

AMENDED REPLY

No. VID809 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

JONNINE JAYE DIVILLI

Applicant

HOUSING AUTHORITY

First Respondent

STATE OF WESTERN AUSTRALIA

Second Respondent

TO THE DEFENCE of the Respondents dated ~~14 March 2025~~ 9 February 2026 (the **Defence**) the Applicant replies as follows:

1. In answer to paragraphs 4.2, 8.2, 10.2(a) and 12.1 of the Defence, the Applicant denies the allegations and refers to s 6(c) of the RTA, and the RT Regulations that specifically identify the Authority as an agency that is acting on behalf of the Crown, as caught by s 6(c), including rr 5AD(3) and 5A(1).

2. In answer to paragraph 5A of the Defence, the Applicant:
 - a. to ~~subparagraphs 5A.1-5A.10~~, refers to Part VIIA of the *Housing Act* and admits to its terms properly construed; and
 - b. to ~~subparagraph 5A.11~~, refers to ss 38(1)(c), 42(2)(b) and 50 as well as s 82 of the RTA;and otherwise denies the allegations.

Filed on behalf of	Jonnine Jaye Divilli, the Applicant		
Prepared by	Benedict Tobin Hardwick		
Law firm	Slater and Gordon Lawyers		
Tel	(03) 9190 0590	Fax	(03) 9600 0292
Email	Ben.Hardwick@slatergordon.com.au		
Address for service	Level 35, 530 Colins Street, Melbourne VIC 3000		

3. In answer to paragraph 11A of the Defence, the Applicant refers to the terms of Divilli's Lease, admits to its terms properly construed including having regard to s 82 of the RTA and otherwise denies the allegations.
4. In answer to paragraph 14.1-14.3 of the Defence, the Applicant denies the allegations and, in respect of 14.3, refers to and repeats the reply to paragraph 5A.11 of the Defence (at 2(b) above).
5. In answer to paragraph 19A of the Defence, the Applicant responds with the following:
 - a. s 42(2)(c) of the RTA provides that it is a term of every residential tenancy agreement that the lessor must comply with all requirements in respect of buildings, health and safety under any other written law insofar as they apply to the premises;
 - b. the requirements of the laws pleaded in 19A of the Defence are requirements in respect of buildings, health and safety under any other written law;
 - c. by reason of s 62G of the *Housing Act*, where there is a Housing Management Agreement and the Authority is not a party to the residential tenancy agreement, the Authority is deemed to be the lessor for the purposes of the RTA;
 - d. by reason of the matters above and where the Authority is a party to the residential tenancy agreement or a deemed lessor, the Authority is required to comply with the laws identified in 19A as lessor;and otherwise denies the allegations.
6. In answer to paragraph 20A of the Defence, the Applicant:
 - a. admits the allegations in 20A.1;
 - b. admits the allegations in 20A.2, save that Divilli's Residence has housed:
 - i. since July 2015, four ~~five~~ biological children;
 - ii. since on or shortly after 22 November 2017, five biological children;
 - iii. since October 2022, five biological children and two foster children;
 - iv. since January 2025, five biological children and ~~at least two~~ three foster children;

and, pending discovery, otherwise denies the allegations.

7. In answer to paragraph 20B of the Defence, the Applicant:
- a. denies the allegations in 20B.1A and 20B.1B;
 - b. to 20B.1C:
 - i. further to particular C to paragraph 109 of the FASOC, admits that on or about 23 May 2024, the Authority issued a Tenant Liability Notice and Service Delivery Decision Review Form and both expressly referred to section 10 of the Aboriginal Housing Services Maintenance Policy; and
 - ii. otherwise denies the allegations;
 - c. denies the allegations in 20B.1D and 20B.1E;
 - d. to 20B.1F:
 - i. further to particular D to paragraph 109 of the FASOC, admits that on or about 21 May 2024, the Authority issued a Tenant Liability Notice and Service Delivery Decision Review Form and both expressly referred to section 10 of the Aboriginal Housing Services Maintenance Policy; and
 - ii. otherwise denies the allegations;
 - e. admits that the pantry door was replaced or repaired at Divilli's Residence but otherwise denies the allegations in 20B.1G;
 - f. denies the allegations in 20B.1H;
 - g. to 20B.1I:
 - i. further to the particular B to paragraph 109 of the FASOC, admits that on or about 23 May 2024, the Authority issued a Tenant Liability Notice and Service Delivery Decision Review Form and both expressly referred to section 10 of the Aboriginal Housing Services Maintenance Policy; and
 - ii. otherwise denies the allegations;
 - h. to 20B.1J:
 - i. admits that on or about 7 October 2024, maintenance works were undertaken at Divilli's Residence to replace a damaged toilet paper holder; and
 - ii. otherwise denies the allegations;

Particulars

The Non-Scheduled Labour relates to “Secure power box lid bent hinge”:
Schedule 1 of the Defence at p 116.

The power box at Divilli’s Residence has not been repaired and presently
still does not have a lid.

- i. denies the allegations in 20B.1K;
- j. to 20B.1L:
 - i. further to particular A to paragraph 109 of the FASOC, admits that on or about 17 October 2024, the Authority issued a Tenant Liability Notice and Service Delivery Decision Review Form and both expressly referred to section 10 of the Aboriginal Housing Services Maintenance Policy; and
 - ii. otherwise denies the allegations;
- k. denies 20B.1M, refers to paragraph 3 herein and says further that those cross-referred clauses are inconsistent with provisions of the RTA and to that extent are void and of no effect, specifically:
 - i. cl 3.4.6 (referred to at 11A.2(r) of the Defence) is inconsistent in part with s 38 of the RTA; and
 - ii. cl 3.4.9 and 3.12 (referred to at 11A.2(t) and (v) respectively of the Defence) are inconsistent in part with s 50 of the RTA

Particulars

s 82 of the RTA.

- l. to 20B.1:
 - i. denies the allegations in paragraph 20B.1, refers to paragraphs 2(b) and 3 herein, and says further that that cross-referred clause is inconsistent with ss 42 and 43 of the RTA and to that extent is void and of no effect.
 - ii. says that to the extent the Authority sought the costs incurred in repairing the damage pleaded in 20B.1A, 20B.1D, 20B.1G and 20B.1J from Ms Divilli having:
 - 1. reasonably assumed that the repair was required due to an intentional, negligent or reckless act of Ms Divilli, Mr Rivers or their lawful invitees, and/or
 - 2. applied clause 10 of the Aboriginal Housing Services Policy Manual in its form at the relevant time,

the Authority breached s 9(1) or, alternatively, s 12(1)(b) of the RDA as alleged in section I.4 of the FASOC; and

- iii. refers to s 58 of the RTA generally and says further that to the extent the loss of the keys constituted a breach of Divilli's Lease, the Authority failed to mitigate its loss by failing to keep a spare key to Divilli's Residence that could be duplicated and provided at negligible cost in the event of accidental loss of the keys given to her;

Particulars

ss 58 and 82 of the RTA.

m. denies 20B.2.

~~a. says that the Respondents have not identified any and what damage to Divilli's Residence they allege was caused by Ms Divilli, or other occupants of Divilli's Residence, or their lawful invitees and so cannot plead to any such allegation; and~~

~~b. otherwise denies the allegations.~~

8. In answer to paragraph 32A of the Defence, the Applicant:

- a. to subparagraph 32A.1-32A.3, does not know and therefore cannot admit the allegations;
- b. to subparagraph 32A.4, denies the allegations; and
- c. to subparagraph 32A.5, denies the allegations and says further that ~~section~~ 5X of the *Civil Liability Act 2002* (WA) is not engaged including because of the nature of the claims pleaded.

9. In answer to paragraph 32B of the Defence, the Applicant:

- a. denies the allegations; and
- b. says further that ~~section~~ 5W of the *Civil Liability Act 2002* (WA) is not engaged including because of the nature of the claims pleaded.

10. In answer to paragraph 52, 53, 69 and 71 of the Defence, the Applicant:

- a. denies the allegations; and
- b. says further that:

- i. the Rent Setting Policy alleged did not apply to houses or lots not listed in a Housing Management Agreement;
- ii. the Rent Setting Policy alleged did not apply to Ms Divilli because it applies only to houses listed in Schedule B of the relevant Housing Management Agreement, and hers was not so listed or, alternatively applies only to houses listed in Schedule B of the relevant Housing Management Agreement at the time of entry into the tenancy agreement for that housing, and hers was not so listed; and
- iii. any determination under s 62E of the *Housing Act* was invalid when it was not both determined by the Authority and approved by the Minister.

Particulars

Divilli's Residence, being [REDACTED] at Yurmulun is listed in Schedule A of the Housing Management Agreement relevant to Divilli's Residence.

Item 3 of Divilli's Lease.

Divilli's Lease commenced on or around 6 July 2015.

On or around 12 October 2018, the Authority and the Yurmulun Aboriginal Corporation entered into a deed of variation pursuant to which Divilli's Residence, being [REDACTED] at Yurmulun was added to Schedule B of the Housing Management Agreement relevant to Divilli's Residence.

- 11. In answer to paragraph 79 of the Defence, the Applicant:
 - a. to ~~subparagraph~~ 79.1, refers to and repeats each reply to paragraphs 5A, 11A and 53 of the Defence; and
 - b. otherwise does not know and cannot admit the allegations in ~~subparagraph~~ 79.2-79.4.
- 12. In answer to paragraph 84 of the Defence, the Applicant admits the allegations in 84.1-84.4, without derogating from 84 of the FASOC.
- 13. In answer to paragraph 89 of the Defence, the Applicant admits the allegations in 89.1-89.7, without derogating from 89 of the FASOC.

14. In answer to paragraph 95 of the Defence, the Applicant:
- a. denies 95.2; and
 - b. refers to the Respondents admission in 1.2(c) of the Defence and to 6 of the FASOC, 5(c) herein and s 62G of the Housing Act.
15. In answer to paragraph 96A of the Defence, the Applicant denies 96A and repeats 14(b) herein.
16. In answer to paragraph 110 of the Defence, the Applicant:
- a. admits 110.1;
 - b. says that the Authority's tenant liability policy in the Housing Maintenance Policy Manual is inconsistent with the Authority's tenant liability policy in the Aboriginal Housing Policy Manual; and
 - c. otherwise denies the allegations pleaded therein.

Particulars

The Applicant refers to and repeats the particulars to paragraphs 108 to 110 of the FASOC.

Save as aforesaid, and save as to admissions contained in the Defence, the Applicant joins issue with the Respondents upon the whole of their Defence.

Date: ~~11 April 2025~~24 February 2026



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Signed by Benedict Tobin Hardwick
Lawyer for the Applicant

This pleading was prepared by Fiona Forsyth of King's Counsel, Matthew Albert and Hannah Hofmann of Counsel.

Certificate of lawyer

I, Benedict Tobin Hardwick, certify to the Court that, in relation to the reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~11 April 2025~~24 February 2026

A handwritten signature in black ink, appearing to be 'Benedict Tobin Hardwick', written over a horizontal dotted line.

Signed by Benedict Tobin Hardwick
Lawyer for the Applicant