

NOTICE OF FILING

Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 21/11/2025 4:05:11 PM AWST
Date Accepted for Filing: 21/11/2025 4:05:15 PM AWST
File Number: WAD251/2022
File Title: ALEXANDRA WALTERS & ANOR v STATE OF WESTERN AUSTRALIA
Registry: WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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

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



No. WAD251 of 2022

Form 33
Rule 16.32

Defence to Amended Statement of Claim

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

ALEXANDRA WALTERS

First Applicant

JOEL VIDA

Second Applicant

STATE OF WESTERN AUSTRALIA

Respondent

92B

TABLE OF CONTENTS

A.	PRELIMINARY	2
B.	THE APPLICANTS	2
C.	THE GROUP MEMBERS	2
D.	THE RESPONDENT.....	6
E.	DETENTION CENTRES	7
F.	RELEVANT PROVISIONS OF THE YO AND YO REGULATIONS.....	8
G.	CLAIMS OF WRONGFUL IMPRISONMENT	19
H.	CLAIMS OF BATTERY AND/OR ASSAULT	20
I.	DUTY OF CARE.....	24
J.	RELEVANT AREAS UNDER PART 2 DIVISION 2 OF THE DDA	30
K.	CLAIMS OF MS WALTERS	33
L.	CLAIMS OF MR VIDA	103
M.	CLAIMS OF GROUP MEMBERS	147

Unless otherwise defined below and without any admission, in this Defence:

- I. the Respondent adopts the defined terms in the Amended Statement of Claim dated 11 July 2025 (**SOC**); and
- II. certain documents mentioned in this Defence will be the subject of a claim in part for public interest immunity and/or confidentiality.

In response to the SOC, the Respondent says as follows:

A. PRELIMINARY

- 1 It does not plead to paragraph 1 as it contains no allegations against it and makes no admission in respect of that paragraph.

B. THE APPLICANTS

- 2 It admits paragraph 2.
- 3 It admits paragraph 3.
- 4 It admits paragraph 4.
- 5 It admits paragraph 5.
- 6 It admits paragraph 6.
- 7 As to paragraph 7, it:
 - (a) says that the Second Applicant (**Mr Vida**) was diagnosed in 2018 with manic psychosis; and
 - (b) otherwise does not know and therefore cannot admit the allegations.

- 8 It admits paragraph 8.

- 9 It admits paragraph 9.

C. THE GROUP MEMBERS

- 10 As to paragraph 10, it:
 - (a) says that during the following periods “detainees” (within the meaning of section 3

of the *Young Offenders Act 1994* (WA) (**YO Act**) were detained in the following places, each of which was declared to be a detention centre under section 13 of the YO Act:

- (i) Rangeview Juvenile Remand Centre (**Rangeview**) from 26 March 1994 to 30 October 2012;
 - (ii) Banksia Hill Detention Centre (**Banksia Hill**) from 5 September 1997 to date; and
 - (iii) Hakea Juvenile Facility (**Hakea**) from 22 January 2013 to 6 December 2013;
- (b) says that as to the “**DDA sub-group**” (as that term is defined in paragraph 3(a) of the Amended Originating Application filed on 11 July 2025 (**OA**)), the determination of the DDA sub-group claims would necessitate an examination of the idiosyncrasies of each incidence of disability discrimination alleged, such that the questions of law or fact set out in paragraphs 1, 9 and 11, 12 and 13 on pages 5 and 6 of the OA are not common to the claims of the DDA sub-group members;
- (c) says that as to the “**Tort sub-group**” (as that term is defined in paragraph 3(b) of the OA):
- (i) all claims of false imprisonment, assault and/or battery (including by way of strip searches, use of mechanical restraints and/or use of physical restraints) (**Trespass to the Person Claims**) in respect of conduct alleged to have occurred on or after 18 August 2005 and on or before 14 November 2005 are statute-barred by ss 38(1)(b) and 40 of the *Limitation Act 1935* (WA) (**1935 Act**) and/or s 6 of the *Crown Suits Act 1947* (WA) and/or s 47A of the 1935 Act;
 - (ii) all claims of loss or injury caused by an alleged breach of a duty of care (including allegations of failing to take reasonable steps to prevent psychiatric injury to that sub-group) (**Negligence Claims**) in respect of loss or damage alleged to have been suffered on or after 18 August 2005 and on or before 14 November 2005 are statute-barred by ss 38(1)(c)(vi) and 40 of the 1935 Act and/or s 6 of the *Crown Suits Act 1947* (WA) and/or s 47A of the 1935 Act;
 - (iii) all Trespass to the Person Claims in respect of conduct alleged to have occurred, and all Negligence Claims in respect of loss or damage alleged to

have been suffered, after 14 November 2005 are statute-barred:

- (A) pursuant to s 30(1) of the *Limitation Act 2005 (WA)* (**2005 Act**), if the person was under 15 years of age when the cause of action accrued to that person and 6 years or more had elapsed between the date on which the cause of action accrued and the commencement of this proceeding on 28 November 2022; and
 - (B) pursuant to s 31(1) of the 2005 Act, if the person was 15, 16 or 17 years of age when the cause of action accrued to that person and the person had reached 21 years of age when this proceeding was commenced on 28 November 2022;
- (iv) all Trespass to the Person Claims in respect of conduct alleged to have occurred after 14 November 2005 are statute-barred, pursuant to ss 14(1) and/or 16(1) of the 2005 Act, if the person was 18 years of age when the cause of action accrued to that person and 3 years or more had elapsed between the date on which the cause of action accrued and the commencement of this proceeding on 28 November 2022;
- (v) all Negligence Claims which:
- (A) constitute “an action for damages relating to a personal injury to a person” within the meaning of s 14(1) of the 2005 Act, in respect of loss or damage alleged to have been suffered after 14 November 2005, are statute-barred, pursuant to s 14(1) of the 2005 Act, if the person was 18 years of age when the cause of action accrued to that person and 3 years or more had elapsed between the date on which the cause of action accrued and the commencement of this proceeding on 28 November 2022; and
 - (B) do not constitute “an action for damages relating to a personal injury to a person” within the meaning of s 14(1) of the 2005 Act, in respect of loss or damage alleged to have been suffered after 14 November 2005 are statute-barred, pursuant to s 13(1) of the 2005 Act, if the person was 18 years of age when the cause of action accrued to that person and 6 years or more had elapsed between the date on which the cause of action accrued and the commencement of this proceeding on 28 November 2022;

(vi) each of the:

(A) Trespass to the Person Claims; and/or

(B) Negligence Claims,

are “claim[s] for damages for harm caused by the fault of a person” within the meaning of sections 5A(1) and 5V(1) of the *Civil Liability Act 2002 (WA)* (**CLAWA**); and

(vii) the determination of the:

(A) Trespass to the Person Claims; and/or

(B) Negligence Claims,

would necessitate an examination of the idiosyncrasies of each incidence alleged to constitute false imprisonment, assault, battery or breach of a duty of care (such that the questions of law or fact alleged to be common to the claims of Group Members in paragraphs 3, 4, 5, 7, 8, 9, 10, 11, 12 and 13 (at least) of the OA are not common to the claims of members of the Tort sub-group;

(d) says that by operation of ss 46PO(2) and (3) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**), the Applicants cannot advance claims on behalf of group members alleging a breach of the DDA which occurred after the date of the making of a complaint to the Australian Human Rights Commission (**AHRC**);

(e) says that the Applicants cannot bring claims on behalf of group members concerning the complaint filed with the AHRC on 14 July 2023 (amended on 16 November 2023) and terminated on 15 February 2024 absent an extension of time pursuant to s 46PO(2) of the AHRC Act; and

(f) otherwise does not plead to paragraph 10 as it contains no allegations against it and makes no admission in respect of that paragraph.

11 It does not know and therefore cannot admit paragraph 11.

D. THE RESPONDENT

12 It admits paragraph 12.

13 As to paragraph 13, it:

(a) admits that:

(i) it is vicariously liable for wrongful acts and omissions of the Minister responsible for the administration of the YO Act, acting within the scope of their authority;

(ii) it is vicariously liable for wrongful acts and omissions of:

(A) each Chief Executive Officer of the Department (as that term is defined in s 3 of the YO Act) (**CEO**);

(B) each Superintendent (as that term is defined in s 3 of the YO Act);

(C) each person who is appointed under section 11(1a)(a) of the YO Act as a custodial officer (**Officers**);

(D) each prison officer (as that term is defined in s 3 of the YO Act); and

(E) each police officer (as that term is defined in s 3 of the YO Act),

acting within the course of their employment;

(b) says that whether any wrongful act or omission of a CEO, Superintendent, Officer, prison officer and/or police officer was within the course of their employment requires:

(i) an examination of the circumstances of each alleged incident;

(ii) an enquiry as to whether the tortious act in question has a sufficiently strong connection with the employment, and what is entailed in that employment, so as to be said to have been done in the course of that employment; and

(iii) taking into account specific features of the role assigned to the employee, which include characteristics such as authority, power, trust, control and the ability to exploit the relationship, which the employment places the wrongdoer in, in respect of the alleged victim;

- (c) says further that:
- (i) the Respondent, each Minister, each CEO, each Superintendent, each Officer, prison officer and/or police officer is and was at all relevant times a “public body or officer” within the meaning of s 5U of CLAWA;
 - (ii) each of the:
 - (A) Trespass to the Person Claims; and/or
 - (B) the Negligence Claims,are “claim[s] for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function” within the meaning of s 5X of CLAWA; and/or
 - (iii) in respect of the Trespass to the Person Claims and the Negligence Claims, a “policy decision” cannot be used to support a finding that the Respondent was at fault unless the decision was so unreasonable that no reasonable public body or officer in its position could have made it, pursuant to s 5X of CLAWA; and
- (d) otherwise denies paragraph 13.

14 [Not Used].

E. DETENTION CENTRES

15 As to paragraph 15, it:

- (a) admits that the Respondent operated the following “detention centres” (within the meaning of s 13 of the YO Act) within the time periods set out below (**Detention Centres**):
 - (i) Rangeview from 26 March 1994 to 30 October 2012;
 - (ii) Banksia Hill from 5 September 1997 to date; and
 - (iii) Hakea from 22 January 2013 to 6 December 2013;

- (b) as to the First Applicant (**Ms Walters**):
 - (i) it repeats paragraph 4 above; and
 - (ii) says that Ms Walters was never detained in Rangeview or Hakea;
- (c) as to Mr Vida:
 - (i) it repeats paragraph 8 above; and
 - (ii) says that Mr Vida was never detained in Rangeview or Hakea; and
- (d) otherwise denies the allegations in paragraph 15.

F. RELEVANT PROVISIONS OF THE YO ACT AND YO REGULATIONS

16 As to paragraph 16, it:

- (a) admits that the provisions of the YO Act and the *Young Offenders Regulations 1995 (YO Regulations)* pleaded in SOC [18] to [42] are material to the matters pleaded in the SOC;
- (b) says that the materiality and legal meaning of those provisions requires full consideration of the language of each of the YO Act and YO Regulations viewed as a whole and the context, general purpose and policy of the YO Act and YO Regulations; and
- (c) otherwise denies the allegations in paragraph 16.

17 It admits paragraph 17.

Objectives and principles

18 It admits paragraph 18.

19 It admits paragraph 19.

Detainees, key persons and administration

20 It admits paragraph 20.

21 As to paragraph 21, it:

(a) admits that:

- (i) the relevant Minister is responsible for administering the YO Act and the YO Regulations;
- (ii) under s 9 of the YO Act, it is the duty of the CEO, under the direction of the Minister, “to carry into operation the provisions of [the YO] Act so far as the duty is not expressly committed to any other person”;
- (iii) under s 3 of the YO Act, “superintendent” means the “person in charge of the detention centre”;
- (iv) under s 11(1) of the YO Act, the CEO may appoint, under and subject to Part 3 of the *Public Sector Management Act 1994 (WA)*, such officers and other persons as are necessary to implement or administer the YO Act;
- (v) under s 11(1a) of the YO Act, in addition to persons appointed under s 11(1) and for the purposes of the YO Act, the CEO may appoint:
 - (A) custodial officers for primarily non-administrative functions; and
 - (B) officers and employees of particular classes as are prescribed by the regulations,and may remove those persons in the prescribed circumstances; and
- (vi) under s 3 of the YO Act, “custodial officer” means:
 - (A) a superintendent, or other officer with custodial functions, appointed under s 11(1) of the YO Act; or
 - (B) a person who is appointed under s 11(1a)(a) of the YO Act as a custodial officer;

(b) says that the CEO may, by a signed instrument of delegation, delegate to an officer of the Department, either generally or as otherwise provided in the instrument, any power or duty under the YO Act, pursuant to s 10 of the YO Act; and

(c) otherwise denies the allegations in paragraph 21.

22 As to paragraph 22, it:

- (a) admits that, under s 11B of the YO Act, a custodial officer:
 - (i) has a responsibility to maintain the security of the facility or detention centre where he or she is employed;
 - (ii) must obey all lawful orders given to him or her by the officer under whose control or supervision he or she is placed; and
 - (iii) may issue to a detainee such orders as are necessary for the purposes of the YO Act, including the security, good order, or management of a facility or detention centre, and may use such force as is prescribed under s 11C of the YO Act as is necessary to ensure that lawful orders given to a detainee are complied with;
- (b) says that, under s 11B of the YO Act, a custodial officer is liable to answer for the escape of a detainee placed in his or her charge or for whom when on duty he or she has a responsibility; and
- (c) otherwise denies the allegations in paragraph 22.

23 As to paragraph 23, it:

- (a) admits:
 - (i) paragraph 23(a);
 - (ii) that under s 11E(2) of the YO Act a prison officer when assisting under s 11E(1) of the YO Act:
 - (A) has the powers;
 - (B) is subject to the responsibilities; and
 - (C) is to receive the protection from liability,which in like circumstances would be conferred or imposed on a custodial officer, in addition to the powers and duties conferred and imposed on that prison officer by or under any other law; and

(iii) that under s 11E(3) of the YO Act a prison officer when assisting under s 11E(1) of the YO Act may use such force as can be used by a custodial officer and, with the approval of the CEO, may use such controlled weapons as are necessary in the circumstances; and

(b) otherwise denies the allegations in paragraph 23.

24 As to paragraph 24, it:

(a) admits:

(i) paragraph 24(a);

(ii) that under s 11F(2) of the YO Act a police officer when assisting under s 11F(1) of the YO Act:

(A) has the powers;

(B) is subject to the responsibilities; and

(C) is to receive the protection from liability,

which in like circumstances would be conferred or imposed on a custodial officer, in addition to the powers and duties conferred and imposed on that police officer by or under any other law; and

(b) otherwise denies the allegations in paragraph 24.

25 As to paragraph 25, it:

(a) admits that:

(i) s 13(1) of the YO Act empowers the Minister to declare a place to be a "detention centre";

(ii) s 118A(1) of the YO Act provides that if:

(A) as a result of a sentence imposed by a Court, a young person is to be imprisoned; and

(B) the young person is under 18 years old at the time when under that sentence he or she is to be imprisoned,

then, unless a direction has been made under s 118(4) of the YO Act, the young person is to serve that sentence in a detention centre and not in a prison until a direction is made under s 178 of the YO Act; and

(b) otherwise denies the allegations in paragraph 25.

26 It admits paragraph 26.

Orders, force, restraint and confinement

Power to give orders

27 It admits paragraph 27 and, in this defence, refers to the power under section 11B(d) of the YO Act, which provides that an Officer may issue to a detainee such orders as are necessary for the purposes of the YO Act, including the security, good order, or management of Banksia Hill, and may use such force as is prescribed under section 11C as is necessary to ensure that lawful orders given to a detainee are complied with, as the **“Compliance with Orders Power”**.

Use of force

28 As to paragraph 28, it:

(a) admits that under s 11C of the YO Act, a custodial officer:

- (i) is authorised to use no more than “prescribed force” in the management, control and security of a facility or detention centre (**Management, Control and Security Power**); and

PARTICULARS

- (i) Reg 71(1) of the YO Regulations provides that “prescribed force” means “the degree of physical force which is the minimum required to control a detainee’s behaviour in the circumstances”.
- (ii) must not use force on a young offender unless that force is used in the “prescribed circumstances”;

PARTICULARS

- (i) Reg 72(1) of the YO Regulations provides that “prescribed circumstances” means “an immediate period when a detainee is

imminently presenting a risk of physical injury to himself or herself, other detainees or staff”.

- (b) refers to and repeats paragraph 22(a)(iv) above and says that the Compliance with Orders Power authorises the use of force;
- (c) refers to and repeats paragraph 40(a)(iii) below and says that the Use of Force in Searches Power (as defined in paragraph 40(a)(iii) below) authorises the use of force;
- (d) refers to and repeats paragraph 30(b) below and says that the Restraints Power (as defined in paragraph 30(b) below) authorises the use of force; and
- (e) otherwise denies the allegations in paragraph 28.

29 It admits paragraph 29 and says further that the provisions of the YO Act prevail over the YO Regulations to the extent of any inconsistency.

Restraint

30 It admits paragraph 30 and says further that:

- (a) “**restraint**” under the YO Act and YO Regulations has its ordinary meaning of “a measure or condition that keeps someone or something under control”; and
- (b) in this defence, it uses the term “**Restraints Power**” to refer to the power under section 11D(1) of the YO Act, which provides that the CEO or a Superintendent may authorise and direct the use of a restraint (being, in its ordinary meaning, “a measure or condition that keeps someone or something under control”) where, in their opinion, such restraint is necessary (among other things) to prevent the young offender injuring himself or herself, or any other person.

31 It admits paragraph 31.

32 As to paragraph 32, it:

- (a) admits that s 11D(3) provides that if restraint is used in relation to a young offender for a continuing period of more than 24 hours, the use and the circumstances must be reported as soon as practicable to the CEO by the Superintendent who has overall responsibility for the young offender at the time;

- (b) says that s 11D(3) does not refer to a restraint being used “on” a detainee but, rather, “in relation to” a detainee; and
- (c) otherwise denies the allegations in paragraph 32.

Confinement

33 As to paragraph 33, it:

- (a) admits paragraphs 33(a) to 33(c);
- (b) says that:
 - (i) “confinement” in the YO Regulations means that a detainee is “confined to that detainee’s sleeping quarters or a designated room” during unlock hours (regs 73 and 74);
 - (ii) the definition of “unlock hours” in reg 73 of the YO Regulations contemplates that detainees may not be able “to leave their sleeping quarters” because they are subject to “confinement or restraint”;
 - (iii) a detainee is not “subject to confinement” within the meaning of the YO Regulations if they are “confined to that detainee’s sleeping quarters or a designated room” not during unlock hours (emphasis added); and
 - (iv) reg 74(2) of the YO Regulations provides that “superintendent may order that a detainee be confined to that detainee’s sleeping quarters or to a designated room in order to maintain good government, good order or security in a detention centre”; and
- (c) otherwise denies the allegations in paragraph 33.

34 As to paragraph 34, it:

- (a) admits that “unlock hours” is defined in reg. 73 of the YO Regulations as meaning “the period during which detainees who are not subject to confinement or restraint are able to leave their sleeping quarters”; and
- (b) otherwise denies the allegations in paragraph 34.

35 It admits paragraph 35.

36 As to paragraph 36, it:

(a) admits that:

(i) s 196(1) of the YO Act empowers the Governor to “make regulations prescribing all matters that are required or permitted by [the YO] Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of [the YO] Act”; and

(ii) admits that s 196(2)(e) provides that, without limiting s 196(1), regulations may be made conferring authority on a Superintendent "to order that a detainee be confined to the detainee's sleeping quarters, or to a designated room, for a period not exceeding 24 hours in order to maintain good government, good order or security in a detention centre"; and

(b) otherwise denies the allegations in paragraph 36.

37 As to paragraph 37, it:

(a) admits that:

(i) reg 74(1) of the YO Regulations provides that a “superintendent or a visiting justice may order that a detainee be confined to that detainee’s sleeping quarters or to a designated room as a way of dealing with a detainee who has been found to have committed a detention offence”; and

(ii) reg 72(2) provides that “superintendent may order that a detainee be confined to that detainee’s sleeping quarters or to a designated room in order to maintain good government, good order or security in a detention centre”;

(b) refers to and repeats paragraph 33(b) above; and

(c) otherwise denies the allegations in paragraph 37.

38 As to paragraph 38, it:

(a) admits the content of the YO Regulations in paragraphs 38(a) to (d); and

(b) otherwise denies the allegations in paragraph 38.

Search

39 As to paragraph 39, it:

(a) says that s 196(3) of the YO Act provides that, without limiting s 196, the Governor may make regulations for the management, control, and security of detention centres generally or a specified detention centre and for, among other things, the management, control, and security of detainees:

(i) conferring authority on a Superintendent to search a detainee and take from him or her any thing found on his or her person:

(A) which apparently was not issued to the detainee with the approval of the Superintendent;

(B) which has been retained by the detainee without the approval of the Superintendent; or

(C) which, although issued or retained with the approval of the Superintendent, appears to the Superintendent to constitute a threat to or breach of the security or good order of the detention centre,

and to use such force as is reasonably necessary for the purpose of performing that search or seizure;

(ii) conferring authority on a Superintendent to use a trained dog to assist in carrying out a prescribed search; and

(iii) limiting the liability for injury or damage caused by the use of a trained dog when under the control of an authorised person in carrying out a search, and when the search was carried out in prescribed circumstances; and

(b) otherwise denies the allegations in paragraph 39.

40 As to paragraph 40, it:

(a) says that:

(i) reg 82(1) of the YO Regulations provides that a Superintendent “is authorised to search any detainee in accordance with this Part and take from him or her any illegal or unauthorised thing found on his or her person”;

- (ii) reg 83 provides that a Superintendent “is authorised to use a trained dog to assist in carrying out a search in accordance with this Part”;
- (iii) reg 84 provides that a Superintendent “is authorised to use such force as is reasonably necessary to perform a search and to take from a detainee in, entering or leaving a detention centre any illegal or unauthorised thing found during a search” (**Use of Force in Searches Power**); and
- (iv) a Superintendent may direct an Officer to undertake a search on their behalf; and

(b) otherwise denies the allegations in paragraph 40.

41 As to paragraph 41, it:

(a) admits that:

- (i) reg 85(1) of the YO Regulations provides that a detainee “should” be searched:
 - (A) on admission to the detention centre;
 - (B) immediately before discharge from the detention centre;
 - (C) on leaving or returning to a detention centre; and
 - (D) when transferring from one detention centre to another; and
- (ii) reg 85(2) provides that a detainee “may” be searched “at any time, and in such a manner, as is considered necessary at the time by the superintendent” (**Search Power**);

(b) says further that the authorisation of searches of detainees:

- (i) on admission to a Banksia Hill;
- (ii) immediately before discharge from Banksia Hill;
- (iii) on leaving or returning to Banksia Hill;
- (iv) when transferring from Banksia Hill to another detention centre;
- (v) on placement into an observation or multi-purpose cell;

- (vi) on receipt of intelligence;
- (vii) on discovery of contraband during a pat search or refusal by the detainee to comply with a pat search; and/or
- (viii) on such other occasions and in such a manner as the Superintendent or their delegate considered necessary to ensure the good order, security and safety of Banksia Hill and the wellbeing of detainees and staff,

is a “policy decision” within the meaning of sections 5U and 5X of CLAWA (**Conduct of Searches Policy Decision**); and

PARTICULARS

- (i) Standing Order 17.
 - (ii) Superintendent’s Notice 16 of 2013.
 - (iii) See also reg 85 of the YO Regulations. Regulation 85(2) provides that “A detainee may be searched at any time, and in such a manner, as is considered necessary at the time by the superintendent”.
- (c) otherwise denies the allegations in paragraph 41.

42 As to paragraph 42, it:

- (a) admits that reg 86 of the YO Regulations provides that:
 - (i) a detainee may be searched using either a “pat” or “strip” search depending on the circumstances surrounding the requirement of the search;
 - (ii) a detainee should be “strip” searched if there are circumstances giving rise to a reasonable suspicion that the detainee may be in possession of an item that could:
 - (A) jeopardise the safety, good order or security of the detention centre;
 - or
 - (B) be used for self-harm;
 - (iii) at least 2 Officers must be present during a search of a detainee;

- (iv) a detainee must not be “strip” searched in the sight or immediate presence of a person of the opposite gender;
 - (v) where practicable, a detainee should not be “strip” searched in the immediate presence of another detainee;
 - (vi) any search of a detainee must be conducted with due regard to the decency and self-respect of the detainee;
 - (vii) despite sub-regulation 86(4), a Superintendent may direct that a search is to be carried out in the presence of a medical practitioner or a nurse; and
 - (viii) whenever a detainee is “strip” searched, each Officer taking a role in that search must forward a written report of the search to the Superintendent; and
- (b) otherwise denies the allegations in paragraph 42.

G. CLAIMS OF FALSE IMPRISONMENT

43 [Not used].

44 It does not plead to paragraph 44 as the paragraph contains no allegations against it and makes no admission in respect of that paragraph.

45 It denies paragraph 45 and says further that:

- (a) section 118A of the YO Act provides that a young person sentenced by a Court to be imprisoned must serve the sentence in a detention centre and not in a prison, unless a direction is made in respect of the young person under section 118(4) or 178(3) or the young person is transferred under section 178A(2) of the YO Act;
- (b) a detainee is lawfully held in a Detention Centre:
 - (i) if in accordance with a remand warrant issued within the meaning of the *Criminal Procedure Act 2004* (WA);
 - (ii) if in accordance with a warrant of commitment issued with the meaning of the *Sentencing Act 1995* (WA); and
 - (iii) if in accordance with ss 19 and/or 21 of the YO Act;

- (c) the powers conferred by reg 73 and 74 of the YO Regulations do not derogate from the:
 - (i) Compliance with Orders Power; and/or
 - (ii) Management, Control and Security Power,under the YO Act and repeats paragraph 33(b) above; and
- (d) none of the matters pleaded in paragraphs 45(b) to 45(g) of the SOC render the confinement of a detainee unlawful if that confinement was otherwise lawful.

H. CLAIMS OF BATTERY AND/OR ASSAULT

46 As to paragraph 46:

- (a) as to paragraph 46(a), it:
 - (i) admits that the YO Act and YO Regulations authorise contact with a detainee:
 - (A) pursuant to the Management, Control and Security Power under s 11C of the YO Act and regs 71 and 72 of the YO Regulations; and
 - (B) pursuant to the Search Power and Use of Force in Searches Power and regs 84 to 87 of the YO Regulations;
 - (ii) says that the following persons may use “prescribed force” (being physical force to the degree which is the minimum required to control a detainee’s behaviour in the circumstances and which is necessary to ensure that lawful orders given to a detainee are complied with):
 - (A) a custodial officer (pursuant to s 11B(d) of the YO Act);
 - (B) a prison officer (pursuant to s 11E(2) and 11E(3) of the YO Act); and
 - (C) a police officer (pursuant to s 11F(2) of the YO Act);
 - (iii) says further that the persons identified in paragraph 46(a)(ii) above may use “prescribed force” in exercising a power under the YO Act and/or YO Regulations;

- (iv) repeats paragraph 30 above and says that under the YO Act and YO Regulations:
 - (A) the terms “restraint” (being “a measure or condition that keeps someone or something under control”) and “prescribed force” are not mutually exclusive; and
 - (B) use of “prescribed force” may include the use of “restraint” (including as set out in s 11D of the YO Act);
- (b) it denies the allegations in paragraph 46(b) and refers to and repeats paragraphs 28(a) to 28(d) and 46(a)(ii) to 46(a)(iv) above;
- (c) as to paragraph 46(c), it admits that reg 71(1) of the YO Regulations does not authorise the use of force on a detainee exceeding the degree of physical force which is the minimum required to control the detainee’s behaviour in the circumstances;
- (d) as to paragraph 46(d), it admits that reg 71(2) of the YO Regulations does not authorise the use of a physical restraint hold on a detainee by an Officer when:
 - (i) the Officer has not received instruction in the proper use of that physical restraint hold; or
 - (ii) the Superintendent has not authorised the use of that type of physical restraint hold;
- (e) it denies the allegations in paragraph 46(e) and refers to and repeats paragraphs 28(a) to 28(d) and 46(a)(ii) to 46(a)(iv) above;
- (f) it denies the allegations in paragraphs 46(f) and 46(g), refers to paragraph 41(a) above and says that:
 - (i) reg 85(2) provides that “a detainee may be searched at any time, and in such a manner, as is considered necessary at the time by the superintendent”; and
 - (ii) the use of the word “may” in reg 86(1) is permissive and in contrast to the use of the word “must” in regs 86(3), 86(4), 86(6) and 86(8);

- (g) it says further that in the period in which Ms Walters and/or Mr Vida were detained in Banksia Hill (being the period from 7 – 8 March 2014 and 9 March 2016 until 22 April 2020):
- (i) at least the following physical restraint holds (defined in paragraph 76(d) below) were authorised by the Superintendent;
 - (A) a figure four restraint;
 - (B) an escort hold;
 - (C) wrist weave hold;
 - (D) prone position with the detainee’s arm in the small of the lower back;
 - (E) an under hook and pike hold; and
 - (F) an **over hook and pike hold**, which is a variation of the under hook and pike hold and may be used for a detainee of a small size reducing the risk of discomfort to the shoulders by inserting one arm over the detainee’s shoulder; and
 - (ii) each custodial officer and prison officer received instruction in the proper use of at least those physical restraint holds as part of their training;
- (h) it says further that the use of force on a detainee may be justified in self-defence at common law;
- (i) further, or alternatively, it says that:
- (i) the authorisation of strip searches of detainees:
 - (A) on admission to a Detention Centre;
 - (B) immediately before discharge from a Detention Centre;
 - (C) on leaving or returning to a Detention Centre;
 - (D) when transferring from one Detention Centre to another;
 - (E) on placement into an observation or multi-purpose cell;
 - (F) on receipt of intelligence;

- (G) on discovery of contraband during a pat search or refusal by the detainee to comply with a pat search; and/or
- (H) on such other occasions and in such a manner as the Superintendent or their delegate considered necessary to ensure the good order, security and safety of Banksia Hill and the wellbeing of detainees and staff,

is a “policy decision” within the meaning of sections 5U and 5X of CLAWA (**Conduct of Searches Policy Decision**);

PARTICULARS

- (i) During the period in which Ms Walters and/or Mr Vida were detained in Banksia Hill, being the period from 7 – 8 March 2014 and 9 March 2016 until 22 April 2020, policies for the conduct of strip searches of detainees at Banksia Hill were set out in Standing Order 17, YCR 207, Standing Order 14a, Superintendent’s Notice 23 of 2013 and Superintendent’s Notice 16 of 2013.
- (ii) the authorisation of the use of handcuffs on a detainee:
 - (A) where the movement of a detainee is required during periods of lockup where, to preserve the good government, order and security of Banksia Hill, handcuffs are, in the view of the shift manager, required;
 - (B) where, following an incident, the detainee is compliant but responding staff determine in the interests of maintaining the safety of the detainee and others, that handcuffs are required for the removal of the detainee from the area;
 - (C) where handcuffs are required to be applied in the controlled escort of a detainee; or
 - (D) where a detainee has been placed on a management regime, approved by the Superintendent, which requires the application of handcuffs when out of cell,

is a "policy decision" within the meaning of sections 5U and 5X of CLAWA
(Use of Handcuffs Policy Decision);

PARTICULARS

- (i) During the period in which Ms Walters and/or Mr Vida were detained in Banksia Hill, being the period from 7 – 8 March 2014 and 9 March 2016 until 22 April 2020, policies for the use of handcuffs on detainees were set out in Standing Order 18, YCR 204, Policy Directive 82, Standing Order 45b, Superintendent's Notice 5 of 2014, Superintendent's Notice 2 of 2016 and Superintendent's Notice 8 of 2019.
- (iii) the claims in paragraphs 46 to 47 constitute a "claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function" within the meaning of s 5X of CLAWA; and
- (iv) pursuant to s 5X of CLAWA, the Conduct of Searches Policy Decision and/or Use of Handcuffs Policy Decision cannot be used to support a finding that the Respondent was at fault unless the Conduct of Searches Policy Decision and/or Use of Handcuffs Policy Decision was so unreasonable that no reasonable public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it; and
- (j) otherwise denies the allegations in paragraph 46.

47 As to paragraph 47, it:

- (a) refers to and repeats paragraphs 46(a) to 46(g) above;
- (b) says that any apprehension as alleged in paragraphs 47(a) and (b) must have been objectively reasonable and requires an examination of the circumstances of each alleged assault; and
- (c) otherwise denies the allegations in paragraph 47.

I. DUTY OF CARE

48 It admits paragraph 48.

48A. As to paragraph 48A, it:

- (a) refers to and repeats paragraphs 1 to 9 above;
- (b) admits that some detainees were persons who had experienced trauma, abuse or neglect both before and after being a detainee and says that the nature of any such trauma, abuse or neglect varied from detainee to detainee, as did the behaviour of those detainees (if any) due to such trauma, abuse or neglect;
- (c) admits that some detainees had neurodevelopmental impairment including one or more of cognitive impairment, behavioural disorders and/or other mental health conditions and says that the nature of such impairment varied from detainee to detainee;
- (d) says that some detainees, including Ms Walters and Mr Vida, were at all material times not “person(s) of normal fortitude” within the meaning of section 5S of CLAWA; and
- (e) otherwise does not know and therefore cannot admit the allegations.

Control over risk of harm

49 As to paragraph 49, it:

- (a) refers to and repeats paragraph 48A above;
- (b) says that, pursuant to section 5W of CLAWA, in determining whether the Respondent, the Minister, the CEO, the Superintendent, any Officer, prison officer and/or police officer has a duty of care or has breached a duty of care, the Court must have regard to the following matters:
 - (i) the functions required to be exercised by the public body or officer are limited by the financial and other resources that are reasonably available to the public body or officer for the purpose of exercising those functions;
 - (ii) the general allocation of those resources by the public body or officer is not open to challenge;
 - (iii) the functions required to be exercised by the public body or officer are to be determined by reference to the broad range of its activities (and not merely by reference to the matter to which the proceedings relate); and

- (iv) the public body or officer may rely on evidence of its compliance with the general procedures and applicable standards for the exercise of its functions as evidence of the proper exercise of its functions in the matter to which the proceedings relate;
- (c) admits that the Minister, the CEO, the Superintendent, Officers, prison officers and/or police officers knew, or ought reasonably to have known that detainees were children who had, or were likely to have, the Detainee Characteristics;
- (d) refers to and repeats paragraph 48A above;
- (e) as to paragraph 49(b), it:
 - (i) admits that at all material times, the Minister and/or CEO had the right and ability to determine who was employed in a Detention Centre, what skills were required, what training and procedures would be followed, and what persons would be allowed into a Detention Centre, subject to the provisions of the YO Act and *Public Sector Management Act 1994 (WA)*, including subsidiary legislation made thereunder;
 - (ii) says that the ability to determine who was employed in a Detention Centre, what skills those persons were required to have and what training and procedures would be followed was (and is) limited by the financial and other resources that were (and are) reasonably available to the Detention Centre for the purpose of exercising those functions;

PARTICULARS

- (i) The Detention Centres have faced challenges in dealing with damage to property caused by detainees, recruiting necessary staff and staff absences (including due to workers compensation claims). Further particulars will be provided following discovery and/or the filing of evidence.
- (f) as to paragraph 49(c), it:
 - (i) admits that each Minister, CEO, Superintendent, Officer, prison officer and/or police officer has the rights and powers conferred upon them at the relevant time by the YO Act and YO Regulations;

- (ii) says further that the “ability to determine how and when detainees were exposed to contact with other detainees” depended, among other things, on:
 - (A) the circumstances prevailing in the Detention Centre at the relevant time; and/or
 - (B) the limited financial and other resources that were reasonably available to the Detention Centre for the purpose of exercising its functions; and

PARTICULARS

- (i) It refers to and repeats the particulars subjoined to paragraph 49(e) above.
- (g) otherwise denies the allegations in paragraph 49.

Vulnerability

50 As to paragraph 50, it:

- (a) says that in that form, the allegation is embarrassing and/or ambiguous in that it does not identify the risk(s) of harm in respect of which the detainees are alleged to be vulnerable; and
- (b) under cover of the above objection, denies the allegations in paragraph 50.

The Respondent’s duty of care

51 As to paragraph 51, it:

- (a) refers to and repeats paragraphs 48 to 50 above;
- (b) admits as to each of the Detention Centres that a detaining authority has a duty to exercise reasonable care for the physical safety of a detainee;
- (c) says that:
 - (i) such a duty does not require the authority to ensure the physical health and safety of a detainee but, rather, is an obligation of reasonable care to avoid harm to the physical condition of a detainee; and

- (ii) the scope and content of any duty owed to each detainee and what types of risks of harm are encompassed by the duty is informed by:
 - (A) the matters set out in section 5W of CLAWA;
 - (B) the obligation of each Minister, CEO, Superintendent, Officer, prison officer and/or police officer to ensure the effective detention of detainees in accordance with the law; and
 - (C) the duty of care owed to employees of each Detention Centre, including each Superintendent, Officer, prison officer and/or police officer;

PARTICULARS

- (i) It refers to and repeats the particulars subjoined to paragraph 49(e) above.
- (d) says that:
- (i) section 5S of CLAWA provides that the Minister, the CEO, the Superintendents, Officers, prison officers and/or police officers did not owe a duty of care to the Applicants to take care not to cause the Applicants mental harm unless the Minister, CEO, Superintendents, Officers, prison officers and/or police officers (as the case may be) ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken;
 - (ii) section 5S of CLAWA requires a particular and separate inquiry into the existence and content of a duty of care with respect to mental harm;
 - (iii) section 5S of CLAWA imposes a qualification on the test of reasonable foreseeability by specifying three elements that a respondent ought to have foreseen, namely:
 - (A) that “a person of normal fortitude” might;
 - (B) “in the circumstances of the case” suffer; and
 - (C) “a recognised psychiatric illness”, if reasonable care were not taken;

- (iv) section 5S of CLAWA requires the Applicants to identify with some precision the nature of the risk which might give rise to mental harm by identifying the risk of particular events which might give rise to mental harm;
 - (v) there is no articulation in paragraph 51 of the SOC of the nature of the conduct that the Respondent should have foreseen which might lead a person of normal fortitude to suffer a psychiatric illness; and
 - (vi) in the absence of a specified risk of harm, one cannot assess the probability of that risk occurring or evaluate the reasonableness of the Respondent's response, or lack of response, to that risk;
- (e) says further that:
- (i) section 5B of CLAWA requires the Applicants to identify and articulate the "risk of harm" against which it is alleged the Respondent would be negligent for failing to take precautions;
 - (ii) paragraphs 48 to 51 of the SOC do not identify the person, thing or set of circumstances which is alleged to have given rise to the potential for the alleged harm nor the general causal mechanism of any injury sustained: *De Martin & Gasparini Pty Ltd v Bartlett* [2025] NSWCA 56 [22]; and
 - (iii) in the absence of a specified risk of harm, one cannot assess the probability of that risk occurring or evaluate the reasonableness of the Respondent's response, or lack of response, to that risk; and
- (f) otherwise denies the allegations in paragraph 51.

Minister, the CEO, the Superintendent and Officers Duty of Care

52 As to paragraph 52, it:

- (a) refers to and repeats paragraphs 51(a) to 51(c) above; and
- (b) otherwise denies the allegations in paragraph 52.

53 As to paragraph 53, it:

- (a) admits paragraph 53(a);
- (b) refers to and repeats paragraphs 48A and 51(a) to 51(c) above; and

(c) otherwise denies the allegations in paragraph 53.

J. RELEVANT AREAS UNDER PART 2 DIVISION 2 OF THE DDA AND BEHAVIOURAL REGIME

54 As to paragraph 54, it:

(a) says that, during the Relevant Period:

(i) the Respondent administered education and training at:

(A) Rangeview;

(B) Banksia Hill; and

(C) Hakea;

(ii) Auswest Specialist Education and Training Services (**ASETS**) was a registered training organisation (**RTO**), registered by the Training Accreditation Council (**TAC**), to deliver vocational education and training (**VET**) programs to detainees of Rangeview and/or Banksia Hill and/or Hakea;

(iii) the Certificate in General Education for Adults (**CGEA**) was a VET program, which contained curriculum accredited in Victoria, by the Adult, Community and Further Education Board; the Respondent did not develop the curriculum;

(iv) ASETS accepted enrolments in the CGEA; and

(v) ASETS was administered by the Respondent; and

(b) otherwise admits the allegations in paragraph 54.

54A. As to paragraph 54A, it:

(a) refers to and repeats paragraph 54 above;

(b) admits that Rangeview, Banksia Hill and Hakea were each an educational institution;

- (c) does not know and therefore cannot admit that the Superintendent or Officers were members of staff of an educational institution; and
- (d) otherwise admits the allegations in paragraph 54A.

55 As to paragraph 55, it:

- (a) says that the paragraph is embarrassing and/or ambiguous in that it:
 - (i) pleads rolled-up conclusions and does not plead, particularise or cross-refer to any material facts from which those conclusions are alleged to arise;
 - (ii) does not specify which of the matters in 55(a) to (h) are said to be:
 - (A) goods; and/or
 - (B) services; and/or
 - (C) facilities;
- (b) says further that:
 - (i) it admits that during the Relevant Period it provided the matters set out in paragraphs 55(a), (b), (b1) (c), (d), (d1), (e), (g), (g1), (g2), (g3) of the SOC to detainees at Banksia Hill;
 - (ii) it does not know and therefore cannot admit that it provided the matters set out in paragraphs 55(a1), (c1), (f) and (h) of the SOC to detainees during the Relevant Period, unless and until particulars are provided of the specific matters that Ms Walters and Mr Vida allege were provided to them;
 - (iii) says further that as an inherent part of detention, the Respondent provided or made available to detainees at Banksia Hill:
 - (A) a place to receive visits from friends, relatives and legal advisors;
 - (B) telephones to communicate with friends, relatives and legal advisors;
 - (C) a space for recreation and exercise;

- (D) goods and services for recreation and exercise;
 - (E) health and hygiene goods;
 - (F) food and canteen services; and
 - (G) heating and cooling in the detention centre; and
- (c) otherwise denies the allegations in paragraph 55.

55A. As to paragraph 55A, it:

- (a) objects to paragraph 55A(a)(ii) to (vi) and says that the requirements listed are not facially neutral when such conduct is alleged to be a manifestation of Ms Walters' or Mr Vida's disabilities, and therefore does not give rise to a "requirement" or "condition" within the meaning of section 6(2) of the DDA;
- (b) under cover of that objection:
 - (i) refers to and repeats paragraphs 22 to 26 above;
 - (ii) admits that Ms Walters, Mr Vida and other detainees were required to comply with all lawful demands, directions and orders given or made by the CEO, Superintendent and Officers within the scope of their powers afforded by the YO Act and YO Regulations;
 - (iii) says that to the extent that the matters listed in paragraph 55A(a)(ii) to (iv) formed the subject of a valid demand, direction or order given or made by the CEO, Superintendent and Officers within the scope of their powers afforded by the YO Act and YO Regulations, it admits that all detainees were required to comply;
- (c) says that insofar as there was a 'Behavioural Regime' (which it denies), the requirements in 55(A)(a)(i) to (iv) were in order to:
 - (i) protect Ms Walters and/or Mr Vida from harm to themselves or to others;
 - (ii) maintain the safety and security of other detainees;
 - (iii) maintain the safety and security of Officers and other staff;

(iv) maintain the security, good order and management of each detention facility; and/or

(v) to exercise and perform powers and duties conferred by the YO Act and YO Regulations,

(together, the **Safety and Security Objectives**);

(d) says that insofar as detainees engaged in Proscribed Conduct, it acted in accordance with the requirements set out in paragraphs 28 to 42, 76 to 86, 108 and 162; and

(e) otherwise denies the allegations in paragraph 55A.

55B. As to paragraph 55B, it:

(a) refers to and repeats paragraph 55A above (including the objection); and

(b) otherwise denies the allegations in paragraph 55B.

55C. As to paragraph 55C, it

(c) refers to and repeats paragraph 55A above (including the objection); and

(d) otherwise denies the allegations in paragraph 55C.

K. CLAIMS OF MS WALTERS

K.1 False Imprisonment, assault and battery

False imprisonment

56 As to paragraph 56, it:

(a) admits that during the time that Ms Walters was detained at Banksia Hill, Banksia Hill was placed in “lockdown” and/or “rolling lockdown” (as those terms are defined in paragraph 44 of the SOC) on the basis of the Safety and Security Objectives:

PARTICULARS

(i) During the time Ms Walters was detained at Banksia Hill, detainees at Banksia Hill were restricted to their cells or restricted to their living units during at least the following periods:

- (A) between approximately 7.15pm in the evening each day until and 7.45am the following day (**Overnight Lockdown**);
 - (B) between approximately 12.00pm to 12.40pm and 4.00 pm to 4.40 pm for periods of approximately 30 to 40 minutes each day for staff breaks; and
 - (C) from November 2016 onwards, each Wednesday afternoon for approximately 3 hours for staff training; and
- (ii) it refers to paragraph 87 of the Walters Schedule of Particulars.
- (b) says that some “lockdowns” and/or “rolling lockdowns” referred to in paragraph 56(a) above were implemented when the number of staff who attended for work at Banksia Hill that day was insufficient to have all detainees (who were not subject to confinement or restraint) out of their cells during unlock hours while at the same time maintain the security, good government, good order and/or management of Banksia Hill and the safety and security of detainees, Officers, prison officers, police officers and other staff;

PARTICULARS

- (i) Further particulars of lockdowns and/or rolling lockdowns during the time that Ms Walters was detained at Banksia Hill may be provided following discovery and/or evidence.
- (c) says that the claims set out in paragraphs 56 to 86 and 112 to 115:
- (i) are “claim[s] for damages for harm caused by the fault of a person” within the meaning of ss 5A(1) and/or 5V(1) of CLAWA;
 - (ii) are subject to the following provisions of CLAWA:
 - (A) ss 5U, 5V, 5W and/or 5X of Part 1C of CLAWA; and/or
 - (B) Part 2 of CLAWA;
 - (iii) include “claim[s] for personal injury damages for mental harm” within the meaning of s 5R(1) of CLAWA”; and/or

- (iv) are subject to ss 5Q, 5R, 5S and/or 5T of Part 1B of CLAWA;
- (d) says further that the authorisation of lockdowns and/or rolling lockdowns in the management of the Detention Centres is a 'policy decision' within the meaning of s 5U of CLAWA (**Lockdowns Policy Decisions**); and

PARTICULARS

- (i) During the period in which Ms Walters and/or Mr Vida were detained in Banksia Hill, being the period from 7 – 8 March 2014 and 9 March 2016 until 22 April 2020, policies for the use of lockdowns and/or rolling lockdowns were set out in Standing Order 25, Youth Custodial Rule 222, Youth Custodial Rule 205. Further particulars may be provided following discovery and the filing of evidence.
 - (e) otherwise denies the allegations in paragraph 56.
- 57 It refers to and repeats paragraph 56 above and otherwise admits paragraph 57.
- 58 It refers to and repeats paragraph 56 above and otherwise admits paragraph 58.
- 59 As to paragraph 59, it:
- (a) refers to and repeats paragraphs 33(b) and 56 above; and
 - (b) otherwise denies the allegations in paragraph 59.
- 60 As to paragraph 60, it:
- (a) admits that the confinement of Ms Walters in her cell during a lockdown or rolling lockdown was not "detention offence" confinement; and
 - (b) otherwise denies the allegations in paragraph 60.
- 61 As to paragraph 61, it:
- (a) says that Ms Walters was deprived of her liberty by reason of being a detainee at Banksia Hill and refers to paragraph 45(a) and 45(b) above and paragraph 62(b) below; and
 - (b) otherwise denies the allegations in paragraph 61.

62 As to paragraph 62, it:

- (a) refers to and repeats paragraphs 59 to 61 above;
- (b) refers to and repeats paragraph 45(b) above and says that Ms Walters was lawfully detained in Banksia Hill during the relevant periods;

PARTICULARS

- (i) Remand warrant issued on 30 May 2018 authorising imprisonment until a new court dated of 18 July 2018 at 9.15am;
- (ii) remand warrant issued 18 July 2018 authorising imprisonment until a new court date of 29 August 2018 at 1.30pm;
- (iii) remand warrant issued 29 August 2018 authorising imprisonment until a new court date on 19 September 2018 at 1.30pm;
- (iv) remand warrant issued 19 September 2018 authorising imprisonment until a new court date of 25 October 2018 at 1.30pm;
- (v) remand warrant issued 25 October 2018 authorising imprisonment until a new court date of 15 November 2018 at 9.15am;
- (vi) remand warrant issued 15 November 2018 authorising imprisonment until a new court date of 7 December 2018 at 9.15am;
- (vii) remand warrant issued 7 December 2018 authorising imprisonment until new court date of 29 January 2019 at 9.15am;
- (viii) remand warrant issued 29 January 2019 authorising imprisonment until a new court date of 25 March 2019 at 1.30pm;
- (ix) remand warrants issued 25 March 2019 and 15 April 2019 authorising imprisonment until new court date of 29 April 2019 at 1.30pm;

- (x) remand warrant dated 15 April 2019 authorising imprisonment until a new court date of 29 April 2019 at 9.00am;
 - (xi) remand warrant issued 18 July 2019 authorising imprisonment until a new court date of 8 August 2019 at 9.15am; and
 - (xii) remand warrant issued 3 December 2019 authorising imprisonment until a new court date of 6 December 2019 at 12.15pm;
- (c) refers to and repeats paragraph 13(c) above;
- (d) says further or in the alternative that:
- (i) pursuant to reg 74(2) of the YO Regulations, the Superintendent may order that detainees be confined to their respective sleeping quarters or to a designated room in order to maintain good government, good order or security in Banksia Hill;
 - (ii) in implementing each lockdown and/or rolling lockdown, the Superintendent and/or Officers ordered that the detainees be confined to their respective sleeping quarters or to a designated room in order to maintain good government, good order or security in Banksia Hill; and/or

PARTICULARS

- (i) It refers to and repeats the particulars subjoined to paragraphs 56(a) and 56(d) above.
 - (iii) such orders were made in order to maintain good government, good order or security in Banksia Hill;
- (e) says further or in the alternative that:
- (i) pursuant to section 11B(d) of the YO Act, an Officer may issue to a detainee such orders as are necessary for the purposes of the YO Act, including the security, good order, or management of Banksia Hill, and may use such force as is prescribed under section 11C of the YO Act as is necessary to ensure that lawful orders given to a detainee are complied with;
 - (ii) in implementing each lockdown and/or rolling lockdown, Officers issued

orders to detainees of Banksia Hill to return to their cells; and/or

- (iii) such orders were necessary for the purposes of the YO Act, including the security, good order and/or management of Banksia Hill;
- (f) refers to and repeats paragraph 56 above and says further or in the alternative that:
- (i) the claims in paragraphs 56 to 62 and/or 112 to 115 constitute a “claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function” within the meaning of s 5X of CLAWA; and
 - (ii) pursuant to s 5X of CLAWA, the Lockdowns Policy Decision(s) cannot be used to support a finding that the Respondent was at fault unless the Lockdowns Policy Decision(s) was/were so unreasonable that no reasonable public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it/them; and
- (g) says that when Ms Walters was confined to her sleeping quarters or another designated room during unlock hours, it was on the basis of the Safety and Security Objectives pursuant to the:
- (i) Management, Control and Security Power (see paragraph 62(d) above); and/or
 - (ii) Compliance with Orders Power (see paragraph 62(f) above); and
- (h) otherwise denies the allegations in paragraph 62.

63 As to paragraph 63, it:

- (a) says that in order to ensure the safety and security of the detention centre, the Cue Unit:
 - (i) is the multi-purpose management unit within the Yeeda Unit (the general living unit for female detainees) comprising of 4 cells which provides a higher level of supervision for detainees requiring a higher level of support, care and engagement;

- (ii) contains 2 observation cells which allow for Officers to maintain a direct line of sight to the detainee and are used:
 - (A) for detainees who are in need of continuous observation;
 - (B) if a detainee is suspected to be under the influence of, or suffering withdrawal from, alcohol or drugs;
 - (C) if a detainee is considered a risk to self or others;
 - (D) if a detainee is having suicidal ideations, threatening suicide, or found with items which provide capability to carry out or attempt suicide or self-harm or harm others;
 - (E) if a detainee is assessed or has a known current mental health illness which is not controlled by medication and is supported by the Medical Unit;
 - (F) if a detainee appears to be depressed, distressed, or experiencing rapid mood swings in consultation with Psychological Services;
 - (G) if a detainee is presenting with any other reason causing a risk of imminent harm to self or others;
 - (H) if a detainee is undergoing an incident investigation;
 - (I) on the request/advice of a psychiatrist or mental health nurse; and
 - (J) as an overflow management option if other multipurpose cells are not available;
- (iii) contains 2 multi-purpose cells which are utilised (as necessary and as a last resort) as a short-term placement of detainees, as an immediate response to an incident; and to:
 - (A) promote self-regulation of detainees;
 - (B) manage risk at Banksia Hill;
 - (C) support the incident investigation process; and

(D) support the overflow of detainees requiring increased checks and a higher level of supervision and observation; and

(b) otherwise admits the allegations in paragraph 63.

64 As to paragraph 64, it:

(a) says that:

(i) during her detention at Banksia Hill, Ms Walters engaged in violence and threats of violence, including:

(A) punching, kicking and otherwise assaulting Officers and/or other staff;

(B) threatening Officers and/or other staff with violence, including drawing or writing threats of violence towards Officers and/or other staff, and including creating a “kill list”;

(C) engraving threats toward her victim such as “[He] is a dead man”, “[He] will die” and “I will kill [him]” into a tree in the Yeeda precinct;

PARTICULARS

(i) It refers to paragraphs 5, 6, 9, 10, 11, 17, 18, 21, 23 24, 25, 26, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 40, 41, 42, 46, 48, 49, 50, 51, 53, 54, 56, 57, 58, 60, 61, 62, 63, 64, 67, 68, 69, 70, 71, 73, 74, 75, 76, 81, 85 and 86 of the Respondent’s schedule of particulars for Ms Walters (**Walters Schedule of Particulars**).

(ii) during Ms Walters’ time in Banksia Hill, overnight lockdown usually started at 7.15pm and went until 7.45am the next day (being the Overnight Lockdown);

(b) refers to paragraph 62 above and says that when Ms Walters was confined to her sleeping quarters or another designated room during unlock hours, it was on the basis of the Safety and Security Objectives pursuant to the:

(i) Management, Control and Security Power; and/or

(ii) Compliance with Orders Power;

PARTICULARS

- (i) It refers to the particulars to paragraph 64(a) above and to paragraphs 60 and 86 of the Walters Schedule of Particulars.
- (c) says further or in the alternative that the authorisation of confinement of a detainee to their sleeping quarters or to a designated room:
 - (i) following incidents of violence or threatened violence by the detainee;
 - (ii) following incidents of self-harm;
 - (iii) where there is a risk of self-harm by a detainee;
 - (iv) when insufficient Officers and/or other staff are available to supervise detainee(s) during unlock hours; and
 - (v) to interrupt a cycle of behaviour and to provide the opportunity for detainees reflect on their behaviour and to assist with the ongoing good government, good order or security of the detention centre,

is a 'policy decision' within the meaning of ss 5U and 5X of CLAWA (**Specific Confinement Policy Decision**); and

PARTICULARS

- (i) During the period in which Ms Walters and/or Mr Vida were detained in Banksia Hill, being the period from 7 – 8 March 2014 and 9 March 2016 until 22 April 2020, policies for the use of confinement of detainees were set out in Juvenile Custodial Rule 211, Youth Custodial Rule 205, Standing Order 9a, Standing Order 9b, Youth Custodial Rule 207. It also refers to and repeats the particulars subjoined to paragraph 56(d) above.
- (d) otherwise denies the allegations in paragraph 64.

65 It admits paragraph 65.

66 As to paragraph 66, it:

- (a) refers to and repeats paragraph 61(a) above; and

(b) otherwise denies the allegations in paragraph 66.

67 As to paragraph 67, it:

(a) says that Ms Walters was deprived of her liberty by reason of being a detainee at Banksia Hill and refers to paragraph 45(a) and 45(b) above;

(b) further or in the alternative, it refers to paragraph 64(a) above and says that when Ms Walters was confined to her sleeping quarters or another designated room during unlock hours, it was on the basis of the Safety and Security Objectives pursuant to the:

(i) Management, Control and Security Power; and/or

(ii) Compliance with Orders Power;

PARTICULARS

(i) It refers to paragraphs 1, 2, 3, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 51, 53, 54, 55, 56, 57, 58, 60, 61, 62, 63, 64, 67, 69, 70, 71, 73, 75, 77, 80, 81, 83, 85 and 86 of the Walters Schedule of Particulars.

(c) refers to and repeats paragraph 56 and says further or in the alternative that:

(i) the claims in paragraphs 64 to 68 and/or 112 to 115 constitute a “claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function” within the meaning of s 5X of CLAWA; and

(ii) pursuant to s 5X of CLAWA, the Specific Confinement Policy Decision(s) cannot be used to support a finding that the Respondent was at fault unless the Specific Confinement Policy Decision(s) was/were so unreasonable that no reasonable public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it/them; and

(d) otherwise denies the allegations in paragraph 67.

68 As to paragraph 68, it:

- (a) refers to and repeats paragraphs 65 to 67 above; and
- (b) denies the allegations in paragraph 68.

Strip searches

69 As to paragraph 69, it:

- (a) admits that Ms Walters was strip searched on her admission to Banksia Hill on 23 March 2018 and refers to and repeats paragraphs 41(a) and 42(a) above;
- (b) admits that Ms Walters was subjected to a half-and-half strip search (being a search in which half a person's clothing is removed at a time, with those clothes put back on before removal of the other half) on her admission to Banksia Hill on the following dates and refers to and repeats paragraphs 41(a) and 42(a) above:
 - (i) 26 August 2019;
 - (ii) 3 September 2019;
 - (iii) 3 December 2019; and
 - (iv) 20 March 2020;
- (c) does not know and therefore cannot admit whether Ms Walters was strip searched on admission to Banksia Hill on 17 July 2019;
- (d) refers to and repeats paragraph 41(a)(ii) above and admits that Ms Walters was subjected to a:
 - (i) strip search after an incident on 20 June 2018 involving scissors;
 - (ii) strip search after an incident on 27 June 2018 involving a shard of Perspex;
 - (iii) half-and-half strip search after an incident on 26 February 2019 in which Ms Walters absconded and climbed onto the roof of the Cue unit, where she stayed for over four hours; and

PARTICULARS

- (i) It refers to paragraphs 7, 10 and 75 of the Walters Schedule of Particulars.
- (e) otherwise denies paragraph 69.

70 As to paragraph 70, it:

- (a) does not know and cannot admit paragraph 70(a);
- (b) refers to and repeats paragraphs 41(a), 42(a) and 46(f) above and says that:
 - (i) reg. 85(2) of the YO Regulations states that a “detainee may be searched at any time, and in such a manner, as is considered necessary at the time by the superintendent”;
 - (ii) reg 81(4) of the YO Regulations states that “if the superintendent is empowered to search a detainee, officer or other employee, or a person to whom Division 4 applies, the superintendent is empowered to direct an officer to undertake that search on his or her behalf”; and
 - (iii) reg 86(2) of the YO Regulations does not limit the conduct of strip searches to when there are circumstances giving rise to a reasonable suspicion that the detainee may be in possession of an item that could (a) jeopardise the safety, good order or security of the detention centre; or (b) be used for self-harm;
- (c) refers to paragraph 69(b) above which identifies the circumstances in which Ms Walters was strip-searched; and
- (d) otherwise denies paragraph 70.

PARTICULARS

- (i) It refers to and repeats the particulars subjoined to paragraph 69 above.
- 71 As to paragraph 71, it:
- (a) repeats paragraphs 64(a)(i) and 70(c) above;

- (b) says that the searches conducted of Ms Walters were pursuant to the:
 - (i) Search Power;
 - (ii) Use of Force in Searches Power; and/or
 - (iii) Compliance with Orders Power;
- (c) refers to and repeats paragraph 56 and says further or in the alternative that:
 - (i) the claims in paragraphs 69 to 71 and/or 112 to 115 constitute a “claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function” within the meaning of s 5X of CLAWA; and
 - (ii) pursuant to s 5X of CLAWA, the Conduct of Searches Policy Decision(s) cannot be used to support a finding that the Respondent was at fault unless the Conduct of Searches Policy Decision(s) was/were so unreasonable that no reasonable public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it/them; and
- (d) otherwise denies the allegations in paragraph 71.

72 As to paragraph 72, it:

- (a) admits paragraphs 72(a), (b), (f) and (g); and
- (b) otherwise denies paragraph 72.

73 It repeats paragraph 72 above and otherwise does not plead to paragraph 73 as no allegation is made against it in that paragraph and makes no admission in respect of that paragraph.

74 As to paragraph 74, it:

- (a) does not know and therefore cannot admit paragraph 74(a);
- (b) says that Ms Walters was:
 - (i) not strip-searched during the incident that occurred on 29 January 2019;
 - (ii) subject to a pat and wand search; and

- (c) otherwise denies paragraph 74.

PARTICULARS

- (i) It refers to paragraph 73 of the Walters Schedule of Particulars.

75 As to paragraph 75, it:

- (a) refers to and repeats paragraph 72(a), 74(a) and 74(b) above;
- (b) says that the use of force on Ms Walters was pursuant to the:
 - (i) Compliance with Orders Power;
 - (ii) Management, Control and Security Power;
 - (iii) Restraints Power; and
 - (iv) Use of Force in Searches Power;
- (c) says further that the conduct of a pat and wand search on Ms Walters was pursuant to the Search Power and Use of Force in Searches Power;

PARTICULARS

- (i) It refers to paragraph 73 of the Walters Schedule of Particulars.

- (d) refers to and repeats paragraph 56 and says further or in the alternative that:
 - (i) the claims in paragraphs 72 to 75 and/or 112 to 115 constitute a “claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function” within the meaning of s 5X of CLAWA; and
 - (ii) pursuant to s 5X of CLAWA, the Conduct of Searches Policy Decision(s) and/or Use of Handcuffs Policy Decision(s) cannot be used to support a finding that the Respondent was at fault unless the Conduct of Searches Policy Decision(s) and/or Use of Handcuffs Policy Decision(s) was/were so unreasonable that no reasonable public body or officer in the position of the Respondent could have made it/them; and
- (e) otherwise denies the allegations in paragraph 75.

Use of force

76 As to paragraph 76, it:

- (a) refers to and repeats paragraph 64(a)(i) above;
- (b) admits that while Ms Walters was detained at Banksia Hill, she was sometimes subjected to the use of force by Officers of the kind set out in paragraphs 76(a) to 76(n);
- (c) says that the use of force on a detainee is authorised by the YO Act and the YO Regulations and in the circumstances referred to in paragraphs 28(a) to 28(d) and 46 above; and
- (d) refers to and repeats paragraph 46(g) above and says further that at all material times during the period that Ms Walters was detained in Banksia Hill all Officers were trained in the use of physical restraint holds, including:
 - (i) an **escort hold** by which:
 - (A) a single Officer takes hold of, or makes contact with, one of the detainee's arms or shoulders; and
 - (B) two Officers take hold of a detainee's arms, with each Officer holding one arm;
 - (ii) a "**wrist weave**":
 - (A) by which an Officer holds the detainee's arm with one hand, places the Officer's other arm at the inner side of the detainee's elbow and using the first hand, bends the detainee's arm at the elbow around the Officer's wrist; and
 - (B) performed by two Officers, in which each Officer holds an opposite arm of the detainee;
 - (iii) an "**under hook and pike hold**", by which an Officer inserts one arm under the detainee's armpit, and secures by cupping and then holds the detainee's shoulder with the hand of that Officer's first arm and applies downward pressure with a locked arm on the back of the detainee's neck with the Officer's other hand;

- (iv) an Officer taking hold of a detainee's legs;
 - (v) one or more Officers forcing a detainee to the ground;
 - (vi) one or more Officers holding a detainee face down on the ground or on a mattress on the ground;
 - (vii) a **figure four restraint**, by which one or more Officers positioned behind the detainee's legs hold a detainee by the legs in a "figure 4" position while the detainee is face down on the ground, such that the detainee's legs are interwoven in a pattern resembling the numeral 4; with one leg bent to the side and the other leg bent upward folded over the first leg, which was also referred to as "folding up";
 - (viii) restraining a detainee while handcuffs are applied to or removed from the detainee's wrists; and
 - (ix) use of a **soft shield**, which is a large, padded shield and is designed to use on less threatening detainees, lowering the level of impact on the detainee; and
- (e) otherwise denies paragraph 76.

77 As to paragraph 77, it:

- (a) admits that force of the kind described in one or more of paragraphs 76(d)(i) to 76(d)(ix) above was used on Ms Walters; and

PARTICULARS

- (i) It refers to paragraphs 10, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 48, 49, 51, 53, 54, 56, 57, 60, 61, 62, 63, 64, 66, 67, 70, 71, 73, 74, 75, 77, 85 and 86 of the Walters Schedule of Particulars.

- (b) otherwise denies paragraph 77.

78 As to paragraph 78, it:

- (a) says that the circumstances in which force was used on Ms Walters are particularised in paragraph 77(a) above; and

(b) otherwise denies paragraph 78.

79 It does not know and therefore cannot admit paragraph 79.

80 As to paragraph 80, it:

(a) says that the Compliance with Orders Power authorises the use of such force as is prescribed under s 11C(1) of the YO Act as is necessary to ensure that lawful orders given to a detainee are complied with and is not limited to the “prescribed circumstances” referred to in s 11C(2) of the YO Act and reg 72(1) of the YO Regulations and refers to and repeats paragraph 46 above;

(b) says further that the use of force on Ms Walters was pursuant to the:

(i) Compliance with Orders Power;

(ii) Management, Control and Security Power;

(iii) Restraints Power; and/or

(iv) Use of Force in Searches Power; and

PARTICULARS

(i) It refers to and repeats the particulars subjoined to paragraph 77(a) above.

(c) further, or alternatively, says that on the occasions particularised below the use of force on Ms Walters was in self-defence at common law; and

PARTICULARS

(i) It refers to paragraphs 23, 24, 25, 26, 29, 30, 31, 33, 35, 36, 37, 38, 40, 42, 48, 49, 51, 53, 56, 57, 60, 61, 62, 63, 64, 70, 71, 73, 75 and 86 of the Walters’ Schedule of Particulars.

(d) otherwise denies the allegations in paragraph 80.

81 As to paragraph 81, it:

(a) refers to and repeats paragraph 80 above; and

(b) otherwise denies the allegations in paragraph 81.

Handcuffing

82 As to paragraph 82, it:

- (a) admits that handcuffs were used on Ms Walters on the occasions particularised below; and

PARTICULARS

- (i) It refers to paragraphs 7, 8, 10, 29, 30, 31, 33, 40, 43, 44, 45, 46, 48, 51, 54, 56, 57, 60, 66, 67, 70, 71, 73, 75 and 86 of the Walters Schedule of Particulars.
- (b) otherwise denies paragraph 82.

83 As to paragraph 83, it:

- (a) refers to and repeats paragraphs 64(a)(i) and 80(a) above; and
- (b) says that the use of handcuffs on Ms Walters was pursuant to the:
 - (i) Restraints Power;
 - (ii) Compliance with Orders Power; and/or
 - (iii) Management, Control and Security Power;

PARTICULARS

- (i) It refers to and repeats the particulars subjoined to paragraph 82 above.
- (c) refers to and repeats paragraph 56(c) and says further or in the alternative that:
 - (i) the claims in paragraphs 82 to 86 and/or 112 to 115 constitute a “claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function” within the meaning of s 5X of CLAWA; and
 - (ii) pursuant to s 5X of CLAWA, the Use of Handcuffs Policy Decision(s) cannot be used to support a finding that the Respondent was at fault unless Use of Handcuffs Policy Decision(s) was/were so unreasonable that no reasonable

public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it/them; and

(d) otherwise denies the allegations in paragraph 83.

84 As to paragraph 84, it:

(a) says that the circumstances in which Ms Walters was handcuffed are particularised in paragraph 82 above; and

(b) otherwise does not know and therefore cannot admit paragraph 84.

85 It does not know and therefore cannot admit the allegations in paragraph 85.

86 As to paragraph 86, it:

(a) refers to and repeats paragraph 83 above; and

(b) otherwise denies paragraph 86.

K.2. Breach of duty of care

87 As to paragraphs 48 to 53, 87 to 93, 116 and/or 117, it:

(a) says that the claims set out therein are:

(i) “claim[s] for damages for harm caused by the fault of a person” within the meaning of ss 5A(1) and/or 5V(1) of CLAWA; and/or

(ii) subject to the following provisions of CLAWA:

(A) s 5B of Division 2 of Part 1A of CLAWA;

(B) ss 5C and/or 5D of Division 3 of Part 1A of CLAWA;

(C) s 5K of Division 5 of Part 1A of CLAWA;

(D) ss 5U, 5V, 5W and/or 5X of Part 1C of CLAWA; and/or

(E) Part 2 of CLAWA; and/or

(b) says that the claims set out in paragraphs 48 to 53, 87 to 93, 116 and/or 117:

- (i) include “claim[s] for personal injury damages for mental harm” within the meaning of s 5R(1) of CLAWA”; and/or
- (ii) are subject to ss 5Q, 5R, 5S and/or 5T of Part 1B of CLAWA.

88 As to paragraph 88, it:

- (a) repeats paragraph 3 above; and
- (b) otherwise does not know and therefore cannot admit paragraph 88.

89 As to paragraph 89, it:

- (a) repeats paragraph 3 above;
- (b) says that Ms Walters:
 - (i) had a personal support plan (**PSP**) which included meeting with a Youth Worker to explore, discuss and/or complete activities with a focus on emotional wellbeing;

PARTICULARS

- (i) Alexandra Walters BHDC Support Plan.
- (ii) had a PSP that set out tips for Officers in verbally communicating with Ms Walters;

PARTICULARS

- (i) Personal Support Plans.
- (iii) was reminded by Officers to maintain her personal hygiene standards;

PARTICULARS

- (i) ARMS Risk Assessment Group Minutes.
- (iv) was identified by a psychologist at Banksia Hill to have a desire for structure/routine; and

PARTICULARS

- (i) Alexandra Walters Psychological Assessment Report dated 22 February 2019.
- (v) was identified as requiring substantial support for restricted and repetitive behaviours; and

PARTICULARS

- (i) Autism Spectrum Disorder Diagnostic Assessment.
 - (c) otherwise does not know and therefore cannot admit paragraph 89.
- 90 [Not used].
- 91 As to paragraph 91, it:
- (a) repeats paragraph 88 above;
 - (b) admits that the relevant Superintendent(s) knew Ms Walters had, or was likely to have, ASD, and knew the matters in paragraph 80(b)above; and
 - (c) otherwise denies the allegations in paragraph 91.
- 91A. As to paragraph 91A, it:
- (a) refers to and repeats paragraph 51(c)(ii) above;
 - (b) refers to and repeats paragraphs 89 and 91 above;
 - (c) says that at all relevant times, Ms Walters was not a “person of normal fortitude” within the meaning of s 5S of CLAWA;
 - (d) refers to and repeats paragraph 51(d) above and says that the allegation is embarrassing and/or ambiguous in that:
 - (i) under s 5S of CLAWA, because it is necessary to assess whether a person of normal fortitude would suffer a recognised psychiatric illness “in the circumstances of the case”, it is necessary to specify the critical event(s) with a degree of precision;

- (ii) paragraph 91A of the SOC does not identify whether:
 - (A) it is alleged that each incident cross-referenced in the particulars to that paragraph was foreseeable and might, in the circumstances of the case, cause a person of normal fortitude to suffer a recognised psychiatric illness; or
 - (B) it alleges that some combination of incidents in each sub-paragraph might do so; or
 - (C) it alleges that the combination of all incidents in all sub-paragraphs might do so;
- (iii) there is no articulation in paragraph 91A of the SOC of the nature of the conduct that the Respondent should have foreseen which might lead a person of normal fortitude to suffer a psychiatric illness; and
- (iv) in the absence of a specified risk of harm, one cannot assess the probability of that risk occurring or evaluate the reasonableness of the Respondent's response, or lack of response, to that risk; and
- (e) under cover of that objection, otherwise denies the allegations in paragraph 91A.

92 As to paragraph 92, it:

- (a) refers to and repeats paragraphs 64 and 67 above;
- (b) says that:
 - (i) paragraph 92 does not identify the person, thing or set of circumstances which is alleged to have given rise to the potential for the alleged harm nor the general causal mechanism of any injury sustained: *De Martin & Gasparini Pty Ltd v Bartlett* [2025] NSWCA 56 [22]; and
 - (ii) in the absence of a specified risk of harm, one cannot assess the probability of that risk occurring or evaluate the reasonableness of the Respondent's response, or lack of response, to that risk;
- (b) says further or in the alternative that pursuant to section 5W of CLAWA:
 - (i) the functions that were required to be exercised by Banksia Hill were limited by the financial and other resources that were reasonably available to

Banksia Hill (including the number of available staff) for the purpose of exercising those functions;

- (ii) the general allocation of those resources is not open to challenge;
- (iii) the functions required to be exercised by Banksia Hill are to be determined by reference to the broad range of its activities (and not merely by reference to the matter to which this proceeding relates); and
- (iv) the Respondent's allocations of staff to Banksia Hill were a "policy decision" within the meaning of s 5X of CLAWA;

(c) says further or in the alternative that:

- (i) the claims in paragraphs 48 to 53, 87 to 93, 116 and/or 117 constitute a "claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function" within the meaning of s 5X of CLAWA; and

(ii) pursuant to s 5X of CLAWA, the:

(A) Lockdown Policy Decision(s); and/or

(B) Specific Confinement Policy Decision(s);

cannot be used to support a finding that the Respondent was at fault unless that policy decision was/were so unreasonable that no reasonable public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it/them; and

(d) otherwise denies paragraph 92.

92A. As to paragraph 92A, it:

- (a) refers to and repeats paragraphs 45(a), 45(b), 49, 56, 62(d) and 62(e) above;
- (b) refers to and repeats paragraph 62, 64 and 67 above;
- (c) refers to and repeats paragraph 92 above; and
- (d) otherwise denies paragraph 92A.

92B. It denies paragraph 92B and says further that if (which is denied) there was any breach of the alleged duty of care by the Respondent, the Minister, the CEO, a Superintendent and/or any Officer, Ms Walters was contributorily negligent (within the meaning of section 5K of CLAWA and/or section 4(1) of the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947 (WA)*) in failing to take precautions against the risk of that harm by:

- (a) failing to comply with directions issued to her by Officers; and/or
- (b) failing to refrain from threatening to harm Officers and/or other detainees.

PARTICULARS

- (i) With respect to failing to comply with the directions issued by Officers, it refers to paragraphs 10, 12, 13, 14, 17, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35,, 36, 37, 38, 39, 40, 41, 42, 46, 48, 49, 51, 52, 53, 54, 55, 56, 57, 60, 61, 62, 63, 64, 67, 69, 70, 71, 75, 77, 81, 83 of the Walters Schedule of Particulars;
- (ii) with respect to failing to refrain from threatening to harm Officers and/or other detainees, it refers to paragraphs 5, 6, 9, 11, 17, 18, 23, 24, 25, 26, 29, 30, 31, 33, 34, 35, 37, 38, 40, 41, 46, 48, 49, 50, 51, 52, 56, 58, 60, 61, 62, 64, 65, 67, 68, 75, 76, 81, 86 of the Walters Schedule of Particulars; and
- (iii) further particulars may be provided following discovery and the filing of evidence.

92C. As to paragraph 92C, it:

- (a) refers to paragraphs 70, 71 and 75 above; and
- (b) says further that paragraph 92C does not identify the person, thing or set of circumstances which is alleged to have given rise to the potential for the alleged harm nor the general causal mechanism of any injury sustained: *De Martin & Gasparini Pty Ltd v Bartlett* [2025] NSWCA 56 [22];
- (c) in the absence of a specified risk of harm, one cannot assess the probability of that risk occurring or evaluate the reasonableness of the Respondent's response, or lack of response, to that risk; and

- (d) otherwise denies paragraph 92C.

92D. As to paragraph 92D, it:

- (a) refers to and repeats paragraphs 40(a), 41(a), 42(a) and 49 above;
- (b) refers to and repeats paragraphs 70, 71 and 75 above;
- (c) refers to and repeats paragraph 92C above; and
- (d) otherwise denies paragraph 92D.

92E. As to paragraph 92E, it:

- (a) refers to and repeats paragraph 92C above;
- (b) says further that:
 - (i) the claim in paragraph 92E constitutes a “claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function” within the meaning of s 5X of CLAWA; and
 - (ii) pursuant to s 5X of CLAWA, the Conduct of Searches Policy Decision(s) cannot be used to support a finding that the Respondent was at fault unless Conduct of Searches Policy Decision(s) decision was/were so unreasonable that no reasonable public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it/them; and
- (c) otherwise denies paragraph 92E.

92F. As to paragraph 92F, it:

- (a) refers to and repeats paragraph 80 above;
- (b) says that paragraph 92F does not identify the person, thing or set of circumstances which is alleged to have given rise to the potential for the alleged harm nor the general causal mechanism of any injury sustained: *De Martin & Gasparini Pty Ltd v Bartlett* [2025] NSWCA 56 [22];

- (c) in the absence of a specified risk of harm, one cannot assess the probability of that risk occurring or evaluate the reasonableness of the Respondent's response, or lack of response, to that risk; and
- (d) otherwise denies paragraph 92F.

92G. As to paragraph 92G, it:

- (a) refers to and repeats paragraphs 22(a)(iv), 28, 40(a)(iii) and 49 above;
- (b) refers to and repeats paragraph 80 above;
- (c) refers to and repeats paragraph 92F above; and
- (d) otherwise denies paragraph 92G.

92H. It denies paragraph 92H and says further that if (which is denied) there was any breach of the alleged duty of care by the Respondent, the Minister, the CEO, a Superintendent and/or any Officer, Ms Walters was contributorily negligent (within the meaning of section 5K of CLAWA and/or section 4(1) of the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (WA)) in failing to take precautions against the risk of that harm by:

- (a) failing to comply with directions issued to her by Officers; and/or
- (b) failing to refrain from threatening to harm Officers and/or other detainees.

PARTICULARS

- (i) It refers to and repeats the particulars subjoined to paragraph 92B above.

92I. As to paragraph 92I, it:

- (a) refers to and repeats paragraph 83 above;
- (b) says further that:
 - (i) paragraph 92I does not identify the person, thing or set of circumstances which is alleged to have given rise to the potential for the alleged harm nor the general causal mechanism of any injury sustained: *De Martin & Gasparini Pty Ltd v Bartlett* [2025] NSWCA 56 [22]; and

- (ii) in the absence of a specified risk of harm, one cannot assess the probability of that risk occurring or evaluate the reasonableness of the Respondent's response, or lack of response, to that risk; and
- (c) says further or in the alternative that pursuant to section 5W of CLAWA:
 - (i) the functions that were required to be exercised by Banksia Hill were limited by the financial and other resources that were reasonably available to Banksia Hill (including the number of available staff) for the purpose of exercising those functions;
 - (ii) the general allocation of those resources is not open to challenge; and
 - (iii) the functions required to be exercised by Banksia Hill are to be determined by reference to the broad range of its activities (and not merely by reference to the matter to which this proceeding relates);
- (d) says further or in the alternative that:
 - (i) the claims in paragraphs 92I to 92K constitute a "claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function" within the meaning of s 5X of CLAWA; and
 - (ii) pursuant to s 5X of CLAWA, the Use of Handcuffs Policy Decision(s) cannot be used to support a finding that the Respondent was at fault unless Use of Handcuffs Policy Decision(s) was/were so unreasonable that no reasonable public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it/them; and
- (e) otherwise denies paragraph 92I.

92J. As to paragraph 92J, it:

- (a) refers to and repeats paragraphs 83 and 49 above;
- (b) refers to and repeats paragraph 92I above; and
- (c) otherwise denies paragraph 92J.

92K. It denies paragraph 92K and says further that if (which is denied) there was any breach of the alleged duty of care by the Respondent, the Minister, the CEO, a Superintendent and/or any Officer, Ms Walters was contributorily negligent (within the meaning of section 5K of CLAWA and/or section 4(1) of the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947 (WA)*) in failing to take precautions against the risk of that harm by:

- (a) failing to comply with directions issued to her by Officers; and/or
- (b) failing to refrain from threatening to harm Officers and/or other detainees.

PARTICULARS

- (i) It refers to and repeats the particulars subjoined to paragraph 92B above.

92L. As to paragraph 92L, it:

- (a) refers to paragraph 49 above;
- (b) refers to paragraphs 91(d), 92(b), 92(b), 92(b) and 92(b) above;
- (c) says that the allegation is embarrassing and/or ambiguous in that it does not identify the content or requirements of a “comprehensive assessment” (in subparagraph (a)) or the content or requirements of the training referred to in subparagraph (c);
- (d) says that Ms Walters’ ASD was diagnosed in custody and that it was recorded in the Total Offender Management Solution system (**TOMS**);
- (e) says that it trained Officers in:
 - (i) interacting with detainees with disabilities, including autism spectrum disorder;

PARTICULARS

- (i) The Respondent relies on the Disability Services Handbook distributed as part of the training for Officers at the Corrective Services Academy.
- (ii) interacting with detainees who have suffered trauma; and

- (iii) mental health first aid; and

PARTICULARS

- (i) The Respondent relies on the training conducted at the Corrective Services Academy as outlined in:
 - (A) Intellectual and Cognitive Disability Training; and
 - (B) the Disability Services Handbook.
- (f) otherwise denies paragraph 92L.

92M. It denies paragraph 92M.

93 As to paragraph 93, it:

- (a) says that section 5T of CLAWA states that a Court cannot make an award of personal injury damages for pecuniary loss for consequential mental harm unless the harm consists of a recognised psychiatric illness;
- (b) says further that any award of personal injury damages in favour of Ms Walters is subject to the application of Part 2 of CLAWA;
- (c) refers to and repeats paragraphs 92B, 92H and 92K above; and
- (d) otherwise denies the allegations in paragraph 93.

94 [Not used].

K.3. Disability Discrimination Act Claims

95 As to paragraph 95, it:

- (a) admits that pursuant to s 123 of the DDA, the Respondent is vicariously liable for the conduct engaged in by the CEO, Superintendent and Officers within the scope of their actual or apparent authority unless the Respondent can establish that it took reasonable precautions and exercised due diligence to avoid the conduct; and
- (b) otherwise denies the allegations in paragraph 95.

96 As to paragraph 96, it:

- (a) refers to and repeats paragraph 3 above; and
- (b) otherwise admits the allegations in paragraph 96.

96A. As to paragraph 96A, it:

- (a) does not know and therefore cannot admit the allegations in sub-paragraph (a);
- (b) as to sub-paragraph (b):
 - (i) admits that during her detention at Banksia Hill there were occasions where Ms Walters became upset about allegedly dirty or stained clothing, bedding, furniture and rooms; and

PARTICULARS

- (i) These incidents include:
 - (A) an incident on 8 January 2019 where Ms Walters was escorted to the showers by Officers and provided with new clothing; she refused the clothes stating that they were dirty and stained; and
 - (B) an incident on 27 February 2019 where Ms Walters complained that her cell was dirty.
- (ii) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (b);
- (c) as to sub-paragraph (c):
 - (i) as to sub-paragraph (i):
 - (A) admits that during her detention at Banksia Hill there were occasions where Ms Walters engaged in self-harm by cutting or scratching herself; and

PARTICULARS

(i) These incidents include:

(A) an incident on 31 May 2018 where Ms Walters approached another detainee who she accused of turning on and off a light switch while she was in the shower, and told her that she would "choke and stab whoever did it, what they were doing wasn't very nice"; as a result, Ms Walters was transferred to Cue Unit in an observation cell. While in the observation cell, she engaged in self-harm by scratching her legs. Ms Walters was counselled by the unit manager;

(B) an incident on 8 June 2018, where an Officer identified several scratches on Ms Walters' ankle area. Ms Walters was assessed by the clinical nurse;

(C) an incident on 13 July 2018, where it was discovered that Ms Walters had been cutting her left arm; and

(D) an incident on 8 January 2019, where Ms Walters, following an incident in the showers with Officers, upon returning to her cell began to self-harm on her right leg and right forearm with a staple.

(B) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (i);

(ii) as to sub-paragraph (ii):

(A) admits that during her detention at Banksia Hill there were occasions where Ms Walters drew images of violence; and

PARTICULARS

(i) These incidents include:

(A) an incident on 16 June 2018, where Ms Walters' cell was searched and a number of pieces of paper were located

which included depictions of, among other things, acts of violent self-harm and harm to others; and

(B) an incident on 5 October 2018, where Ms Walters was drawing pictures of knives and blood in the classroom.

(B) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (ii);

(iii) as to sub-paragraph (iii):

(A) admits that during her periods detention at Banksia Hill there were occasions where Ms Walters wrote down words such as “die” and “kill”; and

PARTICULARS

(i) These incidents include an incident on 7 November 2018, where Officers inspected Ms Walters’ drawings which contained pictures of a person hanging, the word “die”, drawings of knives and threats and violence towards staff.

(B) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (iii);

(d) as to sub-paragraph (d):

(i) says that Ms Walters was assessed by a psychologist in November 2019 as:

(A) desiring and benefiting from consistency and routine; and

(B) experiencing increased stress and agitation with lack of, or inconsistency in, routine which may lead to her reacting more strongly to further stressors; and

PARTICULARS

(i) Community Psychological Assessment Report.

(ii) says further that during her periods of detention at Banksia Hill, Ms Walters was involved in incidents that were summarised by staff as often being a result of disruption in her routine; and

PARTICULARS

- (i) Youth Level of Service.
- (iii) otherwise admits the allegations in sub-paragraph (d); and
- (e) otherwise denies the allegations in paragraph 96A.

97 As to paragraph 97, it:

- (a) as to sub-paragraph (a):
 - (i) as to sub-paragraph (i):
 - (A) refers to and repeats paragraphs 69 to 75 above;
 - (B) says that during her detention at Banksia Hill there were occasions where Ms Walters refused to comply with a direction from Officers that she submit to a strip search;
 - (C) says further that the directions from Officers to submit to strip searches were made pursuant to the Safety and Security Objectives; and

PARTICULARS

- (i) The incidents where Ms Walters was directed to submit to a strip search include:
 - (A) an incident on 20 June 2018, where:
 - (1) Officers learned that Ms Walters was encouraging another detainee to sneak a knife into her cell so Ms Walters could cut herself;
 - (2) Officers had later found out that on the same day scissors had been confiscated from another detainee who had attempted to pass them to Ms Walters; and
 - (3) by reason of these matters, Officers conducted a strip search of Ms Walters;

- (4) during the strip search, Ms Walters indicated she did not want to participate;
 - (5) following the search, Ms Walters was allocated to her a cell in Cue Unit;
- (B) an incident on 27 June 2018, where:
- (1) Ms Walters was using a piece of Perspex to cut her legs and arms;
 - (2) Ms Walters informed Officers that she wanted to stab a specific Officer who had come into her cell the previous day;
 - (3) Ms Walters was observed taking apart of radio and then tying both power cords from her radio and her television together with an antenna to fashion a noose which she attempted to secure to a light fitting;
 - (4) Ms Walters then refused to communicate with Officers and moved behind the privacy screen in her cell;
 - (5) Officers gave Ms Walters a use of force warning; and
 - (6) shortly after the warning was given, Officers entered her cell, and placed Ms Walters in handcuffs and placed her in a cell in the Cue Unit where a secondary pat search was conducted followed by a strip search;
- (C) an incident on 15 November 2018, where:
- (1) Ms Walters returned from a hearing in the Perth Magistrates' Court;
 - (2) on arrival back at Banksia Hill, she was instructed she would need to submit to a routine strip search prior to entering her cell;

- (3) Ms Walters refused to submit to the search and she was directed into a holding cell where a pat search and wand search were performed; and
 - (4) Ms Walters was then released from the holding cell.
 - (D) an incident on 26 February 2019, where:
 - (1) Ms Walters was being escorted from the Cue Unit to the Yeeda Unit for dinner when she attempted to run away;
 - (2) Ms Walters then attacked the Officer who was accompanying her and proceeded to climb onto the roof;
 - (3) Ms Walters refused demands to come back down from the roof and while she was on the roof the entire centre was in lockdown while Officers maintained a cordon for Ms Walters' safety; and
 - (4) after several hours, Ms Walters came back down from the roof and was escorted to her cell where a strip search was conducted.
- (D) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (i);
- (ii) As to sub-paragraph (ii):
 - (A) refers to and repeats paragraphs 82 to 86 above:
 - (B) says that during her detention at Banksia Hill there were occasions where Ms Walters refused to comply with directions from Officers that she submit to being placed in handcuffs;
 - (C) says further that the directions from Officers to submit to being placed in handcuffs were made pursuant to the Safety and Security Objectives; and

PARTICULARS

- (i) The incidents where Ms Walters was directed to submit to handcuffs include:
 - (A) the 27 June 2018 incident described in the particulars subjoined to 97(a)(i)(C) above;
 - (B) an incident on 17 September 2018, where:
 - (1) Ms Walters, upon completing her laundry chores, refused to return to her cell in the Cue Unit and instead threatened an Officer;
 - (2) Ms Walters continued to refuse to return to her cell and was issued a use of force warning;
 - (3) Officers moved to take control of Ms Walters to attempt to guide her back to her cell, and Ms Walters began lashing out with her arms, striking an Officer; and
 - (4) Officers then took control of Ms Walters' arms and placed them behind her back and the Unit Manager then placed handcuffs on Ms Walters.
 - (D) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (ii);
- (iii) As to sub-paragraph (iii):
 - (A) refers to and repeats sub-paragraph (ii) above,
 - (B) says that during her detention at Banksia Hill there were occasions where Ms Walters refused to comply with directions from Officers to return to the Cue Unit;
 - (C) says further that the directions from Officers to return to the Cue Unit were made pursuant to the Safety and Security Objectives;

PARTICULARS

- (i) The incidents where Ms Walters was directed to submit to a strip search include:
 - (A) the 18 May 2018 incident described in the particulars subjoined to 96A(c)(i)(A) above;
 - (B) the 20 June 2018 incident described in the particulars subjoined to 97(a)(i)(C) above; and
 - (C) the 27 June 2018 incident described in the particulars subjoined to 97(a)(i)(C) above;
- (D) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (iii) therein;
- (iv) as to sub-paragraph (iv):
 - (A) refers to and repeats paragraph 96A(b) above;
 - (B) says that during her detention at Banksia Hill there were occasions where Ms Walters refused to comply with directions from Officers to return to her cell because she claimed that her cell was dirty;

PARTICULARS

- (i) The Respondent refers to and repeats the particulars subjoined to paragraph 96A(b) above.
- (C) says further that the directions from Officers to return to her cell were made pursuant to the Safety and Security Objectives;
- (D) denies that her cell was dirty; and
- (E) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (iv); and
- (v) as to sub-paragraph (v):
 - (A) refers to and repeats paragraph 96A(b) above;

- (B) says that during her detention at Banksia Hill there were occasions where Ms Walters refused to comply with directions from Officers to surrender clothes that she had been wearing for laundering;

PARTICULARS

- (i) The Respondent refers to and repeats the particulars subjoined to paragraph 96A(b) above.
- (C) denies that the clothes provided to Ms Walters were dirty or stained; and
- (D) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (v);

(b) as to sub-paragraph (b):

- (i) says that during her detention at Banksia Hill there were occasions where Ms Walters resisted against warnings provided from Officers that they would use force;
- (ii) says further that during her detention at Banksia Hill there were occasions where Ms Walters resisted the use of force by Officers;

PARTICULARS

- (i) The incidents include:
 - (A) the 27 June 2018 incident described in the particulars subjoined to 97(a)(i)(C) above; and
 - (B) the 17 September 2018 incident described in the particulars subjoined to 97(a)(ii)(C) above;
- (iii) says further that the warnings concerning the use of force and the use of force by Officers in relation to Ms Walters were done pursuant to the Safety and Security Objectives; and
- (iv) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (b);

- (c) as to sub-paragraph (c):
 - (i) refers to and repeats paragraph 96A(c) above;
 - (ii) says that during her detention at Banksia Hill there were occasions where Ms Walters engaged in acts of self-harm; and

PARTICULARS

- (i) The Respondent refers to and repeats the particulars subjoined to paragraph 96A(c) above.
 - (iii) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (c);
- (d) as to sub-paragraph (d):
 - (i) refers to and repeats paragraph 96A(b) above;
 - (ii) says that during her detention at Banksia Hill there were occasions where Ms Walters drew violent images and used words such as “kill” and “die”; and

PARTICULARS

- (i) The Respondent refers to and repeats the particulars subjoined to paragraph 96A(b) above.
 - (iii) otherwise does not know and therefore cannot admit allegations in sub-paragraph (d);
- (e) refers to and repeats paragraph 96A: and
- (f) otherwise does not know and therefore cannot admit the allegations in paragraph 97.

98 As to paragraph 98, it:

- (a) as to sub-paragraph (a):
 - (i) refers to and repeats paragraphs 97 above;

- (ii) says further that in each of the circumstances where Officers:
 - (A) used force against Ms Walters;
 - (B) used handcuffs on Ms Walters; and
 - (C) confined Ms Walters to the Cue Unit,it did so pursuant to the Safety and Security Objectives; and

PARTICULARS

- (i) The Respondent refers to and repeats the particulars subjoined to:
 - (A) paragraph 97(a)(iii); and
 - (B) paragraph 97(b)(ii).
- (iii) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (a);
- (b) as to sub-paragraph (b):
 - (i) refers to and repeats paragraphs 64 and 97 above;
 - (ii) says further that in each of the circumstances where Officers allocated Ms Walters an observation cell in the Cue Unit, it did so pursuant to the Safety and Security Objectives; and

PARTICULARS

- (i) The Respondent refers to and repeats the particulars subjoined to:
 - (A) paragraph 64 above; and
 - (B) it refers to paragraph 3, 37, 62, 67, 71, 76, 77 and 85 of the Walters Schedule of Particulars.
- (iii) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (b);

- (c) as to sub-paragraph (c):
 - (i) refers to and repeats paragraph 82 above;
 - (ii) says that when Ms Walters was housed in the Cue Unit she was handcuffed for movements to and from the Cue Unit pursuant to a PSP;
 - (iii) says further that the PSP was made pursuant to the Safety and Security Objectives; and
 - (iv) otherwise does not know and therefore cannot admit the allegations contained in sub-paragraph (c);
- (d) as to sub-paragraph (d):
 - (i) says that that during her detention at Banksia Hill there were occasions where, as a result of the conduct set out in paragraphs 64(a) and 97 above, access to programs and privileges were restricted or removed from Ms Walters;

PARTICULARS

- (i) Incidents where access to programs and privileges were removed or restricted include:
 - (A) on 10 September 2018, where:
 - (1) Ms Walters refused to comply with a directive to return to her cell after time working in the laundry;
 - (2) attending Officers attempted to counsel Ms Walters for at least 15 minutes before a use of force warning was issued and Ms Walters was then non-compliant and force was used and Ms Walters was escorted to her cell; and
 - (3) as a result of the matters set out above, Ms Walters was issued with a loss of program placement;

(B) on 11 September 2018, where:

- (1) Ms Walters was to be escorted to a cell in the Cue Unit to be observed;
- (2) Ms Walters refused to comply with the direction to move to the Cue Unit;
- (3) Ms Walters then took possession of a broom which she eventually gave up and proceeded then to pick up two spray bottles and threatened to spray the Officers;
- (4) after Officers issued a use of force warning and Ms Walters remained non-compliant, Ms Walters was escorted to the Cue Unit while she kicked at one of the Officer's legs multiple times and resisted the escort the whole way to the Cue Unit; and
- (5) as a result of the matters set out above, Ms Walters lost television privileges for 2 days;

(C) on 8 January 2018, where:

- (1) Ms Walters was placed in the showers and provided with clean clothing;
- (2) Ms Walters refused to put on the clothes, claiming that they were dirty, "fucked up" or "stained" and while Officers provided her with another set of clean clothes, Ms Walters refused to wear either set;
- (3) Ms Walters started to abuse the Officers, using vulgar words;
- (4) Ms Walters also proceeded to throw 3 bottles of shampoo/body wash, 2 bottles of conditioner and 1 large bar of soap at the Officers;
- (5) Ms Walters eventually agreed to put an old shirt on and was subsequently escorted to the Cue Unit; and

- (6) as a result of the matters set out above, Ms Walters lost canteen privileges for 4 days; and
- (D) an incident on 23 March 2019, where:
 - (1) Ms Walters was observed drawing in her journal in a manner which aroused suspicion;
 - (2) in response to a request by an Officer to look at the journal, Ms Walters said words to the effect of “I don’t have to show you shit” and “you’re just causing shit”;
 - (3) Ms Walters then returned to her cell, where she used the cell intercom to verbally abuse staff with words to the effect of: “fuck you cunts” and “you dumb cunts”; and
 - (4) as a result of the matters set out above, Ms Walters lost recreation privileges for 1 day.
- (ii) says further that the decision to remove or restrict access to program and privileges was done pursuant to the Safety and Security Objectives; and
- (iii) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (d); and
- (e) as to sub-paragraph (e):
 - (i) says that there were three occasions where Ms Walters was removed from educational classes due to her behaviour;
 - (ii) says further that the first incident occurred on 18 July 2019, where:
 - (A) Ms Walters was attending education activities in the C wing of the Yeeda Unit where she was provided with work and offered help by teachers and Officers but refused to complete the work;
 - (B) Ms Walters was instead drawing an inappropriate picture which said “DIE Officors” with the “I” drawn as a bloodied knife which was subsequently confiscated;

- (C) during the morning tea break, Ms Walters was hiding in the yard from Officers and calling them “stupid”, “mean” and “dumb” and accused them of “stalking” her; and
 - (D) as a result of the conduct set out above, the unit manager decided to send Ms Walters back to her cell;
- (iii) says further that the second incident occurred on 5 October 2018, where:
 - (A) Ms Walters was in the Yeeda Unit classroom and was observed by Officers as being non-compliant, doing inappropriate drawings of knives and blood;
 - (B) the unit manager counselled Ms Walters and one of the Officers confiscated Ms Walters’ drawing implements for 10 minutes; and
 - (C) by reason of the matters set out above, Ms Walters was escorted from the classroom to the Cue Unit;
- (iv) says further that the third incident occurred on 31 October 2018, where:
 - (A) Ms Walters was attending education classes in the Cue Unit;
 - (B) Officers observed Ms Walters raising her voice and stating: “I don’t want to waste my Wednesday! I’m already getting nothing! I don’t want to do schoolwork and waste my time!”;
 - (C) Officers and teachers encouraged Ms Walters to complete her workbook but Ms Walters proceeded to tear her book apart; and
 - (D) by reason of the matters set out above, it was decided that it was appropriate to end Ms Walters’ class for the day;
- (v) says further that on all three occasions, the removal of Ms Walters from education classes was made pursuant to the Safety and Security Objectives; and
- (vi) otherwise denies the allegations sub-paragraph (e);

(f) as to sub-paragraph (f):

- (i) says that that during her detention at Banksia Hill there were occasions where, as a result of the conduct set out in paragraphs 64(a) and 97 above, books, paper, writing and/or drawing implements were confiscated or alternatively access to those items were refused or restricted; and

PARTICULARS

(i) Incidents where access to items were removed or restricted or alternatively confiscated include:

(A) the 5 October 2018 incident described in the particulars subjoined to 98(e)(iii) above;

(B) an incident on 1 July 2018, where:

(1) Ms Walters was observed in the Yeeda C wing picking up a book titled, "The knife that killed me";

(2) The book was confiscated from Ms Walters by the Officer as it was deemed inappropriate especially due to some of the previous comments and incidents that have taken place involving Ms Walters; and

(C) An incident on 1 July 2018, where:

(1) Officers conducting a routine search of Ms Walters cell located papers which included a song about slashing the throat of an Officer and a list of "Kids/Officers I will kill"; and

(2) due to the nature of the material, the Officer confiscated the papers.

(ii) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (f);

(g) as to sub-paragraph (g):

(i) admits that fabric swatches were provided to Ms Walters; and

(ii) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (g); and

(h) otherwise denies the allegations in paragraph 98.

99 [Not used].

100 As to paragraph 100, it:

(a) [not used];

(b) as to sub-paragraph (b):

(i) subject to the matters referred to in sub-paragraph (iv) below, admits that cognitive behavioural therapy was not provided to Ms Walters during the periods she was in detention;

(ii) says that cognitive behavioural therapy:

(A) is one of several therapeutic interventions available that may be exercised in particular circumstances;

(B) is subject to the assessment of that individual; and

(C) is subject to clinical discretion, resource availability, and the detainee's engagement capacity;

(iii) does not know and cannot admit whether specific therapies may have been considered for a particular detainee but were not applied in relation to that detainee on the basis that they were not considered suitable in the circumstances that presented themselves at the relevant time;

(iv) approaches consistent with, or elements of, cognitive behavioural therapy may be applied in different settings, including offence-specific counselling, ARMS assessments, or staff-led interventions such as verbal reframing of negative thought patterns during de-escalation attempts, and reflection exercises facilitated following incidents of non-compliance or emotional dysregulation; and

(v) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (b);

- (c) as to sub-paragraph (c):
 - (i) says the paragraph is vague and embarrassing and liable to be struck out as it:
 - (A) fails to identify, with sufficient particularity, the techniques that would be required to be used by Officers;
 - (B) fails to adequately explain when each adjustment should be made, and whether deploying one of the supposed adjustments is sufficient, or whether a combination of adjustments should be attempted, and if so what combination; and
 - (C) requires the exercise of a discretion, and as such the adjustment cannot be considered necessary;
 - (ii) under cover of those objections says that it trained Officers in:
 - (A) interacting with detainees with disabilities, including autism spectrum disorder;

PARTICULARS

- (i) The Respondent relies on the Disability Services Handbook distributed as part of the training for Officers at the Corrective Services Academy.
- (B) interacting with detainees who have suffered trauma; and
- (C) mental health first aid;

PARTICULARS

- (i) The Respondent relies on the training conducted at the Corrective Services Academy as outlined in:
 - (A) Intellectual and Cognitive Disability Training; and
 - (B) the Disability Services Handbook.

- (iii) says further that it put in place a series of guidelines and materials for Officers that, included the following techniques to use when confronting Ms Walters' challenging behaviour:
- (A) being literal in conversations;
 - (B) carefully explaining information;
 - (C) keeping instructions short and clear;
 - (D) providing one-on-one support;
 - (E) setting clear, consistent boundaries;
 - (F) providing a routine with behavioural reinforcement or reward for appropriate behaviour;
 - (G) being firm, consistent and fair;
 - (H) engaging in positive reinforcement, rather than focusing on what Ms Walters should not do; and
 - (I) remaining forward-focused, rather than focusing on previous incidents.

PARTICULARS

- (i) Alexandra Walters - Feedback for Workers/Carers in the Community;
 - (ii) ARAG Minutes; and
 - (iii) Case Management Plan.
- (iv) otherwise denies the allegations in sub-paragraph (c);
- (v) says further and in the alternative that insofar as the techniques and approaches to communication are reasonable adjustments (which is denied), the Respondent provided reasonable adjustments as outlined in sub-paragraph 100(c)(iii) above;

(vi) says further and in the alternative that insofar as the techniques and approaches to communication are reasonable adjustments (which is denied), Officers who observe non-compliant behaviour:

(A) must exercise discretion to determine the most appropriate response;

(B) must act quickly to ensure the security and safety of detainees and staff;

(C) face variable factors depending on the circumstances of the behaviour, including immediate issues concerning safety to the individual detainee as well as other detainees and staff; and

(D) may not have sufficient time to engage in any of the techniques or approaches due to the immediacy of any specific act or threat;

(vii) by reason of the matters set out above, the alleged reasonable adjustment would:

(A) undermine the Safety and Security Objectives; and

(B) prevent Officers from exercising their discretion in identifying the most appropriate response to non-compliant behaviour,

and would therefore impose an unjustifiable hardship on the Respondent within the meaning of the DDA;

(d) [not used];

(e) as to sub-paragraph (e):

(i) says that it trained Officers in the following:

(A) interacting with detainees with disabilities, including autism spectrum disorder;

PARTICULARS

(i) The Respondent relies on the Disability Services Handbook distributed as part of the training for Officers at the Corrective Services Academy.

- (B) interacting with detainees who have suffered trauma; and
- (C) mental health first aid;

PARTICULARS

- (i) The Respondent relies on the training conducted at the Corrective Services Academy as outlined in:
 - (A) Intellectual and Cognitive Disability Training; and
 - (B) the Disability Services Handbook.
- (ii) says further that the alleged reasonable adjustment would:
 - (A) undermine the Safety and Security Objectives;
 - (B) require the provision of a support worker at all times as Ms Walters could interact with an Officer at any time; and
 - (C) require significant undertaking by the Respondent to hire individual support workers for Ms Walters and other detainees with similar needs as Ms Walters;
- (iii) says that insofar as the provision of an individual support worker to support Ms Walters with interactions with Officers (which is denied), it would:
 - (A) cause delays in the ability of Officers to act quickly to ensure the security and safety of detainees and staff;
 - (B) undermine the authority of Officers; and
 - (C) require additional staffing requirements not just for Ms Walters but for other detainees with similar needs as Ms Walters;
- (iv) says further that by reason of the matters set out in sub-paragraphs (ii) and (iii) above, the proposed reasonable adjustment would impose an unjustifiable hardship on the Respondent within the meaning of the DDA; and
- (v) otherwise denies the allegations in sub-paragraph (e);

- (f) as to sub-paragraph (f):
- (i) says that during her detention at Banksia Hill, Ms Walters was provided with clothing and accommodation that was not stained, dirty or unhygienic;
 - (ii) says further that there were occasions where Ms Walters insisted on wearing dirty clothing and was non-compliant with instructions to wear the clean clothing provided to her; and

PARTICULARS

- (i) These occasions include:
 - (A) on 7 October 2018, where Ms Walters was given six different pairs of clean underwear and bras to choose from but she refused to wear any of them;
 - (B) on 24 October 2018, where Ms Walters was provided with clean clothing to wear after her shower but she refused to wear them;
 - (C) on 29 October 2018, where Ms Walters was provided with clean clothing to wear after her shower but she refused to wear them;
 - (D) on 29 November 2018, where Ms Walters was provided with clean clothing but chose to wear her dirty clothes again;
 - (E) on 3 December 2018, where Ms Walters was provided with new clothing but refused to wear them;
 - (F) on 15 December 2018, where Ms Walters was provided with clean clothing and re-dressed into her clothing from the day before despite Officers' instructions;
 - (G) on 8 January 2019, where Ms Walters was provided with clean clothing but she chose not to change into them after showering and became abusive towards staff when instructed to wear them;

- (H) on 20 January 2019, where:
- (1) Ms Walters was provided with clean clothes to wear after her shower;
 - (2) Ms Walters demanded her dirty clothes back and refused to comply with instructions to change into the clean clothing provided;
 - (3) Officers explained to Ms Walters that she was required to wear clean clothes and that the dirty ones would be washed; and
 - (4) Ms Walters became threatening towards staff and continued to demand her dirty clothes back before punching an Officer in the face;
- (I) on 3 February 2019, where Ms Walters was provided with clean clothing but did not change into them after showering and instead chose to wear her dirty clothing;
- (J) on 26 March 2019, where Ms Walters was provided with clean clothing but refused to change her t-shirt and insisted that she would wait until it was more stained before changing it;
- (K) on 2 April 2019, where:
- (1) Ms Walters was provided with clean clothes to wear after her shower;
 - (2) after becoming upset that her dirty clothing had been removed, Ms Walters demanded her dirty clothes be returned and threatened to assault an Officer if she did not get them back;
 - (3) Ms Walters changed into the clean clothes provided and exited the shower but continued to argue with Officers that she wanted to wear the dirty clothing;

- (4) Officers instructed Ms Walters that she would not get her dirty clothing back until it had been washed due to hygiene standards; and
 - (5) after Ms Walters' continued refusal to comply with instructions, she was escorted back to her cell during which time she assaulted two Officers; and
- (iii) says further that there were occasions where Ms Walters made her cell dirty and on some of these occasions refused to clean it;

PARTICULARS

- (i) These occasions include:
 - (A) on 19 September 2018, where Ms Walters had covered the floors and walls in her cell with food and refused to clean it;
 - (B) on 29 October 2018, where Ms Walters flooded her cell, placed her bed linen in the toilet and smeared her lunch on the wall;
 - (C) on 12 November 2018, where Ms Walters threw her dinner on the floor of her cell;
 - (D) on 25 November 2018, where Ms Walters covered her cell in food, torn out hair and shredded paper;
 - (E) on 6 January 2019, where Ms Walters had smeared her dinner from the night before all over her cell and was reluctant to complete a cell clean to the appropriate standard; and
 - (F) on 31 March 2019, where:
 - (1) Ms Walters' cell was overrun by ants as a result of her leaving food on the floor;

- (2) Ms Walters admitted that she experiments with Officers by hiding milk or cheese in her radiator to feed ants and spiders; and
 - (3) after refusing to clean up the food in her cell, an Officer and an OH&S representative removed the food and sprayed the cell with ant spray;
- (g) as to sub-paragraph (g):
 - (i) says the paragraph is vague and embarrassing and liable to be struck out as it fails to adequately explain when each adjustment should be made, and whether deploying one of the supposed adjustments is sufficient, or whether a combination of adjustments should be attempted, and if so what combination; and
 - (ii) under cover of that objection, it says that during the period of her detention at Banksia Hill, Ms Walters was, subject to the limits set out in sub-paragraph (iii) below, provided with access to the items listed in paragraph 100(g)(i) to (v) in the SOC;
 - (iii) says further that at times, Ms Walters' access to the items listed in paragraph 100(i) to (v) of the SOC was limited or refused where:
 - (A) Ms Walters conduct was non-compliant with directions; or
 - (B) Ms Walters was a security risk to herself, other detainees or staff;

PARTICULARS

- (i) The Respondent relies on the matters set out in paragraphs 64(a), 97 and 98 above.
- (iv) says further that the alleged reasonable adjustment would:
 - (A) undermine the Safety and Security Objectives; and
 - (B) prevent Officers from exercising their discretion in identifying the most appropriate response to the behaviour set out in sub-paragraph (iii) above;

- (v) says that insofar as access to the matters listed in paragraphs 100(g)(i) to (v) of the SOC are reasonable adjustments (which is denied), Officers who observe such behaviour:
 - (A) must exercise discretion to determine the most appropriate response;
 - (B) must act quickly to ensure the security and safety of detainees and staff;
 - (C) face variable factors depending on the circumstances of the behaviour, including immediate issues concerning safety to the individual detainee as well as other detainees and staff; and
 - (D) may not have sufficient time to engage in any of the techniques or approaches due to the immediacy of any specific act or threat;
- (vi) says further that by reason of the matters set out in paragraphs 100(g)(iv) and (v) above, the proposed reasonable adjustment would impose an unjustifiable hardship on the Respondent within the meaning of the DDA; and
- (vii) otherwise denies the allegations in sub-paragraph (g); and
- (h) otherwise denies the allegations in paragraph 100.

101 As to paragraph 101, it:

- (a) refers to and repeats paragraph 100 above; and
- (b) otherwise denies the allegations in paragraph 101.

101A. As to paragraph 101A, it:

- (a) refers to and repeats paragraphs 100 to 101 above; and
- (b) otherwise denies the allegations in paragraph 101A.

101B. As to paragraph 101B, it:

- (a) refers to and repeats paragraphs 49 and 101(a) below; and
- (b) otherwise denies the allegations in paragraph 101B.

102 As to paragraph 102, it:

- (a) refers to and repeats paragraphs 97, 100, 101, 105 to 109 above; and
- (b) otherwise denies the allegations in paragraph 102.

Direct discrimination

102A. As to paragraph 102A, it:

- (a) says that the paragraph is embarrassing and/or ambiguous in that it:
 - (i) pleads rolled-up conclusions and does not plead, particularise or cross-refer to any material facts from which those conclusions are alleged to arise;
 - (ii) alleges that the conduct alleged is unlawful by reason of some unspecified combination of paragraphs 95 to 102, without identifying which provisions (or combination of provisions) in those paragraphs are said to have the effect pleaded; and/or;
 - (iii) fails to identify a comparator as required under s 5 of the DDA;
- (b) under cover of that objection:
 - (i) refers to and repeats paragraphs 100 to 102 above;
 - (ii) says that the appropriate comparator to determine whether Ms Walters was treated differently in circumstances that were not materially different is a child:
 - (A) aged between 13 and 15;
 - (B) detained at Banksia Hill;
 - (C) without Ms Walters' disabilities; and
 - (D) who consistently engaged in non-compliant or dangerous behaviour as set out in paragraphs 64(a), 96(a), 97 and 98; and
 - (iii) otherwise denies the allegations in paragraph 102A.

Indirect discrimination

103 As to paragraph 103, it:

- (a) says that the paragraph is embarrassing and/or ambiguous in that it:
 - (i) pleads rolled-up conclusions and does not plead, particularise or cross-refer to any material facts from which those conclusions are alleged to arise;
 - (ii) alleges that the conduct alleged is unlawful by reason of some unspecified combination of paragraphs 55A to 55C and 95 to 102, without identifying which provisions (or combination of provisions) in those paragraphs are said to have the effect pleaded; and
- (b) under cover of that objection:
 - (i) refers to and repeats paragraphs 22 to 26 and 55(a) to 55(c) above;
 - (ii) says that to the extent a “requirement” or “condition” has been identified it was reasonable having regard to the Superintendents’ and Officers’ obligation to maintain the Safety and Security Objectives; and
 - (iii) otherwise denies the allegations in paragraph 103.

104 [Not used].

Discrimination in education

105 As to paragraph 105, it:

- (a) says that on each occasion Ms Walters was confined to the Cue Unit, it was done pursuant to the Safety and Security Objectives;

PARTICULARS

- (i) The Respondent refers to and repeats the particulars subjoined to paragraph 96A(b) above.
- (b) says that during the periods in which Ms Walters was held in the Cue Unit:
 - (i) an educational staff member was usually present in the Cue Unit;

- (ii) depending on whether the staff member could safely and securely attend to Ms Walters in the Cue Unit, the staff member would deliver educational services to Ms Walters;
 - (iii) in the event that such services could not be supplied due to safety or security reasons, educational staff supplied work packs that would be delivered to detainees in the Cue Unit; and
 - (iv) detainees in the Cue Unit, including Ms Walters, could request library books to read while in the Unit; and
- (c) otherwise denies the allegations in paragraph 105.

106 As to paragraph 106, it:

- (a) says that the paragraph:
 - (i) conflates section 22(2)(a) and section 22(2)(c) of the DDA and is therefore impermissible and embarrassing and ought to be struck out; and
 - (ii) pleads rolled-up conclusions and does not plead, particularise or cross-refer to any material facts from which those conclusions are alleged to arise;
- (b) under the cover of those objections, it:
 - (i) refers to and repeats paragraphs 54, 54A, 102A and 105 above (including the objections); and
 - (ii) otherwise denies the allegations in paragraph 106;
- (c) further or in the alternative, if the Respondent has discriminated against Ms Walters on the grounds of a disability as alleged (which it denies), such discrimination is not unlawful by reason of section 21B of the DDA because of the following matters:
 - (i) the matters set out in paragraphs 93 and 100 above;
 - (ii) on the occasions that Ms Walters was placed in the Cue Unit, it was done for the purpose of the Safety and Security Objectives; and

PARTICULARS

- (i) The Respondent refers to and repeats the particulars subjoined to paragraph 98(b) above.

- (iii) by reason of the matters set out in paragraphs 106(c)(i) to 106(c)(ii) above not moving Ms Walters to the Cue Unit following her behaviour would have imposed unjustifiable hardship on the Respondent within the meaning of the DDA.

Harassment by staff of an educational institution

106A. As to paragraph 106A, it:

- (a) says that there are no records of Ms Walters making a complaint about the conduct alleged in paragraph 106A;
- (b) says further that there are no records held by the People, Culture and Standards Division of the Department of Justice that contain an allegation about the conduct alleged in paragraph 106A; and
- (c) otherwise does not know and therefore cannot admit the allegations in paragraph 106A.

106B. As to paragraph 106B, it:

- (a) refers to and repeats paragraph 106A above; and
- (b) otherwise does not know and cannot admit the allegations in paragraph 106B.

Disability Standards for Education

106C. As to paragraph 106C, it:

- (a) says that to the extent that:
 - (i) Ms Walters was a student with a disability;
 - (ii) Banksia Hill was an educational institution; and
 - (iii) the Respondent was an educational provider in relation to that educational institution,

then:

(iv) clause 5.2(2) of the *Disability Standards for Education 2005* (the **Standards**) obliged the Respondent to:

(A) consult Ms Walters, or an associate of Ms Walters, about whether a disability she had, affected her ability to participate in the courses or programs for which she was enrolled and use the facilities or services provided by the Respondent;

(B) in light of the consultation, decide whether an adjustment was necessary to ensure that Ms Walters was able to participate in the courses or programs provided by the educational institution, and use the facilities and services provided by it, on the same basis as a student without a disability; and

(C) if:

(1) an adjustment was necessary to achieve the aim mentioned in paragraph 106C(a)(iv)(B) above; and

(2) a reasonable adjustment could be identified in relation to that aim,

make a reasonable adjustment for Ms Walters in accordance with Part 3; and

(v) clause 6.2(2) of the Standards obliged the Respondent to:

(A) consult Ms Walters, or an associate of Ms Walters, about whether a disability she had, affected her ability to participate in learning experiences of the course or program provided by the Respondent;

(B) in light of the consultation, decide whether an adjustment was necessary to ensure that Ms Walters was able to participate in those learning experiences on the same basis as a student without a disability; and

(C) if:

- (1) an adjustment was necessary to achieve the aim mentioned in paragraph 106C(a)(v)(B) above; and
- (2) a reasonable adjustment could be identified in relation to that aim,

make a reasonable adjustment for Ms Walters in accordance with Part 3;

- (b) says that clause 3.4(1) of the Standards provided that, for the Standards, an adjustment was reasonable in relation to a student with a disability if it balanced the interests of all parties affected;
- (c) says that clause 3.4(2) of the Standards provided that, in assessing whether a particular adjustment for a student was reasonable, regard should be had to all the relevant circumstances and interests, including the circumstances and interests set out in that clause;
- (d) as to sub-paragraph (a):
 - (i) says that it is embarrassing and/or ambiguous in that it does not plead, particularise or cross-refer to any material facts as to what is said to be the assessments that would assist Ms Walters in participating in her education;
 - (ii) says that it was a practice at Banksia Hill that upon admission to Banksia Hill, detainees underwent a literacy and numeracy assessment conducted by teaching staff;

PARTICULARS

- (i) Alexandra Walters Education Assessments; and
- (ii) Recording sheet – results and interview.

(iii) says further that during the Relevant Period, education for all detainees in Banksia Hill, involved:

- (A) a school day which ran on Monday, Tuesday, Thursday and Friday from the hours of 9.00am to 3.00pm and on Wednesday from 9.00am to 12.00pm during school term;
- (B) face to face teaching;
- (C) a teacher being present at all times, or if not, an Officer to supervise the detainees until the teacher returned;
- (D) learning which was at each detainee's own pace;
- (E) provision for tasks to be broken down into meaningful steps for each and every detainee;
- (F) provision for any detainee to opt out from being taught in their classroom, at any time during school days, and to go back to their accommodation;
- (G) provision for a teacher to determine to release any detainee from their course work, at any time during school days, and to instead provide them with alternative activities, such as:
 - (1) playing board games;
 - (2) listening to music;
 - (3) doing art;
 - (4) drawing;
 - (5) playing sport;
 - (6) cooking; and/or
 - (7) playing computer games;

- (H) provision for any detainee to, in consultation with their teacher and at any time during school days, to choose to undertake non-course related activities, such as:
 - (1) playing board games;
 - (2) listening to music;
 - (3) doing art;
 - (4) drawing;
 - (5) playing sport;
 - (6) cooking; and/or
 - (7) playing computer games;
- (I) teaching the CGEA to detainees, which:
 - (1) did not set an established timeline by which detainees had to complete it; and
 - (2) allowed for detainees to progress with the CGEA at a rate at which each detainee was willing and able to progress;
- (iv) says further that it was a practice at Banksia Hill that all detainees complete a learning plan wherein they identify their individual educational needs and set goals and that this is documented on the Pathlore learning management system which is accessible to all teachers;
- (v) says further that Ms Walters completed at least two learning plans, which were:
 - (A) developed by Ms Walters in consultation with a support person; and
 - (B) aimed at ascertaining her learning needs and style;
- (vi) says that it will refer to the full terms and effect of the Standards; and
- (vii) otherwise does not know and therefore cannot admit the allegations in subparagraph (a);

- (e) as to sub-paragraph (c):
 - (i) refers to and repeats paragraphs 100(c) and 106C(a) above; and
 - (ii) otherwise denies the allegations in sub-paragraph (c);
- (f) As to sub-paragraph (g):
 - (i) says the Respondent provided Ms Walters with access to psychologists, counsellors and support workers at Banksia Hill;
 - (ii) says some of the staff, including Officers at Banksia Hill were trained in assisting people with ASD; and

PARTICULARS

- (i) The Respondent refers to and repeats paragraph 100(e) above.
- (iii) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (g);
- (g) refers to and repeats paragraphs 102 and 103 above; and
- (h) otherwise denies the allegations in paragraph 106C.

106D. As to paragraph 106D, it:

- (a) refers to and repeats paragraph 101 and 106C above; and
- (b) otherwise denies the allegations in paragraph 106D.

106E. As to paragraph 106E:

- (a) refers to and repeats paragraphs 106C and 106D above; and
- (b) otherwise denies the allegations in paragraph 106E.

106F. As to paragraph 106F, it:

- (a) says that:
 - (i) paragraph 106F(a) is embarrassing and/or ambiguous in that it does not plead, particularise or cross-refer to any material facts as to what is said to

be the mental health treatment, counselling and support that Ms Walters required;

- (ii) paragraph 106F(b) is embarrassing and/or ambiguous in that it does not plead, particularise or cross-refer to any material facts as to what is said to be the behavioural therapy that would assist Ms Walters “to learn to, and to, better regulate her emotions and behaviour”; and
- (iii) paragraph 106F(c) is embarrassing and/or ambiguous in that it does not plead, particularise or cross-refer to any material facts as to what is said to be “appropriately qualified” support worker;

(b) under cover of that objection:

- (i) refers to and repeats paragraphs 100, 101 and 106C above;
- (ii) otherwise denies the allegations in paragraph 106F; and
- (iii) cannot plead further to the allegations contained in paragraph 106F in the absence of particulars.

106G. As to paragraph 106G, it:

- (a) refers to and repeats paragraphs 101, 106C and 106F above; and
- (b) otherwise denies the allegations in paragraph 106G.

106H. As to paragraph 106H, it:

- (a) refers to and repeats paragraphs 106C, 106F and 106G above; and
- (b) otherwise denies the allegations in paragraph 106H.

106I. As to paragraph 106I, it:

- (a) refers to and repeats paragraphs 101, 106C, and 106F to 106H above; and
- (b) otherwise denies the allegations in paragraph 106H.

106J. As to paragraph 106J:

- (a) says that the allegation is embarrassing and/or ambiguous as it does not identify the relevant step or steps the Respondent is supposed to have implemented to prevent harassment as required under s 8.3 of the Standards;
- (b) under cover of that objection:
 - (i) refers to and repeats paragraphs 106A and 106B above; and
 - (ii) otherwise denies the allegation in paragraph 106J.

106K. As to paragraph 106K, it:

- (a) refers to and repeats paragraphs 106C to 106J above; and
- (b) otherwise denies the allegation in paragraph 106K.

Goods, services and facilities

107 As to paragraph 107, it:

- (a) refers to and repeats paragraph 55 above (including the objections); and
- (b) otherwise denies the allegations contained in paragraph 107.

108 As to paragraph 108, it:

- (a) refers to and repeats paragraph 98 above;
- (b) says that that during her detention at Banksia Hill there were occasions where Ms Walters' access to the programs or services listed in paragraph 108 of the SOC were limited by reason of:
 - (i) Ms Walters' non-compliance with lawful directions;
 - (ii) Ms Walters' threatening behaviour to others;
 - (iii) Ms Walters' threatening behaviour to herself;
 - (iv) Ms Walters' abuse of other detainees or staff; and
 - (v) Ms Walters' assault of other detainees or staff;

PARTICULARS

- (i) The Respondent refers to and repeats the matters set out in paragraphs 64(a), 96A and 97 above.
- (c) says further that the decisions to limit access to the programs and services listed in paragraph 108 of the SOC were done pursuant to the Safety and Security Objectives; and
- (d) otherwise denies the allegations in paragraph 108.

108A As to paragraph 108A, it:

- (a) is embarrassing and/or ambiguous in that it fails to identify a good, service or facility within the meaning of section 4 and 24 of the DDA;
- (b) under cover of that objection:
 - (i) refers to and repeats paragraphs 55, 98 and 108 above; and
 - (ii) otherwise denies the allegations in paragraph 108A.

108B As to paragraph 108B, it:

- (a) refers to and repeats paragraph 98 above;
- (b) admits that between 11 October 2018 and 14 December 2018 and, 15 February 2019 and 13 December 2019, while housed in the Cue Unit, pursuant to Ms Walters' PSP, she was required to be escorted and handcuffed when leaving the Unit;
- (c) says further that in instances where Ms Walters was handcuffed or otherwise restrained for movements whilst housed in the Cue Unit, it (and the PSP) was made pursuant to the Safety and Security Objectives; and
- (d) otherwise does not know and therefore cannot admit the allegations contained in paragraph 108B.

109 As to paragraph 109, it:

- (a) is embarrassing and/or ambiguous in that it fails to identify a good, service or facility within the meaning of section 4 and 24 of the DDA;

- (b) pleads rolled-up conclusions and does not plead, particularise or cross-refer to any material facts from which those conclusions are alleged to arise; and/or
- (c) alleges that the conduct alleged is unlawful by reason of some unspecified combination of paragraphs 102A, 103 and 107, without identifying which provisions (or combination of provisions) in those paragraphs are said to have the effect pleaded; and/or;
- (d) fails to identify a comparator as required under s 5 of the DDA;
- (e) under cover of that objection:
 - (i) refers to and repeats paragraph 55, 96, 102A, 103, 107 and 108B above;
 - (ii) further or in the alternative, if the Respondent has discriminated against Ms Walters on the grounds of a disability as alleged (which it specifically denies), such discrimination is not unlawful by reason of section 21B of the DDA because of the following matters:
 - (A) on the occasions that Ms Walters was placed in the Cue Unit, it was done for the purposes of the Safety and Security Objectives;
 - (B) on the occasions that Mr Walters, when placed in the Cue Unit, was subject to handcuffs when she was moved outside of the Cue Unit, the use of handcuffs was done for the purpose of the Safety and Security Objectives;
 - (C) by reason of the matters set out in sub-paragraphs (A) to (B):
 - (1) not moving Ms Walters to the Cue Unit following her behaviour would cause unjustifiable hardship on the Respondent within the meaning of the DDA; and/or
 - (2) allowing Ms Walters, when placed in the Cue Unit, to move to other parts of Banksia Hill without handcuffs would cause unjustifiable hardship on the Respondent within the meaning of the DDA,
 - (iii) otherwise denies the allegations in paragraph 109.

Harassment by provider of goods, services and facilities

109A. As to paragraph 109A, it

- (a) refers to and repeats paragraph 55 above; and
- (b) otherwise does not know and therefore cannot admit the allegations contained in paragraph 109A.

109B. As to paragraph 109B, it:

- (a) refers to and repeats paragraph 55 above; and
- (b) otherwise does not know and therefore cannot admit the allegations contained in paragraph 109B.

109C. As to paragraph 109C, it:

- (a) is embarrassing and/or ambiguous in that it fails to identify a good, service or facility within the meaning of section 4 and 24 of the DDA; and
- (b) under cover of that objection:
 - (i) refers to and repeats paragraph 55 above; and
 - (ii) otherwise does not know and otherwise cannot admit the allegations contained in paragraph 109C.

K.4. Remedies

110 It denies that Ms Walters is entitled to the relief claimed in paragraph 110.

111 It denies that Ms Walters is entitled to the relief claimed in paragraph 111.

112 As to paragraph 112, it:

- (a) says that Ms Walters' claims for damages in respect of the matters alleged in paragraphs 56 to 86 and 112 to 115 of the SOC are:
 - (i) "claim[s] for damages for harm caused by the fault of a person" within the meaning of ss 5A(1) and 5V(1) of CLAWA; and
 - (ii) claims for "personal injury damages" within the meaning of s 5T of CLAWA;

- (b) says further that any award of personal injury damages in favour of Ms Walters is subject to the application of Part 2 of CLAWA;
- (c) says further that:
 - (i) s 5T of CLAWA provides that the Court cannot make an award of personal injury damages for pecuniary loss for consequential mental harm unless the harm consists of a recognised psychiatric illness; and
 - (ii) the harm(s) alleged in paragraph 112 do not consist of a recognised psychiatric illness; and
- (d) otherwise does not know and therefore cannot admit paragraph 112.

113 As to paragraph 113, it:

- (a) repeats paragraph 112 above; and
- (b) otherwise does not know and therefore cannot admit paragraph 113.

114 As to paragraph 114, it:

- (a) repeats paragraph 112 above; and
- (b) otherwise denies the allegations in paragraph 114.

115 As to paragraph 115, it:

- (a) repeats paragraph 112 above; and
- (b) otherwise denies the allegations in paragraph 115.

116 As to paragraph 116, it:

- (a) says that Ms Walters' claims for damages in respect of the matters alleged in paragraphs 48 to 53, 87 to 93, 116 and/or 117 of the SOC are:
 - (i) "claim[s] for damages for harm caused by the fault of a person" within the meaning of ss 5A(1) and 5V(1) of CLAWA; and
 - (ii) claims for "personal injury damages" within the meaning of s 5T of CLAWA, and refers to and repeats paragraphs 112(b) and 112(c) above; and

(b) otherwise denies the allegations in paragraph 116.

117 [Not used].

118 It denies the allegations in paragraph 118.

119 It denies that Ms Walters is entitled to the relief claimed in paragraph 119.

120 It denies that Ms Walters is entitled to the relief claimed in paragraph 120.

L. CLAIMS OF MR VIDA

L.1 False imprisonment, assault and battery

121 As to paragraph 121, it:

(a) says that at all times during the period that Mr Vida was detained at Banksia Hill, there was a unit at Banksia Hill called the Intensive Support Unit (**ISU**) which was previously called the Harding Unit;

(b) says further that the Harding Unit / ISU was (and is) a specialist unit which:

(i) contains 4 wings – A, B, C and D:

(A) ISU A and C wings comprise of 8 cells and are designated general living wings, for detainees requiring a higher level of supervision and engagement to meet their individual assessed PSP needs, prior to their planned transition back into mainstream accommodation units; the ISU A and C wings may also house detainees who have opted to be placed or remain in ISU for personal, psychological, or physical reasons and who are not subject to a PSP;

(B) ISU B wing comprises of 8 cells – 4 observation cells and 4 multi-purpose cells; and

(C) ISU D wing comprises of 12 cells, monitored by CCTV, and is utilised as a short-term placement for detainees (as necessary and as a last resort), including in the following circumstances: for overnight arrests; where CCTV is deemed appropriate; where detainees are presenting a risk to self or others; for high numbers of detainees in mainstream

living units requiring the use of these beds; and to avoid unsettling the mainstream units at night;

- (ii) contains observation cells within the ISU B wing which have Perspex windows to allow for Officers to observe detainees at all times. These cells are used:
 - (A) for detainees who are in need of continuous observation;
 - (B) if a detainee is suspected to be under the influence of, or suffering withdrawal from, alcohol or drugs;
 - (C) if a detainee is considered a risk to self or others;
 - (D) if a detainee is having suicidal ideations, threatening suicide, or found with items which provide capability to carry out or attempt suicide, self-harm or to harm others;
 - (E) if a detainee is assessed or has a known current mental health illness which is not controlled by medication and is supported by the medical unit;
 - (F) if a detainee appears to be depressed, distressed, or experiencing rapid mood swings and is in consultation with the psychological services unit;
 - (G) if a detainee is presenting with any other reason causing a risk of imminent harm to self or others;
 - (H) if a detainee is undergoing an incident investigation;
 - (I) on the request and/or advice of a psychiatrist or mental health nurse; and/or
 - (J) as an overflow management option if other the multi-purpose cells are not available;
- (iii) contains multi-purpose cells within the ISU B wing which are monitored by CCTV and are utilised (as necessary and as last resort) for the immediate

short-term placement of detainees, as an immediate response to an incident; these cells are also used to:

- (A) promote self-regulation of detainees;
- (B) manage risk at Banksia Hill;
- (C) support the incident investigation process; and/or
- (D) support the overflow of detainees requiring increased checks and a higher level of supervision and observation;

(c) says further that observation cells and multi-purpose cells are:

- (i) only located in the Harding Unit / ISU and the Cue Unit within the Yeeda Unit at Banksia Hill; and
- (ii) designed to have limited ligature points to decrease the risk of a detainee engaging in self-harm;

(d) says further that during the period that Mr Vida was detained at Banksia Hill, detainees were moved from the mainstream accommodation units to the Harding Unit / ISU for a variety of reasons, including:

- (i) concerns regarding their safety, including that a detainee would engage in self-harm;
- (ii) concerns regarding the safety of other detainees;
- (iii) concerns regarding the safety of Officers and/or other staff; and/or
- (iv) concerns regarding the physical integrity of Banksia Hill; and

(e) admits that during the time that Mr Vida was detained at Banksia Hill, he was accommodated as particularised below;

PARTICULARS

(i) The ISU (twelve allocations between the below dates over 20 days):

- (A) 21 to 22 March 2018;

- (B) 28 to 31 March 2018;
 - (C) 31 March to 5 April 2018;
 - (D) 17 to 18 April 2018;
 - (E) 18 to 19 April 2018;
 - (F) 19 April 2018;
 - (G) 16 April 2019;
 - (H) 16 to 17 April 2019;
 - (I) 17 April 2019;
 - (J) 29 to 30 April 2019; and
 - (K) 21 to 22 April 2020;
- (ii) the Harding Unit (four allocations between the below dates over 6 days):
- (A) 8 March 2014;
 - (B) 9 to 10 March 2016;
 - (C) 11 to 12 March 2016; and
 - (D) 29 September 2016;
- (iii) Karakin (one allocation between the below dates over 3 days):
28 to 30 November 2016;
- (iv) Jasper (one allocation between the below dates over 3 days):
31 July to 2 August 2017;
- (v) Detainee reception (eleven allocations between the below times with an additional 20 days to those above):
- (A) 7 to 8 March 2014 (around two hours);
 - (B) 9 March 2016 (around two hours);

- (C) 10 to 11 March 2016 (overnight);
 - (D) 29 September 2016 (around five hours);
 - (E) 28 November 2016 (around three hours);
 - (F) 21 March 2018 (around three hours);
 - (G) 28 March 2018 (around three hours);
 - (H) 5 to 17 April 2018 (13 days due to transfer to the BAU hospital);
 - (I) 16 April 2019 (around 15 mins);
 - (J) 17 to 25 April 2019 (8 days due to transfer to the BAU hospital);
 - (K) 21 April 2020 (1 hour); and
 - (L) 22 April 2020 (around seven hours); and
- (vi) Offsite (close supervision): 25 to 29 April 2019 (5 days);
- (f) says that during his detention in Banksia Hill, Mr Vida engaged in violence and threats of violence;

PARTICULARS

- (i) It refers to paragraphs 5(b), 5(e), 6(3)(b), 6(4)(c), 6(4)(d), 6(4)(g), 6(4)(h), 7(2), 7(3), 7(4)(f), 7(4)(g), 7(4)(l), 9(10), 9(11), 10(1)(c), 10(1)(v), 10(2)(e), 10(2)(g), 10(2)(t), 11(1)(k), 11(1)(m), 11(1)(u)(iii), 11(1)(bb), 11(2)(f), 11(2)(q), and 11(2)(r) of the Respondent's schedule of particulars for Mr Vida (**Vida Schedule of Particulars**).
- (g) says that the claims set out in paragraphs 121 to 142 and 171 to 175:
- (i) are "claim[s] for damages for harm caused by the fault of a person" within the meaning of ss 5A(1) and/or 5V(1) of CLAWA;

- (ii) are subject to sections 5U, 5V, 5W and/or 5X of Part 1C of CLAWA and Part 2 of CLAWA;
 - (iii) include “claim[s] for personal injury damages for mental harm” within the meaning of s 5R(1) of CLAWA”; and/or
 - (iv) are subject to ss 5Q, 5R, 5S and/or 5T of Part 1B of CLAWA;
- (h) says further that:
- (i) the Respondent, each Minister, each CEO, each Superintendent, each Officer, prison officer and/or police officer is and was at all relevant times a “public body or officer” within the meaning of s 5U of CLAWA;
 - (ii) the claims set out in paragraphs 121 to 142 and 171 to 175 are “claim[s] for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function” within the meaning of s 5X of CLAWA;
 - (iii) in respect of the claims set out in paragraphs 121 to 142 and 171 to 175, a “policy decision” cannot be used to support a finding that the Respondent was at fault unless the decision was so unreasonable that no reasonable public body or officer in its position could have made it, pursuant to s 5X of CLAWA; and
 - (iv) the Respondent’s allocations of staff to Banksia Hill were a ‘policy decision’ within the meaning of s 5X of CLAWA;
- (i) refers to and repeats paragraph 92(b) above; and
 - (j) otherwise denies the allegations in paragraph 121.

122 As to paragraph 122, it:

- (a) says that on 40 of the 54 days on which Mr Vida was detained in Banksia Hill, he was in detention on remand for short periods of time;

PARTICULARS

- (i) On 8 March 2014, Mr Vida was detained at Banksia Hill for approximately 12 hours;

- (ii) between 9 and 11 March 2016, Mr Vida was detained at Banksia Hill for approximately 36 hours and 30 minutes between 8.02pm on 9 March 2016 and 8.36am on 11 March 2016;
 - (iii) between 11 and 12 March 2016, Mr Vida was detained at Banksia Hill for approximately 20 hours and 50 minutes between 6.03pm on 11 March and 12.52pm on 12 March 2016;
 - (iv) on 29 September 2016, Mr Vida was detained at Banksia Hill for approximately 11 hours and 30 minutes between 1.30am and 1.02pm;
 - (v) between 21 and 22 March 2018, Mr Vida was detained at Banksia Hill for approximately 22 hours, between 3.52pm on 21 March 2018 and 5.52pm on 22 March 2018;
 - (vi) between 21 and 22 April 2020, Mr Vida was detained at Banksia Hill for approximately 21 hours and 40 minutes hours between 5.03pm on 21 April 2020 and 2.42pm on 22 April 2020;
- (b) says that other than on two occasions, each of Mr Vida's admissions to Banksia Hill, were for two days or less;
- (c) says that for five of his ten admissions into Banksia Hill, he was admitted at or approximately 6pm or later (three admissions were approximately midnight or later);
- (d) says that when Mr Vida was confined to his sleeping quarters or another designated room during unlock hours, it was on the basis of the Safety and Security Objectives pursuant to the:
- (i) Management, Control and Security Power; and/or
 - (ii) Compliance with Orders Power; and

PARTICULARS

- (i) It refers to paragraphs 4, 6, 7, 8, 10 and 11 of the Vida Schedule of Particulars.
- (e) otherwise denies the allegations in paragraph 122.

123 It does not know and therefore cannot admit paragraph 123.

124 It does not know and therefore cannot admit paragraph 124.

125 It admits paragraph 125.

126 As to paragraph 126, it:

(a) says that Mr Vida was deprived of his liberty by reason of being a detainee at Banksia Hill and refers to paragraph 45(a) and 45(b) above and paragraph 127(c) below; and

(b) otherwise denies the allegations in paragraph 126.

127 As to paragraph 127, it:

(a) says that during Mr Vida's time in Banksia Hill, the Overnight Lockdown usually started at 7.15pm and went until 7.45am the next day;

(b) refers to and repeats paragraphs 121(f) and 122(a) above;

(c) refers to and repeats paragraph 45(b) above and says that Mr Vida was lawfully detained in Banksia Hill during the relevant periods;

PARTICULARS

(i) Pursuant to section 19 of the YO Act on 7 March 2014, 9 March 2016, 11 March 2016, 29 September 2016 and 21 April 2020;

(ii) remand warrant issued 29 November 2016 authorising imprisonment until a new court date of 30 November 2016 at 2.15pm;

(iii) arrest warrant issued 31 July 2017 authorising imprisonment until he was to be brought before the court as soon as was reasonably practicable;

(iv) remand warrant issued 21 March 2018 authorising imprisonment until a new court date of 22 March 2018 at 1.30pm;

(v) remand warrant issued 29 March 2018 authorising imprisonment until a new court date of 3 April 2018 at 9.15am;

- (vi) remand warrant issued 3 April 2018 authorising imprisonment until a new court date of 5 April 2018 at 9.15am;
 - (vii) remand warrant issued 5 April 2018 authorising imprisonment until a new court date of 9 April 2018 at 11.15am;
 - (viii) remand warrant issued 9 April 2018 authorising imprisonment until a new court date of 12 April 2018 at 1.30pm;
 - (ix) remand warrant issued 12 April 2018 authorising imprisonment until a new court date of 19 April 2018 at 1.30pm;
 - (x) remand warrant issued 16 April 2019 authorising imprisonment until a new court date of 17 April 2019 at 1.30pm;
 - (xi) remand warrant issued 23 April 2019 authorising imprisonment until a new court date of 26 April 2019 at 9.15am; and
 - (xii) remand warrant issued 26 April 2019 authorising imprisonment until a new court date of 30 April 2019 at 11.15am.
- (d) refers to and repeats paragraph 122(d) above and says that when Mr Vida was confined to his sleeping quarters or another designated room during unlock hours, it was on the basis of the Safety and Security Objectives pursuant to the:
- (i) Management, Control and Security Power; and/or
 - (ii) Compliance with Orders Power;
- (e) refers to and repeats paragraphs 64(c) and 121(f) above and says further or in the alternative that:
- (i) the claims in paragraphs 121 to 128 and/or 171 to 174 constitute a “claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function” within the meaning of s 5X of CLAWA; and
 - (ii) pursuant to s 5X of CLAWA, the Specific Confinement Policy Decision(s) cannot be used to support a finding that the Respondent was at fault unless the Specific Confinement Policy Decision(s) was/were so unreasonable that

no reasonable public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it/them; and

(f) otherwise denies the allegations in paragraph 127.

128 As to paragraph 128, it:

(a) repeats paragraph 127 above; and

(b) otherwise denies the allegations in paragraph 128.

Strip searches

129 As to paragraph 129, it:

(a) refers to and repeats paragraphs 41(a), 42(a), 121(f) and 127(d) above;

(b) admits that Mr Vida was strip searched on his admission to Banksia Hill on the occasions particularised below;

PARTICULARS

(i) 7 March 2014; 9 March 2016; 11 March 2016; 29 September 2016; 28 November 2016; 31 July 2017; and 21 April 2020.

(c) admits that Mr Vida was subjected to a half-and-half strip search on his admission to Banksia Hill on 16 April 2019; and

(d) otherwise denies paragraph 129.

130 As to paragraph 130, it:

(a) does not know and therefore cannot admit paragraph 130(a);

(b) refers to and repeats paragraphs 41(a), 42(a) and 46(f) above and says that:

(i) reg 85(2) of the YO Regulations states that a “detainee may be searched at any time, and in such a manner, as is considered necessary at the time by the superintendent”;

(ii) reg 81(4) of the YO Regulations states that “if the superintendent is empowered to search a detainee, officer or other employee, or a person to

whom Division 4 applies, the superintendent is empowered to direct an officer to undertake that search on his or her behalf”; and

- (iii) reg 86(2) of the YO Regulations does not limit the conduct of strip searches to when there are circumstances giving rise to a reasonable suspicion that the detainee may be in possession of an item that could (a) jeopardise the safety, good order or security of the detention centre; or (b) be used for self-harm;
- (c) refers to paragraph 129(b) above and to the particulars thereto which identify the circumstances in which Mr Vida was strip-searched; and
- (d) otherwise denies paragraph 130.

131 As to paragraph 131, it:

- (a) repeats paragraphs 130(b) and 130(c) above says that the searches conducted of Mr Vida were pursuant to the:
 - (i) Search Power;
 - (ii) Use of Force in Searches Power; and/or
 - (iii) Compliance with Orders Power;
- (b) says further or in the alternative that:
 - (i) the claims in paragraphs 129 to 131 and/or 171 to 174 constitute a “claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function” within the meaning of s 5X of CLAWA; and
 - (ii) pursuant to s 5X of CLAWA, the Conduct of Searches Policy Decision(s) cannot be used to support a finding that the Respondent was at fault unless the Conduct of Searches Policy Decision(s) was/were so unreasonable that no reasonable public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it/them; and
- (c) otherwise denies the allegations in paragraph 131.

Other alleged assault and battery

132 As to paragraph 132, it:

- (a) says that there were multiple incidents involving Mr Vida on 3 April 2018;

PARTICULARS

- (i) Incident numbers I45945125, I45955825, I45957093 and I45972180; and

- (ii) it refers to paragraph 7(4) of the Vida Schedule of Particulars.

- (b) says that at about 12:55pm on 3 April 2018:

- (i) Mr Vida was in the ISU yard area to make a phone call; his behaviour was erratic;
 - (ii) Mr Vida was instructed to return to his cell so that other detainees could use the yard but he refused to do so;
 - (iii) Mr Vida started threatening the unit manager; Mr Vida was standing in a fighting stance – he was pacing up and down, puffing out his chest;
 - (iv) additional Officers entered the yard to assist the unit manager and a code amber was called;
 - (v) Mr Vida refused to comply with the instructions and threatened to knock out the officers one by one;
 - (vi) Mr Vida was given a use of force warning and was told that if he did not comply, the recovery Officers would take him to his cell;
 - (vii) the unit manager continued to counsel Mr Vida to return to his cell;
 - (viii) Mr Vida refused to follow instructions;
 - (ix) Officers held Mr Vida's arms and escorted him to his cell and secured him; he was compliant during the escort; and

PARTICULARS

- (i) It refers to paragraph 7(4)(I) of the Vida Schedule of Particulars.

(c) otherwise denies the allegations in paragraph 132.

133 It denies paragraph 133.

134 It denies paragraph 134.

135 It denies paragraph 135.

136 As to paragraph 136, it:

(a) says that there was an incident involving Mr Vida beginning at approximately 1:15pm on 17 April 2019 during which Mr Vida was aggressive and threatening; and

PARTICULARS

(i) It refers to paragraph 10(1) of the Vida Schedule of Particulars.

(b) otherwise denies paragraph 136.

137 It admits paragraph 137.

138 It does not know and therefore cannot admit paragraph 138.

139 As to paragraph 139, it:

(a) refers to and repeats paragraphs 46(g) and 76(d) above;

(b) refers to and repeats paragraphs 132 and 136 above and says that the use of force on Mr Vida was pursuant to the:

(i) Compliance with Orders Power;

(ii) Management, Control and Security Power; and/or

(iii) Restraints Power;

(c) further, or alternatively, says that on the occasions particularised below the use of force on Mr Vida was in self-defence at common law;

PARTICULARS

(ii) It refers to paragraphs 5(1)(b), 5(1)(e), 7(4)(f), 7(4)(l), 9(10) and 11(2)(r) of the Vida Schedule of Particulars.

- (d) refers to and repeats paragraph 121(f) and says further or in the alternative that:
 - (i) the claims in paragraphs 132 to 142 and/or 171 to 174 constitute a “claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function” within the meaning of s 5X of CLAWA; and
 - (ii) pursuant to s 5X of CLAWA, the Use of Handcuffs Policy Decision(s) cannot be used to support a finding that the Respondent was at fault unless the Use of Handcuffs Policy Decision(s) was/were so unreasonable that no reasonable public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it/them; and
- (e) otherwise denies the allegations in paragraph 139.

140 As to paragraph 140, it:

- (a) refers to and repeats paragraph 136 above; and
- (b) otherwise denies paragraph 140.

141 As to paragraph 141, it:

- (a) refers to and repeats paragraph 140(a) above; and
- (b) otherwise denies paragraph 141.

142 As to paragraph 142, it:

- (a) refers to and repeats paragraph 139(a) above; and
- (b) otherwise denies paragraph 142.

L.2 Breach of duty of care

143 [Not used].

144 As to paragraph 144, it:

- (a) refers to and repeats paragraph 7 above; and
- (b) otherwise does not know and therefore cannot admit paragraph 144.

145 As to paragraph 145, it:

- (a) repeats paragraph 7 above;
- (b) says that Mr Vida:
 - (i) was aggressive;
 - (ii) removed his clothes;
 - (iii) appeared paranoid;
 - (iv) appeared to have difficulty regulating his emotions and behaviour; and
- (c) otherwise does not know and therefore cannot admit paragraph 145.

146 It denies paragraph 146.

146A. As to paragraph 146A, it:

- (a) refers to and repeats paragraph 51(c)(ii) above;
- (b) refers to and repeats paragraphs 145 and 146 above;
- (c) says that all relevant times, Mr Vida was not a person of normal fortitude within the meaning of section 5S of CLAWA;
- (d) refers to and repeats paragraph 51(d) above and says that the allegation is embarrassing and/or ambiguous in that:
 - (i) under s 5S of CLAWA, because it is necessary to assess whether a person of normal fortitude would suffer a recognised psychiatric illness “in the circumstances of the case”, it is necessary to specify the critical event(s) with a degree of precision;
 - (ii) paragraph 146A of the SOC does not identify whether:
 - (A) it is alleged that each incident cross-referenced in the particulars to that paragraph was foreseeable and might, in the circumstances of the case, cause a person of normal fortitude to suffer a recognised psychiatric illness;

- (B) it alleges that some combination of incidents in each sub-paragraph might do so; or
- (C) whether it alleges that the combination of all incidents in all sub-paragraphs might do so;
- (iii) there is no articulation in paragraph 146A of the SOC of the nature of the conduct that the Respondent should have foreseen which might lead a person of normal fortitude to suffer a psychiatric illness; and
- (iv) in the absence of a specified risk of harm, one cannot assess the probability of that risk occurring or evaluate the reasonableness of the Respondent's response, or lack of response, to that risk; and
- (e) under cover of that objection, otherwise denies the allegations in paragraph 146A.

147 As to paragraph 147, it:

- (a) refers to and repeats paragraph 122(d) above;
- (b) says that:
 - (i) paragraph 147 does not identify the person, thing or set of circumstances which is alleged to have given rise to the potential for the alleged harm nor the general causal mechanism of any injury sustained: *De Martin & Gasparini Pty Ltd v Bartlett* [2025] NSWCA 56 [22]; and
 - (ii) in the absence of a specified risk of harm, one cannot assess the probability of that risk occurring or evaluate the reasonableness of the Respondent's response, or lack of response, to that risk;
- (c) says further or in the alternative that pursuant to section 5W of CLAWA:
 - (i) the functions that were required to be exercised by Banksia Hill were limited by the financial and other resources that were reasonably available to Banksia Hill (including the number of available staff) for the purpose of exercising those functions;
 - (ii) the general allocation of those resources is not open to challenge;

- (iii) the functions required to be exercised by Banksia Hill are to be determined by reference to the broad range of its activities (and not merely by reference to the matter to which this proceeding relates); and
 - (iv) the Respondent's allocations of staff to Banksia Hill were a "policy decision" within the meaning of s 5X of CLAWA;
- (d) says further or in the alternative that:
- (i) the claims in paragraphs 48 to 53, 144 to 148 and/or 171 to 175 constitute a "claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function" within the meaning of s 5X of CLAWA; and
 - (ii) pursuant to s 5X of CLAWA, the Specific Confinement Policy Decision(s) and/or Lockdowns Policy Decision(s) cannot be used to support a finding that the Respondent was at fault unless Specific Confinement Policy Decision(s) and/or Lockdowns Policy Decision(s) was/were so unreasonable that no reasonable public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it/them; and
- (e) otherwise denies paragraph 147.

147A. As to paragraph 147A, it:

- (a) refers to and repeats paragraphs 45(a), 45(b) and 49 above;
- (b) refers to and repeats paragraph 122, 126 and 127 above;
- (c) refers to and repeats paragraph 147 above; and
- (d) otherwise denies paragraph 147A.

147B. It denies paragraph 147B and says further that if (which is denied) there was any breach of the alleged duty of care by the Respondent, the Minister, the CEO, a Superintendent and/or any Officer, Mr Vida was contributorily negligent (within the meaning of section 5K of CLAWA and/or section 4(1) of the *Law Reform (Contributory*

Negligence and Tortfeasors' Contribution) Act 1947 (WA)) in failing to take precautions against the risk of that harm by:

- (a) failing to comply with directions issued to him by Officers; and/or
- (b) failing to refrain from threatening to harm Officers and/or other detainees;

PARTICULARS

- (i) With respect to failing to comply with the directions issued by Officer, it refers to paragraphs 6(3)(b), 7(4)(f), 7(4)(g) of the Vida Schedule of Particulars;
- (ii) with respect to failing to refrain from threatening to harm Officers and/or other detainees, it refers to paragraphs 6(3)(b), 7(3)(b), 7(4)(f); 7(4)(g); 9(2), 10(1)(c), 10(1)(e), 10(1)(v), 10(2)(a) and 10(2)(e) of the Vida Schedule of Particulars; and
- (iii) further particulars may be provided following discovery and the filing of evidence.

147C. As to paragraph 147C, it:

- (a) refers to paragraph 131(a) above;
- (b) says further that paragraph 147C does not identify the person, thing or set of circumstances which is alleged to have given rise to the potential for the alleged harm nor the general causal mechanism of any injury sustained: *De Martin & Gasparini Pty Ltd v Bartlett* [2025] NSWCA 56 [22];
- (c) in the absence of a specified risk of harm, one cannot assess the probability of that risk occurring or evaluate the reasonableness of the Respondent's response, or lack of response, to that risk; and
- (d) otherwise denies paragraph 147C.

147D. As to paragraph 147D, it:

- (a) refers to and repeats paragraphs 40(a), 41(a), 42(a) and 49 above;
- (b) refers to and repeats paragraphs 129 and 130 above;

- (c) refers to and repeats paragraph 147(a) above; and
- (d) otherwise denies paragraph 147D.

147E. As to paragraph 147E, it:

- (a) refers to and repeats paragraph 147(a) above;
- (b) says further that:
 - (i) the claim in paragraph 147E constitutes a “claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function” within the meaning of s 5X of CLAWA; and
 - (ii) pursuant to s 5X of CLAWA, the Conduct of Searches Policy Decision(s) cannot be used to support a finding that the Respondent was at fault unless Conduct of Searches Policy Decision(s) was/were so unreasonable that no reasonable public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it/them; and
- (c) otherwise denies paragraph 147E.

147F. As to paragraph 147F, it:

- (a) refers to and repeats paragraph 139(a);
- (b) says that paragraph 147F does not identify the person, thing or set of circumstances which is alleged to have given rise to the potential for the alleged harm nor the general causal mechanism of any injury sustained: *De Martin & Gasparini Pty Ltd v Bartlett* [2025] NSWCA 56 [22];
- (c) in the absence of a specified risk of harm, one cannot assess the probability of that risk occurring or evaluate the reasonableness of the Respondent’s response, or lack of response, to that risk; and
- (d) otherwise denies paragraph 147F.

147G. As to paragraph 147G, it:

- (a) refers to and repeats paragraphs 22(a)(iv), 28, 40(a)(iii) and 49 above;

- (b) refers to and repeats paragraphs 139 and 140 above;
- (c) refers to and repeats paragraph 147F above; and
- (d) otherwise denies paragraph 147G.

147H. It denies paragraph 147H and says further that if (which is denied) there was any breach of the alleged duty of care by the Respondent, the Minister, the CEO, a Superintendent and/or any Officer, Mr Vida was contributorily negligent (within the meaning of section 5K of CLAWA and/or section 4(1) of the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947 (WA)*) in failing to take precautions against the risk of that harm by:

- (a) failing to comply with directions issued to him by Officers;
- (b) failing to refrain from threatening to harm Officers and/or other detainees.

PARTICULARS

- (i) It refers to and repeats the particulars subjoined to paragraph 147B above.

147I. As to paragraph 147I, it:

- (a) refers to and repeats paragraph 139 above;
- (b) says further that:
 - (i) paragraph 147I does not identify the person, thing or set of circumstances which is alleged to have given rise to the potential for the alleged harm nor the general causal mechanism of any injury sustained: *De Martin & Gasparini Pty Ltd v Bartlett* [2025] NSWCA 56 [22]; and
 - (ii) in the absence of a specified risk of harm, one cannot assess the probability of that risk occurring or evaluate the reasonableness of the Respondent's response, or lack of response, to that risk;
- (c) says further or in the alternative that pursuant to section 5W of CLAWA:
 - (i) the functions that were required to be exercised by Banksia Hill were limited by the financial and other resources that were reasonably available to

Banksia Hill (including the number of available staff) for the purpose of exercising those functions;

- (ii) the general allocation of those resources is not open to challenge; and
 - (iii) the functions required to be exercised by Banksia Hill are to be determined by reference to the broad range of its activities (and not merely by reference to the matter to which this proceeding relates);
- (d) says further or in the alternative that:
- (i) the claims in paragraphs 147I to 147K constitute a “claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function” within the meaning of s 5X of CLAWA; and
 - (ii) pursuant to s 5X of CLAWA, the Use of Handcuffs Policy Decision(s) cannot be used to support a finding that the Respondent was at fault unless Use of Handcuffs Policy Decision(s) was/were so unreasonable that no reasonable public body or officer in the position of the Respondent, the Minister, the CEO and/or the Superintendent could have made it/them; and
- (e) otherwise denies paragraph 147I.

147J. As to paragraph 147J, it:

- (a) refers to and repeats paragraphs 139, 140 and 49 above;
- (b) refers to and repeats paragraph 147(a) above; and
- (c) otherwise denies paragraph 147J.

147K. It denies paragraph 147K and says further that if (which is denied) there was any breach of the alleged duty of care by the Respondent, the Minister, the CEO, a Superintendent and/or any Officer, Mr Vida was contributorily negligent (within the meaning of section 5K of CLAWA and/or section 4(1) of the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947 (WA)*) in failing to take precautions against the risk of that harm by:

- (a) failing to comply with directions issued to him by Officers;

- (b) failing to refrain from threatening to harm Officers and/or other detainees.

PARTICULARS

- (i) It refers to and repeats the particulars subjoined to paragraph 147B above;
- (ii) further particulars may be provided following discovery and the filing of evidence.

147L. As to paragraph 147L, it:

- (a) refers to paragraph 49 above;
- (b) refers to and repeats paragraphs 147(b), 147(d), 147C, 147F and 147I above;
- (c) says that the allegation is embarrassing and/or ambiguous in that it does not identify the content or requirements of a “comprehensive assessment” (in subparagraph (a)) or the content or requirements of the training referred to in subparagraph (c);
- (d) says that it trained Officers in the following:
 - (i) interacting with detainees with disabilities, including schizophrenia;

PARTICULARS

- (i) The Respondent relies on the Disability Services Handbook distributed as part of the training for Officers at the Corrective Services Academy.
- (ii) interacting with detainees who have suffered trauma; and
- (iii) mental health first aid; and

PARTICULARS

- (i) The Respondent relies on the training conducted at the Corrective Services Academy as outlined in:
 - (A) Intellectual and Cognitive Disability Training; and
 - (B) the Disability Services Handbook.

(e) otherwise denies paragraph 147L.

147M. It denies paragraph 147M.

148 As to paragraph 148, it:

- (a) says that section 5T of CLAWA states that a Court cannot make an award of personal injury damages for pecuniary loss for consequential mental harm unless the harm consists of a recognised psychiatric illness;
- (b) says further that any award of personal injury damages in favour of Mr Vida is subject to the application of Part 2 of CLAWA;
- (c) refers to and repeats paragraphs 147B, 147H and 147K above; and
- (d) otherwise denies the allegations in paragraph 148.

149 [Not used].

150 [Not used].

L.3 Disability Discrimination Act Claims

150A. As to paragraph 150A, it:

- (a) admits that pursuant to s 123 of the DDA, the Respondent is vicariously liable for the conduct engaged in by the CEO, Superintendent and Officers within the scope of their actual or apparent authority unless the Respondent can establish that it took reasonable precautions and exercised due diligence to avoid the conduct; and
- (b) otherwise denies the allegations in paragraph 150A.

150B. As to paragraph 150B, it:

- (a) refers to and repeats paragraph 7 above; and
- (b) otherwise admits the allegations in paragraph 150B.

150C. As to paragraph 150C, it:

- (a) refers to and repeats paragraph 7 and 145 above; and

(b) otherwise does not know and therefore cannot admit paragraph 150C.

151 As to paragraph 151, it:

(a) refers to and repeats paragraph 7 above;

(b) admits that during his periods of detention at Banksia Hill there were occasions where that Mr Vida exhibited the behaviours set out in paragraph 151 of the SOC;

PARTICULARS

(i) Some of the behaviours were recorded in incident reports, including:

(A) on 30 March 2018, Mr Vida entered the recreation yard where he was given food whilst he was enjoying recreation time, he threw the food around the yard, he then removed his shirt and threw it on the yard floor and stated "come in here cunt, and bring me a broom"; and

(B) on 2 April 2018, Mr Vida was observed in his cell having removed his clothes and being abusive to staff.

(c) otherwise does not know and therefore cannot admit the allegations in paragraph 151.

152 As to paragraph 152, it:

(a) objects to paragraph 152 and says that the paragraph is embarrassing and/or ambiguous in that it:

(i) pleads rolled-up conclusions and does not plead, particularise or cross-refer to any material facts from which those conclusions are alleged to arise;

(ii) does not specify which of the conduct in paragraphs 152(a) to (d) are said to have occurred in response to which of the behaviours described in paragraph 151; and

(iii) says that it is embarrassing and/or ambiguous in that it does not plead, particularise or cross-refer to any material facts as to who is alleged to have engaged in the behaviour alleged at paragraph 152(d) and when;

- (b) under the cover of that objection above:
 - (i) refers to and repeats paragraphs 121, 122, 132 to 136 and 151 above;
 - (ii) as to sub-paragraph (a):
 - (A) says that Mr Vida was predominately held in the Harding Unit / ISU;
 - (B) says further that in each of the circumstances where Officers confined Mr Vida in the Harding Unit / ISU, it did so pursuant to the Safety and Security Objectives; and
 - (iii) does not know and therefore cannot admit the allegation in sub-paragraph (b);
 - (iv) as to sub-paragraph (c):
 - (A) says that during his periods of detention at Banksia Hill, where there were occasions where Mr Vida was subject to the use of force, it did so pursuant to the Safety and Security Objectives;

PARTICULARS

- (i) The Respondent refers to and repeats the matters set out in paragraphs 132 to 136 above.
 - (B) says further that in each of the circumstances where Officers applied force or used handcuffs on Mr Vida in the Harding Unit / ISU, it did so pursuant to the Safety and Security Objectives;
 - (v) denies the allegations in sub-paragraph (d); and
 - (c) otherwise does not know and therefore cannot admit the allegations in paragraph 153
- As to paragraph 153, it:
- (a) objects to paragraphs 153(b) and says that a requirement for Mr Vida to “refrain from being verbally aggressive” is not facially neutral when such conduct is said to be a manifestation of Mr Vida’s disability, and therefore not a “requirement” or “condition” within the meaning of section 6(2) of the DDA; and

- (b) under the cover of that objection:
 - (i) refers to and repeats paragraphs 22 to 26 and 55A above;
 - (ii) says that Mr Vida was required to obey all lawful commands, directions and orders given or made by the Superintendent and Officers within the scope of their powers afforded by the YO Act and YO Regulations;
 - (iii) says that the requirement in paragraph 153(b)(ii) of the ASOC was in place in order to achieve the Safety and Security Objectives.
- (c) otherwise denies the allegations in paragraph 153.

154 As to paragraph 154, it:

- (a) [not used];
- (b) as to paragraph (b):
 - (i) subject to the matters referred to in sub-paragraph (iv) below, admits that cognitive behavioural therapy was not provided to Mr Vida during the periods he was in detention;
 - (ii) says that cognitive behavioural therapy:
 - (A) is one of several therapeutic interventions available that may be exercised in particular circumstances
 - (B) is subject to the assessment of that individual; and
 - (C) is subject to clinical discretion, resource availability, and the detainee's engagement capacity; and
 - (iii) does not know and cannot admit whether specific therapies may have been considered for a particular detainee but were not applied in relation to that detainee on the basis that they were not considered suitable in the circumstances that presented themselves at the relevant time;
 - (iv) approaches consistent with, or elements of, cognitive behavioural therapy may be applied in different settings, including offence-specific counselling, ARMS assessments, or staff-led interventions such as verbal reframing of negative thought patterns during de-escalation attempts, and reflection

exercises facilitated following incidents of non-compliance or emotional dysregulation; and

- (v) otherwise does not know and therefore cannot admit the allegations in subparagraph (b);
- (c) as to paragraph (c):
 - (i) says the paragraph is vague and embarrassing and liable to be struck out as it:
 - (A) fails to identify, with sufficient particularity, the techniques that would be required to be used by Officers;
 - (B) fails to adequately explain when each adjustment should be made, and whether deploying one of the supposed adjustments is sufficient, or whether a combination of adjustments should be attempted, and if so what combination; and
 - (C) requires the exercise of a discretion, and as such the adjustment cannot be considered necessary;
 - (ii) under cover of that objection says that it trained Officers in the following:
 - (A) interacting with detainees with disabilities, including intellectual disabilities;

PARTICULARS

- (i) The Respondent relies on the Disability Services Handbook distributed as part of the training for Officers at the Corrective Services Academy.
- (B) interacting with detainees who have suffered trauma; and
- (C) mental health first aid;

PARTICULARS

- (i) The Respondent relies on the training conducted at the Corrective Services Academy as outlined in:

- (A) Intellectual and Cognitive Disability Training; and
- (B) the Disability Services Handbook.

(iii) says further that the alleged reasonable adjustment would:

- (A) undermine the Safety and Security Objectives; and
- (B) prevent Officers from exercising their discretion in identifying the most appropriate response to non-compliant behaviour;

(iv) says that insofar as the techniques and approaches to communication are reasonable adjustments (which is denied), Officers who observe non-compliant behaviour:

- (A) must exercise discretion to determine the most appropriate response;
- (B) must act quickly to ensure the security and safety of detainees and staff;
- (C) face variable factors depending on the circumstances of the behaviour, including immediate issues concerning safety to the individual detainee as well as other detainees and staff; and
- (D) may not have sufficient time to engage in any of the techniques or approaches due to the immediacy of any specific act or threat; and

(v) say further that by reason of the matters set out in sub-paragraphs (iii) and (iv) above, the proposed reasonable adjustment would impose an unjustifiable hardship on the Respondent within the meaning of the DDA.

(d) [not used]

(e) as to sub-paragraph (e):

(i) says that it trained Officers in the following:

- (A) interacting with detainees with disabilities, including schizophrenia;

PARTICULARS

- (i) The Respondent relies on the Disability Services Handbook distributed as part of the training for Officers at the Corrective Services Academy.
- (B) interacting with detainees who have suffered trauma; and
- (C) mental health first aid;

PARTICULARS

- (i) The Respondent relies on the training conducted at the Corrective Services Academy as outlined in:
 - (A) Intellectual and Cognitive Disability Training; and
 - (B) the Disability Services Handbook.
- (ii) says further that the alleged reasonable adjustment would:
 - (A) undermine the Safety and Security Objectives;
 - (B) require the provision of a support worker at all times as Mr Vida could interact with an Officer at any time; and
 - (C) require significant undertaking by the Respondent to hire individual support workers for Mr Vida and other detainees with similar needs as Mr Vida;
- (iii) says that insofar as the provision of an individual support worker to support Mr Vida with interactions with Officers (which is denied), it would:
 - (A) cause delays in the ability of Officers to act quickly to ensure the security and safety of detainees and staff;
 - (B) undermine the authority of Officers; and
 - (C) require additional staffing requirements not just for Mr Vida but for other detainees with similar needs as Mr Vida;

- (iv) say further that by reason of the matters set out in sub-paragraphs (ii) and (iii) above, the proposed reasonable adjustment would impose an unjustifiable hardship on the Respondent within the meaning of the DDA; and
- (v) otherwise denies the allegations in sub-paragraph (e);
- (f) as to sub-paragraph (f):
 - (i) says the paragraph is vague and embarrassing and liable to be struck out as it fails to adequately explain when each adjustment should be made, and whether deploying one of the supposed adjustments is sufficient, or whether a combination of adjustments should be attempted, and if so what combination; and
 - (ii) under cover of that objection, it says that during the period of his detention at Banksia Hill, Mr Vida was, subject to the limits set out in sub-paragraph (iii) below, provided with access to the items listed in paragraph 154(f)(i) to (iv) in the SOC;
 - (iii) says further that at times, Mr Vida's access to the items listed in paragraph 154(f)(i) to (iv) of the SOC was limited or refused where:
 - (A) Mr Vida's conduct was non-compliant with directions; or
 - (B) Mr Vida's was a security risk to himself, other detainees or staff;

PARTICULARS

- (i) The Respondent relies on the matters set out in paragraphs 120(f), 132 and 136 above.
- (iv) says further that the alleged reasonable adjustment would:
 - (A) undermine the Safety and Security Objectives; and
 - (B) prevent Officers from exercising their discretion in identifying the most appropriate response to the behaviour set out in sub-paragraph (iii) above;

- (v) says that insofar as access to the matters listed in paragraphs 154(f)(i) to (iv) of the SOC are reasonable adjustments (which is denied), Officers who observe such behaviour:
 - (A) must exercise discretion to determine the most appropriate response;
 - (B) must act quickly to ensure the security and safety of detainees and staff;
 - (C) face variable factors depending on the circumstances of the behaviour, including immediate issues concerning safety to the individual detainee as well as other detainees and staff; and
 - (D) may not have sufficient time to engage in any of the techniques or approaches due to the immediacy of any specific act or threat;
- (vi) says further that by reason of the matters set out in paragraphs 154(f)(iv) above, the proposed reasonable adjustment would impose an unjustifiable hardship on the Respondent within the meaning of the DDA; and
- (vii) otherwise denies the allegations in sub-paragraph (f); and
- (g) otherwise denies the allegations in paragraph 154.

155 As to paragraph 155, it:

- (a) refers to and repeats paragraph 154 above (including the objections); and
- (b) otherwise denies the allegations in paragraph 155.

155A. As to paragraph 155A, it:

- (a) refers to and repeats paragraphs 154 to 155 above; and
- (b) otherwise denies the allegations in paragraph 155A.

155B. As to paragraph 155B, it:

- (a) refers to and repeats paragraphs 49 and 155(a) above; and
- (b) otherwise denies the allegations in paragraph 155B.

156 As to paragraph 156, it:

- (a) refers to and repeats paragraphs 55, 151, 152, 154, 155, 155A and 155B above (including the objections); and
- (b) otherwise denies the allegations in paragraph 156.

Direct discrimination DDA s 5(2)

156A. As to paragraph 156A, it:

- (a) says that the paragraph is embarrassing and/or ambiguous in that it:
 - (i) pleads rolled-up conclusions and does not plead, particularise or cross-refer to any material facts from which those conclusions are alleged to arise;
 - (ii) alleges that the conduct alleged is unlawful by reason of some unspecified combination of paragraphs 150B to 155, without identifying which provisions (or combination of provisions) in those paragraphs are said to have the effect pleaded; and/or;
 - (iii) fails to identify a comparator as required under s 5 of the DDA;
- (b) under cover of that objection:
 - (i) refers to and repeats paragraphs 151, 152, 154, 155, 155A and 155B and 156 above;
 - (ii) says that the appropriate comparator to determine whether Mr Vida was treated differently in circumstances that were not material different is a child:
 - (A) aged between 11 and 17;
 - (B) detained at Banksia Hill;
 - (C) without Mr Vida's disabilities; and
 - (D) who consistently engaged in non-compliant or dangerous behaviour as set out in paragraphs 151 and 152 above; and
 - (iii) otherwise denies the allegations in paragraph 156A.

Indirect discrimination DDA s 6(2)

157 As to paragraph 157, it:

- (a) says that the paragraph is embarrassing and/or ambiguous in that it:
 - (i) pleads rolled-up conclusions and does not plead, particularise or cross-refer to any material facts from which those conclusions are alleged to arise; and/or
 - (ii) alleges that the conduct alleged is unlawful by reason of some unspecified combination of paragraphs 55A to 55C and 150B to 156, without identifying which provisions (or combination of provisions) in those paragraphs are said to have the effect pleaded; and
- (b) under cover of that objection:
 - (i) refers to and repeats paragraphs 22 to 26 and 55(a) to 55(c) above;
 - (ii) says that to the extent a “requirement” or “condition” has been identified it was reasonable having regard to the Superintendents’ and Officers’ obligation to maintain the Safety and Security Objectives; and
 - (iii) otherwise denies the allegations in paragraph 103.

158 [Not used].

Discrimination in education

159 As to paragraph 159, it:

- (a) says that it is embarrassing and/or ambiguous in that it does not plead, particularise or cross-refer to any material facts as to what is said to be the “rehabilitation programs” to which Mr Vida was not given access;
- (b) says that it is embarrassing as it pleads that Mr Vida was confined in the ISU as a consequence of his behaviour referred to in paragraphs 152 where that paragraph does not plead any alleged behaviours of Mr Vida;

- (c) under the cover of those objections, it:
- (i) refers to and repeats paragraphs 8, 121, 122, 151 and 152 (including the objections);
 - (ii) says that each of Mr Vida's admissions to Banksia Hill except two, was for two days or less;
 - (iii) says that for five of his ten admissions into Banksia Hill, he was admitted at or approximately 6pm or later (three admissions were approximately midnight or later);
 - (iv) says that on each occasion Mr Vida was confined to the Harding Unit / ISU, it was done pursuant to the Safety and Security Objectives;

PARTICULARS

- (i) The Respondent refers to and repeats the particulars subjoined to paragraph 96A(b) above.
- (v) says that while Mr Vida was confined in the Harding Unit / ISU, and subject to him being in the Harding Unit / ISU during the times that education services were provided at Banksia Hill:
 - (A) he had access to an educational staff member who was usually present in the Harding / ISU Unit;
 - (B) depending on whether the staff member could safely and securely attend to Mr Vida in the Harding Unit / ISU, the staff member would deliver educational services to Mr Vida;
 - (C) in the event that such services could not be supplied due to safety or security reasons, educational staff supplied work packs that would be delivered to detainees in the Harding Unit / ISU; and
 - (D) detainees in the Harding Unit / ISU, including Mr Vida, could request library books to read while in the Unit; and
- (vi) otherwise denies the allegations in paragraph 159.

160 As to paragraph 160, it:

- (a) refers to and repeats paragraph 54, 54(a), 55, 103 to 105, 156(a) and 159 above (including the objections);
- (b) otherwise denies the allegations in paragraph 160; and
- (c) further or in the alternative, if the Respondent has discriminated against Mr Vida on the grounds of a disability as alleged (which it specifically denies), such discrimination is not unlawful by reason of section 21B of the DDA because of the following matters:
 - (i) on the occasions that Mr Vida was placed in the Harding Unit / ISU it was done for the purpose of the Safety and Security Objectives;

PARTICULARS

- (i) The Respondent refers to and repeats the particulars subjoined to paragraph 152(b)(i) above.
- (ii) in order to ensure the safety and security of the detention centre, the Harding Unit / ISU has the features pleaded in paragraph 121(b) above;
- (iii) by reason of the restrictive nature of the Harding Unit /ISU, education services were usually administered one-on-one or in small groups in the Unit and in the presence of Officers, due to the safety and security concerns surrounding the detainees; and
- (iv) by reason of the matters set out in sub-paragraphs (i) to (iv) above, not moving Mr Vida to the Harding Unit / ISU following his behaviour would impose an unjustifiable hardship on the Respondent within the meaning of the DDA.

160A. [Not used].

Harassment by staff of an educational institution

160B. As to paragraph 160B, it:

- (a) refers to and repeats paragraphs 54(a) and 152 above; and
- (b) otherwise denies the allegations in paragraph 160B.

Disability Standards for Education

160C. As to paragraph 160C, it:

(a) says that to the extent that:

(i) Mr Vida was a student with a disability; and

(ii) Banksia Hill was an educational institution; and

(iii) the Respondent was an educational provider in relation to that educational institution,

then

(iv) clause 5.2(2) of the Standards obliged the Respondent to:

(A) consult Mr Vida, or an associate of Mr Vida, about whether a disability he had, affected his ability to participate in the courses or programs for which he was enrolled and use the facilities or services provided by the Respondent; and

(B) in light of the consultation, decide whether an adjustment was necessary to ensure that Mr Vida was able to participate in the courses or programs provided by the educational institution, and use the facilities and services provided by it, on the same basis as a student without a disability; and

(C) if:

(1) an adjustment was necessary to achieve the aim mentioned in paragraph 160C(a)(iv)(B) above; and

(2) a reasonable adjustment could be identified in relation to that aim,

make a reasonable adjustment for Mr Vida in accordance with Part 3; and

- (v) clause 6.2(2) of the Standards obliged the Respondent to:
 - (A) consult Mr Vida, or an associate of Mr Vida, about whether a disability he had, affected his ability to participate in learning experiences of the course or program provided by the Respondent; and
 - (B) in light of the consultation, decide whether an adjustment was necessary to ensure that Mr Vida was able to participate in those learning experiences on the same basis as a student without a disability; and
 - (C) if:
 - (1) an adjustment was necessary to achieve the aim mentioned in paragraph 160C(a)(v)(B) above; and
 - (2) a reasonable adjustment could be identified in relation to that aim,

make a reasonable adjustment for Mr Vida in accordance with Part 3;
- (b) says that clause 3.4(1) of the Standards provided that, for the Standards, an adjustment was reasonable in relation to a student with a disability if it balanced the interests of all parties affected;
- (c) says that clause 3.4(2) of the Standards provided that, in assessing whether a particular adjustment for a student was reasonable, regard should be had to all the relevant circumstances and interests, including the circumstances and interests set out in that clause;
- (d) as to paragraph (a):
 - (i) says that it is embarrassing and/or ambiguous in that it does not plead, particularise or cross-refer to any material facts as to what is said to be the assessments that would assist Mr Vida in participating in his education;
 - (ii) refers to and repeats paragraph 160 above;

- (iii) says that it was a practice at Banksia Hill that upon admission to Banksia Hill, detainees underwent a literacy and numeracy assessment conducted by teaching staff;

PARTICULARS

- (i) Admission Exit Assessment Guidelines and Procedures 2020;
 - (ii) BHDC Enrolment Flowchart New Student;
 - (iii) BHDC Enrolment Flowchart Returning Student;
 - (iv) BHDC Reading Test A 2023;
 - (v) BHDC Writing & Language Convention Test;
 - (vi) EGE Numeracy Assessment 2018; and
 - (vii) Student Admissions & Education Assessment.
- (iv) says further that during the Relevant Period, education for all detainees in Banksia Hill involved the matters set out in paragraph 106C(d)(iii) above;
- (v) says further that by reason of the fact that Mr Vida's time in detention at Banksia Hill was:
 - (A) usually a stay of no longer than 48 hours;
 - (B) usually over a weekend or during school holidays when the standard educational services were not offered,there were limited opportunities for Mr Vida to engage in educational services offered at Banksia Hill;
- (vi) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (a);
- (e) as to sub-paragraph (h):
 - (i) refers to and repeats paragraphs 154(c) and 160C(a) above; and
 - (ii) otherwise does not know and therefore cannot admit the allegations in sub-paragraph (h);

- (f) as to sub-paragraph (j):
 - (i) says that the Respondent provided Mr Vida with access to psychologists, counsellors and support workers at Banksia Hill;
 - (ii) says further some of the staff, including Officers, were trained in assisting persons with an intellectual disability; and

PARTICULARS

- (i) The Respondent refers to and repeats paragraph 154(c) above.
- (iii) otherwise does not know and therefore cannot admit the allegations contained therein;
- (g) refers to and repeats paragraphs 156(a) and 157 above; and
- (h) otherwise does not know and therefore cannot admit the allegations in paragraph 160C.

160D. As to paragraph 160D:

- (a) refers to and repeats paragraphs 154 and 160C above;
- (b) says that by reason of the matters in paragraph 160C(d)(v) no occasion arose to consult with Mr Vida about his participation in education; and
- (c) otherwise denies the allegations in paragraph 160D.

160E. As to paragraph 160E:

- (a) refers to and repeats paragraphs 160(a) and 160(g) above; and
- (b) otherwise denies the allegations in paragraph 160E.

160F. As to paragraph 160F:

- (a) says that:
 - (i) paragraph 160F(a) is embarrassing and/or ambiguous in that it does not plead, particularise or cross-refer to any material facts as to what is said to be the mental health treatment, counselling and support that Mr Vida required;

- (ii) paragraph 160F(b) is embarrassing and/or ambiguous in that it does not plead, particularise or cross-refer to any material facts as to what is said to be the behavioural therapy that would assist the Mr Vida “to learn to, and to, better regulate his emotions and behaviour”; and
 - (iii) paragraph 160F(c) is embarrassing and/or ambiguous in that it does not plead, particularise or cross-refer to any material facts as to what is said to be “appropriately qualified” support worker;
- (b) refers to and repeats paragraph 154 and 160C above; and
- (c) under cover of that objection:
- (i) otherwise denies the allegations in paragraph 160F; and
 - (ii) cannot plead further to the allegations contained in paragraph 160F in the absence of particulars.

160G. As to paragraph 160G:

- (a) refers to and repeats paragraphs 154, 160C and 160F above; and
- (b) otherwise denies the allegations in paragraph 160G.

160H. As to paragraph 160H:

- (a) refers to and repeats paragraphs 160C, 160F and 160G above; and
- (b) otherwise denies the allegations in paragraph 160H.

160I. As to paragraph 160I:

- (a) refers to and repeats paragraphs 154, 160C, and 160F to 160H above; and
- (b) otherwise denies the allegations in paragraph 160H.

160J. As to paragraph 160J:

- (a) says that the allegation is embarrassing and/or ambiguous as it does not identify the relevant step or steps the Respondent is supposed to have implemented to prevent harassment as required under s 8.3 of the Standards; and

- (b) under cover of that objection:
 - (i) refers to and repeats paragraphs 160A and 160B above; and
 - (ii) otherwise denies the allegation in paragraph 160J.

160K. As to paragraph 160K:

- (a) refers to and repeats paragraphs 160C to 160J above; and
- (b) otherwise denies the allegation in paragraph 160K.

Goods, services and facilities

161 As to paragraph 161, it:

- (a) refers to and repeats paragraph 55 above (including the objections); and
- (b) otherwise denies the allegations in paragraph 161.

162 As to paragraph 162, it:

- (a) refers to and repeats paragraphs 121, 122, 151 and 152 above (including the objections);
 - (i) says that the decision to place Mr Vida in the ISU was done pursuant to the Safety and Security Objectives;
 - (ii) says that during his detention in the ISU, Mr Vida had access to:
 - (A) psychology services;
 - (B) mental health services;
 - (C) medical services;
 - (D) case planning services;
 - (E) a place and space for recreation and exercise areas; and
 - (F) visitors;

- (iii) says that during his detention at in the ISU, Mr Vida did not have access to educational services on the basis that when he was admitted to the ISU his admission was either:
 - (A) usually a stay of no longer than 48 hours; and
 - (B) usually over a weekend or during school holidays when the standard educational services were not offered,
- (iv) otherwise denies the allegations in paragraph 162.

163 As to paragraph 163, it:

- (a) refers to and repeats paragraphs 55, 156(a), 157, 161 and 162 above (including the objections); and
- (b) otherwise denies the allegations in paragraph 163;
- (c) further or in the alternative, if the Respondent has discriminated against Mr Vida on the grounds of a disability as alleged (which it specifically denies), such discrimination is not unlawful by reason of section 21B of the DDA because of the following matters:
 - (i) on the occasions that Mr Vida was placed in the ISU, it was done for the purposes of Safety and Security Objectives; and
 - (ii) on the occasions that Mr Vida, when placed in the ISU, was subject to limitations concerning access to certain matters set out in paragraph 55 of the SOC it was done for the purposes of the Safety and Security Objections;
 - (iii) by reason of the matters set out in sub-paragraphs (i) to (ii):
 - (A) not moving the Mr Vida to the ISU following his behaviour would cause unjustifiable hardship on the Respondent within the meaning of the DDA; and/or
 - (B) not restricting Mr Vida's access to matters listed in paragraph 55 of the ASOC would cause unjustifiable hardship within the meaning of the DDA.

Direct discrimination DDA s 5(1)

164 As to paragraph 164, it:

- (a) refers to and repeats paragraph 152(b)(v) above (including the objection);
- (b) otherwise denies the allegations in paragraph 164;

165 It denies the allegations in paragraph 165.

166 As to paragraph 166, it:

- (a) refers to and repeats paragraph 165 above; and
- (b) otherwise denies the allegations in paragraph 166.

167 As to paragraph 167, it:

- (a) objects to paragraph 167 and says that the paragraph is embarrassing and/or ambiguous in that it:
 - (i) pleads rolled-up conclusions and does not plead, particularise or cross-refer to any material facts from which those conclusions are alleged to arise;
 - (ii) does not specify which of the conduct in paragraphs 152 and 164 to 157 it is alleged to be the less favourable treatment;
 - (iii) does not specify the relevant comparator for the less favourable treatment alleged in paragraph 152(a) to (c); and
 - (iv) does not plead, particularise or cross-refer to any material facts as to what is said to be the circumstances that “are not materially different”; and
- (b) under the cover of those objections, denies the allegations in paragraph 167.

168 As to paragraph 168, it:

- (a) refers to and repeats paragraphs 55 and 161 above (including the objections);
- (b) says that the transportation of Mr Vida between his cell and the recreation area in the ISU is not a “services” or “facility” within the meaning of section 4 and 24 of the DDA; and

- (c) otherwise denies the allegations in paragraph 168.

Harassment by provider of goods, services and facilities

168A. As to paragraph 168A, it:

- (a) refers to and repeats paragraph 55 above; and
- (b) otherwise denies the allegations in paragraph 168A.

L.4 Remedies

169 It denies Mr Vida is entitled to the relief claimed in paragraph 169.

170 It denies Mr Vida is entitled to the relief claimed in paragraph 170.

171 As to paragraph 171, it:

- (a) says that Mr Vida's claims for damages in respect of the matters alleged in paragraphs 121 to 142 and/or 171 to 175 of the SOC are:
 - (i) "claim[s] for damages for harm caused by the fault of a person" within the meaning of ss 5A(1) and 5V(1) of CLAWA; and
 - (ii) claims for "personal injury damages" within the meaning of s 5T of CLAWA;
- (b) says further that any award of personal injury damages in favour of Mr Vida is subject to the application of Part 2 of CLAWA;
- (c) says further that:
 - (i) s 5T of CLAWA provides that the Court cannot make an award of personal injury damages for pecuniary loss for consequential mental harm unless the harm consists of a recognised psychiatric illness; and
 - (ii) the harm(s) alleged in paragraph 171 do not consist of a recognised psychiatric illness; and
- (d) otherwise does not know and therefore cannot admit paragraph 171.

172 As to paragraph 172, it:

- (a) repeats paragraph 171 above; and

(b) otherwise does not know and therefore cannot admit paragraph 172.

173 As to paragraph 173, it:

(a) repeats paragraph 171 above; and

(b) otherwise denies the allegations in paragraph 173.

174 As to paragraph 174, it:

(a) repeats paragraph 171 above; and

(b) otherwise denies the allegations in paragraph 174.

175 As to paragraph 175, it:

(a) says that Mr Vida's claims for damages in respect of the matters alleged in paragraphs 48 to 53, 144 to 148 and/or 175 of the SOC are:

(i) "claim[s] for damages for harm caused by the fault of a person" within the meaning of ss 5A(1) and 5V(1) of CLAWA;

(ii) claims for "personal injury damages" within the meaning of s 5T of CLAWA, and refers to and repeats paragraphs 171(b) and 171(c) above; and

(b) otherwise denies the allegations in paragraph 175.

176 [Not used].

177 It denies the allegations in paragraph 177.

178 It denies that Mr Vida is entitled to the relief claimed in paragraph 178.

179 It denies that Mr Vida is entitled to the relief claimed in paragraph 179.

M. CLAIMS OF GROUP MEMBERS

180 It denies the allegations in paragraph 180.

181 It denies the allegations in paragraph 181.

182 It denies the allegations in paragraph 182.

183 It denies the allegations in paragraph 183.

184 It denies the allegations in paragraph 184.

185 It does not plead to paragraph 185 as it contains no allegations against it and makes no admission in respect of that paragraph.

Date: 21 November 2025

A handwritten signature in blue ink, appearing to read 'Nigel Jones', written over a horizontal dotted line.

Signed by Nigel Jones

Lawyer the Respondent

This pleading was prepared by Jonathan Kirkwood SC, Tim Jeffrie, Andrew McRobert and Laura Hilly of counsel.

Certificate of lawyer

I Nigel Jones certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 21 November 2025



Signed by Nigel Jones

Lawyer for the Respondent