NOTICE OF FILING

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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.

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Form 59
Rule 29.02(1)

Affidavit

No: VID 809 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

Jonnine Jaye DIVILLI
Applicant

HOUSING AUTHORITY and others named in the schedule
Respondents

Affidavit of:	**Rory John Walsh**
Address:	Level 35, 530 Collins Street, Melbourne Victoria 3000
Occupation:	Solicitor
Date:	16 September 2025

Contents

I, Rory John Walsh, c/- Slater and Gordon Lawyers, Level 35, 530 Collins Street, Melbourne in the State of Victoria, Solicitor, affirm:

A. BACKGROUND

1. I am a Practice Group Leader in the sole and permanent employ of Slater and Gordon Lawyers, and I have the care and conduct of this matter on behalf of the Applicant.

Filed on behalf of (name & role of party) Jonnine Divilli, The Applicant
Prepared by (name of person/lawyer) Rory Walsh
Law firm (if applicable) Slater and Gordon Lawyers
Tel 03 8539 8362 Fax NA
Email rory.walsh@slatergordon.com.au
Address for service (include state and postcode) Level 35, 530 Collins Street, Melbourne, 3000, VIC

2. Save where otherwise indicated, I make this affidavit from information within my knowledge. Where I depose to matters based on information and belief provided to me by others, I believe those matters to be true.

3. In making this affidavit I am not authorised, and do not intend, to waive privilege. Nothing in this affidavit should be construed as a waiver of privilege.

4. Documents referred to in this affidavit are exhibited and marked **Exhibit RJW1** and referred to by the page number for each document.

Introduction and purpose of this affidavit

5. This affidavit is made in support of the both the Applicant's

   (i) motion to strike out paragraph 20B of the Respondents' Defence under r 16.21 of the *Federal Court Rules 2011* (Cth) to be filed with the Court on or around the date of this affidavit (**Strike Out Application**) and

   (ii) Proposed Orders for the case management hearing on 24 September 2025, filed with the Court on 12 September 2025 by the Applicant (**Applicant's Proposed Orders**).

6. In accordance with order 4 of the Orders of the Court dated 3 July 2025, the parties conferred as to the contents of a joint position paper (**JPP**) on 9 September 2025. A JPP was prepared following that conferral and further correspondence, which was filed with the Court on 12 September 2025.

7. This affidavit also seeks to inform the Court of several matters raised in the consent orders contained in the Order of the Court dated 16 September 2025 (**Consent Orders**).

8. In this affidavit, I depose to:

   (a) the status of the Applicant's complaint before the Australian Human Rights Commission (**AHRC**) under the *Racial Discrimination Act 1975* (Cth) (**RDA complaint**) and proposed pleading amendments;

   (b) the Applicant's Strike Out Application; and

   (c) matters relating to and providing context to the issues raised in the JPP:

      (i) **Further and Better Particulars issue**: the Respondents' compliance with existing orders for the provision of further and better particulars, detailed below in paragraphs 46 to 58, and referred to in the JPP at section 4;

      (ii) **Respondents' Discovery Affidavit issue**: order 2 of the Consent Orders requiring the Respondents to provide specific information on affidavit in respect of the discovery process, as well as details of the Respondents' discovery efforts to date, detailed below in paragraphs 59 to 74, referred to in the JPP at section 5;

(iii) **DMP inconsistency issue**: order 3 of the Consent Order providing for an amendment to the Document Management Protocol (**DMP**) to regularise the production of documents in different formats, as well as the Respondents' foreshadowed delay as a result of this order, detailed below in paragraphs 75 to 102, referred to in the JPP at section 5;

(iv) **Sample and Tenancy Agreement discovery issue:** the Applicant seeks an order requiring the discovery of two further categories of documents, detailed below in paragraphs 103 to 125, referred to in the JPP at section 5, and relating to order 1 of the Applicant's Proposed Orders;

(v) **Opt Out proposal**: the Applicant seeks orders for a conferral process for opt out, detailed below in paragraphs 126 to 129, referred to in the JPP at section 12 and relating to order 2-6 of the Applicant's Proposed Orders;

(vi) **Section 21 RTA issue**: the Applicant seeks a direction in respect of applying the normal Federal Court of Australia rules for trial in this proceeding, detailed below in paragraphs 130 to 136, referred to in the JPP at section 12;

(vii) **Correspondence between the Housing Authority and Ms Divilli**: the Applicant seeks an order requiring that all correspondence from the Housing Authority to Ms Divilli in respect of her tenancy be forwarded to Slater and Gordon as soon as practicably after it is sent by the Authority, as referred to in the JPP at section 13, and which is the subject of an additional order sought by the Applicant sent to the Court on 16 September 2025; and

(viii) **Respondents to produce discovery categories 45 to 47**: order 1 of the Consent Orders in relation to the Respondents providing discovery categories 45 to 47, detailed below in paragraphs 150 and 151 and referred to in the JPP at section 5.

B. STATUS OF THE APPLICANT'S RDA CLAIM AND PROPOSED PLEADING AMENDMENT

9. The Applicant has submitted a complaint to the AHRC with a request that it be terminated upfront in accordance with section 46PH(1B)(b) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**), so that following the termination, the pleadings in this proceeding could be amended to adopt the RDA complaint. The Respondents have agreed to upfront termination of the complaint, though the parties are still waiting to hear whether this course has been accepted by the Delegate. The Applicant contends that her pleading amendments, incorporating the RDA complaint, are confined and should not delay the progression of the remainder of the case.

RDA claim

10. The RDA complaint filed with the AHRC on 11 April 2025, is on behalf of the Applicant and the class members to this proceeding and allege race and descent discrimination under the RDA.

11. The Respondents to the RDA complaint are the same Respondents as in this proceeding.

12. On 11 April 2025, Slater and Gordon sent a letter to DLA Piper serving the Respondents with the RDA complaint. The letter provided, amongst others things:

> *We also put you on notice of the fact that we foreshadow amending the ASoC in future to add the claims that are made in the AHRC Complaint once that process has been completed. We provide this indication simply so that your clients are aware of it from an early time, noting that this additional cause of action was first foreshadowed at the time the statement of claim was first served on your client on 19 August 2024. As you will see, those claims are fairly confined and do not have any impact on the progress of this proceeding in its current form.*

A copy of the letter dated 11 April 2025 is at **Exhibit RJW1** page 31 to 33.

13. I understand that as of early September 2025, the Respondent are represented by DLA Piper in both this proceeding and the RDA complaint.

14. In filing the RDA claim, the Applicant requested that the complaint be terminated forthwith under section 46PH(1B)(b) of the AHRC Act, so that following the termination, the pleadings in this proceeding could be amended to adopt the RDA complaint.

15. The RDA complaint raises complaints which are separate and in addition to the matters raised in the current pleadings.

16. The Respondents have been on notice since the service of the Statement of Claim in this proceeding, being 19 August 2024, that the Applicant intended to file, and seek to terminate upfront, the RDA complaint, "*to allow the discrimination claims to be brought into the Federal Court under s 46PO of that Act, and amended into the claims in this Proceeding.*"

A copy of the letter dated 19 August 2024 is at **Exhibit RJW1** page 34 to 35

17. I understand that the Respondents sought, and were granted by the AHRC, two extensions to the time by which they were to respond to the Applicant's proposal to terminate the RDA complaint. While I do not know the basis as to why the first extension of time was granted, I understand that the second extension was required because the respondents needed to brief alternate Senior Counsel as a consequence of the appointment to the Court of Appeal of Western Australia of the Senior Counsel who had been previously briefed in this proceeding by the Respondents.

18. As addressed in the section immediately below, DLA Piper in its correspondence of 23 April and 3 June 2025 asked to be provided with the Applicant's proposed pleading amendments.

A copy of the letter dated 23 April 2025 is at **Exhibit RJW1** page 36 to 37.

A copy of the letter dated 3 June 2025 is at **Exhibit RJW1** page 38 to 41.

19. On 25 April 2025, Slater and Gordon sent a letter to DLA Piper noting that the Applicant is prepared to provide draft pleading amendments in respect of the RDA complaint '*in due course*.'

A copy of the letter dated 25 April 2025 is at **Exhibit RJW1** page 42 to 43.

20. On 2 September 2025, Slater and Gordon sent a letter to DLA Piper confirming that the Applicant intended to shortly provide her proposed pleadings amendments to incorporate the RDA complaint.

A copy of the letter dated 2 September 2025 is at **Exhibit RJW1** page 62 to 65.

21. By correspondence of 5 September 2025 DLA Piper confirmed that they had recently been engaged in respect of the RDA complaint and confirmed that they had written to the AHRC confirming their clients' agreement to the complaint being terminated in accordance with section 46PH(1B)(b) of the AHRC Act.

22. On 9 September 2025, the Applicant was informed by the investigator/conciliator that the AHRC complaint has now been referred to the Delegate, with a recommendation that the complaint be terminated under s 46PH(1B)(b) of the AHRC Act.

23. The Applicant cannot take further steps to amend her Amended Statement of Claim in this proceeding to include the RDA complaint until such a time that the RDA complaint is officially terminated by the Delegate.

24. As at the time of affirming this affidavit, my office is yet to hear from the AHRC Delegate as to whether they are prepared to terminate the claim upfront in accordance with the wishes of the parties and the recommendation of the AHRC investigator/conciliator.

Proposed pleading amendment

25. In the letter dated 11 April 2025 from Slater and Gordon to DLA Piper, by which Slater and Gordon served the Respondents with the RDA complaint, the Applicant also noted the following:

> ***Further Amendments***
>
> *The ASoC includes, in the particulars to paragraph 1, that Divilli's Residence has 9 occupants. The Reply, in answer to paragraph 20.A.2 of the Defence provides that Divilli's Residence has housed five biological children and at least two foster children. We have been instructed by the Applicant that she has recently adopted a third foster child. We will seek to amend the ASoC to reflect this change in due course. We suggest that it is most efficient to do so as part of other amendments made in future.*

26. On 23 April 2025, DLA Piper sent a letter to Slater and Gordon, which responded both to the foreshadowed pleading amendment in the paragraph above and the amendments in respect of the RDA complaint, by advising that:

> *'5 The foreshadowed amendments to the pleading will (if made) plainly alter the scope of the dispute between our clients, including both the common questions for determination and discovery. In those circumstances, it is our clients' view that:*
>
> *5.1 your client ought to specify the proposed amendments to her pleading as soon as possible; and*
>
> *5.2 the time for the bringing of any application for Merck orders ought to be extended until after your client has sought leave to amend her pleading in the terms foreshadowed (as the parties will not be in a position to settle upon the common questions for determination until then).*

27. On 25 April 2025, Slater and Gordon sent a letter to DLA Piper responding inter alia that '*the claims outlined in the AHRC Complaint are confined and will not impact the progress of the proceeding.*'

A copy of the letter dated 25 April 2025 is at **Exhibit RJW1** page 42 to 43.

28. By correspondence of 3 June 2025, DLA Piper provided substantive responses to the Applicant's complaints about the deficiencies in the Respondents' defence (further discussed at paragraphs 32 to 58 below) and in doing so noting that:

> *"This letter addresses the issues raised with respect to your clients' defence in paragraphs 7-15 of Your Letter. Before turning to those matters, we request an explanation as to:*
>
> *2.1 the amendments that your client intends to make to her statement of claim (currently referred to only as "other amendments" in paragraph 17 of Your Letter); and*
>
> *2.2 when she intends to do so.*
>
> *The response to these queries will inform how our client proceeds with respect to the issues raised in Your Letter.*

29. Slater and Gordon's correspondence of 14 August 2025, relevantly noted

> *Pleading amendment to incorporate RDA claim*
>
> *15. Although we are yet to receive a response to our request of 8 August 2025 seeking confirmation of your client's position regarding the proposed termination of the AHRC claim, we have been advised by the AHRC that your client has sought a further extension of time in which to provide its response, which is now due on 4 September 2025.*
>
> *16. As you are aware, and subject to the AHRC claim being terminated, the applicant intends to seek leave from the Court to amend her pleadings to incorporate the RDA complaint within this proceeding. As such we would again ask that you promptly advise us*

of your clients position once finalised and conveyed to the AHRC, so that the Court may be apprised of the position prior to the CMH and the JPP be updated accordingly.

A copy of the letter dated 14 August 2025 is at **Exhibit RJW1** page 44 to 47.

30. By correspondence of 5 September 2025, DLA Piper noted as follows:

> *"..Assuming that the AHRC does make orders terminating your client's complaint, we understand that your client will shortly thereafter seek orders for the amendments of her originating summons and statement of claim. Whilst you have asserted that your client's foreshadowed amendments to the claim will be confined, we are unable to understand the scope or implications of those amendments until we have seen the proposed amendments (which we requested in our letters of 23 April 2025 and 3 June 2025). That is particularly so in circumstances where you have foreshadowed unspecified "other amendments".*
>
> *Further to the above, we welcome the indication that you have given that you will shortly be providing us with the proposed amendments to the statement of claim. Once we have received these, we will be in a better position to assess the appropriate steps going forward.*
>
> *Whilst we remain of the view that the appropriate course is for pleadings disputes to await the outcome of the AHRC process, and thus avoid the potential need for multiple rounds of amendments, we are seeking counsel's availability to confer on the objections you have raised to our clients' defence".*

A copy of the letter is at **Exhibit RJW1** page 66 to 67.

31. The parties exchanged a number of correspondences as to the conferral required by order 4 of the Orders made on 3 July 2025.

A copy of those correspondences at **Exhibit RJW1** page 44 to 76.

C. THE STRIKE OUT APPLICATION

32. The applicant seeks to strike-out paragraph 20B of the Defence under r 16.21 of the *Federal Court Rules 2011* (Cth).

33. The Court has made orders to have the Strike Out Application heard on the same day as the case management hearing scheduled for 24 September 2025 (subject to further conferral between the parties).

34. The Court Orders of 11 September also provide timetabling orders for both the application to be filed and submissions to be provided by the parties, in the event that further conferral does not resolve the issue and obviate the need for the application to be pressed.

35. I set out the information below in support of the Applicant's Strike Out Application.

36. Paragraph 20B of the Respondents' Defence provides:

> *20B Further to paragraph 20A herein, the respondents say that to the extent that any damage to the Divilli Premises was caused by Ms Divilli, or the other occupants of the Divilli Premises, or their lawful invitees, then:*
>
> > *20B.1 pursuant to clause 2.4 of the Divilli Tenancy Agreement, and clause 4.4(b) of the HMA (as pleaded in paragraph 5A.11 herein), the Authority (as the deemed lessor for the purposes of the RT Act) is not liable for the costs incurred in repairing such damage;*
> >
> > *20B.2 Ms Divilli and Mr Rivers are liable to the Authority for that damage and, to the extent that the Authority is held liable to Ms Divilli or Mr Rivers, the Authority is entitled to a set-off on account of their liability to it.*

37. On 11 April 2025, Slater and Gordon sent a letter to DLA Piper in respect of what were said to be a number of deficiencies in the Defence filed in this proceeding. In relation to paragraph 20B of the Defence, the Applicant said that the paragraph was '*liable to be struck out*' and that either the Respondents replead ('*identifying the particular damage that it is alleged was in fact caused by Ms Divilli, the other occupants of the Divilli Premises or their lawful invitees and identify the precise facts and proper basis on which that allegation is made*') or to otherwise withdraw that paragraph from the defence.

38. By correspondence of 3 June 2025, DLA Piper provided substantive responses to these issues, in respect of the paragraph 20B issue, the letter relevantly provided:

> *'For clarity, the pleading at paragraph 20B of the defence goes to the proper measure of damages payable to your client in the event that any breaches are established against ours. What is contended is that any damage caused by your client or her lawful invitees needs to be taken into account in the quantification of any damages payable to her.*
>
> *Our client has provided particulars that an inference will be drawn with respect to property damage which has been observed on inspection, but which has not been reported either to the second respondent or to the Police. Further particularisation of such losses may follow (as is appropriate) the provision of discovery and the issuance of subpoenas, which will elucidate these issues.'*

39. On 14 August 2025, Slater and Gordon sent a further letter to DLA Piper responding, at paragraphs 7 to 15 of that letter, to the 20B issue by indicating that if proper particulars were not provided the Applicant intended to file an application to strike out that paragraph of the defence.

40. The letter also sought the Respondents agreement to confer and/or agree timetabling orders so that the application could be listed on the same day as the case management hearing and sought a reply by 21 August 2025.

A copy of the letter dated 14 August 2025 is at **Exhibit RJW1** page 48 to 50.

41. While I understood that the Respondents' initial position, as conveyed in the DLA Piper letter of 1 September 2025, was to defer conferral in relation to the Applicant's proposed Strike Out Application

until after such time as the Applicant has filed and served her amended pleadings and the Respondents' Senior Counsel has had an opportunity to read into the material with which he has, or is to be, briefed with, and is in a position to engage in detailed conferral in respect of these matters, the Respondents ultimately consented to programming orders to enable the application to be heard on 24 September 2025 .

A copy of the letter dated 1 September 2025 is at **Exhibit RJW1** page 59 to 61.

42. By letter dated 15 September 2025, DLA Piper informed Slater and Gordon of the following:

> *2. In order to address your client's concerns with Paragraph 20B, our clients propose to amend the set-off claimed with respect to the Divilli premises such that it is particularised by reference to any costs that they have incurred:*
>
> *2.1 in carrying out works on the Divilli premises;*
>
> *2.2 which are the subject of any unresolved tenant liability notice.*

In the same letter, DLA Piper stated that it was seeking instructions as to the specifics of those particulars and would write to Slater and Gordon further in that regard under separate cover. DLA Piper also proposed that any such amendments to the Defence could be made at the same time as any consequential amendments arising from the Applicant's foreshadowed amendments to her statement of claim relating to the AHRC complaint are made. DLA Piper sought confirmation that the proposed course raised in their letter was sufficient to obviate the need for the Applicant to bring her Strike Out Application.

A copy of the letter dated 15 September 2025 is at **Exhibit RJW1** page 77.

43. By letter dated 15 September 2025, Slater and Gordon responded to DLA Piper that it cannot assess the adequacy of their response, and consequently the need for a hearing on the Strike Out Application, without seeing the proposed amendments to paragraph 20B of the Defence or further and better particulars in relation to the same. In this letter, I reiterated that if the Respondents are making a positive allegation regarding damage to the Divilli premises, it should be able to provide those particulars.

A copy of the letter dated 15 September 2025 is at **Exhibit RJW1** page 78 to 79.

44. Slater and Gordon's letter further provided that the current timetabling for the Strike Out Application ought be maintained unless and until the Respondents provide their proposed pleading amendments or further particulars in relation to paragraph 20B of the Defence. This letter confirmed that the Applicant's Strike Out Application can be withdrawn if those proposed pleading amendments or particulars adequately addresses her concerns as regards the deficiencies in paragraph 20B of the Defence.

45. At the time of filing this affidavit, the Applicant has received no further correspondence in relation to this matter.

D. FURTHER AND BETTER PARTICULARS ISSUE

46. Orders have been made for the Respondents to provide a response to the Applicant's request for further and better particulars. The time for the provision of the response was extended to 20 August 2025. The response remains outstanding although the Respondents have most recently indicated an anticipation of being in a position to file and serve the response in the week commencing 15 September.

47. In the event it becomes necessary to refer to this matter in the course of the case management hearing, the relevant correspondence in respect of the presently outstanding response, is set out below.

48. On 11 April 2025, the Applicant filed and served upon the Respondents a request for further and better particulars. As at the date of affirming this affidavit, the Respondents are yet to provide their response to the Applicant's request.

49. The orders of 3 July 2025 were reached by consent between the Applicant and Respondents and required pursuant to order 2 that '*by 4.00 pm AWST on 6 August 2025, the respondents must provide a response to the applicant's request for further and better particulars filed on 11 April 2025.*"

50. On 6 August 2025, DLA Piper sent a letter to Slater and Gordon seeking an extension by way of consent as they were '*still obtaining instructions and are* unfortunately *not yet in a position to file a Response in accordance with paragraph 2 of the Orders*'... '*we do, however, anticipate our client will be in a position to file and serve its Response within 14 days.*'

    A copy of this letter dated 6 August 2025 is at **Exhibit RJW1** page 80.

51. The Applicant agreed to the proposed extension and the Court made orders on 8 August 2025 that the response to the request for the further and better particulars be provided by 4:00 pm on 20 August 2025.

52. On 21 August 2025, Slater and Gordon emailed DLA Piper inquiring as to when the response would be provided.

    A copy of this email dated 21 August 2025 is at **Exhibit RJW1** page 81.

53. On 25 August 2025, DLA Piper sent an email to Slater and Gordon which advised inter alia that:

    > *We are also continuing to obtain instructions with respect to the response to your client's request for further and better particulars (which has unfortunately taken longer than expected to answer) and also expect to provide that by 29 August 2025.*

    A copy of this email dated 25 August 2025 is at **Exhibit RJW1** page 83.

54. In the letter Slater and Gordon sent to DLA Piper on 25 August 2025, the Applicant sought confirmation as to whether the Respondents intended to seek *'a further extension to comply with the Court Orders of 8 August 2025 to amend the date of compliance with paragraph 1 to 29 August 2025'.*

A copy of this letter dated 25 August 2025 is at **Exhibit RJW1** page 52 to 53.

55. DLA Piper's correspondence of 1 September 2025 informed the Applicant that the request for further and better particulars, along with other matters, could not *'be sensibly advanced'* until after the Applicant had served her amended pleadings and were better addressed once their Senior Counsel has had an opportunity to fully apprise himself of this matter. I note that the Respondents' letter on 6 August 2025 (in which they foreshadowed that the Respondents would provide the response to the request for further and better particulars within 14 days) made no mention of the need to brief alternate Senior Counsel or the need for the RDA complaint to have been terminated and the Applicant to have filed further amended pleadings.

A copy of the letter dated 1 September 2025 is at **Exhibit RJW1** page 59 to 61.

56. In my letter of reply sent on 2 September 2025, I noted that the Applicant had not been provided with any relevant application or proposed orders.

A copy of this letter dated 2 September 2025 is at **Exhibit RJW1** page 62 to 65.

57. DLA Piper in their correspondence of 5 September 2025 relevantly advised

> *"We are also hopeful that we will be in a position to file the response to your client's request for particulars imminently. We should be in a position to update you about that later today."*

A copy of this letter dated 5 September 2025 is at **Exhibit RJW1** page 66 to 67.

58. I understand from paragraph 4 of the JPP, that the Respondents now anticipate being in a position to file and serve their response to the request for further and better particulars during the week commencing 15 September 2025. At the time of filing this affidavit I have not been served with the Respondents' further and better particulars

E. RESPONDENTS' DISCOVERY AFFIDAVIT ISSUE

59. On 14 August 2025, Slater and Gordon provided DLA Piper with a list of proposed consent orders to consider ahead of the case management hearing, which included an order requiring that the Respondents provide more detailed information regarding discovery, as follows:

> *The Respondents file and serve a supplementary affidavit in relation to the discovery by 4.00pm AWST on 3 October 2025, including as to the matters listed in paragraph 7.8 (d) of the Federal Court Class Actions Practice note, being:*

a. where documents responsive to the now agreed discovery categories between the parties are stored or held (and why these are to be considered the most appropriate repositories for each discovery category);

b. the steps required to review and prepare them for production;

c. the approximate number of documents responsive to the agreed discovery categories; and

d. the likely timetable and cost of making discovery of those documents.

60. While the making of such an order was initially resisted by the Respondents, agreement has now been reached that the Respondents will provide a supplementary affidavit by 31 October 2025 which sets out:

(a) where documents responsive to the agreed discovery categories are stored or held;

(b) the steps required to review and prepare the documents for production;

(c) the approximate number of discovery documents responsive to the agreed discovery categories; and

(d) the likely timetable and cost of making discovery of those documents.

61. I understand from the Respondents' column at section 4 of the JPP that the timing of this affidavit is informed by the work currently being undertaken by Deloitte, as follows:

Deloitte has been engaged to assist in collecting and mapping the Respondents' data for the purpose of discovery. The Respondents agree to provide a supplementary affidavit by 31 October 2025 (when the exercise being undertaken by Deloitte will have further progressed) …

62. The parties' agreement as to the discovery affidavit is reflected in order 2 of the Orders of the Court dated 16 September 2025.

Overview of discovery provided to date

63. To date the Respondents have provided 1,067 documents. These were provided in two tranches, the first received on 1 August 2025 containing 753 documents, and the second tranche received on 27 August 2025 containing 314 documents.

64. The parties agreed 48 discovery categories, one of which relates to the Applicant's discovery and the other 47 relate to the Respondents' discovery. It is for this reason that the correspondence between the parties variously refer to the discovery orders as relating to 47 or 48 categories of documents.

65. While, for reasons discussed in the section below headed the DMP inconsistency issue, the discovery category to which each document is responsive to was not included in the metadata produced by the Respondents, on the analysis undertaken by Slater and Gordon approximately 53%

of the total documents discovered to date appear to relate specifically to the Applicant's tenancy for the premises at [redacted] Pandanus Park.

66. Further, approximately 34% of documents in the first tranche appear to be documents relating to Housing Management Agreements and non-Housing Management Agreements and therefore appear to be responsive to category A2 of Annexure A of the Orders dated 25 June 2025.

67. In the second tranche of discovery, approximately 87% of the documents relate to the Applicant's tenancy.

68. While discovery review is ongoing, our current analysis indicates that of the 1067 documents discovered in total so far, approximately 809 (or 76%) of the documents received appear to be responsive to only four out of the 47 discovery categories relevant to the Respondents' discovery.

69. On our analysis either no, or very few documents, have been discovered and which are responsive to the other 43 discovery categories relevant to the Respondents' discovery.

70. By correspondence of 27 August 2025, DLA Piper provided the following update as to the progress of discovery:

> *'9.1 The Respondents have produced to the Applicant discovery tranche 1 on 1 August 2025, and will shortly produce discovery tranche 2 (ahead of 1 September 2025).*
>
> *9.2 The Respondents continue to be engaged in an extensive and detailed search of its records (noting the near 15-year "Relevant Period" which applies to the majority of the discovery categories). That process is being supported by Deloitte's forensic data consultancy team, who have been engaged by DLA Piper to provide both data mapping and data collection services.*
>
> *9.3 The searches of the Respondents' records have been complicated by recent Machinery of Government changes, which has resulted in the Housing Authority being separated from the Department of Communities, and the creation of a new agency, the Department of Housing and Works.*
>
> *9.4 As a result of these organisational changes, the relevant personnel and data are now spread between both Departments. Whilst the majority of relevant documents (from the Relevant Period) are still located upon Department of Communities servers, these changes has increased the complexity of the discovery process.*
>
> *9.5 Further, given the business of the Department of Communities also comprises highly sensitive areas, such as Child Protection and Family Violence divisions, the large scale searches of its data must be approached cautiously and with the engagement and direct approval of the executive level across both Departments.'*

A copy of this letter dated 27 August 2025 is at **Exhibit RJW1** page 54 to 56.

71. To my understanding this is the first time that my office has been advised of:

(a) The involvement of the Deloitte's forensic data consultancy team in the Respondents' discovery process;

(b) the complications arising from the "*recent Machinery of Government changes*"; and/or

(c) the complexities of conducting data searches of the *Department of Communities with the consequential need for engagement of direct approval of executive level across both Departments*".

72. I do not know to what effect, if any, the above matters might impact the volume or timing of discovery to be provided in this proceeding.

73. On 12 September 2025, and after agreement was reached that the Respondents would provide a supplementary discovery affidavit, I emailed DLA Piper as follows:

`Given the reference to the "significant additional time being required to complete discovery", we consider it appropriate that your client's affidavit also address the resources which have been applied since the commencement of this proceeding, to discharging the Respondents discovery obligations.

A copy of this email dated 12 September 2025 is at **Exhibit RJW1** page 83.

74. At time of affirming this affidavit, I am yet to receive a response to my email above.

F. DMP INCONSISTENCY ISSUE

75. As reflected in order 3 of the Orders of the Court made on 16 September 2025, the parties have agreed to the following with respect to the provision of 'discovery category' data in the load file for each discovered document produced by the Respondent:

Paragraph 12.6 of the Document Management Protocol, being Annexure A of the orders made on 27 February 2025, be amended to include a new field as follows:

*Discovery Category**	*Where the parties have agreed to (or the Court has ordered) discovery by category, this Field contains an identifier to the category that the document was responsive to.*

76. In order to provide context to this order, and in the event that it proves necessary in the course of the case management hearing to refer to these matters, I set out below the relevant correspondence in respect of this matter.

The discovery category negotiations

77. Discovery orders were made on 25 June 2025, those orders identify the 47 Discovery Categories relevant to the Respondents' discovery.

78. Considerable cost and effort were expended in identifying, proposing, and negotiating the agreement of 47 discovery categories relevant to the Respondents' discovery, as follows:

79. Following the initial discovery categories proposed by the applicant on 14 May 2025, there were two formal conferrals and the exchange of a number of draft discovery categories between the parties, following which a final version was agreed on 24 June 2025, which was then provided to the Court as an Annexure to proposed consent orders, which were made by the Court on 25 June 2025.

80. I note that, throughout this conferral process, significant negotiations were undertaken between the parties as to whether specific categories were to be included in the final document, as well as negotiations as to the precise language and terms used in respect of many of those categories.

The DMP negotiations

81. The DMP was agreed between the parties and was the subject of the Orders of the Court dated 27 February 2025 under Annexure A.

82. The Court Orders of 9 September 2024, required the parties to have conferred by 14 February 2025, in respect of agreeing an electronic document management protocol (**DMP**), following which the parties were at liberty to make any application for directions in relation to a DMP.

83. There were exchanges of draft versions of the DMP between Slater and Gordon and the State's Solicitors' Office in 2024, but a DMP had not been agreed prior to DLA Piper being retained by the Respondents.

84. On 13 February 2025, being the day before the parties were required to have conferred, DLA Piper sent a letter to Slater and Gordon proposing further changes to the draft DMP that had previously been circulated between Slater and Gordon and the SSO.

85. One of the proposed changes related to the exchange of export data in an alternate format to the 'mdb.' format provided for in the earlier drafts of the DMP. The alternate format for export data proposed by DLA Piper was a '.dat' file, which has been specifically intended to accommodate the Respondents' use of "Relativity" as their chosen eDiscovery platform.

86. In that letter, the Respondents' attached a tracked changes version of the DMP, which included:

(a) under 12.1 (e) provision for a '.dat' file to be exchanged; and

(b) under table 12.6, under the heading '*Export Format and Data for Concordance (.dat) load file*', all the relevant data that was to be exchanged between the parties for that file.

A copy of this letter dated 13 February 2025 is at **Exhibit RJW1** page 84 to 85.

87. Part 12 of the DMP provides for the exchange of the metadata with respect to documents being discovered. In the table at 12.3 of the DMP (at the bottom of page 19) the '.mdb' file requires the parties to provide the Discovery Category as a mandatory field in the export data. 'Discovery Category' as a data filed was indicated to be a mandatory field to be exchanged with the data for the '.mdb' file, as it was marked with an asterisk in this table of the 12.3(b) of the DMP.

88. In contrast, the '.dat' load file at 12.6 of the DMP (beginning at page 22) does not list 'Discovery Category' as a field.

89. This omission, and inconsistency between the metadata required to be exchanged between the two different file types, was not made explicitly clear by the Respondents in their letter of 13 February 2025, when proposing the inclusion of the '.dat' file metadata.

Correspondence relevant to the inconsistency

90. This inconsistency in the DMP only became apparent to Slater and Gordon on or around 13 August 2025, following the receipt of the first tranche of discovery from the Respondents on 1 August 2025.

91. On 20 August 2025, Slater and Gordon wrote to DLA Piper in respect of what was anticipated to

> *".. have been an inadvertent omission, however absent this data, the Applicant cannot discern which discovery category each document is responsive to' and that:*
>
> *In light of this, we would be grateful if the respondents could indicate whether they agree to include the Discovery Category as part of providing the '.dat' file in future discovery tranches and whether they could also re-provide export data '.dat' file from tranche 4 of discovery produced on 1 August 2025, now with the data for the Discovery Category included.*
>
> *If agreement is reached in relation to this, and to avoid inefficiencies, we do not see the need to amend the DMP as approved under the orders of 25 February 2025, but will instead rely upon correspondence evidencing agreement of this position.*
>
> *Alternatively, however, if agreement cannot otherwise be reached, we will seek to have this inconsistency in the DMP formally rectified at the upcoming case management hearing.*

A copy of that letter dated 20 August 2025 is at **Exhibit RJW1** page 51.

92. The Respondents initially resisted this obligation and the Applicant's proposal to regularise the DMP. As best I understand it, the Respondents' initial position appeared to be that:

(a) The Respondents did not envisage in agreeing the discovery orders that this obligation arose;

(b) that the obligation is overly onerous and inefficient; and

(c) the advice they have received from their internal eDiscovery specialists is to the effect that compliance with such an obligation would likely delay what would otherwise have been the

expected time for completion of discovery and that this delay would be in the order of doubling the duration of the discovery process.

A copy of the Respondents' correspondences in relation to this issue dated 1, 5 and 9 September 2025 is at **Exhibit RJW1** page 59 to 61, 66 to 67 and 75 to 76.

93. By letter dated 29 August 2025, I explained to the Respondents that, '*if it had been made clear that the change to the DMP being sought by your clients was intended to relieve them of the obligation to provide discovery category data, the applicant would have opposed the change*.'

A copy of that letter dated 29 August 2025 is at **Exhibit RJW1** page xx to xx.

94. The Respondents proposed in their correspondence of 1 September 2025 to discover documents by reference to what they describe as "*one of the seven overarching classes of documents, identified as A to F in the discovery orders*".

A copy of that letter dated 1 September 2025 is at **Exhibit RJW1** page 57 to 58.

95. By letter dated 2 September 2025, I rejected this proposal, asserting this was "*not what was intended in relation to the provision of data under the DMP*", and pressed the proposal to regularise the DMP requirements for providing individual discovery category data in the '.dat' file.

A copy of that letter dated 2 September 2025 is at **Exhibit RJW1** page 62 to 56.

96. Following further conferral, an agreement was reached between the parties to regularise the DMP in the manner sought by the Applicant, as is now reflected in order 3 of the Court's Orders dated 16 September 2025.

97. While this matter is now the subject of agreement between the parties, the Respondents explained to me by email on 12 September 2025 that their agreement is subject to the following:

> "*Its agreement to do so is, however, on the express basis that this in no way limits the issues to which a document so coded may be relevant and that this approach will result in significant additional time being required to complete discovery.*
>
> *The Respondents propose that, following provision of the supplementary affidavit, the parties confer as to an amended discovery timetable.*"

A copy of that email dated 12 September 2025 is at **Exhibit RJW1** page 86.

98. I am concerned with the Respondents foreshadowing that the provision of category data '*will result in significant additional time being required to complete discovery.*' My concern arises in the context of the Respondents only very recently resisting the Applicant's request that they file an affidavit updating the Court and the parties as to the progress of their discovery.

99. As is set out in paragraph 70 above, the Respondents have also foreshadowed complications with their discovery efforts owing to recent "Machinery of Government Changes", with relevant personnel and data now spread between two separate Departments. As is also set out in paragraph 71 above,

the Respondents appear to have engaged a third-party forensic data service, though I have not been apprised of when this took place.

100. As is provided for in order 2 of the Court's Orders dated 16 September 2025, the Respondents are to provide a supplementary affidavit in relation to discovery on 31 October 2025. I also note the Respondents' proposal set out in section 5 of the JPP that "*following the provision of the supplementary affidavit, the parties confer as to an amended discovery timetable.*"

101. Accordingly, I am concerned that the Applicant will not be fully apprised of the full extent of the Respondents' delays in meeting their discovery obligations until November 2025 at the earliest, in respect of a discovery process which the Court orders require to be completed by 1 December 2025 (order 1 of the Orders made on 25 June 2025).

G. SAMPLE AND TENANCY AGREEMENT DISCOVERY ISSUE

102. The Applicant seeks the following order with respect to the production of documents related to the range of tenancy agreements used and entered into by the Respondents:

In addition to order 1 of the orders of 25 June 2025, the Respondents must make discovery by 4.00pm AWST on 31 October 2025 of the following two categories of documents:

a. *Each version of any templates or 'standard form' Primary Tenancy Agreements and Secondary Tenancy Agreements; and*

b. *Examples of any versions of a Primary Agreement or Secondary Agreement to which the Authority or Western Australia was a party*

103. As is explained in the Respondents' column in section 5 of the JPP, the Respondents object to the additional discovery categories by the Applicant '*on the basis of relevance, and the scope being too broad.*'

104. Prior to agreeing to the discovery categories which are reflected in the Court Orders of 25 June 2025, the Applicant proposed in a draft Discovery Categories document on 13 June 2025 that the Respondents are to discover under the proposed 'category 9':

> *Each template version of a Primary Agreement and Secondary Agreement to which the Authority or Western Australia was a party.*

A copy of that draft document is at **Exhibit RJW1** page 87 to 90.

105. On 20 June 2025, DLA Piper sent an email to Slater and Gordon responding to a number of proposed discovery categories and stated with respect to the above category:

> *'This remains an issue. We object to this category on the basis of relevance. In practical terms, the Respondent could have no certainty as to the existence of each "template version" of tenancy*

agreements over the Relevant Period. There is no central repository, as appears to be envisaged by the category.'

A copy of that email dated 20 June 2025 is at **Exhibit RJW1** page 91 to 96.

106. On 23 June 2025 Slater and Gordon sent a letter to DLA Piper, stating that with respect to the template or standard form agreements:

'the Applicant's position is that these documents are relevant to paragraphs 2-3 of the ASOC and to the common questions as to the content of contractual terms that are relevant to both her and group members. If template versions of these documents do exist, the Applicant's position is that all templates that are in existence for the claim period should be produced. If all of those documents cannot be produced and only examples can be provided, your clients should provide an affidavit setting out why this is so.

A copy of that letter dated 23 June 2025 is at **Exhibit RJW1** page 97 to 99.

107. On 24 June 2025, DLA Piper sent a letter to Slater and Gordon stating this document category is irrelevant and would:

'only be relevant to the "content of contractual terms" if those documents were signed agreements as between a tenant and the Respondent. A template document carries no weight in this regard.'

...

'a blank "template" tenancy agreement is of no assistance to ascertaining the relevant terms of any agreement between a tenant and the Respondent'.

A copy of that letter dated 24 June 2025 is at **Exhibit RJW1** page 100 to 102.

108. In response to the letter of 24 June 2025 above in paragraph 107, Slater and Gordon sent a letter to DLA on the same day, stating that whilst the Applicant does not agree with the Respondents regarding 'Category 9', the Applicant is willing to reconsider her position if the Respondents 'provide examples of agreements they can easily access within 14 days' and 'file an affidavit explaining why such documents cannot be produced prior to 16 July 2025.'

A copy of that letter dated 24 June 2025 is at **Exhibit RJW1** page 103 to 104.

109. Later that same day, DLA Piper sent an email to Slater and Gordon

As to paragraph 1(b) of the Letter:

- *We disagree with the Applicant's proposal that the Respondent provide an explanatory affidavit and examples of agreements as a condition of the Applicant's withdrawal of proposed Category 9.*
- *The primary basis for the Respondent's objection to that category is that the documents sought are not relevant to a material issue, nor the pleading references that the Applicant relies upon (as outlined in our letter earlier today).*

- *Therefore, the provision by the Respondent of an explanatory affidavit does not address our client's objection and the Respondent is not prepared to agree to this suggestion.*

The Respondent proposes, in order to progress this matter, that:

- *The Applicant reserves its position in respect to Category 9 (as it has done with other categories); and*
- *We will take instructions from our clients as to providing example tenancy agreements.*

If the Applicant is agreeable to the above, we:

- *will sign and return the consent orders; and*
- *consent to the proposed correspondence to the Court.*

A copy of that email is at **Exhibit RJW1** page 105 to 106.

110. Later on 24 June 2025, discovery categories were then agreed to and provided to the Court and orders were made the following day confirming the Discovery Categories in this proceeding.

111. The Applicant never received any further correspondence from DLA Piper regarding the instructions from their clients as to providing example tenancy agreements, as was foreshadowed in their email dated 24 June 2025.

112. On 27 June 2025, Slater and Gordon sent a letter to DLA Piper stating it was beneficial to separate out two distinct categories of documents discussed between the parties in relation to former-Category 9 documents, being

(a) *templates or 'standard form' versions of Primary Agreements and Secondary Agreements ('**standard form tenancy agreements**'); and*

(b) *samples of executed versions of Primary Agreements and Secondary Agreement to which the Authority or Western Australia was a party ('**executed tenancy agreements**').*

A copy of that letter dated 27 June 2025 is at **Exhibit RJW1** page 107 to 109.

113. In that letter, the Applicant reiterated her position that standard form tenancy agreement documents are 'plainly relevant to paragraphs 2-3 of both the ASOC and the Defence, and to the common contractual terms contained in such agreements. She also noted that they are relevant to:

> *'paragraph 46 of both the ASOC of the Defence, both of which refer to copies of tenancy agreements (in the ASOC) and proposed tenancy agreements (in the Defence) that are provided to prospective tenants at the time of execution. To the extent that the proposed tenancy agreements are derived from standard form tenancy agreements, we consider them relevant in the proceeding.'*

114. The Applicant did not receive any correspondence in reply to her letter dated 27 June 2025 seeking agreement as to these two further discovery categories.

115. On 14 August 2025 Slater and Gordon sent a letter to DLA Piper with the proposed orders and joint position paper pressing for the Respondents to make discovery of :

(a) Each version of any templates or 'standard form' Primary Tenancy Agreements and Secondary Tenancy Agreements; and

(b) Examples of any versions of a Primary Agreement or Secondary Agreement to which the Authority or Western Australia was a party

A copy of that letter dated 14 August 2025 is at **Exhibit RJW1** page 48 to 50.

116. The DLA Piper correspondence of 5 September 2025 provided in respect of this issue:

"7.1 Our client remains unable to understand how 'tenancy agreement templates' or 'sample tenancy agreements' are said to be related to any of the issues in dispute between our clients. We welcome further conferral on this point."

117. In the JPP agreed on 12 September 2025, the Respondents' position in respect of this issue was described as follows:

"The Respondents object to the additional discovery categories put by the Applicant (regarding "template or standard form" agreements and example agreements) on the basis of relevance, and the scope being too broad."

118. As is set out in the JPP, the Applicant maintains that the content of standard form, template or example tenancy agreements (and even their existence) are relevant to (at least) paragraphs 2, 3, 15, and 46 of the Amended Statement of Claim (and Defence). The Applicant maintains they demonstrate the common written terms of agreements entered into by group members.

Existence of Standard Form Tenancy Agreements

119. It is not clear whether the Respondents maintains that 'standard form' tenancy agreements 'do not exist', as was the position put forward in DLA Piper's email to Slater and Gordon on 20 June 2025 (set out at paragraph 105 above). To the extent that this argument is pressed, the Applicant provides the following:

120. I am informed by Slater and Gordon lawyers working on this matter that many tenancy agreements signed by tenants across WA and sighted by the solicitor team appear to be in the same form and use the same or similar terms. One tenancy agreement in our possession is marked in the footer of the document as "v2.docx", which suggests there exists a repository of template agreements, or at least several versions of tenancy agreements, of which the Respondents would be aware.

A copy of that tenancy agreement is at **Exhibit RJW1** page 136 to 149.

Scope of Applicant's request for Executed Tenancy Agreements

121. I note the Respondents' objection in section 5 of the JPP that the discovery categories sought by the Applicant are 'too broad'.

122. It was Slater and Gordon's understanding at the time the discovery categories were agreed that DLA Piper was to seek instructions from their clients in relation to the provision of a representative list or set of executed tenancy agreements, which would effectively confine and narrow this request.

123. DLA Piper's commitment to seeking instructions from their client in this regard is set out in their email dated 24 June 2025.

124. As I have explained in paragraph 111 above, DLA Piper never corresponded with Slater and Gordon in relation to these instructions, despite the matter being raised again in our letter dated 27 June 2025.

H. OPT OUT PROPOSAL

125. On 14 August 2025, Slater and Gordon sent a letter to DLA Piper proposing the following orders with respect to commencing a conferral process for opt out in this proceeding:

(a) By 4.00 pm AWST on 3 October 2025, the Applicant serve a draft opt out notice and process for opt out to the Respondents.

(b) By 4.00 pm AWST on 10 October 2025, the Respondents provide a response to the draft opt out notice and process for opt out from the Applicants.

(c) By 4.00 pm AWST on 17 October 2025, the parties to have conferred about an opt out notice and process in this proceeding.

(d) By 4.00 pm AWST on 24 October 2025, the parties provide a joint proposal to the court of the opt out notice and process.

A copy of that letter dated 14 August 2025 is at **Exhibit RJW1** page 48 to 50.

126. DLA Piper's correspondence of 1 September 2025, informed the Applicant that the 'making of orders for the provision of opt-out notices and the closing of the class', could not be 'be sensibly advanced' until after the Applicant had served her amended pleadings and the Respondents' Senior Counsel has had an opportunity to read into the material with which he has, or is to be, briefed with.

A copy of that letter dated 1 September 2025 is at **Exhibit RJW1** page 59 to 61.

127. The Slater and Gordon correspondence of 2 September 2025, at paragraph 14 confirmed the Applicant's position as

"While the applicant considers that it would be efficient to progress discussions as to both the content of and the process for the opt out notices, in addition to the confined rules of evidence proposal, we are prepared to await Mr Dharmananda's availability, if that remains your clients' position"

A copy of that letter dated 2 September 2025 is at **Exhibit RJW1** page 62 to 65.

128. The Applicant's position in this regard was again confirmed at paragraphs 6 and 7 of the Slater and Gordon correspondence of 8 September 2025.

A copy of that letter dated 8 September 2025 is at **Exhibit RJW1** page 73 to 74.

I. SECTION 21 RTA ISSUE

129. On 16 January 2025, Slater and Gordon sent a letter to DLA Piper noting that section 21 of the Residential Tenancies Act 1987 (WA) ('**RTA**') provided that:

> *'In any proceedings on an application under this Act, a competent court shall not be bound by the rules of evidence but may inform itself upon any matter relating to the proceedings in such manner as it thinks fit.'*

130. In that letter the Applicant proposed that "given the complexity of the proceeding, it is 'fit' for the claims arising under the RTA in *Divilli v Housing Authority & Anor* to be dealt with on the basis that the normal rules of evidence apply for proceedings in the Federal Court of Australia, including those contained the Evidence Act 1995 (Cth)' and that the Applicant proposed obtaining a ruling or orders by consent from the Court in this regard, seeking the Respondents' agreement.

A copy of that letter dated 16 January 2025 is at **Exhibit RJW1** page 119 to 122.

131. On 28 May 2025, Slater and Gordon sought a response be provided to this proposal.

A copy of that letter dated 28 May 2025 is at **Exhibit RJW1** page 123 to 126

132. In the Slater and Gordon correspondence of 14 August 2025, the following order was proposed:

> With respect to section 21 of the *Residential Tenancies Act* 1987 (WA), the normal Federal Court of Australia rules for evidence shall apply in this proceeding to the claims made under *Residential Tenancies Act* 1987 (WA), including those contained the *Evidence Act 1995* (Cth).

133. The DLA Piper correspondence of 1 September 2025, resisted the order on the basis that 'the making of orders with respect to whether the rules of evidence should apply to the proceedings', could not be 'be sensibly advanced' until after the applicant had served her amended pleadings and their Senior Counsel has had an opportunity to read into the material with which he has, or is to be, briefed with.

A copy of that letter dated 1 September 2025 is at **Exhibit RJW1** page 59 to 61.

134. I understand the Respondents do not now consider that Section 21 of the Residential Tenancy Act 1987 (WA) applies.

135. The Applicant now seeks the Court's clarification as to whether any formal ruling or direction needs to be made in respect of this issue.

J. CORRESPONDENCE BETWEEN THE HOUSING AUTHORITY AND MS DIVILLI

136. The Applicant seeks an order requiring that all correspondence from the Housing Authority to Ms Divilli in respect of her tenancy be forwarded to Slater and Gordon as soon as practicably after it is sent by the Authority.

137. On 1 November 2024, Slater and Gordon sent the WA State Solicitor's Office (**SSO**) a letter requesting the SSO's confirmation that '*All future correspondence or communication from the Housing Authority concerning her premises will be sent to Slater and Gordon, not directly to Ms Divilli*'. This correspondence was prior to the appointment of DLA Piper as solicitors for the Respondents.

A copy of that letter dated 1 November 2024 is at **Exhibit RJW1** page 127 to 128

138. On 13 November 2024, the SSO sent Slater and Gordon a letter explaining that it considered this request too broad, noting that there may be a need to contact Ms Divilli for, inter alia, emergency or routine matters unrelated to the proceedings. The SSO's letter explained that the Housing Authority maintains a system that sends automated communications to tenants, and noted that, *'as a temporary measure, automatic communications for Ms Divilli's premises have been turned off.*'

A copy of that letter dated 13 November 2024 is at **Exhibit RJW1** page 129 to 130

139. In the same letter, the SSO indicated that its automated system does not have the capacity to split correspondence or send to multiple recipients. As such, the SSO offered to enter Slater and Gordon's contact details into the automated system, in place of Ms Divilli's contact details, subject to the provision of Ms Divilli's written and express consent to do so. The SSO suggested that, '*Otherwise, the Housing Authority proposes to engage with Slater + Gordon in good faith on an ongoing basis regarding the communications that may be required, or which may occur, with Ms Divilii from time to time*.'

140. On 20 November 2024, Slater and Gordon sent the SSO a letter clarifying that direct communications with Ms Divilli in relation to emergencies and to arrange attendances to her premises can occur without prior notice being provided to Slater and Gordon, but expressed our view that all such activities are '*squarely relevant to Ms Divilli's claim*' and as such, '*stressed the importance of ensuring that communications regarding these matters, and other matters which may impact her rights (such as the issuing of liability notices) are promptly shared by the Authority with Slater and Gordon at the same time or shortly after they are provided to Ms Divilli.*'

A copy of that letter dated 20 November 2024 is at **Exhibit RJW1** page 131 to 132.

141. On 16 January 2025, Slater and Gordon sent a letter to DLA Piper pressing for a response to our request that all non-urgent communications from the Respondents to Ms Divilli be directed to Slater and Gordon.

A copy of that letter dated 16 January 2025 is at **Exhibit RJW1** page 119 to 122.

142. On 6 March 2025, DLA Piper sent Slater and Gordon a letter which provided the following:

> *Our client has considered your request that the Housing Authority direct all non-urgent correspondence with Ms Divilli to your firm. We are instructed that it is impractical for the Housing Authority to do so. The communications from the Housing Authority to its tenants is largely made through its specialised automated systems. It would impose considerable logistical burdens upon our client to change those systems to accommodate the request.*
>
> *Our client is considering the practicalities of implementing a routine review of correspondence sent to Ms Divilli, so that these may be provided to our firm and onforwarded to you. We will write to you further in that regard as soon as possible.*

A copy of that letter dated 6 March 2025 is at **Exhibit RJW1** page 133 to 135.

143. On 28 May 2025, Slater and Gordon sent a letter to DLA Piper noting that we had '*received no further communication on this matter.*'

A copy of the letter dated 28 May 2025 is at **Exhibit RJW1** page 123 to 126.

144. On 6 September 2025, Slater and Gordon sent a letter to DLA Piper noting that no response to this issue was ever received. That letter also expressed the following concern:

> *'In course of reviewing discovery, we have identified a document titled 'Customer File Notes.xlsx' (HOA.004.001.0002), which contained an entry recorded on 7 November 2024, which states 'DO NOT SEND ANY CORRESPONDENCE TO THIS TENANCY - LEGAL ACTION - NO MANUAL LETTERS' in rows 3 and 4 of the excel sheet. We attach this document for ease of reference*
>
> *We are concerned at the direction in that entry that correspondence to Ms Divilli or her partner, Mr Rivers, from the Housing Authority, in respect of her tenancy or her home may have ceased.'*

145. The letter requested confirmation as to whether:

> (a) '*Correspondence from the Authority to Ms Divilli or her partner has ceased; and*
>
> (b) *If so, what matters would otherwise have been notified to Ms Divilli or her partner, but for the direction recorded in the Customer file notes.'*

146. Within that letter, I also reiterated Ms Divilli's instructions that her legal representatives be copied into all correspondence relevant to her tenancy and not for such correspondence to cease.

A copy of the letter dated 6 September 2025 is at **Exhibit RJW1** page 71 to 72.

147. On 9 September 2025, DLA Piper advised it was awaiting their clients' instructions as to its communications with the Applicant and will respond as soon as possible.

A copy of the letter dated 9 September 2025 is at **Exhibit RJW1** page 75 to 76.

148. In the JPP agreed on 12 September 2025, I note the Respondents' position at section 13 is that

"The Respondents agree that correspondence should continue to be sent to the Applicant in the usual course of the management of her tenancy. They do not, however, agree that it is practical or appropriate for the Applicant's legal representatives to be copied to all such correspondence."

K. CONSENT ORDERS AS TO DISCOVERY TO BE MADE BY THE RESPONDENTS

149. On 14 August 2025, Slater and Gordon wrote to DLA Piper regarding an apparent oversight in the Discovery Orders agreed between the parties, as follows:

> *We note that order 1 of the orders of 25 June 2025 requires your clients to produce documents from A-E to Annexure A of those orders.*
>
> *Given that there was agreement between the parties in the conferral relating to discovery that your clients produce documents responsive to categories 45-47 of Topic F we consider it appropriate to formalise this aspect of your clients' discovery by amending order 1 of the 25 June 2025 orders as such:*
>
> > *In addition to order 1 of the orders of 25 June 2025, the Respondents must make discovery of documents in accordance with the categories 45-47 of Annexure A to those orders as part of their discovery.*
>
> *We would be grateful if you could indicate whether you agree to proposed order 3.*

A copy of the letter dated 14 August 2025 is at **Exhibit RJW1** page 48 to 50.

150. By letter dated 27 August 2025, the Respondents indicated they are agreeable to this proposed order, and the parties' agreement is reflected in order 1 of the Orders dated 16 September 2025. Accordingly, this is no longer an issue in dispute between the parties.

A copy of the letter dated 27 August 2025 is at **Exhibit RJW1** page 54 to 56.

Affirmed by the deponent)

at Melbourne)

in the State of Victoria)

on 16 September 2025)

Before me:)

Signature of deponent

Signature of witness

Henry Laurence Hamilton Lindsay
Level 35, 530 Collins Street
Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

No: VID 809 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

Jonnine Jaye DIVILLI
Applicant

HOUSING AUTHORITY and others named in the schedule
Respondents

CERTIFICATE IDENTIFYING EXHIBIT

This is the Exhibit marked '**RJW1**' now produced and shown to Rory John Walsh at the time of affirming his affidavit on 16 September 2025.

Before me :

Henry Laurence Hamilton Lindsay
Level 35, 530 Collins Street
Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

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Our Ref: VID 809/2024

11 April 2025

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Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

We refer to the above matter and your clients' Defence filed on 14 March 2025. The purpose of this letter is to:

(a) request production of certain documents referred to in the Defence;

(b) address a number of issues arising in the Defence which we suggest require further consideration by the Respondents; and

(c) provide an update on other developments in or related to this proceeding.

Service

1. Pursuant to order 4 of the orders of the Court made on 9 September 2024 (as amended by the orders of the Court made on 7 March 2025) please find **attached**, by way of service:

   (a) our client's Reply to the Defence as filed on 11 April 2025 (**Reply**); and

   (b) a Request for Further and Better Particulars of the Defence (**FABP**).

2. We have prepared and filed our client's Reply to the Defence notwithstanding that it may need to be amended following the response to the Request for FBP and the response to this letter. Further, subject to the responses received, our client may seek to strike out parts of the Defence.

3. We also take this opportunity to serve on you a representative complaint under s 46P(2)(a)(ii) of the *Australian Human Rights Commission Act 1986* (Cth), lodged on behalf of the Applicant on 11 April 2025 (**AHRC Complaint**).

Request for production of documents referred to in the Defence

4. We kindly request that the Respondents produce the following documents referred to in the Defence, which were not provided by the Respondents in compliance with Order 5 of the 16 December 2024 orders of his Honour Justice Jackson, by **4pm (AWST) 25 April 2025**. If we do not receive the requested documents by this date, we will serve a notice to produce under r 20.31 of the *Federal Court Rules 2011* (Cth) (**Rules**).

5. We seek production of the following documents:

   (a) the tenancy agreement relied upon in paragraph 1.2(a) of the Defence;

(b) the maintenance and repair recommendations made by the inspectors to the Authority concerning the Divilli Premises (paragraph 20A.35(a) of the Defence);

(c) all entries concerning the Divilli Premises in the software platform maintained by Lake Maintenance (particulars to paragraph 20A.35 of the Defence);

(d) all documents and records (other than the inspection reports already provided) referred to in paragraph 32A.3(f) of the Defence in relation to the Divilli Premises; and

(e) any rent assessment, applicable authorisations and any letters in relation to the Applicant referred to in paragraph 79.3 of the Defence.

Deficiencies in the Defence

6. By way of a general observation, we note that the Defence alternates between responsive pleas with a broad application to the group members at large and responsive pleas applying directly to the Applicant. By way of example, paragraph 46.1 directs the plea to the Applicant yet in paragraph 46.1(g) the response is seemingly directed to the group members at large. At this stage, we highlight that this may be an issue that will need to be addressed, and we invite your clients to revisit their Defence for this reason.

7. At paragraph 4.2 of the Defence, the Respondents deny that the Authority was and is 'an agency that acted on behalf of the Crown'. A denial to the same effect is to be found in paragraphs 8.2(b), 10.2(a) and 12.1 of the Defence. Section 6(c) of the *Residential Tenancies Act 1987* (WA) (**RTA**), and the regulations under that Act, specifically identify the Authority as an agency caught by s 6(c) (see in particular reg 5AD(3) and 5A(1)). In that regard, we invite the Respondents to revisit their denials in paragraph 4.2, 8.2(b) and 12.1, and their reliance on paragraph 8.2 in paragraph 10.2(a) of the Defence. Further, we also invite the Respondents to revisit their plea at paragraph 27.2 and the allegation that the State had no obligations under the Divilli Tenancy Agreement 'at all', in light of the recognition that the Authority is an agency that is acting on behalf of the Crown.

8. At paragraphs 9 and 72 of the Defence, the Respondents deny that Western Australia was a party to a Primary Agreement (as defined in the Amended Statement of Claim filed on 25 November 2024). We assume by this that your clients deny that the State was a party to any agreement in respect of Housing in Remote Communities. We **enclose** by way of example a Primary Agreement which names the State as a party to it, and which was previously provided to your clients by correspondence on 1 November 2024. In light of this example Primary Agreement, we invite the Respondents to revisit this plea.

9. At paragraph 13 of the Defence, the Respondents deny that the Authority and Western Australia engaged in conduct as a trading corporation, carrying on business or supplying services within the meaning of the Australian Consumer Law (**ACL**). Similarly, in paragraphs 16 and 18, they deny that each tenant was a 'consumer' for the purposes of s 61 of the ACL or either Respondent provided any guarantees for the purposes of the ACL. In our view, these bare denials obscure the dispute that clearly now exists on the issue of the applicability of the ACL. That approach is contrary to s 37M of the *Federal Court of Australia Act 1976* (Cth). We request the Respondents to consider repleading this bare denial with proper allegations of fact and particulars, and draw attention to the parties' obligation to act consistently with the overarching purpose and the requirement under the Rules that a pleading must identify the issues that the party wants the Court to resolve.

10. Paragraph 17.2 of the Defence requires clarification as the cross-reference to paragraph 12 of the Defence appears to be a mistake.

11. In paragraph 20B of the Defence, the Respondents plead that 'to the extent that any damage to the Divilli Premises was caused by Ms Divilli, or the other occupants of the Divilli Premises, or their lawful invitees' 'the Authority … is not liable for the costs incurred in repairing such damage'. The plea does not specify whether or not the Respondents assert that any particular damage was in fact caused by Ms Divilli, the other occupants of the Divilli Premises or their lawful invitees. The plea 'to the extent' therefore goes nowhere and is not a proper pleading. This is not cured by the particulars to paragraph 20B which also do not identify the relevant damage. Paragraph

20B is liable to be struck out. Accordingly, the Respondents should either replead paragraph 20B and plead the particular damage that it is alleged was in fact caused by Ms Divilli, the other occupants of the Divilli Premises or their lawful invitees and identify the precise facts and proper basis on which that allegation is made, noting the seriousness of any such allegation. Alternatively, the Respondents should withdraw the allegation in paragraph 20B of the Defence. We note that paragraph 20B is also referred to in paragraphs 21, 23, 26, 29, 33 and 34 of the Defence.

12. Paragraph 23.2 of the Defence requires clarification; it appears the word 'know' is missing.

13. At paragraph 32A.5 of the Defence, the Respondents allege that s 5X of the *Civil Liability Act 2002* (WA) (**CLA**) is engaged. In circumstances of the claim in paragraphs 31- 35 of the ASoC being for breach of contractual terms, it is unclear how s 5X is engaged (see also the discussion in *Southern Properties (WA) Pty Ltd v Executive Director of the Department of Conservation and Land Management* (2012) 42 WAR 287, especially at [300]). On that basis, we invite the Respondents to withdraw paragraph 32A.5.

14. Similarly, we invite the Respondents to withdraw paragraph 32B of the Defence. Such a provision does not apply in circumstances where no duty of care claim is made by the Applicant. Section 5W of the CLA only applies to allegations of a breach of a duty of care.

15. Finally, we refer to r 16.07(2) of the Rules and invite you to reconsider the Defence in that light. On numerous occasions, the Defence neither denies nor adopts the form of words in s 16.07(3) of the Rules.

16. Please provide your response to paragraphs 6 to 15 of this letter within 21 days of the date of this letter, failing which we will consider making an application to strike out the relevant parts of the Defence.

Further Amendments

17. The ASoC includes, in the particulars to paragraph 1, that Divilli's Residence has 9 occupants. The Reply, in answer to paragraph 20.A.2 of the Defence provides that Divilli's Residence has housed five biological children and at least two foster children. We have been instructed by the Applicant that she has recently adopted a third foster child. We will seek to amend the ASoC to reflect this change in due course. We suggest that it is most efficient to do so as part of other amendments made in future.

18. We also put you on notice of the fact that we foreshadow amending the ASoC in future to add the claims that are made in the AHRC Complaint once that process has been completed. We provide this indication simply so that your clients are aware of it from an early time, noting that this additional cause of action was first foreshadowed at the time the statement of claim was first served on your client on 19 August 2024. As you will see, those claims are fairly confined and do not have any impact on the progress of this proceeding in its current form.

Yours sincerely

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Our ref: M667484

19 August 2024

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Dear Ms Lomma and Ms Jeyamohan

Divilli v Housing Authority and Anor VID809/2024

We refer to our previous correspondence dated 16 August 2024, and to your confirmation you are authorised to accept service on behalf of your clients, the Housing Authority (**Authority**) and State of Western Australia (**State**).

1. We have commenced, on behalf of Jonnine Jaye Divilli, a representative proceeding in the Federal Court of Australia against the Authority and State (**Proceeding**).

2. Please find **enclosed**, by way of service, sealed copies of the Originating Application and Statement of Claim, the Proper Basis Certification and Genuine Steps Statement.

3. We also wish to inform you that we anticipate bringing a representative complaint in respect of the same housing in the Australian Human Rights Commission. We expect it will concern breaches of the *Racial Discrimination Act 1975* (Cth) by the State and the Authority. We will inform you as soon as that is initiated. We expect to then invite your clients' consent to it being terminated under s 46PH(1)(h) (public importance) or s 46PH(1B)(b) (no prospect of conciliation) of the *Australian Human Rights Commission Act* 1986 (Cth). Termination would then allow the discrimination claims to be brought into the Federal Court under s 46PO of that Act, and amended into the claims in this Proceeding.

4. Please contact Gemma Leigh-Dodds on 0417 197 859 for any further information or to discuss the contents of this letter.

Yours faithfully

Rory Walsh

Rory Walsh
Practice Group Leader
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Encl.
Statement of Claim & Proper Basis Certification
Originating Application
Genuine Steps Statement

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Your reference

2442-24

Our reference

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AUM/1300789098.1

By Email Only: *gemma.ld@slatergordon.com.au*

23 April 2025

Dear Colleagues,

DIVILLI -V- HOUSING AUTHORITY & ANOR
FEDERAL COURT PROCEEDINGS VID 809 OF 2024

1 We refer to your letter dated 11 April 2025.

2 We are taking instructions with respect to the matters you have raised with respect to our client's defence, and your client's request for further and better particulars thereof, and will revert to you in that regard shortly.

3 In the interim, we note that your client has:

3.1 lodged a complaint with the Australian Human Rights Commission (**AHRC**) and requested that it be terminated under section 46PH of the *Australian Human Rights Commission Act 1986* (Cth);

3.2 foreshadowed amending her pleading in this claim to incorporate the matters which are the subject of the AHRC Complaint; and

3.3 foreshadowed making other, unspecified, amendments to the pleading.

4 Could you please keep us appraised of the status of the AHRC Complaint as that matter progresses?

5 The foreshadowed amendments to the pleading will (if made) plainly alter the scope of the dispute between our clients, including both the common questions for determination and discovery. In those circumstances, it is our clients' view that:

5.1 your client ought to specify the proposed amendments to her pleading as soon as possible; and

5.2 the time for the bringing of any application for Merck orders ought to be extended until after your client has sought leave to amend her pleading in the terms foreshadowed (as the parties will not be in a position to settle upon the common questions for determination until then).

6 Our client presently still intends to serve an affidavit in accordance with paragraph 6 of the orders made on 16 December 2024. However, it seems highly likely that the scope of discovery may expand as a result of the foreshadowed amendments to the pleadings (if made). In those circumstances, our client reserves the right to file further affidavits going to any additional issues raised at a later date.

7 We look forward to hearing from you with respect to the above matters. Feel free to call us to confer by telephone.

Yours sincerely,

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Our reference

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3 June 2025

Dear Colleagues,

DIVILLI -v- HOUSING AUTHORITY & ANOR
FEDERAL COURT PROCEEDINGS VID 809 OF 2024

1 We refer to your letter dated 11 April 2025 (**Your Letter**).

2 This letter addresses the issues raised with respect to clients' defence in paragraphs 7-15 of Your Letter. Before turning to those matters, we request an explanation as to:

2.1 the amendments that your client intends to make to her statement of claim (currently referred to only as "other amendments" in paragraph 17 of Your Letter); and

2.2 when she intends to do so.

3 The response to these queries will inform how our client proceeds with respect to the issues raised in Your Letter.

Paragraph 7 of Your Letter

4 At paragraph 7 of Your Letter, you contend that our clients' denial that the first respondent was acting as the agent of the second respondent is unsustainable in light of section 6(c) of the *Residential Tenancies Act 1987* (WA) and the regulations made under that provision. Our client does not agree that the cited provisions can or do have the effect of creating an agency relationship between the respondents. The capacity in which the first respondent entered into the relevant agreements is a matter to be determined by the circumstances of each case. It is therefore a matter for determination at trial.

Paragraph 8 of Your Letter

5 Could you please advise us of the specifics of the redacted tenancy agreement provided with Your Letter so that we may take instructions with respect to it? In any event, our client remains of the position that the second respondent was not party to any Tenancy Agreements (as that term is defined in the statement of claim). That is a factual matter, and one which will need to be considered in respect to each claimant. We note in that regard

that the only claimant presently identified is Ms Divilli. Our client is unable to address this issue with respect to any other individuals at this time.

6 This is plainly a matter for trial and not an issue going to the efficacy of our clients' pleading.

Paragraph 9 of Your Letter

7 You assert in paragraph 9 of Your Letter that our clients' denial of the application of the *Australian Consumer Law* (**ACL**) is bare and obscures the dispute that exists between the parties.

8 The respondents' position with respect to the application of the ACL is set out plainly in paragraph 12 of their defence. That is, the respondents were at all times material to these proceedings:

8.1 carrying out a governmental function;

8.2 not engaged in trade or commerce; and

8.3 not carrying out a business.

9 Moreover, in circumstances where our clients deny the existence of a state of affairs (that they were engaged in trade or commerce), we do not see how particulars would elucidate that pleading. It is a permissible traverse and it is, with respect, for your client to prove the state of affairs which she alleges.

Paragraphs 10 and 12 of Your Letter

10 You have correctly identified typographical errors with respect to our client's pleading at paragraphs 17.2 and 23.2 of our clients' defence. To avoid multiple amendments to the pleadings, we propose to address these issues by way of amendment following the making of the foreshadowed amendments to your client's statement of claim.

Paragraph 11 of Your Letter

11 You assert at paragraph 11 of Your Letter that our clients have not given particulars of the damage which it is alleged your client or her lawful invitees have caused, and thus that the pleading at paragraph 20B of the defence is unsustainable in its current form. For clarity, the pleading at paragraph 20B of the defence goes to the proper measure of damages payable to your client in the event that any breaches are established against ours. What is contended is that any damage caused by your client or her lawful invitees needs to be taken into account in the quantification of any damages payable to her.

12 Our client has provided particulars that an inference will be drawn with respect to property damage which has been observed on inspection, but which has not been reported either to the second respondent or to the Police. Further particularisation of such losses may follow (as is appropriate) the provision of discovery and the issuance of subpoenas, which will elucidate these issues.

Paragraphs 13 and 14 of Your Letter

13 In these paragraphs, you assert (in effect) that sections 5X and 5W of the *Civil Liability Act 2002* (WA) (**CLA**) cannot be engaged because your client's claims are for breach of contract and do not allege a breach of duty. That submission misapprehends the operations of sections 5X and 5W of the CLA. Both sections 5X and 5W are found in Part 1C of the CLA. Section 5V of the CLA expressly provides that:

> *(1) Subject to sections 3A and 4A, this Part applies to any claim for damages for harm caused by the fault of a person unless this section states otherwise.*
>
> *(2) This Part extends to a claim for harm caused by the fault of a person even if the damages are sought to be recovered in an action for breach of contract or any other action.* [emphasis added]

14 The term 'harm' is defined in section 3 of the Act to include claims for property damage and economic loss.

15 With respect to section 5X of the CLA, the only conditioning factor for the application of that section is that the claim is one for harm caused by the fault of a public body or officer. The pleading of section 5X in paragraph 32A.5 of our clients' defence is in response to the allegations in paragraph 32 of your client's statement of claim to the effect that they:

15.1 had no or "insufficient" systems for maintenance;

15.2 had no or "no adequate" engagements with contractors or agents to provide "reasonable" assurance with respect to maintenance;

15.3 did not carry out remedial works within a "reasonable" period of time.

16 Those allegations, relying as they do upon questions of reasonableness, plainly constitute claims based upon fault. As such, section 5X of the CLA is – in our view – plainly engaged.

17 For the same reason, your client's allegation in paragraph 32 of the statement of claim is clearly one based upon a breach of duty (whether that duty arise from contract or some other source). As such, the court is obliged to take into consideration the factors set out in section 5W of the CLA when assessing the content of such duty (if found).

18 In any event, again, the question of whether sections 5X and 5W of the CLA are engaged is a matter for trial and does not go to the efficacy of our clients' pleading.

Paragraph 15 of Your Letter

19 We take on board the observation you make with respect to the application of rules 16.07(2) of the *Federal Court Rules.* In the interests of efficiency, our clients will address the issue you have raised when filing their defence to your client's foreshadowed amendments to the pleadings.

20 Please let us know if you would like to organise further conferral on these issues between our clients' respective counsel.

Yours sincerely,

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Our Ref: VID 809/2024

25 April 2025

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Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

We refer to our letter dated 11 April 2025 (**Our Letter**), your letter dated 11 April 2025 in relation to the Notice to Admit Facts (**Your First Letter**) and your letter dated 23 April 2025 (**Your Second Letter**).

Status of racial discrimination complaint

1. Regarding paragraphs 3 to 4 of Your Second Letter, we confirm we will keep you appraised of developments in the Australian Human Rights Commission complaint lodged on behalf of the Applicant on 11 April 2025 (**AHRC Complaint**). In this regard, we would be grateful if you could please confirm that you hold instructions to act in relation to the AHRC Complaint.

2. Regarding paragraph 6 of Your Letter, the Applicant is prepared to provide a draft pleading amendment in due course, however, and as noted at paragraph 18 of Our Letter, the claims outlined in the AHRC Complaint are confined and will not impact the progress of the proceeding.

Extension of Merck order

3. Regarding paragraph 5 of Your Second Letter, we do not consent to the extension of the deadline from 25 April 2025 per Order 3 of the orders made 16 December 2024.

4. In our view, as the parties should be at liberty to apply for 'Merck Orders' at the time the parties consider to be appropriate, there is therefore presently no utility maintaining an order prescribing a time for making such an application.

5. Accordingly, the Applicant proposes to let the Order 3 lapse, or alternatively would be prepared to consent to Order 1(c), of the original orders made on 9 September 2024, as then amended by Order 3 of the orders made on 16 December 2024, being set aside.

Notices of Dispute in response to the Applicant's Notices to Admit as to documents and as to facts

6. We refer to the Respondents' responses to the Notices to Admit as to Documents and as to Facts, and the two Notices of Dispute issued in relation to each, dated 11 April 2025.

7. In relation to the Notice of Dispute (Documents) dated 11 April 2025, we would be grateful if you could also please explain, briefly but clearly, the basis upon which the documents disputed are not admitted. We ask especially because a number of them purport to be documents of the State and so them being in dispute is surprising.

8. Lastly, in relation to Your First Letter, we note at paragraph 3.3 you state that the Respondents "*reserve the right to revisit the facts alleged as their understanding of the facts develop thought the usual course of litigation*". The Applicant does not accept the Respondents' can reserve their position, when a lengthy and repeated extensions of longer than three months were provided to provide the responses, including so as to fall after the filing of the Defence.

Respondent's affidavit and defence documents

9. We look forward to receiving the affidavit subject to Order 6 of the orders of 16 December 2025, and the outstanding documents referred to in the Defence, as outlined in Our Letter.

10. Please contact me if you wish to discuss anything further.

Yours sincerely

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Our Ref: VID 809/2024

14 August 2025

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Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

1. We refer to your letter dated 3 June 2025 (Your Letter) in response to our letter of 11 April (Our Letter) in which we raised various deficiencies with your client's defence.

Paragraphs 7 of Our letter and paragraph 4 of Your Letter.

2. We note your response on the question of agency. Having now specifically drawn the relevant section of the *Residential Tenancies Act 1987 (WA)* and the regulations to your attention, the applicant regards your client's position in respect of the Agency pleading as lacking merit.
3. We will in these circumstances, rely upon Our Letter on the question of costs if successful on this issue at trial.

Paragraph 8 of Our Letter and paragraph 5 of Your Letter

4. Your client asserts that it is unable to address the issue of whether Western Australia was a party to a Primary Agreement (as defined in the Statement of Claim) because the only claimant presently identified is Ms Divilli. In fact, in Your Letter you assert that the second respondent was not a party to <u>any</u> Tenancy Agreement. In addition, the paragraphs of the Defence in which that allegation is made (paragraphs 9 and 72) relate to common issues and broader legal questions, and do not relate specifically to Ms Divilli.
5. In those circumstances, and given we have provided you with an example of a Primary Agreement which names the State as a party, we do not understand how your client's denial can be maintained. The applicant's position is that if agreement cannot be reached on this issue we will rely on the relevant correspondence on the questions of costs if successful at trial.

   We note your request to be provided with an unredacted version of the tenancy agreement earlier

provided by us, and we will revert back to you shortly in respect of this request.

Paragraph 9 of Our Letter and paragraphs 7-9 of Your Letter

6. We do not accept that the provision of particulars is sufficient. We will assume that your client relies on the matters set out in 8.1-8.3 as the only particulars your client chooses to rely on in support of its denial in paragraph 13. Please advise if this assumption is incorrect within 28 days and if so, what further particulars they intend to rely upon. Absent which , we will rely on this correspondence to oppose any subsequent attempt from your clients to rely on any further particulars.

Paragraph 11 of Our Letter and paragraphs 11-12 of Your Letter

7. At paragraph 20B of your clients' Defence, your clients allege:

> Further to paragraph 20A herein, the respondents say that to the extent that any damage to the Divilli Premises was caused by Ms Divilli, or the other occupants of the Divilli Premises, or their lawful invitees, then:
>
> > 20B.1 pursuant to clause 2.4 of the Divilli Tenancy Agreement, and clause 4.4(b) of the HMA (as pleaded in paragraph 5A.11 herein), the Authority (as the deemed lessor for the purposes of the RT Act) is not liable for the costs incurred in repairing such damage;
> >
> > 20B.2 Ms Divilli and Mr Rivers are liable to the Authority for that damage and, to the extent that the Authority is held liable to Ms Divilli or Mr Rivers, the Authority is entitled to a set-off on account of their liability to it.
> >
> > PARTICULARS
> >
> > It may be inferred that the damage was caused by Ms Divilli, or the other occupants of the Divilli Premises, or their lawful invitees in circumstances where:
> >
> > A. There were regular property maintenance inspections of the Divilli Premises;
> >
> > B. No-one reported to the police or to the Authority, and it has not been alleged, that any damage to the Divilli Premises had occurred unlawfully.

8. Our client sought clarification of this allegation. Is it in fact alleged that any damage was caused by Ms Divilli or other occupants or their lawful invitees? You have not answered that question.
9. Instead, you have stated that this paragraph "goes to the proper measure of damages". However, that response is insufficient and appears inconsistent with the particulars which suggest that there is a positive allegation of damage caused by Ms Divilli.
10. Any plea of set off must be founded in fact and have a proper basis. A plea in set off which relies on an allegation that a person committed property damage, potentially amounting to a crime (see, eg *Criminal Code Act Compilation Act* 1913 (WA) s 445), requires specificity befitting such a serious allegation (see, by analogy, *Plaintiff M83A/2019 v Morrison (No 2)* [2020] FCA 1198 at [89]).
11. The Applicant is entitled to know if an allegation is being made against her that any particular damage was caused by her, other occupants or lawful invitees. Is this allegation being made or not? If it is, it ought be properly and fully particularised. If not, it ought be withdrawn. In the absence

of such an allegation, she cannot properly respond.

12. The particulars provided to paragraph 20B only obscure the issue. They indicate where the cause of damage will be "inferred" and appear to suggest that such an inference is being made but without providing adequate detail.
13. We again request that you provide proper particulars in relation to paragraph 20B by 28 August 2025. If not, the Applicant intends to file an interlocutory application seeking to strike out paragraph 20B from the respondents' defence.
14. The Applicant proposes
    a. to rely upon the relevant sections of Our Letter, Your Letter and this correspondence in complying with the requirement of conferrals in good faith prior to bringing an interlocutory application as required by at paragraph 12.2 of the Federal Court Central Practice Note). Please confirm whether you are content with the proposal to proceed in this way or alternatively whether your clients wish to confer in respect of this matter prior to proceeding to a hearing of the application.
    b. that if a strike out application is required, the Applicant considers it would be more cost effective and convenient to the Court to have the application listed to be heard on the same date as the case management hearing on 24 September 2025, which the applicant's interstate based legal representatives will be attending in person.
    c. We estimate that the hearing of the application would be unlikely to take more than 1 to 2 hours, and the case management hearing could commence immediately after the conclusion of that application.
    d. Subject to your client's response to this proposal, we can prepare a proposed communication to the Court seeking to have the application listed on 24 September 2025 and for the timetabling orders that the applicant file written submissions of no more than 5 pages by 10 September 2025 and the respondent file written submissions of no more than 5 pages, by 17 September 2025.
15. Please provide a response to the proposal at paragraph 14 above by 21 August 2025.

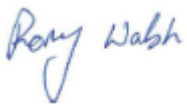
Paragraphs 13 and 124 of Our Letter and paragraphs 13 to 18 of Your Letter

16. We dispute your client's position that our client's allegation in paragraph 32 is based on breach of duty or "fault". More importantly, however, our client disputes that section 5X of the *Civil Liability Act* can be engaged where the plaintiff is not seeking to use a policy decision to support a finding that the defendant was at fault.
17. At paragraph 32, our client has pleaded no or an insufficient system for repairs and maintenance operated by your clients, and particularised these by way of failure to reach internal required benchmarks (para 32 of the Amended Statement of Claim). Our client does not seek to impugn any "policy decision" as defined in the *Civil Liability Act*.
18. In your clients' filed defence, they plead that the Authority's decisions were policy decisions. However, such "decisions" are not particularised or identified.
19. Without conceding that your client can rely on section 5X in any way in this proceeding, please

provide particulars by 28 August 2025 of the policy decisions that are alleged in paragraph 32 of the Defence, including providing the date, the subject matter, the person who made the decision and copies of the documents said to record that decision.

20. In any event, as set out in *Southern Properties (WA) Pty Ltd v Executive Director of the Department of Land Management* [2012] WASCA 79 at [300], “s 5X does not allow for a public authority to plead a “policy defence”.’ In that light, we continue to query the basis upon which that aspect of your defence can be maintained.
21. We will rely on Our Letter on the question of costs if successful on this issue also at trial, assuming it is maintained.
22. Please do not hesitate to contact us if you wish to discuss any of the matters in the above.

Yours sincerely



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Our Ref: VID 809/2024

14 August 2025

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Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

1. We refer to the abovenamed proceeding and the case management hearing (**CMH**) listed for 24 September 2025.

2. We have prepared the **enclosed** proposed minutes of order and joint position paper for the upcoming CMH for your clients to consider, which deal with the issues set out below.

Further Discovery Affidavit

3. As foreshadowed in our letter dated 2 July 2025, we seek an order that your clients provide an affidavit in respect of its discovery obligations in this proceeding.

4. As you are aware the applicant had earlier sought your client's agreement to provide such an affidavit in the course of preparing the June orders, but in the absence of agreement and in the interests of advancing the discovery categories and your clients' discovery process, we did not press for these orders to be made at that time but indicated that we would seek such an affidavit prior to the next CMH.

5. The applicant maintains that she ought at a minimum have the information proscribed by the Federal Court's Class Actions Practice Note at 7.8(d):

    a. *where documents responsive to the now agreed discovery categories between the parties are stored or held (and why these are to be considered the most appropriate repositories for each discovery category);*

    b. *the steps required to review and prepare them for production;*

    c. *the approximate number of documents responsive to the agreed discovery categories; and*

    d. *the likely timetable and cost of making discovery of those documents.*

6. The Applicant has not been provided with any information in relation to the above matters in relation to the now agreed discovery categories. You advised in your letter of 1 July 2025, that:

    Our clients are now engaged in the process of compiling and reviewing potentially relevant documents for discovery. Their understanding of the scope of the exercise will necessarily evolve during that process. We will keep you updated as to the likely volume of documents responding to the discovery orders, as well as the timing for completion of discovery (which can

hopefully be accomplished prior to the current 1 December 2025 deadline), in light of that evolving understanding.

Concomitantly, if, in the course of the discovery process, it appears that our clients will require further time to complete their discovery, we can provide an affidavit addressing the timing issues at that time.

7. That your clients understanding of the scope of exercise will necessarily evolve during the discovery process, does not relieve it of the obligation to comply with the practice note. The applicant is entitled to properly understand how your client proposes to discharge its discovery obligations and the resources which are being applied to that obligation.

8. It would be far more efficient in our experience for your client to provide an affidavit, addressing these matters by 30 August 2025, so that the case management hearing can address any matters arising at an earlier point in time. If, however, your client continues to resist the provision of an affidavit, the plaintiff will seek an order 1 of the proposed orders at the forthcoming case management hearing.

Further Discovery of tenancy agreements

9. As requested in our letter of 27 June 2025, the applicant's sought agreement that the following categories of document ought be included as part of discovery process in this proceeding, being:

    a. *Each version of any templates or 'standard form' Primary Tenancy Agreements and Secondary Tenancy Agreements;*

    b. *Examples of any versions of a Primary Agreement or Secondary Agreement to which the Authority or Western Australia was a party*

10. We note in this regard, that your client has provided two tenancy agreements in its most recent tranche of discovery (being documents HOA.010.001.0001 and HOA.003.001.0099), however there has not been any engagement with our proposal to formally include the categories to which these documents respond, as had been proposed in our letter of 27 June 2025. We note that our client reserved her position on this issue in order to advance discovery more generally in her letter of 23 June 2025.

11. We would be grateful if your clients could indicate at their earliest convenience, whether they now agree to discovery being made with respect to further tenancy agreements documents and whether they agree to order 2 of the proposed orders.

Previous discovery orders

12. We note that order 1 of the orders of 25 June 2025 requires your clients to produce documents from A-E to Annexure A of those orders.

13. Given that there was agreement between the parties in the conferral relating to discovery that your clients produce documents responsive to categories 45-47 of Topic F we consider it appropriate to formalise this aspect of your clients' discovery by amending order 1 of the 25 June 2025 orders as such:

    In addition to order 1 of the orders of 25 June 2025, the Respondents must make discovery of documents in accordance with the categories 45-47 of Annexure A to those orders as part of their discovery.

14. We would be grateful if you could indicate whether you agree to proposed order 3.

Pleading amendment to incorporate RDA claim

15. Although we are yet to receive a response to our request of 8 August 2025 seeking confirmation of your client's position regarding the proposed termination of the AHRC claim, we have been advised by the AHRC that your client has sought a further extension of time in which to provide its response, which is now due on 4 September 2025.

16. As you are aware, and subject to the AHRC claim being terminated, the applicant intends to seek leave from the Court to amend her pleadings to incorporate the RDA complaint within this proceeding. As such we would again ask that you promptly advise us of your clients position once finalised and conveyed to the AHRC, so that the Court may be apprised of the position prior to the CMH and the JPP be updated accordingly.

Strikeout application against your clients' defence

17. We have today sent separate correspondence in respect of various deficiencies in your clients' defence, confirming that in the absence of agreement the applicant intends to file a notice of motion in relation to paragraph 20B of your clients' defence.

18. The proposed orders and the joint position paper do not address these issues, as these are dealt with in the confines of that letter and the draft interlocutory application by the Applicant.

Opt out process

19. The Applicant proposes a process by which the parties begin agreement as to an opt out process in this proceeding, which is set out in orders 4 to 7.

Other matters and subsequent case management hearing

20. The applicant wrote to you on 16 January 2025 and 28 May 2025 seeking agreement to the proposal to dispense with section 21 of the *Residential Tenancies Act* 1987 (WA) (**RTA**). Our view is that orders should be made he claims arising under this proceeding be dealt with on the basis that the normal rules of evidence apply for proceedings in the Federal Court of Australia, including those contained the *Evidence Act* 1995 (Cth). We are yet to receive a response to this issue and have provided for an order in relation to this at order 8.

21. We consider that another case management hearing is to be set down in early November to allow for further timetabling issues to be ventilated and nearer to the completion of discovery, with the liberty to apply.

22. We request that you provide a response to this letter, and proposed orders and joint position paper by 21 August 2025.

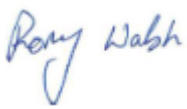
23. Additionally, we would be grateful if you could confirm you and your counsel teams' availability after to confer in relation to this proposed timetable and joint position paper in advance of 10 September 2025. Currently. our team is available to confer at the following dates:

    a. 27 to 29 August; and

    b. 1 to 3, and 8 and 9 September

24. Please do not hesitate to contact us in relation to any of the above matters.

Yours sincerely



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Our Ref: VID 809/2024

20 August 2025

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Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

1. We refer to the Document Management Protocol in this proceeding as approved by the orders of 25 February 2025 (**DMP**)

2. You wrote to us prior to this, on 13 February 2025, seeking to provide alternate formats for the production of export data to accommodate the use of Relativity and proposing your client export its data in the form of a '.dat' load file rather than 'mdb.' file, to which the Applicant agreed.

3. It has however become apparent to us that there is an inconsistency in the DMP, in that it provides for the fact that the 'mdb.' load file requires the parties to provide the Discovery Category as a mandatory field in the export data (see table at 12.3 of the DMP- bottom of page 19), whereas the '.dat' load file does not include this requirement (see the table at 12.6 of the DMP).

4. We believe this may have been an inadvertent omission, however absent this data, the Applicant cannot discern which discovery category each document is responsive to.

5. In light of this, we would be grateful if the respondents could indicate whether they agree to include the Discovery Category as part of providing the '.dat' file in future discovery tranches and whether they could also re-provide export data '.dat' file from tranche 4 of discovery produced on 1 August 2025, now with the data for the Discovery Category included.

6. If agreement is reached in relation to this, and to avoid inefficiencies, we do not see the need to amend the DMP as approved under the orders of 25 February 2025, but will instead rely upon correspondence evidencing agreement of this position.

7. Alternatively, however, if agreement cannot otherwise be reached, we will seek to have this inconsistency in the DMP formally rectified at the upcoming case management hearing.

8. We would be grateful for a response to the above by this Friday 22 August 2025 and to also provide an indication when the Discovery Category data in relation to tranche 4 can be provided to us by.

Yours sincerely

Rory Walsh

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Our Ref: VID 809/2024

25 August 2025

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Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

1. We refer to your email from earlier today and thank you for that response.

2. The applicant has sought to accommodate the inconvenience arising from the appointment of your clients' previous senior counsel, as a consequence of which your clients have sought, and has been afforded extensions to comply with Court Orders in this proceeding as well as the two extensions you have been granted with respect to responding to the termination Australian Human Rights Commission complaint brought by the Applicant.

3. However, the applicant wishes to making plain her concern that if this issue was to continue to impede upon your clients' ability to progress this litigation some 11 weeks after the appointment of Justice Thomson was publicly announced, in particular in relation to matters which had been raised with your clients some months prior to his appointment.

4. Firstly, however, can you please confirm, by return, whether your client has now briefed alternate Senior Counsel, and if not, when they anticipate doing so.

5. Secondly, can you please also confirm whether your clients intend to seek a further extension to comply with the Court Orders of 8 August 2025 to amend the date of compliance with paragraph 1 to 29 August 2025 and if so, please provide us with the proposed communication to the Court in this regard.

6. Separately, we note that the evidentiary proposal referred to in your email earlier today relating to section 21 of the *Residential Tenancies Act* 1987 (WA) was initially raised by the applicant in her correspondence of 16 January 2025. The proposal is intended to clarify the evidentiary requirements for trial of this proceeding and simply seeks to adopt the normal rules of evidence which apply to proceedings in the Federal Court of Australia.

7. As such, we do not understand how this proposal is said to be causing further delay as a result of its complexity and it also having significant implications for how the parties prepare the matter for trial, however we expect your correspondence will explain those matters.

8. Further, while the pleading issues raised by the applicant do involve some degree of complexity, for completeness it should also be noted that those matters have been the subject of substantive correspondence exchanged between the parties since 11 April 2025. Including a substantive articulation of your clients' position in its correspondence of 3 June 2025, which we anticipate was prepared in consultation with your clients' counsel team at that time.

9. Nor do we understand the potential for a strike out application to have taken your clients by surprise, as it was squarely raised in our correspondence of 11 April 2025.

10. As you are aware, the case management hearing is scheduled for 24 September 2025 and the current timetabling orders require the parties to have conferred and provided the Court their respective positions by 10 September 2025 in the form of a joint position paper and proposed orders.

11. In agreeing to the most recent extension to the timetable, the applicant was not aware that your clients would be even further delayed in complying with the Court orders requiring a response to the request for the further and better particulars. Nor did the applicant appreciate that the need to replace Senior Counsel was continuing to delay engagement with a confined evidentiary proposal and the pleading issues.

12. Given the limited time now remaining to comply with the Court timetabling orders, any further delay, beyond this week, in your clients substantively engaging with the outstanding matters, will clearly impact upon the applicant's ability to comply with those orders.

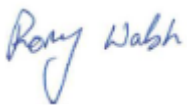
13. Separate however to both the pleading matters and the evidentiary proposal, there are a number of more recently raised, but less substantive, matters currently outstanding. We do not understand that these are said to be matters in respect of which a delay has arisen because of the need to confer with Senior Counsel. These include the following:

    a. whether the respondents now agree to formally include categories 45 to 47 in their discovery as set out in our proposed orders and our letter of 14 August 2025;
    b. whether a further affidavit in relation to discovery will be forthcoming as set out in our proposed orders and our letter of 14 August 2025;
    c. whether the discovery data provided by your clients can include Discovery Categories so that it is consistent with the intention of the DMP, as proposed in our letter of 20 August 2025; and
    d. your client's availability to confer prior to 10 September 2025.

14. In order to expedite discussion of any issues arising, we would be assisted if your client would by no later than tomorrow, indicate its position in relation to the matters raised in 13 (a) to (d) above.

15. Finally, if contrary to your clients' current expectation, it becomes apparent that they will be unable to respond to the balance of the outstanding matters by 29 August 2025, please notify us of this as soon as practicable so that the applicant can consider the implications of any further such delay.

Yours sincerely



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VID 809/2024
Our reference
AMC/AMC/3148015/736070
AUM/1301568383.1

By Email Only: *rory.walsh@slatergordon.com.au*

27 August 2025

Dear Mr Walsh,

DIVILLI -V- HOUSING AUTHORITY & ANOR
FEDERAL COURT PROCEEDINGS VID 809 OF 2024

1 We refer to paragraph 13 of your correspondence of 25 August 2025, and set out the Respondents' response below.

Para 13(a): Discovery categories 45 to 47

2 The Respondent is agreeable to proposed order 3, as contained in your letter of 14 August 2025.

Para 13(b): Further discovery affidavit

3 We understand that your client contends that:

3.1 The affidavit of Mr Craig Newton of 30 April 2025 (**Newton Affidavit**) is deficient, by reference to Order 7 of the Orders made by His Honour Justice Jackson on 9 September 2024 (as varied by order 6 of the Orders made on 16 December 2024).

3.2 The Respondents' ought to provide a further affidavit that, at a minimum, addresses the information proscribed by the Federal Court's *Class Actions Practice Note* (**Practice Note**) at paragraph 7.8 (d), which you assert includes:

(a) where documents responsive to the now agreed discovery categories between the parties are stored or held (and why these are to be considered the most appropriate repositories for each discovery category);

(b) the steps required to review and prepare them for production;

(c) the approximate number of documents responsive to the agreed discovery categories; and

(d) the likely timetable and cost of making discovery of those documents.

4 The above matters sought by your client (in paragraphs 3.2(a) – (d) herein) go well beyond the contents of paragraph 7.8(d) of Practice Note, which refers to an affidavit by any party detailing:

4.1 Where relevant documents are stored;

4.2 What types of documents exist;

4.3 In what form they are held; and

4.4 The likely timetable and costs consequences of making discovery.

5 In circumstances where the discovery categories and timetable for discovery are now subject to Court orders, we do not understand the Applicant's insistence for a further affidavit deposing to the above matters.

6 Our client will act consistently with its discovery obligations and the Court orders, by providing its relevant documents to the Applicant that are responsive to the 47 agreed discovery categories.

7 In these circumstances, our client is not agreeable to the applicant's proposed order 1, as contained in your letter of 14 August 2025.

8 As previously noted, our client is prepared to:

8.1 Keep your client updated as to the likely volume of documents responding to the discovery orders; and

8.2 The timing for completion of discovery.

9 In this regard, and by way of an update as to the Respondents' preparation of its discovery:

9.1 The Respondents have produced to the Applicant discovery tranche 1 on 1 August 2025, and will shortly produce discovery tranche 2 (ahead of 1 September 2025).

9.2 The Respondents continue to be engaged in an extensive and detailed search of its records (noting the near 15-year "Relevant Period" which applies to the majority of the discovery categories). That process is being supported by Deloitte's forensic data consultancy team, who have been engaged by DLA Piper to provide both data mapping and data collection services.

9.3 The searches of the Respondents' records have been complicated by recent Machinery of Government changes, which has resulted in the Housing Authority being separated from the Department of Communities, and the creation of a new agency, the Department of Housing and Works.

9.4 As a result of these organisational changes, the relevant personnel and data are now spread between both Departments. Whilst the majority of relevant documents (from the Relevant Period) are still located upon Department of Communities servers, these changes has increased the complexity of the discovery process.

9.5 Further, given the business of the Department of Communities also comprises highly sensitive areas, such as Child Protection and Family Violence divisions, the large scale searches of its data must be approached cautiously and with the

engagement and direct approval of the executive level across both Departments.

10 We will continue to provide updates as to the discovery process as is appropriate.

Para 13(c): Discovery data and DMP

11 We understand that the Applicant asserts that there are inconsistencies regarding the approach to the identification of the Discovery Category (as a mandatory field) within the Document Management Protocol (**DMP**), as between the "mdb." load file and ".dat" load files.

12 Whilst we agree with your observation regarding the presence of an inconsistency between the requirements for the different load files, it was not anticipated that the parties would be required to classify documents against the large list of discovery categories which have now been sought by the Applicant.

13 To require the Respondents, as part of its review of thousands of potentially relevant documents, to ascribe one of 47 categories to each document is overly onerous and inefficient, and will substantially slow the progress of its review and ultimately, its compliance with the current discovery timetable.

14 The Respondents accordingly do not agree to the Applicant's proposed amendment to the DMP. If this issue is pressed at the upcoming case management hearing, the Respondents' position will be for the DMP to remain in its current form.

15 We will otherwise write to you separately regarding our client's availability to confer prior to 10 September 2025.

Yours sincerely,

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Our Ref: VID 809/2024

29 August 2025

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Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

1. We refer your letter of 27 August 2025 (**Your Letter**) and in particular to the concerns we have raised as to the inadequacy of the data provided in your client's discovery.

2. We wrote to you in this regard on 20 August 2025 to rectify an inconsistency identified in the amended DMP by seeking your clients' agreement that discovery category data be included as part of providing the '.dat' file in future discovery tranches, consistent with the obligation under the DMP in respect of the 'mdb.' file.

3. We are surprised that your clients resist this proposal, not only because this is a standard requirement in proceedings of this nature, but also because of the way in which this change of approach has arisen.

4. Relevantly, in your letter of 13 February 2025 proposing that the DMP be amended, you provided the following rationale for the change being sought:

> *To provide alternate formats for the production of export data to accommodate the use of Relativity by our client. In that regard, our client is content for your client to provide export data in the '.mdb' format set out in the existing Section 12 of the DMP. Our client proposes, in addition that its data be exported in the form of a '.dat' load file, as is native to Relativity.*

5. The explanation provided for the change did not disclose that the discovery category data would be omitted from data to be provided in the format of a '.dat' load file. Nor had there been any earlier concerns raised by your clients, in this or any other correspondence, that providing discovery category data would be somehow 'overly onerous or inefficient'.

6. If it had been made clear that the change to the DMP being sought by your clients was intended to relieve them of the obligation to provide discovery category data, the applicant would have resisted the proposed change.

7. We also note in Your Letter you state:

> *To require the Respondents, as part of its review of thousands of potentially relevant documents, to ascribe one of 47 categories to each document is overly onerous and inefficient, and will substantially slow the progress of its review and ultimately, its compliance with the current discovery timetable.*

8. It is not clear how it is said that the obligation, which currently exists in respect of data provided in the '.mdb' format, "*to ascribe one of 47 categories to each document is overly onerous and inefficient, and will substantially slow the progress of its review and ultimately, its compliance with the current discovery timetable"*

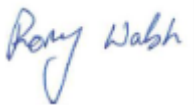
9. We assume your clients are already assessing relevance by reference to the agreed discovery categories and as such the provision of category data ought be straightforward. If this is not the case, we would be assisted by an explanation as to how your client is discharging its discovery obligations and or why the requirement is said to be onerous and inefficient.

10. For the avoidance of doubt, the applicant is not seeking that the respondents, in providing the discovery category data, identify each and every category which a document might satisfy, but just the primary category or categories, by which it has been determined to be responsive to and discovered in respect of.

11. If agreement cannot be reached in this matter, the applicant intends to raise this issue for determination at the case management hearing.

12. Given the delays which have confirmed the limited time remaining in which to comply with the timetabling orders prior to the case management conference, please provide a response to this letter by close of business today.

Yours sincerely



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Your reference
VID 809/2024
Our reference
SDH/SDH/3148015/736070
AUM/1301597755.1

By Email Only: *rory.walsh@slatergordon.com.au*

1 September 2025

Dear Mr Walsh,

DIVILLI -V- HOUSING AUTHORITY & ANOR
FEDERAL COURT PROCEEDINGS VID 809 OF 2024

1 We refer to your letters dated 14 and 25 August 2025.

Appointment of Replacement Senior Counsel

2 Our client has now secured replacement senior counsel, Kanaga Dharmananda SC, with respect to this matter. We are still in the process of briefing Mr Dharmananda SC on the matter.

3 As you will appreciate, this matter involves very significant legal and factual issues and there is a very considerable volume of material which he will need to 'read in'. As such, we anticipate that it will take some time before Mr Dharmananda is in a position to engage in detailed conferral regarding the matters raised in your letters.

4 In the interim, we raise the following matters with you going to the sensible progression of the matter more generally.

AHRC Complaint and Amendment of Proceedings

5 You have advised us that your client intends to amend her statement of claim in the event that her complaint before the Australian Human Rights Commission (**AHRC**) is terminated. You advised us in your letter of 11 April 2025 that those amendments were likely to go beyond the matters raised in the AHRC complaint, but have not (despite the request in our letters dated 23 April 2025 and 3 June 2025) indicated what those proposed amendments entail.

6 Whilst our firm does not presently act in relation to the complaint your client has brought against our clients in the Australian Human Rights Commission, we do understand that the time for our clients to provide a response to that complaint has been extended to 4 September 2025. We also understand that our clients expect to provide their response by that date.

7 Assuming, for the purposes of this letter, that our clients' response to the AHRC involves consenting to the complaint being terminated, it seems to us that conferral beyond matters going to:

7.1 the scope and timing of your client's proposed amendment to her statement of claim; and

7.2 the continuation of the discovery process already underway,

cannot be sensibly advanced and ought to be put on hold until your clients have filed and served their amended pleading. This includes the making of any orders with respect to:

7.3 the issues with our client's defence, raised in your letter of 14 August 2025 and your client's Request for Particulars;

7.4 the making of orders for the provision of opt-out notices and the closing of the class; and

7.5 the making of orders with respect to whether the rules of evidence should apply to the proceedings.

8 These are matters which ought to addressed with a proper appreciation of the common issues for trial, and the scope of the initial trial of this matter. Such an approach avoids the need for the parties to potentially deal with multiple rounds of amendments to the pleadings. These are also matters which would be best addressed once our client's Senior Counsel has had an opportunity to fully apprise himself of this matter.

Discovery

9 With respect to the issues you have raised as to discovery, and in furtherance of our letter to you dated 27 August 2025:

9.1 Our clients are agreeable to the making of an order in the terms proposed in paragraph 3 of the proposed consent orders annexed to your letter dated 25 August 2025.

9.2 For the reasons set out in that letter, our clients do not agree that it is necessary or appropriate for them to provide a supplementary affidavit attesting to the matters set out in your proposed order 1. Our clients have, however, undertaken to continue keeping you appraised as to the scope and progress of discovery by correspondence.

9.3 We reiterate the comments made with respect to the onerous nature of the proposed requirement to code each discovered document by reference to the 47 categories of discovery agreed between the parties, and the likely delay this will cause. As a compromise, our client will agree to an amendment to the document management protocol (**DMP**) such that each of the documents it discloses will be coded by references to one of the seven overarching classes of documents (identified as A-F) in the schedule included as Annexure A to the orders made on 25 June 2025.

9.4 For the avoidance of doubt, and consistent with your letter of today's date, the categorisation of a document as falling within any one of those classes does not mean that said document is not also relevant to any other of the agreed categories.

Next Steps

10 In light of the above, and assuming that our clients' position is to consent to the termination of the AHRC complaint, it is our view that a sensible way for the parties to proceed is to:

10.1 agree the amendment of the discovery orders, as per paragraph [9] above;

10.2 put a pause on conferral as to pleadings, opt-out procedure, and the rules of evidence to be applied, pending receipt of the AHRC's determination of your client's complaint;

10.3 following receipt of the AHRC's determination, confer as to the making of orders for:

(a) the provision of a further amended originating application and statement of claim by your client, to address the subject of the AHRC complaint and the 'additional matters' foreshadowed;

(b) the filing of amended defences and replies thereafter (such amendments to address the matters which are the subject of your client's request for particulars);

(c) further conferral, following receipt of the amended pleadings, as to (and if necessary):

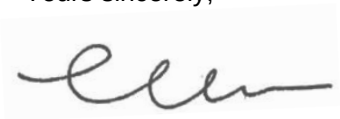
(i) Merck orders;

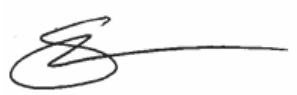
(ii) any further discovery which may need to be given arising out of the amendments.

11 We look forward to hearing from you with respect to the above matters, and will (in any event) write to you further regarding them following the delivery of our clients' response to your client's AHRC complaint.

12 Feel free to call us should you wish to confer by phone in the interim.

Yours sincerely,





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Our Ref: VID 809/2024

2 September 2025

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Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

1. We refer to your correspondence of 1 September (Your Letter) and thank you for your reply.

The Joint Position Paper and the Case Management Hearing

2. We are surprised that your clients are now proposing to defer resolution of substantive pleading and procedural matters until after

   a) receipt of the Australian Human Rights Commission (**AHRC)** determination; and

   b) such time as your Senior Counsel has completed his "reading in" to this matter so as to be in a position to engage in detailed conferral regarding these matters.

3. We further note that your clients also appear to seek, to be relieved of the obligation to comply with the Court orders pursuant to which they were required to respond to the request for further and better particulars by 20 August 2025, but have provided no relevant application or proposed orders.

4. We are concerned by this unexpected change of approach and the purported justification of it, namely in circumstances where:

   a) The applicant made plain her intention to further amend her claim in relation to matters relating to the AHRC claims when serving her statement of claim on 19 August 2024, more than a year ago;

   b) Your client has delayed the progress of the AHRC complaint, having obtained two extensions to date;

   c) Your Letter fails to clarify whether your clients' response to the AHRC, which is due in only two days time, will seek yet more time or to consent to the AHRC complaint being terminated;

   d) The applicant has repeatedly confirmed, most recently in her correspondence of 11 April 2025 and 25 April 2025, that the AHRC claims are '*fairly confined and do not have any impact on the progress of this proceeding in its current form*';

   e) The AHRC claims are both separate and in addition to the current pleadings;

f) The matters which the applicant is proposing to address at the case management hearing have been the subject of correspondence over many months with many of the issues thoroughly ventilated in correspondence prior to the appointment of your clients previous Senior Counsel;

g) There are clearly benefits in progressing discovery and any interlocutory disputes relating to matters in the Amended Statement of Claim and doing so promptly to avoid further delays in the future;

h) Your email of 25 August 2025 made no mention of the long foreshadowed pleading amendment and instead squarely attributed your clients' delay to the complexity of the matters raised, which were said to have been complicated by the requirement to engage alternative Senior Counsel;

i) Your clients have not previously raised the prospect of being unable to progress these matters until being provided with the proposed amendment.

5. In such circumstances, the applicant does not agree that the intention to ultimately adopt the AHRC claims into these pleadings, ought to justify further delaying the determination of matters which are unconnected to those very confined claims.

6. Further the applicant does not understand how it is said that the resolution of the following matters are connected to or are contingent upon the proposed amendments arising out of the AHRC claims:

a) The applicant's proposed strike out application directed at paragraph of 20B of your defence. This has been the subject of substantive correspondence since 11 April 2025 and in respect of which your clients' agreement to timetabling orders was sought on 14 August 2025 to enable the application to be efficiently heard in conjunction with the case management hearing on 24 September 2025;

b) The Court orders requiring your clients to provide a response to the request for further and better particulars. These particulars were first sought on 11 April 2025 and your clients have already been provided with an extension to comply with the orders, the deadline for which expired over two weeks ago. Your correspondence of 25 August 2025 relevantly advised in this regard that:

"*We are also continuing to obtain instructions with respect to the response to your client's request for further and better particulars (which has unfortunately taken longer than expected to answer) and also expect to provide that by 29 August 2025."*

c) The proposed provision of a discovery affidavit by your clients in respect of their discharge of their discovery obligations (as proposed in our order 1 and foreshadowed in item 5 of the proposed joint position paper);

d) The provision of discovery of tenancy agreement templates and sample tenancy agreements (as proposed in our order 2 and also foreshadowed in item 5 of the proposed joint position paper), an issue which was not addressed in Your Letter.

7. It is our client's position that these matters should be resolved promptly, if necessary by the Court, and not further deferred.

Document Management Proposal (DMP)

8. The applicant presses the proposal contained in her correspondence of 20 August 2025 in relation to regularising the DMP requirements for providing discovery category data for the discovery documents produced in the 'dat.' file.

9. Your correspondence makes no attempt to engage with the applicant's complaints in this regard, save to assert delay and burden.

10. The “compromise” proposal contained at paragraph 9.3 of your letter of 1 September 2025 to only provide data by reference to one of the seven overarching classes of documents (identified as A-F), rather than the one of the agreed 47 categories in Annexure A (included as a schedule to the orders made on 25 June 2025), is not what was intended in relation to the provision of data under the DMP.

11. Each of the 47 categories is distinct and is capable of being applied to a document that is ultimately being produced by way of discovery.

12. We repeat as stated in our letter of 29 August 2025, that the applicant is not seeking that the respondents, in providing the discovery category data, identify each and every category which a document might satisfy, but just the primary category or categories, to which it has been determined to be responsive.

13. The applicant in her letter of 29 August 2025 also specifically asked for confirmation as to whether your clients are undertaking discovery by reference to the agreed discovery categories. If so, the applicant does not understand, if discovery is being produced by the respondents by reference the discovery categories, how this is not a straightforward exercise. Please now provide a response to that question.

Conferral

14. While the applicant considers that it would be efficient to progress discussions as to both the content of and the process for the opt out notices, in addition to the confined rules of evidence proposal, we are prepared to await Mr Dharmananda’s availability, if that remains your clients’ position.

15. The applicant intends to shortly provide her proposed amendments to incorporate the AHRC claim. The timing of the application in this proceeding to adopt those claims is of course dependent upon the resolution of the AHRC complaint which cannot occur until your clients have engaged with the process.

16. We note that the applicant has now asked on three separate occasions for your clients to confirm when their representatives are available to confer in respect of the matters identified in the joint position paper she circulated on 14 August 2025. We are yet to receive a response to this query.

17. We also note that your clients have now expressed the view that conferral can only be sensibly advanced in respect of the scope and timing of the applicant’s proposed pleading amendments and the “continuation of the discovery process already underway”.

18. While it is unclear what is intended to be discussed in relation to the continuation of the discovery process, the applicant assumes that your clients are content for the recent correspondences to discharge the requirement to confer in advance of the case management hearing.

19. If this is the case, we will shortly circulate an updated proposed joint position paper setting out the respective positions of the parties based on recent correspondence.

20. If, not, please confirm your clients’ position as a matter of urgency, given limited time remains to confer in advance of complying with the Court orders pursuant to which the parties are to confer and provide orders and a joint position paper by next Tuesday.

21. Finally, we note the confirmation in your letter of 1 September 2025 that:

    a) Mr Kanaga Dharmananda SC has now been retained by your clients,

    b) the process of briefing him is ongoing; and

    c) it will take “some time” before Mr Dharmananda will have “read in” to the considerable volume of material so as to be in a position to engage in detailed conferral regarding the matters raised by the applicant.

22. So that the applicant and the Court can properly understand your proposal that conferral in relation to the matters identified at paragraph 4 above be best addressed when your clients' Senior Counsel has had an opportunity to fully apprise himself of this matter, and in circumstances where the appointment of your clients' previous Senior Counsel was announced on 10 June 2025 please confirm:

    a) When Mr Dharmananda was briefed with the "considerable volume of material" he is now required to read?

    b) When Mr Dharmananda expects to be in a position to engage in detailed conferral regarding the matters raised by the applicant?

23. We would be assisted if your client could, by close of business tomorrow, provide answers in respect of the questions raised at paragraphs 13, 20, and 22 above.

24. Please do not hesitate to contact us in relation to the above issues.

Yours sincerely

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Your reference
VID 809/2024
Our reference
SDH/SDH/3148015/736070
AUM/1301634451.1

By Email Only: *rory.walsh@slatergordon.com.au*

5 September 2025

Dear Mr Walsh,

DIVILLI -V- HOUSING AUTHORITY & ANOR
FEDERAL COURT PROCEEDINGS VID 809 OF 2024

1 We refer to your letter dated 2 September 2025 (**Your Letter**).

Pleadings Issues

2 Following our letter of 1 September 2025, our firm was engaged to provide a response to your client's complaint to the Australian Human Rights Commission (**AHRC**). To that end, a response was provided to the AHRC yesterday. A copy of that response is **attached** for your reference. You will see that whilst our clients have raised important matters as to the scope of the complaint, they are agreeable to the complaint being terminated in accordance with section 46PH(1B)(b) of the *Australian Human Rights Commission Act 1986* (Cth).

3 Assuming that the AHRC does make orders terminating your client's complaint, we understand that your client will shortly thereafter seek orders for the amendments of her originating summons and statement of claim. Whilst you have asserted that your client's foreshadowed amendments to the claim will be confined, we are unable to understand the scope or implications of those amendments until we have seen the proposed amendments (which we requested in our letters of 23 April 2025 and 3 June 2025). That is particularly so in circumstances where you have foreshadowed unspecified "other amendments".

4 Further to the above, we welcome the indication that you have given that you will shortly be providing us with the proposed amendments to the statement of claim. Once we have received these, we will be in a better position to assess the appropriate steps going forward.

5 Whilst we remain of the view that the appropriate course is for pleadings disputes to await the outcome of the AHRC process, and thus avoid the potential need for multiple rounds of amendments, we are seeking counsel's availability to confer on the objections you have raised to our clients' defence. We are also hopeful that we will be in a position to file the response to your client's request for particulars imminently. We should be in a position to update you about that later today.

Opt-Out Notices and Rules of Evidence

6 Patently, questions as to opt-out notices and whether the rules of evidence should apply to these proceedings should not be addressed until the pleadings have closed and common questions for trial settled. There now seems to be agreement on this point.

Discovery Issues

7 With respect to the matters in paragraph 6(c) and (d) and 8-13 of Your Letter:

7.1 Our client remains unable to understand how 'tenancy agreement templates' or 'sample tenancy agreements' are said to be related to any of the issues in dispute between our clients. We welcome further conferral on this point.

7.2 We have addressed your request for a further affidavit regarding the location of documents and timing of discovery by our letter of 27 August 2025. For the avoidance of doubt, we remain of the view that this is neither necessary nor desirable.

7.3 Whilst it will very likely delay what would otherwise have been the expected time for completion of discovery (based upon the current discovery categories, and nothing that they will likely change should your client amend its statement of claim as foreshadowed), we are seeking our clients' instructions as to coding discovery documents by reference to *one* of the discovery categories only. Any agreement to do so would be on the express basis that this in no way limits the issues to which a document so coded may be relevant.

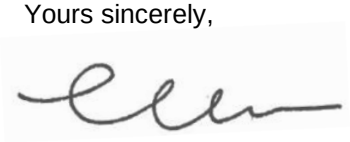
Conferral

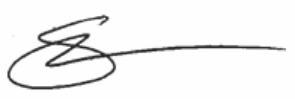
8 We also expect to provide very shortly with our client's responses to your proposed position paper and orders for the Case Management Hearing.

9 We also think that it would be of assistance for our respective clients' counsel to confer. We will write to you as to our clients' counsels' availability under separate cover.

10 Feel free to call us should you wish to confer by phone in the interim.

Yours sincerely,





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By Email Only: *rory.walsh@slatergordon.com.au*

5 September 2025

Dear Mr Walsh,

DIVILLI -V- HOUSING AUTHORITY & ANOR
FEDERAL COURT PROCEEDINGS VID 809 OF 2024

1 We refer to your letter dated 5 September 2025.

2 We do not understand what 'change of position' you purport to be surprised by. We proposed that certain matters (pleadings disputes, opt-out procedures, and orders as to the application of the rules of evidence) ought to be deferred until your client's foreshadowed amendments to the pleading were made. Your client has conceded the last two of those issues and not the first. We have thus proposed that the parties confer further as to the issues you wish to press. There is no change of position in that regard.

3 We are advised that both our client's counsel and senior counsel are available to confer on the afternoon of **Tuesday, 9 September 2025**. Could you please advise if this suits your client's counsel?

4 We envision that conferral will canvass your client's pleading objections and the orders to be made at the upcoming Case Management Hearing. We are, however, engaging with counsel with the view to providing an agenda for the conferral.

5 We will write to you regarding the balance of the matters raised as soon as we are able.

6 I look forward to hearing from you.

Yours sincerely,

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Our Ref: VID 809/2024

5 September 2025

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By email only: anna.crosby@dlapiper.com; simon.hubbard@dlapiper.com;

Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

1. We refer to your letter of today's date are again surprised by your clients' latest change of position.

2. While we note your clients are now prepared to confer, there is however very little time remaining in which to do so. Further the inconsistency in your clients' position to the matters which the Applicant has raised and your clients' failure to do the things they say they will do, within the time frames they say they will do them, are creating inefficiencies and increasing significant otherwise avoidable legal costs

3. Your correspondence is unclear as to when the outstanding matters will be attended to.

4. Please indicate by close of business today:
   a) when your counsel proposes to confer;
   b) the topics proposed to confer in respect of;
   c) confirm that your senior counsel has sufficiently read into the brief to confer on those matters;
   d) when the outstanding response to the request for further and better particulars will be provided; and
   e) when the responses to the JPP will be provided.

5. To be clear, the Applicant is no longer assisted by timeframes which you are only hopeful to be able to achieve.

6. In relation to the discovery category coding issue and so that we understand what is being proposed, the applicant repeats her request for confirmation that your client is undertaking discovery by reference to the agreed discovery categories, and if not, how that relevance is otherwise being assessed? We press for a response to that request.

Yours sincerely

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Our Ref: VID 809/2024

6 September 2025

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Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

1. We refer to the abovenamed proceeding and write in respect of two separate issues, being your clients' communications with the Applicant and the discovery of two files in '.obr' format.

Communications with the Applicant

2. We have on number of occasions requested that all non-urgent correspondence from your clients to Ms Divilli be copied to our firm. This request was first made in correspondence to the State Solicitor's Office (**SSO**) on 1 November 2024 and again on 20 November 2024.

3. In its correspondence of 13 November 2024, the SSO indicated that the Authority "*proposes to engage with Slater + Gordon in good faith on an ongoing basis regarding the communications that may be required, or which may occur, with Ms Divilli from time to time*".

4. On 16 January 2025, we wrote again seeking your engagement with this issue and raised it in subsequent correspondence.

5. We were then advised by your letter of 6 March 2025 that it would be "impractical for the Authority" to direct all non-urgent correspondence with Ms Divilli to our firm, citing the Authority's specialised automated systems for tenant communications.

6. It was however indicated that the Authority was "c*onsidering the practicalities of implementing a routine review of correspondence sent to Ms Divilli, so that these may be provided to our firm and onforwarded to you. We will write to you further in that regard as soon as possible*."

7. Having received no further communication on this matter, we wrote again on 28 May 2025, and no response to this issue was ever received by you in response.

8. In course of reviewing discovery, we have identified a document titled 'Customer File Notes.xlsx' (HOA.004.001.0002), which contained an entry recorded on 7 November 2024, which states 'DO NOT SEND ANY CORRESPONDENCE TO THIS TENANCY - LEGAL ACTION - NO MANUAL LETTERS' in rows 3 and 4 of the excel sheet. We **attach** this document for ease of reference.

9. We are concerned at the direction in that entry that correspondence to Ms Divilli or her partner, Mr Rivers, from the Housing Authority, in respect of her tenancy or her home may have ceased.

10. We would be grateful if you could please now confirm whether:

a) Correspondence from the Authority to Ms Divilli or her partner has ceased; and

b) If so, what matters would otherwise have been notified to Ms Divilli or her partner, but for the direction recorded in the Customer file notes.

11. For the avoidance of doubt, Ms Divilli wishes her legal representatives to be copied into all correspondence relevant to her tenancy and not for such correspondence to cease.

Discovery of .obr files

12. We refer to your clients' second tranche of discovery produced on 27 August 2025. Within this tranche, your clients produced two documents with an '.obr' file extension, as follows:

(a) **HOA.009.001.0043** titled 'Recordkeeping Plan - Department of Communities 2024.obr'; and,

(b) **HOA.009.001.0044** titled 'Spreadsheet - Northgate Use Cases - Table Format - All Combinations.obr'.

13. Your clients have produced both of these documents in PDF form only and they are both effectively blank.

14. Accordingly, we request that your clients produce both of these documents in their native format, in addition to the PDF format provided (but with its contents now included). In this regard we refer to paragraph 4.2 of the Document Management Protocol agreed between the parties, requiring that all non-standard files be produced in native format.

15. In addition, can you please clarify the following:

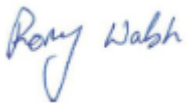
(a) what are '.obr' files in the context of your clients' document management system(s);

(b) how are '.obr' files typically accessed and/or opened; and

(c) can '.obr' files be produced in a format that allows us to read their full contents.

16. We would be grateful to receive your prompt response to these queries so that they can, if necessary, be added to the JPP to be discussed at the forthcoming case management conference.

Yours sincerely



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Our Ref: VID 809/2024

8 September 2025

Anna Crosby & Cameron McLean
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By email only: anna.crosby@dlapiper.com; simon.hubbard@dlapiper.com;

Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

1. We refer to your correspondence of 5 September 2025 and write in relation to your clients' proposal to confer on 9 September 2025.

Availability for conferral

2. We confirm that the Applicant's legal team is available to confer at **1:30pm AWST** on **Tuesday 9 September 2025**. We further advise that the conferral will be attended by the Applicant's counsel and senior counsel, as well as the Applicant's solicitors.

3. If this timing is suitable, we would be grateful if you could confirm by return which members of the Respondents' legal team will be in attendance, and we will circulate a MS Teams invitation accordingly.

Matters to be addressed during conferral

4. We consider that the agenda for tomorrow's conferral ought to include each of the matters raised in proposed minutes of orders and joint position paper for the upcoming Case Management Hearing, which were enclosed with our correspondence dated 14 August 2025, and also the matters identified below.

5. We wish to confirm that the Applicant intends to amend the matters listed in the proposed minutes of orders and joint position paper, to include the following issues which have been the subject of correspondence following the provision of the proposed JPP on 14 August 2025:

   (a) The applicant's proposed strike out application;

   (b) The outstanding further and better particulars to the defences;

   (c) The provision of category data for discovered documents produced in the Respondents' 'dat.' files, and in particular, the need for the Respondents to identify a primary category or categories to which each discovered document is responsive; and

   (d) The status of correspondence from the Housing Authority to the Applicant, and the need for Slater & Gordon to be copied into all such correspondence henceforth.

6. For the avoidance of doubt, we do not consider that agreement has been reached between the parties on whether questions as to opt-out notices and the rules of evidence applicable to these proceedings ought to wait until pleadings have closed and common questions for trial settled.

We note paragraph 14 of our letter dated 2 September 2025 proposed that discussions on these issues could '*await Mr Dharmananda's availability'* only. The Applicant remains of the view that there is utility is seeking to progress discussion of these matters.

Yours sincerely

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Your reference
VID 809/2024
Our reference
AMC/AMC/3148015/736070
AUM/1301649447.1

By Email Only: ***rory.walsh@slatergordon.com.au***

9 September 2025

Dear Mr Walsh,

DIVILLI -V- HOUSING AUTHORITY & ANOR
FEDERAL COURT PROCEEDINGS VID 809 OF 2024

1 We set out below the Respondents' responses to several of the outstanding issues raised by the Applicant.

Discovery of ".obr" files

2 We refer to your correspondence of 6 September 2025.

3 The native versions of the documents you refer to in paragraph 12 of that letter have already been disclosed (HOA.011.001.0001 and HOA.011.001.0039).

4 As to your client's questions in paragraph 15, we are instructed as follows:

4.1 ".obr" files are links to documents that are stored on the Respondent's internal document management system. As you would be aware, a link to a document is not in itself a document.

4.2 ".obr" files can be accessed only from within the Respondents' network. By double clicking on an ".obr" file, it would open the document it is linked to, in its native application.

4.3 As ".obr" files are a link to a specific document, the native format of the underlying document can, and has, been produced.

5 For completeness:

5.1 We are already aware of the presence of ".obr" file types within the data being provided to us by the Respondents. We are specifically conducting checks to identify any documents or attachments that include ".obr" files and are individually requesting the native version of the linked documents from the Respondents (if those documents exist).

5.2 The document being linked to (at the time the link is created) may be in draft or may be in a final format. Therefore, there will be instances where the link "goes to" a version of a file, that is then edited in the normal course of business (and may no longer exist).

5.3 For the purpose of data collection and discovery, files stored in the document management system will be collected as separate files, if they still exist in the Respondent's systems at the time of collection.

Discovery data and Document Management Protocol (DMP)

6 We refer to your correspondence of 29 August and 2 September 2025.

7 As you will appreciate, when the DMP was agreed between the parties in February 2025, it was not yet known by the parties that there would be 48 distinct discovery categories.

8 Our current approach in reviewing the Respondents' documents for relevance is in line with the approach outlined in paragraph 9.3 in our letter of 1 September 2025. That is, our review team is categorising documents as falling within one or more of the seven overarching classes of documents (identified as A to F in Annexure A of the Discovery Orders). We are taking an inclusive approach as to both relevance and whether documents fall within multiple categories.

9 The Respondents otherwise maintain that to attribute one of 47 categories to each document is overly onerous and inefficient, and will substantially slow the progress of its discovery review. In this regard, when conferring and agreeing to the proposed timetable for discovery, we did not envisage that the review process would include ascribing one of 47 categories to each document.

10 We have examined this issue and taken advice from our internal eDiscovery specialists, and based upon these matters, we are of the view that the time taken to complete the discovery process will at least double if this approach is adopted.

Other matters

11 We are awaiting our clients' instructions as to its communications with the Applicant and will respond as soon as possible.

Yours sincerely,

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Your reference
VID 809/2024
Our reference
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By Email Only: *rory.walsh@slatergordon.com.au*

15 September 2025

Dear Mr Walsh,

DIVILLI -V- HOUSING AUTHORITY & ANOR
FEDERAL COURT PROCEEDINGS VID 809 OF 2024

1 We refer to our recent correspondence with you regarding paragraph 20B of our clients' defence (**Paragraph 20B**).

2 In order to address your client's concerns with Paragraph 20B, our clients propose to amend the set-off claimed with respect to the Divilli Premises such that it is particularised by reference to any costs that they have incurred:

2.1 in carrying out works on the Divilli Premises;

2.2 which are the subject of an unresolved tenant liability notice.

3 We are currently seeking instructions as to the specifics of those particulars, and will write to you further in that regard under separate cover.

4 Further, to avoid the need for filing multiple amended defences, we suggest that this amendment be made at the same time as any consequential amendments arising from your client's foreshadowed amendments to her statement of claim relating to the subject matter of the AHRC complaint (which is consistent with the approach your client has taken with respect to her foreshadowed "other amendments").

5 Can you please advise if your client is content to proceed in this fashion, and thus obviate the need to bring her foreshadowed strike out application?

Yours sincerely,

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Our Ref: VID 809/2024

15 September 2025

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By email only: anna.crosby@dlapiper.com; simon.hubbard@dlapiper.com;

Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

1. We refer to your letter of 15 September 2025 and the Orders made by Justice Jackson on 11 September 2025 providing a timetable for the Applicant's strike-out application.

2. While your letter does provide some assistance to us in understanding the Respondents' set-off claims as they relate to unresolved tenant liability notices, we cannot assess the adequacy of your response, and consequently the need for a hearing on the strike-out application, without seeing the proposed amendments or further and better particulars.

3. We do not consider this situation analogous to one where a party is simply seeking leave to amend a pleading to add new particulars or allegations (as is the case with the Applicant's RDA amendment and/or the foreshadowed 'other amendments'). Rather, this is a specific strike-out application wherein the Applicant alleges the Respondents' pleading is deficient and must be amended or struck-out.

4. As has been our position since 11 April 2025, if the Respondent is making a positive allegation regarding damage to premises, it must have had a basis for doing so and should be able to provide those particulars.

5. In short, we seek the following information:

    a) whether any positive allegation is in fact being made against Ms Divilli as to damage being caused by her or other occupants or lawful invitee;

    b) if such an allegation is being made:

        i. what that damage was;
        ii. when it was allegedly caused; and
        iii. on what basis it is alleged that the damage was caused by Ms Divilli, other occupants or invitees; and

    c) what is alleged in terms of any set-off.

6. It is not clear when your client might obtain instructions as to the particulars it now proposes to provide. We note your correspondence of today foreshadows writing to us separately in this regard, although no reason is provided as to why this needs to be a matter for separate correspondence.

7. Given your clients must have had a basis to plead the matters in paragraph 20B, we would expect that obtaining their instructions as to these particulars ought be something that could be done as a matter of expediency, particularly where the matter was initially raised 5 months ago.

8. In circumstances where

    a) the parties have exchanged significant substantive correspondence on this issue, including over the last two weeks in respect of the timing of the strike out application,

    b) the adequacy of the particulars/repleading can't be assessed in advance of seeing the proposed amended pleading, and

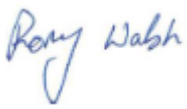
    c) where there are Court Orders which provide a timetable for the strike-out application to be heard on 24 September 2025,

    we consider it more efficient to maintain the current timetable, but request that you provide any amended pleading/further particulars as soon as possible. If that proposed amendment adequately addresses our client's concerns, the strike out application can be withdrawn, but in the event that it does not, the matter can be resolved at the next hearing, without losing any further time.

9. We would ask that your clients obtain instructions on these issues as quickly as possible, so that the parties can determine whether a hearing is required.

10. If there is a reason why your clients are unable to obtain the instructions prior to 24 September 2025, please articulate those reasons in full so we can properly consider the matter.

Yours sincerely



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Your reference

2442-24

Our reference

AMC/AMC/3148015/736070
AUM/1301183006.1

By Email Only: *Rory.Walsh@slatergordon.com.au*

6 August 2025

Dear Colleagues,

DIVILLI -V- HOUSING AUTHORITY & ANOR
FEDERAL COURT PROCEEDINGS VID 809 OF 2024

1 We refer to your client's request for further and better particulars dated 11 April 2025 and the Orders of Justice Jackson dated 3 July 2025 (**Orders**).

2 Pursuant to Paragraph 2 of the Orders, the respondents are to file a response to your client's request (**Response**) by 4:00 pm on 6 August 2025. In this regard:

2.1 We are still obtaining instructions and are unfortunately not yet in a position to file a Response in accordance with paragraph 2 of the Orders;

2.2 We do, however, anticipate our client will be in a position to file and serve its Response within 14 days.

3 We accordingly **enclose** a Memorandum of Consent Orders seeking an extension of the timeframe for the filing of the Response to 20 August 2025 (**Memorandum**). If agreeable, could you please sign the Memorandum and return it to us for filing?

4 We look forward to hearing from you.

Yours sincerely,

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Special Counsel

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Partner

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Kate Taylor

From: William Zerno
Sent: Thursday, 21 August 2025 4:31 PM
To: Simon Hubbard
Cc: Kate Taylor; WAHousingCALegalTeam; Cameron Maclean; Anna Crosby; Ashlee Scarff Bublitz; Valerie Polovinkina
Subject: Divilli -v- Housing Authority & Anor- VID 809/2024 [S+G-ACTIVE.M1035865.M667484.FID5489177]

Dear colleagues

We refer to paragraph 1 of the orders of 8 August 2025, which provided an extension for your clients to provide a response to the request for further and better particulars by yesterday's date.

We note we have not yet received this and there has also been no indication for any further extension sought by your clients.

We would be grateful if at your earliest convenience you could please provide an indication as to when the response to the request for further and better particulars will now be provided.

Kind regards

William Zerno
Senior Associate

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Kate Taylor

From: Simon Hubbard <Simon.Hubbard@dlapiper.com>
Sent: Monday, 25 August 2025 12:43 PM
To: William Zerno
Cc: Kate Taylor; WAHousingCALegalTeam; Cameron Maclean; Anna Crosby; Ashlee Scarff Bublitz; Valerie Polovinkina
Subject: RE: Divilli -v- Housing Authority & Anor- VID 809/2024 [S+G-ACTIVE.M1035865.M667484.FID5489177]

Dear William,

We refer to your email below, and the communications referred to therein, and apologise for the delay in responding.

Your communications have raised significant and complex issues with respect to the pleadings (including a proposed strikeout application), and the progression of the action (including whether the rules of evidence should or should not apply, which will have significant implications for how the parties prepare the matter for trial). These are matters that require detailed consideration, including input from counsel. That process has been complicated by the recent appointment of our client's (former) Senior Counsel as the President of the Western Australian Court of Appeal, and the consequent requirement for the Respondents to engage alternative Senior Counsel.

We will respond on the matters you have raised as soon as possible, and expect to do so by the close of business on Friday, 29 August 2025.

We are also continuing to obtain instructions with respect to the response to your client's request for further and better particulars (which has unfortunately taken longer than expected to answer) and also expect to provide that by 29 August 2025.

Feel free to call us should you wish to discuss in the interim.

Regards,

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Special Counsel

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From: Rory Walsh
Sent: Friday, 12 September 2025 1:23 PM
To: Anna Crosby; Kate Taylor; Simon Hubbard
Cc: WAHousingCALegalTeam; Cameron Maclean; Ashlee Scarff Bublitz; Valerie Polovinkina; William Zerno
Subject: RE: Divilli v Housing Authority & Anor || VID 809/2025 [S+G-ACTIVE.M1035865.M667484.FID5489177] [DLAP-AUMATTERS.FID1990902]

Thank you for that confirmation.

Given the reference to the "significant additional time being required to complete discovery", we consider it appropriate that your client's affidavit also address the resources which have been applied since the commencement of this proceeding, to discharging the Respondents discovery obligations.

Regards

Rory Walsh
Practice Group Leader

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By Email : *gemma.ld@slatergordon.com.au*

13 February 2025

Dear Colleagues,

DIVILLI -V- HOUSING AUTHORITY & ANOR
FEDERAL COURT PROCEEDINGS VID 809 OF 2024

1 We refer to paragraph 4 of the orders made on 16 December 2024, requiring the parties to confer with respect to a document management protocol (**DMP**).

2 **Attached** is an updated draft DMP, as previously circulated as between Slater & Gordon and the State Solicitors Office. The changes that we have proposed to the DMP have been tracked for ease of reference.

3 Materially, the changes which we have proposed to the DMP are as follows:

3.1 To apply de-duplication at group document level. That is, a document will only be considered a duplicate if its 'host' document is also a duplicate (attachments to unique emails will not, for example, be captured).

3.2 To apply de-duplication to email chains, so that the parties are not required to give discovery of each individual email within a chain (unless the other party requests them to do so).

3.3 To remove the requirement to code for source (i.e. computer hard drive, mobile phone, etc) and custodian. The discovery in this matter, as you will appreciate, is likely to be extremely voluminous. Given the very large number of documents that will need to be processed, coded and reviewed, it is our client's view that coding for this information is disproportionate to any legitimate forensic purpose and thus too onerous for the parties.

3.4 To provide alternate formats for the production of export data to accommodate the use of Relativity by our client. In that regard, our client is content for your client to provide export data in the '.mdb' format set out in the existing Section 12 of the DMP. Our client proposes, in addition that its data be exported in the form of a '.dat' load file, as is native to Relativity.

3.5 To change the naming convention of documents to include a stamp identifying each page of the documents for ease of reference. This is again a change made to accommodate the use of the Relavity database, which does not include page numbering in the naming of files by default.

4 Could you please advise whether the changes proposed to the DMP may be agreed? If so, we will provide you with consent orders to give effect to that agreement.

5 Please otherwise let us know if you wish to confer by telephone or video conference regarding the remaining issues with respect to the DMP.

Yours sincerely,

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From: Anna Crosby <Anna.Crosby@dlapiper.com>
Sent: Friday, 12 September 2025 12:02 PM
To: Rory Walsh; Kate Taylor; Simon Hubbard
Cc: WAHousingCALegalTeam; Cameron Maclean; Ashlee Scarff Bublitz; Valerie Polovinkina; William Zerno
Subject: RE: Divilli v Housing Authority & Anor || VID 809/2025 [S+G-ACTIVE.M1035865.M667484.FID5489177] [DLAP-AUMATTERS.FID1990902]

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Rory,

Subject to my clients' instructions (which remain outstanding), I confirm that there are no significant changes to the position expressed on 9 September in the earlier draft of the joint position paper.

Of note, in respect of discovery, the Respondents now propose the following:

> *The Respondents agree to provide a supplementary affidavit by 31 October 2025 (when the exercise being undertaken by Deloitte will have further progressed) which sets out:*
>
> a) *where documents responsive to the agreed discovery categories are stored or held;*
> b) *the steps required to review and prepare the documents for production;*
> c) *the approximate number of discovery documents; and*
> d) *the likely timetable and cost of making discovery of those documents.*
>
> *The Respondents agree to the Applicant's proposal to "regularise" the DMP to ensure that the Respondents provide 'category data' for discovered documents produced in the Respondents' 'dat.' files. Its agreement to do so is, however, on the express basis that this in no way limits the issues to which a document so coded may be relevant and that this approach will result in significant additional time being required to complete discovery.*
>
> *The Respondents propose that, following provision of the supplementary affidavit, the parties confer as to an amended discovery timetable.*

We otherwise anticipate receiving our clients' instructions prior to 12:00 pm (AWST).

Kind regards,

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Special Counsel

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DLA Piper Australia

ANNEXURE A
Applicant's Proposed Discovery Categories for Divilli Proceeding

GLOSSARY

Unless otherwise stated, all document requests are for within the Relevant Period (July 2010-25 November 2024).

Capitalised terms are defined in:

- the Applicant's filed Amended Statement of Claim (ASOC) in *Jonnine Jaye Divilli v Housing Authority & Ano*r VID809/2024;
- the Respondents' filed Defence in *Jonnine Jaye Divilli v Housing Authority & Ano*r VID809/2024; and
- the Affidavit of Craig Stuart Newton affirmed on 30 April 2025 in *Jonnine Jaye Divilli v Housing Authority & Ano*r VID809/2024.

In addition to the above:
- "**HMA communities**" are defined as ~~Aboriginal~~ communities where an HMA is executed.
- "**Non-HMA communities**" are defined as ~~Aboriginal~~ communities where an HMA is not executed.
- "**Pleaded Housing**" comprises Housing as defined at paragraph 2 of the ASOC, provided to Australian Aboriginal persons per 2(a) of the ASOC.
- "**Pleaded Remote Areas**" comprises Pleaded Housing in the areas defined as Remote Communities at paragraph 2 of the ASOC. This includes HMA communities, Non-HMA communities, as well as Australian Aboriginal Persons living in Housing which is neither subject to an HMA nor part of a non-HMA community, in the defined remote areas of 2(b)(i)B, including community housing or general public housing.
- "**Householder**" is defined as anyone not identified as a tenant or co-tenant living at a property for more than eight weeks (see Aboriginal Housing Policy Manual version 1.6, dated July 2023 at page 3, see also page 4 for the definition of tenant and co-tenant).
- "**Landholder"** is defined as the entity which holds rights to the management of land but does not hold any ownership rights in relation to the land.
- "**Maintenance Response Times**" is defined by reference to paragraphs 31– 32 of the ASOC, and here includes 'Routine' items as defined at paragraph 31 of the ASOC.
- "**RTA Terms**" is defined as the terms identified at paragraph 15(i)-(iv) of the ASOC.
- "**Management Level Documents**" are defined as: Documents related to the establishment, management, performance, monitoring and evaluation, recommendations, review and/or remediation of the relevant arrangement, including minutes of meetings, briefings (including ministerial briefings), assessments, reports, audits, and/or memoranda evidencing same.
- "**Policy-level Documents**" are defined as: Policies, guidelines, procedures, protocols, standards and/or similar, including drafts, subsequent iterations and variations thereto.
- "**Training Materials**" are defined as: Documents evidencing any training materials, procedures, instructions, directives, scripts, manuals and/or similar provided to staff/employees, contractors/sub-contractors or other relevant parties in relation to the performance or execution of the relevant function or arrangement
- "**Contractual Documents**" are defined as: Contracts, agreements, memoranda of understanding or similar arrangements, and/or any other documents evidencing the rights and obligations as between the relevant parties.

TABLE 1 – AGREED CATEGORIES

# (New)	# (Old)	Proposed Category	ASOC/Defence Reference
A. TENANCY FRAMEWORK AND AGREEMENTS **Covering the legal and contractual foundation of housing arrangements in Western Australia**			
1.	3.	Management-Level Documents ~~and Contractual Documents~~ evidencing the implementation of the HMA with Yurmulun Aboriginal Corporation, as well as any emails or files notes of communications between Yurmulun Aboriginal Corporation and the Respondents regarding responsibilities and performance under the HMA, including communications in respect of maintenance and repairs.	ASOC para 5, Defence paras 5A.1-5A.11
2.	4.	~~Management-Level Documents and~~ Contractual Documents concerning: i. the HMA between the Respondents and Yurmulun Aboriginal Corporation; ii. the HMAs between any equivalent organisations in any other HMA communities; and iii. any equivalent agreements which provide for the management of Pleaded Housing, with any equivalent organisations in Non-HMA communities.~~;~~ ~~during the Relevant Period.~~	Defence: para 5 and 5A.
3.	7.	Management-Level Documents and Policy-Level Documents recording or evidencing the availability of alternative housing options in Pleaded Remote Areas including ~~Housing~~ in Yurmulun, including any waiting lists for public housing, availability of private rentals, and any assessments of housing supply and demand in Pleaded Remote Areas.	ASOC 48-49 (Monopoly Conditions); Defence 48-49
4.	8.	Records from any databases, including the "Habitat" system, ~~"Objective" and "Caretaker" systems,~~ used by the Respondents in relation to any Primary Agreement or Secondary Agreement to which the Authority or Western Australia is a party, containing the total number and identity of the persons who would be Group Members as defined in ASOC [2], including records that would establish, for example, their age, and their rent paying status	ASOC paras 2-3; Defence paras 2-3
B. COMFORT, SECURITY, HEALTH AND SAFETY **Addressing particular defects (including health and safety, secure housing, reasonable comfort) in Pleaded Remote Areas**			
5.	10.	Management-Level Documents and Policy-Level Documents recording or evidencing the water quality in Yurmulun and any other water supplied to Pleaded Remote Areas, including: i. any testing of water; ii. reports on specific risk levels; iii. all water alerts; and iv. correspondence and communication in relation to same, including between the Authority, the State of Western Australia, the Water Corporation or Department of Health, or with the Advisory Committee for the Purity of Water.	ASOC para 20(c), Defence paras 20A.5-20A.7
6.	11.	Management-Level Documents and Policy-Level Documents recording or evidencing any assessments, consideration of, monitoring or remediation efforts regarding water safety and including: i. consideration of, or the installation of water filters in Pleaded Housing in Yurmulun and in ~~Housing in~~ Pleaded Remote Areas, ii. consideration of the need and reasoning for the installation; iii. consideration of, or the provision of bottled water for use by tenants and occupants in Pleaded Housing in Yurmulun and ~~Housing~~ in Pleaded Remote Areas; and iv. consideration of, or the implementation of any other remediation efforts in Yurmulun and in Pleaded Remote Areas.	ASOC para 20(c); Defence para 20A
7.	13.	Management-Level Documents related to the consideration of, monitoring or remediation efforts regarding the adequacy of: i. insulation; and ii. energy efficiency in ~~Housing in~~ Pleaded Remote Areas.	ASOC para 29(a) and (h), Defence para 29
C. MAINTENANCE AND REPAIR SYSTEMS **Covering policies, procedures, and systems for repairs and maintenance, including continuous breaches and delayed repairs**			
8.	17.	All Policy-Level Documents and Training Materials evidencing the Authority's systems for carrying out, processing and prioritising repairs and maintenance works in Pleaded Remote Areas, including but not limited to documents provided to and used by: i. the Authority; ii. the Department of Communities; iii. "regional service providers"; iv. "Indigenous Community Housing Organisations"; v. "maintenance contractors"; and vi. "maintenance subcontractors".	ASOC paras 31-35; Defence paras 31-32B.3 regarding repair system

9.	18.	Management-Level Documents, Contractual Documents and communications between the Authority, State and Emama Nguda Aboriginal Corporation regarding any notifications or requests for repairs on maintenance to be performed at Yurmulun during the Relevant Period. ~~excluding any property inspection reports as to any residence in Yurmulun.~~	ASOC para 20, 31-35; Defence para 20A, 32A.
10.	20.	Management-Level Documents evidencing the Authority's performance against Maintenance Response Times ~~for Housing~~ in Pleaded Remote Areas as set out in the Housing Authority's Annual Reports during the Relevant Period.	ASOC para 32 Particulars; Defence para 32A.4
11.	21.	Contractual Documents between the Authority and "regional service providers" mentioned in Defence [32A.3(a)], as well as between the Authority and the Indigenous Community Housing Organisations responsible for tenancy management prior to approximately October 2014, including but not limited to the following organisations: i. Emama Nguda Aboriginal Corporation; ii. Mowanjum Aboriginal Corporation; iii. Marra Worra Worra Aboriginal Corporation; iv. Aboriginal Community Housing Limited, Goldfields; v. Aboriginal Community Housing Limited, Kununurra; vi. Ngaanyatjarra Council (Lands); vii. Pilbara Meta Maya; and any amendments or variations to these contracts during the Relevant Period.	ASOC para 32(ii); Defence para 32A.3(a)
12.	22.	Contractual Documents between the Authority and "maintenance contractors" mentioned in Defence [32A.3(b)] and any amendments or variations to these contracts during the Relevant Period, including but not limited to the following organisations: i. Lakes Maintenance (WA) Pty Ltd; ii. Ngaanyatjarra Services; iii. Programmed Facility Management Pty Ltd; iv. Looma Community Inc; ~~and including but not limited to the following data management systems:~~ ~~i. "Spyderware";~~ ~~ii. "Loc8"; and~~ ~~iii. "NRMConnect".~~	ASOC para 32(ii); Defence para 32A.3
13.	23	A: Management-Level Documents recording the Authority's periodic evaluations, audits, or reviews of the performance of "regional service providers" and "Indigenous Community Housing Organisations" ~~,"maintenance contractors" and "maintenance subcontractors" in meeting the Priority Defect Response Times, including records of any penalties imposed or contract terminations for non-performance.~~ including but not limited to the following organisations: i. Emama Nguda Aboriginal Corporation ii. Mowanjum Aboriginal Corporation; iii. Marra Worra Worra Aboriginal Corporation; iv. Aboriginal Community Housing Limited, Goldfields; v. Aboriginal Community Housing Limited, Kununurra; vi. Ngaanyatjarra Council (Lands). B: Management-Level Documents recording the Authority's periodic evaluations, audits, or reviews of the performance of "maintenance contractors" and "maintenance subcontractors" in meeting the Maintenance Response Times, including records of any penalties imposed or contract terminations for non-performance, including but not limited to the following organisations: i. Lakes Maintenance (WA) Pty Ltd; ii. Ngaanyatjarra Services; iii. Programmed Facility Management Pty Ltd; and iv. Looma Community Inc.	ASOC para 32(iii); Defence paras 32A.
14.	25.	Policy-Level Documents and Training Materials recording the Authority's payment processes for "maintenance subcontractors" in relation to payment disputes or penalties for delayed or inadequate work during the Relevant Period.	ASOC para 32(ii); Defence para 32A.3(e)
15.	26.	Policy-Level Documents and Training Materials related to the policy and process regarding verifying completion of maintenance works and quality assurance as to the completed works.	ASOC para 32(i) & (ii); Defence para 32A.3, 32A.4
16.	29.	Management-Level Documents recording or evidencing the Authority's response to repair delays exceeding the Maintenance Response Times, including escalation procedures, tenant compensation policies, or alternative accommodation arrangements.	ASOC para 34; Defence para 32A
17.	30.	Management-Level Documents recording or evidencing the Authority's collection, tracking, and analysis of data relating to maintenance completion within Maintenance Response Times, including any statistical analyses, trend reports, or performance dashboards used by management during the Relevant Period.	ASOC para 32(iii); Defence para 32A.2 and 32A.3
18.	31.	Policy-Level Documents and Training Materials for addressing tenant complaints about ~~H~~housing conditions in Pleaded Remote Areas. ~~including Yurmulun.~~	ASOC paras 31-35, Defence paras 32A
19.	34.	Management-Level Documents relating to the Authority or Western Australia's consideration of the standard and adequacy of ~~public housing stocks~~ housing in Pleaded Remote Areas.	ASOC para 38-69
D. RENT AND PAYMENTS **Focusing on rent collection, calculations, and related practices and policies**			
20.	36.	Management-Level Documents and Policy Documents relating to the Rent Setting Policy referred to in the Defence [53.1]–[53.10], including how rent was determined by the Authority and approved by the Minister, including drafts, ministerial approvals, implementation guidelines, and communications regarding its application in Pleaded Remote Areas.	ASOC paras 52-53, Defence paras 52-53
21.	38.	Documents and Training Materials recording or evidencing: i. the Authority's approach to ~~dividing components of the total rent to be paid between residents in a household tenancy agreement~~ assessing total household income and rent payable by each tenant, co-tenant and Householder; ii. any policies and procedures for tenants to disclose their income and the Authority's approach to failures to disclose income; and iii. any policies and procedures for obtaining authorisation or notifying tenants of rent being collected directly from Centrelink during the Relevant Period.	ASOC paras 52-61 & 68-82; Defence paras 52-61 & 68-82
22.	39.	Contractual Documents between the Authority or the State of Western Australia and Centrelink, Services Australia or the Commonwealth regarding arrangements for direct collection of rent by the Authority from Centrelink for tenants in ~~Housing in~~ Pleaded Remote Areas during the Relevant Period.	ASOC paras 52-57, 73-82; Defence paras 79.2-79.5
23.	41.	Management-Level Documents and Policy-Level Documents related to the process by which rental amounts for Aboriginal tenants in ~~Housing in~~ Pleaded Remote Areas were determined and set, including methodologies used to determine the calculation of the replacement cost method of determining maximum rent, assessments of market value, or any other metrics used to establish rental value in Pleaded Remote Areas during the Relevant Period.	ASOC para 53 & 68-69 (Excessive Rent); Defence para 53 & 68-69
24.	42.	Policy-Level Documents and Training Materials related to the refunding of rent to tenants in Pleaded Remote Areas, in circumstances where there was an overpayment of rent, or in any other circumstance.	ASOC para 58(b); Defence para 58
E. CULTURAL COMPETENCY, COMMUNICATIONS AND CLASS ATTRIBUTES **Focusing on the Authority's treatment of and interaction with Aboriginal tenants**			

25.	46.	~~Internal mass communications~~ Management-Level Documents, Policy-Level Documents and Training Materials that acknowledge or address disadvantages faced by Aboriginal tenants in Pleaded Remote Areas.	ASOC 44-47, 54 &59; Defence 44-47, 54 & 59.
F. JONNINE DIVILLI TENANT - SPECIFIC DOCUMENTS Comprehensive tenant files and liability determinations			
26.	48.	The entire Tenant File and Property File in respect of Ms Divilli, Divilli's Residence, and any previous tenancy or occupancy agreements to which Ms Divilli and the Authority or Western Australia was a party within the Relevant Period.	ASOC para 1 &11 (particulars); Defence paras 1.2(a), 11A
27.	49.	All records and metadata relating to both the property and tenancy file of Ms Divilli and held on the "Habitat", "Caretaker" and "Objective" system showing maintenance and repair requests for Divilli's Residence, including timestamps of entry, prioritisation categorisations (P2, P2R, P3, P4), work order issuance, contractor assignment, completion records, and time elapsed between each stage.	ASOC para 32(iii); Defence para 32A.2
28.	50.	Any notices given to occupant(s) of Divilli's Residence of breach of rent or breach of the tenancy agreements.	ASOC para 11(d); Defence para 11.4 regarding tenancy extensions

TABLE 2 – CONTESTED/FURTHER INSTRUCTIONS CATEGORIES			
# (New)	**# (Old)**	**Proposed Category**	**ASOC/Defence Reference**
A. TENANCY FRAMEWORK AND AGREEMENTS Covering the legal and contractual foundation of housing arrangements in Western Australia			
29.	1.	Documents relating to the establishment and the scope and terms of ~~and nature of~~ the principal/agent relationship between: i. Yurmulun Aboriginal Corporation and the Authority in respect of Divilli's Lease. ii. Any proposed 'owner' and/or 'Landholder' of a relevant residence defined in paragraph 2 of the filed ASOC and the Authority.	Defence: para 5 and 5A.
30.	2.	~~All head leases and Authority subleases, including any HMAs, held with various Aboriginal entities in respect of various Aboriginal lands (as defined in the *Housing Act*) within Remote Communities and any amendments thereof.~~ All leases in respect of Pleaded Remote Areas, not including individual residential tenancy agreements.	ASOC paras 5-9; Defence paras 5.1-5A.11 regarding HMAs and the Authority's role
31.	5.	All delegations, directions, or policy mandates made by the State of Western Australia to the Housing Authority under the *Housing Act* or otherwise that are or were applicable to the management, including the management of repairs and maintenance issues~~, of Housing~~ in Pleaded Remote Areas.	ASOC para 4; Defence paras 4, 5A.1-5A.11 regarding statutory framework
32.	6.	Documents evidencing the Authority Business, including: i. All financial statements, budgets, and internal policies for the Authority relating to the collection, allocation, and use of rental income received through HMAs, Primary Agreements and Secondary Agreements to which the Authority or the State of Western Australia is a party, including any documents showing rental income being used for any purposes other than repairs and maintenance. ii. All organisational charts, strategic plans, performance metrics, and internal communications (including board or executive meeting minutes) showing how the Housing Authority structures its service delivery operations, measures effectiveness, and sets rent amounts. iii. All Policy-Level Documents and government correspondence distinguishing between the Authority's governmental functions and commercial activities, including records showing the proportion of operations funded by rental income and the provision of services beyond basic governmental housing functions.	ASOC para 12; Defence para 12.1-12.5
33.	9.	~~Samples of each any wi~~ Each template version of a Primary Agreement and Secondary Agreement to which the Authority or Western Australia was a party ~~thin the Relevant Period~~.	ASOC paras 2-3; Defence paras 2-3
B. COMFORT, SECURITY, HEALTH AND SAFETY Addressing particular defects (including health and safety, secure housing, reasonable comfort) in Pleaded Remote Areas			
34.	12.	Management-Level Documents regarding any complaints and notifications received regarding concerns with water quality and safety in Pleaded Remote Areas.	ASOC para 20(c) and 51; Defence para 20A
35.	14.	Management-Level Documents, Policy-Level Documents and Training Materials recording or evidencing any assessments, consideration of, or monitoring, regarding measures taken to protect relevant group members inside their home from external heat in Pleaded Remote Areas, including: i. the provision of air conditioning units, curtains and curtain rails or drapes or blinds covering each external window; and ii. any external wall and ceiling insulation, and any Management-Level Documents and Policy-Level Documents related to the provision and/or removal of air conditioning in such communities, including policies, reports and communications related to same.	ASOC para 29(c) and (h), 28 and 51; Defence para 29
36.	15.	Management-Level Documents, Policy-Level Documents and Training Materials recording or evidencing any assessments, consideration of, monitoring or remediation efforts related to the health impact of heat stress and/or high heat discomfort in Pleaded Remote Areas.	ASOC para 28(h) and 51; Defence para 28
37.	16.	Management-Level Documents regarding assessments, consideration of, monitoring or remediation efforts related to overcrowding in ~~Housing in~~ Pleaded Remote Areas.	ASOC paras 44(k), 51(c), 55, Defence para 20A.2 , 51 and 55
38.	#	All evidence filed by or on behalf of the Authority or the Department responsible for the *Housing Act 1980* (WA) in any inquest, inquiry or proceeding purportedly under the *Coroners Act 1986* (WA) ~~during or since the Relevant Period~~.	~~TBC~~ Para 51(b)
39.	#	Management level documents of the Authority or the Department responsible for the *Housing Act 1980* (WA) giving consideration or response to, or implementing coronial inquest findings and recommendations.	~~TBC~~ Para 51(b)
C. MAINTENANCE AND REPAIR SYSTEMS Covering policies, procedures, and systems for repairs and maintenance, including continuous breaches and delayed repairs			
40.	19.	Management-Level Documents, Policy Level-Documents and Training Material recording the Authority's "Habitat", ~~"Caretaker" and "Objective"~~ system's functionality and capabilities, including user manuals and technical specifications~~, system audit logs, and records of system malfunctions or limitations during the Relevant Period~~.	ASOC para 32(i); Defence para 32A.2(h), 32A.3(c)
41.	24.	Management-Level Documents recording or evidencing the Authority's performance related to maintenance and the RTA Terms in ~~Housing in~~ Pleaded Remote Areas, including any analyses of ~~under~~performance, proposed improvements, comparisons to other jurisdictions or resource constraints ~~during the Relevant Period~~.	ASOC para 32; Defence para 32A.4
	~~27.~~	~~Management-Level Documents recording or evidencing the basis for the Authority's assertion in Defence [32A.4] that its "inspection and maintenance system was reasonable having regard to its obligations" including any advice, benchmarking studies, or comparisons with other jurisdictions' remote housing maintenance systems.~~	~~ASOC para 32-33; Defence para 32A.4~~
42.	28.	Management Level Documents recording or evidencing analysis or implementations of alternative approaches to the inspection and maintenance systems that were considered but not adopted by the Authority, including cost-benefit analyses, pilot programs, or expert recommendations.	ASOC para 32; Defence para 32A.4

43.	32.	Management-Level Documents recording or evidencing Systemic Breaches as alleged and defined at paragraph 51 of the ASOC in ~~Housing in~~ Pleaded Remote Areas, including widespread maintenance, repair, or living condition ~~issues in Housing in Remote Communities~~.	ASOC 51 (Systemic Breaches); Defence 51
44.	33.	Management-Level Documents and Policy-Level Documents identifying, ~~and~~ tracking and collating data related to "Delayed Repairs Tenants" including records of repair delays exceeding the Authority's own timeframes and any analysis of systemic repair delays and efforts to rectify any delayed repairs.	ASOC para 62; Defence para 62
45.	34.	Management-Level Documents relating to the Authority or Western Australia's consideration of the standard and adequacy of ~~public housing stocks~~ housing in Pleaded Remote Areas.	ASOC para 38-69;
46.	35.	Management-Level Documents recording, or considering or creating comparative financial data showing: i. total rent and maintenance ~~levies~~ charges collected from tenants in ~~Housing in~~ Pleaded Remote Areas during the Relevant Period, including but not limited to HMA Annual Reports for HMA communities and the equivalent documents in relation to other Pleaded Housing; and ii. total expenditure on repairs, maintenance and improvements in those same communities during the Relevant Period, including any internal analysis of this data and appropriate allocation.	ASOC 53 (reasonable rental value), 58-61 (unconscionable conduct re rents not abated); Defence 5A.11(c), 53, 58-61
47.	N/A	All documents used in the preparation of the parts of each Housing Authority Annual Report that concerns Pleaded Remote Areas.	ASOC para 12 and 32;
D. RENT AND PAYMENTS **Focusing on rent collection, calculations, and related practices and policies**			
48.	37.	Management-Level Documents, ~~and~~ Policy Documents and Contractual Documents recording or evidencing: i. ~~showing~~ how rent was determined by the Authority and approved by the Minister in relation to ~~Housing in~~ Pleaded Remote Areas not covered by the Rent Setting Policy; and ii. the Authority's or Western Australia's legal or policy basis for charging and collecting rent or maintenance ~~amounts~~ charges from Claimants, including ministerial approvals under s 62E of the Housing Act and/or s 30 of the RTA.	ASOC para 2, ~~&~~ 52-53, 36(iii)(j), 61 and 70-82; Defence paras 52-53 & 71-81
	~~40.~~	~~Management-Level Documents, Policy-Level Documents or Contractual Documents recording or evidencing the Authority's or Western Australia's legal or policy basis for charging and collecting rent or maintenance amounts charges from Claimants, including ministerial approvals under s 62E of the *Housing Act* and/or s 30 of the RTA.~~	~~ASOC 70-82 (Restitution); Defence 71-81~~
49.	43.	Policy-Level Documents and Training Materials related to the Authority's ~~rent review policy~~ standard practice to carry out a rent assessment with the tenant, including the communication of the availability and operation of the rent ~~review policy~~ assessment to tenants ~~in Housing~~ in Pleaded Remote Areas.	ASOC para 79; Defence para 79
50.	44.	Management Level Documents, Policy-Level Documents and Training Materials related to: i. assessing or determining whether any damage was caused by wilful or negligent acts or omissions under subclauses 4.4(b) and (c) of a relevant HMA; ii. directions, instructions or communications to third parties (such as contractors and ~~remote~~ regional service providers) regarding the assessment, interpretation or the determination of "wilful or negligent acts" pursuant to subclauses 4.4(b) and (c) of ~~the~~ a relevant HMA; iii. data or statistics showing instances where repairs were denied based on determinations of "wilful or negligent acts" by tenants ~~in Housing~~ in Pleaded Remote Areas compared to public housing outside of the Pleaded Remote Areas ~~area~~; iv. assessing or determining any alleged tenant liability or maintenance charges in Pleaded Remote Areas, including the approach to the calculation of set off amounts, notification procedures to tenants, co-tenants and Householders and the communications of proposed tenant liability charges being provided; and v. data or statistics showing instances and amounts of tenant liability or maintenance charges charged to tenants, co-tenants and Householders in Pleaded Remote Areas.	Defence 5A
E. CULTURAL COMPETENCY, COMMUNICATIONS AND CLASS ATTRIBUTES **Focusing on the Authority's treatment of and interaction with Aboriginal tenants**			
51.	45.	Management-Level Documents, Policy-Level Documents and Training Materials prepared for or used by staff of the Authority or any contractors and ~~subcontractors or~~ agents engaged by the Authority regarding: i. the execution of tenancy agreements with public housing tenants and/or public housing tenants who are Australian Aboriginal people in Pleaded Remote Areas; and ii. the administration or management of tenancies with tenants who are Australian Aboriginal people in Pleaded Remote Areas, including communications in relation to any changes to agreements, the charging of rent or tenant liability; and iii. any efforts to ameliorate difficulties of Australian Aboriginal people in Pleaded Remote Areas understanding the information in light of the Class Attributes, including as to use of interpreters and cultural awareness.	ASOC paras 44-47, 52 & 79(c); Defence paras 44-47, 52 and 79.
52.	47.	Policy Level Documents and Training Materials regarding consideration or provision of appropriate communications and warnings regarding water quality provided to tenants and occupants in Pleaded Remote Areas, the monitoring of water supply and water quality to ~~Housing in~~ Pleaded Remote Areas.	ASOC para 20(c), 51 and 19(c); Defence para 20A
F. JONNINE DIVILLI TENANT - SPECIFIC DOCUMENTS **Comprehensive tenant files and liability determinations**			
53.	51.	All records held by Ms Divilli pertaining to her tenancy and the Divilli Residence, including but not limited to: i. Communications between Ms Divilli and Yurmulun Aboriginal Corporation, Emama Nguda, Lakes Maintenance and/or the Authority. ii. Communications and/or reports to the WA Police regarding damage to the Divilli Residence. iii. Communications between Ms Divilli and third parties regarding the Divilli Residence, including the Water Corporation or other State Government departments. iv. The incoming property inspection report for the Divilli Residence. v. Photographs, videos or any other records showing or recording the condition of the Divilli Residence from time to time. vi. Any document concerning the cause of any damage to the Divilli Residence ~~Premises~~. vii. Any record of any agreement or arrangement between Ms Divilli and Mr Bayden Rivers or any other person as to payment of rent, tenant liability or any other amount under the Tenancy Agreement. viii. Centrelink and other financial records of payments made in relation to the tenancy by Ms Divilli (herself) or any other person.	

From: Anna Crosby <Anna.Crosby@dlapiper.com>
Sent: Friday, 20 June 2025 3:41 PM
To: Gemma Leigh-Dodds
Cc: Cameron Maclean; Simon Hubbard; WAHousingCALegalTeam; Ashlee Scarff Bublitz; Valerie Polovinkina
Subject: RE: VID 809/2024 || Divilli -v- Housing Authority & Anor [DLAP-AUMATTERS.FID1990902]

Dear Gemma,

We refer to your correspondence of 13 June 2025, together with the enclosed document titled "Annexure A".

Whilst we are awaiting final instructions from our clients as to the final form of the proposed discovery categories, we set out below what we consider remains in dispute.

In our view, the categories shaded in orange are capable of agreement, subject to further amendments as to the wording of those categories.

# (New)	Proposed Category	ASOC/Defence reference	DLA Comment
N/a	"Maintenance Response Time" (definition)	N/a	We consider that this definition is vague and requires amendment.
9.	Management-Level Documents, Contractual Documents and communications between the Authority, State and Emama Nguda Aboriginal Corporation regarding any notifications or requests for repairs on maintenance to be performed at Yurmulun during the Relevant Period.	ASOC para 20, 31-35; Defence para 20A, 32A.	According to our notes, this category was not agreed at the recent conferral meeting. The use of the term "communications" would seem to make the category broad enough to capture all correspondence between ENAC and the Authority regarding all maintenance in Yurmulun during the Relevant Period. We do not understand the

			relevance of this category, beyond Ms Divilli, to an initial trial.
30.	All leases in respect of Pleaded Remote Areas, not including individual residential tenancy agreements.	ASOC paras 5-9; Defence paras 5.1-5A.11 regarding HMAs and the Authority's role	We do not think that the revised wording addresses our concern with this category. It remains too broad and there is no conditioning factor. This category ought to be limited to leases entered into by the Respondents with any third parties in respect of the Pleaded Housing.
32.	Documents evidencing the Authority Business, including: i. All financial statements, budgets, and internal policies for the Authority relating to the collection, allocation, and use of rental income received through HMAs, Primary Agreements and Secondary Agreements to which the Authority or the State of Western Australia is a party, including any documents showing rental income being used for any purposes other than repairs and maintenance. ii. All organisational charts, strategic plans, performance metrics, and internal communications (including board or executive meeting minutes) showing how the Housing	ASOC para 12; Defence para 12.1-12.5	We remain of the view that this category is far too broad, and cannot be agreed.

	Authority structures its service delivery operations, measures effectiveness, and sets rent amounts. iii. All Policy-Level Documents and government correspondence distinguishing between the Authority's governmental functions and commercial activities, including records showing the proportion of operations funded by rental income and the provision of services beyond basic governmental housing functions.		
33.	Each template version of a Primary Agreement and Secondary Agreement to which the Authority or Western Australia was a party.	ASOC paras 2-3; Defence paras 2-3	This remains an issue. We object to this category on the basis of relevance. In practical terms, the Respondent could have no certainty as to the existence of each "template version" of tenancy agreements over the Relevant Period. There is no central repository, as appears to be envisaged by the category.
38.	All evidence filed by or on behalf of the Authority or the Department responsible for the Housing Act 1980 (WA) in any inquest, inquiry or proceeding purportedly under the Coroners Act 1986 (WA).	Para 51(b)	We consider that this category is a fishing exercise, with no obvious connection to the pleading. In our view, this category cannot be agreed.
39.	Management level documents of the Authority or the Department responsible for the Housing	Para 51(b)	Same as above.

	Act 1980 (WA) giving consideration or response to, or implementing coronial inquest findings and recommendations.		
41.	Management-Level Documents recording or evidencing the Authority's performance related to maintenance and the RTA Terms in Pleaded Remote Areas, including any analyses of performance, proposed improvements, comparisons to other jurisdictions or resource constraints.	ASOC para 32; Defence para 32A.4	This requires us to undertake an evaluative exercise. The applicant should be precise about what documents she seeks (if any) beyond those going to maintenance.
43	Management-Level Documents recording or evidencing Systemic Breaches as alleged and defined at paragraph 51 of the ASOC in Pleaded Remote Areas, including widespread maintenance, repair, or living conditions.	ASOC 51 (Systemic Breaches); Defence 51	It calls for an evaluative exercise. The documents sought should be in any event be covered by Categories 41, 44 and 45.
47.	All documents used in the preparation of the parts of each Housing Authority Annual Report that concerns Pleaded Remote Areas.	ASOC para 12 and 32;	We consider that this category should be limited to financial statements, reports and other data underlying the reporting of financial performance, and performance against KPIs.
50.	Management Level Documents, Policy-Level Documents and Training Materials related to: i. assessing or determining whether any damage was caused by wilful or negligent acts or omissions under subclauses 4.4(b) and (c) of a relevant HMA; ii. directions, instructions or communications to third parties (such as contractors and	Defence 5A	The amended wording does not address our issue with this category. We remain of the view that it is irrelevant to any pleaded issue.

		remote regional service providers) regarding the assessment, interpretation or the determination of “wilful or negligent acts” pursuant to subclauses 4.4(b) and (c) of the a relevant HMA;		
	iii.	data or statistics showing instances where repairs were denied based on determinations of "wilful or negligent acts" by tenants in Housing in Pleaded Remote Areas, including compared to public housing outside of the Pleaded Remote Areas area;		
	iv.	assessing or determining any alleged tenant liability or maintenance charges in Pleaded Remote Areas, including the approach to the calculation of set off amounts, notification procedures to tenants, co-tenants and Householders and the communications of proposed tenant liability charges being provided; and		
	v.	data or statistics showing instances and amounts of tenant liability or maintenance		

		charges charged to tenants, co-tenants and Householders in Pleaded Remote Areas.		

We look forward to hearing from you.

Kind regards,

Anna Crosby
Senior Associate

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DLA Piper Australia

From: Gemma Leigh-Dodds <Gemma.LD@slatergordon.com.au>
Sent: Wednesday, 18 June 2025 5:35 PM
To: Anna Crosby <Anna.Crosby@dlapiper.com>
Cc: Cameron Maclean <Cameron.Maclean@dlapiper.com>; Simon Hubbard <Simon.Hubbard@dlapiper.com>; WAHousingCALegalTeam <WAHousingCALegalTeam@Slatergordon.com.au>; Ashlee Scarff Bublitz <ashlee.scarff.bublitz@dlapiper.com>; Valerie Polovinkina <Valerie.Polovinkina@dlapiper.com>
Subject: RE: VID 809/2024 || Divilli -v- Housing Authority & Anor [DLAP-AUMATTERS.FID1990902] [S+G-ACTIVE.M1035865.M667484.FID5489177]

****EXTERNAL****

Dear Anna

Thank you for the update.

Kind regards,

Gemma Leigh-Dodds
Principal Lawyer

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From: Anna Crosby <Anna.Crosby@dlapiper.com>
Sent: Wednesday, 18 June 2025 7:19 PM
To: Gemma Leigh-Dodds <Gemma.LD@slatergordon.com.au>
Cc: Cameron Maclean <Cameron.Maclean@dlapiper.com>; Simon Hubbard <Simon.Hubbard@dlapiper.com>; WAHousingCALegalTeam <WAHousingCALegalTeam@Slatergordon.com.au>; Ashlee Scarff Bublitz <ashlee.scarff.bublitz@dlapiper.com>; Valerie Polovinkina <Valerie.Polovinkina@dlapiper.com>

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Our Ref: VID 809/2024

23 June 2025

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Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

We refer to our letter to you dated 13 June 2025 regarding the Applicant's revised discovery position, and to the email from Ms Crosby of your office dated 20 June 2025 (**the 20 June email**), which set out the discovery topics that you considered remained in dispute.

The purpose of this letter is to confirm the parties' positions regarding the discovery categories, and the time by which the discovery categories that have been agreed will be produced.

Discovery categories

1. It appears that the parties have been able to substantially narrow the topics that remain in dispute between them. The Applicant's position in response to the 20 June email is as follows:

    a. The Applicant continues to press for her definition of 'Maintenance Response Time'. We do not agree with your comments that the definition is vague and requires amendment, given the Applicant has adopted the Respondents' suggested wording, and it is precisely defined to be linked to the applicable timeframes and purpose stipulated in paragraphs 31-32 of the Applicant's Amended Statement of Claim (**ASOC**).

    b. The Applicant continues to press for Category 9, however is willing to limit the scope of the category to the time period from 2022 to 2024 inclusive.

    c. The Applicant agrees to limit Category 30 to leases entered into by the Respondents with any third parties in respect of the Pleaded Housing.

    d. The Applicant agrees to limit Category 32 to subcategory (i) and will no longer press for the remaining subcategories at this time. The Applicant reserves her position in relation to the remaining subcategories and may press for these at a later time.

    e. The Applicant continues to press for Category 33. As previously advised, the Applicant's position is that these documents are relevant to paragraphs 2-3 of the ASOC and to the common questions as to the content of contractual terms that are relevant to both her and group members. If template versions of these documents do exist, the Applicant's position is that all templates that are in existence for the claim period should be produced. If all of those documents cannot be produced and only examples can be provided, your clients should provide an affidavit setting out why this is so.

f. The Applicant does not presently press for production of the documents in Categories 38 and 39, but reserves the right to press for these at a later date.

g. The Applicant continues to press for the production of documents in Category 41, however she is prepared to confine the scope of the category and omit 'comparisons to other jurisdictions.' Category 41 is clearly relevant to the pleaded case, including, most importantly, paragraph 32 of the ASOC.

h. The Applicant does not presently press for production of the documents in Category 43, but reserves the right to press for these at a later date.

i. The Applicant agrees to limit Category 47 to financial statements, reports and other data underlying the reporting of financial performance, and performance against KPIs.

j. The Applicant understands that Category 50(i) and (ii) have been agreed between the parties and that the only dispute remains in relation to subcategories (iii), (iv) and (v). Provided the Applicant's understanding in relation to subcategories (i) and (ii) is correct, we confirm that she does not presently press for production of the remaining subcategories at this time but reserves the right to press for these documents at a later date.

2. Provided that the above position is accepted, the Applicant's current understanding of the discovery categories is outlined at **Annexure A** to this letter, with the only areas that remain in dispute in purple.

Production of discovery

3. We have previously sought your clients' position as to the anticipated timing and volume of the production of documents relevant to the substantive issues in the proceeding and to discovery, including by requesting an addendum affidavit to address the deficiencies outlined regarding the Newton Affidavit, filed on 30 April 2025. We are yet to receive your clients' response.

4. Noting that the orders of the Honourable Justice Jackson dated 10 June 2025 (**the orders**) require the Applicant to file any discovery application by tomorrow, 24 June 2025, we again seek your clients' confirmation as to when they expect discovery can be produced. To better understand your clients' position, the Applicant would also be assisted by confirmation as to the estimated number of documents expected to be responsive to each agreed topic.

5. In the interests of efficiency, and to ensure that documents are produced to the Applicant without undue delay, she is content for documents to be produced in tranches of equivalent (or reasonably equivalent) size on the first working day of each month, with the first date of production being 1 August 2025, and the final date being 1 December 2025.

6. For the avoidance of doubt, the Applicant expects to be in a position to discover documents responsive to Topic F by 5 August 2025.

Next steps

7. The orders require that any application for discovery be made by the Plaintiff by tomorrow, 24 June 2025. In those circumstances, we would be grateful to receive a response from you at your earliest convenience and at least by **10am tomorrow (AWST)** to confirm your client's position in relation to each category in Annexure A. We also note that the 20 June email stated that you were still awaiting final instructions from your clients as to the agreed discovery categories.

8. In the meantime, we will commence preparing an application based on the categories identified as disputed and, absent any other indication, will proceed to file that application tomorrow without further notice to you. The application will include orders for the timing of production. However, we are of course happy to continue to discuss with you if there are any further ways to narrow the dispute between us and, for example, to remove categories from those contested if your clients do, in fact, agree to discover those documents.

9. We further note that the Applicant is yet to receive a response to the Further and Better Particulars filed on 11 April 2025 and to matters raised in previous correspondence, such as the letter to you

dated 28 May 2025. We continue to await your clients' response to these matters, and the Applicant reserves her right to make an appropriate application in that regard, including in relation to further discovery and costs.

Yours sincerely

Gemma Leigh-Dodds
Principal Lawyer
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Your reference

2442-24

Our reference

AMC/AMC/3148015/736070
AUM/1301151722.1

By Email Only: *gemma.ld@slatergordon.com.au*

24 June 2025

Dear Colleagues,

DIVILLI -V- HOUSING AUTHORITY & ANOR
FEDERAL COURT PROCEEDINGS VID 809 OF 2024

1 We refer to your letter of 23 June 2025 and its enclosure titled "Annexure A".

Discovery categories

2 The Respondents agree to the discovery categories proposed in Annexure A save for the three below matters.

2.1 The definition of "Maintenance Response Times" ought to also include reference to paragraph 31.2 of the Defence. Therefore, we propose that the definition be amended as follows:

> *"Maintenance Response Times is defined by reference to paragraphs 31– 32 of the ASOC, and here includes 'Routine' items as defined at paragraph 31 of the ASOC, and paragraph 31.2 of the Defence."*

2.2 Category 8: Given that the Applicant is not pressing proposed Categories 8(ii) and (iii), the wording *"Documents evidencing the Authority Business, including"* ought to be removed from this category. Accordingly, the complete Category 8 wording should be as follows:

> *"All financial statements, budgets, and internal policies for the Authority relating to the collection, allocation, and use of rental income received through HMAs, Primary Agreements and Secondary Agreements to which the Authority or the State of Western Australia is a party, including any documents showing rental income being used for any purposes other than repairs and maintenance."*

2.3 Category 9: The Applicant remains of the view that Category 9 is irrelevant. As to this:

(a) As detailed in your 23 June Letter, the Applicant's position is that the documents sought are *"relevant to paragraphs 2 – 3 of the ASOC and to the common questions as to the content of contractual terms that are relevant to both her and group members".*

(b) The Respondents do not understand this contention. The Applicant is seeking production from the Respondents of various blank "template"

agreements. Those documents would only be relevant to the "content of contractual terms" if those documents were signed agreements as between a tenant and the Respondent. A template document carries no weight in this regard.

(c) Further, at paragraph 14 of the ASOC, the Applicant pleads that the provisions of the *Residential Tenancies Act 1987 (WA)* (**RTA**) override the terms of any tenancy agreement that are inconsistent with the RTA. In the premises of this pleading, a blank "template" tenancy agreement is of no assistance to ascertaining the relevant terms of any agreement between a tenant and the Respondent.

Production of discovery

3 It is not possible, at this time, for the Respondents to estimate:

3.1 The number of documents that it expects to be responsive to each of the 50 discovery categories.

3.2 The precise timing as to when the Respondent's discovery could be produced, noting that the Respondent's understanding of the discovery documents sought by the Applicant has evolved significantly since the Newton Affidavit was prepared. In particular, there is no longer a focus upon tenant and property files (which were more easily quantifiable), and rather, "Management-Level Documents" and other document types are sought by the Applicant, which is a more open enquiry.

4 That being said, the Respondents are agreeable to the Applicant's proposal that discovery be provided in tranches on the first working day of each month, with the first date of production being 1 August 2025.

5 However, the Respondents agreement is subject to the following:

5.1 The production tranches will not be provided by way of category (e.g. Categories 1 to 5 being provided in full on 1 August 2025). The discovery documents will be produced as they are reviewed and processed, but not by reference to specific categories.

5.2 The Respondents cannot guarantee that the tranches will be of an equivalent size. This is not practical, and the size of each tranche will likely vary significantly.

5.3 In the event that the Respondents have not completed the discovery process by 1 December 2025, there be liberty to apply to extend the provision of further tranches into the following months.

6 We look forward to hearing from you with respect to the above matters.

Yours sincerely

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Senior Associate

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Our Ref: VID 809/2024

24 June 2025

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By email only: Anna.Crosby@dlapiper.com; Cameron.Maclean@dlapiper.com

Dear Colleagues

***Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024**

We refer to our letter to you dated 23 June 2025 and your response of today's date regarding the discovery categories that remain in dispute between the parties.

1. The Applicant's position in relation to discovery is now as follows:

    a) The Applicant agrees to your revised definition of 'Maintenance Response Times' and your amendments to the wording of Category 8.

    b) The Applicant does not agree with your clients' position in relation to Category 9. However, the Applicant is willing to reconsider her position if your clients:

        a. provide examples of agreements they can easily access within 14 days; and

        b. file an affidavit explaining why such documents cannot be produced prior to 16 July 2025.

2. The Applicant agrees to accept discovery of documents in tranches on the first working date of each month, with production commencing on 1 August 2025 and understands that such production will not be provided by way of category, but will be compliant with the agreed Document Management Protocol.

3. However, the Applicant does not accept your clients' position that production of tranches of a reasonably equivalent size cannot be guaranteed, or that it is not possible for your clients to estimate the number of documents expected to be responsive to the agreed categories. We will write to you separately about this matter in the coming days.

Next Steps

4. The Applicant has prepared a Minute of Consent to be provided to the Court as soon as possible and ideally today, outlining the agreed position between the parties. The Minute of Consent and Annexure A are **enclosed** for your consideration.

5. Please note that Annexure A to the Minute of Consent is the list of discovery categories that are now agreed between the parties. The Applicant has provisionally removed old category 9 for the reasons identified above, and has also removed a category which had previously been duplicated in error, being *'Management-Level Documents relating to the Authority or Western Australia's*

consideration of the standard and adequacy of housing in Pleaded Remote Areas'. The Applicant has amended the numbering of the categories in Annexure A accordingly.

6. Please provide your clients' position in relation to the Minute of Consent and accompanying Annexure A by **4pm (AWST) today** so as to ensure that this material can be provided to the Court in accordance with the orders of the Honourable Justice Jackson dated 10 June 2025.

Yours sincerely

Gemma Leigh-Dodds
Principal Lawyer
SLATER AND GORDON

William Zerno

From: Anna Crosby <Anna.Crosby@dlapiper.com>
Sent: Tuesday, 24 June 2025 6:07 PM
To: Laura Nigro
Cc: WAHousingCALegalTeam; Ashlee Scarff Bublitz; Valerie Polovinkina; Cameron Maclean; Simon Hubbard
Subject: RE: VID 809/2024 || Divilli -v- Housing Authority & Anor [DLAP-AUMATTERS.FID1990902]

Dear Laura,

Thank you for your email and letter.

As to paragraph 1(b) of the Letter:

- We disagree with the Applicant's proposal that the Respondent provide an explanatory affidavit and examples of agreements as a condition of the Applicant's withdrawal of proposed Category 9.
- The primary basis for the Respondent's objection to that category is that the documents sought are not relevant to a material issue, nor the pleading references that the Applicant relies upon (as outlined in our letter earlier today).
- Therefore, the provision by the Respondent of an explanatory affidavit does not address our client's objection and the Respondent is not prepared to agree to this suggestion.

The Respondent proposes, in order to progress this matter, that:

- The Applicant reserves its position in respect to Category 9 (as it has done with other categories); and
- We will take instructions from our clients as to providing example tenancy agreements.

If the Applicant is agreeable to the above, we:

- will sign and return the consent orders; and
- consent to the proposed correspondence to the Court.

We look forward to hearing from you.

Kind regards,

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Senior Associate

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Our Ref: VID 809/2024

27 June 2025

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By email only: Anna.Crosby@dlapiper.com; Cameron.Maclean@dlapiper.com

Dear Colleagues

***Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024**

We refer to our letter to you dated 24 June 2025 regarding the timing for production of discovery, your letter in response of the same date (**your letter**), and to the email exchanges between the parties in relation to same.

Sample versions of tenancy agreements

1. We consider it beneficial at this juncture to separate out two distinct categories of documents discussed between the parties in relation to former-Category 9 documents:

    a. templates or 'standard form' versions of Primary Agreements and Secondary Agreements ('**standard form tenancy agreements**'); and

    b. samples of executed versions of Primary Agreements and Secondary Agreement to which the Authority or Western Australia was a party ('**executed tenancy agreements**').

Standard form tenancy agreements

2. The Applicant does not accept the position put forward in paragraph 2.3 of your letter as to the relevance of standard form tenancy agreements. We repeat the Applicant's contention that such documents are plainly relevant to paragraphs 2-3 of both the ASOC and the Defence, and to the common contractual terms contained in such agreements.

3. We also raise the relevance of such documents to paragraph 46 of both the ASOC of the Defence, both of which refer to copies of tenancy agreements (in the ASOC) and proposed tenancy agreements (in the Defence) that are provided to prospective tenants at the time of execution. To the extent that the proposed tenancy agreements are derived from standard form tenancy agreements, we consider them relevant in the proceeding.

4. As to the Respondents' comments in paragraph 2.3 of your letter about the probative value of such agreements. We do not consider these to be a compelling reason to avoid discovery of such documents.

5. We also do not accept the Respondents' position, outlined in the email of Ms Crosby of 20 June 2025, that in practical terms the Respondents could have no certainty as to the existence of such agreements, as there is no central repository of such documents. The Applicant contends that if template versions exist, then all template versions that are in existence for the relevant period should be produced.

6. If your clients are of the view that their records are incomplete in this respect, those practical limitations can be explained in an affidavit explaining the scope of any production responsive to this category. We do not consider this a reason to avoid discovery of them as such.

7. We note the Applicant has in her possession a version of the tenancy agreement signed by herself and an officer of the Housing Authority which contains a footer on the first page that reads 'Residential Tenancy Agreement Aboriginal Housing (RTAA update) v2.docx'. This suggests that the Authority has in its custody a series of template agreements listed by version.

8. Accordingly, we would be grateful if your clients could clarify whether they would be amenable to agreeing to a further discovery order in relation to standard form tenancy agreements, in the following terms:

    a. *Each version of any templates or 'standard form' Primary Agreements and Secondary Agreements*

Executed tenancy agreements

9. We refer to the email of Ms Crosby dated 24 June 2025 confirming that your clients' instructions would be sought in relation to the provision of example tenancy agreements. We understand this to be a reference to executed tenancy agreements.

10. We would be grateful if such agreements or response could be provided to the Applicant by **11 July 2025**.

11. We would also be grateful if your clients could clarify whether they would be amenable to agreeing to a further discovery order in relation to executed tenancy agreements, in the following terms:

    a. "*Examples of any versions of a Primary Agreement or Secondary Agreement to which the Authority or Western Australia was a party"*

Scope of discovery production

12. As was explained in our letter dated 24 June 2025, the Applicant does not accept your clients' position that production of tranches of a reasonably equivalent size cannot be guaranteed, or that it is not possible for your clients to estimate the number of documents expected to be responsive to the agreed discovery categories.

13. We re-state the Applicant's serious concerns regarding the Respondents' commitment to the timely and efficient completion of the discovery process for the reasons set out in our letter dated 28 May 2025. Specifically, we note that this proceeding has been on foot since 19 August 2024 with no substantive voluntary production made of readily producible and clearly relevant documents to date, and despite numerous requests for further clarity regarding the estimated cost, volume and timing of production of discovery, as well as several other outstanding requests for materials.

14. For this reason, we find it uncompelling for your clients to now state that it is 'not possible' for them to estimate the timing and volume of discovery. It is not the case that discovery has 'evolved significantly since the affidavit of Mr Craig Newton filed on 30 April 2025 (**Newton Affidavit)** was prepared', but rather that the Newton Affidavit was deficient in the first place. The Court's order required the Respondents to provide an affidavit addressing documents relevant to the substantive issues in the ASOC - a document that had been filed months before your clients received extensions to comply with the affidavit order.

15. Relevantly, we further note paragraph 7.8(d) of the Federal Court Class Actions Practice Note expressly states that, by the time of the first Case Management Hearing, parties should be in a position to address 'affidavits by any party as to where relevant documents are stored, what types of documents exist, in what form they are held, the likely timetable and cost consequences of making discovery of particular categories of documents'. Here, the proceeding has progressed for close to twelve months, and well past issues the Practice Note contemplates would be ordinarily covered at the first Case Management Hearing, particularly now given there are discovery categories agreed between the parties.

16. Accordingly, as outlined in the **enclosed** proposed Minute of Consent, the Applicant considers it essential that prior to the next Case Management Hearing, your clients file and serve a supplementary affidavit identifying matters which the Federal Court Class Actions Practice Note contemplates, and which were not sufficiently addressed by the Newton affidavit, being:

    a. where documents responsive to the now agreed discovery categories between the parties are stored or held;

    b. the steps required to review and prepare them for production;

    c. the approximate number of documents responsive to the agreed discovery categories; and

    d. the likely timetable and cost of making discovery of those documents.

17. The Applicant has also included an order requiring a filed response to the Applicant's Request for Further and Better Particulars, which was filed and served on your clients 11 weeks ago, and to which we have not received a response, despite multiple requests.

Next Steps

18. We look forward to your prompt response to the matters raised in this letter. If you wish to discuss this correspondence, please do not hesitate to contact our office.

Yours sincerely

Gemma Leigh-Dodds
Principal Lawyer
SLATER AND GORDON

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16 January 2025

Simon Hubbard
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By email only; Simon.Hubbard@dlapiper.com

Dear Mr Hubbard,

***Divilli v Housing Authority & Anor* VID809/2024**

1. We refer to the above-mentioned proceeding ('***Divilli v Housing Authority & Anor***').

2. Separately to the interlocutory steps which are subject of the revised orders made by his Honour Justice Jackson on 16 December 2024, this letter outlines a number of outstanding requests in correspondence from the Applicant, as well as several new matters that have more recently emerged.

Outstanding matters

Status of Ms Divilli's repair and maintenance issues

3. We refer to the correspondence from Australian Lawyers for Remote Aboriginal Rights ('**ALRAR**') sent to the Housing Authority dated 26 July 2024 in relation to ongoing repair and maintenance issues at Jonnine Divilli's premises.

4. As confirmed in our letter dated 16 August 2024 to the State Solicitor's Office ('**SSO**'), we now represent Ms Divilli in relation to her claims against the Housing Authority.

5. We have not yet received a response to the letter dated 26 July 2024. We would be grateful for an update on the repairs and maintenance issues raised in that letter, and in particular, the status of the repair regarding the electrical safety of Ms Divilli's home. We reiterate that the electricity at her home was found to be un-earthed.

Communications with Ms Divilli

6. We refer to our letter to the SSO dated 20 November 2024. In particular, we call your attention to paragraphs 8-11 of that letter, requesting all non-urgent communications from the Respondents to Ms Divilli be directed to Slater and Gordon.

7. We are yet to receive a response from the Respondents in relation to that request and seek such a response again.

Further provision of documents

8. We note that there are also several outstanding requests in relation to the provision of documents from the Respondents. In particular, we call attention to:

    a) The request for the documents and information contained in paragraph 7 of our letter to the SSO dated 1 November 2024; and

    b) The request for documents contained in paragraphs 5, and 8-11 of our letter to the SSO dated 20 November 2024.

9. We reiterate those requests and ask they now be provided promptly, noting that the Respondents' response to the request listed in paragraph 8(a) above has now been outstanding for over ten weeks.

Document Management Protocol

10. We note that the parties in *Divilli v Housing Authority & Anor* are yet to formally agree on an electronic Document Management Protocol ('**DMP**') to be used in the proceeding.

11. On 15 November 2024, we sent the latest iteration of our proposed DMP ('Draft 2.0') to the SSO and have not yet received a substantive response in relation to the same. We also note that, pursuant to his Honour's orders dated 16 December 2024, the parties must confer and attempt to agree on a DMP by 14 February 2025.

12. We would be grateful if the Respondents could provide a response to the Draft 2.0 DMP as soon as possible and by 24 January 2025. That will have been over two months after it was first provided to your clients. It will leave only a few weeks for it to be resolved before agreement was foreshadowed by the orders.

New matters

Issuance of Tenant Liability Notices to Group Members

13. We refer to our previous correspondence with the SSO regarding the Decision Review Form issued to our client and Lead Applicant of this proceeding, Jonnine Divilli, on 17 October 2024 in relation to certain "tenant liability" charges.

14. The SSO's letter of 13 November 2024 confirmed that the Decision Review Form issued to Ms Divilli was retracted on a "reservation of rights" basis, and that if the Housing Authority decides to pursue any of the "tenant liability" charges in the Decision Review Form, it intends to do so by way of set-off or counterclaim in *Divilli v Housing Authority & Anor*.

15. This correspondence has prompted us to suggest that a protocol be put in place regarding the Respondents' communications with group members regarding "tenant liability" charges.

16. We are concerned that the Respondents' issuing of correspondence regarding "tenant liability" charges to group members could adversely impact group member claims and rights in the proceeding. We consider the proper venue for any such liabilities to be considered and resolved is now within the context of the active Federal Court of Australia proceeding.

17. We note that s 33ZF of the *Federal Court Act 1976* (Cth) empowers the Court, in appropriate cases, to control aspects of a Respondent's communications with unrepresented group members, including in order to protect the integrity of the court process (*Davaria Pty Ltd v 7-Eleven Stores Pty Ltd* (2020) 143 ACSR 553 at [108]). As per paragraph 11.2 of the *Federal*

Court of Australia Class Actions Practice Note, the Court may establish a protocol for such communications.

18. As such, and to provide the Respondents and group members with clarity regarding what communications are appropriate, we would appreciate the Respondents' views as to whether, in principle, they are willing to develop a communications protocol in respect of "tenant liability" notices for the duration of the proceeding.

Status of repair and maintenance issues raised in letter of Mr Jeremy King

19. We refer to the letter of Mr Jeremy King, of the Western Australian Department of Communities ('**DoC**') to Mr Daniel Kelly of ALRAR dated 29 August 2024.

20. Mr King's letter made the following remarks:

> **"***- as at 28 August 2024 the [Housing] Authority has conducted inspections at 170 properties.*
>
> *- as at 28 August 2024, the Authority has issued 570 maintenance work orders, with 504 of these being completed. This work is ongoing.*
>
> *- as at 28 August 2024, a further 829 maintenance items are being batched by trade and community and will be issued to contractors shortly to ensure an efficient delivery of maintenance to these remote locations The work is ongoing*."

21. The repair and maintenance issues raised by Mr King are in respect of properties whose tenants are now group members in *Divilli v Housing Authority & Anor*.

22. Slater and Gordon have received enquiries from group members who are seeking updates regarding the repairs reported to the Housing Authority by ALRAR. We would accordingly appreciate if the Respondents would provide Slater and Gordon with an update promptly as to the status of the ongoing and incomplete repair and maintenance issues referred to in the letter of Mr King dated 29 August 2024.

Request re Ms Divilli's rent receipts

23. We refer to the Housing Management Agreement for Yurmulun Aboriginal Corporation (previously known as Pandanus Park) ('**the Pandanus Park HMA**') applicable to Ms Divilli's residence.

24. Under clause 4.3(e) of the Pandanus Park HMA, the Housing Authority agrees to, inter alia, "…*issue receipts for all Rent collected when requested by a Tenant*…".

25. We hereby request on her behalf that all rent receipts for Ms Divilli issue and be sent directly to Slater and Gordon.

Agreement as to the non-application of section 21 of the Residential Tenancies Act 1987 (WA)

26. Finally, we note that section 21 of the *Residential Tenancies Act 1987* (WA) ('**RTA'**) states that:

> *'In any proceedings on an application under this Act, a competent court shall not be bound by the rules of evidence but may inform itself upon any matter relating to the proceedings in such manner as it thinks fit.'*

27. In our view, given the complexity of the proceeding, it is 'fit' for the claims arising under the RTA in *Divilli v Housing Authority & Anor* to be dealt with on the basis that the normal rules of evidence apply for proceedings in the Federal Court of Australia, including those contained the *Evidence Act 1995* (Cth).

28. We propose obtaining a ruling or orders by consent from the Court in this regard. If the Respondents agree, we will prepare a draft communication and consent order for your consideration. Please respond in this respect by 24 January 2025.

Please contact me on 0417 197 859 for any further information or to discuss the contents of this letter.

Kind regards

Gemma Leigh-Dodds
Principal Lawyer
SLATER AND GORDON

Slater Gordon Lawyers

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Our Ref: VID 809/2024

28 May 2025

Cameron McLean & Simon Hubbard
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By email only: simon.hubbard@dlapiper.com; Cameron.Maclean@dlapiper.com

Dear Colleagues

Re *Jonnine Jaye Divilli v Housing Authority & Anor* VID 809/2024

We refer to the above matter and the orders of the Court made on 9 September 2024 (as amended by the orders of the Court made on 16 December 2024 and 30 April 2025) (the **Orders**) requiring the parties to confer for the purpose of agreeing to the discovery to be given by the parties. The purpose of this letter is to address:

(a) our concerns regarding the Respondents' commitment to the timely and efficient completion of the discovery process; and

(b) the resultant prejudice to the Applicant, who may not have access to necessary information to prepare discovery materials in advance of the first Case Management Hearing scheduled for 16 July 2025.

More broadly, we are concerned regarding delays in responding to significant litigation issues, including matters affecting the health, safety and financial position of the Applicant, Ms Divilli. This seems to be tension with the obligations on parties imposed by s 37M of the *Federal Court of Australia Act* 1976 (Cth).

Affidavit identifying certain matters

1. Order 7 of the Orders, required the Respondents to file an affidavit identifying, inter alia:

   (a) "*where documents responsive to the substantive issues raised in the Applicant's filed statement of claim are stored, what type of documents exist, in what form they are held, and the likely timetable and costs of making discovery of those documents*."

2. The affidavit of Mr Craig Newton was filed on 30 April 2025 (**Newton Affidavit**). It only partially complied with this Order, given:

   (a) Limited scope: The Newton Affidavit identified documents responsive only in respect of tenancies and properties subject to a Housing Management Agreement ('**HMAs**'). It did not contain any reference to documents in respect of tenancies *not* subject to an HMA, notwithstanding the Applicant's claims are brought on behalf of all Aboriginal tenants in public housing provided by the Respondents in the defined areas.

   (b) Missing systemic documents: The Newton Affidavit did not provide any reference to documents relating to the widespread systemic breaches pleaded in the Applicant's filed Amended Statement of Claim (**ASOC**) dated 25 November 2024, including those indicated from breaches of the Health and Safety term, the Secure Housing term, the Repairs term,

the Reasonable Comfort term, the Repair Systems term and the Australian Consumer Law of the Respondents' administration of public housing across the pleaded areas. The relevance of these claims to the proceeding and the initial trial as being common to the group were outlined in Slater and Gordon's letter to the State Solicitor's Office (**SSO**) of 1 November 2024. No response questioned the 1 November 2024 letter.

3. Since receiving the Newton Affidavit, a number of attempts have been made to obtain further information regarding documents pertaining to these issues, including:

   (a) a letter sent to the Respondents on 14 May 2025 outlining concerns the Applicant held regarding the Respondents' apparent understanding and characterisation of the claims arising from the limited scope of the Newton Affidavit.

   (b) by email on 21 May 2025, Slater and Gordon requested that the Respondents provide their assessment of the Applicant's proposed discovery categories by 23 May 2025.

   (c) by telephone on 23 May 2025, Slater and Gordon were informed that the Respondents would not be able to advise of their position until the end of the following week.

4. Accordingly, we request the Respondents provide a supplementary affidavit by 4 June 2025 addressing the deficiencies in the Newton Affidavit, particularly regarding non-HMA tenancies and systemic breach documents and their application to Order 7.

Failure to respond to request for Further and Better Particulars and other matters

5. To narrow potential discovery issues the Applicant has actively sought clarification through:

   (a) the issuance of two notices to admit in December 2024 and January 2025 (further extensions to respond to which were agreed); and

   (b) correspondence seeking clarification of the Respondents' position.

6. In particular, on 11 April 2025, the Applicant filed a request for Further and Better Particulars (**FBPs**). On the same day, the Applicant also issued a letter to the Respondents outlining a number of deficiencies in the Defence which are also relevant to the discovery categories sought by the Applicant.

7. Requests for the Respondents' response to the Applicant's FBP's and outstanding matters raised in the 11 April 2025 letter were made by Slater and Gordon:

   (a) by letter dated 14 May 2025;

   (b) by email dated 21 May 2025;

   (c) by telephone call on 23 May 2025; and

   (d) by further email on 26 May 2025.

8. Notwithstanding these requests, the Applicant has not received the Respondents' FBPs nor any substantive response to the issues raised in the 11 April 2025 letter at the time of this correspondence.

9. The purpose of serving the FBPs request several weeks prior to the time for discovery conferrals was to ensure that the Respondents' provision of FBPs could inform the Applicant's proposed discovery categories.

10. The Respondents' delay has adversely affected the Applicant's ability to put forward proposed discovery which accurately and comprehensively reflects the substantive issues in dispute between the parties.

11. The Applicant reiterates her request that the responses to the FBP's and outstanding matters raised in correspondence of 11 April 2025 be provided. We reiterate that a strike out application

concerning those aspects of the Defence is in consideration absent an adequate response to those requests.

Divilli communications from the Authority

12. We have, on numerous occasions, requested that correspondence from your clients to Ms Divilli be copied to our firm. This request was first made in correspondence to the SSO on 1 November and on 20 November 2024.

13. Initially, on 13 November 2024, the SSO indicated at paragraph 8 of its letter that the Authority "*proposes to engage with Slater + Gordon in good faith on an ongoing basis regarding the communications that may be required, or which may occur, with Ms Divilli from time to time*". However, no such engagement has materialised.

14. On 16 January 2025, Slater and Gordon highlighted to DLA Piper that a response was outstanding. After further repeated requests from Slater and Gordon, by your letter dated 6 March 2025, you advised that it would be "*impractical for the Authority*" to direct all non-urgent correspondence with Ms Divilli to our firm, citing the Authority's specialised automated systems for tenant communications. Instead, it was indicated that the Authority was *"considering the practicalities of implementing a routine review of correspondence sent to Ms Divilli, so that these may be provided to our firm and onforwarded to you. We will write to you further in that regard as soon as possible*." We have received no further communication on this matter.

15. Concerningly, we have recently become aware of documents produced by the Respondents revealing additional alleged “tenant liability” charges in relation to repair issues being raised by the Respondents which arose after the filing of this proceeding, and which Ms Divilli appears to be still paying.

16. These separate charges were not brought to Slater and Gordon’s attention at the time of the initial correspondence with the SSO in November 2024, nor in the months since, despite repeated requests for further information, and despite the agreement from the Respondents that similar charges raised at a similar time would not be pursued separately to this litigation.

17. This squarely concerns the issues we first raised six months ago regarding an appropriate communications regime which should be put in place for management of communications and materials with the Applicant.

18. The Applicant therefore seeks confirmation that:

    (a) any “tenant liability” charges raised after the filing of the proceeding on 19 August 2024 be set aside, as had been agreed to in relation to the Decision Review Form charges subject to the correspondence from the SSO on 13 November 2024;

    (b) the Respondents confirm no further tenant liability charges will be pursued against Ms Divilli or other tenants at the Divilli Premises while this proceeding is on foot; and

    (c) the Respondents engage with the Applicant’s proposal to develop an appropriate communications protocol in respect of “tenant liability” notices for the duration of the proceeding, as we had first proposed in the 16 January 2025 letter and as outlined by paragraph 11.2 of the *Federal Court of Australia Class Actions Practice* Note.

19. If the Respondents do not commit to paragraph 18 above by 4 June 2025, we will seek directions or an injunction from the Court on these matters at the upcoming Case Management Hearing without further notice to you.

Divilli tenant communications on file

20. We also note our request made to the SSO on 20 November 2024, and restated to your firm in correspondence dated 16 January 2025, for "*all documents, records, notes and other communications held on file for Ms Divilli, from the commencement of her tenancy to today's date*". By your letter dated 6 March 2025, you refused this request as *'neither reasonable nor*

feasible', noting that such documents would be produced in the course of discovery and suggesting the Applicant had no entitlement to receive them otherwise.

21. We note in this regard your clients have been aware of the proposed document requests relating to Ms Divilli's file for over six months.

22. Ms Divilli's tenant and property files are now being sought as a proposed discovery category (category F). We seek confirmation by written correspondence that:

    (a) the documents sought in the Applicant's proposed discovery categories in relation to category F are understood to encompass the materials sought by the Applicant in its correspondence of 20 November 2024 and 16 January 2025; and

    (b) these documents can be produced as a matter of priority, including prior to the upcoming Case Management Hearing.

23. Please confirm by 4 June 2025.

Outstanding repair status request for Jonnine Divilli

24. On 26 July 2024, Australian Lawyers for Remote Aboriginal Rights wrote to the Housing Authority to list a number of outstanding repairs of the Applicant's house. On 16 August 2024, Slater and Gordon confirmed to the SSO that we act for her in relation to her claims against the Housing Authority.

25. On 16 January 2025, Slater and Gordon requested an update on repairs and maintenance issues for the Applicant, including the "*status of the repair regarding the electrical safety of Ms Divilli's home*" which we reiterated included *"that the electricity at her home was found to be unearthed*".

26. By letter dated 6 March 2025, DLA Piper committed to writing to Slater and Gordon "*under separate cover*" with respect to the status of the repair works raised in the 26 July 2024 ALRAR letter. Such a letter was never received.

27. Please provide your clients' response by 4 June 2025.

Other

28. Finally, we refer to Slater and Gordon's letter of 16 January 2025 seeking the Respondents' agreement regarding the non-application of section 21 of the *Residential Tenancies Act*. The 16 January 2025 letter sought the Respondents' response by 24 January 2025. To date, no response has been received in relation to this issue.

29. Please provide your clients' position on this matter by 4 June 2025 for the Applicant to prepare a proposed consent order, or to include in her separate application for orders if it is not agreed.

Reservations as to costs

30. The Applicant reserves the right to seek an order as to costs in relation to any application necessitated by the Respondents' delay and/or deficiencies raised in this letter.

Yours sincerely

Gemma Leigh-Dodds
Principal Lawyer
SLATER AND GORDON

Slater Gordon Lawyers

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1 November 2024

Andrew Shuy and Gemma Mullins
State Solicitor's Office
David Malcolm Justice Centre
28 Barrack St
Perth WA 6000

By email only; g.mullins@sso.wa.gov.au a.shuy@sso.wa.gov.au

Dear Mr Shuy and Ms Mullins

***Divilli v Housing Authority & Anor* VID809/2024**

1. We refer to the above-mentioned proceeding.

2. We have become aware the Lead Applicant, Ms Jonnine Divilli, our client, was recently issued with a 'Decision Review Form' dated 17 October 2024 from the Housing Manager, noting a 'decision' in relation to alleged tenant liability charges for various repairs to her home. The total amount of the charge sought is $3066.90. As you know, Ms Divilli's home is a subject of this proceeding.

3. We are aware Ms Divilli's former lawyer, Australian Lawyers for Remote Aboriginal Rights (ALRAR), wrote to the Housing Authority on 28 March 2024 specifically in respect of our client and noted "*We are instructed also to request that all correspondence, notices and communications in relation to this Premises be forward to us on Ms Divilli's behalf. However, to the extent that you wish to inspect the Premises, please provide notice directly to that tenant, and provide us with a duplicate copy of the notice as soon as possible prior to the proposed inspection*".

4. We have liaised with ALRAR and they have not received any such correspondence.

5. We note that the State of Western Australia and Housing Authority both hold model litigant obligations. These include informing an Applicant's legal representative before directly contacting an Applicant party to active litigation.[1]

6. We therefore request confirmation by close of business on Monday, 4 November 2024, that
    a) None of the claimed amount in the Decision Review Form will be pursued against Ms Divilli.

[1] *Various Applicants from Santa Teresa v Chief Executive Officer (Housing)* [2019] NTCAT 7, [22]-[24].

b) All future correspondence or communication from the Housing Authority concerning her premises will be sent to Slater and Gordon, not directly to Ms Divilli.

7. Finally, given the alleged tenant liability notice relates to issues in this proceeding, we kindly also request:
    a) all documents relating to the purported 'decision' in relation to the tenant liability notice, and any others we may not be aware of, and
    b) an indication as to when and how Ms Divilli was afforded procedural fairness prior to the making of that decision.

8. We further expressly reserve our client's right to seek judicial review of that decision,[2] or to otherwise raise it in this proceeding, if the Housing Authority choose to let it stand.

9. Please contact me if you have any questions or wish to discuss.

Kind regards

Gemma Leigh-Dodds
Principal
SLATER AND GORDON

[2] *Rules of the Supreme Court 1971* (WA) Order 56, which provide a 6-month limitation period after a decision is made.

SSO Ref: 2142-22
Enquiries: Gemma Mullins | (08) 9264 1321 | g.mullins@sso.wa.gov.au

Ms Gemma Leigh-Dodds
Principal Lawyer
Slater + Gordon
Level 35, 530 Collins Street
MELBOURNE VIC 3000

By email: gemma.LD@slatergordon.com.au

Date: 13 November 2024

Dear Ms Leigh-Dodds

DIVILLI V HOUSING AUTHORITY AND STATE OF WESTERN AUSTRALIA; FEDERAL COURT APPLICATION; VID 809 OF 2024

1. I refer to your letter dated 1 November 2024 regarding a Decision Review Form dated 17 October 2024 and your subsequent email communications with our Mr Andrew Shuy.

1. DECISION REVIEW FORM

2. As stated in Mr Shuy's email dated 5 November 2024, I confirm that the Decision Review Form (including the charge to Ms Divilli's account referred to therein) is retracted on a "reservation of rights" basis.

3. If the Housing Authority decides to pursue any of the tenant liability charges the subject of the Decision Review Form, it intends to do so by way of set-off or counterclaim in the Federal Court proceeding.

4. It is therefore safe to assume that, if the charges are pursued, Ms Divilli will be accorded procedural fairness as part of the legal process (obviating any need to dispute whether there is an obligation to accord procedural fairness).

2. COMMUNICATIONS WITH MS DIVILLI

5. By paragraph [6(b)] of your letter dated 1 November 2024, you have requested that all future correspondence or communication from the Housing Authority concerning Ms Divilli's premises be sent to Slater + Gordon, rather than directly to Ms Divilli.

6. In the Housing Authority's respectful view, the request is too broad. There might be a need to contact Ms Divilli for emergency or routine matters unrelated to the proceedings. Ms Divilli might herself initiate contact with the Housing Authority

or Emama Nguda for some reason. Routine inspections will need to be carried out at the premises. Contractors will be required to attend the premises from time to time to carry out repairs and maintenance. While your reference to *Various Applicants from Santa Teresa v Chief Executive Officer (Housing)* [2019] NTCAT 7 is noted, much depends on the particular facts and circumstances of each case.

7. The Housing Authority maintains a system that sends automated communications to tenants, including rental statements, utility bills (where applicable), rental subsidy reviews and notice of bi-annual inspection letters. As a temporary measure, automatic communications for Ms Divilli's premises have been turned off. If Ms Divilli requests that Slater + Gordon receive her correspondence, and Slater + Gordon provide written and express confirmation of this request, the Housing Authority will input Slater + Gordon's nominated address into its system in respect of Ms Divilli's premises. The system does not have the capacity to split correspondence or send to multiple recipients, such that Slater + Gordon would need to onforward communications to Ms Divilli. For the avoidance of doubt, this would not obviate the need for the Housing Authority, or its agents, to contact Ms Divilli directly in respect of matters of the kind discussed in paragraph [6] above.

8. Otherwise, the Housing Authority proposes to engage with Slater + Gordon in good faith on an ongoing basis regarding the communications that may be required, or which may occur, with Ms Divilli from time to time. Recognising the nature of the Housing Authority's functions, the need to manage large numbers of tenancies via regional service providers (relevantly here, Emama Nguda), and the practicalities of managing an ongoing tenancy, the Housing Authority does not guarantee that no communications will be sent without prior notice to Slater + Gordon. Slater + Gordon should put in place suitable arrangements with Ms Divilli if it wishes to ensure that it is kept informed of all communications between her and the Housing Authority or its agents.

9. Please do not hesitate to contact me to discuss.

Yours sincerely

GEMMA MULLINS
ASSISTANT STATE SOLICITOR

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20 November 2024

Andrew Shuy and Gemma Mullins
State Solicitor's Office
David Malcolm Justice Centre
28 Barrack St
Perth WA 6000

By email only; g.mullins@sso.wa.gov.au a.shuy@sso.wa.gov.au

Dear Colleagues

***Divilli v Housing Authority & Anor* VID809/2024**

1. We refer to:
   a) our letter to you dated 1 November 2024 regarding a 'Decision Review Form' dated 17 October 2024 (**Our Letter**);
   b) the email exchange between Mr Shuy and myself on 5 and 8 November 2024; and
   c) the letter of Ms Mullins sent 13 November 2024 (**Your Letter**).

Document provision

2. Thank you for your confirmation that the Decision Review Form and the associated alleged charges to Ms Divilli's account has been retracted.

3. We reserve the right to challenge any such claims on their merits, procedural compliance and factual basis should your client pursue them through this proceeding.

4. We maintain our request as outlined at paragraph 7 of Our Letter, which remains unanswered. For convenience, it was:

   a) all documents relating to the purported 'decision' in relation to the tenant liability notice, and any others we may not be aware of (which we clarify means any other proposed tenant liability charges which were not contained in the Decision Review Form we have cited); *and*

   b) an indication as to when and how Ms Divilli was afforded procedural fairness prior to the making of that decision.

5. At the same time and in an effort to avoid duplication in later requests, we also request a copy of any documents, records, notes and other communications held on file for Ms Divilli, from the commencement of her tenancy at [redacted] Pandanus Park, to today's date.

6. We request that you provide the requested materials in paragraph 4 above as a matter of priority, noting this has now been requested for over a fortnight. We also seek an indication of when the documents requested at paragraph 5 could be provided.

7. If the Respondents decline to provide this material, we will consider seeking an order for the Court compelling its production. Those documents are clearly discoverable in the proceeding in any event.

Communications with Ms Divilli

8. Regarding an agreed process for future communications with Ms Divilli, we appreciate your consideration of the request that all correspondence regarding Ms Divilli's premises be directed to Slater and Gordon.

9. To clarify, we understand operational practicalities will require direct communication with Ms Divilli for emergencies or to arrange attendances at her premises. These activities can occur without prior notice being provided to Slater and Gordon.

10. However, these activities are also squarely relevant to Ms Divilli's claim, and to the issues raised to the class action in the Applicant's filed statement of claim. As such, we stress the importance of ensuring that communications regarding these matters, and others which may impact her rights (such as the issuing of liability notices) are promptly shared by the Authority with Slater and Gordon at the same time or shortly after they are provided to Ms Divilli.

11. We understand the First Respondent's system constraints in ensuring correspondence sent to Ms Divilli is provided to a second addressee. However, this can and should be reasonably addressed, particularly in the context of an active litigation. As such, Slater and Gordon should continue to receive any and all non-urgent communications directed to Ms Divilli, so we may consider their relevance for this proceeding.

Kind regards

Gemma Leigh-Dodds
Principal
SLATER AND GORDON

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Ms Gemma Leigh-Dodds
Slater & Gordon
Level 35, 530 Collins Street
MELBOURNE VIC 3000

Your reference

2442-24

Our reference

SDH/SDH/3148015/736070
AUM/1300501836.1

By Email : *gemma.ld@slatergordon.com.au*

6 March 2025

Dear Colleagues,

DIVILLI -V- HOUSING AUTHORITY & ANOR
FEDERAL COURT PROCEEDINGS VID 809 OF 2024

1 We refer to your letter dated 16 January 2025 (**Your Letter**).

Correspondence regarding other housing tenants

2 Your Letter requests that we address correspondence to your firm with respect to: (a) repair and maintenance works carried out for, and (b) tenant liability notices issued to, tenants other than the applicant in these proceedings (**Ms Divilli**).

3 It is our client's view that is not appropriate for it to address any such correspondence to your firm, save where it has received correspondence that you are acting for a specific tenant. You will appreciate that correspondence of the kind sought is likely to contain personal and sensitive information. Our client is not at liberty to disclose to third parties without express consent.

4 We otherwise confirm that our firm will not correspond with any tenants directly.

5 This addresses the matters raised in paragraphs [13]-[22] of Your Letter. The balance of this letter addresses the queries raised with respect to Ms Divilli personally.

Queries and requests regarding Ms Divilli

Requested Repair Works

6 Our client acknowledges that a number of requests for maintenance works were made by ALRAR on Ms Divilli's behalf by letter dated 26 July 2024. We are instructed that our client has, and is continuing to, consider the maintenance requests made on Ms Divilli's behalf in accordance with its lawful obligations. We will write to you under separate cover with respect to the status of those works.

Communication with Ms Divilli

7 Our client has considered your request that the Housing Authority direct all non-urgent correspondence with Ms Divilli to your firm. We are instructed that it is impractical for the Housing Authority to do so. The communications from the Housing Authority to its tenants is largely made through its specialised automated systems. It would impose considerable logistical burdens upon our client to change those systems to accommodate the request.

8 Our client is considering the practicalities of implementing a routine review of correspondence sent to Ms Divilli, so that these may be provided to our firm and onforwarded to you. We will write to you further in that regard as soon as possible.

Requests for Documents

9 In answer to the request at paragraphs [23]-[25] of Your Letter, we **attach** a statement of account for Ms Divilli's tenancy between the period from 6 July 2015 to 7 February 2025.

10 At paragraph [8](a) of Your Letter, you repeat a request made on 20 November 2024 for the production of copies of:

> *"all documents, records, notes and other communications held on file for Ms Divilli, from the commencement of her tenancy... to todays date"*.

11 The production of such documents is neither reasonable nor feasible for our client to comply with. It is also not clear on what authority your client says that she would be entitled to production of such documents. As you will appreciate, the parties are progressing toward discovery in these proceedings. Our client is in the process of reviewing documents for that purpose, and Ms Divilli will be provided with all documents from her file that are discoverable in due course (that is, following reasonable reviews and consideration by the respondents). If your client asserts that she is entitled to access to documents sooner, please advise us under what authority she asserts that to be the case, and the scope of documents such authority provides access to.

12 Your Letter also repeats at, paragraph [8](b), a request made on 1 November 2024 for the production of documents relating to a Decision Review Form issued by the Housing Authority to Ms Divilli on 17 October 2024. We confirm that the State Solicitor's Office wrote to your firm on 13 November 2024 advising that:

12.1 the Housing Authority had withdrawn the Decision Review Form on a reservation of right basis; and

12.2 if the Housing Authority is to pursue recovery of tenant liability charges from Ms Divilli, it will do so by way of set-off or counterclaim in these proceedings.

13 In the circumstances, the issue of the Decision Review Form has been subsumed into these proceedings. As such, our clients comments in paragraph [9] above apply equally to this request. Should our client seek recovery by way of counterclaim and set-off in the proceedings, it will provide your client with discovery of the documents underlying that claim at the relevant time.

14 Please call us should you wish to discuss these matters further in the interim.

Yours sincerely,

Simon Hubbard
Special Counsel

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Partner

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Government of **Western Australia**
Department of **Housing**

TENANCY AGREEMENT

BACKGROUND

The Housing Authority ("Authority") and Pandanus Park ("Organisation") made an
(Insert Community Name)
agreement called a Housing Management Agreement or "HMA". This agreement allows the Authority to control and manage the letting and leasing of rental houses in the community.

Under the HMA the Authority talks about things related to your tenancy agreement with the Organisation's Community Council, like any Special Conditions which might form part of this Agreement. To do this properly, the Authority may need to give your personal information to the Organisation's Community Council, and the Organisation's Community Council may only use that information for issues relating to your tenancy.

The Authority acts as the 'lessor' of the rental premises for the purposes of this Tenancy Agreement and has all the rights and obligations of an owner under the Residential Tenancies Act 1987 ("Act") as modified by the Residential Tenancies Regulations 1987 ("the Regulations"), but the HMA does not give the Authority ownership of or any legal interest in the land where the rental premises are located.

This Tenancy Agreement ("Agreement") sets out the rights and responsibilities of the tenant and the Authority with respect to the rental premises.

This is a binding legal document enforceable in the Magistrates Court by both the tenant and the Authority. Some important matters affecting tenants and the Authority are set out in the Act and Regulations, which defines a 'tenancy' and contains statements regarding the legal rights of lessors and tenants of residential premises in Western Australia.

THIS AGREEMENT IS MADE BETWEEN:

The Housing Authority of 99 Plain Street, East Perth, Western Australia *(acting through their agent named in Item 6 of the Schedule)* (lessor)

[*Note: Delete the words in italics if this agreement is to be signed by an authorised office of the Housing Authority*]

- and -

The person(s) named in Item 7 of the Schedule (tenant[s]).

THIS AGREEMENT is in 2 parts:

Part 1 Schedule and Operative Part (setting out the terms and conditions of this agreement.)

Part 2 Property Condition Report (Ingoing)

IMPORTANT Information for Tenants

1. The lessor or the lessor's agent must give the tenant a copy of Form 1AC "Information for tenant – what you must know about your tenancy" at the time when this agreement is signed.
2. The lessor must (within 14 days, or where that is not practicable, within such longer period as is so practicable) give the tenant a copy of this tenancy agreement for the tenant to keep after the agreement is signed by both parties.

JD BR

Initials Initials

SCHEDULE

ITEM 1.	COMMENCEMENT DATE OF TENANCY	27 / July /2015. (Day / Month / Year)
ITEM 2.	COMMUNITY LOCATION	Yurmulun (Pandanus Park)
ITEM 3.	ADDRESS OF RENTAL PREMISES	No. [redacted] (Lot [redacted]), Pandanus Park road (enter number) (enter Lot No) (enter street name if applicable)
ITEM 4.	TERM OF TENANCY	This agreement creates a periodic tenancy in accordance with the *Residential Tenancies Act 1987* commencing on the date referred to in Item 1.
ITEM 5.	NAME & ADDRESS OF LESSOR	The Housing Authority of 99 Plain Street, East Perth WA 6004.
ITEM 6.	NAME, ADDRESS & CONTACT NUMBER OF LESSOR'S AGENT	_____
ITEM 7.	NAME OF TENANT[S]	Jonnine Divilli (Enter name of Tenant 1) Bayden Rivers (Enter name of Tenant 2 – if applicable)
ITEM 8.	AMOUNT OF RENT PAYABLE	Rent Period = ☐ weekly ☒ fortnightly The rent payable by the Tenant[s] is $ _____ (enter amount)
ITEM 9.	METHOD OF PAYMENT	The rent must be paid into the following account: _____ : _____ : _____ (name of institution) (bsb number) (account number)
ITEM 10.	SECURITY BOND	The bond is $ _____ (enter amount) payable upon signing of this Agreement and before taking possession of the premises. (strike out if bond is not payable)
ITEM 11.	NUMBER OF PERSONS TO OCCUPY THE PREMISES	A minimum of ___ (insert number) and a maximum of ___ (insert number) may occupy premises.
ITEM 12.	SPECIAL CONDITIONS	As set out in Annexure "A" of this Agreement.
ITEM 13.	TENANT'S AGENT	The name of the person who can represent the tenant when the tenant is away from the premises is _____ (insert name)

JD Initials BR Initials

OPERATIVE PART

The following provisions set out the terms and conditions of this Agreement.

1. GRANT OF TENANCY

Premises

1.1 The lessor leases to the tenant[s] and the tenant[s] accepts the lease of premises situated at the address referred to in Item 3 of the Schedule.

1.2 The premises must only be used for residential purposes. The lessor may, in the lessor's sole and absolute discretion, permit the tenant[s] to use the premises (or part thereof) for non-residential purposes.

Period of Possession

1.3 The term of this Agreement is the period referred to in Item 4 of the Schedule.

Amount of Rent payable by Tenant[s]

1.4 The tenant[s] must pay the RENT amount referred to in Item 8 of the Schedule.

1.5 The rent must be paid one period in advance from the commencement date and thereafter in the manner set out in Item 9 of the Schedule.

Rent Provisions

1.6 The rent is the amount identified at Item 8 of the Schedule (as subsequently varied or reviewed pursuant to the provisions of this Agreement).

- rent increase –

1.7 The lessor may increase or decrease the rent at any time including without limitation as a result of the lessor's annual review or upon the tenant[s] notifying the lessor of a change in the tenant[s] income or family circumstances in accordance with clause 3.3.

1.8 The tenant[s] acknowledges and agrees that the new rent which is to apply following a review under clause 1.7 is to be determined and calculated in accordance with Annexure B, "Rent Policy".

1.9 Annexure B, "Rent Policy" is deemed to be incorporated into this agreement and to apply to and form part of this Agreement as if it had been fully set out in this agreement.

- notice of rent increase -

1.10 The lessor may change or amend the method for calculating the rent which is set out in Annexure B, "Rent Policy" by giving the tenant[s] no less than 60 days written notice of such amendment or change, provided that the amended or changed method will not take effect any earlier than 6 months after the commencement of this Agreement or within 6 months of the last amendment or change to the method.

1.11 The tenant[s] acknowledges and agrees the lessor is not required to give the tenant[s] any notice before the lessor increases or decreases rent in accordance with clause 1.7. Notwithstanding this, the lessor shall take reasonable steps to notify the tenant[s] of any change in rent.

Use of Premises

1.12 The tenant[s] agrees to comply with the terms of this Agreement and with all the rules and by-laws governing the use of the premises and common areas.

Lessor's access to the Premises

1.13 The lessor or the lessor's agent may enter the premises:

(a) with the consent of the tenant[s] given at or immediately before the time of entry;

(b) in the case of an emergency;

(c) to inspect and secure the premises if there are reasonable grounds to believe that premises have been abandoned and the tenant[s] has not responded to a notice from the lessor;

(d) for the purposes of collecting rent;

(e) to conduct up to 4 routine inspections in a 12 month period after giving between 7 and 14 days written notice;

(f) at any reasonable time after giving the tenant[s] not less than 72 hours notice in writing before the proposed entry.

For the purpose of this clause 1.13, reasonable time shall mean between 8am and 6pm on a weekday; between 9am and 5pm on a Saturday and any other time agreed to by the parties.

Appointment of Agent

1.14 The tenant[s] may appoint a person referred to in Item 13 of the Schedule to represent them while the tenant[s] is away, for example attending to cultural considerations set out in Annexure A of this Agreement, if the lessor needs to attend the premises pursuant to clause 1.13.

Special Conditions

1.15 The lessor and the tenant[s] agree that the Special Conditions referred to in Item 12 of the Schedule as contained in Annexure A form part of this Agreement.

Community By-Laws

1.16 The Parties agree that Community By-laws may affect this Agreement.

2. THE LESSOR

Supply of the Premises

2.1 The lessor must give the tenant[s] vacant possession of the premises on the commencement date specified in Item 1 of the Schedule and must provide the premises to the tenant[s] in a reasonable state of cleanliness and state of repair having regard to its age and character.

2.2 The lessor must comply with all laws affecting the Premises, including building, health and safety laws.

Repairs-

2.3 The lessor must maintain the premises in a reasonable state of repair having regard to its age and character.

2.4 The lessor must arrange for any repairs which are the lessor's responsibility under clause 2.3 to be carried out within a reasonable period of time after the need for the repairs arises, save and except that if the tenant[s] gives the lessor notice of the need for urgent repairs (as defined in s.43(1) of the Act) the lessor must ensure that the repairs are carried out by a suitably qualified repairer as soon as possible after receiving the notification.

2.5 The tenant[s] may only arrange for the urgent repairs to be carried out if:

2.5.1. the tenant[s] is unable to contact the lessor or the lessor's agent;

(i) within 24 hours in relation to urgent repairs required to essential services (as specified in the Regulations); or

(ii) within 48 hours (or such longer period prescribed in the Regulations) in relation to other urgent repairs; or

2.5.2. having notified the lessor or the lessor's agent:

(i) if the Premises are located within metropolitan region (as defined in s.4(1) of the *Planning & Development Act 2005)*, the lessor or the lessor's agent has failed to ensure that the repairs are carried out in accordance with clause 2.4 as soon as practicable after the notification; or

(ii) if the Premises are located outside the metropolitan region (as defined by the *Planning & Development Act 2005)*, the lessor or the lessor's agent fails to keep the tenant[s] informed of the efforts being made to carry out those repairs; and

2.5.3. the repairs are carried out by a suitably qualified repairer to the minimum extent necessary to effect those repairs.

2.6 If the tenant[s] carries out the urgent repairs in accordance with clause 2.5, the lessor shall reimburse the tenant[s] for the reasonable expenses incurred by the tenant[s] in arranging for those repairs and the reasonable cost of those repairs.

Tenant[s] right of peace, comfort and privacy

2.7 The lessor shall not cause or permit any interference with the reasonable peace, comfort or privacy of the tenant[s] in the use of the premises and shall take all reasonable steps to enforce this obligation upon any other tenant[s] in occupation of adjacent premises.

Locks and security devices

2.8 The lessor must provide and maintain all locks and other devices that are necessary to ensure premises are reasonably secure, and neither the lessor nor the tenant[s] shall alter, remove or add any locks or other devices without the consent of the other given at or immediately before the time of alteration, removal or addition of any lock or device.

Rates

2.9 The tenant is not responsible for paying any local government rates (including water rates).

Exemptions & Exclusions from the Act

2.10 The lessor is exempt from the following provisions of the Act:

(a) Section 33 which requires the issuing of receipts for the payment of rent;

(b) Section 27A which requires use of a prescribed form of residential tenancy agreement; and

(c) Section 30(1) which governs rent increases.

2.11 The following provisions of the Act apply in a modified form to the lessor: s.27C(4), 43(3), 45, 47(1)(b) and 93(1)(b).

3. THE TENANT[S]

Tenant Responsibility

3.1 The tenant[s], upon signing of this Agreement, agrees to be responsible for tenant obligations set out in this Agreement.

3.2 Where the tenancy comprises of more than one (1) person, the obligations to be performed under this Agreement are binding on each of the persons jointly and severally.

Payment of Rent

3.3 The tenant[s] agrees to:

3.3.1 pay rent on time, failing which the lessor may issue a notice of termination and, if the rent is still not paid in full, the lessor may take action through the courts to evict the tenant;

3.3.2 immediately notify the lessor of a change[s] in the tenant[s]'s income or family circumstances as specified in Annexure B, "Rent Policy".

Use of Premises

3.4 The tenant[s] must:

3.4.1 use the premises as a place of residence;

3.4.2 not use or allow the premises to be used for any illegal purpose;

3.4.3 not cause or permit a nuisance;

3.4.4 not cause, or permit to be caused, an interference with the reasonable peace, comfort or privacy of a person residing in the immediate vicinity of the premises;

3.4.5 not intentionally or negligently cause or permit damage to the residential premises;

3.4.6 advise the lessor or the lessor's agent as soon as practicable if any damage occurs;

3.4.7 keep the premises in a reasonable state of cleanliness;

3.4.8 not cause or allow to be caused injury to the lessor, the lessor's agent or

any person lawfully on adjacent premises; and

3.4.9 not allow anyone who is lawfully at the premises to breach the terms of this Agreement.

3.5 The tenant[s] is responsible for the conduct or omission of any person lawfully on the premises that results in a breach of the Agreement.

3.6 The tenant[s] must not keep any unlicensed or un-roadworthy vehicle on the premises without the prior written consent of the lessor. Such consent is not to be unreasonably withheld.

3.7 In this section 'vehicle(s)' includes car, truck, bus, trailer, caravan, boat, motorcycle or any other vehicle whether capable of being licensed or not and whether or not in working order.

Subletting or Assignment

3.8 The tenant[s] must not sublet or assign the tenant[s] interest in the premises or this Agreement without the prior written consent of the lessor (consent will not be unreasonably withheld).

Occupation of Premises

3.9 The tenant[s] must not at any time, without the written consent of the lessor, allow the premises to remain unoccupied for a continuous period in excess of two months and must not in any continuous period of 12 months during the tenancy, allow the premises to remain unoccupied for any period or periods which alone or together exceed three months. If the tenant[s] intends to leave the premises unoccupied for a continuous period in excess of two months, the tenant[s] must give the lessor one month's notice in writing of this intention. The lessor shall not withhold the lessor's consent if the lessor is satisfied, in the lessor's absolute discretion, that the tenant[s] has good reason to temporarily vacate the premises and that such vacation will not prejudice the condition of the premises.

3.10 If a tenant[s] is required to vacate the premises:

3.10.1 due to cultural circumstances, the lessor may apply clause 2 of the Special Conditions; or

3.10.2 where provisions under the Community By-laws are exercised by the Organisation and impact on the tenant[s] ability to comply with clause 3.9, the lessor may apply clause 1 of the Special Conditions (determined on a case by case basis and before any further action is taken).

Tenant to maintain standard of premises

3.11 The tenant[s] must keep the premises in a condition that does not (and shall ensure that the tenant[s]'s activities on the premises do not) attract rodents, vermin, insects (excluding white ants, termites, Singapore ants and bees), birds, animals or other pests and if the tenant fails to comply with this obligation, then the tenant[s] shall be responsible for the eradication of any infestations, including without limitation, the employment of a pest exterminator, approved by the lessor, to carry out the necessary work. Without limiting the effect of clause 3.4.7, the tenant[s] must:

(a) maintain the garden to comply with community standards;
(b) water the lawn, trees and shrubs;
(c) mow the lawn and/or slash long grass; and
(d) remove and dispose of all rubbish from premises.

In this section **'rubbish'** includes domestic refuse, lawn clippings or other garden refuse.

Property Damage and Personal Injury

3.12 The tenant[s] must not intentionally or negligently cause or allow any other person (whether other householders, visitors or relatives) to cause damage to the premises or adjoining premises.

Fixtures, Alterations and Improvements

3.13 The tenant[s] must not affix any fixture or make any renovation, alteration or addition to the premises or common areas without the prior written permission of the lessor; which is not to be unreasonably withheld. The tenant[s] must also obtain the prior written permission from the lessor before removing any fixture attached by the tenant[s], and must notify the lessor of any damage caused by such removal and, at the option of the lessor, the tenant[s] must repair the damage or compensate the lessor for any reasonable expenses incurred by the lessor in repairing the damage.

3.14 If the lessor wants to make any renovation, alteration or addition to the premises or affix a fixture to the premises, then:

3.14.1 the lessor must obtain the tenant[s]'s permission prior to affixing any fixture or making any renovation, alteration or addition to the premises; and

3.14.2 the tenant[s] must not unreasonably refuse permission for the lessor to affix any fixture or make any renovation, alteration or addition to the premises.

Pets

3.15 The tenant[s] must not keep a dog which is listed in the *Dog (Restricted Breeds) Regulations 2002* which includes dogo Argentino, fila Brasilerio, Japanese tosa, American pit bull terrier or pit bull terrier.

Utility Services

3.16 The tenant[s] is responsible for the payment of all water consumption, electricity, gas, telephone and connection charges in respect of the premises.

Insurance

3.17 The tenant[s] is responsible for insuring the tenant[s'] personal property.

4. GENERAL PROVISIONS

End of Agreement

4.1 The tenant[s] agrees, when this agreement ends, to give vacant possession of the premises to the lessor. Before giving vacant possession to the lessor the tenant[s] must:

4.1.1 remove all the tenant[s]'s property from the premises; and

4.1.2 leave the premises as nearly as possible in the same condition, fair wear and tear excepted, as at the commencement of this tenancy agreement.

Vacating the Premises

4.2 This Agreement may be ended:

4.2.1 by agreement in writing between the lessor and the tenant[s]; or

4.2.2 by either the lessor or the tenant[s] by giving written notice of termination to the other party. The notice does not need to specify any grounds for the termination of this agreement. The notice may be given at any time. The lessor must give at least 60 days' notice and the tenant[s] must give at least 21 days' notice.

4.3 The tenant[s] must upon vacating the premises return to the lessor all keys (including any duplicate copies).

Termination Provisions

- other than non-payment of rent –

4.4 If the tenant[s] breaches an obligation arising under this Agreement (other than the non-payment of rent) the lessor may give notice, requesting the tenant[s] to rectify the breach.

4.5 If the tenant[s] does not rectify the breach, then not less than 14 days after the first notice was given, the lessor may give a termination notice to the tenant[s] to

end the tenancy on a day that is not less than 7 days after the second notice is given.

- non-payment of rent –

4.6 If the tenant[s] does not pay rent due under the agreement, the lessor may give a notice to the tenant[s] requiring payment of the outstanding rent.

(a) If the rent is not paid, the lessor may give a termination notice to the tenant[s] not less than 14 days after the first notice was given, to end the tenancy on a day that is not less than 7 days after the second notice is given.

(b) If the tenant[s] pays the rent due under this Agreement together with the amount of any court application fee at least one day before the scheduled court hearing, any application to a competent court to end the tenancy shall be discontinued.

- endorsement of Community Council -

4.7 Prior to taking any breach or termination action referred to in clause 4.4 to clause 4.6 inclusive, the lessor must ensure that the lessor complies with the requirements of the Housing Management Agreement between the lessor and the Organisation's Community Council.

- inspection of premises -

4.8 The lessor must, as soon as practicable, and in any event :

4.8.1 if the premises are located more than 100kms from the nearest office of the lessor, within 28 days after the termination of this Agreement;

4.8.2 in all other cases, within 14 days after the termination of this Agreement,

conduct an inspection of the premises, prepare a final report describing the condition of the premises and provide a copy of the report to the tenant[s].

4.9 The lessor is not required to comply with clause 4.8 within the period specified in clause 4.8 if, in that period, the lessor is unable to inspect the premises because of weather conditions, road closure or a person of Aboriginal descent (as defined by s.4 of the *Aboriginal Affairs Planning Authority Act 1972*) who is part of the community who lives on the land in which the premises are located refuses to give the lessor access to the land.

4.10 The tenant[s] shall be given a reasonable opportunity to be present at the inspection.

ANNEXURE "A" SPECIAL CONDITIONS

The following provisions form the Special Conditions referred to in Item 12 of the Schedule in this Agreement.

1: Treatment of Abandonment of Premises

The lessor will not consider premises to be abandoned or take action to terminate the tenancy for a period of not less than two (2) months and not exceeding _____ [enter timeframe agreed to under HMA – to be written as follows e.g. six (6) months] where provisions under the Community By-laws are exercised by the Organisation that impact on the tenant[s] ability to comply with their obligations under this Agreement (to be determined on a case by case basis).

2: Cultural Circumstances

The following events are considered a 'cultural circumstance' for the purposes of this Agreement:

Event	Period of Absence	Rent Payment
Sorry Business	9months (enter timeframe – to be written as follows – two (2) months)	No rent (enter will not apply OR will continue to apply)
Law Business	9 months (enter timeframe – to be written as follows – two (2) months)	No rent. (enter will not apply OR will continue to apply)

3: Community By-Laws

The tenant must obey any Community By-Laws which exist or are passed from time-to-time by the Community Council.

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ANNEXURE "B" RENT POLICY

Tenants are charged rent according to either of the 2 options outlined below.

(Bolded terms are defined under 'Meaning of Terms Used' on the last page)

RENT OPTION 1

1. **Tenants** who keep the Department of Housing or its agent[1] up to date with their household income details; including from the annual income review; will pay 25% (or, in the case of some Australian government payments only, such lesser percentage of those payments as is specified in the table in paragraph 7) of the total **assessable income** of all members of the household in rent, unless paragraph 2 below applies.

    - For premises where the Department of Housing does not pay LGA rates, the rent amount paid by the tenant is further reduced by an amount equivalent to the LGA rates minus the amount of any fees or charges paid by the Department of Housing for local government services to the property.

2. If 25% of the household **assessable income** is greater than the maximum rent (see below) then the rent payable is the maximum rent.

3. This means no household, who pays rent under Option 1, will pay more than 25% of their household assessable income in rent.

4. All **household members'** incomes are included.

5. Some payments from the Australian government are non-assessable. **Non-assessable income** amounts are not included in the rent calculation.

6. Any incomes not paid by the Australian government such as wages, salary, annuities and foreign pensions are fully assessable. This means 25% of these incomes are paid in rent.

7. Some payments from the Australian government are partially included. This means that less than 25% of these incomes are paid in rent. The table below lists the income type or householder and the proportion of the income that is paid in rent.

Income/householder category	**Proportion paid in rent**
Income of tenants and partners (including statutory incomes, wages/salary, interest and income from financial and property assets)	25%

[1] Agent includes a Regional Service Provider who manages the tenancy.

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Basic Family Tax Benefit Part A (minimum payment)	0%
Additional Family Tax Benefit A	10%
Family Tax Benefit Part B	5%
Income of household members 21 years of age or over, or student household members over the age of 25 years	25%
Income of household members under the age of 21 years	10%
Income of household members who are students under the age of 25 years	10%
Child support payments received (child maintenance)	20%
Salary sacrificed amounts	25%
Any income of householders who are 100 years of age and over	0%

8. Self-employed tenants will be required to pay 25% of their taxable income or an equivalent award wage in rent, whichever is the greater.

9. Gross income is used, which is the income before tax is taken out.

10. If income changes, so too will the rent.

RENT OPTION 2

- Tenants who do not provide up to date household income details to the Department of Housing or its agent, including from the annual income review; may be required to pay the maximum rent (see below).

- Tenants under option 2 may pay a rent which is more than 25% of their household assessable income.

MAXIMUM RENT

Aboriginal Town Based Communities

For tenants living in **Aboriginal Town Based Communities** the maximum rent will be determined by the average public housing market rents in the same town.

- For premises where the Department of Housing does not pay LGA rates, the rent amount paid by the tenant is further reduced by an amount equivalent to the LGA rates minus the amount of any fees or charges paid by the Department of Housing for local government services to the property..

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Remote Aboriginal Communities

For tenants living in Remote Aboriginal Communities, the weekly maximum rent payable is calculated based on the estimated replacement cost of the dwelling over a 25 year period divided by 52 weeks.

- For premises where the Department of Housing does not pay LGA rates, the rent amount paid by the tenant is reduced by an amount equivalent to the LGA rates minus the amount of any fees or charges paid by the Department of Housing for local government services to the property..

TENANTS MUST NOTIFY THE DEPARTMENT OF A CHANGE OF INCOME

Tenants must immediately let the Department of Housing or its agent know if:

- anyone moves in or out of the premises; and
- when household income increases or decreases by $10 per week or more

Households must provide income details to the Department of Housing or its agent as part of the **annual income review** and when requested by the Department of Housing or its agent.

Meaning of Terms Used:

Tenants: The persons who sign the tenancy agreement.

Partner: The person in a de facto relationship with a Tenant as defined under section 4AA of the *Family Law Act 1975* (Cth) or the spouse of the Tenant as defined under section 5 of the *Interpretation Act 1984* (WA

Household members: Persons who live in the dwelling for more than 8 weeks that have not signed the tenancy agreement - includes dependants, non-family members and boarders.

Assessable income: Income that is used in calculating how much rent is payable.

Non assessable income: Income that is not used in calculating the rent payable. They are allowances or benefits which:

- are not included by Centrelink when assessing entitlements; and
- are required in their entirety for a specific purpose.

Aboriginal Town Based Communities – Aboriginal communities within a town gazettal boundary as defined by the Department of Planning or within a 5km radius of the town centre.

Note: The above is a summary of Department of Housing Aboriginal Housing policies relating to rent, including the 'Rent to Income' and 'Maximum Rent' policies. For further details contact your local Department of Housing branch or your Regional Service Provider.

SIGNATURE PAGE

Tenant[s] Signature

Signature of 1st Tenant ←

Signature of 2nd Tenant (if applicable) ←

Signature of Witness

Signature of Witness

Signature of Authority's Authorised Officer

Signature of Authorised Officer ←

Signature of Witness ←

Sharny Martin
Name of Authorised Officer

29.9.2015
Date

Signature of Authority's Agent

Signature of Authorised Officer ←

Signature of Witness ←

Name of Authorised Officer

Date

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