate the nature and extent of the behavioural regime applied in detention centres.
6. In your email you noted that the Original Complaint did not explicitly refer to any claim by Mr Vida under s 39 of the DDA. The Amended Complaint now includes such a reference at paragraph 92A.
7. In your email you noted that the Original Complaint did include an explicit reference to a claim by [REDACTED] for harassment within the meaning of the DDA and DSE by reason of his being handcuffed while attending class. Paragraph 114 has been amended to clarify that by handcuffing [REDACTED] in view of other students and teachers, Officers humiliated and distressed [REDACTED], marking him out as apparently dangerous by reason of his disability. That was conduct that was reasonably likely to humiliate and distress [REDACTED] and hence falls within the definition of harassment in 8.1 of the DSE.
8. In your email you noted that the Original Complaint included a section for “Areas of Discrimination” but not a section for “grounds” “outlined in sections 5 and 6”. The Amended Complaint now includes specific sections for each complainant setting out how discrimination is alleged to arise under ss 5 and 6 of the DDA, i.e., both directly and indirectly.
9. Similarly, for [REDACTED], [REDACTED] and [REDACTED], the Amended Complaint now includes specific sections for each complainant setting out how discrimination is alleged to arise under ss 14 and 15 of the ADA, i.e., both directly and indirectly.
10. For Ms Walters, paragraph 64A has been inserted expanding upon her claims for disability discrimination in relation to the provision of goods, services and facilities.
11. For [REDACTED], paragraphs 191F to 191I have been inserted to incorporate his claims for disability discrimination in relation to the provision of goods, services and facilities.
12. For each of the Complainants, further paragraphs have been inserted incorporating or expanding upon their claims for harassment under sections 37 and 39 of the DDA.
13. Paragraph 203 has been amended to refer to the relevant sections governing vicarious liability under the *Disability Discrimination Act 1992* (Cth)(**DDA**) and the *Age Discrimination Act 2004* (Cth)(**ADA**).
14. Finally, paragraphs 205 and 206 have been inserted noting that the Complainants are seeking to undergo further assessments to determine the full nature and extent of their disabilities which may not have been properly diagnosed during their time in detention.
15. As may be expected, in many cases similar amendments have been made multiple times in respect of different complainants. To assist the Commission and the Respondent in reviewing those proposed amendments, we enclose a table, which describes the kinds of amendments made and cross-references the relevant paragraphs in the Amended Complaint for each of the complainants.



*Service of Amended Complaint upon Respondent*

The Complainants will provide a copy of the proposed Amended Complaint to the solicitors acting for the Respondent in Federal Court Proceedings WAD251/2022 and seek to confirm the Respondent's position.

Please contact the write if you have any queries regarding this correspondence.

Yours faithfully

**LEVITT ROBINSON**

**Stewart A Levitt**

Senior Partner

A handwritten signature in blue ink, appearing to read 'Blaise Prentice-Davidson'.

**Blaise Prentice-Davidson**

Human Rights Counsel



Table of Amendments to Sections Relating to Specific Complainants

Description of Subject of Amendment	Ms Walters	Mr Vida	████████	████████	████████
Clarifying how disability affects thought processes, emotions and judgment	38A	69A	96A	137A	172A
Clarifying behaviour engaged which was a manifestation of a disability	40	71	101	143	N/A
Clarifying Officers' response to behaviour	45	74	105	145	176
Clarifying ability to comply with requirements	47	76	107	147	178
Inserting effect of failure to make adjustments	47A	76A	107A	147A	178A
Inserting Direct Disability Discrimination Grounds	48A	78A	111A	149A	183A
Inserting Indirect Disability Discrimination Grounds	48B	78B	111B	149B	183B
Inserting Support Services Required	51A	80A	113A	151A	185A
Inserting Harassment in Education Claims	N/A	N/A	114	N/A	N/A
Clarifying DSE Claims	54 to 58D	82 to 86D	115 to 119	152 to 156E	186-191E
Clarifying DSE Harassment Claim	59 to 61	N/A	120	N/A	N/A

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Inserting or Clarifying Discrimination in relation to Provision of Goods, Services and Facilities Claims	64A	N/A	126A	161A	191E to 191I
Inserting Harassment in relation to Provision of Goods, Services and Facilities Claims	65A	92A	126B to 126C	161B to 161D	191J
Inserting Direct Age Discrimination Grounds	N/A	N/A	134A	168A	200A
Inserting Indirect Age Discrimination Grounds	N/A	N/A	134B to 134F	168B to 168F	200B to 200F



# 1. ANNEXURE 1 – DETAILS OF COMPLAINT

## A. Introduction

### A1 Parties

1 This complaint is made by:

- a. Ms Alexandra Walters (born 8 October 2004);
- b. Mr Joel Vida (born 23 May 2002);
- c. [REDACTED] (born [REDACTED]);
- d. [REDACTED] (born [REDACTED]);
- e. [REDACTED] (born [REDACTED])

(together, the **Complainants**).

2 This complaint is a representative complaint made pursuant to section 46PB(1) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRCA**), on behalf of a group of persons set out in paragraph 3 below (who are referred to herein as the **Group Members**).

3 The Group Members are persons who:

- a. are or have been detained in juvenile detention in Western Australia between [5 September 1997](#) [18 August 2005](#) and the making of this complaint (**Relevant Period**) at one or more of the following detention centres declared to be a detention centre under section 13 of the *Young Offenders Act 1994* (WA) (**YOA**):

- i. Banksia Hill Detention Centre (**BHDC**);
- ii. Rangeview Juvenile Remand Centre (**Rangeview**);
- iii. Hakea Juvenile Facility (**Hakea JF**); or
- iv. Unit 18 at Casuarina Prison; (**Unit 18**)

and who

- b. claim to have suffered unlawful disability ~~and~~ or age discrimination on one or more occasions while so detained by an act or omission of:



- i. the Minister of the Crown in right of Western Australia who was, at the relevant time, responsible for the administration of the YO Act (**Minister**);
- ii. the chief executive officer of the department of the Government of Western Australia (**CEO**) who was, at the relevant time, principally assisting the responsible Minister in the administration of the YO Act;
- iii. a superintendent of a detention centre at the relevant time or a person who was performing, or purporting to perform, the functions of a superintendent under the YO Act in respect of a detention centre at the relevant time (**Superintendent**); and/or
- iv. an officer performing functions under the YO Act in respect of a detention centre or a person purporting to perform those functions (**Officer**).

4 This complaint is made against the State of Western Australia (**Western Australia**).

5 Western Australia is, and was at all material times, able to be sued pursuant to section 5 of *Crowns Suits Act 1947* (WA).

## A2 Overview of Complaint and Background of Previous Complaints

6 In overview, the complaint is that Western Australia, through the Department of Justice and its officers and agents, has:

- a. engaged in unlawful disability discrimination [and harassment in relation to a disability](#) contrary to the *Disability Discrimination Act 1992* (Cth) (the **DDA**) against detainees at the detention centres listed in paragraph 3a above; and
- b. engaged in unlawful age discrimination contrary to the *Age Discrimination Act 2004* (Cth) (the **ADA**) against detainees at Hakea [JF](#) and Unit 18.

7 This complaint of unlawful discrimination is lodged pursuant to section 46P(2)(b) of the AHRCA, by persons aggrieved by that unlawful discrimination.

## Relationship to Previous Complaints

8 Three of the complainants have previously made complaints to the Australian Human Rights Commission in relation to their treatment within juvenile detention, as follows:



- a. Ms Walters and Mr Vida were complainants under a complaint lodged with the Australian Human Rights Commission which was allocated Complaint Numbers 2022-10859, 2022-11417 and 2022-11418 (**First Complaint**);
- b. [REDACTED] was a complainant under a complaint lodged with the Australian Human Rights Commission which was allocated Complaint Numbers 2022-15309, 2022-15509, and 2022-1511 (**Second Complaint**),

(together, the **Two Previous Complaints**).

9 Further, [REDACTED] was an affected person within the meaning of s 3(1) of the AHRCA in relation to the Second Complaint, while [REDACTED] was an affected person in relation to the First Complaint. [REDACTED] [was also an affected person in relation to the First Complaint.](#)

10 In summary, the First Complaint alleged unlawful disability, age and racial discrimination in relation to the treatment of juvenile detainees at BHDC and Rangeview, occurring from 5 September 1997 onwards and ongoing as at the date of the lodging of the First Complaint.

11 In summary, the Second Complaint alleged unlawful disability, age and racial discrimination in relation to the treatment of juvenile detainees at BHDC and at Unit 18 at Casuarina Prison, from 13 July 2022 onwards and ongoing as at the date of lodging of the Second Complaint.

12 The First Complaint was terminated on 14 November 2022. Following the termination of the First Complaint, Ms Walters and Mr Vida commenced proceedings against Western Australia in the Federal Court of Australia seeking, among other things, remedies under s 46PO of the AHRCA.

13 The Second Complaint was terminated on 6 March 2023. Following the termination of the Second Complaint, [REDACTED] and [REDACTED] commenced proceedings against Western Australia in the Federal Court of Australia seeking, among other things, remedies under s 46PO of the AHRCA.

14 The Complainants apprehend that there may be an argument in relation to such Federal Court Proceedings relating to whether the descriptions in the First and Second Complaints of the unlawful discrimination alleged therein:

- a. provided sufficient details of the unlawful discrimination complained of; and/or
- b. were sufficiently broad or included sufficient reference to relevant matters,



so as to provide the Federal Court of Australia with jurisdiction consistently with the requirements of s 46PO(3) of the AHRCA, to enable the Court to entertain an application for relief in respect of that alleged unlawful discrimination.

- 15 To the extent that the unlawful discrimination alleged in this Complaint ~~extends~~does extend beyond the unlawful discrimination alleged in either the First or Second Complaints, as the case may be, the Complainants now make this further complaint in respect of that further alleged discrimination.
- 16 Moreover, the Complainants apprehend that the operation of s 46PO(3) may be such that the Court only has jurisdiction to entertain an application for relief in respect of unlawful discrimination alleged to have occurred up to the date of the termination of the First and Second Complaints, but not thereafter.
- 17 Because, in the case of both the First and Second Complaints, the unlawful discrimination complained of is and was continuing, the Complainants now make this further complaint in order to extend the period in respect of which they allege that unlawful discrimination occurred, so as to “top-up” the First and Second Complaints.

#### BanksiaBHDC and Rangeview

- 18 BHDC commenced operation as a detention centre on or about 5 September 1997 while Rangeview commenced operation in 1994.
- 19 Rangeview operated until around 5 October 2012. BHDC continues to operate to this day.
- 20 The Complainants allege that detainees at BHDC and Rangeview were subject to unlawful disability discrimination, as set out below in relation to the Complainants in this complaint.

#### Hakea JF and Unit 18

- 21 On 22 January 2013, the Minister declared, under section 13 of the YO Act, those buildings and enclosures situated on Reserve 50756, being Lot 501 on Deposited Plan 69593 (held by the Western Australian Land Information Authority established by the Land Information Authority Act 2006) known as Units 5 and 12 of the Hakea Prison, but not being parts of a prison under the Prisons Act 1981, to be a detention centre, which commenced operation immediately.
- 22 Hakea JF was utilised as a detention centre after a riot at BHDC on 20 January 2013 resulted in significant damage to the cells and facilities at BHDC, following which the Minister at the time determined that detainees be detained in an alternate location.

23 Detainees detained at Hakea JF had limited access to goods, services, facilities and education as compared to detainees in BHDC or Rangeview and as compared to the services and facilities made available to adult prisoners within Hakea Prison.

24 Similarly, on 13 July 2022, the Minister declared, under section 13 of the YOA, those buildings and enclosures situated within Casuarina Prison and known as Unit 18 to be a detention centre, which commenced operation on 14 July 2022.

25 On 20 July 2022, approximately 20 detainees, who had immediately prior to that point been detained in BHDC, were transferred to Unit 18.

26 According to a media release by the Department of Justice, the detainees initially transferred to Unit 18 were selected for transfer on the basis that they had “exhibited complex needs, had significant offending histories and for months had been destroying infrastructure, assaulting staff and harming themselves”.

27 Thereafter, Unit 18 has been operated as a detention centre for the duration of the Relevant Period, during which some of the Applicants and Group Members were have been detained there.

28 The accommodation for detainees in Unit 18 in the Relevant Period included:

- a. a number of residential cells comprising general accommodation cells; and
- b. a number of multi-purpose cells, observation and isolation cells, together referred to as the Multi-Purpose Unit (**MPU**).

29 MPU cells are primarily used for punishment, confinement and observation of detainees. They are usually completely empty, with no television or radio, no books or other reading material, and no personal items such as photographs.

30 Detainees detained at Unit 18 had limited access to services, facilities and education as compared to detainees in BHDC and as compared to the services and facilities made available to adult prisoners within Casuarina Prison.

30A In the case of both Hakea JF and Unit 18, while those detention centres were in operation, young people in youth detention were exposed to the risk of being detained in Hakea JF or Unit 18 and having limited access to goods, services, facilities and education, whereas adult prisoners were not exposed to any such risk.

31 The Complainants allege that detainees at Hakea JF and Unit 18:

- a. were subject to the same kinds of unlawful disability discrimination as detainees detained in BHDC and Rangeview; and
- b. were also subject to unlawful age discrimination, as set out below in relation to [REDACTED], [REDACTED] and [REDACTED], as complainants in this complaint.

## B. Areas of Discrimination

### *Areas for Disability Discrimination under Divisions 2 and 2A of Part 2 of the DDA*

32 At all times during the Relevant Period, Western Australia was an educational authority and an education provider within the meaning of ss 4 and 22 of the DDA, and ss 1.4 and 2.1 of the Disability Standards for Education 2005 (Cth) (DSE).

#### 32A Throughout the relevant period:

- a. each Detention Centre was an educational institution; and
- b. each Superintendent and Officer was a member of the staff of an educational institution;

within the meaning of the DDA and the DSE.

33 At all times during the Relevant Period, Western Australia provided goods and/or services and/or made facilities available to detainees in Detention Centres within the meaning of s 24 of the DDA, including:

- a. a facility of a place and space ~~and time within~~ which detainees could receive visits from friends, relatives and legal advisers;

a1. a service, being the kind provided by government, of an Officer or Officers being present to provide assurance that the facility within a detention centre in which detainees received visits from friends, relatives and legal advisers was safe for the detainees and visitors;

- b. telephone facilities for communicating with friends, relatives and legal advisers;

b1. a service relating to telecommunications being the provision of telephones and opportunities for the detainees to use the telephones;

- c. a facility of a place and space ~~and time~~ for recreation and/or exercise;

c1. a service, being the kind provided by government, of an Officer or Officers being present to provide assurance that the facility within a detention centre in

which detainees were able to enjoy recreation and exercise was safe for the detainees;

d. goods and facilities for recreation, including:

i. fitness and gymnasium ~~facilities~~items;

ii. sport equipment;

ii. ~~writing, drawing~~ and ~~facilities~~; and

iii. art and craft materials; and ~~classes and~~;

~~iii-iv.~~ access to the provision of televisions and radios for entertainment and recreation;

~~iv.~~ d1. a service relating to entertainment and recreation, being opportunities for detainees to use the televisions and radios;

d2. goods, being clothes and health and hygiene or therapeutic items;

e. a service relating to the kind provided by members of a profession, being medical services, including medical treatment;

f. goods, being discretionary food items, such as those provided in a canteen;

f1. a facility of a canteen, being a place at which discretionary food items could be acquired by detainees;

f2. a facility for the comfort and well-being of detainees being heating and cooling equipment;

f3. a service for the comfort and well-being of detainees being the operation by staff of the detention centre of heating and cooling facilities;

g. rehabilitation and vocational programs including general cognitive skills programs;

h. ~~protection~~a service, being the kind provided by government, to protect detainees from risk of physical harm, including self-harm, battery and/or assault by other detainees.

34 At all times from 18 August 2005 onwards, ~~;~~

a. the Detention Centres were each educational institutions within the meaning of ~~section 4~~the DDA and the DSE;



- b. each Superintendent and Officer was a member of the DDA staff of an educational institution within the meaning of the DDA and the DSE; and
- 34c. Pursuant to the Disability Standards for Education 2005 (Cth) (DSE), DSE, as standards formulated pursuant to s 31 of the DDA, applied to Western Australia as an education provider to detainees in Detention Centres.

## **BA. Behavioural Regime**

34A Throughout the relevant period, Western Australia (through the CEO, the Superintendents and Officers) applied a behavioural regime (**Behavioural Regime**) to the Complainants and other detainees in Detention Centres as follows:

a. All detainees must not:

- i. fail to comply with lawful directions from Superintendents and Officers;
- ii. be verbally or physically offensive;
- iii. be verbally or physically aggressive;
- iv. be violent;
- v. make images involving violence or write words involving violence;
- vi. harm themselves; or
- vii. be rude or annoying to Officers.

### **(Proscribed Conduct).**

b. If any of the Complainants or another detainee engaged in the Proscribed Conduct, officers subjected the detainee to consequences including:

- i. the use of physical force;
- ii. handcuffing;
- iii. confinement to their cell;
- iv. confinement to a cell in an observation unit;
- v. loss of program placement;
- vi. confiscation of goods;
- vii. denial of use of goods, services and facilities of the kinds referred to in paragraph 33.

34B Under the Behavioural Regime, when any of the Complainants or another detainee engaged in Proscribed Conduct, they were subjected to the consequences referred to in paragraph 34Ab., even in circumstances where the Proscribed Conduct in which they had engaged was a symptom or manifestation of a disability of the detainee.

34C By reason of the matters in paragraphs 34A and 34B, detainees with a disability were required not to engage in Proscribed Conduct which was a manifestation or symptom of their disability or they would be subjected to the kinds of consequences referred to in paragraph 34Ab.

#### *Areas of Age Discrimination under Division 3 of Part 4 of the ADA*

35 At all times during the Relevant Period, Western Australia was an educational authority and an education provider within the meaning of s 26 of the ADA.

36 At all times during the Relevant Period, Western Australia provided goods and/or services and/or made facilities available to detainees in Detention Centres within the meaning of s 28 of the ADA, including:

a. a facility of a place and space ~~and time within~~ which detainees could receive visits from friends, relatives and legal advisers;

a1. a service, being the kind provided by government, of an Officer or Officers being present to provide assurance that the facility within a detention centre in which detainees received visits from friends, relatives and legal advisers was safe for the detainees and visitors;

b. telephone facilities for communicating with friends, relatives and legal advisers;

b1. a service relating to telecommunications being the provision of telephones and opportunities for the detainees to use the telephones;

c. a facility of a place and space ~~and time~~ for recreation and/or exercise;

c1. a service, being the kind provided by government, of an Officer or Officers being present to provide assurance that the facility within a detention centre in which detainees were able to enjoy recreation and exercise was safe for the detainees;

d. goods and facilities for recreation, including:

i. fitness and gymnasium ~~facilities~~items;

ii. sport equipment;

~~ii. writing, drawing and facilities;~~

~~iii. art and craft materials; and classes and;~~

~~iii-iv. access to the provision of televisions and radios for entertainment and recreation;~~

~~iv. d1. a service relating to entertainment and recreation, being opportunities for detainees to use the televisions and radios;~~

~~d2. goods, being clothes and health and hygiene or therapeutic items;~~

~~e. a service relating to the kind provided by members of a profession, being medical services, including medical treatment;~~

~~f. goods, being discretionary food items, such as those provided in a canteen;~~

~~f1. a facility of a canteen, being a place at which discretionary food items could be acquired by detainees;~~

~~f2. a facility for the comfort and well-being of detainees being heating and cooling equipment;~~

~~f3. a service for the comfort and well-being of detainees being the operation by staff of the detention centre of heating and cooling facilities;~~

~~g. rehabilitation and vocational programs including general cognitive skills programs;~~

~~h. protectiona service, being the kind provided by government, to protect detainees from risk of physical harm, including self-harm, battery and/or assault by other detainees.~~

37 At all times during the Relevant Period, Western Australia provided goods and/or services and/or made facilities available to prisoners in prisons within the meaning of s 28 of the ADA, including:

a. a facility of a place and space and time within which ~~detainees~~prisoners could receive visits from friends, relatives and legal advisers;

a1. a service, being the kind provided by government, of an prison officers being present to provide assurance that the facility within a prison in which detainees received visits from friends, relatives and legal advisers was safe for the prisoners and visitors;

b. telephone facilities for communicating with friends, relatives and advisers;

b1. a service relating to telecommunications being the provision of telephones and opportunities for the prisoners to use the telephones;

c. a facility of a place and space and time for recreation and/or exercise;

c1. a service, being the kind provided by government, of an Officer or Officers being present to provide assurance that the facility within a prison in which prisoners were able to enjoy recreation and exercise was safe for the prisoners;

d. goods and facilities for recreation, including:

i. fitness and gymnasium ~~facilities~~ items;

ii. sport equipment;

ii. writing, drawing and ~~facilities~~;

iii. art and craft materials; and ~~classes and~~;

~~iii-iv.~~ access to the provision of televisions and radios for entertainment and recreation;

~~iv.~~ d1. a service relating to entertainment and recreation, being opportunities for prisoners to use the televisions and radios;

d2. goods, being clothes and health and hygiene or therapeutic items;

e. a service relating to the kind provided by members of a profession, being medical services, including medical treatment;

f. goods, being discretionary food items, such as those provided in a canteen;

f1. a facility of a canteen, being a place at which discretionary food items could be acquired by prisoners;

f2. a facility for the comfort and well-being of prisoners being heating and cooling equipment;

f3. a service for the comfort and well-being of prisoners being the operation by staff of the prison of heating and cooling facilities;

g. rehabilitation and vocational programs including general cognitive skills programs;

- h. protectiona service, being the kind provided by government, to protect prisoners from risk of physical harm, including self-harm, battery and/or assault by other detaineesprisoners.

**C. Ms Walters**

38 Ms Walters hassuffers from autism spectrum disorder (**ASD**). ASD is a disability within the meaning of the DDA.

38A Ms Walters' ASD is a disorder that affects Ms Walters' thought processes, emotions and judgment such that:

- a. when confronted with peremptory, complex or unpleasant commands, she was and is likely to react with heightened emotional and physical responses;
- b. she was and is very concerned with hygiene and became and becomes anxious and upset about dirty or stained clothing, bedding, furniture and rooms;
- c. she engaged and engages in restricted repetitive behaviours, which can include:
- i. self harm by cutting or scratching herself;
- ii. drawing images of violence, such as knives and stabbing;
- iii. writing words such as "kill" and "die";
- d. she requires consistency and routine and becomes anxious and upset with departures from routine.

39 Ms Walters was detained in BHDC for the following periods:

- a. 23 May 2018 to 29 April 2019;
- b. 17 July 2019 to 18 July 2019;
- c. 26 August 2019 to 27 August 2019;
- d. 3 September 2019 to 4 September 2019;
- e. 3 December 2019 to 6 December 2019; and
- f. 20 March 2020 to 21 March 2020.

40 While in BHDC, Ms Walters engaged in the following kinds of behaviour that were symptoms or manifestations of her disability:



- a. refusal to comply with directions from Officers, including directions that she:
  - i. submit to strip searches;
  - ii. submit to being placed in handcuffs;
  - iii. return to the Cue Unit from less restrictive areas of BHDC;
  - iv. return to her cell in the Cue Unit from common areas of the Cue Unit;
  - v. submit to being placed in a cell that was dirty;
  - vi. surrender clothes that she had been wearing for laundering (because of her aversion to stained or dirty clothing provided from the common pool of clothing);
- b. resisted the threat of use of force and use of force by Officers, including by:
  - i. attempting to evade Officers who wished to take hold of her;
  - ii. using objects, such as sharpened sticks or twigs to threaten Officers;
  - iii. striking, or attempting to strike Officers;
- c. engaging in repetitive acts of self-harm, particularly by using objects such as staples removed from books, and broken pieces of plastic, to scratch or cut her skin;
- d. engaging in obsessive:
  - i. drawing of images of violence, such as knives and stabbing;
  - ii. writing words such as “kill” and “die” with reference to herself and/or Officers and the images referred to in sub-paragraph i above.

e. damaging property.

f. going out of bounds.

g. being rude to, annoying or offending Officers.

#### *Unlawful Disability Discrimination*

41 Ms Walters alleges that she was subject to unlawful indirect disability discrimination as defined under s 6 of the DDA in relation to:

- a. education under s 22 of the DDA; and
- b. goods, services and facilities under s 24 of the DDA.

- 42 Ms Walters also alleges that she was subject to unlawful contraventions of the DSE under ss 31 and 32 of the DDA.
- 43 As set out in the First Complaint, Ms Walters alleges that Officers responded to her behaviour, set out in paragraph 40 above, in a punitive manner and that this resulted in Ms Walters being confined to a cell in the Cue Unit, typically receiving as little as one hour of time outside her cell for recreation, which was spent in a small wire cage. By virtue of being so confined, Ms Walters was also deprived of access to any goods, services or facilities, access to which required leaving her cell.
- 44 By way of further elaboration on the matters raised in the First Complaint, Ms Walters alleges as follows.
- 45 Officers' responses to her behaviour, set out in paragraph 40 above, included:
- a. using force and threats of force against Ms Walters, handcuffing her and confining her to her cell for extended periods of time, particularly in the Cue Unit, but also in the Yeeda unit and elsewhere;
  - b. placing Ms Walters in an observation cell or other type of cell in the Cue unit as her accommodation at BHDC for extended periods;
  - c. requiring Ms Walters to be handcuffed for all movements to and from the Cue unit within BHDC for an extended period; and or otherwise using physical restraints on Ms Walters;
  - d. denying or restricting Ms Walters' access to goods, services, programs, privileges and facilities, including those set out in paragraph 33 above;
  - e. subjecting Ms Walters to strip searches;
  - f. removing Ms Walters from or restricting her access to education activities and programs; and
  - d.g. confiscating and/or denying or restricting Ms Walters' access to books, paper, writing and/or drawing implements.
- 46 ~~Officers required Ms Walters to:~~
- a. ~~obey all commands, directions and orders given or made by the Superintendent and Officers;~~
  - b. ~~refrain from self harm; and~~
  - c. ~~refrain from making images involving violence and writing words such as "kill" and "die".~~

47 ~~Ms Walters was not able to comply with those requirements as a result of her disability.~~  
~~Ms Walters would only have been able to comply with those requirements~~Ms Walters would have been able to, or would have been better able to, manage the symptoms and manifestations of her disability described in paragraph 40 if the CEO, the Superintendent and Officers had made adjustments in dealing with Ms Walters, including by:

- a. providing Ms Walters with appropriate mental health treatment, counselling and support;
- b. providing Ms Walters with behavioural therapy to assist her to learn to, and to better regulate her emotions and behaviour;
- c. training Officers about ASD and in techniques and approaches to communicating with Ms Walters to reduce confrontation and escalation;
- d. providing Ms Walters with, and assisting her to implement, an individual behaviour plan to reduce confrontation and escalation;
- e. providing Ms Walters with an appropriately qualified support worker to assist her in her interactions with Officers and detainees;

(collectively, the **Walters Reasonable Adjustments**)

47A Had some or each of the Walters Reasonable Adjustments been made, Ms Walters:

- a. would not have been subjected to the matters described in paragraph 45;
- b. would have been able to access and would have attended education activities at BHDC; and
- c. would have been able to access and would have accessed the goods, services and facilities described in paragraph 33 above.

48 ~~Those kinds of~~The Walters Reasonable Adjustments were not made for Ms Walters, notwithstanding her evident need for those kinds of adjustments by reason of her disability. As a result, she was wrongly characterised as wilfully recalcitrant and subject to punitive responses and thereby disadvantaged.

49 ~~The requirements in paragraph 46 above were not reasonable having regard to the circumstances of the case.~~

#### Direct Discrimination

49A By reason of the matters in paragraphs 38 to 48 above, Western Australia, through the conduct of the CEO, the Superintendent and Officers, discriminated against Ms

Walters within the meaning of section 5 of the DDA on the ground of Ms Walters' ASD in that Western Australia:

- (a) did not make the Walters Reasonable Adjustments; and
- (b) the failure to make the Walters Reasonable Adjustments had the effect that Ms Walters was, because of her ASD, treated less favourably than a person without ASD would have been treated in circumstances that were not materially different.

#### Indirect Discrimination

49B In the alternative to paragraphs 48A above, by reason of the claims in paragraphs 38 to 48 above, Western Australia, through the conduct of the CEO, the Superintendent and Officers, discriminated against Ms Walters within the meaning of section 6(2) of the DDA on the ground of Ms Walters' ASD in that:

- a. Western Australia required Ms Walters, to comply with the Behavioural Regime;
- b. because of Ms Walters' ASD, Ms Walters was only able to comply with the Behavioural Regime if the Walters Reasonable Adjustments were made;
- c. Western Australia did not make the Walters Reasonable Adjustments;
- d. the failure to make the Walters Reasonable Adjustments had the effect of disadvantaging Ms Walters.

#### *Discrimination in Relation to Education – s 22 DDA; ~~s 37 DDA~~*

49C By reason of the matters in set out in paragraphs 33 and 48A above or, alternatively, 33 and 48B above, and the matters in paragraphs 50 to 52A below, Ms Walters was disadvantaged in her access to and enjoyment of education or was subjected to detriment in relation to her enjoyment of the benefit of education.

50 When Ms Walters was confined in her cell, she was often not permitted to attend school and given no access to education or rehabilitation programs. When Ms Walters was provided with some educational instruction while confined, she was given individual instruction by a teacher attending the Cue Unit, including in the company of two (2) custodial officers. Ms Walters was also regularly removed from education activities, often for disciplinary reasons. Ms Walters was thereby subjected to a lack of routine in her education and rehabilitation. Ms Walters was thereby disadvantaged in her access to, and effective enjoyment of, the benefit of education contrary to s 22 of the DDA.

51 When Ms Walters was provided with access to education, she was provided with educational instruction using a curriculum and educational materials, including reading

materials, which were unsuitable by reference to her academic capacity and/or existing level of academic attainment. Further, she was not provided with any specific assistance as a result of her disability, including specialist expertise, personal educational support and/or support for personal and medical care. She was thereby subjected to detriment in relation to her enjoyment of the benefit of education contrary to s 22 of the DDA.

51A In particular, Ms Walters required the following specialised support services to accommodate her disability and enable her to participate in educational activities provided at BHDC:

a. mental health treatment, counselling and support;

b. behavioural therapy to assist her to learn to, and to, better regulate her emotions and behaviour;

c. an appropriately qualified support worker to assist Ms Walters in her interactions with Officers and detainees.

52 Ms Walters was sometimes refused access to specific educational programs and materials on the grounds of her disability. In one instance, Ms Walters was denied access to books which contained staples as Ms Walters was known to use staples to self-harm. Ms Walters was also deprived of access to art programs and art supplies on several occasions as punishment for Ms Walters depicting images of self-harm. This was despite it being known to Officers that artistic expression was a manifestation of Ms Walters' disability. On occasions where Ms Walters produced drawings which were manifestations of her disability, Officers threatened Ms Walters with use of force and denial of privileges. By denying Ms Walters access to specific educational programs used throughout BHDC, Ms Walters was subjected to detriment in relation to her enjoyment of an educational benefit which was offered to other students in the facility, contrary to s 22 of the DDA.

52A By reason of the matters in set out in paragraphs 34 and 48A above or, alternatively, 34 and 48B above, and the matters in paragraphs 20 to 52 above, Ms Walters was disadvantaged in her access to

*Harassment in Education – s 37 DDA*

53 Ms Walters' name was written on a board in the office of BHDC next to the word, "Autistic". The board was in full view of officers, teachers and students at BHDC and the words "Alexandra Walters" and "Autistic" remained on the board despite Ms Walters' complaints that they were offensive, insulting and humiliating and her

requests that they be removed. ~~She was thereby subjected to harassment on the basis of her disability, contrary to s 37 of the DDA.~~

53A By reason of the matters in paragraphs 32A and 53, Western Australia by its servants and agents, the Superintendent and Officers, unlawfully harassed Ms Walters in relation to her disability in contravention of s 37 of the DDA.

#### *Contravention of DSE*

54 By reason of Ms Walters being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 50 above, Ms Walters was prevented from participating in education on the same basis as a student without a disability, ~~in contravention~~within the meaning of Part 5 of the DSE and in particular section 5.2.

55 By reason of Ms Walters being provided with a curriculum and educational materials for courses and programs within BHDC, which were unsuitable by reference to her academic capacity and/or existing level of academic attainment as set out in paragraph 50 above, Ms Walters was not ~~allowed~~able to participate in ~~education~~the learning experiences of those courses and programs on the same basis as a student without a disability, ~~in contravention~~within the meaning of Part 6 of the DSE and in particular section 6.2.

56 By reason of Ms Walters being denied access to specialised support services to accommodate her disability, as set out in paragraph 51 above, Ms Walters was prevented from participating in education on the same basis as a student ~~without a disability, in contravention~~within the meaning of Part 7 of the DSE and in particular section 7.2.

57 Ms Walters would have been ~~able to participate~~assisted in her participation in education and in the learning experiences of courses and programs within BHDC, if adjustments had been made for her by reason of her disability, including:

- a. appropriately assessing Ms Walters' literacy and numeracy competency on admission to BHDC;
- b. developing a curriculum, learning plan and other educational material tailored to Ms Walters' competency level and designed to encourage Ms Walters' participation, accommodate her style of learning and encourage Ms Walters' educational progress and achievement;
- c. adopting techniques and approaches to communicating with Ms Walters to reduce confrontation and escalation;



- d. adopting disciplinary practices within educational settings which accommodated the behavioural manifestations of her disability rather than adopting punitive responses thereto;
- e. adjusting the mode of education provided to Ms Walters to accommodate her disability;
- f. taking steps to allow Ms Walters to continue having lessons with the few educational instructors with whom she had developed a good rapport; and
- g. taking steps to arrange for and/or facilitate the provision of specialised support services to Ms Walters to accommodate her disability.

58 However, in contravention of Parts 3, 5, 6 and 7 of the DSE and in particular sections 3.5, 3.6 and 3.7 of the DSE:

- a. adjustments, including those set out in paragraph 57 above, were not made for Ms Walters, at all or within a reasonable time; and, in contravention of sections 5.2, 6.2, 7.2 and 3.7 of the DSE;
- b. Ms Walters was not consulted about the making of adjustments, including adjustments of the kind set out in paragraph 56 above, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE; and
- c. either no decision was made about the making of reasonable adjustments for Ms Walters, including adjustments of the kind set out in paragraph 57 above, or alternatively, a decision was made not to make those kinds of adjustments or any other adjustments, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE.

58A By reason of the matters in paragraphs 54 to 58 above the State of Western Australia failed to take reasonable steps to ensure that Ms Walters:

- a. was able to participate in education on the same basis as a student without a disability, as required by section 5.2 of the DSE;
- b. was able to participate in the learning experiences of courses and programs within BHDC on the same basis as a student without a disability, as required by section 6.2 of the DSE.

58B To the extent that the specialised support services referred to in paragraph 51A were of a kind provided by Western Australia at BHDC, Western Australia failed to take reasonable steps to ensure that Ms Walters had access to the service in contravention of s 7.2(2) of the DSE.

58C To the extent that the specialised support services referred to in paragraph 51A were of a kind not provided by Western Australia at BHDC, Western Australia failed to take reasonable steps to facilitate the provision by another person or agency of the support services referred to in paragraph 51A to Ms Walters in contravention of s 7.2(3) of the DSE.

58D In contravention of s 7.2(6) of the DSE, Ms Walters was not consulted about her need for specialist support services of the kind referred to in paragraph 51A.

59 By reason of the Officers' conduct set out in paragraph 53 above, Ms Walters suffered harassment within the meaning of section 8.1 of the DSE.

60 In circumstances where it was known to Officers that artistic expression was a manifestation of Ms Walters' disability, it was reasonably foreseeable that depriving Ms Walters of access to art supplies as described in paragraph 52 above would cause her distress. Ms Walters thereby suffered harassment on the basis of her disability, in contravention of section 8.3 of the DSE.

61 By reason of the Officers' conduct set out in paragraph 53 above, Ms Walters was harassed on the basis of her disability. In contravention of section 8.3 of the DSE, the Western Australia, the CEO, the Superintendent and the Officers failed to implement strategies to prevent Ms Walters from being harassed, failed to take appropriate action after the harassment of Ms Walters occurred and failed to ensure Ms Walters had access to complaint mechanisms available to her.

61A By reason of the matters in paragraphs 54 to 61, the State of Western Australia contravened s 32 of the DDA.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

62 By reason of the conduct of Officers matters set out in ~~paragraph 45~~paragraphs 33 and 48A above or, alternatively, 33 and 48B above, and the matters in paragraphs 63 to 65 below, Ms Walters was disadvantaged in her access to the facilities and services provided in detention, set out in paragraph 33 above.

63 Ms Walters was disadvantaged by being punished for alleged misbehaviour by loss of program placement, loss of recreation time, loss of access to the fitness room, loss of canteen privileges and/or loss of television privileges.

64 She was also disadvantaged by being required to be handcuffed for movements within BHDC, and particularly to and from the Cue Unit, including in order to:

- a. attend visits from members of her family, including her parents;

- b. attend medical services at BHDC;
- c. access telephone facilities for communicating with her family; and
- d. make use of:
  - i. recreation areas outside the Cue Unit;
  - ii. goods and facilities for recreation and/or therapy outside the Cue Unit, including:
    - i) fitness and gymnasium facilities;
    - ii) sport equipment and facilities; and
    - iii) art and craft materials and classes;
  - ii. the canteen.

64A Ms Walters was also disadvantaged by the conduct of Officers confiscating and/or denying or restricting Ms Walters' access to books, paper, writing and/or drawing implements as referred to in paragraph 45f., including by reason of her drawing the words and images referred to in paragraph 40d. above, which conduct was:

a. a manifestation of Ms Walters' ASD, as pleaded in paragraph 40; and

b. a means of artistic expression for Ms Walters, which assisted her to cope with the experience of being a young woman with ASD detained at BHDC.

65 Further, she was disadvantaged by being subjected to the unjustified and unlawful use of force and threats of use of force.

Harassment in relation to the provision of goods and services – s 39 DDA

65A While Ms Walters was at Banksia Hill, Officers repeatedly and unreasonably either refused to provide her with or deprived her of the following goods, services and facilities, or, alternatively, provided those goods, services and facilities to Ms Walters, in a manner which was calculated to cause discomfort and/or distress to Ms Walters.

(a) toilet paper;

(b) tampons or other products for menstruating persons;

(c) clothing and underwear;

(d) air-conditioning; and

(e) protection from the risk of self-harm.

65B Ms Walters was repeatedly provided with clothing and underwear which was too small for her to wear, despite larger size clothing being available and despite Ms Walters repeatedly complaining that this caused her extreme discomfort due to sensory issues which were a manifestation of her disability.

65C While placed in the CUE Unit, as part of her of being protected against the risk of self-harm, Ms Walters requested that the air-conditioning in her cell be turned up and Officers instead turned off the air-conditioning and turned on the heating and thereafter refused to turn off the heating despite Ms Walters repeated complaints that she was too hot and could not sleep. Ms Walters was ultimately forced to lie on the floor of her cell in an attempt to reduce her body temperature.

65D When Ms Walters was involved in incidents of self-harm whilst she was placed in the Yeeda Unit, she was on numerous occasions escorted to the CUE Unit. In so doing, one male Officer repeatedly chose a route to escort Ms Walters to the CUE unit which made Ms Walters highly visible to other detainees in the Yeeda Unit, thereby embarrassing and humiliating her, despite there being several other equally suitable routes which would not have made Ms Walters so visible and despite Ms Walters repeatedly requesting that an alternate route be used.

65E When placed in the Cue Unit, as part of her of being protected against the risk of self-harm:

- i. Ms Walters was not allowed to keep either toilet paper or tampons or other products for menstruating persons in her cell.
- ii. Ms Walters would request that she be provided with toilet paper or tampons as and when she required those items; and
- iii. Officers regularly either:
  1. denied Ms Walters access entirely to those goods;
  2. only provided her with those goods after an unreasonable amount of time had elapsed; or
  3. in the case of toilet paper, provided her with a meagre or insufficient amount thereof.

65F It is to be inferred from the unreasonableness of the conduct referred to in paragraphs (a) to (e) above, that Officers deliberately caused discomfort to Ms Walters because they disliked her as a consequence of the behavioural manifestations of her disability set out in paragraph 40 above.

65G. While Ms Walters was at Banksia Hill, she was repeatedly mocked, humiliated, disparaged and ignored by Officers whilst attempting to request the provision of goods and/or access to services among those set out at paragraph [to be inserted] above, being:

- a. fabric swatches;
- b. toilet paper;
- c. tampons;
- d. telephone services;
- e. services and facilities for recreation; and
- f. medical services.

65H Ms Walters was repeatedly mocked by Officers through the intercom in her cell after requesting access to toilet paper, tampons, telephone services, services and facilities for recreation and medical services, with Officers ignoring her, falsely mimicking a message stating that no-one was there to take a call and mimicking dog noises to mock Ms Walters because at times, in a manifestation of her disabilities, Ms Walters had acted like a dog.

65I Ms Walters was repeatedly mocked by a male officer who spoke to her in a high pitch with exaggerated intonation in the manner commonly known as “baby talk”, for no apparent reason, as though Ms Walters was incapable of understanding ordinary speech whilst denying her requests to be provided with goods or to access services including fabric swatches, and services and facilities for recreation.

65J Ms Walters was repeatedly mocked by a female officer who made fun of the way Ms Walters spoke and in particular her vocal disfluencies, being how often Ms Walters would use filler words such as “um”, “ah” and “like”, in response to Ms Walters requests for and use of goods and services, including repeatedly playing a recording of a telephone call between Ms Walters and her father to other Officers whilst mocking Ms Walters in Ms Walters’ presence and continuing to do so despite Ms Walters repeated requests that she stop.

65K. By reason of the matters in paragraphs 55 and 65A to 65J above, Officers harassed Ms Walters in relation to her disability in circumstances where Ms Walters sought to acquire goods or services or make use of facilities provided in Banksia Hill, in contravention of s 39 of the DDA.

*Pleading in WAD251 of 2021*

66 As explained at paragraph 12 above, the Ms Walters has already commenced proceedings against the Respondent under s 46PO of the AHRC Act, following the termination of the First Complaint.

67 Ms Walters's claims in that proceeding are set out in the Statement of Claim in that proceeding and in the Proposed Amended Originating Application in that proceeding, both dated 17 May 2023. Copies of those documents are attached to this complaint and marked "A" and "B" respectively.

68 As explained at paragraphs 14 to 17 above, to the extent that any of the unlawful discrimination to which Ms Walters alleges that she and the group members were subjected as set out above or set out in attachments A and B extends beyond the unlawful discrimination set out in the First Complaint, Ms Walters now makes this further complaint in respect of that unlawful discrimination, on her own behalf and on behalf of the group members.

**D. Mr Vida**

69 At all material times during the Relevant Period, Mr Vida has had suffered from schizophrenia and an intellectual disability. These are disabilities within the meaning of the DDA.

69A Mr Vida's schizophrenia and/or intellectual disability is a disorder that affects Mr Vida's thought processes, emotions, behaviour and judgement such that Mr Vida:

a. sometimes behaves in an uninhibited manner, including removing his clothes;

b. appears at times to be irritable, thought-disordered and aggressive;

c. can be paranoid and suspicious; and

d. has difficulty regulating his emotions and behaviour.

70 Mr Vida was detained at BHDC for the following periods:

- a. 7 March 2014 to 8 March 2014;
- b. 9 March 2016 to 10 March 2016;
- c. 11 March 2016 to 12 March 2016;
- d. 29 September 2016 from 1:21 am to 12:23 pm;
- e. 28 November 2016 to 30 November 2016;
- f. 31 July 2017 to 1 August 2017;

- g. 21 March 2018 to 22 March 2018;
- h. 28 March 2018 to 19 April 2018;
- i. 16 April 2019 to 30 April 2019; and
- j. 21 April 2020 to 22 April 2020.

71 While in BHDC, Mr Vida engaged in the following kinds of behaviour that were symptoms or manifestations of his disability:

- a. behaving in a disinhibited manner, including removing his clothes;
- b. being irritable and thought-disordered;
- c. being verbally aggressive and demanding;
- d. being emotionally labile;
- e. failing to follow instructions or commands; ~~and~~

f. damaging property;

g. being violent;

h. going out of bounds; and

f.i. offending Officers.

#### *Unlawful Disability Discrimination*

72 As set out in the First Complaint, Mr Vida alleges that Officers responded to his behaviour, set out in paragraph 71 above, in a punitive manner and that this resulted in Mr Vida frequently being confined to his cell in the Intensive Support Unit (**ISU**), also known as the Harding Unit, and being deprived of access to goods, services or facilities, including visits, telephone calls, medical and psychological treatment, and education. Mr Vida was also specifically goaded and mocked about his disabilities.

73 By way of further elaboration on the matters raised in the First Complaint, Mr Vida alleges as follows.

74 Officers' responses to his behaviour, set out in paragraph 71 above, included:

- a. confining Mr Vida in his cell, particularly in the ISU/Harding Unit;

a1. placing Mr Vida in the ISU/Harding Unit;

- b. restricting Mr Vida's recreation time out of his cell;

b1. restricting Mr Vida's access to goods, services, programs, privileges and facilities, including those set out in paragraph 33 above;

b2. restricting Mr Vida's access to education activities and programs:

- c. the use of force ~~and or~~ threats of force and the use of physical restraints, including handcuffing, against Mr Vida;

c1. subjecting Mr Vida to strip searches:

- d. calling Mr Vida names, including "spastic", "retard", "mental", and "not all right in the head".

75 ~~Officers required Mr Vida to:~~

- ~~a. obey all commands, directions and orders given or made by the Superintendent and Officers;~~
- ~~b. refrain from being verbally aggressive.~~

76 ~~Mr Vida was not able to comply with those requirements as a result of his disabilities.~~

Mr Vida would ~~only~~ have been able to ~~comply with those requirements, or would have been better able to, manage the symptoms and manifestations of his disability described in paragraphs 69A and 71~~ if the CEO, the Superintendent and Officers had made adjustments in dealing with Mr Vida, including by:

- a. providing Mr Vida with appropriate mental health treatment, counselling and support;
- b. providing Mr Vida with appropriate behavioural therapy to assist him to learn to better regulate his emotions and behaviour;
- c. training Officers about schizophrenia and in techniques and approaches to communication with Mr Vida to reduce confrontation and escalation;
- d. providing Mr Vida with an individual behaviour plan to reduce confrontation and escalation;
- e. providing Mr Vida with an appropriate individual support worker to assist him in his interactions with Officers and detainees;

(collectively, the **Vida Reasonable Adjustments**)

76A Had some or each of the Vida Reasonable Adjustments been made, Mr Vida:

- a. would not have been subjected to the matters described in paragraph 74 above;

b. would have been able to access and would have attended education activities at BHDC; and

c. would have been able to access and would have accessed the goods and services described in paragraph 33 above.

77 ~~These kinds of~~The Vida Reasonable Adjustments were not made for Mr Vida, notwithstanding his evident need for those kinds of adjustments by reason of his disabilities. As a result, he was wrongly characterised as wilfully recalcitrant and subject to punitive responses and thereby disadvantaged.

78 ~~The requirements referred to in paragraph 75 were not reasonable having regard to the circumstances of the case.~~

#### Direct Discrimination

78A By reason of the matters in paragraphs 69 to 77 above, Western Australia, through the conduct of the CEO, the Superintendent and Officers, discriminated against Mr Vida within the meaning of section 5 of the DDA on the ground of Mr Vida's schizophrenia and intellectual disability in that the State:

a. did not make the Vida Reasonable Adjustments; and

b. the failure to make the Vida Reasonable Adjustments had, or would have, the effect that Mr Vida was, because of his schizophrenia and intellectual disability, treated less favourably than a person without schizophrenia and intellectual disability was or would be treated in circumstances that were not materially different.

#### Indirect discrimination DDA s 6(2)

78B In the alternative to paragraph 77A above, by reason of the matters in paragraphs 68 to 77, Western Australia, through the conduct of the CEO Superintendent and Officers, discriminated against Mr Vida within the meaning of section 6(2) of the DDA on the ground of Mr Vida's schizophrenia and intellectual disability in that:

(a) Western Australia required Mr Vida to comply with the Behavioural Regime;

(b) because of Mr Vida's schizophrenia and intellectual disability, Mr Vida was only able to comply with the Behavioural Regime if the Vida Reasonable Adjustments were made;

(c) Western Australia did not make the Vida Reasonable Adjustments;

(d) the failure to make the Vida Reasonable Adjustments had, has, was likely to have or is likely to have the effect of disadvantaging Mr Vida.

*Discrimination in Relation to Education – s 22 DDA; ~~s 37 DDA~~*

78C By reason of the matters in paragraphs 34 and 78A, or alternatively, 34 and 78B, and the matters in paragraphs 79 to 80A below, Mr Vida was disadvantaged in his access to and enjoyment of education or was subjected to detriment in relation to his enjoyment of the benefit of education.

79 When Mr Vida was confined to his cell, including in the ISU, Mr Vida was not permitted to attend school and given no access to education or rehabilitation programs. He was thereby denied access to the benefit of education, contrary to s 22 of the DDA.

80 In the extremely limited circumstances in which education was provided to Mr Vida, Mr Vida was provided educational packs which consisted of educational materials that were not tailored to his level of competence- and attainment. Further, he was not provided with any specific assistance as a result of his disability, including specialist expertise, personal educational support and/or support for personal and medical care. He was thereby subjected to detriment in relation to his education, including in relation to his access to and his effective enjoyment of the benefit of education contrary to s 22 of the DDA.

80A Mr Vida required the following specialised support services to accommodate his disability and enable him to participate in educational activities provided at BHDC:

a. mental health treatment, counselling and support;

b. behavioural therapy to assist him to learn to and to better regulate his emotions and behaviour;

c. an appropriately qualified support worker to assist Mr Vida in his interactions with Officers and detainees.

*Harassment in Education – s 37 DDA*

81 Staff at BHDC regularly called Mr Vida names including “spastic”, “retard”, “mental”, and “not all right in the head”. Staff repeatedly used these names to describe Mr Vida despite it being reasonably foreseeable that the use of such names would have the effect of offending, insulting or humiliating him, and in spite of his repeated complaints. Mr Vida was thereby subjected to harassment on the basis of his disability, contrary to s 37 of the DDA.

### *Contravention of DSE*

82 By reason of Mr Vida being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 78 above, Mr Vida was prevented from participating in education on the same basis as a student without a disability, ~~in contravention~~within the meaning of Part 5 of the DSE and in particular section 5.2.

81A Alternatively, by reason of the matters in paragraph 78 above, Mr Vida was unable to seek admission to or to apply for enrolment in education offered within BHDC, within the meaning of Part 4 of the DSE and in particular section 4.2.

83 By reason of Mr Vida being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 80 above, Mr Vida was prevented from participating in ~~education~~the learning experiences of the courses and programs offered at BHDC on the same basis as a student without a disability ~~in contravention~~within the meaning of Part 6 of the DSE and in particular section 6.2.

84 By reason of Mr Vida being denied access to specialised support services to accommodate his disability, as set out in paragraphs 79 and 80A above, Mr Vida was prevented from participating in education on the same basis as a student without a disability, ~~in contravention~~within the meaning of Part 7 of the DSE and in particular section 7.2.

85 Mr Vida would have been ~~able~~assisted in seeking admission to participate or enrolment in education at BHDC and in his participation in education and in the learning experiences of courses and programs within BHDC if adjustments had been made for him by reason of his disability, including:

- a. appropriately assessing Mr Vida's literacy and numeracy competency on admission to BHDC;
- b. developing a curriculum, learning plan and other educational material tailored to Mr Vida's competency level, designed to encourage Mr Vida's participation and accommodate his style of learning;
- c. taking steps to adjust the materials or the mode of education provided to Mr Vida (in the extremely limited circumstances in which any education was even provided) to accommodate his disability; and
- d. taking steps to arrange for and/or facilitate the provision of specialised support services to Mr Vida to accommodate his disability.

86 However, in contravention of Parts 3, 5, 6 and 7 of the DSE ~~and in particular sections 3.5, 3.6 and 3.7 of the DSE:~~

- a. adjustments, including those set out in paragraph 85 above, were not made for Mr Vida, at all or within a reasonable time; in contravention of sections 5.2, 6.2, 7.2 and 3.7 of the DSE;
- b. Mr Vida was not consulted about the making of adjustments, including those set out in adjustments of the kind set out in paragraph 85 above, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE; and
- ~~b-c.~~ either no decision was made about the making of reasonable adjustments for Mr Vida, including adjustments of the kind set out at paragraph 84 above, or alternatively, a decision was made not to make those kinds of adjustments or any other adjustments, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE.

86A By reason of the matters in paragraphs 82 to 86 above, the State of Western Australia failed to take reasonable steps to ensure that Mr Vida:

- a. was able to seek admission to, or apply for enrolment in education offered in BHDC on the same basis as a prospective student without a disability, and without experiencing discrimination, as required by section 4.2 of the DSE;
- b. was able to participate in education on the same basis as a student without a disability, as required by section 5.2 of the DSE;
- c. was able to participate in the learning experiences of course and programs within BHDC on the same basis as a student without a disability, as required by section 6.2 of the DSE.

86B To the extent that the specialised support services referred to in paragraph 80A were of a kind provided by Western Australia at BHDC, Western Australia failed to take reasonable steps to ensure that Mr Vida had access to the service in contravention of s 7.2(2) of the DSE.

86C. To the extent that the specialised support services referred to in paragraph 80A were of a kind not provided by Western Australia at BHDC, Western Australia failed to take reasonable steps to facilitate the provision by another person or agency of the support services referred to in paragraph 80A to Mr Vida in contravention of s 7.2(3) of the DSE.

86D In contravention of s 7.2(6) of the DSE, Mr Vida was not consulted about his need for specialist support services of the kind referred to in paragraph 80A.

87 By reason of the Officers' conduct set out in paragraph 81 above, Mr Vida was harassed on the basis of his disability. In contravention of section 8.3 of the DSE, Western Australia as the education provider:

- a. failed to implement strategies to prevent Mr Vida from being harassed;
- b. failed to take appropriate action after the harassment occurred; and
- c. failed to ensure that appropriate and adequate complaint mechanisms were available to Mr Vida.

87A By reason of the matters in paragraphs 82 to 87, Western Australia contravened s 32 of the DDA.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

88 By reason of the ~~conduct of Officers~~matters set out in paragraphs ~~74~~33 and 78A, or alternatively, 33 and 78B above ~~and paragraphs 89 to 92 below~~, Mr Vida was disadvantaged in his access to the facilities and services provided in detention, set out in paragraph 33 above. Mr Vida was not permitted access to goods, services and facilities outside the ISU, including some or all of the canteen goods and sport and recreation facilities and equipment services referred to in paragraph 33 above, and was thereby disadvantaged.

89 Mr Vida was also disadvantaged by being subjected to unjustified and unlawful uses of force and handcuffing on numerous occasions.

90 Further, Officers called Mr Vida “spastic”, “retard”, “mental”, and “not all right in the head” and would not have done so had they been dealing with a detainee who did not have schizophrenia or an intellectual disability. Officers thereby engaged in differential treatment of Mr Vida, which disadvantaged him.

91 Mr Vida was subject to confinement, the unlawful use of force and handcuffing on many occasions as set out above. It is to be inferred from the conduct of Officers in specifically abusing Mr Vida on the basis of his disability that they also engaged in that unlawful conduct towards Mr Vida by reason of his disability and would not have treated a person without a disability in the same manner.

92 Mr Vida was thus discriminated against by Officers who treated him less favourably than they would have treated a person without Mr Vida's disability in circumstances that were not materially different.

Harassment in Relation to the Provision of Goods and Services – s 39 DDA

92A By reason of the matters in paragraph 90 above, Officers harassed Mr Vida in relation to his disability in circumstances where Mr Vida was sought to acquire goods and services or use facilities, being those referred to in paragraph 33 above. The Officers thereby contravened s 39 of the DDA.

*Pleading in WAD251 of 2022*

93 As explained at paragraph 12 above, Mr Vida has already commenced proceedings against the Respondent under s 46PO of the AHRC Act, following the termination of the First Complaint.

94 Mr Vida's claims in that proceeding are set out in the Statement of Claim in that proceeding and in the Proposed Amended Originating Application in that proceeding, both dated 17 May 2023. Copies of those documents are attached to this complaint and marked "A" and "B" respectively.

95 As explained at paragraphs ~~14 to~~ 17 above, to the extent that any of the unlawful discrimination to which Mr Vida alleges that he and the group members were subjected as set out above extends beyond the unlawful discrimination set out in the First Complaint, Mr Vida now makes this further complaint in respect of that unlawful discrimination, on his own behalf and on behalf of the group members.

E. [REDACTED]

96 [REDACTED] has a neurological injury sustained in a motorcycle accident, as well as a cognitive impairment, language disorder, severe claustrophobia and suicidal ideation. These are disabilities within the meaning of the DDA.

96A [REDACTED] disabilities, set out in paragraph 96 above, are disorders that affect [REDACTED] [REDACTED] thought processes, emotions, behaviour and judgement such that:

- a. [REDACTED] often has difficulty regulating his emotions and behaviour;
- b. when confronted with peremptory, complex or unpleasant commands, he is likely to react with heightened emotional and physical responses;
- c. he can appear to be irritable, thought disordered and aggressive; and
- d. he can be paranoid and suspicious.

96B [REDACTED] was detained from time to time in youth detention from 2019 onwards.

97 [REDACTED] was initially detained at BHDC but on 20 July 2022, [REDACTED] was transferred from BHDC to Unit 18 at Casuarina Prison, which otherwise housed only adult prisoners.

- 98 [REDACTED] was detained at Unit 18 for the following periods:
- a. 20 July 2022 to 23 August 2022,
  - b. 28 September 2022 to 16 December 2022.
- 99 [REDACTED] was then detained at BHDC between 3 January 2023 and May 2023. He was then transferred again to Unit 18, where he remained until 16 August 2023, when he was transferred back to BHDC for two days until returning to Unit 18 on 18 August 2023 until 17 October 2023, at which time he was again transferred back to BHDC, where he remains detained to the present day.
- 100 While in detention at each place, [REDACTED] has spent a significant amount of his time placed within:
- a. the ISU at BHDC; and
  - b. the MPU at Unit 18.
- 101 While in BHDC, [REDACTED] engaged in the following kinds of behaviour that were a symptoms or manifestations of his disability:
- a. destroying property;
  - b. self-harming;
  - c. exhibiting a lack of thought and/or concern for the consequences of his actions;
  - d. difficulty controlling his impulses;
  - e. difficulty refraining from the above behaviour;
  - f. difficulty regulating his emotions; and
  - g. refusing to follow instructions;
  - h. being verbally aggressive;
  - i. being violent;
  - j. going out of bounds; and
  - k. annoying officers.

#### *Unlawful Disability Discrimination*

- 102 As set out in the Second Complaint, [REDACTED] was subjected to confinement in his cell for extended periods, which exacerbated his mental illness. He was not provided with appropriate therapeutic support or treatment.

103 By way of further elaboration on the matters raised in the Second Complaint, [REDACTED] alleges as follows.

104 [REDACTED] disabilities meant that he had significant difficulty coping with protracted periods of lockdown in his cell and his resultant limited access to programs, activities, and socialisation. These factors trigger feelings of boredom, frustration, isolation, distress, and desperation, acts of self-harm and attempted suicide. His confinement in his cell within Unit 18 thus exacerbated the manifestations of his disabilities described at paragraph 101 above.

105 Officers' responses to [REDACTED] behaviour, set out in paragraph 101 above, included:

a. confining him in his cell;

a1. placing him in the ISU or MPU:

b. restricting his recreation time out of his cell;

c. the use of force or threatened use of force and restraints, including three-point restraints, rip proof garments and handcuffing;

d. subjecting him to strip searches;

d1. removing him from or restricting his access to education activities and programs; and

e. denying or restricting his access to goods, services, privileges and facilities, including education and other programs, those set out in paragraph 33 above.

106 ~~Officers required [REDACTED] to:~~

~~a. obey all commands, directions and orders given or made by the Superintendent and Officers;~~

~~b. refrain from being verbally aggressive; and~~

~~c. refrain from damaging property.~~

107 ~~[REDACTED] was not able to comply with those requirements as a result of his disabilities. [REDACTED] would only have been able to comply with those requirements, or would have been better able to, manage the symptoms and manifestations of his disability, described in paragraph 101,~~ if the CEO, the Superintendent and Officers had made adjustments in dealing with [REDACTED], including by:

a. providing [REDACTED] with appropriate mental health treatment, counselling and support;

- b. providing [REDACTED] with appropriate behavioural therapy to assist him to learn to better regulate his emotions and behaviour;
- c. training Officers about neurological injury and in techniques and approaches to communicating with [REDACTED] to reduce confrontation and escalation;
- d. providing [REDACTED] with an individual behaviour plan to reduce confrontation and escalation;
- e. providing [REDACTED] with an appropriate individual support worker to assist him in his interactions with Officers and detainees.

(collectively, the [REDACTED] Reasonable Adjustments).

107A Had some or each of the [REDACTED] Reasonable Adjustments been made, [REDACTED]:

- a. would not have been subjected to the matters described in paragraph 105;
- b. would have been able to access and would have attended education activities at BHDC and Unit 18; and
- c. would have been able to access and would have accessed the goods, services and facilities described in paragraph 33.

108 ~~Those kinds of The [REDACTED] Reasonable aAdjustments or adjustments of their kind~~ were not made for [REDACTED] notwithstanding his evident need for those kinds of adjustments by reason of his disabilities. As a result, he was wrongly characterised as wilfully recalcitrant and subject to punitive responses and thereby disadvantaged.

109 The requirements referred to in paragraph 106 were not reasonable having regard to the circumstances of the case.

110 For example, between 21 July 2022 and 19 August 2022, [REDACTED] was confined to his cell for a total of 203 hours and 54 minutes, or an average of 7 hours and 50 minutes per day, in addition to the 13 hours of standard night-time lockdown between the hours of 18:45 and 07:45. During this period, [REDACTED] therefore spent a daily average of 20 hours and 50 minutes locked down in his cell.

111 ~~[REDACTED] disabilities mean he has significant difficulty coping with protracted periods of lockdown and consequential limited access to programs, activities, and socialisation. This difficulty triggers feelings of boredom, frustration, isolation, distress, and desperation, acts of self harm and attempted suicide.~~

Direct Discrimination

111A By reason of the matters in paragraphs 95 to 110 above, Western Australia, through the conduct of the CEO, the Superintendent and Officers, discriminated against [REDACTED] within the meaning of section 5 of the DDA on the ground of [REDACTED] disabilities referred to in paragraph 95 above in that Western Australia:

- a. did not make the [REDACTED] Reasonable Adjustments; and
- b. the failure to make the [REDACTED] Reasonable Adjustments had, or would have, the effect that [REDACTED] was, because of his disabilities referred to in paragraph 95 above, treated less favourably than a person without those disabilities was or would be treated in circumstances that were not materially different.

*Indirect discrimination*

111B. In the alternative to paragraph 111A above, by reason of the matters in paragraphs 95 to 110, Western Australia, through the conduct of the CEO Superintendent and Officers, discriminated against [REDACTED] within the meaning of section 6(2) of the DDA on the ground of [REDACTED] disabilities referred to in paragraph 95 above in that:

- (a) Western Australia required [REDACTED] to comply with the Behavioural Regime;
- (b) because of [REDACTED] disabilities referred to in paragraph 95 above, [REDACTED] was only able to comply with the Behavioural Regime if the [REDACTED] Reasonable Adjustments were made;
- (c) Western Australia did not make the [REDACTED] Reasonable Adjustments;
- (d) the failure to make the [REDACTED] Reasonable Adjustments had, has, was likely to have or is likely to have the effect of disadvantaging [REDACTED].

*Discrimination in Relation to Education – s 22 DDA; ~~s 37 DDA~~*

111C By reason of the matters in paragraphs 34 and 111A, or alternatively 34 and 111B, and the matters in paragraphs 112 to 113A below, [REDACTED] was disadvantaged in his access to and enjoyment of education or was subjected to detriment in relation to his enjoyment of the benefit of education.

112 When [REDACTED] was confined to his cell and placed in the ISU and MPU for extended periods, he was not permitted to attend school and given no access to education or rehabilitation programs. In fact, [REDACTED] detention management report indicates that he received no hours of education in 2022. He was thereby denied access to the benefit of education, contrary to s 22 of the DDA.

113 To the extent that [REDACTED] has received education while detained in Unit 18, it has comprised of limited face-to-face education. For the most part, [REDACTED] was supplied with an education pack while confined to his cell. The education pack consisted of general worksheets that were not tailored to [REDACTED] level of competence. Further, [REDACTED] was not provided with any specific assistance as a result of his disability. Instead, the teacher spent minimal time speaking with [REDACTED] from outside his cell door. [REDACTED] was thereby denied access to the benefit of education, contrary to s 22 of the DDA.

113A. [REDACTED] required the following specialised support services to accommodate his disability and enable him to participate in educational activities provided at BHDC:

a. mental health treatment, counselling and support;

b. behavioural therapy to assist him to learn to and to better regulate his emotions and behaviour;

c. an appropriately qualified support worker to assist [REDACTED] in his interactions with Officers and detainees.

#### Harassment in Education – s37 DDA

114 In the limited circumstances in which education was provided to [REDACTED] outside of his cell at Unit 18, [REDACTED] was handcuffed for the duration of the class. In addition to restricting [REDACTED] access to the benefit of education, contrary to s 22 of the DDA, the act of forcing [REDACTED] to participate in class, whilst being handcuffed, ~~had~~ the effect of was humiliating, offending, intimidating and ~~or~~ distressing for [REDACTED]. It marked [REDACTED] was thereby subjected as apparently dangerous in front of other detainees and the teacher. Given the repeated nature of the conduct and the unreasonableness of requiring [REDACTED] to be handcuffed on those occasions, [REDACTED] treatment constitutes harassment in education on the part of the Officers, contrary to s 37 of the DDA.

#### Contravention of DSE

115 By reason of [REDACTED] being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 112 above, [REDACTED] was prevented from participating in education on the same basis as a student without a disability, ~~in~~ contravention within the meaning of Part 5 of the DSE and in particular section 5.2.

116 By reason of [REDACTED] being provided with a curriculum and educational materials which were not tailored to his level of competence, as set out in paragraph 112 above, [REDACTED] was not allowed able to participate in education the learning experiences of

[courses and programs offered at BHDC](#) on the same basis as a student without a disability, ~~in contravention~~ [within the meaning](#) of Part 6 of the DSE and in particular section 6.2.

117 By reason of [REDACTED] being denied access to specialised support services to accommodate his disability, as set out in paragraph 112 [and 113A](#) above, [REDACTED] was prevented from participating in education on the same basis as a student without a disability, ~~in contravention~~ [within the meaning](#) of Part 7 of the DSE and in particular section 7.2.

118 [REDACTED] would have been able to participate in education if adjustments had been made for him by reason of his disability, including:

- a. appropriately assessing [REDACTED] literacy and numeracy competency on admission to BHDC;
- b. developing a curriculum, learning plan and other educational material tailored to [REDACTED] competency level, designed to encourage [REDACTED] participation and accommodate his style of learning;
- c. taking steps to arrange for and/or facilitate the provision of specialised support services to [REDACTED] to accommodate his disability;
- d. providing sufficient access to teachers and substitute teachers; and
- e. adjusting the materials, or the mode of education provided to [REDACTED] (in the limited circumstances in which any education was even provided) to accommodate his disability.'

119 However, in contravention of Parts [3, 5, 6 and 7](#) of the DSE ~~and in particular section 3.5, 3.6 and 3.7~~:

- a. adjustments, including those set out in paragraph 118 above, were not made for [REDACTED] at all or within a reasonable time; ~~and, in contravention of sections 5.2, 6.2, 7.2 and 3.7 of the DSE~~;
- b. [REDACTED] was not consulted about the making of adjustments, including ~~those adjustments of the kind~~ set out in paragraph 118 above, notwithstanding the evident need for adjustments to be made to accommodate the behavioural manifestations of his disability-, [in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE](#);

120 By reason of the Officers' conduct set out in paragraph 114 above, [REDACTED] was harassed on the basis of his disability. In contravention of section 8.3 of the DSE, the

State of Western, the CEO, the Superintendent and the Officers failed to implement strategies to prevent [REDACTED] from being harassed and failed to take appropriate action after the harassment occurred.

120A By reason of the matters in paragraphs 115 to 120 above, the State of Western Australia contravened s 32 of the DDA.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

121 When [REDACTED] was confined in his cell and placed in the ISU in BHDC, he was disadvantaged in his access to the facilities and services provided in detention, set out in paragraph 33 above.

122 When [REDACTED] was confined in his cell and placed in the MPU in Unit 18, he was disadvantaged in his access to the facilities and services provided in detention, set out in paragraph 33 above.

123 ~~Thus, in~~In addition to being confined in his cell, [REDACTED] was regularly subjected to punishments, including in response to suicide attempts and incidents of self-harm, involving the loss of privileges and/or program placements, including restricting [REDACTED] access, either in part or in full to:

- a. a television or radio;
- b. educational worksheets or other reading material;
- c. education or rehabilitation programs;
- d. sport, exercise, games or recreation;
- e. the ability to eat or socialise with other detainees;
- f. in-person contact with visitors or any other person aside from custodial staff;
- g. telephone contact with family members;
- h. a towel, shampoo, bodywash, toothbrush or other hygiene products;
- i. the opportunity to take a shower.

124 These punishments further exacerbated manifestations of [REDACTED] disabilities, which were treated by Officers as incidents of poor behaviour rather than as manifestations of a disability, precipitating a rapid decline in the mental and physical health of [REDACTED]. In one instance, [REDACTED] fashioned a noose out of the rip-proof gown he was forced to wear. Officers responded by removing the gown, and then left [REDACTED] naked, in solitary confinement in an MPU cell, with only a rip-proof doona for comfort.

125 On another occasion, by reason of being wrongly characterised as wilfully recalcitrant, [REDACTED] was subjected to punitive uses of force such as being folded up, including on one occasion being folded up so as to cause such extreme pain to his neck that he was then taken to hospital for an X-ray.

126 [REDACTED] was frequently subject to routine and excessive uses of force including the use of restraints, strip searches and solitary confinement. On one occasion, [REDACTED] was forced to eat dinner while still in a three-point restraint, for no justifiable reason. This was inhumane and degrading and amounted to forcing [REDACTED] to eat like an animal.

126A By reason of the matters in paragraphs 33 and 111A, or alternatively, 33 and 111B above and in paragraphs 122 to 126 above, [REDACTED] was disadvantaged in his access to some or all of the goods, services and facilities referred to in paragraph 33 above.

Harassment in relation to goods, services and facilities - s 39 DDA

126B On some occasions, the extent of repeated deprivation to which [REDACTED] was subjected in response to requests to access goods, services and facilities within those referred to at paragraph 33 above, and the unreasonableness of Officers doing so, is such that that conduct constitutes harassment within the meaning of the DDA.

126C For example, [REDACTED] was repeatedly ignored while requesting access to medical services and recreation. [REDACTED] informed Officers that he was unable to cope with his continued detention and required access to support services, or goods, services and facilities for recreation or entertainment (among those referred to in paragraph 33 above) and that he would attempt suicide if he continued to be deprived of access to them. Officers unreasonably ignored [REDACTED], refused to allow him access to the requested goods, services and facilities and stripped [REDACTED] naked and left him in a rip-proof gown. That conduct, and the similar conduct referred to in paragraph 124 above, are examples of Officers harassing [REDACTED] on the ground of his disabilities when he sought to acquire goods and services, contrary to s 39 of the DDA.

*Unlawful Age Discrimination*

127 As set out in the Second Complaint, after being moved to Unit 18, [REDACTED] was denied access to family visits and telephone calls and to educational programs.

128 By way of further elaboration on the matters raised in the Second Complaint, [REDACTED] alleges as follows.

- 129 While confined in Unit 18, ██████████ has had extremely limited access to services and facilities as compared both to detainees at BHDC and prisoners within the adult population at Casuarina Prison. ██████████ was regularly unable to access services and facilities provided in Casuarina Prison by reason of it being an adult facility and his status as a child detainee under the YOA.
- 130 Even when ██████████ was not confined within his cell while detained in Unit 18, he still received little to no access to education or any programs for rehabilitation by reason of the failure by the CEO, Superintendent and/or Officers to:
- a. provide sufficient access to teachers and substitute teachers;
  - b. adequately resource education at Unit 18;
  - c. adequately staff Unit 18 to facilitate the minimum 9.8 hours out of cell each day required for standard program delivery.
- 131 When ██████████ has received education in Unit 18, it has been limited to the provision of simplistic worksheets and has not included face-to-face education. ██████████ has not been informed when, if ever, or on what conditions, he may be able to access face-to-face education during the continuation of his detention.
- 132 He has thereby been disadvantaged in his access to education by reason of his age.
- 133 Further, for the reasons referred to in paragraph 129 above, ██████████ has been disadvantaged in his ability to access services and facilities, including facing ongoing difficulties in accessing psycho-social supports such as:
- a. face-to-face visits with his aunt ██████████;
  - b. e-visits with family and friends;
  - c. access to psychologists, mentors, and other non-custodial staff, due to a lack of confidential spaces in which to speak; and
  - d. when welfare checks and/or psychological assessments did occur, being subjected to them being completed through a grille on the door of his cell.
- 134 ██████████ has also been denied access to rehabilitation programs, which have on occasion been scheduled for detainees, but have subsequently been cancelled without explanation (a circumstance which is itself debilitating for a detainee relying on such programs). He has not been able to access a cognitive behavioural therapy program, as all three scheduled sessions were cancelled, as was a program based on engagement with youths through Hip Hop music. ██████████ has ultimately been

entirely prevented from engaging in any formal rehabilitation programs while detained at Unit 18.

Direct Discrimination

134A By reason of the matters in paragraphs 127 to 134 above, [REDACTED] was treated less favourably than adult persons imprisoned within Casuarina Prison by reason of his age. In the premises, the State of Western Australia discriminated against [REDACTED] on the ground of his age within the meaning of s 14 of the ADA.

Indirect Discrimination

134B In the alternative to paragraph 134A, [REDACTED] makes the claims at paragraphs 134C to 134F below.

134C. Throughout [REDACTED] detention at Unit 18, it was a condition of his detention, or alternatively it was a practice imposed by the State of Western Australia that:

- a. [REDACTED] serve his period of detention in a facility located within an adult prison, which did not provide access to the goods, services and facilities available in BHDC, as set out in paragraph 33 above; and
- b. [REDACTED] not be permitted to access any of the equivalent goods, services or facilities within Casuarina Prison, by reason of his age.

134D. Imposing the conditions referred to in paragraph 134C:

- a. had the effect of disadvantaging [REDACTED] by reason of the matters in paragraphs 25 to 31A and 129 to 134; and
- b. was likely to have the effect of disadvantaging other persons who were of the same age as [REDACTED] for reasons analogous to the matters in paragraphs 25 to 31A and 129 to 134.

134E The condition or practice referred to in paragraph 134C was not reasonable having regard to the circumstances of the case.

134F By reason of the matters in paragraphs 127 to 134E, Western Australia discriminated against [REDACTED] on the ground of his age within the meaning of s 15 of the ADA.

135 As explained at paragraph 13 above, [REDACTED] commenced proceedings under s 46PO of the AHRC Act, following the termination of the Second Complaint.

136 As explained at paragraph ~~14~~ 17 above, to the extent that any of the unlawful discrimination to which [REDACTED] alleges that he and the group members were subjected, as set out above, extends beyond the unlawful discrimination set out in the

Second Complaint, [REDACTED] now makes this further complaint in respect of that unlawful discrimination, on his own behalf and on behalf of the group members.

F. [REDACTED]

137 [REDACTED] has attention deficit hyperactivity disorder (**ADHD**) with prominent inattention, anxiety, panic attacks, oppositional defiance traits, executive functioning problems, and social skills difficulties- and conduct disorder. These are disabilities within the meaning of the DDA.

137A [REDACTED] disabilities, set out in paragraph 137 above, are disorders that affect [REDACTED] thought processes, emotions, behaviour and judgement such that [REDACTED] :

a. often has difficulty regulating his emotions and behaviour;

b. when confronted with peremptory, complex or unpleasant commands or when reacting to stress, boredom, anger, and frustration, he is likely to react with heightened emotional and physical responses;

c. can appear to be irritable, thought disordered and aggressive;

d. can be paranoid and suspicious.

138 [REDACTED] was detained in a juvenile justice facility ~~for the following periods:~~

a0. from time to time from about September 2019 until November 2021;

a. from 5 November 2021 to 8 September 2022; and

b. from 17 October 2022 to ~~the present~~ 7 August 2023

139 [REDACTED] was initially detained at BHDC. On 20 July 2022 he was transferred from BHDC to Unit 18 at Casuarina Prison, which otherwise housed only adult prisoners.

140 Since 20 July 2022, [REDACTED] has spent the following periods at each place:

a. at BHDC:

i. 10 August 2022 to 15 August 2022; and

i. 13 January 2023 to 27 January 2023;

b. Unit 18

i. 20 July 2022 to 10 August 2022;

ii. 15 August 2022 to 8 September 2022;

iii. 17 October 2022 to 13 January 2023; and

iv. 27 January 2023 to ~~the present~~ 7 August 2023.

141 While in detention at each place, [REDACTED] has spent a significant amount of his time placed within:

- a. the ISU at BHDC;
- b. the MPU at Unit 18.

142 [REDACTED] disabilities manifest themselves in various ways, including in behaviour consistent with pyromania, kleptomania, oppositional defiant disorder, and impulse control disorder. [REDACTED] disabilities affect his ability to cope with stress, boredom, anger, and frustration.

143 While in BHDC and Unit 18, [REDACTED] engaged in the following kinds of behaviour that were symptoms or manifestations of his disability:

- a. setting fires;
- b. destroying others' property;
- c. lack of thought and/or concern for the consequences of his actions;
- d. difficulty controlling his impulses;
- e. difficulty refraining from the above behaviour;
- f. difficulty regulating his emotions;
- g. self-harming; and
- h. refusing to follow instructions;
- i. being violent or verbally aggressive;
- j. going out of bounds; and
- j-k. being rude to, annoying or offending Officers.

#### *Unlawful Disability Discrimination*

144 [REDACTED] has been confined to his cell for extended periods and subjected to other punishments and disadvantageous treatment as a result of Officers enforcing disciplinary policies which were and are unsuitable for [REDACTED] because of his disabilities.

145 Officers responded to the behaviour of [REDACTED] as described in paragraphs 142 and 143 above by:

- a. the use of force and threats of use of force against him;

- b. the use of restraints including handcuffs, leg shackles and three-point restraints, including requiring [REDACTED] to be handcuffed for all movements with BHDC [and Unit 18](#);
- c. placing [REDACTED] in the ISU or MPU for extended periods;
- d. confining [REDACTED] in his cell for extended periods, particularly in the ISU or MPU;

[d1. restricting his access to goods, services, privileges and facilities including those set out in paragraph 33 above;](#)

- e. subjecting [REDACTED] to strip searches; and
- f. denying or restricting his access to education and programs.

146 ~~While he has been at BHDC and Unit 18, the Superintendent and Officers have imposed the following requirements or conditions on [REDACTED]:~~

- ~~a. to obey all commands, directions and orders given or made by the Superintendent and Officers;~~
- ~~b. to refrain from self harm;~~
- ~~c. to refrain from damaging property.~~

147 ~~[REDACTED] was not able to comply with those requirements as a result of his disabilities. [REDACTED] would [only have been able to, or would have been better able to comply with those requirements, manage the symptoms and manifestations of his disability, described in paragraphs 142 and 143,](#) if the CEO, the Superintendent and Officers had made adjustments in dealing with [REDACTED], including by:~~

- a. providing [REDACTED] with appropriate mental health treatment, counselling and support;
- b. providing [REDACTED] with appropriate behavioural therapy to assist him to learn to better regulate his emotions and behaviour;
- c. training Officers about ADHD and in techniques and approaches to communicating with [REDACTED] to reduce confrontation and escalation;
- d. providing [REDACTED] with an individual behaviour plan to reduce confrontation and escalation;
- e. providing [REDACTED] with an appropriate individual support worker to assist him in his interactions with Officers and detainees;

(collectively, the ~~██████████~~ Reasonable Adjustments).

147A ~~Had some or each of the~~ ██████████ Reasonable Adjustments been made, ~~██████████~~ :

- a. would not have been subjected to the matters described in paragraph 145;
- b. would have been able to access and would have attended education activities at BHDC and Unit 18; and
- c. would have been able to access and would have accessed the goods, services and facilities described in paragraph 33.

148 ~~Those kind of~~The ~~██████████~~ Reasonable aAdjustments were not made for ~~██████████~~ , notwithstanding his evident need for those kinds of adjustments by reason of his disabilities. As a result, he was wrongly characterised as wilfully recalcitrant and subjected to punitive responses, and thereby disadvantaged.

149 ~~The requirements referred to in paragraph 147 were not reasonable having regard to the circumstances of the case.~~

#### Direct Discrimination

149A By reason of the matters in paragraphs 137 to 148 above, Western Australia, through the conduct of the CEO, the Superintendent and Officers, discriminated against ~~██████████~~ within the meaning of section 5 of the DDA on the ground of ~~██████████~~ disabilities set out in paragraph 137 above in that Western Australia:

- a. did not make the ~~██████████~~ Reasonable Adjustments; and
- b. the failure to make the ~~██████████~~ Reasonable Adjustments had, or would have, the effect that ~~██████████~~ was, because of his disabilities set out in paragraph 137 above, treated less favourably than a person without his disabilities set out in paragraph 137 above was or would be treated in circumstances that were not materially different.

#### Indirect discrimination

149B. In the alternative to paragraph 148A above, by reason of the matters in paragraphs 137 to 148, Western Australia, through the conduct of the CEO Superintendent and Officers, discriminated against ~~██████████~~ on the ground of ~~██████████~~ disabilities set out in paragraph 137 above in that:

- (a) Western Australia required ~~██████████~~ to comply with the Behavioural Regime;

- (b) because of [REDACTED] disabilities set out in paragraph 137 above, [REDACTED] was only able to comply with the Behavioural Regime if the [REDACTED] Reasonable Adjustments were made;
- (c) Western Australia did not make the [REDACTED] Reasonable Adjustments;
- (d) the failure to make the [REDACTED] Reasonable Adjustments had, has, was likely to have or is likely to have the effect of disadvantaging [REDACTED].

*Discrimination in Relation to Education – s 22 DDA*

149C By reason of the matters in paragraphs 34 and 149A, or alternatively 34 and 149B, and the matters in paragraphs 150 to 151A below, [REDACTED] was disadvantaged in his access to and enjoyment of education or was subjected to detriment in relation to his enjoyment of the benefit of education.

150 [REDACTED] was confined in his cell and placed in the ISU and MPU for extended periods. When he was so confined, he was either not permitted to attend school or given no access to education. [REDACTED] was also subjected to a lack of routine in his education and rehabilitation. He was thereby disadvantaged in his access to, and effective enjoyment of, the benefit of education, contrary to s 22 of the DDA.

151 When [REDACTED] did receive education, it was extremely basic education regarding literacy and numeracy which did not advance [REDACTED] level of educational attainment. The curriculum was haphazardly applied and there was little to no continuity between lessons, making it almost impossible for [REDACTED] to gain any benefit from the limited education provided. Further, he was not provided with any specific assistance as a result of his disability, including specialist expertise, personal educational support and/or support for personal and medical care. He was thereby subjected to detriment in relation to his enjoyment of the benefit of education contrary to s 22 of the DDA.

151A [REDACTED] required the following specialised support services to accommodate his disability and enable him to participate in educational activities provided at BHDC and at Unit 18:

a. mental health treatment, counselling and support;

b. behavioural therapy to assist him to learn to, and to, better regulate his emotions and behaviour;

c. an appropriately qualified support worker to assist [REDACTED] in his interactions with Officers and detainees.

### *Contravention of DSE*

152 By reason of ██████ being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 150 above, ██████ was prevented from participating in education on the same basis as a student without a disability, ~~in contravention~~within the meaning of Part 5 of the DSE and in particular section 5.2.

153 By reason of ██████ being provided with a curriculum and educational materials which were below his level of competence, as set out in paragraph 150 above, ██████ was not ~~allowed~~able to participate in ~~education~~the learning experiences of the courses and programs offered in youth detention on the same basis as a student without a disability, ~~in contravention~~within the meaning of Part 6 of the DSE and in particular section 6.2.

154 By reason of ██████ being denied access to specialised support services to accommodate his disability, as set out in paragraphs 150 and 151A above, ██████ was prevented from participating in education on the same basis as a student without a disability, ~~in contravention~~within the meaning of Part 7 of the DSE and in particular section 7.2.

155 No attempt was made to adjust the materials, or the mode of education provided to ██████ (in the limited circumstances in which any education was even provided) to accommodate his disability. ██████ was not consulted about any such adjustments. That was notwithstanding that ██████ had previously been the subject of an assessment outside of detention, which had determined that he would benefit from the following kinds of adjustments:

- a. ensuring that ██████ is given clear and consistent instructions;
- b. providing positive feedback from staff; and
- c. providing close guidance with initial tasks to increase understanding of what is expected of him.

155A ██████ would have been able to participate in education if adjustments had been made for him by reason of his disability, including:

- a. appropriately assessing ██████ literacy and numeracy competency on admission into BHDC and/or Unit 18;
- b. developing a curriculum, learning plan and other educational material tailored to ██████ competency level and designed to encourage his participation and accommodate his style of learning;

- c. adopting techniques and approaches to communicating with [REDACTED] to reduce confrontation and escalation;
- d. adopting disciplinary practices within educational settings which accommodated the behavioural manifestations of his disability rather than adopting punitive responses thereto;
- e. adjusting the mode of education provided to [REDACTED] to accommodate his disability;
- f. taking steps to arrange for and/or facilitate the provision of specialised support services to [REDACTED] to accommodate his disability, including appropriate ADHD medication;
- g. providing sufficient access to teachers and substitute teachers; and
- h. taking steps to adjust the materials or the mode of education provided to [REDACTED] [REDACTED] (in the extremely limited circumstances in which any education was provided) to accommodate his disability.

156 In contravention of Parts 3, 5, 6 and 7 of the DSE and in particular sections 3.5, 3.6 and 3.7 of the DSE:

- a. adjustments, including adjustments of the kind set out in paragraphs 147, 154 and 155A above, were not made for [REDACTED], at all or within a reasonable time; and, in contravention of sections 5.2, 6.2, 7.2 and 3.7 of the DSE;

[REDACTED] was not consulted about the making of adjustments, including these adjustments of the kinds set out in paragraphs 147, 155 and 155A above, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE; and

- c. either no decision was made about the making of reasonable adjustments for [REDACTED], including adjustments of the kinds set out in paragraphs 147, 155 and 155A above, or alternatively, a decision was made not to make those kinds of adjustments or any other adjustments, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE.

156A By reason of the matters in paragraphs 152 to 156 above, the State of Western Australia failed to take reasonable steps to ensure that [REDACTED]:

- a. was able to participate in education on the same basis as a student without a disability, as required by section 5.2 of the DSE; and

b. was able to participate in the learning experiences of courses and programs within BHDC and Unit 18 on the same basis as a student without a disability, as required by section 6.2 of the DSE.

156B To the extent that the specialised support services referred to in paragraph 151A were of a kind provided by Western Australia at BHDC and Unit 18, Western Australia failed to take reasonable steps to ensure that [REDACTED] had access to the service in contravention of s 7.2(2) of the DSE.

156D To the extent that the specialised support services referred to in paragraph 151A were of a kind not provided by Western Australia at BHDC and Unit 18, Western Australia failed to take reasonable steps to facilitate the provision by another person or agency of the support services referred to in paragraph 151A to [REDACTED] in contravention of s 7.2(3) of the DSE.

156E In contravention of s 7.2(6) of the DSE, [REDACTED] was not consulted about his need for specialist support services of the kind referred to in paragraph 151A.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

156F By reason of the matters in paragraphs 33 and 149A, or alternatively 33 and 149B, and the matters in paragraphs 157 to 161A, [REDACTED] was disadvantaged in his access to some or all of the goods, services and facilities referred to in paragraph 33 above.

157 [REDACTED] was disadvantaged by being punished for alleged misbehaviour by loss of program placement, loss of recreation time, loss of access to the fitness room, loss of canteen privileges and/or loss of television privileges. This has resulted in [REDACTED] being without access to television, radio, reading material or any other form of entertainment or amusement or method of passing the time.

158 He was also disadvantaged by being subjected to restraints, including being handcuffed or placed in shackles for movements within BHDC and Unit 18, and by being subjected to the unjustified and unlawful use of force and threats of use of force. [REDACTED] was regularly restrained and subjected to uses of force without appropriate justification, including being “folded up” on numerous occasions.

159 On one occasion, [REDACTED] was restrained in three-point restraints and left on the floor of his cell for 9 hours without being released from the restraints and without being provided with water, t-shirt or blanket, being left in extreme cold and discomfort, in conditions tantamount to torture. On another occasion, he was pepper-sprayed while in his cell and posing no threat, in apparent retaliation for an incident involving other

detainees, in which [REDACTED] was not involved. He was then left in his cell for between one and two hours without being permitted to wash the pepper-spray out of his eyes, which caused serious blistering and a rash to form on his skin.

160 [REDACTED] has also had charges brought against him in respect of his responses to such unlawful assaults. On one occasion, after a suicide attempt, he was assaulted and “folded-up”, causing a dislocated shoulder, and then left in three-point restraints, following which [REDACTED] was himself charged with assault. The charge was subsequently withdrawn after the video footage of [REDACTED] being assaulted was shown in court.

161 Further, [REDACTED] was subjected to unnecessary searches, for example for an object which had in fact (to the knowledge of the Officer conducting the search) already been located, which was in those circumstances a punitive measure unlawfully applied against [REDACTED].

161A By reason of the matters in paragraphs 157 to 161 above, [REDACTED] was disadvantaged in his access to some or all of the goods, services and facilities referred to in paragraph 34 above.

*Harassment in relation to goods, services and facilities – s 39 DDA*

161B On some occasions, the extent of repeated deprivation to which [REDACTED] was subjected in response to requests to access goods, services and facilities within those referred to at paragraph 33 above, and the unreasonableness of Officers doing so, is such that that conduct constitutes harassment within the meaning of the DDA.

161C For example, [REDACTED] was repeatedly ignored while requesting access to toilet paper, water to drink, showering or bathing facilities, dental hygiene goods and facilities with which to use them, medical and psychological care, goods, services or facilities relating to entertainment or recreation. On the occasion referred to in paragraph 158 above, he was unreasonably deprived of water, clothing, heating and appropriate medical and therapeutic supports. On another occasion, [REDACTED] was unreasonably repeatedly deprived of the service of being provided protection against risks of harm, when Officers knowingly placed him a cell in which, due to a malfunction, the intercom system made repeated, extremely loud and irritating noises. Despite [REDACTED] protests, he was left in that cell and, being unable to stop the noise, was thereby deprived of sleep which led to a severe deterioration in his mental health and ultimately to his hospitalisation. In each case those are examples of Officers harassing [REDACTED] on the ground of his disabilities when he sought to acquire goods and services, contrary to s 39 of the DDA.

161D Further to the harassment of [REDACTED] by Officers generally, as outlined in paragraph 161C above, [REDACTED] was targeted by a particular Officer who, in addition to engaging in the conduct set out in paragraph 161, also harassed [REDACTED] mother on the ground of [REDACTED] disability in contexts in which [REDACTED] sought to use services and facilities for telephone calls and visits between him and his mother, who had made multiple complaints [REDACTED] mistreatment in BHDC and Unit 18. That Officer attempted to shame [REDACTED] mother in relation to [REDACTED] behaviour and refused to listen to her concerns about [REDACTED] mistreatment by that Officer and other Officers, dismissing their significance, including by saying words to the effect that “I am the boss”. That Officer openly punished [REDACTED] and his mother for not acquiescing in that mistreatment, by withholding visits unless [REDACTED] mother would stop complaining about him being assaulted, kept in solitary confinement and deprived of basic necessities and instead “work with [the Officer]”. That conduct also constituted harassment of [REDACTED] and of his mother (who is an associate of [REDACTED] [REDACTED] within the meaning of ss 4 and 7 of the DDA), contrary to s 39 of the DDA.

#### *Unlawful Age Discrimination*

162 While detained in Unit 18, [REDACTED] had extremely limited access to services and facilities as compared both to detainees at BHDC and prisoners within the adult population at Casuarina Prison. [REDACTED] was regularly unable to access services and facilities provided in Casuarina Prison by reason of it being an adult facility and [REDACTED] not being able to interact with the adult prison population.

163 [REDACTED] has thereby been subject to differential treatment by reason of his age and was thereby disadvantaged in his access to services and facilities. In the circumstances, he was and would only have been able to access services and facilities ordinarily provided to detainees after first being transferred back to BHDC from Unit 18.

164 Even when [REDACTED] was not confined within his cell while detained in Unit 18, he still received little to no access to education or any programs for rehabilitation by reason of the failure by the CEO, Superintendent and/or Officers to:

- a. provide sufficient access to teachers and substitute teachers;
- b. adequately resource education at Unit 18;
- c. adequately staff Unit 18 to facilitate the minimum 9.8 hours out of cell each day required for standard program delivery.

- 165 He has thereby been disadvantaged in his access to education by reason of his age.
- 166 Further, [REDACTED] was disadvantaged by reason of his age in his ability to access services and facilities including:
- a. access to entertainment and reading material (which is also important for self-educational purposes, particularly in light of the lack of education provided);
  - b. telephone calls and e-visits with family, friends and relevant professionals such as case workers or lawyers;
  - c. medical services, including for disability, including the provision of medicine and psychological and psychiatric assessments and prescriptions;
  - d. basic aspects of hygiene including showers, toilet paper for toileting, being able to cut his nails, and so on.
- 167 While detained in Unit 18, [REDACTED] was regularly denied access to the services and facilities listed in paragraph 0. For example:
- a. He would only be provided with meagre amounts of toilet paper on request.
  - b. Showers were regularly broken, limiting access to them.
  - c. [REDACTED] was often denied access to working showers on a punitive basis including as part of solitary confinement.
  - d. For certain periods, he was provided with no medication.
  - e. At other times, he was provided with medication but without proper assessment by a psychologist or psychiatrist despite [REDACTED] specifically requesting access to such assessments.
  - f. Visits were very limited, and [REDACTED] was often forced to choose between, for example, receiving a visit from his mother or from his lawyer. He was even forced to choose between these things and showering at times, due to a perverse and unlawful application of the idea of “out of cell time”.
  - g. He was denied access to telephone calls generally.
  - h. When he was confined in the MPU he was unable to receive any entertainment material and so was unable even to educate or amuse himself by reading.
- 168 The combined effect of these conditions resulted in a serious deterioration in [REDACTED] mental health, causing an increase in panic and anxiety attacks. He has also suffered from significant insomnia, which has a cyclical debilitating effect, as solitary confinement becomes more difficult to withstand as one’s ability to sleep decreases.

168A By reason of the matters in paragraphs 162 to 168 above, [REDACTED] was treated less favourably than adult persons imprisoned within Casuarina Prison by reason of his age. In the premises, the State of Western Australia discriminated against [REDACTED] on the ground of his age within the meaning of s 14 of the ADA.

*Indirect Discrimination*

168B In the alternative to paragraph 168A, [REDACTED] makes the claims at paragraphs 168C to 168F.

168C. Throughout [REDACTED] detention at Unit 18, it was a condition of his detention, or alternatively it was a practice imposed by the State of Western Australia that:

- a. [REDACTED] serve his period of detention in a facility located within an adult prison, which did not provide access to the goods, services and facilities available in BHDC, as set out in paragraph 33 above; and
- b. [REDACTED] not be permitted to access any of the equivalent goods, services or facilities within Casuarina Prison, by reason of his age.

168D. Imposing the conditions referred to in paragraph 168C:

- a. had the effect of disadvantaging [REDACTED] by reason of the matters in paragraph 25 to 31A and 162 to 168; and
- b. was likely to have the effect of disadvantaging other persons who were the same age as [REDACTED] for reasons analogous to the matters in paragraph 25 to 31A and 162 to 168.

168E The condition or practice referred to in paragraph 168C was not reasonable having regard to the circumstances of the case.

168F By reason of the matters in paragraphs 162 to 168E, Western Australia discriminated against [REDACTED] on the ground of his age within the meaning of s 15 of the ADA.

169 As explained at paragraph 13 above, [REDACTED] has commenced proceedings against the Respondent under s 46PO of the AHRC Act, following the termination of the Second Complaint.

170 As explained at paragraphs ~~14 to~~ 17 above, to the extent that any of the unlawful discrimination to which [REDACTED] alleges that he and the group members were subjected, as set out above, extends beyond the unlawful discrimination set out in the Second Complaint, [REDACTED] now makes this further complaint in respect of that unlawful discrimination, on his own behalf and on behalf of the group members.

171 [REDACTED] has submitted several complaints regarding his treatment in BHDC and Unit 18, which provide more details about his treatment in those facilities and the unlawful discrimination he has suffered. A collated copy of those complaints is attached to this complaint and marked “C”.

G. [REDACTED]

172 At all material times, [REDACTED] ~~had and has~~ suffered from ADHD, conduct disorder and from drug addiction. These are disabilities within the meaning of the DDA.

172A [REDACTED] disabilities, set out in paragraph 172 above, are disorders that affects [REDACTED] thought processes, emotions, behaviour and judgement such that [REDACTED]:

- a. [REDACTED] often has difficulty regulating his emotions and behaviour;
- b. when confronted with peremptory, complex or unpleasant commands, he is likely to react with heightened emotional and physical responses;
- c. he can appear to be irritable, thought disordered and aggressive; and
- d. he can be paranoid and suspicious.

173 [REDACTED] was initially detained at Rangeview and BHDC but in or around January 2013, [REDACTED] was transferred from BHDC to Hakea JF, located in the Hakea Prison, which otherwise housed only adult prisoners.

174 [REDACTED] was detained at Hakea JF for a period of approximately one year.

175 While detained in BHDC, Rangeview and in Hakea JF, [REDACTED] engaged in the following kinds of behaviour that were symptoms or manifestations of his disability:

- a. lack of thought and/or concern for the consequences of his actions;
- b. difficulty controlling his impulses;
- c. difficulty refraining from the above behaviour;
- d. difficulty regulating his emotions;
- e. being irritable and thought-disordered;
- f. being verbally aggressive and demanding;
- g. refusal to follow instructions;
- h. engaging in paranoid patterns of thought and corresponding behaviours;
- i. exhibiting distrust of others and their motivations;

- j. experiencing repetitive and intrusive patterns of thought and associated behaviours; and
- k. difficulty sleeping.

#### *Unlawful Disability Discrimination*

176 In response to [REDACTED] behaviour set out in paragraph 175 above, Officers implemented the following responses and imposed the following restrictions on him:

- a. subjected him to the use of force and threats of the use of force;
- b. subjected him to restraints, including handcuffing;
- c. confined him in his cell;

c1. subjecting him to strip searches;

- d. denied or restricted his access to goods, services, privileges and facilities including recreation, those set out in paragraph 33 above;

d1. removing him from or restricting his access to education activities and programs;

- e. denied or restricted his access to in-person visits with family and friends;
- f. purported to prescribe [REDACTED] with Seroquel, which:

iii.i. made him sleepy and docile,

iv.ii. was not prescribed by a doctor or psychologist, and

v.iii. did not provide any effective treatment for [REDACTED], but rather had the effect of making him more compliant in the interests of Officers.

177 ~~While he was detained in BHDC and Hakea, [REDACTED] was required by Officers to:~~

- ~~a. obey all commands, directions and orders given or made by the Superintendent and Officers;~~
- ~~b. refrain from engaging in property damage;~~
- ~~c. refrain from and~~
- ~~d. refrain from offending Officers in any way, including by making trivial requests or displaying negative affect to any degree in response to commands or directions.~~

178 ~~As a result of his disabilities, [REDACTED] was not able to comply with those requirements. He would only have been able to comply with those requirements or~~

would have been better able to manage the symptoms and manifestations of his disability, described in paragraph 175 if the CEO, the Superintendent and Officers had made adjustments in dealing with him, including by:

- a. providing him with appropriate mental health treatment, including medication, counselling and support;
- b. providing him with appropriate behavioural therapy to assist him to learn to better regulate his emotions and behaviour;
- c. training Officers about ADHD and in techniques and approaches to communicating with [REDACTED] to reduce confrontation and escalation; and
- d. providing [REDACTED] with an individual behaviour plan to reduce confrontation and escalation;

(collectively, the [REDACTED] Reasonable Adjustments).

178A Had some or each of the reasonable adjustments referred to in paragraph 178 been made, [REDACTED]:

- a. would not have been subjected to the matters described in paragraph 176;
- b. would have been able to access and would have attended education activities at Rangeview, Hakea JF and BHDC; and
- c. would have been able to access and would have accessed the goods, services and facilities described in paragraph 33.

179 Those kinds of adjustments were not made for [REDACTED], notwithstanding his evident need for those kinds of adjustments by reason of his disabilities. As a result, he was wrongly characterised as wilfully recalcitrant and subjected to punitive responses, and thereby disadvantaged.

180 ~~The requirements referred to in paragraph 177 were not reasonable having regard to the circumstances of the case.~~

181 [REDACTED] was disadvantaged by being confined to his cell, where he was often required to spend about 18 hours per day, regularly being confined for 6 hours of ordinary unlock time which should have applied each day. On one occasion, [REDACTED] was detained in the ISU in BHDC for about 9 weeks.

182 When so confined in his cell, [REDACTED] was regularly unable to access services and facilities and was usually only allowed 30-60 minutes of recreation time per day. On some occasions, he was not allowed out at all for consecutive days. In either case,

at those times, he was not permitted to attend school and given no access to education. He was thereby disadvantaged in his access to, and effective enjoyment of, the benefit of education. He was also thereby subjected to a lack of routine in his education and rehabilitation and was prevented from participating in education on the same basis as a student without a disability. For extended periods of time, [REDACTED] [REDACTED] received no education at all, whether from a teacher or by way of worksheet exercises.

183 [REDACTED] was also disadvantaged by reason of him being subjected to uses of force and threats of uses of force. [REDACTED] was routinely threatened by Officers, including being threatened with being pepper-sprayed in the eyes for behaviour as trivial as allegedly smirking. He was repeatedly subject to “folding up” for trivial incidents and continues to suffer symptoms of physical injuries caused by those uses of force, including his knee being liable to dislocate easily. In one incident, he was subjected to force and restrained and placed into a rip-proof gown after asking for a cup of water. In another, his face was slammed into the ground causing him to begin to bleed from above his eye.

#### Direct Discrimination

183A By reason of the matters in paragraphs 172 to 183, Western Australia, through the conduct of the CEO, the Superintendent and Officers, discriminated against [REDACTED] [REDACTED] within the meaning of section 5 of the DDA on the ground of [REDACTED] disabilities set out in paragraph 172 above, in that Western Australia:

- a. did not make the [REDACTED] Reasonable Adjustments; and
- b. the failure to make the [REDACTED] Reasonable Adjustments had, or would have, the effect that [REDACTED] was, because of his disabilities set out in paragraph 172 above, treated less favourably than a person without his disabilities was or would be treated in circumstances that were not materially different.

#### Indirect discrimination

183B. In the alternative to paragraph 183B above, by reason of the matters in paragraphs 172 to 183, Western Australia, through the conduct of the CEO Superintendent and Officers, discriminated against [REDACTED] within the meaning of section 6(2) of the DDA on the ground of [REDACTED] disabilities set out in paragraph 172 above, in that:

- (a) Western Australia required [REDACTED] to comply with the Behavioural Regime;

- (b) because of [REDACTED] disabilities set out in paragraph 172 above, [REDACTED] was only able to comply with the Behavioural Regime if the [REDACTED] Reasonable Adjustments were made;
- (c) Western Australia did not make the [REDACTED] Reasonable Adjustments;
- (d) the failure to make the [REDACTED] Reasonable Adjustments had, has, was likely to have or is likely to have the effect of disadvantaging [REDACTED].

*Discrimination in Relation to Education – s 22 DDA*

183C By reason of the matters in paragraphs 34 and 183A, or alternatively 34 and 183B, and the matters in paragraphs 184 to 185A below, [REDACTED] was disadvantaged in his access to and enjoyment of education or was subjected to detriment in relation to his enjoyment of the benefit of education.

184 [REDACTED] was disadvantaged by being confined in his cell, as set out in paragraphs 180 to 181 above. When he was so confined, he was either not permitted to attend school or given no access to education. [REDACTED] was also subjected to a lack of routine in his education and rehabilitation. He was thereby disadvantaged in his access to, and effective enjoyment of, the benefit of education, contrary to s 22 of the DDA.

185 In the limited circumstances when [REDACTED] was provided with access to education, he was provided with educational instruction using a curriculum and educational materials, including reading materials, which were not tailored to his level of competence. Further, he was not provided with any specific assistance as a result of his disability, including specialist expertise, personal educational support and/or support for personal and medical care. He was thereby subjected to detriment in relation to his enjoyment of the benefit of education contrary to s 22 of the DDA.

185A [REDACTED] required the following specialised support services to accommodate his disability and enable him to participate in educational activities provided at BHDC:

a. mental health treatment, counselling and support;

b. behavioural therapy to assist him to learn to, and to, better regulate his emotions and behaviour;

c. an appropriately qualified support worker to assist [REDACTED] in his interactions with Officers and detainees.

*Contravention of DSE*

186 By reason of [REDACTED] being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraphs 184 and 185 above, [REDACTED] was

prevented from participating in education on the same basis as a student without a disability, ~~in contravention~~within the meaning of Part 5 of the DSE and in particular section 5.2 of the DSE.

187 By reason of ██████████ being provided with a curriculum and educational materials which were below his level of competence, as set out in paragraph 185 above, ██████████ ██████████ was not allowed to participate in ~~education~~the learning experiences of courses and programs offered at Rangeview, Hakea JF and BHDC on the same basis as a student without a disability, ~~in contravention~~within the meaning of Part 6 of the DSE and in particular section 6.2.

188 By reason of ██████████ being denied access to specialised support services to accommodate his disability, as set out in paragraph 185 above, ██████████ was prevented from participating in education on the same basis as a student without a disability, ~~in contravention~~within the meaning of Part 7 of the DSE and in particular section 7.2.

189 No attempt was made to adjust the materials, or the mode of education provided to ██████████ ██████████ (in the limited circumstances in which any education was provided) to accommodate his disability. ██████████ was not consulted about any such adjustments, despite his ADHD being known to staff at BHDC.

190 ██████████ would have been able to participate in education if adjustments had been made for him by reason of his disability, including:

- a. appropriately assessing ██████████ literacy and numeracy competency on admission into Rangeview, Hakea JF and/or BHDC;
- b. developing a curriculum, learning plan and other educational material tailored to ██████████ competency level and designed to encourage his participation and accommodate his style of learning;
- c. adopting techniques and approaches to communicating with ██████████ to reduce confrontation and escalation;
- d. adopting disciplinary practices within educational settings which accommodated the behavioural manifestations of his disability rather than adopting punitive responses thereto;
- e. adjusting the mode of education provided to ██████████ to accommodate his disability;

- f. taking steps to arrange for and/or facilitate the provision of specialised support services to [REDACTED] to accommodate his disability, including appropriate ADHD medication;
- g. provide sufficient access to teachers and substitute teachers; and
- h. taking steps to adjust the materials or the mode of education provided to [REDACTED] [REDACTED] (in the extremely limited circumstances in which any education was provided) to accommodate his disability.

191 However, in contravention of Part 3 of the DSE ~~and in particular sections 3.5, 3.6 and 3.7 of the DSE:~~

- a. adjustments, including ~~those adjustments of the kind~~ set out in paragraph 190 above, were not made for [REDACTED], at all or within a reasonable time; ~~in contravention of sections 5.2, 6.2, 7.2 and 3.7 of the DSE;~~
- b. [REDACTED] was not consulted about the making of adjustments, including ~~those adjustments of the kind~~ set out in paragraph 190 above, ~~in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE; and-~~
- ~~b.c. either no decision was made about the making of reasonable adjustments for [REDACTED], including adjustments of the kind set out at paragraph 190 above, or alternatively, a decision was made not to make those kinds of adjustments or any other adjustments, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE.~~

191A By reason of the matters in paragraphs 186 to 191 above, the State of Western Australia failed to take reasonable steps to ensure that [REDACTED]:

- a. was able to participate in education on the same basis as a student without a disability, as required by section 5.2 of the DSE; and
- b. was able to participate in the learning experiences of courses and programs within Rangeview, Hakea JF and BHDC on the same basis as a student without a disability, as required by section 6.2 of the DSE.

191B To the extent that the specialised support services referred to in paragraph 185A were of a kind provided by Western Australia at Rangeview, Hakea JF or BHDC, Western Australia failed to take reasonable steps to ensure that [REDACTED] had access to the service in contravention of s 7.2(2) of the DSE.

191C. To the extent that the specialised support services referred to in paragraph 185A were of a kind not provided by Western Australia at Rangeview, Hakea JF or BHDC,

Western Australia failed to take reasonable steps to facilitate the provision by another person or agency of the support services referred to in paragraph 185A to [REDACTED] in contravention of s 7.2(3) of the DSE.

191D In contravention of s 7.2(6) of the DSE, [REDACTED] was not consulted about his need for specialist support services of the kind referred to in paragraph 185A.

191E By reason of the matters in paragraphs 186 to 191D above, the State of Western Australia contravened s 32 of the DDA.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

191F [REDACTED] was disadvantaged by being punished for alleged misbehaviour by being confined to his cell and by loss of program placement, loss of recreation time, loss of access to recreation and exercise facilities, loss of privileges such as canteen and television privileges. This would leave [REDACTED] without any way to entertain or amuse himself and had a deleterious effect on his mental health.

191G [REDACTED] was also disadvantaged by being subjected to restraints, including being handcuffed and being placed in rip-proof gowns. He was also subjected to the unjustified and unlawful use of force and threats thereof. He was regularly restrained and subjected to uses of force without appropriate justification, including being “folded up” on numerous occasions, such as in the incident referred to in paragraph 183 above.

191H [REDACTED] was also disadvantaged by being subjected repeatedly to unnecessary strip searches. [REDACTED] was invariably searched whenever entering or leaving a detention centre, moving to the SPU or ISU and for an extended period while [REDACTED] was placed in ISU, he was subjected to strip searches almost every morning. [REDACTED] had done nothing to create a suspicion that he had secreted anything and no contraband was ever found on him.

191I By reason of the matters in paragraphs 33 and 183A, or alternatively, the matters in paragraphs 33 and 183B, and the matters in paragraphs 191F to 191H above, [REDACTED] was disadvantaged in his access to some or all of the goods, services and facilities referred to in paragraph 34 above.

*Harassment in relation to goods, services and facilities - s 39 DDA*

191J On some occasions, the extent of repeated deprivation to which [REDACTED] was subjected in response to requests to access goods, services and facilities within those referred to at paragraph 33 above, and the unreasonableness of Officers doing so, is such that that conduct constitutes harassment within the meaning of the DDA. Thus,

██████████ was assaulted after requesting goods, services or facilities, such as a cup of water (as described in paragraph 183 above) or goods, services and facilities related to recreation or entertainment. He was also repeatedly denied access to basic hygiene goods including sufficient amounts of toilet paper, for no apparent reason. That conduct constituted harassment of ██████████ on the ground of his disabilities, contrary to s 39 of the DDA.

#### *Unlawful Age Discrimination*

192 While detained in Hakea JF, ██████████ had extremely limited access to services and facilities as compared both to detainees at BHDC and prisoners within the adult population at Hakea Prison. He was regularly unable to access services and facilities provided in Hakea Prison by reason of it being an adult facility and the fact that he was a child.

193 Even when ██████████ was not confined within his cell while detained in Hakea JF, he still received little to no access to education or any programs for rehabilitation by reason of the failure by the CEO, Superintendent and/or Officers to:

- a. provide sufficient access to teachers and substitute teachers or those responsible for delivering rehabilitation programs;
- b. adequately resource education and rehabilitation programs at Hakea JF;
- c. adequately staff Hakea JF to facilitate the minimum 9.8 hours out of cell each day, required for standard program delivery.

194 The education which ██████████ did receive was haphazard. Whereas while at BHDC and Rangeview, ██████████ received little to no education as a result of his punitive treatment as a result of his disability, at Hakea JF, he did receive slightly more time for education, but still no more than twice a week by reason of the restrictions imposed on the detainees as a result of Hakea JF being within an adult prison.

195 ██████████ was thereby disadvantaged in his access to education by reason of his age.

196 ~~In each of~~ Either at Rangeview, BHDC or Hakea JF, when ██████████ did receive limited access to education, it was simplistic and no attempt was made to adjust the materials or the mode of education provided to accommodate ██████████ disability, nor was ██████████ consulted about the possibility of such adjustments being made.

197 Further, while at Hakea JF, ██████████ was disadvantaged in his ability to access services and facilities by reason of his age. In particular, ██████████ was only able

to receive visits on weekends, rather than during the week, as was possible at both BHDC and Rangeview.

198 Further, the following programs or facilities were not available at all at Hakea JF:

- a. sports facilities;
- b. educational programs for the attainment of workplace qualifications; and
- c. rehabilitation programs.

199 [REDACTED] was thereby subject to differential treatment by reason of his age and was thereby disadvantaged in his access to services and facilities and to education.

200 As a result of the conditions of his detention involving the unlawful discrimination set out above, [REDACTED] mental health deteriorated significantly, including his experiencing suicidal ideation and extreme feelings of hopelessness, which he did not experience prior to his detention.

#### Direct Discrimination

200A By reason of the matters in paragraphs 196 to 200 above, [REDACTED] was treated less favourably than adult persons imprisoned within Hakea Prison by reason of his age. In the premises, Western Australia discriminated against [REDACTED] on the ground of his age within the meaning of s 14 of the ADA.

#### Indirect Discrimination

200B In the alternative to paragraph 204B, [REDACTED] makes the claims at paragraphs 200C to 200F below.

200C Throughout [REDACTED] detention at Hakea JF, it was a condition of his detention, or alternatively it was a practice imposed by the State of Western Australia that:

- a. [REDACTED] serve his period of detention in a facility located within an adult prison, which did not provide access to the goods, services and facilities available in BHDC, as set out in paragraph 34 above; and
- b. [REDACTED] not be permitted to access any of the equivalent goods, services or facilities within Hakea Prison, by reason of his age.

200D Imposing the conditions referred to in paragraph 200C:

- a. had the effect of disadvantaging [REDACTED] by reason of the matters in paragraphs 25 to 31A and 192 to 200; and



b. was likely to have the effect of disadvantaging other persons with [REDACTED] disabilities for reasons analogous to the matters in paragraphs 25 to 31A and 192 to 200.

200E The condition or practice referred to in paragraph 200C was not reasonable having regard to the circumstances of the case.

200F By reason of the matters in paragraphs 196 to 200E, Western Australia discriminated against [REDACTED] on the ground of his age within the meaning of s 15 of the ADA.

#### **H. Group member claims**

201 Group members suffered unlawful disability and/or unlawful age discrimination in the Relevant Period while in detention in one or more of the detention centres referred to in paragraph 3a above by reason of the acts or omissions of the Minister, the CEO, the Superintendent and/or Officers which Western Australia is taken to have engaged in and for which Western Australia is vicariously liable.

202 The acts or omissions referred to in paragraph 201 include acts or omissions of the kind described in the individual complaints of the Complainants and arise out of similar and related circumstances having occurred in detention centres under the control of Western Australia in the course of systemic behaviour by the Minister, the CEO, the Superintendent and/or Officers.

#### **I. Vicarious Liability**

203 The Complainants allege that, by the operation of s 123 of the DDA and/or s 57 of the ADA, as the case may be, Western Australia is vicariously liable for the unlawful discrimination alleged in this Complaint and arising from the conduct of its employees and agents, being the Minister, CEO, Superintendent and Officers.

#### **J. Relief sought by the Complainants**

204 The Complainants, on behalf of the Group Members, seek relief in the following forms for themselves and the Group Members:

- a. public apologies;
- b. declarations and/or acknowledgements that Western Australia and the Minister, CEO, Superintendents and Officers engaged in unlawful disability discrimination and/or unlawful age discrimination;
- c. compensation for unlawful disability discrimination and/or unlawful age discrimination;

- d. such other relief as may be awarded under s 46PO(4) of the AHRCA, including compensation in the way of aggravated and/or exemplary damages.
- e. orders prohibiting the continuation of the unlawful discrimination and/or henceforth restraining the Respondent from the unlawful discrimination.

**K. Disabilities of the Complainants**

205 At paragraphs 38, 69, 96, 137 and 172 of this Complaint, the Complainants set out disabilities affecting them. In general, the Complainants allege that they were inappropriately and unreasonable treated punitively as a result of being unfairly and falsely characterised as wilfully disobedient as a result of behavioural manifestations of their disabilities. However, the Complainants also generally allege a lack of access to appropriate diagnostic and therapeutic services during their detention, impairing their ability to identify the full nature and extent of the disabilities affecting them.

206 The Complainants are seeking to undergo further assessments in order to confirm the full nature and extent of the disabilities affecting them and in particular the extent of co-morbidity of conduct disorder with other disabilities, given the significance of allegations of detainees being treated less favourably as a result of perceived misconduct.



## 1. ANNEXURE 1 – DETAILS OF COMPLAINT

### A. Introduction

#### A1 Parties

1 This complaint is made by:

- a. Ms Alexandra Walters (born 8 October 2004);
- b. Mr Joel Vida (born 23 May 2002);
- c. [REDACTED] (born [REDACTED]);
- d. [REDACTED] (born [REDACTED]);
- e. [REDACTED] (born [REDACTED])

(together, the **Complainants**).

2 This complaint is a representative complaint made pursuant to section 46PB(1) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRCA**), on behalf of a group of persons set out in paragraph 3 below (who are referred to herein as the **Group Members**).

3 The Group Members are persons who:

- a. are or have been detained in juvenile detention in Western Australia between 18 August 2005 and the making of this complaint (**Relevant Period**) at one or more of the following detention centres declared to be a detention centre under section 13 of the *Young Offenders Act 1994* (WA) (**YOA**):

- i. Banksia Hill Detention Centre (**BHDC**);
- ii. Rangeview Juvenile Remand Centre (**Rangeview**);
- iii. Hakea Juvenile Facility (**Hakea JF**); or
- iv. Unit 18 at Casuarina Prison; (**Unit 18**)

and who

- b. claim to have suffered unlawful disability or age discrimination on one or more occasions while so detained by an act or omission of:
  - i. the Minister of the Crown in right of Western Australia who was, at the relevant time, responsible for the administration of the YO Act (**Minister**);

- ii. the chief executive officer of the department of the Government of Western Australia (**CEO**) who was, at the relevant time, principally assisting the responsible Minister in the administration of the YO Act;
- iii. a superintendent of a detention centre at the relevant time or a person who was performing, or purporting to perform, the functions of a superintendent under the YO Act in respect of a detention centre at the relevant time (**Superintendent**); and/or
- iv. an officer performing functions under the YO Act in respect of a detention centre or a person purporting to perform those functions (**Officer**).

4 This complaint is made against the State of Western Australia (**Western Australia**).

5 Western Australia is, and was at all material times, able to be sued pursuant to section 5 of *Crowns Suits Act 1947* (WA).

#### A2 *Overview of Complaint and Background of Previous Complaints*

6 In overview, the complaint is that Western Australia, through the Department of Justice and its officers and agents, has:

- a. engaged in unlawful disability discrimination and harassment in relation to a disability contrary to the *Disability Discrimination Act 1992* (Cth) (the **DDA**) against detainees at the detention centres listed in paragraph 3a above; and
- b. engaged in unlawful age discrimination contrary to the *Age Discrimination Act 2004* (Cth) (the **ADA**) against detainees at Hakea JF and Unit 18.

7 This complaint of unlawful discrimination is lodged pursuant to section 46P(2)(b) of the AHRCA, by persons aggrieved by that unlawful discrimination.

#### Relationship to Previous Complaints

8 Three of the complainants have previously made complaints to the Australian Human Rights Commission in relation to their treatment within juvenile detention, as follows:

- a. Ms Walters and Mr Vida were complainants under a complaint lodged with the Australian Human Rights Commission which was allocated Complaint Numbers 2022-10859, 2022-11417 and 2022-11418 (**First Complaint**);
- b. [REDACTED] was a complainant under a complaint lodged with the Australian Human Rights Commission which was allocated Complaint Numbers 2022-15309, 2022-15509, and 2022-1511 (**Second Complaint**),



(together, the **Two Previous Complaints**).

- 9 Further, [REDACTED] was an affected person within the meaning of s 3(1) of the AHRCA in relation to the Second Complaint, while [REDACTED] was an affected person in relation to the First Complaint. [REDACTED] was also an affected person in relation to the First Complaint.
- 10 In summary, the First Complaint alleged unlawful disability, age and racial discrimination in relation to the treatment of juvenile detainees at BHDC and Rangeview, occurring from 5 September 1997 onwards and ongoing as at the date of the lodging of the First Complaint.
- 11 In summary, the Second Complaint alleged unlawful disability, age and racial discrimination in relation to the treatment of juvenile detainees at BHDC and at Unit 18 at Casuarina Prison, from 13 July 2022 onwards and ongoing as at the date of lodging of the Second Complaint.
- 12 The First Complaint was terminated on 14 November 2022. Following the termination of the First Complaint, Ms Walters and Mr Vida commenced proceedings against Western Australia in the Federal Court of Australia seeking, among other things, remedies under s 46PO of the AHRCA.
- 13 The Second Complaint was terminated on 6 March 2023. Following the termination of the Second Complaint, [REDACTED] and [REDACTED] commenced proceedings against Western Australia in the Federal Court of Australia seeking, among other things, remedies under s 46PO of the AHRCA.
- 14 The Complainants apprehend that there may be an argument in relation to such Federal Court Proceedings relating to whether the descriptions in the First and Second Complaints of the unlawful discrimination alleged therein:
- a. provided sufficient details of the unlawful discrimination complained of; and/or
  - b. were sufficiently broad or included sufficient reference to relevant matters,
- so as to provide the Federal Court of Australia with jurisdiction consistently with the requirements of s 46PO(3) of the AHRCA, to enable the Court to entertain an application for relief in respect of that alleged unlawful discrimination.
- 15 To the extent that the unlawful discrimination alleged in this Complaint does extend beyond the unlawful discrimination alleged in either the First or Second Complaints,



as the case may be, the Complainants now make this further complaint in respect of that further alleged discrimination.

16 Moreover, the Complainants apprehend that the operation of s 46PO(3) may be such that the Court only has jurisdiction to entertain an application for relief in respect of unlawful discrimination alleged to have occurred up to the date of the termination of the First and Second Complaints, but not thereafter.

17 Because, in the case of both the First and Second Complaints, the unlawful discrimination complained of is and was continuing, the Complainants now make this further complaint in order to extend the period in respect of which they allege that unlawful discrimination occurred, so as to “top-up” the First and Second Complaints.

#### BHDC and Rangeview

18 BHDC commenced operation as a detention centre on or about 5 September 1997 while Rangeview commenced operation in 1994.

19 Rangeview operated until around 5 October 2012. BHDC continues to operate to this day.

20 The Complainants allege that detainees at BHDC and Rangeview were subject to unlawful disability discrimination, as set out below in relation to the Complainants in this complaint.

#### Hakea JF and Unit 18

21 On 22 January 2013, the Minister declared, under section 13 of the YO Act, those buildings and enclosures situated on Reserve 50756, being Lot 501 on Deposited Plan 69593 (held by the Western Australian Land Information Authority established by the Land Information Authority Act 2006) known as Units 5 and 12 of the Hakea Prison, but not being parts of a prison under the Prisons Act 1981, to be a detention centre, which commenced operation immediately.

22 Hakea JF was utilised as a detention centre after a riot at BHDC on 20 January 2013 resulted in significant damage to the cells and facilities at BHDC, following which the Minister at the time determined that detainees be detained in an alternate location.

23 Detainees detained at Hakea JF had limited access to goods, services, facilities and education as compared to detainees in BHDC or Rangeview and as compared to the services and facilities made available to adult prisoners within Hakea Prison.



- 24 Similarly, on 13 July 2022, the Minister declared, under section 13 of the YOA, those buildings and enclosures situated within Casuarina Prison and known as Unit 18 to be a detention centre, which commenced operation on 14 July 2022.
- 25 On 20 July 2022, approximately 20 detainees, who had immediately prior to that point been detained in BHDC, were transferred to Unit 18.
- 26 According to a media release by the Department of Justice, the detainees initially transferred to Unit 18 were selected for transfer on the basis that they had “exhibited complex needs, had significant offending histories and for months had been destroying infrastructure, assaulting staff and harming themselves”.
- 27 Thereafter, Unit 18 has been operated as a detention centre for the duration of the Relevant Period, during which some of the Applicants and Group Members have been detained there.
- 28 The accommodation for detainees in Unit 18 in the Relevant Period included:
- a. a number of residential cells comprising general accommodation cells; and
  - b. a number of multi-purpose cells, observation and isolation cells, together referred to as the Multi-Purpose Unit (**MPU**).
- 29 MPU cells are primarily used for punishment, confinement and observation of detainees. They are usually completely empty, with no television or radio, no books or other reading material, and no personal items such as photographs.
- 30 Detainees detained at Unit 18 had limited access to services, facilities and education as compared to detainees in BHDC and as compared to the services and facilities made available to adult prisoners within Casuarina Prison.
- 30A In the case of both Hakea JF and Unit 18, while those detention centres were in operation, young people in youth detention were exposed to the risk of being detained in Hakea JF or Unit 18 and having limited access to goods, services, facilities and education, whereas adult prisoners were not exposed to any such risk.
- 31 The Complainants allege that detainees at Hakea JF and Unit 18:
- a. were subject to the same kinds of unlawful disability discrimination as detainees detained in BHDC and Rangeview; and
  - b. were also subject to unlawful age discrimination, as set out below in relation to [REDACTED], [REDACTED] and [REDACTED], as complainants in this complaint.

## B. Areas of Discrimination

### *Areas for Disability Discrimination under Divisions 2 and 2A of Part 2 of the DDA*

32 At all times during the Relevant Period, Western Australia was an educational authority and an education provider within the meaning of ss 4 and 22 of the DDA and ss 1.4 and 2.1 of the Disability Standards for Education 2005 (Cth) (**DSE**).

32A Throughout the relevant period:

- a. each Detention Centre was an educational institution; and
- b. each Superintendent and Officer was a member of the staff of an educational institution;

within the meaning of the DDA and the DSE.

33 At all times during the Relevant Period, Western Australia provided goods and/or services and/or made facilities available to detainees in Detention Centres within the meaning of s 24 of the DDA, including:

- a. a facility of a place and space in which detainees could receive visits from friends, relatives and legal advisers;
  - a1. a service, being the kind provided by government, of an Officer or Officers being present to provide assurance that the facility within a detention centre in which detainees received visits from friends, relatives and legal advisers was safe for the detainees and visitors;
- b. telephone facilities for communicating with friends, relatives and legal advisers;
  - b1. a service relating to telecommunications being the provision of telephones and opportunities for the detainees to use the telephones;
- c. a facility of a place and space for recreation and/or exercise;
  - c1. a service, being the kind provided by government, of an Officer or Officers being present to provide assurance that the facility within a detention centre in which detainees were able to enjoy recreation and exercise was safe for the detainees;
- d. goods and facilities for recreation, including:
  - i. fitness and gymnasium items;
  - ii. sport equipment;

- iii. writing, drawing and art and craft materials; and
- iv. the provision of televisions and radios;

d1. a service relating to entertainment and recreation, being opportunities for detainees to use the televisions and radios;

d2. goods, being clothes and health and hygiene or therapeutic items;

e. a service relating to the kind provided by members of a profession, being medical services, including medical treatment;

f. goods, being discretionary food items, such as those provided in a canteen;

f1. a facility of a canteen, being a place at which discretionary food items could be acquired by detainees;

f2. a facility for the comfort and well-being of detainees being heating and cooling equipment;

f3. a service for the comfort and well-being of detainees being the operation by staff of the detention centre of heating and cooling facilities;

g. rehabilitation and vocational programs including general cognitive skills programs;

h. a service, being the kind provided by government, to protect detainees from risk of physical harm, including self-harm, battery and/or assault by other detainees.

34 At all times from 18 August 2005 onwards:

a. the Detention Centres were each educational institutions within the meaning of the DDA and the DSE;

b. each Superintendent and Officer was a member of the staff of an educational institution within the meaning of the DDA and the DSE; and

c. the DSE, as standards formulated pursuant to s 31 of the DDA, applied to Western Australia as an education provider to detainees in Detention Centres.

### **BA. Behavioural Regime**

34A Throughout the relevant period, Western Australia (through the CEO, the Superintendents and Officers) applied a behavioural regime (**Behavioural Regime**) to the Complainants and other detainees in Detention Centres as follows:

- a. All detainees must not:
- i. fail to comply with lawful directions from Superintendents and Officers;
  - ii. be verbally or physically offensive;
  - iii. be verbally or physically aggressive;
  - iv. be violent;
  - v. make images involving violence or write words involving violence;
  - vi. harm themselves; or
  - vii. be rude or annoying to Officers.

**(Proscribed Conduct).**

b. If any of the Complainants or another detainee engaged in the Proscribed Conduct, officers subjected the detainee to consequences including:

- i. the use of physical force;
- ii. handcuffing;
- iii. confinement to their cell;
- iv. confinement to a cell in an observation unit;
- v. loss of program placement;
- vi. confiscation of goods;
- vii. denial of use of goods, services and facilities of the kinds referred to in paragraph 33.

34B Under the Behavioural Regime, when any of the Complainants or another detainee engaged in Proscribed Conduct, they were subjected to the consequences referred to in paragraph 34Ab., even in circumstances where the Proscribed Conduct in which they had engaged was a symptom or manifestation of a disability of the detainee.

34C By reason of the matters in paragraphs 34A and 34B, detainees with a disability were required not to engage in Proscribed Conduct which was a manifestation or symptom of their disability or they would be subjected to the kinds of consequences referred to in paragraph 34Ab.

*Areas of Age Discrimination under Division 3 of Part 4 of the ADA*

35 At all times during the Relevant Period, Western Australia was an educational authority and an education provider within the meaning of s 26 of the ADA.



36 At all times during the Relevant Period, Western Australia provided goods and/or services and/or made facilities available to detainees in Detention Centres within the meaning of s 28 of the ADA, including:

- a. a facility of a place and space in which detainees could receive visits from friends, relatives and legal advisers;
  - a1. a service, being the kind provided by government, of an Officer or Officers being present to provide assurance that the facility within a detention centre in which detainees received visits from friends, relatives and legal advisers was safe for the detainees and visitors;
- b. telephone facilities for communicating with friends, relatives and legal advisers;
  - b1. a service relating to telecommunications being the provision of telephones and opportunities for the detainees to use the telephones;
- c. a facility of a place and space for recreation and/or exercise;
  - c1. a service, being the kind provided by government, of an Officer or Officers being present to provide assurance that the facility within a detention centre in which detainees were able to enjoy recreation and exercise was safe for the detainees;
- d. goods and facilities for recreation, including:
  - i. fitness and gymnasium items;
  - ii. sport equipment;
  - iii. writing, drawing and art and craft materials; and
  - iv. the provision of televisions and radios;
  - d1. a service relating to entertainment and recreation, being opportunities for detainees to use the televisions and radios;
  - d2. goods, being clothes and health and hygiene or therapeutic items;
- e. a service relating to the kind provided by members of a profession, being medical services, including medical treatment;
- f. goods, being discretionary food items, such as those provided in a canteen;

f1. a facility of a canteen, being a place at which discretionary food items could be acquired by detainees;

f2. a facility for the comfort and well-being of detainees being heating and cooling equipment;

f3. a service for the comfort and well-being of detainees being the operation by staff of the detention centre of heating and cooling facilities;

g. rehabilitation and vocational programs including general cognitive skills programs;

h. a service, being the kind provided by government, to protect detainees from risk of physical harm, including self-harm, battery and/or assault by other detainees.

37 At all times during the Relevant Period, Western Australia provided goods and/or services and/or made facilities available to prisoners in prisons within the meaning of s 28 of the ADA, including:

a. a facility of a place and space in which prisoners could receive visits from friends, relatives and legal advisers;

a1. a service, being the kind provided by government, of an prison officers being present to provide assurance that the facility within a prison in which detainees received visits from friends, relatives and legal advisers was safe for the prisoners and visitors;

b. telephone facilities for communicating with friends, relatives and legal advisers;

b1. a service relating to telecommunications being the provision of telephones and opportunities for the prisoners to use the telephones;

c. a facility of a place and space for recreation and/or exercise;

c1. a service, being the kind provided by government, of an Officer or Officers being present to provide assurance that the facility within a prison in which prisoners were able to enjoy recreation and exercise was safe for the prisoners;

d. goods and facilities for recreation, including:

i. fitness and gymnasium items;

ii. sport equipment;

- iii. writing, drawing and art and craft materials; and
- iv. the provision of televisions and radios;

d1. a service relating to entertainment and recreation, being opportunities for prisoners to use the televisions and radios;

d2. goods, being clothes and health and hygiene or therapeutic items;

e. a service relating to the kind provided by members of a profession, being medical services, including medical treatment;

f. goods, being discretionary food items, such as those provided in a canteen;

f1. a facility of a canteen, being a place at which discretionary food items could be acquired by prisoners;

f2. a facility for the comfort and well-being of prisoners being heating and cooling equipment;

f3. a service for the comfort and well-being of prisoners being the operation by staff of the prison of heating and cooling facilities;

g. rehabilitation and vocational programs including general cognitive skills programs;

h. a service, being the kind provided by government, to protect prisoners from risk of physical harm, including self-harm, battery and/or assault by other prisoners.

**C. Ms Walters**

38 Ms Walters suffers from autism spectrum disorder (**ASD**). ASD is a disability within the meaning of the DDA.

38A Ms Walters' ASD is a disorder that affects Ms Walters' thought processes, emotions and judgment such that:

a. when confronted with peremptory, complex or unpleasant commands, she was and is likely to react with heightened emotional and physical responses;

b. she was and is very concerned with hygiene and became and becomes anxious and upset about dirty or stained clothing, bedding, furniture and rooms;

c. she engaged and engages in restricted repetitive behaviours, which can include:



- i. self harm by cutting or scratching herself;
- ii. drawing images of violence, such as knives and stabbing;
- iii. writing words such as “kill” and “die”;

d. she requires consistency and routine and becomes anxious and upset with departures from routine.

39 Ms Walters was detained in BHDC for the following periods:

- a. 23 May 2018 to 29 April 2019;
- b. 17 July 2019 to 18 July 2019;
- c. 26 August 2019 to 27 August 2019;
- d. 3 September 2019 to 4 September 2019;
- e. 3 December 2019 to 6 December 2019; and
- f. 20 March 2020 to 21 March 2020.

40 While in BHDC, Ms Walters engaged in the following kinds of behaviour that were symptoms or manifestations of her disability:

- a. refusal to comply with directions from Officers, including directions that she:
  - i. submit to strip searches;
  - ii. submit to being placed in handcuffs;
  - iii. return to the Cue Unit from less restrictive areas of BHDC;
  - iv. return to her cell in the Cue Unit from common areas of the Cue Unit;
  - v. submit to being placed in a cell that was dirty;
  - vi. surrender clothes that she had been wearing for laundering (because of her aversion to stained or dirty clothing provided from the common pool of clothing);
- b. resisted the threat of use of force and use of force by Officers, including by:
  - i. attempting to evade Officers who wished to take hold of her;
  - ii. using objects, such as sharpened sticks or twigs to threaten Officers;
  - iii. striking, or attempting to strike Officers;

- c. engaging in repetitive acts of self-harm, particularly by using objects such as staples removed from books, and broken pieces of plastic, to scratch or cut her skin;
- d. engaging in obsessive:
  - i. drawing of images of violence, such as knives and stabbing;
  - ii. writing words such as “kill” and “die” with reference to herself and/or Officers and the images referred to in sub-paragraph i above.
- e. damaging property.
- f. going out of bounds.
- g. being rude to, annoying or offending Officers.

#### *Unlawful Disability Discrimination*

41 Ms Walters alleges that she was subject to unlawful indirect disability discrimination as defined under s 6 of the DDA in relation to:

- a. education under s 22 of the DDA; and
- b. goods, services and facilities under s 24 of the DDA.

42 Ms Walters also alleges that she was subject to unlawful contraventions of the DSE under ss 31 and 32 of the DDA.

43 As set out in the First Complaint, Ms Walters alleges that Officers responded to her behaviour, set out in paragraph 40 above, in a punitive manner and that this resulted in Ms Walters being confined to a cell in the Cue Unit, typically receiving as little as one hour of time outside her cell for recreation, which was spent in a small wire cage. By virtue of being so confined, Ms Walters was also deprived of access to any goods, services or facilities, access to which required leaving her cell.

44 By way of further elaboration on the matters raised in the First Complaint, Ms Walters alleges as follows.

45 Officers’ responses to her behaviour, set out in paragraph 40 above, included:

- a. using force and threats of force against Ms Walters, handcuffing her and confining her to her cell for extended periods of time, particularly in the Cue Unit, but also in the Yeeda unit and elsewhere;
- b. placing Ms Walters in an observation cell or other type of cell in the Cue unit as her accommodation at BHDC for extended periods;

- c. requiring Ms Walters to be handcuffed for movements within BHDC for an extended period or otherwise using physical restraints on Ms Walters;
- d. denying or restricting Ms Walters' access to goods, services, programs, privileges and facilities, including those set out in paragraph 33 above;
- e. subjecting Ms Walters to strip searches;
- f. removing Ms Walters from or restricting her access to education activities and programs; and
- g. confiscating and/or denying or restricting Ms Walters' access to books, paper, writing and/or drawing implements.

46

47 Ms Walters would have been able to, or would have been better able to, manage the symptoms and manifestations of her disability described in paragraph 40 if the CEO, the Superintendent and Officers had made adjustments in dealing with Ms Walters, including by:

- a. providing Ms Walters with appropriate mental health treatment, counselling and support;
- b. providing Ms Walters with behavioural therapy to assist her to learn to, and to better regulate her emotions and behaviour;
- c. training Officers about ASD and in techniques and approaches to communicating with Ms Walters to reduce confrontation and escalation;
- d. providing Ms Walters with, and assisting her to implement, an individual behaviour plan to reduce confrontation and escalation;
- e. providing Ms Walters with an appropriately qualified support worker to assist her in her interactions with Officers and detainees;

(collectively, the **Walters Reasonable Adjustments**)

47A Had some or each of the Walters Reasonable Adjustments been made, Ms Walters:

- a. would not have been subjected to the matters described in paragraph 45;
- b. would have been able to access and would have attended education activities at BHDC; and
- c. would have been able to access and would have accessed the goods, services and facilities described in paragraph 33 above.

48 The Walters Reasonable Adjustments were not made for Ms Walters, notwithstanding her evident need for those kinds of adjustments by reason of her disability. As a result, she was wrongly characterised as wilfully recalcitrant and subject to punitive responses and thereby disadvantaged.

49

*Direct Discrimination*

49A By reason of the matters in paragraphs 38 to 48 above, Western Australia, through the conduct of the CEO, the Superintendent and Officers, discriminated against Ms Walters within the meaning of section 5 of the DDA on the ground of Ms Walters' ASD in that Western Australia:

- (a) did not make the Walters Reasonable Adjustments; and
- (b) the failure to make the Walters Reasonable Adjustments had the effect that Ms Walters was, because of her ASD, treated less favourably than a person without ASD would have been treated in circumstances that were not materially different.

*Indirect Discrimination*

49B In the alternative to paragraphs 48A above, by reason of the claims in paragraphs 38 to 48 above, Western Australia, through the conduct of the CEO, the Superintendent and Officers, discriminated against Ms Walters within the meaning of section 6(2) of the DDA on the ground of Ms Walters' ASD in that:

- a. Western Australia required Ms Walters, to comply with the Behavioural Regime;
- b. because of Ms Walters' ASD, Ms Walters was only able to comply with the Behavioural Regime if the Walters Reasonable Adjustments were made;
- c. Western Australia did not make the Walters Reasonable Adjustments;
- d. the failure to make the Walters Reasonable Adjustments had the effect of disadvantaging Ms Walters.

*Discrimination in Relation to Education – s 22 DDA*

49C By reason of the matters in set out in paragraphs 33 and 48A above or, alternatively, 33 and 48B above, and the matters in paragraphs 50 to 52A below, Ms Walters was disadvantaged in her access to and enjoyment of education or was subjected to detriment in relation to her enjoyment of the benefit of education.

- 50 When Ms Walters was confined in her cell, she was often not permitted to attend school and given no access to education or rehabilitation programs. When Ms Walters was provided with some educational instruction while confined, she was given individual instruction by a teacher attending the Cue Unit, including in the company of two (2) custodial officers. Ms Walters was also regularly removed from education activities, often for disciplinary reasons. Ms Walters was thereby subjected to a lack of routine in her education and rehabilitation. Ms Walters was thereby disadvantaged in her access to, and effective enjoyment of, the benefit of education contrary to s 22 of the DDA.
- 51 When Ms Walters was provided with access to education, she was provided with educational instruction using a curriculum and educational materials, including reading materials, which were unsuitable by reference to her academic capacity and/or existing level of academic attainment. Further, she was not provided with any specific assistance as a result of her disability, including specialist expertise, personal educational support and/or support for personal and medical care. She was thereby subjected to detriment in relation to her enjoyment of the benefit of education contrary to s 22 of the DDA.
- 51A In particular, Ms Walters required the following specialised support services to accommodate her disability and enable her to participate in educational activities provided at BHDC:
- a. mental health treatment, counselling and support;
  - b. behavioural therapy to assist her to learn to, and to, better regulate her emotions and behaviour;
  - c. an appropriately qualified support worker to assist Ms Walters in her interactions with Officers and detainees.
- 52 Ms Walters was sometimes refused access to specific educational programs and materials on the grounds of her disability. In one instance, Ms Walters was denied access to books which contained staples as Ms Walters was known to use staples to self-harm. Ms Walters was also deprived of access to art programs and art supplies on several occasions as punishment for Ms Walters depicting images of self-harm. This was despite it being known to Officers that artistic expression was a manifestation of Ms Walters' disability. On occasions where Ms Walters produced drawings which were manifestations of her disability, Officers threatened Ms Walters with use of force and denial of privileges. By denying Ms Walters access to specific educational programs used throughout BHDC, Ms Walters was subjected to detriment in relation

to her enjoyment of an educational benefit which was offered to other students in the facility, contrary to s 22 of the DDA.

52A By reason of the matters in set out in paragraphs 34 and 48A above or, alternatively, 34 and 48B above, and the matters in paragraphs 20 to 52 above, Ms Waltes was disadvantaged in her access to

*Harassment in Education – s 37 DDA*

53 Ms Walters' name was written on a board in the office of BHDC next to the word, "Autistic". The board was in full view of officers, teachers and students at BHDC and the words "Alexandra Walters" and "Autistic" remained on the board despite Ms Walters' complaints that they were offensive, insulting and humiliating and her requests that they be removed.

53A By reason of the matters in paragraphs 32A and 53, Western Australia by its servants and agents, the Superintendent and Officers, unlawfully harassed Ms Walters in relation to her disability in contravention of s 37 of the DDA.

*Contravention of DSE*

54 By reason of Ms Walters being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 50 above, Ms Walters was prevented from participating in education on the same basis as a student without a disability, within the meaning of Part 5 of the DSE and in particular section 5.2.

55 By reason of Ms Walters being provided with a curriculum and educational materials for courses and programs within BHDC, which were unsuitable by reference to her academic capacity and/or existing level of academic attainment as set out in paragraph 50 above, Ms Walters was not able to participate in the learning experiences of those courses and programs on the same basis as a student without a disability, within the meaning of Part 6 of the DSE and in particular section 6.2.

56 By reason of Ms Walters being denied access to specialised support services to accommodate her disability, as set out in paragraph 51 above, Ms Walters was prevented from participating in education on the same basis as a student within the meaning of Part 7 of the DSE and in particular section 7.2.

57 Ms Walters would have been assisted in her participation in education and in the learning experiences of courses and programs within BHDC, if adjustments had been made for her by reason of her disability, including:

- a. appropriately assessing Ms Walters' literacy and numeracy competency on admission to BHDC;

- b. developing a curriculum, learning plan and other educational material tailored to Ms Walters' competency level and designed to encourage Ms Walters' participation, accommodate her style of learning and encourage Ms Walters' educational progress and achievement;
- c. adopting techniques and approaches to communicating with Ms Walters to reduce confrontation and escalation;
- d. adopting disciplinary practices within educational settings which accommodated the behavioural manifestations of her disability rather than adopting punitive responses thereto;
- e. adjusting the mode of education provided to Ms Walters to accommodate her disability;
- f. taking steps to allow Ms Walters to continue having lessons with the few educational instructors with whom she had developed a good rapport; and
- g. taking steps to arrange for and/or facilitate the provision of specialised support services to Ms Walters to accommodate her disability.

58 However, in contravention of Parts 3, 5, 6 and 7 of the DSE :

- a. adjustments, including those set out in paragraph 57 above, were not made for Ms Walters, at all or within a reasonable time, in contravention of sections 5.2, 6.,2, 7.2 and 3.7 of the DSE;
- b. Ms Walters was not consulted about the making of adjustments, including adjustments of the kind set out in paragraph 56 above, in contravention of sections 5.2, 6.,2, 7.2 and 3.5 of the DSE; and
- c. either no decision was made about the making of reasonable adjustments for Ms Walters, including adjustments of the kind set out in paragraph 57 above, or alternatively, a decision was made not to make those kinds of adjustments or any other adjustments, in contravention of sections 5.2, 6.,2, 7.2 and 3.5 of the DSE.

58A By reason of the matters in paragraphs 54 to 58 above the State of Western Australia failed to take reasonable steps to ensure that Ms Walters:

- a. was able to participate in education on the same basis as a student without a disability, as required by section 5.2 of the DSE;

b. was able to participate in the learning experiences of courses and programs within BHDC on the same basis as a student without a disability, as required by section 6.2 of the DSE.

58B To the extent that the specialised support services referred to in paragraph 51A were of a kind provided by Western Australia at BHDC, Western Australia failed to take reasonable steps to ensure that Ms Walters had access to the service in contravention of s 7.2(2) of the DSE.

58C To the extent that the specialised support services referred to in paragraph 51A were of a kind not provided by Western Australia at BHDC, Western Australia failed to take reasonable steps to facilitate the provision by another person or agency of the support services referred to in paragraph 51A to Ms Walters in contravention of s 7.2(3) of the DSE.

58D In contravention of s 7.2(6) of the DSE, Ms Walters was not consulted about her need for specialist support services of the kind referred to in paragraph 51A.

59 By reason of the Officers' conduct set out in paragraph 53 above, Ms Walters suffered harassment within the meaning of section 8.1 of the DSE.

60 In circumstances where it was known to Officers that artistic expression was a manifestation of Ms Walters' disability, it was reasonably foreseeable that depriving Ms Walters of access to art supplies as described in paragraph 52 above would cause her distress. Ms Walters thereby suffered harassment on the basis of her disability, in contravention of section 8.3 of the DSE.

61 By reason of the Officers' conduct set out in paragraph 53 above, Ms Walters was harassed on the basis of her disability. In contravention of section 8.3 of the DSE, the Western Australia, the CEO, the Superintendent and the Officers failed to implement strategies to prevent Ms Walters from being harassed, failed to take appropriate action after the harassment of Ms Walters occurred and failed to ensure Ms Walters had access to complaint mechanisms available to her.

61A By reason of the matters in paragraphs 54 to 61, the State of Western Australia contravened s 32 of the DDA.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

62 By reason of the matters set out in paragraphs 33 and 48A above or, alternatively, 33 and 48B above, and the matters in paragraphs 63 to 65 below, Ms Walters was

disadvantaged in her access to the facilities and services provided in detention, set out in paragraph 33 above.

63 Ms Walters was disadvantaged by being punished for alleged misbehaviour by loss of program placement, loss of recreation time, loss of access to the fitness room, loss of canteen privileges and/or loss of television privileges.

64 She was also disadvantaged by being required to be handcuffed for movements within BHDC, and particularly to and from the Cue Unit, including in order to:

- a. attend visits from members of her family, including her parents;
- b. attend medical services at BHDC;
- c. access telephone facilities for communicating with her family; and
- d. make use of:
  - i. recreation areas outside the Cue Unit;
  - ii. goods and facilities for recreation and/or therapy outside the Cue Unit, including:
    - i) fitness and gymnasium facilities;
    - ii) sport equipment and facilities; and
    - iii) art and craft materials and classes;
  - ii. the canteen.

64A Ms Walters was also disadvantaged by the conduct of Officers confiscating and/or denying or restricting Ms Walters' access to books, paper, writing and/or drawing implements as referred to in paragraph 45f., including by reason of her drawing the words and images referred to in paragraph 40d. above, which conduct was:

- a. a manifestation of Ms Walters' ASD, as pleaded in paragraph 40; and
- b. a means of artistic expression for Ms Walters, which assisted her to cope with the experience of being a young woman with ASD detained at BHDC.

65 Further, she was disadvantaged by being subjected to the unjustified and unlawful use of force and threats of use of force.

*Harassment in relation to the provision of goods and services – s 39 DDA*

65A While Ms Walters was at Banksia Hill, Officers repeatedly and unreasonably either refused to provide her with or deprived her of the following goods, services and



facilities, or, alternatively, provided those goods, services and facilities to Ms Walters, in a manner which was calculated to cause discomfort and/or distress to Ms Walters.

- (a) toilet paper;
- (b) tampons or other products for menstruating persons;
- (c) clothing and underwear;
- (d) air-conditioning; and
- (e) protection from the risk of self-harm.

65B Ms Walters was repeatedly provided with clothing and underwear which was too small for her to wear, despite larger size clothing being available and despite Ms Walters repeatedly complaining that this caused her extreme discomfort due to sensory issues which were a manifestation of her disability.

65C While placed in the CUE Unit, as part of her of being protected against the risk of self-harm, Ms Walters requested that the air-conditioning in her cell be turned up and Officers instead turned off the air-conditioning and turned on the heating and thereafter refused to turn off the heating despite Ms Walters repeated complaints that she was too hot and could not sleep. Ms Walters was ultimately forced to lie on the floor of her cell in an attempt to reduce her body temperature.

65D When Ms Walters was involved in incidents of self-harm whilst she was placed in the Yeeda Unit, she was on numerous occasions escorted to the CUE Unit. In so doing, one male Officer repeatedly chose a route to escort Ms Walters to the CUE unit which made Ms Walters highly visible to other detainees in the Yeeda Unit, thereby embarrassing and humiliating her, despite there being several other equally suitable routes which would not have made Ms Walters so visible and despite Ms Walters repeatedly requesting that an alternate route be used.

65E When placed in the Cue Unit, as part of her of being protected against the risk of self-harm:

- i. Ms Walters was not allowed to keep either toilet paper or tampons or other products for menstruating persons in her cell.
- ii. Ms Walters would request that she be provided with toilet paper or tampons as and when she required those items; and
- iii. Officers regularly either:
  - 1. denied Ms Walters access entirely to those goods;

2. only provided her with those goods after an unreasonable amount of time had elapsed; or
3. in the case of toilet paper, provided her with a meagre or insufficient amount thereof.

65F It is to be inferred from the unreasonableness of the conduct referred to in paragraphs (a) to (e) above, that Officers deliberately caused discomfort to Ms Walters because they disliked her as a consequence of the behavioural manifestations of her disability set out in paragraph 40 above.

65G. While Ms Walters was at Banksia Hill, she was repeatedly mocked, humiliated, disparaged and ignored by Officers whilst attempting to request the provision of goods and/or access to services among those set out at paragraph [to be inserted] above, being:

- a. fabric swatches;
- b. toilet paper;
- c. tampons;
- d. telephone services;
- e. services and facilities for recreation; and
- f. medical services.

65H Ms Walters was repeatedly mocked by Officers through the intercom in her cell after requesting access to toilet paper, tampons, telephone services, services and facilities for recreation and medical services, with Officers ignoring her, falsely mimicking a message stating that no-one was there to take a call and mimicking dog noises to mock Ms Walters because at times, in a manifestation of her disabilities, Ms Walters had acted like a dog.

65I Ms Walters was repeatedly mocked by a male officer who spoke to her in a high pitch with exaggerated intonation in the manner commonly known as “baby talk”, for no apparent reason, as though Ms Walters was incapable of understanding ordinary speech whilst denying her requests to be provided with goods or to access services including fabric swatches, and services and facilities for recreation.

65J Ms Walters was repeatedly mocked by a female officer who made fun of the way Ms Walters spoke and in particular her vocal disfluencies, being how often Ms Walters would use filler words such as “um”, “ah” and “like”, in response to Ms Walters requests for and use of goods and services, including repeatedly playing a recording of a



telephone call between Ms Walters and her father to other Officers whilst mocking Ms Walters in Ms Walters' presence and continuing to do so despite Ms Walters repeated requests that she stop.

65K. By reason of the matters in paragraphs 55 and 65A to 65J above, Officers harassed Ms Walters in relation to her disability in circumstances where Ms Walters sought to acquire goods or services or make use of facilities provided in Banksia Hill, in contravention of s 39 of the DDA.

*Pleading in WAD251 of 2021*

66 As explained at paragraph 12 above, the Ms Walters has already commenced proceedings against the Respondent under s 46PO of the AHRC Act, following the termination of the First Complaint.

67 Ms Walters's claims in that proceeding are set out in the Statement of Claim in that proceeding and in the Proposed Amended Originating Application in that proceeding, both dated 17 May 2023. Copies of those documents are attached to this complaint and marked "A" and "B" respectively.

68 As explained at paragraphs 14 to 17 above, to the extent that any of the unlawful discrimination to which Ms Walters alleges that she and the group members were subjected as set out above or set out in attachments A and B extends beyond the unlawful discrimination set out in the First Complaint, Ms Walters now makes this further complaint in respect of that unlawful discrimination, on her own behalf and on behalf of the group members.

**D. Mr Vida**

69 At all material times during the Relevant Period, Mr Vida has suffered from schizophrenia and an intellectual disability. These are disabilities within the meaning of the DDA.

69A Mr Vida's schizophrenia and/or intellectual disability is a disorder that affects Mr Vida's thought processes, emotions, behaviour and judgement such that Mr Vida:

- a. sometimes behaves in an uninhibited manner, including removing his clothes;
- b. appears at times to be irritable, thought-disordered and aggressive;
- c. can be paranoid and suspicious; and
- d. has difficulty regulating his emotions and behaviour.

70 Mr Vida was detained at BHDC for the following periods:

- a. 7 March 2014 to 8 March 2014;
- b. 9 March 2016 to 10 March 2016;
- c. 11 March 2016 to 12 March 2016;
- d. 29 September 2016 from 1:21 am to 12:23 pm;
- e. 28 November 2016 to 30 November 2016;
- f. 31 July 2017 to 1 August 2017;
- g. 21 March 2018 to 22 March 2018;
- h. 28 March 2018 to 19 April 2018;
- i. 16 April 2019 to 30 April 2019; and
- j. 21 April 2020 to 22 April 2020.

71 While in BHDC, Mr Vida engaged in the following kinds of behaviour that were symptoms or manifestations of his disability:

- a. behaving in a disinhibited manner, including removing his clothes;
- b. being irritable and thought-disordered;
- c. being verbally aggressive and demanding;
- d. being emotionally labile;
- e. failing to follow instructions or commands;
- f. damaging property;
- g. being violent;
- h. going out of bounds; and
- i. offending Officers.

#### *Unlawful Disability Discrimination*

72 As set out in the First Complaint, Mr Vida alleges that Officers responded to his behaviour, set out in paragraph 71 above, in a punitive manner and that this resulted in Mr Vida frequently being confined to his cell in the Intensive Support Unit (**ISU**), also known as the Harding Unit, and being deprived of access to goods, services or facilities, including visits, telephone calls, medical and psychological treatment, and education. Mr Vida was also specifically goaded and mocked about his disabilities.

73 By way of further elaboration on the matters raised in the First Complaint, Mr Vida alleges as follows.

- 74 Officers' responses to his behaviour, set out in paragraph 71 above, included:
- a. confining Mr Vida in his cell, particularly in the ISU/Harding Unit;
    - a1. placing Mr Vida in the ISU/Harding Unit;
  - b. restricting Mr Vida's recreation time out of his cell;
    - b1. restricting Mr Vida's access to goods, services, programs, privileges and facilities, including those set out in paragraph 33 above;
    - b2. restricting Mr Vida's access to education activities and programs;
  - c. the use of force or threats of force and the use of physical restraints, including handcuffing, against Mr Vida;
    - c1. subjecting Mr Vida to strip searches;
  - d. calling Mr Vida names, including "spastic", "retard", "mental", and "not all right in the head".

75

- 76 Mr Vida would have been able to, or would have been better able to, manage the symptoms and manifestations of his disability described in paragraphs 69A and 71 if the CEO, the Superintendent and Officers had made adjustments in dealing with Mr Vida, including by:

- a. providing Mr Vida with appropriate mental health treatment, counselling and support;
- b. providing Mr Vida with appropriate behavioural therapy to assist him to learn to better regulate his emotions and behaviour;
- c. training Officers about schizophrenia and in techniques and approaches to communication with Mr Vida to reduce confrontation and escalation;
- d. providing Mr Vida with an individual behaviour plan to reduce confrontation and escalation;
- e. providing Mr Vida with an appropriate individual support worker to assist him in his interactions with Officers and detainees;

(collectively, the **Vida Reasonable Adjustments**)

- 76A Had some or each of the Vida Reasonable Adjustments been made, Mr Vida:

- a. would not have been subjected to the matters described in paragraph 74 above;
- b. would have been able to access and would have attended education activities at BHDC; and
- c. would have been able to access and would have accessed the goods and services described in paragraph 33 above.

77 The Vida Reasonable Adjustments were not made for Mr Vida, notwithstanding his evident need for those kinds of adjustments by reason of his disabilities. As a result, he was wrongly characterised as wilfully recalcitrant and subject to punitive responses and thereby disadvantaged.

78

*Direct Discrimination*

78A By reason of the matters in paragraphs 69 to 77 above, Western Australia, through the conduct of the CEO, the Superintendent and Officers, discriminated against Mr Vida within the meaning of section 5 of the DDA on the ground of Mr Vida's schizophrenia and intellectual disability in that the State:

- a. did not make the Vida Reasonable Adjustments; and
- b. the failure to make the Vida Reasonable Adjustments had, or would have, the effect that Mr Vida was, because of his schizophrenia and intellectual disability, treated less favourably than a person without schizophrenia and intellectual disability was or would be treated in circumstances that were not materially different.

*Indirect discrimination DDA s 6(2)*

78B In the alternative to paragraph 77A above, by reason of the matters in paragraphs 68 to 77, Western Australia, through the conduct of the CEO Superintendent and Officers, discriminated against Mr Vida within the meaning of section 6(2) of the DDA on the ground of Mr Vida's schizophrenia and intellectual disability in that:

- (a) Western Australia required Mr Vida to comply with the Behavioural Regime;
- (b) because of Mr Vida's schizophrenia and intellectual disability, Mr Vida was only able to comply with the Behavioural Regime if the Vida Reasonable Adjustments were made;
- (c) Western Australia did not make the Vida Reasonable Adjustments;

- (d) the failure to make the Vida Reasonable Adjustments had, has, was likely to have or is likely to have the effect of disadvantaging Mr Vida.

*Discrimination in Relation to Education – s 22 DDA*

78C By reason of the matters in paragraphs 34 and 78A, or alternatively, 34 and 78B, and the matters in paragraphs 79 to 80A below, Mr Vida was disadvantaged in his access to and enjoyment of education or was subjected to detriment in relation to his enjoyment of the benefit of education.

79 When Mr Vida was confined to his cell, including in the ISU, Mr Vida was not permitted to attend school and given no access to education or rehabilitation programs. He was thereby denied access to the benefit of education, contrary to s 22 of the DDA.

80 In the extremely limited circumstances in which education was provided to Mr Vida, Mr Vida was provided educational packs which consisted of educational materials that were not tailored to his level of competence and attainment. Further, he was not provided with any specific assistance as a result of his disability, including specialist expertise, personal educational support and/or support for personal and medical care. He was thereby subjected to detriment in relation to his education, including in relation to his access to and his effective enjoyment of the benefit of education contrary to s 22 of the DDA.

80A Mr Vida required the following specialised support services to accommodate his disability and enable him to participate in educational activities provided at BHDC:

- a. mental health treatment, counselling and support;
- b. behavioural therapy to assist him to learn to and to better regulate his emotions and behaviour;
- c. an appropriately qualified support worker to assist Mr Vida in his interactions with Officers and detainees.

*Harassment in Education – s 37 DDA*

81 Staff at BHDC regularly called Mr Vida names including “spastic”, “retard”, “mental”, and “not all right in the head”. Staff repeatedly used these names to describe Mr Vida despite it being reasonably foreseeable that the use of such names would have the effect of offending, insulting or humiliating him, and in spite of his repeated complaints. Mr Vida was thereby subjected to harassment on the basis of his disability, contrary to s 37 of the DDA.

### *Contravention of DSE*

- 82 By reason of Mr Vida being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 78 above, Mr Vida was prevented from participating in education on the same basis as a student without a disability, within the meaning of Part 5 of the DSE and in particular section 5.2.
- 81A Alternatively, by reason of the matters in paragraph 78 above, Mr Vida was unable to seek admission to or to apply for enrolment in education offered within BHDC, within the meaning of Part 4 of the DSE and in particular section 4.2.
- 83 By reason of Mr Vida being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 80 above, Mr Vida was prevented from participating in the learning experiences of the courses and programs offered at BHDC on the same basis as a student without a disability within the meaning of Part 6 of the DSE and in particular section 6.2.
- 84 By reason of Mr Vida being denied access to specialised support services to accommodate his disability, as set out in paragraphs 79 and 80A above, Mr Vida was prevented from participating in education on the same basis as a student without a disability, within the meaning of Part 7 of the DSE and in particular section 7.2.
- 85 Mr Vida would have been assisted in seeking admission to or enrolment in education at BHDC and in his participation in education and in the learning experiences of courses and programs within BHDC if adjustments had been made for him by reason of his disability, including:
- a. appropriately assessing Mr Vida's literacy and numeracy competency on admission to BHDC;
  - b. developing a curriculum, learning plan and other educational material tailored to Mr Vida's competency level, designed to encourage Mr Vida's participation and accommodate his style of learning;
  - c. taking steps to adjust the materials or the mode of education provided to Mr Vida (in the extremely limited circumstances in which any education was even provided) to accommodate his disability; and
  - d. taking steps to arrange for and/or facilitate the provision of specialised support services to Mr Vida to accommodate his disability.
- 86 However, in contravention of Parts 3, 5, 6 and 7 of the DSE:



- a. adjustments, including those set out in paragraph 85 above, were not made for Mr Vida, at all or within a reasonable time, in contravention of sections 5.2, 6.2, 7.2 and 3.7 of the DSE;
- b. Mr Vida was not consulted about the making of adjustments, including adjustments of the kind set out in paragraph 85 above, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE; and
- c. either no decision was made about the making of reasonable adjustments for Mr Vida, including adjustments of the kind set out at paragraph 84 above, or alternatively, a decision was made not to make those kinds of adjustments or any other adjustments, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE.

86A By reason of the matters in paragraphs 82 to 86 above, the State of Western Australia failed to take reasonable steps to ensure that Mr Vida:

- a. was able to seek admission to, or apply for enrolment in education offered in BHDC on the same basis as a prospective student without a disability, and without experiencing discrimination, as required by section 4.2 of the DSE;
- b. was able to participate in education on the same basis as a student without a disability, as required by section 5.2 of the DSE;
- c. was able to participate in the learning experiences of course and programs within BHDC on the same basis as a student without a disability, as required by section 6.2 of the DSE.

86B To the extent that the specialised support services referred to in paragraph 80A were of a kind provided by Western Australia at BHDC, Western Australia failed to take reasonable steps to ensure that Mr Vida had access to the service in contravention of s 7.2(2) of the DSE.

86C. To the extent that the specialised support services referred to in paragraph 80A were of a kind not provided by Western Australia at BHDC, Western Australia failed to take reasonable steps to facilitate the provision by another person or agency of the support services referred to in paragraph 80A to Mr Vida in contravention of s 7.2(3) of the DSE.

86D In contravention of s 7.2(6) of the DSE, Mr Vida was not consulted about his need for specialist support services of the kind referred to in paragraph 80A.



87 By reason of the Officers' conduct set out in paragraph 81 above, Mr Vida was harassed on the basis of his disability. In contravention of section 8.3 of the DSE, Western Australia as the education provider:

- a. failed to implement strategies to prevent Mr Vida from being harassed;
- b. failed to take appropriate action after the harassment occurred; and
- c. failed to ensure that appropriate and adequate complaint mechanisms were available to Mr Vida.

87A By reason of the matters in paragraphs 82 to 87, Western Australia contravened s 32 of the DDA.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

88 By reason of the matters set out in paragraphs 33 and 78A, or alternatively, 33 and 78B above and paragraphs 89 to 92 below, Mr Vida was disadvantaged in his access to the facilities and services provided in detention, set out in paragraph 33 above. Mr Vida was not permitted access to goods, services and facilities outside the ISU, including some or all of the goods and services referred to in paragraph 33 above, and was thereby disadvantaged.

89 Mr Vida was also disadvantaged by being subjected to unjustified and unlawful uses of force and handcuffing on numerous occasions.

90 Further, Officers called Mr Vida "spastic", "retard", "mental", and "not all right in the head" and would not have done so had they been dealing with a detainee who did not have schizophrenia or an intellectual disability. Officers thereby engaged in differential treatment of Mr Vida, which disadvantaged him.

91 Mr Vida was subject to confinement, the unlawful use of force and handcuffing on many occasions as set out above. It is to be inferred from the conduct of Officers in specifically abusing Mr Vida on the basis of his disability that they also engaged in that unlawful conduct towards Mr Vida by reason of his disability and would not have treated a person without a disability in the same manner.

92 Mr Vida was thus discriminated against by Officers who treated him less favourably than they would have treated a person without Mr Vida's disability in circumstances that were not materially different.

*Harassment in Relation to the Provision of Goods and Services – s 39 DDA*

92A By reason of the matters in paragraph 90 above, Officers harassed Mr Vida in relation to his disability in circumstances where Mr Vida was sought to acquire goods and



services or use facilities, being those referred to in paragraph 33 above. The Officers thereby contravened s 39 of the DDA.

*Pleading in WAD251 of 2022*

93 As explained at paragraph 12 above, Mr Vida has already commenced proceedings against the Respondent under s 46PO of the AHRC Act, following the termination of the First Complaint.

94 Mr Vida's claims in that proceeding are set out in the Statement of Claim in that proceeding and in the Proposed Amended Originating Application in that proceeding, both dated 17 May 2023. Copies of those documents are attached to this complaint and marked "A" and "B" respectively.

95 As explained at paragraphs 17 above, to the extent that any of the unlawful discrimination to which Mr Vida alleges that he and the group members were subjected as set out above extends beyond the unlawful discrimination set out in the First Complaint, Mr Vida now makes this further complaint in respect of that unlawful discrimination, on his own behalf and on behalf of the group members.

E. [REDACTED]

96 [REDACTED] has a neurological injury sustained in a motorcycle accident, a cognitive impairment, language disorder, severe claustrophobia and suicidal ideation. These are disabilities within the meaning of the DDA.

96A [REDACTED] disabilities, set out in paragraph 96 above, are disorders that affect [REDACTED] thought processes, emotions, behaviour and judgement such that:

- a. [REDACTED] often has difficulty regulating his emotions and behaviour;
- b. when confronted with peremptory, complex or unpleasant commands, he is likely to react with heightened emotional and physical responses;
- c. he can appear to be irritable, thought disordered and aggressive; and
- d. he can be paranoid and suspicious.

96B [REDACTED] was detained from time to time in youth detention from 2019 onwards.

97 [REDACTED] was initially detained at BHDC but on 20 July 2022, [REDACTED] was transferred from BHDC to Unit 18 at Casuarina Prison, which otherwise housed only adult prisoners.

98 [REDACTED] was detained at Unit 18 for the following periods:

- a. 20 July 2022 to 23 August 2022,

b. 28 September 2022 to 16 December 2022.

99 [REDACTED] was then detained at BHDC between 3 January 2023 and May 2023. He was then transferred again to Unit 18, where he remained until 16 August 2023, when he was transferred back to BHDC for two days until returning to Unit 18 on 18 August 2023 until 17 October 2023, at which time he was again transferred back to BHDC, where he remains detained to the present day.

100 While in detention at each place, [REDACTED] has spent a significant amount of his time placed within:

- a. the ISU at BHDC; and
- b. the MPU at Unit 18.

101 While in BHDC, [REDACTED] engaged in the following kinds of behaviour that were a symptoms or manifestations of his disability:

- a. destroying property;
- b. self-harming;
- c. exhibiting a lack of thought and/or concern for the consequences of his actions;
- d. difficulty controlling his impulses;
- e. difficulty refraining from the above behaviour;
- f. difficulty regulating his emotions;
- g. refusing to follow instructions;
- h. being verbally aggressive;
- i. being violent;
- j. going out of bounds; and
- k. annoying officers.

*Unlawful Disability Discrimination*

102 As set out in the Second Complaint, [REDACTED] was subjected to confinement in his cell for extended periods, which exacerbated his mental illness. He was not provided with appropriate therapeutic support or treatment.

103 By way of further elaboration on the matters raised in the Second Complaint, [REDACTED] alleges as follows.

104 [REDACTED] disabilities meant that he had significant difficulty coping with protracted periods of lockdown in his cell and his resultant limited access to programs, activities, and socialisation. These factors trigger feelings of boredom, frustration, isolation, distress, and desperation, acts of self-harm and attempted suicide. His confinement in his cell within Unit 18 thus exacerbated the manifestations of his disabilities described at paragraph 101 above.

105 Officers' responses to [REDACTED] behaviour, set out in paragraph 101 above, included:

- a. confining him in his cell;
- a1. placing him in the ISU or MPU;
- b. restricting his recreation time out of his cell;
- c. the use of force or threatened use of force and restraints, including three-point restraints, rip proof garments and handcuffing;
- d. subjecting him to strip searches;
- d1. removing him from or restricting his access to education activities and programs; and
- e. denying or restricting his access to goods, services, privileges and facilities, including those set out in paragraph 33 above.

106

- a.
- b.
- c.

107 [REDACTED] would have been able to, or would have been better able to, manage the symptoms and manifestations of his disability, described in paragraph 101, if the CEO, the Superintendent and Officers had made adjustments in dealing with [REDACTED], including by:

- a. providing [REDACTED] with appropriate mental health treatment, counselling and support;
- b. providing [REDACTED] with appropriate behavioural therapy to assist him to learn to better regulate his emotions and behaviour;

- c. training Officers about neurological injury and in techniques and approaches to communicating with [REDACTED] to reduce confrontation and escalation;
  - d. providing [REDACTED] with an individual behaviour plan to reduce confrontation and escalation;
  - e. providing [REDACTED] with an appropriate individual support worker to assist him in his interactions with Officers and detainees;
- (collectively, the [REDACTED] **Reasonable Adjustments**).

107A Had some or each of the [REDACTED] Reasonable Adjustments been made, [REDACTED]:

- a. would not have been subjected to the matters described in paragraph 105;
- b. would have been able to access and would have attended education activities at BHDC and Unit 18; and
- c. would have been able to access and would have accessed the goods, services and facilities described in paragraph 33.

108 The [REDACTED] Reasonable Adjustments or adjustments of their kind were not made for [REDACTED] notwithstanding his evident need for those kinds of adjustments by reason of his disabilities. As a result, he was wrongly characterised as wilfully recalcitrant and subject to punitive responses and thereby disadvantaged.

109 The requirements referred to in paragraph **Error! Reference source not found.** were not reasonable having regard to the circumstances of the case.

110 For example, between 21 July 2022 and 19 August 2022, [REDACTED] was confined to his cell for a total of 203 hours and 54 minutes, or an average of 7 hours and 50 minutes per day, in addition to the 13 hours of standard night-time lockdown between the hours of 18:45 and 07:45. During this period, [REDACTED] therefore spent a daily average of 20 hours and 50 minutes locked down in his cell.

111

#### *Direct Discrimination*

111A By reason of the matters in paragraphs 95 to 110 above, Western Australia, through the conduct of the CEO, the Superintendent and Officers, discriminated against [REDACTED] within the meaning of section 5 of the DDA on the ground of [REDACTED] disabilities referred to in paragraph 95 above in that Western Australia:

- a. did not make the [REDACTED] Reasonable Adjustments; and

- b. the failure to make the [REDACTED] Reasonable Adjustments had, or would have, the effect that [REDACTED] was, because of his disabilities referred to in paragraph 95 above, treated less favourably than a person without those disabilities was or would be treated in circumstances that were not materially different.

*Indirect discrimination*

111B. In the alternative to paragraph 111A above, by reason of the matters in paragraphs 95 to 110, Western Australia, through the conduct of the CEO Superintendent and Officers, discriminated against [REDACTED] within the meaning of section 6(2) of the DDA on the ground of [REDACTED] disabilities referred to in paragraph 95 above in that:

- (a) Western Australia required [REDACTED] to comply with the Behavioural Regime;
- (b) because of [REDACTED] disabilities referred to in paragraph 95 above, [REDACTED] was only able to comply with the Behavioural Regime if the [REDACTED] Reasonable Adjustments were made;
- (c) Western Australia did not make the [REDACTED] Reasonable Adjustments;
- (d) the failure to make the [REDACTED] Reasonable Adjustments had, has, was likely to have or is likely to have the effect of disadvantaging [REDACTED].

*Discrimination in Relation to Education – s 22 DDA*

111C By reason of the matters in paragraphs 34 and 111A, or alternatively 34 and 111B, and the matters in paragraphs 112 to 113A below, [REDACTED] was disadvantaged in his access to and enjoyment of education or was subjected to detriment in relation to his enjoyment of the benefit of education.

112 When [REDACTED] was confined to his cell and placed in the ISU and MPU for extended periods, he was not permitted to attend school and given no access to education or rehabilitation programs. In fact, [REDACTED] detention management report indicates that he received no hours of education in 2022. He was thereby denied access to the benefit of education, contrary to s 22 of the DDA.

113 To the extent that [REDACTED] has received education while detained in Unit 18, it has comprised of limited face-to-face education. For the most part, [REDACTED] was supplied with an education pack while confined to his cell. The education pack consisted of general worksheets that were not tailored to [REDACTED] level of competence. Further, [REDACTED] was not provided with any specific assistance as a result of his disability. Instead, the teacher spent minimal time speaking with [REDACTED].

from outside his cell door. [REDACTED] was thereby denied access to the benefit of education, contrary to s 22 of the DDA.

- 113A. [REDACTED] required the following specialised support services to accommodate his disability and enable him to participate in educational activities provided at BHDC:
- a. mental health treatment, counselling and support;
  - b. behavioural therapy to assist him to learn to and to better regulate his emotions and behaviour;
  - c. an appropriately qualified support worker to assist [REDACTED] in his interactions with Officers and detainees.

#### *Harassment in Education – s37 DDA*

114 In the limited circumstances in which education was provided to [REDACTED] outside of his cell at Unit 18, [REDACTED] was handcuffed for the duration of the class. In addition to restricting [REDACTED] access to the benefit of education, contrary to s 22 of the DDA, the act of forcing [REDACTED] to participate in class, whilst being handcuffed, was humiliating, offending, intimidating and distressing for [REDACTED]. It marked [REDACTED] as apparently dangerous in front of other detainees and the teacher. Given the repeated nature of the conduct and the unreasonableness of requiring [REDACTED] to be handcuffed on those occasions, [REDACTED] treatment constitutes harassment in education on the part of the Officers, contrary to s 37 of the DDA.

#### *Contravention of DSE*

115 By reason of [REDACTED] being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 112 above, [REDACTED] was prevented from participating in education on the same basis as a student without a disability, within the meaning of Part 5 of the DSE and in particular section 5.2.

116 By reason of [REDACTED] being provided with a curriculum and educational materials which were not tailored to his level of competence, as set out in paragraph 112 above, [REDACTED] was not able to participate in the learning experiences of courses and programs offered at BHDC on the same basis as a student without a disability, within the meaning of Part 6 of the DSE and in particular section 6.2.

117 By reason of [REDACTED] being denied access to specialised support services to accommodate his disability, as set out in paragraph 112 and 113A above, [REDACTED] was prevented from participating in education on the same basis as a student without a disability, within the meaning of Part 7 of the DSE and in particular section 7.2.

118 [REDACTED] would have been able to participate in education if adjustments had been made for him by reason of his disability, including:

- a. appropriately assessing [REDACTED] literacy and numeracy competency on admission to BHDC;
- b. developing a curriculum, learning plan and other educational material tailored to [REDACTED] competency level, designed to encourage [REDACTED] participation and accommodate his style of learning;
- c. taking steps to arrange for and/or facilitate the provision of specialised support services to [REDACTED] to accommodate his disability;
- d. providing sufficient access to teachers and substitute teachers; and
- e. adjusting the materials, or the mode of education provided to [REDACTED] (in the limited circumstances in which any education was even provided) to accommodate his disability.'

119 However, in contravention of Parts 3, 5, 6 and 7 of the DSE:

- a. adjustments, including those set out in paragraph 118 above, were not made for [REDACTED], at all or within a reasonable time, in contravention of sections 5.2, 6.2, 7.2 and 3.7 of the DSE;
- b. [REDACTED] was not consulted about the making of adjustments, including adjustments of the kind set out in paragraph 118 above, notwithstanding the evident need for adjustments to be made to accommodate the behavioural manifestations of his disability, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE;

120 By reason of the Officers' conduct set out in paragraph 114 above, [REDACTED] was harassed on the basis of his disability. In contravention of section 8.3 of the DSE, the State of Western, the CEO, the Superintendent and the Officers failed to implement strategies to prevent [REDACTED] from being harassed and failed to take appropriate action after the harassment occurred.

120A By reason of the matters in paragraphs 115 to 120 above, the State of Western Australia contravened s 32 of the DDA.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

121 When [REDACTED] was confined in his cell and placed in the ISU in BHDC, he was disadvantaged in his access to the facilities and services provided in detention, set out in paragraph 33 above.

- 122 When [REDACTED] was confined in his cell and placed in the MPU in Unit 18, he was disadvantaged in his access to the facilities and services provided in detention, set out in paragraph 33 above.
- 123 In addition to being confined in his cell, [REDACTED] was regularly subjected to punishments, including in response to suicide attempts and incidents of self-harm, involving the loss of privileges and/or program placements, including restricting [REDACTED] access, either in part or in full to:
- a. a television or radio;
  - b. educational worksheets or other reading material;
  - c. education or rehabilitation programs;
  - d. sport, exercise, games or recreation;
  - e. the ability to eat or socialise with other detainees;
  - f. in-person contact with visitors or any other person aside from custodial staff;
  - g. telephone contact with family members;
  - h. a towel, shampoo, bodywash, toothbrush or other hygiene products;
  - i. the opportunity to take a shower.
- 124 These punishments further exacerbated manifestations of [REDACTED] disabilities, which were treated by Officers as incidents of poor behaviour rather than as manifestations of a disability, precipitating a rapid decline in the mental and physical health of [REDACTED]. In one instance, [REDACTED] fashioned a noose out of the rip-proof gown he was forced to wear. Officers responded by removing the gown, and then left [REDACTED] naked, in solitary confinement in an MPU cell, with only a rip-proof doona for comfort.
- 125 On another occasion, by reason of being wrongly characterised as wilfully recalcitrant, [REDACTED] was subjected to punitive uses of force such as being folded up, including on one occasion being folded up so as to cause such extreme pain to his neck that he was then taken to hospital for an X-ray.
- 126 [REDACTED] was frequently subject to routine and excessive uses of force including the use of restraints, strip searches and solitary confinement. On one occasion, [REDACTED] was forced to eat dinner while still in a three-point restraint, for no justifiable reason. This was inhumane and degrading and amounted to forcing [REDACTED] to eat like an animal.

126A By reason of the matters in paragraphs 33 and 111A, or alternatively, 33 and 111B above and in paragraphs 122 to 126 above, [REDACTED] was disadvantaged in his access to some or all of the goods, services and facilities referred to in paragraph 33 above.

*Harassment in relation to goods, services and facilities - s 39 DDA*

126B On some occasions, the extent of repeated deprivation to which [REDACTED] was subjected in response to requests to access goods, services and facilities within those referred to at paragraph 33 above, and the unreasonableness of Officers doing so, is such that that conduct constitutes harassment within the meaning of the DDA.

126C For example, [REDACTED] was repeatedly ignored while requesting access to medical services and recreation. [REDACTED] informed Officers that he was unable to cope with his continued detention and required access to support services, or goods, services and facilities for recreation or entertainment (among those referred to in paragraph 33 above) and that he would attempt suicide if he continued to be deprived of access to them. Officers unreasonably ignored [REDACTED], refused to allow him access to the requested goods, services and facilities and stripped [REDACTED] naked and left him in a rip-proof gown. That conduct, and the similar conduct referred to in paragraph 124 above, are examples of Officers harassing [REDACTED] on the ground of his disabilities when he sought to acquire goods and services, contrary to s 39 of the DDA.

*Unlawful Age Discrimination*

127 As set out in the Second Complaint, after being moved to Unit 18, [REDACTED] was denied access to family visits and telephone calls and to educational programs.

128 By way of further elaboration on the matters raised in the Second Complaint, [REDACTED] alleges as follows.

129 While confined in Unit 18, [REDACTED] has had extremely limited access to services and facilities as compared both to detainees at BHDC and prisoners within the adult population at Casuarina Prison. [REDACTED] was regularly unable to access services and facilities provided in Casuarina Prison by reason of it being an adult facility and his status as a child detainee under the YOA.

130 Even when [REDACTED] was not confined within his cell while detained in Unit 18, he still received little to no access to education or any programs for rehabilitation by reason of the failure by the CEO, Superintendent and/or Officers to:

- a. provide sufficient access to teachers and substitute teachers;
- b. adequately resource education at Unit 18;

- c. adequately staff Unit 18 to facilitate the minimum 9.8 hours out of cell each day required for standard program delivery.

131 When [REDACTED] has received education in Unit 18, it has been limited to the provision of simplistic worksheets and has not included face-to-face education. [REDACTED] has not been informed when, if ever, or on what conditions, he may be able to access face-to-face education during the continuation of his detention.

132 He has thereby been disadvantaged in his access to education by reason of his age.

133 Further, for the reasons referred to in paragraph 129 above, [REDACTED] has been disadvantaged in his ability to access services and facilities, including facing ongoing difficulties in accessing psycho-social supports such as:

- a. face-to-face visits with his aunt [REDACTED];
- b. e-visits with family and friends;
- c. access to psychologists, mentors, and other non-custodial staff, due to a lack of confidential spaces in which to speak; and
- d. when welfare checks and/or psychological assessments did occur, being subjected to them being completed through a grille on the door of his cell.

134 [REDACTED] has also been denied access to rehabilitation programs, which have on occasion been scheduled for detainees, but have subsequently been cancelled without explanation (a circumstance which is itself debilitating for a detainee relying on such programs). He has not been able to access a cognitive behavioural therapy program, as all three scheduled sessions were cancelled, as was a program based on engagement with youths through Hip Hop music. [REDACTED] has ultimately been entirely prevented from engaging in any formal rehabilitation programs while detained at Unit 18.

#### *Direct Discrimination*

134A By reason of the matters in paragraphs 127 to 134 above, [REDACTED] was treated less favourably than adult persons imprisoned within Casuarina Prison by reason of his age. In the premises, the State of Western Australia discriminated against [REDACTED] on the ground of his age within the meaning of s 14 of the ADA.

#### *Indirect Discrimination*

134B In the alternative to paragraph 134A, [REDACTED] makes the claims at paragraphs 134C to 134F below.

134C. Throughout [REDACTED] detention at Unit 18, it was a condition of his detention, or alternatively it was a practice imposed by the State of Western Australia that:

- a. [REDACTED] serve his period of detention in a facility located within an adult prison, which did not provide access to the goods, services and facilities available in BHDC, as set out in paragraph 33 above; and
- b. [REDACTED] not be permitted to access any of the equivalent goods, services or facilities within Casuarina Prison, by reason of his age.

134D. Imposing the conditions referred to in paragraph 134C:

- a. had the effect of disadvantaging [REDACTED] by reason of the matters in paragraphs 25 to 31A and 129 to 134; and
- b. was likely to have the effect of disadvantaging other persons who were of the same age as [REDACTED] for reasons analogous to the matters in paragraphs 25 to 31A and 129 to 134.

134E The condition or practice referred to in paragraph 134C was not reasonable having regard to the circumstances of the case.

134F By reason of the matters in paragraphs 127 to 134E, Western Australia discriminated against [REDACTED] on the ground of his age within the meaning of s 15 of the ADA.

135 As explained at paragraph 13 above, [REDACTED] commenced proceedings under s 46PO of the AHRC Act, following the termination of the Second Complaint.

136 As explained at paragraph 17 above, to the extent that any of the unlawful discrimination to which [REDACTED] alleges that he and the group members were subjected, as set out above, extends beyond the unlawful discrimination set out in the Second Complaint, [REDACTED] now makes this further complaint in respect of that unlawful discrimination, on his own behalf and on behalf of the group members.

F. [REDACTED]

137 [REDACTED] has attention deficit hyperactivity disorder (**ADHD**) with prominent inattention, anxiety, panic attacks, oppositional defiance traits, executive functioning problems, and social skills difficulties and conduct disorder. These are disabilities within the meaning of the DDA.

137A [REDACTED] disabilities, set out in paragraph 137 above, are disorders that affect [REDACTED] thought processes, emotions, behaviour and judgement such that [REDACTED]:

- a. often has difficulty regulating his emotions and behaviour;

- b. when confronted with peremptory, complex or unpleasant commands or when reacting to stress, boredom, anger, and frustration, he is likely to react with heightened emotional and physical responses;
- c. can appear to be irritable, thought disordered and aggressive;
- d. can be paranoid and suspicious.

138 [REDACTED] was detained in a juvenile justice facility:

- a0. from time to time from about September 2019 until November 2021;
- a. from 5 November 2021 to 8 September 2022; and
- b. from 17 October 2022 to 7 August 2023

139 [REDACTED] was initially detained at BHDC. On 20 July 2022 he was transferred from BHDC to Unit 18 at Casuarina Prison, which otherwise housed only adult prisoners.

140 Since 20 July 2022, [REDACTED] has spent the following periods at each place:

- a. at BHDC:
  - i. 10 August 2022 to 15 August 2022; and
  - i. 13 January 2023 to 27 January 2023;
- b. Unit 18
  - i. 20 July 2022 to 10 August 2022;
  - ii. 15 August 2022 to 8 September 2022;
  - iii. 17 October 2022 to 13 January 2023; and
  - iv. 27 January 2023 to 7 August 2023.

141 While in detention at each place, [REDACTED] has spent a significant amount of his time placed within:

- a. the ISU at BHDC;
- b. the MPU at Unit 18.

142 [REDACTED] disabilities manifest themselves in various ways, including in behaviour consistent with pyromania, kleptomania, oppositional defiant disorder, and impulse control disorder. [REDACTED] disabilities affect his ability to cope with stress, boredom, anger, and frustration.

143 While in BHDC and Unit 18, [REDACTED] engaged in the following kinds of behaviour that were symptoms or manifestations of his disability:

- a. setting fires;
- b. destroying others' property;
- c. lack of thought and/or concern for the consequences of his actions;
- d. difficulty controlling his impulses;
- e. difficulty refraining from the above behaviour;
- f. difficulty regulating his emotions;
- g. self-harming;
- h. refusing to follow instructions;
- i. being violent or verbally aggressive;
- j. going out of bounds; and
- k. being rude to, annoying or offending Officers.

*Unlawful Disability Discrimination*

144 [REDACTED] has been confined to his cell for extended periods and subjected to other punishments and disadvantageous treatment as a result of Officers enforcing disciplinary policies which were and are unsuitable for [REDACTED] because of his disabilities.

145 Officers responded to the behaviour of [REDACTED] as described in paragraphs 142 and 143 above by:

- a. the use of force and threats of use of force against him;
- b. the use of restraints including handcuffs, leg shackles and three-point restraints, including requiring [REDACTED] to be handcuffed for all movements with BHDC and Unit 18;
- c. placing [REDACTED] in the ISU or MPU for extended periods;
- d. confining [REDACTED] in his cell for extended periods, particularly in the ISU or MPU;
- d1. restricting his access to goods, services, privileges and facilities including those set out in paragraph 33 above;
- e. subjecting [REDACTED] to strip searches; and

- f. denying or restricting his access to education and programs.

146

- a.
- b.
- c.

147 [REDACTED] would have been able to, or would have been better able to, manage the symptoms and manifestations of his disability, described in paragraphs 142 and 143, if the CEO, the Superintendent and Officers had made adjustments in dealing with [REDACTED], including by:

- a. providing [REDACTED] with appropriate mental health treatment, counselling and support;
- b. providing [REDACTED] with appropriate behavioural therapy to assist him to learn to better regulate his emotions and behaviour;
- c. training Officers about ADHD and in techniques and approaches to communicating with [REDACTED] to reduce confrontation and escalation;
- d. providing [REDACTED] with an individual behaviour plan to reduce confrontation and escalation;
- e. providing [REDACTED] with an appropriate individual support worker to assist him in his interactions with Officers and detainees;

(collectively, the [REDACTED] **Reasonable Adjustments**).

147A Had some or each of the [REDACTED] Reasonable Adjustments been made, [REDACTED]:

- a. would not have been subjected to the matters described in paragraph 145;
- b. would have been able to access and would have attended education activities at BHDC and Unit 18; and
- c. would have been able to access and would have accessed the goods, services and facilities described in paragraph 33.

148 The [REDACTED] Reasonable Adjustments were not made for [REDACTED] notwithstanding his evident need for those kinds of adjustments by reason of his disabilities. As a result, he was wrongly characterised as wilfully recalcitrant and subjected to punitive responses, and thereby disadvantaged.

149

### *Direct Discrimination*

149A By reason of the matters in paragraphs 137 to 148 above, Western Australia, through the conduct of the CEO, the Superintendent and Officers, discriminated against [REDACTED] within the meaning of section 5 of the DDA on the ground of [REDACTED] disabilities set out in paragraph 137 above in that Western Australia:

- a. did not make the [REDACTED] Reasonable Adjustments; and
- b. the failure to make the [REDACTED] Reasonable Adjustments had, or would have, the effect that [REDACTED] was, because of his disabilities set out in paragraph 137 above, treated less favourably than a person without his disabilities set out in paragraph 137 above was or would be treated in circumstances that were not materially different.

### *Indirect discrimination*

149B. In the alternative to paragraph 148A above, by reason of the matters in paragraphs 137 to 148, Western Australia, through the conduct of the CEO Superintendent and Officers, discriminated against [REDACTED] on the ground of [REDACTED] disabilities set out in paragraph 137 above in that:

- (a) Western Australia required [REDACTED] to comply with the Behavioural Regime;
- (b) because of [REDACTED] disabilities set out in paragraph 137 above, [REDACTED] was only able to comply with the Behavioural Regime if the [REDACTED] Reasonable Adjustments were made;
- (c) Western Australia did not make the [REDACTED] Reasonable Adjustments;
- (d) the failure to make the [REDACTED] Reasonable Adjustments had, has, was likely to have or is likely to have the effect of disadvantaging [REDACTED].

### *Discrimination in Relation to Education – s 22 DDA*

149C By reason of the matters in paragraphs 34 and 149A, or alternatively 34 and 149B, and the matters in paragraphs 150 to 151A below, [REDACTED] was disadvantaged in his access to and enjoyment of education or was subjected to detriment in relation to his enjoyment of the benefit of education.

150 [REDACTED] was confined in his cell and placed in the ISU and MPU for extended periods. When he was so confined, he was either not permitted to attend school or given no access to education. [REDACTED] was also subjected to a lack of routine in his education and rehabilitation. He was thereby disadvantaged in his access to, and effective enjoyment of, the benefit of education, contrary to s 22 of the DDA.

151 When ██████ did receive education, it was extremely basic education regarding literacy and numeracy which did not advance ██████ level of educational attainment. The curriculum was haphazardly applied and there was little to no continuity between lessons, making it almost impossible for ██████ to gain any benefit from the limited education provided. Further, he was not provided with any specific assistance as a result of his disability, including specialist expertise, personal educational support and/or support for personal and medical care. He was thereby subjected to detriment in relation to his enjoyment of the benefit of education contrary to s 22 of the DDA.

151A ██████ required the following specialised support services to accommodate his disability and enable him to participate in educational activities provided at BHDC and at Unit 18:

- a. mental health treatment, counselling and support;
- b. behavioural therapy to assist him to learn to, and to, better regulate his emotions and behaviour;
- c. an appropriately qualified support worker to assist ██████ in his interactions with Officers and detainees.

*Contravention of DSE*

152 By reason of ██████ being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraph 150 above, ██████ was prevented from participating in education on the same basis as a student without a disability, within the meaning of Part 5 of the DSE and in particular section 5.2.

153 By reason of ██████ being provided with a curriculum and educational materials which were below his level of competence, as set out in paragraph 150 above, ██████ was not able to participate in the learning experiences of the courses and programs offered in youth detention on the same basis as a student without a disability, within the meaning of Part 6 of the DSE and in particular section 6.2.

154 By reason of ██████ being denied access to specialised support services to accommodate his disability, as set out in paragraphs 150 and 151A above, ██████ was prevented from participating in education on the same basis as a student without a disability, within the meaning of Part 7 of the DSE and in particular section 7.2.

155 No attempt was made to adjust the materials, or the mode of education provided to ██████ (in the limited circumstances in which any education was even provided) to accommodate his disability. ██████ was not consulted about any such

adjustments. That was notwithstanding that [REDACTED] had previously been the subject of an assessment outside of detention, which had determined that he would benefit from the following kinds of adjustments:

- a. ensuring that [REDACTED] is given clear and consistent instructions;
- b. providing positive feedback from staff; and
- c. providing close guidance with initial tasks to increase understanding of what is expected of him.

155A [REDACTED] would have been able to participate in education if adjustments had been made for him by reason of his disability, including:

- a. appropriately assessing [REDACTED] literacy and numeracy competency on admission into BHDC and/or Unit 18;
- b. developing a curriculum, learning plan and other educational material tailored to [REDACTED] competency level and designed to encourage his participation and accommodate his style of learning;
- c. adopting techniques and approaches to communicating with [REDACTED] to reduce confrontation and escalation;
- d. adopting disciplinary practices within educational settings which accommodated the behavioural manifestations of his disability rather than adopting punitive responses thereto;
- e. adjusting the mode of education provided to [REDACTED] to accommodate his disability;
- f. taking steps to arrange for and/or facilitate the provision of specialised support services to [REDACTED] to accommodate his disability, including appropriate ADHD medication;
- g. providing sufficient access to teachers and substitute teachers; and
- h. taking steps to adjust the materials or the mode of education provided to [REDACTED] [REDACTED] (in the extremely limited circumstances in which any education was provided) to accommodate his disability.

156 In contravention of Parts 3, 5, 6 and 7 of the DSE:

- a. adjustments, including adjustments of the kind set out in paragraphs 147, 154 and 155A above, were not made for [REDACTED], at all or within a reasonable time, in contravention of sections 5.2, 6.2, 7.2 and 3.7 of the DSE;

- b. [REDACTED] was not consulted about the making of adjustments, including adjustments of the kinds set out in paragraphs 147, 155 and 155A above, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE; and
- c. either no decision was made about the making of reasonable adjustments for [REDACTED], including adjustments of the kinds set out in paragraphs 147, 155 and 155A above, or alternatively, a decision was made not to make those kinds of adjustments or any other adjustments, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE.

156A By reason of the matters in paragraphs 152 to 156 above, the State of Western Australia failed to take reasonable steps to ensure that [REDACTED]:

- a. was able to participate in education on the same basis as a student without a disability, as required by section 5.2 of the DSE; and
- b. was able to participate in the learning experiences of courses and programs within BHDC and Unit 18 on the same basis as a student without a disability, as required by section 6.2 of the DSE.

156B To the extent that the specialised support services referred to in paragraph 151A were of a kind provided by Western Australia at BHDC and Unit 18, Western Australia failed to take reasonable steps to ensure that [REDACTED] had access to the service in contravention of s 7.2(2) of the DSE.

156D To the extent that the specialised support services referred to in paragraph 151A were of a kind not provided by Western Australia at BHDC and Unit 18, Western Australia failed to take reasonable steps to facilitate the provision by another person or agency of the support services referred to in paragraph 151A to [REDACTED] in contravention of s 7.2(3) of the DSE.

156E In contravention of s 7.2(6) of the DSE, [REDACTED] was not consulted about his need for specialist support services of the kind referred to in paragraph 151A.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

156F By reason of the matters in paragraphs 33 and 149A, or alternatively 33 and 149B, and the matters in paragraphs 157 to 161A, [REDACTED] was disadvantaged in his access to some or all of the goods, services and facilities referred to in paragraph 33 above.

157 [REDACTED] was disadvantaged by being punished for alleged misbehaviour by loss of program placement, loss of recreation time, loss of access to the fitness room, loss of canteen privileges and/or loss of television privileges. This has resulted in [REDACTED]

being without access to television, radio, reading material or any other form of entertainment or amusement or method of passing the time.

158 He was also disadvantaged by being subjected to restraints, including being handcuffed or placed in shackles for movements within BHDC and Unit 18, and by being subjected to the unjustified and unlawful use of force and threats of use of force. [REDACTED] was regularly restrained and subjected to uses of force without appropriate justification, including being “folded up” on numerous occasions.

159 On one occasion, [REDACTED] was restrained in three-point restraints and left on the floor of his cell for 9 hours without being released from the restraints and without being provided with water, t-shirt or blanket, being left in extreme cold and discomfort, in conditions tantamount to torture. On another occasion, he was pepper-sprayed while in his cell and posing no threat, in apparent retaliation for an incident involving other detainees, in which [REDACTED] was not involved. He was then left in his cell for between one and two hours without being permitted to wash the pepper-spray out of his eyes, which caused serious blistering and a rash to form on his skin.

160 [REDACTED] has also had charges brought against him in respect of his responses to such unlawful assaults. On one occasion, after a suicide attempt, he was assaulted and “folded-up”, causing a dislocated shoulder, and then left in three-point restraints, following which [REDACTED] was himself charged with assault. The charge was subsequently withdrawn after the video footage of [REDACTED] being assaulted was shown in court.

161 Further, [REDACTED] was subjected to unnecessary searches, for example for an object which had in fact (to the knowledge of the Officer conducting the search) already been located, which was in those circumstances a punitive measure unlawfully applied against [REDACTED].

161A By reason of the matters in paragraphs 157 to 161 above, [REDACTED] was disadvantaged in his access to some or all of the goods, services and facilities referred to in paragraph 34 above.

*Harassment in relation to goods, services and facilities – s 39 DDA*

161B On some occasions, the extent of repeated deprivation to which [REDACTED] was subjected in response to requests to access goods, services and facilities within those referred to at paragraph 33 above, and the unreasonableness of Officers doing so, is such that that conduct constitutes harassment within the meaning of the DDA.

161C For example, ██████████ was repeatedly ignored while requesting access to toilet paper, water to drink, showering or bathing facilities, dental hygiene goods and facilities with which to use them, medical and psychological care, goods, services or facilities relating to entertainment or recreation. On the occasion referred to in paragraph 158 above, he was unreasonably deprived of water, clothing, heating and appropriate medical and therapeutic supports. On another occasion, ██████████ was unreasonably repeatedly deprived of the service of being provided protection against risks of harm, when Officers knowingly placed him a cell in which, due to a malfunction, the intercom system made repeated, extremely loud and irritating noises. Despite ██████████ protests, he was left in that cell and, being unable to stop the noise, was thereby deprived of sleep which led to a severe deterioration in his mental health and ultimately to his hospitalisation. In each case those are examples of Officers harassing ██████████ on the ground of his disabilities when he sought to acquire goods and services, contrary to s 39 of the DDA.

161D Further to the harassment of ██████████ by Officers generally, as outlined in paragraph 161C above, ██████████ was targeted by a particular Officer who, in addition to engaging in the conduct set out in paragraph 161, also harassed ██████████ mother on the ground of ██████████ disability in contexts in which ██████████ sought to use services and facilities for telephone calls and visits between him and his mother, who had made multiple complaints ██████████ mistreatment in BHDC and Unit 18. That Officer attempted to shame ██████████ mother in relation to ██████████ behaviour and refused to listen to her concerns about ██████████ mistreatment by that Officer and other Officers, dismissing their significance, including by saying words to the effect that “I am the boss”. That Officer openly punished ██████████ and his mother for not acquiescing in that mistreatment, by withholding visits unless ██████████ mother would stop complaining about him being assaulted, kept in solitary confinement and deprived of basic necessities and instead “work with [the Officer]”. That conduct also constituted harassment of ██████████ and of his mother (who is an associate of ██████████ within the meaning of ss 4 and 7 of the DDA), contrary to s 39 of the DDA.

#### *Unlawful Age Discrimination*

162 While detained in Unit 18, ██████████ had extremely limited access to services and facilities as compared both to detainees at BHDC and prisoners within the adult population at Casuarina Prison. ██████████ was regularly unable to access services and facilities provided in Casuarina Prison by reason of it being an adult facility and ██████████ not being able to interact with the adult prison population.

163 [REDACTED] has thereby been subject to differential treatment by reason of his age and was thereby disadvantaged in his access to services and facilities. In the circumstances, he was and would only have been able to access services and facilities ordinarily provided to detainees after first being transferred back to BHDC from Unit 18.

164 Even when [REDACTED] was not confined within his cell while detained in Unit 18, he still received little to no access to education or any programs for rehabilitation by reason of the failure by the CEO, Superintendent and/or Officers to:

- a. provide sufficient access to teachers and substitute teachers;
- b. adequately resource education at Unit 18;
- c. adequately staff Unit 18 to facilitate the minimum 9.8 hours out of cell each day required for standard program delivery.

165 He has thereby been disadvantaged in his access to education by reason of his age.

166 Further, [REDACTED] was disadvantaged by reason of his age in his ability to access services and facilities including:

- a. access to entertainment and reading material (which is also important for self-educational purposes, particularly in light of the lack of education provided);
- b. telephone calls and e-visits with family, friends and relevant professionals such as case workers or lawyers;
- c. medical services, including for disability, including the provision of medicine and psychological and psychiatric assessments and prescriptions;
- d. basic aspects of hygiene including showers, toilet paper for toileting, being able to cut his nails, and so on.

167 While detained in Unit 18, [REDACTED] u was regularly denied access to the services and facilities listed in paragraph 0. For example:

- a. He would only be provided with meagre amounts of toilet paper on request.
- b. Showers were regularly broken, limiting access to them.
- c. [REDACTED] was often denied access to working showers on a punitive basis including as part of solitary confinement.
- d. For certain periods, he was provided with no medication.

- e. At other times, he was provided with medication but without proper assessment by a psychologist or psychiatrist despite [REDACTED] specifically requesting access to such assessments.
- f. Visits were very limited, and [REDACTED] was often forced to choose between, for example, receiving a visit from his mother or from his lawyer. He was even forced to choose between these things and showering at times, due to a perverse and unlawful application of the idea of “out of cell time”.
- g. He was denied access to telephone calls generally.
- h. When he was confined in the MPU he was unable to receive any entertainment material and so was unable even to educate or amuse himself by reading.

168 The combined effect of these conditions resulted in a serious deterioration in [REDACTED] mental health, causing an increase in panic and anxiety attacks. He has also suffered from significant insomnia, which has a cyclical debilitating effect, as solitary confinement becomes more difficult to withstand as one’s ability to sleep decreases.

#### *Direct Discrimination*

168A By reason of the matters in paragraphs 162 to 168 above, [REDACTED] was treated less favourably than adult persons imprisoned within Casuarina Prison by reason of his age. In the premises, the State of Western Australia discriminated against [REDACTED] on the ground of his age within the meaning of s 14 of the ADA.

#### *Indirect Discrimination*

168B In the alternative to paragraph 168A, [REDACTED] makes the claims at paragraphs 168C to 168F.

168C. Throughout [REDACTED] detention at Unit 18, it was a condition of his detention, or alternatively it was a practice imposed by the State of Western Australia that:

- a. [REDACTED] serve his period of detention in a facility located within an adult prison, which did not provide access to the goods, services and facilities available in BHDC, as set out in paragraph 33 above; and
- b. [REDACTED] not be permitted to access any of the equivalent goods, services or facilities within Casuarina Prison, by reason of his age.

168D. Imposing the conditions referred to in paragraph 168C:

- a. had the effect of disadvantaging [REDACTED] by reason of the matters in paragraph 25 to 31A and 162 to 168; and

b. was likely to have the effect of disadvantaging other persons who were the same age as [REDACTED] for reasons analogous to the matters in paragraph 25 to 31A and 162 to 168.

168E The condition or practice referred to in paragraph 168C was not reasonable having regard to the circumstances of the case.

168F By reason of the matters in paragraphs 162 to 168E, Western Australia discriminated against [REDACTED] on the ground of his age within the meaning of s 15 of the ADA.

169 As explained at paragraph 13 above, [REDACTED] has commenced proceedings under s 46PO of the AHRC Act, following the termination of the Second Complaint.

170 As explained at paragraph 17 above, to the extent that any of the unlawful discrimination to which [REDACTED] alleges that he and the group members were subjected, as set out above, extends beyond the unlawful discrimination set out in the Second Complaint, [REDACTED] now makes this further complaint in respect of that unlawful discrimination, on his own behalf and on behalf of the group members.

171 [REDACTED] has submitted several complaints regarding his treatment in BHDC and Unit 18, which provide more details about his treatment in those facilities and the unlawful discrimination he has suffered. A collated copy of those complaints is attached to this complaint and marked "C".

**G.** [REDACTED]

172 At all material times, [REDACTED] suffered from ADHD, conduct disorder and from drug addiction. These are disabilities within the meaning of the DDA.

172A [REDACTED] disabilities, set out in paragraph 172 above, are disorders that affects [REDACTED] thought processes, emotions, behaviour and judgement such that [REDACTED]:

- a. [REDACTED] often has difficulty regulating his emotions and behaviour;
- b. when confronted with peremptory, complex or unpleasant commands, he is likely to react with heightened emotional and physical responses;
- c. he can appear to be irritable, thought disordered and aggressive; and
- d. he can be paranoid and suspicious.

173 [REDACTED] was initially detained at Rangeview and BHDC but in or around January 2013, [REDACTED] was transferred from BHDC to Hakea JF, located in the Hakea Prison, which otherwise housed only adult prisoners.

174 [REDACTED] was detained at Hakea JF for a period of approximately one year.

175 While detained in BHDC, Rangeview and in Hakea JF, [REDACTED] engaged in the following kinds of behaviour that were symptoms or manifestations of his disability:

- a. lack of thought and/or concern for the consequences of his actions;
- b. difficulty controlling his impulses;
- c. difficulty refraining from the above behaviour;
- d. difficulty regulating his emotions;
- e. being irritable and thought-disordered;
- f. being verbally aggressive and demanding;
- g. refusal to follow instructions;
- h. engaging in paranoid patterns of thought and corresponding behaviours;
- i. exhibiting distrust of others and their motivations;
- j. experiencing repetitive and intrusive patterns of thought and associated behaviours; and
- k. difficulty sleeping.

*Unlawful Disability Discrimination*

176 In response to [REDACTED] behaviour set out in paragraph 175 above, Officers implemented the following responses and imposed the following restrictions on him:

- a. subjected him to the use of force and threats of the use of force;
- b. subjected him to restraints, including handcuffing;
- c. confined him in his cell;
- c1. subjecting him to strip searches;
- d. denied or restricted his access to goods, services, privileges and facilities including those set out in paragraph 33 above;
- d1. removing him from or restricting his access to education activities and programs;
- e. denied or restricted his access to in-person visits with family and friends;
- f. purported to prescribe [REDACTED] with Seroquel, which:
  - i. made him sleepy and docile,
  - ii. was not prescribed by a doctor or psychologist, and

- iii. did not provide any effective treatment for [REDACTED], but rather had the effect of making him more compliant in the interests of Officers.

177

- a.
- b.
- c.
- d.

178 [REDACTED] would have been able to or would have been better able to manage the symptoms and manifestations of his disability, described in paragraph 175 if the CEO, the Superintendent and Officers had made adjustments in dealing with him, including by:

- a. providing him with appropriate mental health treatment, including medication, counselling and support;
- b. providing him with appropriate behavioural therapy to assist him to learn to better regulate his emotions and behaviour;
- c. training Officers about ADHD and in techniques and approaches to communicating with [REDACTED] to reduce confrontation and escalation; and
- d. providing [REDACTED] with an individual behaviour plan to reduce confrontation and escalation;

(collectively, the [REDACTED] **Reasonable Adjustments**).

178A Had some or each of the reasonable adjustments referred to in paragraph 178 been made, [REDACTED]:

- a. would not have been subjected to the matters described in paragraph 176;
- b. would have been able to access and would have attended education activities at Rangeview, Hakea JF and BHDC; and
- c. would have been able to access and would have accessed the goods, services and facilities described in paragraph 33.

179 Those kinds of adjustments were not made for [REDACTED], notwithstanding his evident need for those kinds of adjustments by reason of his disabilities. As a result, he was wrongly characterised as wilfully recalcitrant and subjected to punitive responses, and thereby disadvantaged.

180

181 [REDACTED] was disadvantaged by being confined to his cell, where he was often required to spend about 18 hours per day, regularly being confined for 6 hours of ordinary unlock time which should have applied each day. On one occasion, [REDACTED] was detained in the ISU in BHDC for about 9 weeks.

182 When so confined in his cell, [REDACTED] was regularly unable to access services and facilities and was usually only allowed 30-60 minutes of recreation time per day. On some occasions, he was not allowed out at all for consecutive days. In either case, at those times, he was not permitted to attend school and given no access to education. He was thereby disadvantaged in his access to, and effective enjoyment of, the benefit of education. He was also thereby subjected to a lack of routine in his education and rehabilitation and was prevented from participating in education on the same basis as a student without a disability. For extended periods of time, [REDACTED] received no education at all, whether from a teacher or by way of worksheet exercises.

183 [REDACTED] was also disadvantaged by reason of him being subjected to uses of force and threats of uses of force. [REDACTED] was routinely threatened by Officers, including being threatened with being pepper-sprayed in the eyes for behaviour as trivial as allegedly smirking. He was repeatedly subject to “folding up” for trivial incidents and continues to suffer symptoms of physical injuries caused by those uses of force, including his knee being liable to dislocate easily. In one incident, he was subjected to force and restrained and placed into a rip-proof gown after asking for a cup of water. In another, his face was slammed into the ground causing him to begin to bleed from above his eye.

#### *Direct Discrimination*

183A By reason of the matters in paragraphs 172 to 183, Western Australia, through the conduct of the CEO, the Superintendent and Officers, discriminated against [REDACTED] within the meaning of section 5 of the DDA on the ground of [REDACTED] disabilities set out in paragraph 172 above, in that Western Australia:

- a. did not make the [REDACTED] Reasonable Adjustments; and
- b. the failure to make the [REDACTED] Reasonable Adjustments had, or would have, the effect that [REDACTED] was, because of his disabilities set out in paragraph 172 above, treated less favourably than a person without his disabilities was or would be treated in circumstances that were not materially different.

### *Indirect discrimination*

183B. In the alternative to paragraph 183B above, by reason of the matters in paragraphs 172 to 183, Western Australia, through the conduct of the CEO Superintendent and Officers, discriminated against [REDACTED] within the meaning of section 6(2) of the DDA on the ground of [REDACTED] disabilities set out in paragraph 172 above, in that:

- (a) Western Australia required [REDACTED] to comply with the Behavioural Regime;
- (b) because of [REDACTED] disabilities set out in paragraph 172 above, [REDACTED] was only able to comply with the Behavioural Regime if the [REDACTED] Reasonable Adjustments were made;
- (c) Western Australia did not make the [REDACTED] Reasonable Adjustments;
- (d) the failure to make the [REDACTED] Reasonable Adjustments had, has, was likely to have or is likely to have the effect of disadvantaging [REDACTED].

### *Discrimination in Relation to Education – s 22 DDA*

183C By reason of the matters in paragraphs 34 and 183A, or alternatively 34 and 183B, and the matters in paragraphs 184 to 185A below, [REDACTED] was disadvantaged in his access to and enjoyment of education or was subjected to detriment in relation to his enjoyment of the benefit of education.

184 [REDACTED] was disadvantaged by being confined in his cell, as set out in paragraphs 180 to 181 above. When he was so confined, he was either not permitted to attend school or given no access to education. [REDACTED] was also subjected to a lack of routine in his education and rehabilitation. He was thereby disadvantaged in his access to, and effective enjoyment of, the benefit of education, contrary to s 22 of the DDA.

185 In the limited circumstances when [REDACTED] was provided with access to education, he was provided with educational instruction using a curriculum and educational materials, including reading materials, which were not tailored to his level of competence. Further, he was not provided with any specific assistance as a result of his disability, including specialist expertise, personal educational support and/or support for personal and medical care. He was thereby subjected to detriment in relation to his enjoyment of the benefit of education contrary to s 22 of the DDA.

185A [REDACTED] required the following specialised support services to accommodate his disability and enable him to participate in educational activities provided at BHDC:

- a. mental health treatment, counselling and support;

- b. behavioural therapy to assist him to learn to, and to, better regulate his emotions and behaviour;
- c. an appropriately qualified support worker to assist [REDACTED] in his interactions with Officers and detainees.

*Contravention of DSE*

- 186 By reason of [REDACTED] being denied access to, and effective enjoyment of the benefit of, education, as set out in paragraphs 184 and 185 above, [REDACTED] was prevented from participating in education on the same basis as a student without a disability, within the meaning of Part 5 of the DSE and in particular section 5.2 of the DSE.
- 187 By reason of [REDACTED] being provided with a curriculum and educational materials which were below his level of competence, as set out in paragraph 185 above, [REDACTED] was not allowed to participate in the learning experiences of courses and programs offered at Rangeview, Hakea JF and BHDC on the same basis as a student without a disability, within the meaning of Part 6 of the DSE and in particular section 6.2.
- 188 By reason of [REDACTED] being denied access to specialised support services to accommodate his disability, as set out in paragraph 185 above, [REDACTED] was prevented from participating in education on the same basis as a student without a disability, within the meaning of Part 7 of the DSE and in particular section 7.2.
- 189 No attempt was made to adjust the materials, or the mode of education provided to [REDACTED] (in the limited circumstances in which any education was provided) to accommodate his disability. [REDACTED] was not consulted about any such adjustments, despite his ADHD being known to staff at BHDC.
- 190 [REDACTED] would have been able to participate in education if adjustments had been made for him by reason of his disability, including:
- a. appropriately assessing [REDACTED] literacy and numeracy competency on admission into Rangeview, Hakea JF and/or BHDC;
  - b. developing a curriculum, learning plan and other educational material tailored to [REDACTED] competency level and designed to encourage his participation and accommodate his style of learning;
  - c. adopting techniques and approaches to communicating with [REDACTED] to reduce confrontation and escalation;

- d. adopting disciplinary practices within educational settings which accommodated the behavioural manifestations of his disability rather than adopting punitive responses thereto;
- e. adjusting the mode of education provided to [REDACTED] to accommodate his disability;
- f. taking steps to arrange for and/or facilitate the provision of specialised support services to [REDACTED] to accommodate his disability, including appropriate ADHD medication;
- g. provide sufficient access to teachers and substitute teachers; and
- h. taking steps to adjust the materials or the mode of education provided to [REDACTED] (in the extremely limited circumstances in which any education was provided) to accommodate his disability.

191 However, in contravention of Parts 3 of the DSE:

- a. adjustments, including adjustments of the kind set out in paragraph 190 above, were not made for [REDACTED], at all or within a reasonable time, in contravention of sections 5.2, 6.2, 7.2 and 3.7 of the DSE;
- b. [REDACTED] was not consulted about the making of adjustments, including adjustments of the kind set out in paragraph 190 above, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE; and
- c. either no decision was made about the making of reasonable adjustments for [REDACTED], including adjustments of the kind set out at paragraph 190 above, or alternatively, a decision was made not to make those kinds of adjustments or any other adjustments, in contravention of sections 5.2, 6.2, 7.2 and 3.5 of the DSE.

191A By reason of the matters in paragraphs 186 to 191 above, the State of Western Australia failed to take reasonable steps to ensure that [REDACTED]:

- a. was able to participate in education on the same basis as a student without a disability, as required by section 5.2 of the DSE; and
- b. was able to participate in the learning experiences of courses and programs within Rangeview, Hakea JF and BHDC on the same basis as a student without a disability, as required by section 6.2 of the DSE.

191B To the extent that the specialised support services referred to in paragraph 185A were of a kind provided by Western Australia at Rangeview, Hakea JF or BHDC, Western

Australia failed to take reasonable steps to ensure that [REDACTED] had access to the service in contravention of s 7.2(2) of the DSE.

191C. To the extent that the specialised support services referred to in paragraph 185A were of a kind not provided by Western Australia at Rangeview, Hakea JF or BHDC, Western Australia failed to take reasonable steps to facilitate the provision by another person or agency of the support services referred to in paragraph 185A to [REDACTED] in contravention of s 7.2(3) of the DSE.

191D In contravention of s 7.2(6) of the DSE, [REDACTED] was not consulted about his need for specialist support services of the kind referred to in paragraph 185A.

191E By reason of the matters in paragraphs 186 to 191D above, the State of Western Australia contravened s 32 of the DDA.

*Discrimination in Relation to Services and Facilities – s 24 of the DDA*

191F [REDACTED] was disadvantaged by being punished for alleged misbehaviour by being confined to his cell and by loss of program placement, loss of recreation time, loss of access to recreation and exercise facilities, loss of privileges such as canteen and television privileges. This would leave [REDACTED] without any way to entertain or amuse himself and had a deleterious effect on his mental health.

191G [REDACTED] was also disadvantaged by being subjected to restraints, including being handcuffed and being placed in rip-proof gowns. He was also subjected to the unjustified and unlawful use of force and threats thereof. He was regularly restrained and subjected to uses of force without appropriate justification, including being “folded up” on numerous occasions, such as in the incident referred to in paragraph 183 above.

191H [REDACTED] was also disadvantaged by being subjected repeatedly to unnecessary strip searches. [REDACTED] was invariably searched whenever entering or leaving a detention centre, moving to the SPU or ISU and for an extended period while [REDACTED] was placed in ISU, he was subjected to strip searches almost every morning. [REDACTED] had done nothing to create a suspicion that he had secreted anything and no contraband was ever found on him.

191I By reason of the matters in paragraphs 33 and 183A, or alternatively, the matters in paragraphs 33 and 183B, and the matters in paragraphs 191F to 191H above, [REDACTED] was disadvantaged in his access to some or all of the goods, services and facilities referred to in paragraph 34 above.

*Harassment in relation to goods, services and facilities - s 39 DDA*

191J On some occasions, the extent of repeated deprivation to which [REDACTED] was subjected in response to requests to access goods, services and facilities within those referred to at paragraph 33 above, and the unreasonableness of Officers doing so, is such that that conduct constitutes harassment within the meaning of the DDA. Thus, [REDACTED] was assaulted after requesting goods, services or facilities, such as a cup of water (as described in paragraph 183 above) or goods, services and facilities related to recreation or entertainment. He was also repeatedly denied access to basic hygiene goods including sufficient amounts of toilet paper, for no apparent reason. That conduct constituted harassment of [REDACTED] on the ground of his disabilities, contrary to s 39 of the DDA.

*Unlawful Age Discrimination*

192 While detained in Hakea JF, [REDACTED] had extremely limited access to services and facilities as compared both to detainees at BHDC and prisoners within the adult population at Hakea Prison. He was regularly unable to access services and facilities provided in Hakea Prison by reason of it being an adult facility and the fact that he was a child.

193 Even when [REDACTED] was not confined within his cell while detained in Hakea JF, he still received little to no access to education or any programs for rehabilitation by reason of the failure by the CEO, Superintendent and/or Officers to:

- a. provide sufficient access to teachers and substitute teachers or those responsible for delivering rehabilitation programs;
- b. adequately resource education and rehabilitation programs at Hakea JF;
- c. adequately staff Hakea JF to facilitate the minimum 9.8 hours out of cell each day, required for standard program delivery.

194 The education which [REDACTED] did receive was haphazard. Whereas while at BHDC and Rangeview, [REDACTED] received little to no education as a result of his punitive treatment as a result of his disability, at Hakea JF, he did receive slightly more time for education, but still no more than twice a week by reason of the restrictions imposed on the detainees as a result of Hakea JF being within an adult prison.

195 [REDACTED] was thereby disadvantaged in his access to education by reason of his age.

196 Either at Rangeview, BHDC or Hakea JF, when [REDACTED] did receive limited access to education, it was simplistic and no attempt was made to adjust the materials

or the mode of education provided to accommodate [REDACTED] disability, nor was [REDACTED] consulted about the possibility of such adjustments being made.

197 Further, while at Hakea JF, [REDACTED] was disadvantaged in his ability to access services and facilities by reason of his age. In particular, [REDACTED] was only able to receive visits on weekends, rather than during the week, as was possible at both BHDC and Rangeview.

198 Further, the following programs or facilities were not available at all at Hakea JF:

- a. sports facilities;
- b. educational programs for the attainment of workplace qualifications; and
- c. rehabilitation programs.

199 [REDACTED] was thereby subject to differential treatment by reason of his age and was thereby disadvantaged in his access to services and facilities and to education.

200 As a result of the conditions of his detention involving the unlawful discrimination set out above, [REDACTED] mental health deteriorated significantly, including his experiencing suicidal ideation and extreme feelings of hopelessness, which he did not experience prior to his detention.

#### *Direct Discrimination*

200A By reason of the matters in paragraphs 196 to 200 above, [REDACTED] was treated less favourably than adult persons imprisoned within Hakea Prison by reason of his age. In the premises, Western Australia discriminated against [REDACTED] on the ground of his age within the meaning of s 14 of the ADA.

#### *Indirect Discrimination*

200B In the alternative to paragraph 204B, [REDACTED] makes the claims at paragraphs 200C to 200F below.

200C Throughout [REDACTED] detention at Hakea JF, it was a condition of his detention, or alternatively it was a practice imposed by the State of Western Australia that:

- a. [REDACTED] serve his period of detention in a facility located within an adult prison, which did not provide access to the goods, services and facilities available in BHDC, as set out in paragraph 34 above; and
- b. [REDACTED] not be permitted to access any of the equivalent goods, services or facilities within Hakea Prison, by reason of his age.

200D Imposing the conditions referred to in paragraph 200C:

- a. had the effect of disadvantaging [REDACTED] by reason of the matters in paragraphs 25 to 31A and 192 to 200; and
- b. was likely to have the effect of disadvantaging other persons with [REDACTED] disabilities for reasons analogous to the matters in paragraphs 25 to 31A and 192 to 200.

200E The condition or practice referred to in paragraph 200C was not reasonable having regard to the circumstances of the case.

200F By reason of the matters in paragraphs 196 to 200E, Western Australia discriminated against [REDACTED] on the ground of his age within the meaning of s 15 of the ADA.

#### **H. Group member claims**

201 Group members suffered unlawful disability and/or unlawful age discrimination in the Relevant Period while in detention in one or more of the detention centres referred to in paragraph 3a above by reason of the acts or omissions of the Minister, the CEO, the Superintendent and/or Officers which Western Australia is taken to have engaged in and for which Western Australia is vicariously liable.

202 The acts or omissions referred to in paragraph 201 include acts or omissions of the kind described in the individual complaints of the Complainants and arise out of similar and related circumstances having occurred in detention centres under the control of Western Australia in the course of systemic behaviour by the Minister, the CEO, the Superintendent and/or Officers.

#### **I. Vicarious Liability**

203 The Complainants allege that, by the operation of s 123 of the DDA and/or s 57 of the ADA, as the case may be, Western Australia is vicariously liable for the unlawful discrimination alleged in this Complaint and arising from the conduct of its employees and agents, being the Minister, CEO, Superintendent and Officers.

#### **J. Relief sought by the Complainants**

204 The Complainants, on behalf of the Group Members, seek relief in the following forms for themselves and the Group Members:

- a. public apologies;
- b. declarations and/or acknowledgements that Western Australia and the Minister, CEO, Superintendents and Officers engaged in unlawful disability discrimination and/or unlawful age discrimination;



- c. compensation for unlawful disability discrimination and/or unlawful age discrimination;
- d. such other relief as may be awarded under s 46PO(4) of the AHRCA, including compensation in the way of aggravated and/or exemplary damages.
- e. orders prohibiting the continuation of the unlawful discrimination and/or henceforth restraining the Respondent from the unlawful discrimination.

**K. Disabilities of the Complainants**

- 205 At paragraphs 38, 69, 96, 137 and 172 of this Complaint, the Complainants set out disabilities affecting them. In general, the Complainants allege that they were inappropriately and unreasonable treated punitively as a result of being unfairly and falsely characterised as wilfully disobedient as a result of behavioural manifestations of their disabilities. However, the Complainants also generally allege a lack of access to appropriate diagnostic and therapeutic services during their detention, impairing their ability to identify the full nature and extent of the disabilities affecting them.
- 206 The Complainants are seeking to undergo further assessments in order to confirm the full nature and extent of the disabilities affecting them and in particular the extent of co-morbidity of conduct disorder with other disabilities, given the significance of allegations of detainees being treated less favourably as a result of perceived misconduct.