NOTICE OF FILING

Details of Filing

Document Lodged:	Outline of Submissions
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File Title:	JONNINE JAYE DIVILLI v HOUSING AUTHORITY & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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

Respondents' Outline of Submissions
Opposing Strike-out Application

No: VID 809 of 2025

Federal Court of Australia

District Registry: Victoria

Division: General

Jonnine Jaye DIVILLI

Applicant

HOUSING AUTHORITY and others named in the schedule

Respondents

1. The applicant applies for an order to strike out [20B] of the respondents' defence. In her submissions of 16 September 2025 (**AS**) at [7], the applicant invited the respondents to provide a proposed amended pleading to address the concerns underlying the strike-out application. The respondents took up that invitation. A proposed amended defence was sent to the applicant on 17 September 2025: affidavit of Cameron Maclean affirmed on 22 September 2025 (**Maclean**), Annexure CM-1.

2. The proposed amendments remove the allegedly "conditional or hypothetical" language previously used in [20B] of the defence (see AS at [5(a)] and [5(b)(i)]). The respondents now plead in essence that:

   (a) on particular dates, particular maintenance works were undertaken on the applicant's premises in accordance with work orders issued by the Housing Authority;

   (b) the Housing Authority incurred particular costs in respect of those works;

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(c) the Housing Authority issued particular notices to the applicant in which it informed her that it considered the applicant to be responsible for the maintenance items;

(d) each of the maintenance works were in respect of damage caused to the applicant's premises in breach of one or more the obligations in the tenancy agreement;

(e) the applicant and Mr Rivers are liable to the Housing Authority for that damage and, to the extent it is held liable to the applicant or Mr Rivers, the Housing Authority is entitled to set off on account of their liability to it.

3. On 19 September 2025, at the applicant's request, the respondents confirmed the following matters about the proposed amended [20B] (Maclean, Annexure CM-5):

(a) a positive allegation is being made that damage was intentionally or negligently caused by the applicant or other occupants or lawful invitees;

(b) the damage is the matters listed under the "works undertaken" column in the particulars;

(c) the damage is alleged to have been caused before the relevant works are pleaded to have been undertaken;

(d) the amount of set-off is that listed in the "cost incurred" column in the particulars.

4. The respondents added the axiomatic point that this confirmation did not limit the evidence that might be led to prove the material facts pleaded in [20B], and, in particular, the evidence that might be led to support the allegation of intentional or negligent damage.

5. Given the proposed amendments to [20B] and the further confirmation given about the nature of the respondents' case, it might have been thought that the applicant's stated concerns have been addressed and that the strike out application need not proceed.

6. But that is not the case. The applicant presses the application on the basis of a (newly stated) concern that the respondents have not identified the "material facts" relied on to support the allegation of intentional or negligent damage: Maclean, Annexure CM-6.

7. In truth, the applicant's demand for "material facts" is a demand for evidence. The respondents are not required to state, in the defence, the evidence that will be relied on at trial to prove the damage was intentionally or negligently caused: FCR, r 16.02(1)(d).

8. Even *assuming* that the proposed amended [20B] is technically deficient because it does not state further details about the basis of the allegation of intentional or negligent damage, this is not, in itself, a sound reason to strike out the paragraph.

9. In *Thomson v STX Pan Ocean Co Ltd* [2012] FCAFC 15 at [13], the Full Court said:

   (a) It is well established that the main purposes of pleadings are to give notice to the other party of the case it has to meet, to avoid surprise to that party, to define the issues at trial, to thereby allow only relevant evidence to be admitted at trial and for the trial to be conducted efficiently within permissible bounds.

   (b) Equally well established is the principle that pleadings are not an end in themselves. Pleadings are instead a means ultimately to attaining justice between the parties to litigation.

   (c) Thus, at least in the current era, the courts do not take an unduly technical or restrictive approach to pleadings. The introduction of case management has been partially responsible for this change in approach.

10. In *Thomson*, the Full Court cited Martin CJ's well known discussion in *Barclay Mowlem Construction Ltd v Dampier Port Authority* (2006) 33 WAR 82 at [4]-[8]. In *Barclay Mowlem*, after referring to the role of pleadings in the contemporary case management context, Martin CJ said (at [7]) that:

> … provided a pleading fulfils its basic functions of identifying the issues, disclosing an arguable cause of action or defence, as the case may be, and appraising the parties of the case that has to be met, the Court ought properly be reluctant to allow the time and resources of the parties and the limited resources of the Court to be spent extensively debating the application of technical pleadings rules that evolved in and derive from a very different case management environment.

11. Martin CJ added (at [8]) that the proper approach to pleading disputes is that "only where the criticisms of a pleading significantly impact upon the proper preparation of the case and its presentation at trial should those criticisms be seriously entertained".

12. More recently, in *EIX20 v Western Australia* [2022] FCA 1357 at [19]-[26], Banks-Smith J reviewed the authorities as to the modern approach to pleadings,

including *Thomson* and *Barclay Mowlem*. Banks-Smith J observed (at [22]) that the approach disclosed by those authorities conforms with s 37M of the *Federal Court of Australia Act 1976* (Cth), which sets out that the overarching purpose of the civil practice and procedures is to facilitate the just resolution of disputes according to law and as efficiently as possible. This includes the objective of the efficient use of judicial resources and the efficient disposal of the court's overall caseload.

13. Viewed against the backdrop of the above authorities, the applicant's complaint about the proposed amended [20B] seems to ring hollow. The complaint does not significantly impact upon the proper preparation of the case and its presentation at trial. In circumstances where the allegation of intentional or negligent damage is confined to *particular* damage the subject of *particular* maintenance works carried out on the applicant's *own premises*, it is difficult to see how the applicant is not in a position to understand the allegation and to prepare to meet it at trial. Further, the applicant's ability to meet the allegation at trial must be assessed in light of the fact that the respondents will ultimately be required to put on evidence and written submissions to support the proof of the allegation at trial.

14. In assessing the applicant's complaint, the court should have regard to the fact that the set off pleaded in the proposed amended [20B] is a relatively minor issue in the overall context of the litigation commenced by the applicant. It will be far from the focal point of the trial.

15. For the above reasons, the applicant's strike out application should be dismissed. The applicant should be ordered to pay the respondents' costs of the application. But, if the Court is minded to grant the application, there should be leave to replead or provide particulars.

Dated: 22 September 2025

S K Dharmananda

L Pham