

## NOTICE OF FILING

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File Title:	BIJ23 & ANOR v STATE OF WESTERN AUSTRALIA
Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

### Important Information

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## Statement of Particulars – BIK23

No: WAD109/2023

Federal Court of Australia  
District Registry: Western Australia  
Division: General

### BIJ23 and another named in the Schedule

First Applicant

### STATE OF WESTERN AUSTRALIA

Respondent

#### Part 1: Chronological List of Events at Banksia Hill and Unit 18

##### Incidents at Banksia Hill Detention Centre (Banksia Hill) between 11 July 2022 to 20 July 2022.

1. At around 4pm on 11 July 2022, BIK23 was moved from a standard cell to an observation cell in Banksia Hill's ISU due to his involvement in an earlier incident in which he had broken the tap in his cell.
2. At around 5pm on 11 July 2022, BIK23 was subject to the use of force, and the application of mechanical, 3-point restraints.
3. At a time between 7pm and 9pm on the night of 11 July 2022, BIK23 was involved in a critical incident in which he climbed into an area above the ceiling in his unit of Banksia Hill.
4. At around 9pm on the 11 July 2022, BIK23 was subject to a use of force, and the application of restraints.

##### Incidents at Unit 18 between 20 July 2022 and 10 August 2022

5. Between 23 July 2022 and 26 July 2022, BIK23 submitted multiple requests to see a doctor about a boil, which was only actioned some four (4) days after his first request.
  - (a) On 26 July 2022, a nurse assessed BIK23 in his cell and told him that the boil was infected, but that she could not treat or dress the site of the wound because they did not possess any at Unit 18 at the time, and that he would need to be transferred to Fiona Stanley Hospital (**FSH**) for treatment.

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[Form approved 01/08/2011]

- (b) On 27 July 2022, BIK23 was transferred to FSH, where medical staff treated him for the infection.
6. Between 30 July and 4 August 2022, BIK23 was placed in a cell which still had shards of broken glass on the floor, and a broken viewing window.
- (a) BIK23 was transferred from Unit 18 to Banksia Hill, for an in-person visit with his mother.
  - (b) During the time when BIK23 was offsite for the in-person visit, another detainee had been moved into BIK23's cell and had smashed the glass viewing window on the cell door.
  - (c) Upon return to Unit 18, BIK23 found his cell covered in fragments of glass and a hole in the viewing window on his cell door.
  - (d) BIK23 requested that he be moved to a cell free of glass, and/or that he be provided with the equipment required to clean the glass, both of which were refused.
  - (e) BIK23 then had a verbal disagreement with the Officers, swallowed glass and was transferred to FSH for treatment.
7. On 30 July 2022, a disturbance occurred at Unit 18, involving most juvenile detainees at Unit 18.
- (a) BIK23 remained in his cell for the duration of the disturbance to avoid being caught up and/or involved in it and did not participate in the disturbance.
  - (b) Special Operations Group (**SOG**) Officers, nevertheless sprayed a chemical agent through the broken hatch on his cell door.
  - (c) Following the use of the chemical agent, BIK23 was left in his cell for approximately 1 to 2 hours, with no access to running water to decontaminate himself and experienced extreme discomfort, difficulty seeing and breathing.
  - (d) BIK23 was eventually moved to another cell where he was able to wash his eyes.

#### **Incidents at Banksia Hill between 10 and 16 August 2022**

8. Between 12 August 2022 and 14 August 2022 at Banksia Hill, BIK23 was subject to rolling lockdowns due to staff shortages, without a functioning television or any other in-cell activities.
- (a) BIK23's mental health deteriorated due to feelings of frustration and boredom, exacerbating the symptoms of his disability, and caused his behaviour to become increasingly dysregulated.
  - (b) BIK23 was subjected to use of force and the application of restraints (handcuffs) for escort to ISU, where he was again subject to solitary confinement for extended periods.
9. On 15 August 2022, BIK23 engaged in self-harm by cutting his arms with a sharp object. He was eventually seen by a registered nurse, but not by a mental health professional.

10. On 16 August 2022, BIK23 became distressed after being informed he would be returned to Unit 18 and refused to alight the transport van bound for Unit 18. BIK23 was then subject to use of force, and restraints (handcuffs), with one officer holding his arms and the other his legs, to force him into the van.

**Incidents at Unit 18 between 16 August 2022 and 8 September 2022**

11. On 21 August 2022, BIK23 engaged in self-harm, smashing the television in his cell, and using fragments of glass to cut his arms, and tied a ligature around his neck. BIK23 was transferred to an MPU cell for the remainder of the night.
12. On 25 August 2022, BIK23 engaged in self-harm, and was again placed in an MPU cell with no access to:
  - (a) A towel, toiletries, or a functional shower.
  - (b) Education and/or any other formalised programs or services.
  - (c) Sufficient, quality 'out of cell time' to exercise, recreate and/or socialise.
  - (d) Any in-cell activities, such as a television, radio, and/or reading materials.
  - (e) Peer support from other detainees; welfare officers and/or mentors.
  - (f) Access to a telephone to call family and/or other external supports.
13. Between 25 August 2022 and 30 August 2022, all contact between detainees and external supports, including family, were cancelled, as were all social visits, both in-person and/or via AVL link (known as an e-visit).
14. Between 30 August and 8 September 2022, BIK23 was denied access to any medication which led to an acute deterioration in his mental and physical wellbeing, and an increase in anxiety and panic attacks.
15. On 1 September 2022, BIK23 engaged in self-harm both before and after a use of force by officers.
  - (a) Failure to provide him with his regular dose of psychotropic medication caused BIK23 to become suicidal, and attempt suicide by hanging from a makeshift ligature. In doing so, BIK23 accidentally set off the water sprinklers in his cell, causing his cell to flood.
  - (b) Special Operations Group (SOG) officers then entered BIK23's cell, placed him prone on the floor, face down in a puddle of water with his hands cuffed behind his back, with one officer on each leg, which was painful and made it difficult for him to breathe (this restraint is referred to as 'folding up' by Officers and detainees).
  - (c) BIK23 was then carried to another cell by his arms and legs, which caused him to experience agonising pain, and to cry out repeatedly saying, "my shoulder is dislocated", all of which were ignored.



- (d) In the other cell, officers placed BIK23 prone on the floor and placed him in 3-point restraints, with his arms and legs chained behind his back, wearing only underwear.
- (e) Soon after the officers left, BIK23 attempted suicide, using one of the chains of the 3-point restraint as a ligature.

#### **Incidents at Unit 18: 8 November 2022 to 13 January 2023**

- 16. On 3 December 2022, BIK23 engaged in self-harm by swallowing batteries from his radio. He was taken to hospital for treatment and kept overnight.
- 17. On 4 December 2022, Officers used force, including a chemical agent, against BIK23.
  - (a) Incident report number I129346905.
  - (b) BIK23 was transported from FSH to Unit 18. He was told that he would be placed in an MPU cell upon his return to Unit 18 and refused to exit the vehicle at Unit 18.
  - (c) Officers used force, and sprayed him with a chemical agent to force him out of the vehicle, and placed him in an MPU cell, in rip-proof clothing where he remained for approximately seven (7) days.
- 18. On 28 December 2022, after protracted periods of time in solitary confinement BIK23 started an electrical fire in his cell and set alight both his mattress and bedding.
  - (a) BIK23 pushed the mattress and bedding up to the cell door to get the officers' attention so that they would come to extinguish the fire and/ then, extract BIK23 from the cell.
  - (b) Attending Officers refused to come to BIK23's aid, unless and until he submitted to handcuffs being applied through the grille on his cell door but the location of the burning mattress and bedding initially prevented him from being able to do so.
  - (c) BIK23 required hospitalisation after the incident for smoke inhalation.
- 19. On 28 December 2022, BIK23 was escorted from FSH to Unit 18 by five (5) Officers. Upon return to Unit 18, BIK23 placed a piece of metal in his mouth. Escorting officers then turned off their body-worn cameras, which BIK23 interpreted as a threat. One officer then blocked BIK23's nose so that he could not breathe, forcing him to open his mouth, whereupon the piece of metal was removed.

#### **Incidents at Banksia Hill: 13 January 2023 to 27 January 2023**

- 20. For a period after 13 January 2023 in Banksia Hill, BIK23 was subject to rolling lockdowns and had no access to education, programs, or recreation.
- 21. On 19 January 2023, BIK23's social visit with his family was cancelled due to the wing being unsettled due to a critical incident in which he was not involved. The cancellation of the in-person visit caused BIK23's behaviour to become dysregulated and he climbed into the roof cavity, cutting his foot, heel, palm of his hands and upper leg and was subject to a use of force, and the application of restraints (handcuffs), for escort to Banksia Hill's ISU.

22. Between 15 and 22 January 2023, BIK23 had no access to a functional shower, nor to running water to brush his teeth, or to his regular anti-psychotic and anti-anxiety medication, namely Seroquel, Mirtazapine, and Clonazepam.

**Incidents at Unit 18 between 27 January 2023 to 7 August 2023**

23. On 15 February 2023, at around 3pm, YCO Aaron Rodgers along with three (3) other Officers, forced BIK23 to submit to a strip search, on the basis that he had concealed and/or had a makeshift weapon in his possession.
- (a) The 'weapon' had already been located and confiscated from another detainee who had misled investigating officers by telling them that it was BIK23 who gave him the weapon.
  - (b) BIK23 was strip searched in the presence of one YCO known to him, Aaron Rodgers, and three (3) other Officers whose names he cannot recall.
  - (c) BIK23 was required to expose the top half, and then the bottom half of his body, including his genitals in front of attending officers.
  - (d) Shortly after the strip-search concluded, BIK23 self-harmed, banging his head against his cell wall multiple times.
24. On 5 March 2023, BIK23 was waiting to attend a scheduled e-visit with his mother, when an officer asked him to return to his cell.
- (a) BIK23 did not comply with the instruction to return to his cell and told officers that he was to attend an e-visit with his mother which had been arranged and confirmed by Case Planning.
  - (b) Moments later, six (6) Officers, one of whom was known to him as Brian Rassie used force to restrain him on the ground, pulled his hair and pushed his face into the concrete floor, causing it to become bruised, bloodied and grazed.
  - (c) BIK23 cried out in pain and told officers he would return to his cell voluntarily if they stopped using force, but they relented only once he had been placed in his allocated cell.
  - (d) BIK23 threw an object at his cell door as the restraining officers exited his cell, whereupon an Officer then sprayed chemical agent into his face through the hatch in his cell door.
  - (e) Officers did not allow BIK23 to leave his cell for decontamination, until he submitted to the application of handcuffs through the viewing window, and then Officers escorted him to an MPU cell.
25. On 7 March 2023, BIK23 was moved from one MPU cell to another, and was not provided with a towel or toiletries for four (4) days, despite repeated requests.
26. On 9 March 2023, BIK23 was not provided with his anti-psychotic and anti-anxiety medication, namely Seroquel, Mirtazapine, and Clonazepam. Failure to maintain BIK23's regular treatment regime, exacerbated the manifestations of disability, including but not limited to

increasingly dysregulated behaviour; an uptake in the severity and frequency of self-harm and/or suicidal ideation; and/or involvement in critical incidents.

27. On 12 March 2023, Officers used force to move BIK23 from a standard cell to an MPU cell. Officers then refused BIK23's requests for in-cell activities such as a book or magazine and refused his request for a towel so that he could have a shower.
28. On 29 and 30 March 2023, Officers cancelled BIK23's e-visits with his parents without notice.
29. On 31 March 2023, two Officers approached BIK23 while he was in the yard.
  - (a) As they approached him, the Officers turned off their body worn cameras and BIK23 feared they intended to use excessive force on him.
  - (b) BIK23 jumped up onto the edge of a two-metre-high drop to escape the two Officers, who used force to pull him down by his upper body, forcing him onto the concrete pavement in a crawling position.
  - (c) One of the officers pushed BIK23's face into the concrete and dragged him across the ground on his face, causing it to become bruised, bloodied, and grazed. BIK23 was then handcuffed and dragged by the officers to his allocated cell.
  - (d) No photographs were taken of BIK23's injuries, nor was he given any follow-up medical or psychological care following the use of force and handcuffs.
30. On 31 March 2023, BIK23 was placed in a cell with a broken cell-call button. The broken cell-call emitted constant beeping sounds and prevented him from sleeping. BIK23 submitted repeated requests to be moved to another cell which were denied, despite his describing the sound from the broken cell-call button as a form of 'auditory torture'.
31. On 1 April 2023, after approximately 24 hours locked down in a cell with a broken cell call button, BIK23 lit an electrical fire in the hope that it would result in him being moved to an alternative cell, with a functional cell-call button.
  - (a) Officers did not respond promptly to the fire because lack of in-person welfare checks, combined with the broken cell-call button in BIK23's cell, meant that BIK23 depended on other detainees to raise the alarm, and a delay which resulted in extensive burns to his hands, requiring 2-days of treatment in hospital until 3 April 2023.
  - (b) Upon return to Unit 18, BIK23 was not given any follow-up medical care, bandages, medication, or analgesic.
32. On 1 April 2023, BIK23's scheduled in-person visit with his parents was cancelled without notice or explanation.
33. On 2 April 2023, during a scheduled e-visit with BIK23, BIK23's mother Joanne noticed a bruise on the right side of his face from the incident on 31 March 2023.
34. On 16 April 2023, an Officer sprayed BIK23 with a chemical agent in the face and mouth.
  - (a) An officer entered BIK23's cell to confiscate his television.

- (b) BIK23 attempted to explain that he had been granted permission to keep the television, by prior arrangement with another Senior Officer. The Officer ignored BIK23's explanations and protestations, spraying him with chemical agent twice: once in the face and once in the mouth.
  - (c) Approximately one hour later, the same officer attended BIK23's cell to return the confiscated television.
35. Between 17 April 2023 and 23 April 2023,
- (a) four (4) out of five (5) scheduled e-visits with BIK23's family were cancelled.
  - (b) BIK23 had no access to a shower due to the water and power being turned off, and he had no access to TV, books, education, recreational activities, or telephone calls to external supports.
  - (c) BIK23 was confined to his cell, where traces of pepper spray remained, for almost 24 hours per day.
36. On 26 April 2023, BIK23 was denied access to his allocated Youth Justice Psychological Services' (YJPS) psychologist.
37. On 2 May 2023, after more than 2 weeks of complaining of a persistent toothache, BIK23 was eventually to see a dentist at Banksia Hill.
38. On 29 March 2023, 30 March 2023, 1 April 2023, 28 April 2023, 13 May 2023, and 2 June 2023, BIK23's visits with family were cancelled without explanation or notice.
39. From 17 October 2022 to the first week of June 2023, BIK23 was not provided with an implement to cut his toenails, despite his repeated requests.
40. Between December 2022 and 2 June 2023, BIK23's requests to see a psychiatrist to discuss his treatment regime, including alterations to his prescribed psychotropic medication, were denied.
41. On 2 June 2023, an officer, carrying a soft shield, pushed BIK23 against a wall, causing the back of BIK23's head to hit the wall with great force and BIK23 to fall to the ground.
- (a) BIK23 experienced dizziness and developed a headache and was unable to sleep that night but received no follow-up medical treatment or psychological support.
  - (b) BIK23 was placed in rip-proof clothing for four (4) days, until 6 June 2023.
42. On or about 26 June 2023, a medical officer halved BIK23's dosage of Mirtazapine on the basis that it had caused BIK23 to gain weight. The change in his medication and treatment regime caused him to experience the following negative by-products: insomnia, and an increase in critical incidents.
43. On or around 12 July 2023, BIK23 met with his psychiatrist, who substituted another anti-depressant for Mirtazapine.

44. On 6 August 2023, BIK23 was involved in a critical incident which involved the use of force, including the spraying of a chemical agent.

**Part 2: Particulars of BIK23's behaviour in BHDC for which he was punished by being transferred to Unit 18.**

BIK23 was punished for his behaviour in Banksia Hill by being transferred to Unit 18 in the circumstances described in paragraphs: 1-4, 8-10, 20-22.

**Part 3: Particulars of Confinement**

1. BIK23's confinement followed the use of force by Officers or threatened use of force by Officers in the circumstances described in Part 1, paragraphs: 7, 15, 17, 24, 27, 35.
2. BIK23's confinement followed incidents of self-harm in the circumstances described in Part 1, paragraphs: 11, 12, 15,

**Part 4: Particulars of Use of Force (with the following sub-categories)**

1. When it was not in an immediate period when BIK23 was imminently presenting a risk of injury to himself or other detainees or staff in the circumstances described in Part 1, paragraphs: 7, 17, 23, 24, 27, 29, 34, 41, 44.
2. After the imminent risk of injury had passed and BIK23 had been stabilised in the circumstances described in Part 1, paragraphs: 15, 24, 44
3. Force that was more than the degree of minimum physical force required to control BIK23's behaviour in the circumstances described in Part 1, paragraphs: 7, 15, 17, 19, 24, 29, 34, 41, 44.

**Part 5: Particulars of Restraints**

1. BIK23 was subjected to handcuffing or other restraints in the circumstances described in Part 1, paragraphs: 15, 17, 18, 24, 29.
2. Of the occasions referred to in Part 5, Paragraph 1 the use of restraints was:
  - a. Not authorised by the CEO or the Superintendent in the circumstances described in Part 1, paragraphs: 15, 17, 18, 24, 29.
  - b. In the alternative to Part 5, paragraph 2(a), authorised by the CEO or the Superintendent but not in an immediate period when the mechanical restraint of BIK23 was necessary to prevent injury to himself or other detainees in the circumstances described in Part 1, paragraphs: 15, 17, 18, 24, 29.
  - c. If the CEO or the Superintendent did form the opinion that the handcuffing or other restraint of BIK23 was necessary to prevent injury, the opinion of the CEO or the Superintendent was not reasonable in the circumstances described in Part 1, paragraphs: 15, 17, 18, 24, 29.

**Part 6: Particulars of breach of duty of care.**

1. Failing to provide adequate mental health services in the circumstances described in Part 1, paragraphs: 11, 14, 26, 36, 40, 42, 43.

2. Failing to avoid non-compliance by failing to modify behaviour and discipline policies at Unit 18 services in the circumstances described in Part 1, paragraphs: 17, 24, 34, 44
3. Giving peremptory unpleasant or unpleasant commands in the circumstances described in Part 1, paragraphs: 18, 23, 24, 34.
4. Failing to protect against self-harm by failing to adequately monitor BIK23 in the circumstances described in Part 1, paragraphs: 11, 15, 16, 18, 19, 23, 31.
5. Failing to provide a safe environment for a child detainee in the circumstances described in Part 1, paragraphs: 6, 7, 11, 15, 16, 18, 19, 23, 24, 29, 31, 34, 41, 44

**Part 7: Particulars of incidents of self-harm and/or attempted suicide**

1. BIK23 harmed himself and/or attempted suicide in the circumstances described in Part 1, paragraphs: 6, 11, 15, 16, 18, 19, 23, 31

**Part 8: Punitive responses to manifestations of disability**

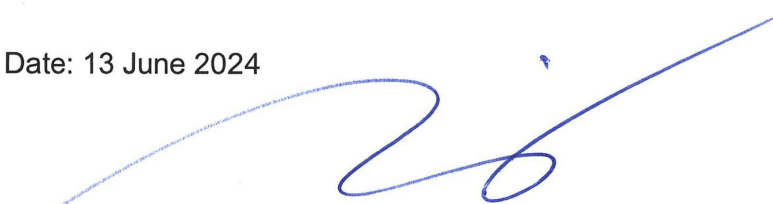
1. Loss of program placement in the circumstances described in Part 1, paragraphs: 12, 17, 25, 27, 35.
2. Loss of canteen privileges in the circumstances described in Part 1, paragraphs: 12, 17, 25, 27, 35.
3. Loss of TV privileges in the circumstances described in Part 1, paragraphs: 12, 17, 25, 27, 34, 35.
4. Loss of recreation privileges in the circumstances described in Part 1, paragraphs: 12, 17, 25, 27, 35.
5. Confiscation of in-cell activities in the circumstances described in Part 1, paragraphs: 12, 17, 25, 27, 35.
6. Refusing to allow BIK23 to engage in education in the circumstances described in Part 1, paragraphs: 12, 17, 25, 27, 35.



**Part 9: Deprivation of Goods Services and Facilities**

1. BIK23 was denied access to phone calls in the circumstances described in Part 1, paragraphs: 12, 17, 25, 27, 35.
2. BIK23 was denied access to family contact in the circumstances described in Part 1, paragraphs: 12, 17, 25, 27, 29, 32, 35, 38.
3. BIK23 was denied access to a psychologist described in Part 1, paragraphs: 36, 40.
4. BIK23 was denied access to timely and appropriate medical care as described in Part 1, paragraphs: 5, 7, 11, 14, 26, 29, 31, 37, 39, 40, 41, 42, 43.
5. BIK23 was denied access to programs in the circumstances described in Part 1, paragraphs: 12, 17, 25, 27.
6. BIK23 was denied access to necessities such as drinking water, use of a toilet and showering in the circumstances described in Part 1, paragraphs: 7, 12, 25, 27.
7. BIK23 was denied access to protection against self-harm in the circumstances described in Part 1, paragraphs: 6, 11, 15, 16, 18, 19, 23, 31.
8. BIK23 was denied access to in cell activities in the circumstances described in Part 1, paragraphs: 12, 17, 25, 27, 34.

Date: 13 June 2024



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Signed by Stewart Levitt  
Lawyer for the Applicants

**SCHEDULE OF PARTIES**

**First Applicant:** BIJ23

**Second Applicant:** BIK23

**Respondent:** State of Western Australia