

## NOTICE OF FILING

### Details of Filing

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*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.

# Annexure B



Form 17  
Rule 8.05(1)(a)

## Amended Statement of Claim

No: WAD251/2022

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

**ALEXANDRA WALTERS** and another person identified in the schedule

Applicants

**STATE OF WESTERN AUSTRALIA**

Respondent

### A. PRELIMINARY

1. Defined Terms in this Amended Statement of Claim have the same meaning as in the Amended Originating Application.

### B. THE APPLICANTS

2. The first applicant, (**Ms Walters**), was born on 8 October 2004.
3. Ms Walters has, and at all material times had, Autism Spectrum Disorder (**ASD**).
4. Ms Walters was detained at the Banksia Hill Detention Centre in Western Australia (Banksia Hill) for the following periods:
  - (a) 23 May 2018 to 29 April 2019;
  - (b) 17 July 2019 to 18 July 2019;
  - (c) 26 August 2019 to 27 August 2019;
  - (d) 3 September 2019 to 4 September 2019;
  - (e) 3 December 2019 to 6 December 2019; and
  - (f) 20 March 2020 to 21 March 2020.
5. At all relevant times while she was detained in Banksia Hill, Ms Walters was a child of 13 to 15 years of age.

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6. The second applicant, (**Mr Vida**) was born on 23 May 2002.
7. Mr Vida has, and at all material times had, schizophrenia and an intellectual disability (**Mr Vida's Disabilities**).
8. Mr Vida was detained at Banksia Hill for the following periods:
  - (a) 7 March 2014 to 8 March 2014;
  - (b) 9 March 2016 to 10 March 2016;
  - (c) 11 March 2016 to 12 March 2016;
  - (d) 29 September 2016 from ~~4.27~~ 1.21 am to 12.23 pm;
  - (e) 28 November 2016 to 30 November 2016;
  - (f) 31 July 2017 to 1 August 2017;
  - (g) 21 March 2018 to 22 March 2018;
  - (h) 28 March 2018 to 19 April 2018;
  - (i) 16 April 2019 to 30 April 2019; and
  - (j) 21 April 2020 to 22 April 2020.
9. Mr Vida is Aboriginal and, at all relevant times while he was detained at Banksia Hill BHDC, he was a child of 11 to 17 years of age.

#### **C. THE GROUP MEMBERS**

10. Ms Walters and Mr Vida each bring this proceeding seeking the relief set out in the Amended Originating Application, on their own behalf and as representative parties pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) for the **Group Members** (as that term is defined in paragraphs 2 and 3 of the Amended Originating Application).
11. At the date of this Amended Statement of Claim, and as at the date of commencement of this proceeding seven or more Group Members have claims against the respondent (**State**). ~~the State of Western Australia.~~

#### **D. THE RESPONDENT**

12. The State ~~of WA~~ is sued under the title 'State of Western Australia', pursuant to s 5(2) of the *Crown Suits Act 1947* (WA).
13. ~~Each **Minister, CEO, Superintendent, and Officer** (as defined in the Amended Originating Application):~~

- ~~(a) — Implementing or administering;~~
  - ~~(b) — exercising a power or duty under; or~~
  - ~~(c) — assisting in the exercise of any power or duty under;~~
- ~~the *Young Offenders Act 1994 (WA) (YO Act)* was at all relevant times:~~
- ~~(d) — in the service of, or an agent of, the State of WA;~~
  - ~~(e) — acting in the performance or purported performance of his or her functions; and~~
  - ~~(f) — acting in the service of, or as an agent of, the State of WA when the performance of his or her functions was in the course of service to the State of WA, or was an incident of that service; and/or~~
  - ~~(g) acting within the scope of his or her actual, implied or apparent authority.~~

13. The State is vicariously liable for the acts done by each person holding any of the offices or positions set forth in paragraphs 21 to 24 below performed by them in the course of their duties and/or exercising their powers under the *Young Offenders Act 1994 (WA) (YO Act)* and the *Young Offenders Regulations 1995 (WA) (YO Regulations)*: section 182(4) of the YO Act.
14. ~~By reason of the matters pleaded in paragraph [13], the State of WA is:~~
- ~~(a) — vicariously liable for the tortious conduct alleged in this proceeding to have been committed by reason of an act or omission of a Minister, CEO, Superintendent, or Officer referred to in paragraph [13]; and~~
  - ~~(b) — taken to have engaged in the conduct in contravention of the *Disability Discrimination Act 1992 (Cth) (DDA)* alleged in this Statement of Claim to have been committed by a Minister, CEO, Superintendent or Officer.~~

#### E. DETENTION CENTRES

15. At all material times from 18 August 2005 in the **(Relevant Period)** the State of WA operated the following detention centres ~~Detention Centres~~ declared pursuant to s 13 of the YO Act and in which the Applicants and Group Members have from time to time been were detained **(Detention Centres)**:
- (a) Rangeview Juvenile Remand Centre, in operation until 30 October 2012 **(Rangeview)**;
  - (b) Banksia Hill, in operation from 5 September 1997 ~~to date~~ and continuing; and

(c) **Hakea** Juvenile Facility, in operation from 22 January 2013 to 6 December 2013  
(Hakea). and;

~~(d) **Unit 18** of Casuarina Prison, in operation from 13 July 2022 to date.~~

#### **F. RELEVANT PROVISIONS OF THE YO ACT AND YO REGULATIONS**

16. The provisions of the YO Act and the ~~Young Offenders Regulations 1995 (WA)~~ YO Regulations that are primarily material to the matters pleaded in this Statement of Claim are pleaded in paragraphs 18 to 42 below.

17. Sections 11 to 11B and 11C to 11F of the YO Act and regulations 70 to 86 of the YO Regulations referred to below commenced operation on 1 July 2005.

#### **Objectives and principles**

18. Section 6 sets out the main objectives of the YO Act:

- (a) to provide for the administration of juvenile justice; and
- (b) to set out provisions, embodying the general principles of juvenile justice, for dealing with young persons who have, or are alleged to have, committed offences; and
- (c) to ensure that the legal rights of young persons involved with the criminal justice system are observed; and
- (d) to enhance and reinforce the roles of responsible adults, families, and communities in:
  - (i) minimising the incidence of juvenile crime; and
  - (ii) punishing and managing young persons who have committed offences; and
  - (iii) rehabilitating young persons who have committed offences towards the goal of their becoming responsible citizens; and
- (e) to integrate young persons who have committed offences into the community; and
- (f) to ensure that young persons are dealt with in a manner that is culturally appropriate, and which recognises and enhances their cultural identity.

19. Section 7 of the YO Act sets out the general principles to be observed in performing functions under the YO Act as follows:

- (a) there should be special provision to ensure the fair treatment of young persons who have, or are alleged to have, committed offences; and
- (b) a young person who commits an offence is to be dealt with, either formally or informally, in a way that encourages the young person to accept responsibility for his or her conduct; and
- (c) a young person who commits an offence is not to be treated more severely because of the offence than the person would have been treated if an adult; and
- (d) the community must be protected from illegal behaviour; and
- (e) victims of offences committed by young persons should be given the opportunity to participate in the process of dealing with the offenders to the extent that the law provides for them to do so; and
- (f) responsible adults should be encouraged to fulfil their responsibility for the care and supervision of young persons, and supported in their efforts to do so; and
- (g) consideration should be given, when dealing with a young person for an offence, to the possibility of taking measures other than judicial proceedings for the offence if the circumstances of the case and the background of the alleged offender make it appropriate to dispose of the matter in that way and it would not jeopardise the protection of the community to do so; and
- (h) detaining a young person in custody for an offence, whether before or after the person is found to have committed the offence, should only be used as a last resort and, if required, is only to be for as short a time as is necessary; and
- (i) detention of a young person in custody, if required, is to be in a facility that is suitable for a young person and at which the young person is not exposed to contact with any adult detained in the facility, although a young person who has reached the age of 16 years may be held in a prison for adults but is not to share living quarters with an adult prisoner; and
- (j) punishment of a young person for an offence should be designed so as to give the offender an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways; and
- (k) a young person who is dealt with for an offence should be dealt with in a time frame that is appropriate to the young person's sense of time; and

- (l) in dealing with a young person for an offence, the age, maturity, and cultural background of the offender are to be considered; and
- (m) a young person who commits an offence is to be dealt with in a way that:
  - (i) strengthens the family and family group of the young person; and
  - (ii) fosters the ability of families and family groups to develop their own means of dealing with offending by their young persons; and
  - (iii) recognises the right of the young person to belong to a family.

#### **Detainees, key persons and administration**

20. ~~Under s~~ Section 3 of the YO Act defines a “detainee” is to mean “a person who is detained in a detention centre” (**detainee**).
21. In respect of each Detention Centre, the key persons responsible for administering the YO Act and the YO Regulations are:
- (a) the relevant Minister;
  - (b) the CEO of the Department of the Public Service (**CEO**) principally assisting the Minister in the administration of the YO Act, who is, subject to the Minister’s direction, required “to carry into operation the provisions of [the YO] Act so far as the duty is not expressly committed to any other person” (s 9);
  - (c) the relevant Superintendent, who is the person in charge of the relevant Detention Centre (s 3);
  - (d) Officers and other persons appointed by the CEO to implement or administer the Act (s 11(1)); and
  - (e) ~~Custodial~~ custodial Officers appointed by the CEO for primarily non-administrative functions (s 11(1a)).
22. ~~Under~~ By s 11B of the YO Act a “~~custodial Officer~~” “custodial officer” (as that term is defined in s 3 of the YO Act) among other things:
- (a) has a responsibility to maintain the security of the Detention Centre where he or she is employed (s 11B(a));
  - (b) must obey all lawful orders given to him or her by the officer under whose control or supervision he or she is placed (s 11B(c)); and
  - (c) 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 Detention Centre, 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 (s 11B(d)).

23. Under By s 11E of the YO Act a “prison officer” (as that term is defined in s 3 of the YO Act):
- (a) may assist in the exercise or performance of any power or duty under the YO Act if requested to do so by the CEO or the Superintendent (s 11E(1));
  - (b) when assisting, has the powers, duties, and protection from liability of a custodial officer in addition to the powers and duties conferred or imposed on the prison officer under any other law (s 11E(2));
  - (c) when assisting, may use such force as may be used by a custodial Officer and with the approval of the CEO may use such weapons as are necessary in the circumstances (s 11E(3)).
24. Under By s 11F of the YO Act a “police officer” (as that term is defined in s 3 of the YO Act):
- (a) may assist in the exercise or performance of any power or duty under the YO Act if requested to do so by the CEO or the Superintendent (s 11F(1));
  - (b) when assisting, has the powers, duties, and protection from liability of a custodial Officer in addition to the powers and duties conferred or imposed on the police officer under any other law (s 11F(2)).
25. Section 13(1) of the YO Act empowers the Minister to declare a place to be a “detention centre”. The YO Act distinguishes detention centres from prisons established under the *Prisons Act 1981 (WA)*. Section 118A(1) provides that, if a person under 18 years old is sentenced to a term of imprisonment, they must, subject to limited exceptions, serve that sentence in a detention centre and not in a prison.
26. Section 181(1) of the YO Act empowers the CEO, subject to the approval of the Minister, to make “rules for the management, control, and security of detention centres generally or a specified detention centre and for the management, control, and security of detainees and the management of officers of the Department”. The YO Regulations prevail over the rules, to the extent of any inconsistency.

### **Orders, force, restraint and confinement**

#### Power to give orders

27. Under By s 11B(d) of the YO Act, a custodial 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 a detention centre and may use such force as is prescribed under s 11C as is necessary to ensure that lawful orders given to a detainee are complied with.

#### Use of force

28. ~~Under~~ By s 11C of the YO Act:

- (a) a custodial officer may use “no more than prescribed force” in the management, control and security of a detention centre; and
- (b) force may only be used “in the prescribed circumstances”.

29. The requirements of s 11C of the YO Act are given additional content by regulations 71 and 72 of the YO Regulations:

- (a) the “prescribed force” which may be used under s 11C(1) is defined as “the degree of physical force which is the minimum required to control a detainee’s behaviour in the circumstances”: reg 71(1).
- (b) a person cannot use a physical restraint hold when applying prescribed force unless they have received instruction in the proper use of that hold, and the use of that type of hold has been authorised by the Superintendent: reg 71(2).
- (c) the “prescribed circumstances” in which force may be used under s 11C(1) are defined as meaning “an immediate period when a detainee is imminently presenting a risk of physical injury to himself or herself, other detainees or staff”: reg 72(1). As soon as the imminent risk has passed and the detainee has been stabilised, prescribed circumstances for the use of force no longer exist: reg 72(2).

#### Restraint

30. ~~Under~~ By s 11D(1) of the YO Act, the CEO or the a Superintendent may authorise and direct the restraint of a young offender where, in their opinion, such restraint is necessary:

- (a) to prevent the young offender injuring himself or herself, or any other person;
- (b) upon considering advice from a medical practitioner, on medical grounds; or
- (c) to prevent the escape of a young offender during his or her movement to or from a facility or detention centre, or during his or her temporary absence from a facility or detention centre.

31. Restraint involving the use of medication must not be used on medical grounds unless the approval of a medical practitioner is obtained first: s 11D(2).

32. The A Superintendent is required to report to the CEO if restraint is used on a detainee for a continuing period of more than 24 hours: s 11D(3).

#### Confinement

33. The term “confine” and its cognates have their ordinary meaning in the YO Act and the YO Regulations and are so used in this Statement of Claim, as follows:
- (a) “confine” has its ordinary meaning of “to enclose within bounds” and “to shut up or keep in”;
  - (b) “confined” has its ordinary meaning of “enclosed within bounds” and “shut up or kept in”;
  - (c) “confinement” has its ordinary meaning of “the state of being confined”; and
  - (d) “confine” and its cognates refer to actions and the consequence of actions by the CEO, Superintendent or Officers requiring a detainee to remain in their sleeping quarters or a designated room during ‘unlock hours’, as defined in reg 73 of the YO Regulations.
34. The term “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”, being the hours in the ordinary routine of a Detention Centre when detainees, other than those subject to lawful confinement or restraint, are permitted to be outside their sleeping rooms.
35. Where a “detention offence” (as that term is defined by s 170 of the YO Act) ~~by a~~ detainee is admitted or found to be proved, s 173 of the YO Act empowers a Superintendent or visiting justice, among other things, to order that the detainee be confined to the detainee’s sleeping quarters, or to a designated room:
- (a) for a period not exceeding 24 hours if the order is made by the Superintendent; or
  - (b) for a period not exceeding 48 hours if the order is made by a visiting justice.
36. Section 196(1) of the YO Act empowers the Governor to make regulations. Section 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”.
37. Part 9 of the YO Regulations is entitled “Confinement of detainees”. It provides for two types of confinement:

- (a) a Superintendent or a visiting justice may order that a detainee be confined to their sleeping quarters or to a designated room if they have been found to have committed a detention offence (**detention offence confinement**): reg 74(1).
  - (b) a Superintendent may order that a detainee be confined to their sleeping quarters or to a designated room in order to maintain good government, good order or security in a detention centre (**security confinement**): reg 74(2).
38. Divisions 2 and 3 of Part 9 of the YO Regulations set out procedures and safeguards that apply to detention offence confinement and security confinement, respectively, including:
- (a) a Superintendent must make and maintain a record of an order to confine a detainee: regs 76(1), 79(1);
  - (b) where confinement is ordered to take place in a designated room, a Superintendent must assess the room to be of an appropriate size and sufficiently lit and ventilated that the detainee can be confined without injury to health: regs 76(2), 79(3);
  - (c) a detainee under detention offence confinement is entitled to fresh air, exercise and staff company for a period of at least 30 minutes every 3 hours during unlock hours: reg 76(3);
  - (d) a detainee who is held in security confinement for 12 hours or longer is entitled to at least 1 hour of exercise each 6 hours during unlock hours: reg 79(4).

### Search

39. Section 196(3) of the YO Act empowers the Governor to make regulations conferring authority on a Superintendent, among other things, for search of and seizure of things from detainees.
40. Regulation 82(1) of the YO Regulations authorises a Superintendent to search any detainee “in accordance with this Part” and take from them any illegal or unauthorised thing found on their person: reg 82(1). A Superintendent is authorised to use such force as is reasonably necessary to perform that search and seizure. The Superintendent may direct an officer to undertake the search on their behalf.
41. Regulation 85 ~~sets out~~ of the YO Regulations provides when a search under reg 82(1) may occur as follows:
- (a) A detainee should be searched:
    - (i) on admission to the detention centre;

- (ii) immediately before discharge from the detention centre;
  - (iii) on leaving or returning to a detention centre; and
  - (iv) when transferring from one detention centre to another.
- (b) A detainee may be searched at any time, and in such a manner, as is considered necessary at the time by a Superintendent.
42. Regulation 86 ~~sets out~~ of the YO Regulations provides how a search under reg 82(1) may occur as follows:
- (a) A detainee may be searched using either a “pat” or “strip” search depending on the circumstances surrounding the requirement of the search: reg 86(1).
  - (b) 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:
    - (i) jeopardise the safety, good order or security of the detention centre; or
    - (ii) be used for self-harm: reg 86(2).
  - (c) At least 2 officers must be present during a search of a detainee: reg 86(3).
  - (d) A detainee must not be “strip” searched in the sight or immediate presence of a person of the opposite gender: reg 86(4).
  - (e) Where practicable, a detainee should not be “strip” searched in the immediate presence of another detainee: reg 86(5).
  - (f) Any search of a detainee must be conducted with due regard to the decency and self-respect of the detainee: reg 86(6).
  - (g) Despite sub-regulation (4) above, a Superintendent may direct that a search is to be carried out in the presence of a medical practitioner or a nurse: reg 86(7).
  - (h) 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: reg 86(8).

**G. ~~RESIDUAL LIBERTY~~ WRONGFUL IMPRISONMENT**

43. ~~At all times while Ms Walters and Mr Vida and Group Members were lawfully in detention in Detention Centres, they retained a right to residual liberty, being the right to enjoy all civil liberties that were not taken away expressly or by necessary implication by the lawful administration of the terms and conditions of their detention.~~
44. In this Statement of Claim:

- (a) “**lockdown**” refers to the practice in Detention Centres of locking detainees in their sleeping quarters during unlock hours;
  - (b) “**rolling lockdown**” refers to the practice in Detention Centres of locking detainees in their sleeping quarters during unlock hours and opening an individual wing or part of the Detention Centre for a short period before returning it to lockdown and successively opening for short periods and returning to lockdown the remaining wings or parts of the Detention Centre.
45. By reason of the matters in paragraphs 33 to 38 above, and ~~[43] and [44]~~, each of the following constitutes wrongful imprisonment of a detainee:
- (a) the confinement of a detainee in a room during unlock hours other than:
    - (i) detention offence confinement not exceeding 24 hours, lawfully ordered by the Superintendent as permitted by s 173 of the YO Act and reg 74(1) of the YO Regulations;
    - (ii) detention offence confinement not exceeding 48 hours, lawfully ordered by a visiting justice as permitted by s 173 of the YO Act and reg 74(1) of the YO Regulations;
    - (iii) security confinement not exceeding 24 hours, lawfully ordered by the Superintendent as permitted by regulation 74(2) of the YO Regulations;
  - (b) detention offence confinement or security confinement for which the Superintendent has failed to make and maintain a record of the order to confine the detainee contrary to regulations 76(1) (detention offence confinement) and 79(1) (security confinement) of the YO Regulations;
  - ~~(c) security confinement for which the Superintendent has failed to make and maintain a record of the order to confine the detainee;~~
  - (d) detention offence confinement or security confinement in a designated room not assessed by the Superintendent to be of an appropriate size and sufficiently ventilated and lit that the detainee can be confined in that room without injury to health contrary to regulations 76(2) (detention offence confinement) and 79(3) (security confinement) of the YO Regulations;
  - (e) security confinement where the Superintendent has failed to inform the detainee of the reason for the confinement contrary to regulation 79(2) of the YO Regulations;

- (f) failure to give a detainee subject to detention offence confinement fresh air, exercise and staff company for a period of at least 30 minutes every 3 hours during unlock hours contrary to regulation 76(3) of the YO Regulations;
- (g) failure to give a detainee subject to security confinement ~~fresh air, exercise and staff company~~ for a period of at least 1 hour every 6 hours during unlock hours contrary to regulation 79(4) of the YO Regulations;
- (h) purported security confinement which is not reasonably necessary to maintain good government, good order or security in a Detention Centre contrary to regulation 74(2) of the YO Regulations; and
- (i) the confinement of detainees in a room by a lockdown or rolling lockdown other than for dealing with a disturbance or a hazard from which the detainees need to be protected because such confinement is not authorised by the YO Act, the YO Regulations or the common law.

#### H. BATTERY AND/OR ASSAULT

46. By reason of the matters in paragraphs 28 to 32 and 39 to 42 above, each of the following constitutes a battery of a detainee:
- (a) except in connection with the proper exercise of the power to search under regs 85 to 87 of the YO Regulations, the use of force on a detainee when the detainee is not imminently presenting a risk of physical injury to himself or herself, other detainees, or staff contrary to s 11C of the YO Act and reg 72(1) of the YO Regulations.
  - (b) the use of force on a detainee after an imminent risk of physical injury to the detainee, other detainees, or staff has passed, contrary to s 11C of the YO Act and reg 72(2) of the YO Regulations.
  - (c) 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, contrary to s 11C of the YO Act and reg 71(1) of the YO Regulations.
  - (d) 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;
 contrary to s 11C of the YO Act and reg 71(2) of the YO Regulations.

- (e) the restraint of a detainee other than authorised or directed by the CEO or Superintendent in the following circumstances permitted under s 11D of the YO Act:
    - (i) such restraint as is necessary in the lawfully-formed opinion of the CEO or Superintendent to prevent the detainee from injuring himself, herself, or any other person;
    - (ii) such restraint as is necessary in the lawfully-formed opinion of the CEO or Superintendent on medical grounds advised and approved by a medical practitioner in advance of the use of the restraint;
    - (iii) such restraint as is necessary in the lawfully-formed opinion of the CEO or Superintendent to prevent the escape of a detainee:
      - 1. during his or her movement to or from a detention centre; or
      - 2. during his or her temporary absence from a detention centre;
  - (f) the search of a detainee that involves physical contact with the person of the detainee in circumstances or in a manner not authorised by regs 85 to 87 of the YO Regulations,
  - (g) a strip search involving physical contact with the person of the detainee conducted as a matter of routine practice and/or in the absence of circumstances giving rise to a reasonable suspicion that the detainee may be in possession of an item that could:
    - (i) jeopardise the safety, good order or security of the detention centre; or
    - (ii) be used for self-harm.
47. By reason of the matters in paragraphs 28 to 32 and 39 to 42 above, each of the following constitutes an assault of a detainee:
- (a) conduct of the Superintendent or an Officer that caused a detainee to apprehend that the Superintendent or Officer might make or cause physical contact with the detainee in the circumstances set out in paragraph 46;
  - (b) the “strip” search of a detainee, not involving physical contact with the person of the detainee, conducted as a matter of routine practice and in the absence of circumstances giving rise to a reasonable suspicion that the detainee may be in possession of an item that could:
    - (i) jeopardise the safety, good order or security of the detention centre; or

- (ii) be used for self-harm; and
- the detainee apprehended that if he or she did not submit to the strip search, physical force would be used against him or her;
- (c) the strip search of a detainee not involving physical contact with the person of the detainee, conducted in a manner not authorised by reg 86 of the YO Regulations and the detainee apprehended that if he or she did not submit to the strip search physical force would be used against him or her.

## I. DUTY OF CARE

### Foreseeable Risk of Harm

48. Each detainee, including Ms Walters and Mr Vida, was, while in detention in a Detention Centre:
- (a) a child, or a young adult who had commenced to be a detainee while a child;
  - (b) under the control of the Minister, the CEO, the Superintendent and Officers;
  - (c) without freedom or capacity to provide for their own needs for food, clothing, shelter, medical treatment, other health and welfare, and education or rehabilitation;
  - (d) separated from their parents or guardians who were, accordingly, unable to provide for their needs for food, clothing, shelter, medical treatment, other health and welfare, and education;
  - (e) dependant on the CEO, Superintendent and Officers to provide for their needs for food, clothing, shelter, medical treatment, other health and welfare, and education,
  - ~~(f) likely to have experienced trauma, abuse or neglect both before and after becoming a detainee;~~
  - ~~(g) had, or was likely to have, at least one domain of neurodevelopmental impairment including one or more of:
 
    - ~~(i) cognitive impairment;~~
    - ~~(ii) behavioural disorders; and~~
    - ~~(iii) other mental health conditions.~~~~
  - ~~(h) vulnerable to psychiatric injury, including exacerbation of existing mental health conditions;~~

- ~~(i) — vulnerable to physical and psychiatric injury from self-harm and/or attempts at self-harm;~~
- ~~(j) — vulnerable to suffering economic loss as a consequence of:
 
  - ~~(i) — lack of access to reasonable education or rehabilitation programs; and/or~~
  - ~~(ii) — lack of reasonable opportunity for rehabilitation towards the goals of developing a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways.~~~~

(together and severally **Detainee Characteristics**).

48A Many detainees, including Ms Walters and Mr Vida, were, while in detention in a Detention Centre, persons who:

- (a) had experienced trauma, abuse or neglect both before and since becoming a detainee;
- (b) had at least one domain of neurodevelopmental impairment including one or more of:
 
  - (i) cognitive impairment;
  - (ii) behavioural disorders; and
  - (iii) other mental health conditions;
- (c) were vulnerable to injury to their mental health (including psychiatric injury);
- (d) were vulnerable to self-harm and/or attempts at self-harm.

(together and severally **Additional Detainee Characteristics**).

#### **Control over risk of harm**

49. At all material times during the Relevant Period:

- ~~(a) in the circumstances set out in paragraph [48], the Minister, the CEO, the Superintendent and Officers knew, or ought reasonably to have known, that, or to the effect that, detainees were children who had, or were likely to have, the Detainee Characteristics and the Additional Detainee Characteristics;~~

#### **Particulars**

- ~~(a) As to the Detainee Characteristics, the awareness of the Minister, the CEO, the Superintendent and Officers is to be inferred from the circumstances, as those are matters arising from the nature and operation of the Detention Centres.~~

- (b) As to the matter in sub-paragraph 48A(a) above, the Minister, the CEO, the Superintendent and Officers ought to have been aware of that matter because:
- (i) independent research demonstrates the high proportion of young persons in detention who have experienced trauma, abuse and neglect, such the 2009 NSW Young People in Custody Health Survey which showed that 81% of female detainees and 57% of male detainees had experienced trauma, abuse or neglect; and
  - (ii) that matter had been the subject of report by and had informed recommendations of the Office of the Inspector of Custodial Services including in its 2017 Report "Behaviour management practices at Banksia Hill Detention Centre".
- (c) As to the matters in sub-paragraphs 48A(b) above, the Minister, the CEO, the Superintendent and Officers ought to have been aware of those matters because:
- (i) independent research demonstrates the high proportion of detainees in youth detention suffering from disabilities including neurocognitive impairment, behavioural disorders and other mental health conditions including a 2016 study of detainees at Banksia Hill by the Telethon Kids Institute which indicated that nine of out ten young people in detention had at least one form of severe neurodisability.
  - (ii) that research had been reported by and had informed recommendations of the Office of the Inspector of Custodial Services including in its 2017 Report "Behaviour management practices at Banksia Hill Detention Centre".
- (d) As to the matters in sub-paragraphs 48A(c) and (d) above, the Minister, the CEO, the Superintendent and Officers ought to have been aware of those matters because a reasonable person in the circumstances would have inferred those matters from the Detainee Characteristics and the matters in sub-paragraphs 48A(a) and 48A(b) above.

- (b) the Minister, the CEO, and the Superintendent 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;
- (c) the CEO, the Superintendent and Officers had the right and ability to determine how and when Detainees were exposed to contact with other detainees.

### **Vulnerability**

50. The Detainee Characteristics and, or alternatively, the Additional Detainee Characteristics, meant that the detainees were vulnerable individuals.

### **State duty of care**

~~51. By reason of the matters in paragraphs [48] to [50] above, at all material times during the Relevant Period, the State of WA was liable to all detainees in respect of the following duties of care:~~

~~(a) a duty by the Minister, the CEO, the Superintendent and Officers to take reasonable care; and~~

~~(b) a non-delegable duty by the State of WA to take reasonable steps to ensure that reasonable care was taken by the Minister, the CEO, the Superintendent, Officers and any third party who entered a Detention Centre~~

~~to avoid the risks of harm to detainees described in paragraph [53] during their detention.~~

51. By reason of the matters in paragraphs 48 to 50 above, at all material times during the Relevant Period, the State owed all detainees a non-delegable duty to take reasonable steps to ensure the Minister, the CEO, the Superintendent, Officers and any third party who entered a Detention Centre took reasonable care to avoid acts or omissions which a reasonable person in their respective positions could reasonably foresee would be likely to might foreseeably cause harm to a detainee.

### **Minister, the CEO, the Superintendent and Officers duty of care**

52. The relationship of the Minister, the CEO, the Superintendent and Officers with detainees under their control, including Ms Walters and Mr Vida, was such that, at all material times during the Relevant Period, each of them was under a duty to take reasonable care to avoid acts or omissions which ~~a reasonable person in the position of the Minister, the CEO, the Superintendent and Officers their respective positions could~~

~~reasonably foresee would be likely to harm might foreseeably cause harm to the detainee.~~

53. ~~By reason of the matters in paragraphs 48, 48A, 49 and 50 above, harm to to [52], the State of WA, the Minister, the CEO, the Superintendent and Officers owed the detainees, including Ms Walters and Mr Vida, a duty to take reasonable care, and to take reasonable precautions, to avoid acts or omissions which it was of the following kinds were reasonably foreseeable could cause harm of the following kinds to detainees with respect to each of the duties of care set out in paragraphs 50 and 51 and 52 above:~~

- ~~(a) — physical harm and psychiatric injury suffered by them during their detention; and~~
- ~~(b) — harm to their mental health (including psychiatric injury).exacerbation of existing mental health conditions or disabilities;~~
- ~~(c) — physical and/or psychiatric injury from self-harm and/or attempted self-harm;~~
- ~~(d) — physical and/or psychiatric injury from conduct of other detainees or Officers;~~
- ~~(e) — economic loss as a consequence of lack of access to reasonable education; and~~
- ~~(f) — economic loss as a consequence of lack of access to a reasonable opportunity for rehabilitation towards the goals of developing a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways.~~

53. By reason of the matters in paragraphs 48, 48A, 49 and 50 above, there was a foreseeable and not insignificant risk of harm to detainees with respect to each of the duties of care set out in paragraphs 51 and 52 above:

- (a) Physical injury as a result of:
  - (i) uses of force by Officers; and
  - (ii) self-harm;
- (b) psychiatric injury, including exacerbation of previous mental health conditions or disabilities as a result of one or more of:
  - (i) being subjected to extended periods of confinement;
  - (ii) uses of force or threats of use of force by Officers;
  - (iii) being subjected to restraints;
  - (iv) being subjected to strip searches;
  - (v) failure to make a comprehensive assessment of mental health and/or cognitive disabilities such that the CEO, Superintendent and Officers had

limited knowledge of the disabilities, vulnerabilities, risks and support needs of individual detainees;

- (vi) failure to provide or to provide access to comprehensive mental health services and/or treatment for detainees;
- (vii) failure to train officers in relation to the needs of children with mental health and/or cognitive disabilities and de-escalation techniques in response to behaviour arising from the detainee's disabilities;
- (viii) failure to modify behaviour and discipline policies to reduce avoidable incidents of non-compliance by detainees arising from the detainee's disabilities;
- (ix) restrictions being imposed on detainee access to education, recreation and goods, services and facilities.

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

54. During the Relevant Period, the State of WA was an educational authority and an education provider within the meaning of ss 4 and 22 of the DDA and ss 1.4 and 2.1 of the *Disability Standards for Education 2005 (Cth) (DSE)*.

**Particulars**

- (a) *During the Relevant Period, each Detention Centre was an institution at which education or training was provided to detainees.*
- (b) *The DSE are standards formulated under the DDA to clarify and elaborate the legal obligations under the DDA in relation to education and operate as subordinate legislation. The State of WA by its servants and agents, the Minister, the CEO, the Superintendent and Officers, administered each Detention Centre, including as regards education and training provided to detainees.*

54A. Throughout the Relevant Period:

- (a) each Detention Centre was an educational institution; and
- (b) each Superintendent and Officer was a member of the staff of an educational institution;

within the meaning of the DDA and the DSE.

55. During the Relevant Period, the State of WA ~~provided goods and/or services and/or~~ provided goods and services and made facilities available to detainees in Detention Centres within the meaning of s 24 of the DDA, including:
- (a) A facility of a place and space in ~~and time within~~ which detainees could receive visits from friends, relatives and legal advisers;
  - (a1) a service, being the kind provided by government, of an Officer or Officers being present to provide assurance that the facility within a detention centre in which detainees received visits from friends, relatives and legal advisers was safe for the detainees and visitors;
  - (b) telephone facilities for communicating with friends, relatives and legal advisers;
  - (b1) a service relating to telecommunications being the provision of telephones and opportunities for the detainees to use the telephones;
  - (c) a facility of a place and space ~~and time~~ for recreation and/or exercise;
  - (c1) a service, being the kind provided by government, of an Officer or Officers being present to provide assurance that the facility within a detention centre in which detainees were able to enjoy recreation and exercise was safe for the detainees;
  - (d) goods to facilitate entertainment, and facilities for recreation and/or exercise, including:
    - (i) fitness and gymnasium items facilities;
    - (ii) sport equipment ~~and facilities;~~ and
    - (iii) books, paper, writing, drawing, art and craft materials; ~~and classes.~~
    - (iv) the provision of ~~access to~~ televisions and radios. ~~for entertainment and recreation;~~
  - (d1) goods, being clothes and health and hygiene items;
  - (e) a service relating to entertainment and recreation being opportunities for the detainees to use the televisions and radios;
  - (f) a service relating to the kind provided by members of a profession, being medical services, including medical treatment;
  - (g) goods, being discretionary food items, such as those provided in a canteen;
  - (g1) a facility a facility of a canteen, being a place at which discretionary food items could be acquired by detainees;

- (g2) a facility for the comfort and well-being of detainees being heating and cooling equipment;
- (g3) a service for the comfort and well-being of detainees being the operation by staff of the detention centre of heating and cooling facilities;
- (h) a service, being the kind provided by government, to protect detainees protection from risk of physical harm, including self-harm, battery and/or assault by other detainees.

55A. Throughout the Relevant Period, the State (through the CEO, the Superintendent and Officers) applied a behavioural regime (**Behavioural Regime**) to Ms Walters and Mr Vida and to all other detainees in Detention Centres as follows:

- (a) all detainees must not:
  - (i) fail to comply with lawful directions from Superintendents and Officers;
  - (ii) be verbally or physically offensive;
  - (iii) be verbally or physically aggressive;
  - (iv) be violent;
  - (v) make images involving violence or write words involving violence; or
  - (vi) harm themselves;

**(Proscribed Conduct)**

**Particulars**

- (a) The Proscribed Conduct was applied by rules and operating procedures for the management and control of detention centres and detainees made by the CEO from time to time pursuant to s 181 of the YO Act.
- (b) Examples of such rules and operating procedures include:
  - (i) the "Standing Orders" promulgated from 2005 onwards, including Standing Orders 9 and 18;
  - (ii) the "Juvenile Custodial Rules" approved by the Minister on or around 17 July 2008, and in particular Rules 209, 210 and 211 thereof; and
  - (iii) more recently, the "Custodial Operating Procedures and Policies" (COPPs) which have been promulgated from around

2019 onwards, and in particular COPPs 6.1, 6.2, 6.4, 6.10 and 7.6.

(c) Instances of the application of the Behavioural Regime to Ms Walters and Mr Vida are set out in paragraphs 97 and 98 below for Ms Walters and paragraphs 151 and 152(a) to (c) below for Mr Vida.

(d) Further particulars may be provided after discovery.

(b) If Ms Walters or Mr Vida or another detainee engaged in the Proscribed Conduct, Officers subjected the detainee to consequences including:

- (i) the use of physical force;
- (ii) handcuffing;
- (iii) confinement to their cell;
- (iv) confinement to a cell in an observation unit;
- (v) loss of program placement;
- (vi) confiscation of goods;
- (vii) denial of use of goods, services and facilities of the kinds referred to in sub-paragraphs [55(c)] and [55](d)] to [55(g1)].

#### **Particulars**

(a) The consequences for the Proscribed Conduct were specified in the rules and operating procedures for the management and control of detention centres and detainees made by the CEO from time to time pursuant to s 181 of the YO Act referred to in the particulars to paragraph 49 above.

(b) The consequences were imposed through:

- (i) the delegation of authority to Superintendents and Officers; and
- (ii) exercises of discretion by Officers in purported exercise of authority under s 11B(d) of the YO Act.

(c) Instances of the application of the Behavioural Regime to Ms Walters and Mr Vida are set out in paragraphs 97 and 98 below for Ms Walters and paragraphs 151 and 152(a) to (c) below for Mr Vida.

(d) Further particulars may be provided after discovery.

55B. Under the Behavioural Regime, when Ms Walters, Mr Vida or another detainee engaged in Proscribed Conduct, they were subjected to the consequences referred to in paragraph 55A(b) above even in circumstances where the Proscribed Conduct in which they had engaged was a symptom or manifestation of a disability of the detainee.

**Particulars**

- (a) *As regards Ms Walters, the Applicants refer to the matters pleaded in paragraphs 97 and 98 below.*
- (b) *As regards Mr Vida, the Applicants refer to the matters pleaded in paragraphs 151 and 152 below.*
- (c) *As regards other detainee group members, further particulars will be provided in evidence and after discovery.*

55C. By reason of the matters in paragraphs 55A and 55B above, detainees with a disability were required not to engage in conduct which was a manifestation or symptom of their disability or they would be subjected to the kinds of consequences referred to in paragraph 55A(b) above.

**CLAIMS OF MS WALTERS**

**K.1 False Imprisonment, assault and battery**

**False imprisonment**

56. During the time Ms Walters was detained at Banksia Hill, the CEO and the Superintendent frequently used “lockdowns” and “rolling lockdowns” in the management of Banksia Hill for operational reasons, including staff shortages.

**Particulars**

- (a) *Particulars of lockdowns and rolling lockdowns during the time that Ms Walters was detained at Banksia Hill will be provided following discovery.*
57. When a lockdown referred to in paragraph 56 above was in effect, Ms Walters was locked in her accommodation cell for the duration of the lockdown.
58. When a rolling lockdown was in effect, Ms Walters was locked in her accommodation cell during the period in which her unit was subject to the rolling lockdown.
59. When Ms Walters was locked in her cell during lockdowns or rolling lockdowns, she was subjected to confinement within the meaning of the YO Act.

**Particulars**

- (a) *Particulars of confinement of Ms Walters during lockdowns and rolling lockdowns will be provided following discovery.*
60. The confinement of Ms Walters in her cell during the lockdowns and rolling lockdowns referred to in paragraphs 56 to 59 above was not detention offence confinement or security confinement.
61. The confinement of Ms Walters in her cell during the lockdowns and rolling lockdowns deprived Ms Walters of her residual liberty.
62. By reason of the matters in paragraphs 43, 45 and 56 to 61 above, the CEO, the Superintendent and Officers falsely imprisoned Ms Walters when she was confined in a cell during lockdowns and rolling lockdowns.
63. During the time that Ms Walters was detained at Banksia Hill, the unit where female detainees were standardly detained was known as the "Yeeda Unit", while the intensive support unit for female detainees was known as the "Cue Unit".
64. In addition to the matters in paragraphs 56 to 62 above, on numerous dozens of occasions while Ms Walters was detained at Banksia Hill, Ms Walters was confined in her sleeping quarters or other designated rooms during outside unlock hours, including in the following circumstances:
- (a) on 23 and 24 May 2018, following her first admission to Banksia Hill;
  - (b) when Officers wanted to limit or prevent interaction between Ms Walters and other detainees in her unit;
  - (c) following incidents of use of force by Officers or threatened use of force by Officers;
  - (d) following incidents of self-harm or threatened self-harm by Ms Walters;
  - (e) when Officers assigned to supervise Ms Walters during unlock hours were unavailable; and
  - (f) on other occasions and in circumstances in respect of which further details will be provided.

#### **Particulars**

- (a) *Ms Walters was confined in observation cell 2 in the Cue Unit following her first admission in the circumstances particularised in the Statement of Particulars, Part 1, Paragraph 1.*

- (b) Ms Walters was also confined in a cell on occasions including the occasions particularised in the Statement of Particulars, Part 2, Paragraph 1.
- (c) Of the occasions particularised in the Statement of Particulars Part 2 Paragraph 1,
- (i) Occasions when Officers wanted to limit or prevent interaction between Ms Walters and other detainees in her unit are particularised in Part 2, Paragraph 2 3.
  - (ii) Occasions when Ms Walters' confinement followed following the use of force by Officers or threatened use of force by Officers are particularised in Part 2, Paragraph 3 2.
  - (iii) Occasions when Ms Walters' confinement followed incidents of self-harm or threatened self-harm by Ms Walters are particularised in Part 2, Paragraph 4 3.
  - (iv) Occasions when Ms Walters was confined when Officers assigned to supervise Ms Walters were unavailable are particularised in Part 2, Paragraph 5 4.
  - (v) Particulars of other occasions on which Ms Walters was confined in a cell, including in the kinds of circumstances already particularised, will be provided following discovery.

65. The confinement of Ms Walters in her cell on each of the occasions referred to in paragraph 64 above was not detention offence confinement.
66. The confinement of Ms Walters in her cell on each of the occasions referred to in paragraph 64 above deprived Ms Walters of her residual liberty.
67. The confinement of Ms Walters on the occasions referred to in paragraph 64 above was not justified.

#### **Particulars**

- (a) If the confinement of Ms Walters in the circumstances referred to in paragraph 64 ~~63~~ purported to be security confinement, the confinement was unlawful for one or more of the following reasons:
- (i) it was not directed by the Superintendent;
  - (ii) the Superintendent failed to make and maintain a record of the order to confine Ms Walters;

(iii) it was not reasonably necessary to maintain good government, good order or security at Banksia Hill;

(iv) the Superintendent failed to inform Ms Walters of the reason for the confinement;

(v) Ms Walters was not given fresh air, exercise and staff company for a period of at least 1 hour every 6 hours during unlock hours.

(b) If the confinement of Ms Walters in the circumstances referred to in paragraph 64 above did not purport to be security confinement, it was unlawful because it deprived Ms Walters of her residual liberty without authority under the YO Act and without lawful justification.

68. By reason of the matters in paragraphs 65 to 67, the State of WA falsely imprisoned Ms Walters.

#### **Strip searches**

69. Ms Walters was subjected to a strip search on numerous occasions during her time in detention at Banksia Hill.

#### **Particulars**

(a) Ms Walters was strip searched:

(i) at or shortly after the time of her admission on each occasion she was admitted to Banksia Hill;

(ii) on about 20 June 2018 at about 6.30 pm in the circumstances described in the Statement of Particulars, Part 1, Paragraph 7 5;

(iii) on about 27 June 2018 at about 9.44 am in the circumstances described in the Statement of Particulars, Part 1, Paragraph 10 8;

(iv) on about 26 February 2019 at about 9.30 pm in the circumstances described in the Statement of Particulars, Part 1, Paragraph 75 73;

(v) further particulars of strip searches of Ms Walters will be provided following discovery.

70. On each occasion referred to in paragraph 69 above:

(a) Ms Walters apprehended that if she did not submit to a strip search, Officers would immediately use force on her and make unwanted physical contact with her body;

(b) Ms Walters did not freely consent to being strip searched and submitted to strip search out of fear that physical force would be used on her;

- (c) the Superintendent did not have a reasonable suspicion that Ms Walters might have possession of an item that could jeopardise the safety, good order or security of Banksia Hill or be used for self-harm.
71. By reason of the matters in paragraphs 47(b), 69 and 70 (v) above, Officers assaulted Ms Walters when they required her to submit to a strip search.
72. On about 29 January 2019 at about 11.25 am:
- (a) Ms Walters returned to Banksia Hill in the rear pod of a transport vehicle following a court appearance;
  - (b) Ms Walters had been escorted by Officers for the duration of her absence from Banksia Hill for the court appearance;
  - (c) Officers instructed Ms Walters to come out of the pod to undergo a strip search before being escorted to the Yeeda Unit;
  - (d) Ms Walters objected to being strip searched;
  - (e) Officers told her she would be subject to use of force unless she came voluntarily out of the pod and submitted to a strip search;
  - (f) Ms Walters refused to come out of the pod;
  - (g) an Officer entered the pod and used physical force to remove her from the vehicle;
  - (h) that Officer and additional Officers used force and restraint on Ms Walters in order to attempt to strip search her after she was removed from the transport vehicle.

### **Particulars**

*Particulars of this incident are in the Statement of Particulars, Part 1, Paragraph 73.*

73. Ms Walters' claims of battery arising from the incident referred to in paragraph 72 above are included in the claims pleaded in paragraphs 77 to 81 below.
74. In the circumstances referred to in paragraph 72 above:
- (a) before the Officer entered the pod, Ms Walters apprehended that Officers would immediately use physical force on her and make unwanted physical contact with her body;
  - (b) the Superintendent did not have a reasonable suspicion that Ms Walters might have possession of an item that could jeopardise the safety, good order or security of Banksia Hill or be used for self-harm.

75. By reason of the matters in paragraphs 47(b), 72 and 74 above, Officers assaulted Ms Walters.

**Use of force**

76. While Ms Walters was detained at Banksia Hill, she was subjected to the use of force by Officers in which Officers made unwanted physical contact with Ms Walters' body, including the following kinds of force:
- (a) a single Officer taking hold of one of Ms Walters' arms;
  - (b) two Officers taking hold of Ms Walters by Ms Walters' arms, each Officer holding an opposite arm;
  - (c) a "wrist weave", where an Officer held Ms Walters' arm with one hand, placed the Officer's other arm at the inner side of Ms Walters' elbow joint and using the first hand bent her arm at the elbow around the Officers' wrist;
  - (d) a "wrist weave" performed by 2 Officers, each Officer holding an opposite arm;
  - (e) an "under hook and pike" hold, where an Officer inserted one arm under Ms Walters' arm, held Ms Walters' shoulder with the hand of that Officer's first arm and applied downwards pressure on the back of Ms Walters' neck with the Officers' other hand;
  - (f) an Officer taking hold of Ms Walters' legs;
  - (g) one or more Officers forcing Ms Walters to the ground;
  - (h) one or more Officers holding Ms Walters face down on the ground or on a mattress on the ground;
  - (i) one or more Officers holding Ms Walters by the legs in a "figure 4" position while she was face down on the ground, such that Ms Walters legs were interwoven in a pattern resembling the numeral 4: with one leg bent to the side and the other leg bent upwards folded over the first leg;
  - (j) "folding up", where one or more Officers would hold each of Ms Walters' arms and kick her legs out from under her; one Officer would then position themselves at Ms Walters' head, using their hands to hold her face down, while placing their knee either on or near her neck; the other Officers would then stretch Ms Walters' arms behind her back and fold her legs up at the knees, using their weight to hold her ankles down at her buttocks;
  - (k) holding Ms Walters in one of the ways described above while handcuffs were applied to or removed from Ms Walters' wrists;

- (l) an Officer pushing Ms Walters in the back or shoulder;
  - (m) one or more Officers pushing ~~or otherwise applying force to~~ Ms Walters with a hard shield;
  - (n) one or more Officers pushing ~~or otherwise applying force to~~ Ms Walters with a soft shield.
77. Force of the kind described in paragraph 76 above was used on Ms Walters on numerous ~~dozens of~~ occasions.

#### **Particulars**

- (a) *Force was used on Ms Walters in the circumstances particularised in Part 3 of the Statement of Particulars to this Statement of Claim.*
  - (b) *Further particulars may be provided following discovery.*
78. Ms Walters did not consent to physical contact being made with her body when force was used on her on the occasions referred to in paragraph 77 above.
79. Ms Walters had a continuing apprehension that imminent physical contact would be made with her body by Officers on the occasions referred to in paragraph 77 above.
80. The use of force on Ms Walters was unlawful on those occasions referred to in paragraph 77 above:
- (a) particularised in the Statement of Particulars, Part 3, Paragraph 1 as use of force when it was not in an immediate period when Ms Walters was imminently presenting a risk of injury to herself or other detainees or staff;
  - (b) particularised in the Statement of Particulars, Part 3, Paragraph 2 as use of force after imminent risk of injury has passed and Ms Walters had been stabilised; and
  - (c) particularised in the Statement of Particulars, Part 3, Paragraph 3 as the use of more than the degree of physical force which was the minimum to control Ms Walters' behaviour.
81. By reason of the matters in subparagraphs 46(a) to 46(c) and 76 to 80 above, Officers assaulted and battered Ms Walters on the occasions referred to in paragraph 77.

#### **Handcuffing**

82. While Ms Walters was detained at Banksia Hill, she was subjected to handcuffing on ~~dozens of~~ numerous occasions.

#### **Particulars**

- (a) *For extended periods when Ms Walters was housed in the Cue Unit, she was required to be in handcuffs for all movements to and from her cell, including on the occasions particularised in the Statement of Particulars, Part 4, paragraph 1.*
- (b) *Further particulars of the requirement referred to in particular (a) will be provided following discovery.*
- (c) *Ms Walters was handcuffed during incidents involving the use of force particularised in the Statement of Particulars to this statement of claim as particularised in the Statement of Particulars, Part 4, paragraphs 1A, 2 and 3.*
- (d) *Further particulars of the handcuffing of Ms Walters may be provided following discovery.*

83. The handcuffing of Ms Walters referred to in paragraph 82 was unlawful.

#### **Particulars**

- (a) *On the occasions referred to in particulars (a) and (c) to paragraph 82:*
    - (i) *the CEO or the Superintendent did not authorise and direct the restraint of Ms Walters;*
    - (ii) *alternatively, if the CEO or the Superintendent did authorise and direct the restraint of Ms Walters, the CEO or the Superintendent did not form the opinion that the restraint of Ms Walters was necessary to prevent injury to herself or any other person;*
    - (iii) *alternatively, if the CEO or the Superintendent did form the opinion that the handcuffing of Ms Walters was necessary to prevent injury, the opinion of the CEO or the Superintendent was not reasonable.*
  - (b) *On the occasions referred to in particular (c) to paragraph 82 above the use of force, including the handcuffing of Ms Walters, was unlawful for the reasons referred to in paragraph 80 above.*
  - (c) *Further particulars of the unlawful handcuffing of Ms Walters may be provided following discovery.*
84. Ms Walters did not consent to physical contact being made with her body when she was put in handcuffs on the occasions referred to in paragraph 82 above and submitted to handcuffing either as a result of:
- (a) *fear that additional physical force would be used on her if she did not submit; or*

(b) Officers using force to physically hold and restrain her while handcuffs were put on her.

85. Ms Walters had a continuing apprehension that imminent physical contact would be made with her body by Officers on the occasions referred to in paragraph 82 above.

86. By reason of the matters in paragraphs 46(e) and 82 to 85, Officers assaulted and battered Ms Walters.

## K.2 Breach of duty of care

87. ~~By reason of the matters in paragraphs [48] to [53] the State of WA, the Minister, the CEO, the Superintendent, and Officers owed Ms Walters the duty of care referred to in paragraph 53.~~

88. Ms Walters' ~~has and always had~~ ASD, which was diagnosed in 2017.

89. Ms Walters' ASD is a disorder that affects Ms Walters' thought processes, emotions and judgment such that:

- (a) when confronted with peremptory, complex or unpleasant commands, she was and is likely to react with heightened emotional and physical responses;
- (b) she was and is very concerned with hygiene and became and becomes anxious and upset about dirty or stained clothing, bedding furniture and rooms;
- (c) she engaged and engages in restricted repetitive behaviours;
- (d) she ~~required and~~ requires consistency and routine and becomes anxious and upset with departures from routine.

90. ~~By reason of the matters in paragraph 89, Ms Walters had complex support needs while she was in detention at Banksia Hill.~~

91. ~~The matters set out in paragraph [89] are common and well known circumstances that are likely to arise with persons who have ASD. That Ms Walters had or was likely to have ASD, as well as the nature of ASD set out in paragraph 89 above, were matters which the State of WA, the Minister, the CEO and the Superintendent knew or ought to have known~~

### Particulars

- (a) Ms Walters had been diagnosed with ASD in 2017 2015.
- (b) Officers were made aware by Ms Walters and by Ms Walters' parents that Ms Walters had ASD.

- (c) Ms Walters repeats the matters in paragraphs (c) of the particulars sub-joined to paragraph 49 above. In the circumstances referred to in that paragraph, the State, the Minister, the CEO and the Superintendent ought to have assessed detainees, including Ms Walters, to determine whether they had any disabilities and, if so, the nature and extent of those disabilities.

91A Further, and in the alternative, the State, the Minister, the CEO and the Superintendent and Officers ought to have foreseen that a person of normal fortitude might, in the circumstances of Ms Walters' case, suffer a recognised psychiatric injury if reasonable care were not taken.

### Particulars

- (a) The circumstances of the case include:
- (i) the matters set out in paragraphs 88 to 91 above;
  - (ii) the physical injuries suffered by Ms Walters as a result of the assaults and batteries referred to in paragraphs 76 to 81 above;
  - (iii) the physical injuries suffered by Ms Walters as a result of her engaging in self-harm;
  - (iv) the confinement of Ms Walters in the circumstances described in paragraphs 56 and 64 above;
  - (v) the strip searching of Ms Walters in the circumstances described in paragraphs 69 and 72 above;
  - (vi) the use of force Ms Walters in the circumstances described in paragraph 77 above;
  - (vii) the handcuffing of Ms Walters in the circumstances described in paragraph 82 above.

~~92 — In breach of the duty of care they each owed to Ms Walters, the State of WA, the Minister, the CEO, the Superintendent and Officers failed to take reasonable care to avoid acts or omissions which it was reasonably foreseeable could would be likely to cause harm of the following kinds to Ms Walters of the kind set out in paragraph 53 and 91A:~~

~~(a) psychiatric injury, including exacerbation of pre-existing psychiatric disabilities;~~

~~(b) physical and/or psychiatric injury from self-harm and/or attempted self-harm; and~~

~~(c) physical and/or psychiatric injury from conduct of other detainees or Officers.~~

### **Particulars**

- ~~(a) — Failing to provide adequate assessment of Ms Walters' disability and complex support needs arising from her ASD.~~
- ~~(b) — Failing to provide adequate mental health services.~~
- ~~(c) — Failing to provide adequate crisis care facilities.~~
- ~~(d) — Failing to provide Ms Walters with adequate access to clean and unstained clothing, bedding, furniture and accommodation, including as particularised in the Statement of Particulars, Part 5, paragraph 1.~~
- ~~(e) — Failing to modify adequately modify the behaviour and discipline policies at Banksia Hill to reduce avoidable incidents of non-compliance by the occasions of stress, anxiety and upset for Ms Walters, and, in response to such incidents subjecting Ms Walters to confinement, uses of force and restraints when she reacted with heightened emotional and physical responses to directions, commands and stressful situations.~~
- ~~(f) — Officers failed to avoid incidents of non-compliance by Ms Walters by failing to modify adequately the behaviour and discipline policies at Banksia Hill in the circumstances described including as particularised in the Statement of Particulars, Part 5, paragraph 2.~~
- ~~(g) — Failing to ensure that Officers interacting with Officers gave Ms Walters did not give Ms Walters peremptory, complex or unpleasant commands, including as particularised in the circumstances described in the Statement of Particulars, Part 5, paragraph 3.~~
- ~~(h) — Subjecting Officers subjected Ms Walters to uses of force and/or restraints and/or confinement when she reacted with heightened emotional and physical responses to directions, commands and stressful situations, including as particularised in the circumstances described in the Statement of Particulars, Part 5, paragraph 4.~~

~~(i) — Subjecting Ms Walters to extended periods in which she was required to submit to handcuffs for movements within Banksia Hill, including as pleaded in paragraph [82]. More specific actions which State of WA, the Minister, the CEO and the Superintendent could have taken in order to reduce such incidents are set out in paragraph 100 below.~~

~~(j) — Subjecting Ms Walters to extended periods of confinement as pleaded in paragraphs [56] and [64] above.~~

~~(k) — Subjecting Ms Walters to repeated strip searches as pleaded in paragraphs 69 to 75 above.~~

~~(l) — Subjecting Ms Walters to uses of force as pleaded in paragraphs 76 to 84 above.~~

~~(m) — Subjecting Ms Walters to restraints as pleaded in paragraphs 82 to 86 above.~~

92. Further to paragraphs 53 and 88 to 91A above, there was a reasonably foreseeable and not insignificant risk that Ms Walters would suffer physical injury and/or a recognised psychiatric illness by being subjected to:

- (a) confinement to her cell during unlock hours;
- (b) prolonged periods of confinement, namely instances of confinement for over 10 hours and/or on successive days.

92A. In the circumstances:

(a) a reasonable person in the position of the State, the CEO and the Superintendent would have required Officers not to subject detainees (including Ms Walters) to:

- (i) confinement to their cell during unlock hours; and/or
- (ii) prolonged periods of confinement, namely instances of confinement over 10 hours and/or on successive days,

except as authorised by law, namely detention offence confinement or security confinement in accordance with regulation 24 of the YO Regulations;

(b) a reasonable person in the position of the State and Officers would not have subjected Ms Walters to:

- (i) confinement to her cell during unlock hours; and/or
  - (ii) prolonged periods of confinement, namely instances of confinement over 10 hours and/or on successive days,
- except as authorised by law, namely detention offence confinement or security confinement in accordance with regulation 24 of the YO Regulations.

92B. In the premises:

- (a) the State, the CEO and the Superintendent acted in breach of their respective duties of care to Ms Walters by not doing that which is set out in paragraph 92A(a) above;
- (b) the State and Officers acted in breach of their respective duties of care to Ms Walters by subjecting her to:
  - (i) confinement to her cell during unlock hours; and/or
  - (ii) prolonged periods of confinement, namely instances of confinement over 10 hours and/or on successive days,

as pleaded in paragraphs 56 to 68 above and the particulars thereto.

92C. Further to paragraphs 53 and 88 to 91A above, there was a reasonably foreseeable and not insignificant risk that Ms Walters would suffer physical injury and/or a recognised psychiatric illness by being subjected to unlawful strip searches.

92D. In the circumstances:

- (a) a reasonable person in the position of the State, the CEO and the Superintendent would have required Officers not to subject detainees (including Ms Walters) to unlawful strip searches and ensured they did not do so;
- (b) a reasonable person in the position of the State and the Officers would not have subjected Ms Walters to unlawful strip searches.

92E. In the premises:

- (a) the State, the CEO and the Superintendent acted in breach of their respective duties of care to Ms Walters by failing to do that which is set out in paragraph 92D(a) above;

(b) the State and the Officers breached their respective duties of care to Ms Walters by subjecting her to unlawful strip searches as pleaded in paragraphs 69 to 75 above.

92F. Further to paragraphs 53 and 88 to 91A above, there was a reasonably foreseeable and not insignificant risk that Ms Walters would suffer physical injury and/or a recognised psychiatric illness as a consequence of being subjected to physical force that was unreasonable in all the circumstances, including having regard to the Detainee Characteristics, the Additional Detainee Characteristics and Ms Walters' ASD.

92G. In the circumstances, a reasonable person in the position of the State and the Officers would not have subjected Ms Walters to unreasonable use of physical force.

92H. In breach of their respective duties of care the State and the Officers subjected Ms Walters to unreasonable, including unlawful, physical force as pleaded in paragraphs 77 to 81 above.

92I. Further to paragraphs 53 and 88 to 91A above, there was a reasonably foreseeable and not insignificant risk that Ms Walters would suffer physical injury and/or a recognised psychiatric illness as a consequence of being subjected to handcuffing and the use of other restraints which was unreasonable in all the circumstances, including having regard to the Detainee Characteristics, the Additional Detainee Characteristics and Ms Walters' ASD.

92J. In the circumstances, a reasonable person in the position of the State and the Officers would not have subjected Ms Walters to unreasonable use of handcuffing and other restraints.

92K. In breach of their duty of care, the State and the Officers subjected Ms Walters to the unreasonable use of handcuffing and other restraints as pleaded in paragraphs 82 and 83 above and the particulars thereto.

92L. Further, by reason of the matters set out in paragraphs 92, 92C, 92F and/or 92I above, a reasonable person in the position of the State, the CEO and the Superintendent would have:

(a) ensured that a comprehensive assessment of Ms Walters was undertaken on admission to custody to identify Ms Walters' ASD and the matters pleaded in paragraph 89 above;

(b) ensured that all Officers were informed of the result of the said assessment;

(c) ensured that Officers were trained in relation to the needs of children in detention with mental health and/or cognitive disabilities, including Ms Walters' ASD.

92M. In the premises, the State, the CEO and the Superintendent acted in breach of their respective duties of care to Ms Walters by failing to do that which is set out at paragraph 92L above.

93. As a result of the breaches of duty of care described in paragraphs 92 to 92M above, Ms Walters has suffered injury and damage.

#### **Particulars**

~~(i) Psychiatric injury, including anxiety, mental distress, suicidal ideation, self-harm and attempted self-harm.~~

(a) Physical injury including (and consequent pain and suffering) in the nature of ~~from~~ cuts, abrasions and scarring to her body from numerous episodes of self-harm, including in the circumstances particularised in the Statement of Particulars, Part 6, paragraph 1.

(b) Physical injury including (and consequent pain and suffering) from being subjected to use of force by Officers, including in the circumstances particularised in the Statement of Particulars, Part 3.

(c) Injury to her mental health, including anxiety, mental distress, suicidal ideation and self-harm ideation.

(d) Further particulars may be provided following discovery and/or information obtained from health service providers.

94. ~~Further, in breach of the duty of care owed to Ms Walters, the State of WA, the Minister, the CEO, the Superintendent and Officers failed to take reasonable care to avoid acts or omissions which it was reasonably foreseeable could cause economic loss to Ms Walters as a consequence of lack of access to reasonable education and a reasonable opportunity for rehabilitation.~~

#### **Particulars**

~~(i) Depriving Ms Walters of reasonable access to education and rehabilitation programs by confining her for extended periods, including as pleaded in paragraphs [56] and [64].~~

- ~~(ii) — Subjecting Ms Walters to lockdowns and rolling lockdowns, as pleaded in paragraph [56], which disrupted her access to education and rehabilitation programs.~~
- ~~(iii) — Failing to provide Ms Walters with sufficient support for her disabilities to enable her to learn adequately.~~
- ~~(iv) — Failing to provide teaching, teaching resources and materials appropriate to Ms Walters' level of education attainment.~~
- ~~(v) — Frequently withdrawing Ms Walters' access to visual art as a punishment of Ms Walters.~~
- ~~(vi) — Failing to provide rehabilitation programs.~~

95. ~~As a result of the breaches of duty of care described in paragraph [0], Ms Walters suffered loss and damage.~~

#### **Particulars**

- ~~(i) — At the age of 18 years, Ms Walters has only attained the literacy and numeracy levels of an average 12-year old (year 7) student;~~
- ~~(ii) — Ms Walters has suffered economic loss as a result of failing to progress in her level of educational attainment during the time she was detained at Banksia Hill, having the consequence that Ms Walters has diminished employment opportunities and prospects;~~
- ~~(i) — Ms Walters has suffered economic loss as a result of the loss of a chance of a better outcome in her level of educational attainment during the time she was detained at Banksia Hill, having the consequence that Ms Walters has diminished employment opportunities and prospects.~~

### **K.3 Disability Discrimination Act Claims**

95. The conduct of the CEO, Superintendent and Officers pleaded herein were within the scope of their actual or apparent authority and thus was conduct engaged in also by the State: Section 123 of the DDA.
96. Ms Walters' ASD is (and was at all material times) a disability within the meaning of the DDA.
- 96A. Ms Walters' ASD is a disorder that affects (and at all material times affected) Ms Walters' thought processes, emotions and judgment such that:

- (a) when confronted with peremptory, complex or unpleasant commands, she was and is likely to react with heightened emotional and physical responses, including emotional dysregulation;
- (b) she was and is very concerned with hygiene and became and becomes anxious and upset about dirty or stained clothing, bedding, furniture and rooms;
- (c) she engaged and engages in restricted repetitive behaviours, including:
  - (i) self harm by cutting or scratching herself;
  - (ii) drawing images of violence, such as knives and stabbing;
  - (iii) writing words such as "kill" and "die";
- (d) she requires consistency and routine and becomes anxious and upset with departures from routine.

97. While in Banksia Hill, Ms Walters engaged in the following kinds of behaviour, that were ~~symptoms or a manifestations of her disability~~ a symptom or a manifestation, of Ms Walters' ASD and thus caused or contributed by and being an aspect of her ASD:

- (a) Refusal to comply with directions from Officers that she:
  - (i) submit to strip searches;
  - (ii) submit to being placed in handcuffs;
  - (iii) return to the Cue Unit from less restrictive areas of Banksia Hill;
  - (iv) submit to being placed in a cell that was dirty;
  - (v) surrender clothes that she had been wearing for laundering (because of her aversion to stained or dirty clothing provided from the common pool of clothing).
- (b) Resistance to the threat of use of force and use of force by Officers including by:
  - (i) attempting to evade Officers who wished to take hold of her;
  - (ii) using objects, such as sharpened sticks or twigs to threaten Officers;
  - (iii) ~~punching or kicking Officers or attempting to do so~~ punch or kick Officers.
- (c) Engaging in repetitive acts of self-harm, particularly by using objects such as staples removed from books and broken pieces of plastic to scratch or cut her skin, as particularised in the Statement of Particulars Part 6, paragraph 1.

- (d) Engaging in obsessive:
- (i) drawing of images of violence such as knives and stabbing;
  - (ii) writing words such as "kill" and "die" with reference to herself and/or Officers and the images referred to in sub-paragraph 97(d)(i) above 97(d)(i),  
as particularised in the Statement of Particulars Part 6, paragraph 2 4.
98. Officers responded to the behaviour of Ms Walters described in ~~paragraphs 89 and~~ paragraph 97 above by:
- (a) the use of force against Ms Walters, use of handcuffs, and confinement of Ms Walters in the Cue Unit described above in section K1 and particularised in the Statement of Particulars Parts 2, 3 and 4;
  - (b) allocating Ms Walters an observation cell in the Cue Unit ~~unit~~ as her accommodation at Banksia Hill for extended periods, including confining her as described in paragraph 64;
  - (c) requiring Ms Walters to be handcuffed for all movements to and from the Cue Unit ~~unit~~ for an extended period as referred to in paragraph 82(a) above;
  - (d) by denying or restricting Ms Walters' access to programs and privileges as particularised in the Statement of Particulars, Part 7.
  - (e) removing Ms Walters from education activities as particularised in paragraphs 17, 40 and 48 of the Statement of Particulars. Part 1;
  - (f) confiscating and/or denying or restricting Ms Walters' access to books, paper, writing and/or drawing implements as particularised in paragraphs 5, 11, 18, 27, 40, 42, and 65 of the Statement of Particulars, Part 1; and
  - (g) confiscating and/or denying Ms Walters access to therapeutic aids including fabric swatches.

### **Particulars**

*Particulars will be provided following discovery.*

99. ~~While Ms Walters was at Banksia Hill, the Superintendent and Officers imposed the following requirements or conditions on Ms Walters:~~
- (a) ~~she was required to obey all commands, directions and orders given or made by the Superintendent and Officers;~~
  - (b) ~~she was required to refrain from self harm;~~

- (c) ~~she was required to refrain from making images involving violence and writing words such as "kill" and "die".~~

### Particulars

*Particulars will be provided following discovery.*

100. ~~Because of Ms Walters' ASD she would only comply or have been able to, or alternatively would have been better able to, comply with the requirements or conditions referred to in paragraph [99]~~ Ms Walters would have been able to, or alternatively would have been better able to, manage the symptoms and manifestations of her ASD if the CEO, the Superintendent and Officers had made the following reasonable adjustments for Ms Walters:
- (a) ~~providing Ms Walters with regular access to mental health treatment, counselling and support;~~
  - (b) providing Ms Walters with ~~behavioural therapy,~~ cognitive behavioural therapy, to assist her to learn to, and to, better regulate her emotions and behaviour;
  - (c) ~~training Officers about ASD~~ Requiring Officers to use techniques and approaches to ~~communicating~~ communication with Ms Walters to reduce confrontation and escalation, namely:
    - (i) using non-confrontational language and behaviour in response to apprehended incidents of non-compliance so far as reasonably possible;
    - (ii) allowing Ms Walters greater time and flexibility in enforcing compliance with directions;
    - (iii) not threatening to use force or confinement, or to withdraw privileges;
    - (iv) not engaging in punitive responses to incidents in which Ms Walters had become dysregulated;
    - (v) not requiring Ms Walters to wear clothing or enter or remain in a cell that she regarded as stained, dirty or unhygienic.
  - (d) ~~providing Ms Walters with, and assisting her to implement, an individual behaviour plan designed to reduce confrontation and escalation;~~
  - (e) providing Ms Walters with an individual support worker trained and experienced in managing a young person with ASD to assist her in her interactions with Officers and detainees;

- (f) providing Ms Walters with clothing and accommodation that was not stained, dirty or unhygienic;
- (g) assisting Ms Walters to cope with the boredom and frustration of detention and/or isolation by providing her, or not depriving her, of access to:
  - (i) a television, radio, games, reading material or other forms of distraction and/or entertainment, including writing and/or drawing implements;
  - (ii) the ability to eat or socialise with other detainees;
  - (iii) in-person contact with visitors or any other person aside from custodial staff;
  - (iv) telephone contact with family members; and
  - (v) hygiene products and services.

(separately and collectively **Walters Reasonable Adjustments**).

101. The CEO, the Superintendent and Officers did not make the Walters Reasonable Adjustments referred to in paragraph 100 above.

101A. Ms Walters' ASD was one of the reasons the Officers (and thereby the State) did not make the Walters Reasonable Adjustments in that Officers refused to accept that:

- (a) Ms Walters' ASD genuinely impaired her ability to avoid or minimise incidents of non-compliance;
- (b) Ms Walters was not capable of preventing or minimising incidents of dysregulated or disturbed behaviour without adjustments like the Walters Reasonable Adjustments first being made.

101B. At a minimum, the matters set out in paragraph 101A above should be inferred by reason of the following:

- (a) as pleaded in paragraph 49(a) above, amongst others the Officers knew, or ought reasonably to have known that detainees were children who had, or were likely to have, the Detainee Characteristics and the Additional Detainee Characteristics;
- (b) the Office of the Inspector of Custodial Services identified in its 2017 Report "Behaviour Management Practices at Banksia Hill Detention Centre" (2017 OICS Report) that staff lack confidence in non-punitive approaches to behaviour problems of detainees;
- (c) the 2017 OICS Report recommended that a trauma informed model be pursued for young people in detention (such as Ms Walters);

- (d) Officers persisted in the use of punitive responses to behaviour problems of detainees following the 2017 OICS Report, including in the Relevant Period;
- (e) Officers did not make any of the Walters Reasonable Adjustments, even during minor incidents and where making the Walters Reasonable Adjustments would have imposed little to no additional burden on the operation of Banksia Hill;
- (f) The refusal to make the Walters Reasonable Adjustments occurred in a context in which Ms Walters' disability was openly made the subject of mockery and disdain by Officers, who subjected her to harassment on that basis, as referred to in paragraphs 109A and 109B below.

#### **Particulars**

- (a) Particulars of the circumstances in which the Officers refused to make the Walters Reasonable Adjustments and engaged in punitive responses to manifestations of Ms Walters' ASD are set out in Part 5 of the Statement of Particulars.
- (b) Particulars of the circumstances in which the Officers refused to make the Walters Reasonable Adjustments and deprived Ms Walters of goods, services and facilities in response to manifestations of Ms Walters' ASD are set out in Part 7 of the Statement of Particulars.
- (c) Further particulars may be provided following discovery.

102. ~~The failure to make the reasonable adjustments~~ Had the Walters Reasonable Adjustments referred to in paragraph 100 ~~had the effect of disadvantaging above been made~~, Ms Walters:

- (a) would not have been subjected to the matters described in paragraph 96 98 above, either at all or, alternatively to the extent that occurred;
- (b) would have been able to access and would have attended education activities at Banksia Hill;
- (c) would have been able to access and would have accessed the goods, services and facilities described in paragraph 55 above.

#### **Particulars**

- ~~(a) Ms Walters engaged in the behaviour described in paragraph [97] throughout her time in detention at Banksia Hill.~~

- ~~(b) — Because of Ms Walters' disability, the threat of use of force, use of force, restraint, and confinement of Ms Walters and the restriction of Ms Walters' access to programs:~~
- ~~(i) were not effective, or appropriately adapted, to improve Ms Walters' ability to regulate her emotions and to refrain from the behaviour described in paragraph [97]; and~~
- ~~(ii) exacerbated Ms Walters' inability to regulate her emotions and refrain from the behaviour described in paragraph [97].~~
- ~~(c) — Ms Walters' ability to regulate her emotions and refrain from the behaviour described in paragraph [97] declined over the time that she was detained in Banksia Hill.~~
- ~~(d) — Ms Walters was disadvantaged:~~
- ~~(i) in her access to education and rehabilitation programs from the State of WA;~~
- ~~(ii) by being subjected to detriment in connection with her education and rehabilitation from the State of WA;~~
- ~~(iii) in her access to goods, services and facilities provided to detainees at Banksia Hill;~~
- ~~as pleaded and particularised in paragraphs [105] and [106] below.~~

### **Direct discrimination**

102A. By reason of the matters pleaded at paragraphs 95 to 102 above, the State, through the conduct of the CEO, the Superintendent and Officers, discriminated against Ms Walters within the meaning of section 5 of the DDA on the ground of Ms Walters' ASD in that the State:

- ~~(a) — did not make the Walters Reasonable Adjustments; and~~
- ~~(a) the failure to make the Walters Reasonable Adjustments had the effect that Ms Walters was, because of her ASD, by failing to make the Walters Reasonable Adjustments, the State treated Ms Walters less favourably than a 13 to 15 year old child without ASD detained at Banksia Hill would have been treated in circumstances that were not materially different.~~

### **Particulars**

- ~~(a) Ms Walters refers to and repeats paragraphs 98, and 102-100 above.~~

- (b) A 13 to 15 year old child detainee at Banksia Hill without ASD would in the usual course not engage in the behaviour described in paragraphs 96A and 97 above and, accordingly, would not have been subjected to conduct from Officers of the kind described in paragraph 98 above or, alternatively, would have been subjected to such conduct much less frequently and to a less severe degree.
- ~~(i) would not and did not engage in the behaviour described in paragraphs 96A and 97 above, alternatively would and did so much less frequently and to a much less severe degree;~~
- ~~(ii) would not and did not require adjustments such as the Walters Reasonable Adjustments, alternatively would and did so much less frequently and to a much less severe degree;~~
- ~~(iii) would not have been and was not subjected to conduct from Officers of the kind described in paragraph 98 above, alternatively would have been and was subjected to such conduct much less frequently and to a much less severe degree.~~
- (c) The less favourable treatment includes:
- (i) directions from Officers to submit to strip searches, to submit to being placed in handcuffs, to return to the Cue Unit from less restrictive areas of Banksia Hill, to submit to being placed in a cell that was dirty and to surrender clothes that she had been wearing for laundering;
- ~~(iA) confinement in her cell or other place within Banksia Hill;~~
- ~~(ii) threat of force and use of force by Officers;~~
- ~~(iii) the matters in paragraphs 105, 106, 108 and 109 below;~~
- (d) further particulars may be provided after discovery.

### Indirect discrimination

103. Further, or in the alternative to paragraph 102A above, by reason of the matters pleaded at paragraphs 55A to 55C and 95 to 102 above, the State, through the conduct of the CEO, the Superintendent and officers, discriminated against Ms Walters within the meaning of section 6(2) of the DDA on the ground of Ms Walters' ASD in that:

- (a) the State required Ms Walters, to comply with the Behavioural Regime;

- (b) because of Ms Walters' ASD, Ms Walters was only able to comply with the Behavioural Regime if the Walters Reasonable Adjustments were made;
- (b) the State did not make the Walters Reasonable Adjustments;
- (c) the failure to make the Walters Reasonable Adjustments had the effect of disadvantaging Ms Walters

**Particulars**

*(a) Ms Walters refers to and repeats the matters in paragraphs 55B, 55C and 98 above.*

104. ~~By reason of the matters in paragraphs [13], [14], and [96] to [103], the State of WA discriminated against Ms Walters on the ground of her disability within the meaning of s 6(2) of the DDA.~~

**Discrimination in education**

105. ~~When Ms Walters was confined in the Cue Unit as a consequence of her behaviour as referred to in paragraphs [97] and [98] paragraph 98(a) and (b) above:~~

- (a) she was often not permitted to attend school and given no access to education or rehabilitation programs;
- (b) at other times, while confined, Ms Walters was given individual instruction by a teacher attending the Cue Unit.

***Particulars***

*(a) Particulars of the occasions when Ms Walters was confined in the Cue Unit as a consequence of her behaviour and not permitted to attend school will be provided following discovery.*

*(b) Ms Walters received some instruction by a teacher in the Cue Unit instead of attending school on 31 October 2018.*

*(c) Further particulars of other occasions on which Ms Walters was given individual instruction in the Cue Unit instead of attending school will be provided following discovery.*

106. By reason of the matters in paragraphs 54, 54A, 104, 102A and 105 103 above or, alternatively, the matters in paragraphs 54, 54A, 103 and 105 above, the State of WA, by its servants and agents, the Superintendent and Officers, unlawfully discriminated against Ms Walters on the ground of her ASD:

- (a) in contravention of s 22(2)(a) of the DDA, by denying or limiting Ms Walters' access to, or effective enjoyment of, the benefit of:
- (i) education on those occasions when Ms Walters was not permitted to attend school while she was confined in the Cue ~~Unit~~ unit for misbehaviour and when she was removed from educational activities;
  - (ii) education in a classroom on those occasions when she was confined in the Cue ~~Unit~~ unit for misbehaviour and given individual instruction by a teacher;
  - (iii) the educational and therapeutic value to Ms Walters of her utilising books, paper, writing and/or drawing implements on those occasions particularised in the Statement of Particulars, Part 7, paragraph 6.
- (b) in contravention of s 22(2)(c) of the DDA, by subjecting Ms Walters to the following other detriments:
- (i) disruptions and lack of routine in her education and rehabilitation;
  - (ii) a curriculum, when being taught, that was below her level of competence;
  - (iii) being given ~~education~~ educational materials, including reading material, that was below her level of competence;
  - (iv) having 2 custodial Officers present while being given individual instruction by a teacher in the Cue unit.

#### **Particulars**

- (a) Particulars of the occasions when Ms Walters was confined in the Cue Unit as a consequence of her behaviour and not permitted to attend school will be provided following discovery.
- (b) Ms Walters was removed from educational activities as particularised in paragraphs 17, 40 and 48 of the Statement of Particulars. Part 1.
- (c) Further particulars of other occasions on which Ms Walters was removed from educational activities may be provided following discovery.
- (d) Ms Walters received some instruction by a teacher in the Cue Unit instead of attending school on 31 October 2018.
- (e) Further particulars of other occasions on which Ms Walters was given individual instruction in the Cue Unit instead of attending school may be provided following discovery.

- (f) Further particulars of the occasions when Ms Walters was provided with individual education in the Cue Unit with 2 custodial Officers present will be provided following discovery.

**Harassment by staff of an educational institution**

106A. While Ms Walters was at Banksia Hill, her name was written on a board in the office of Banksia Hill next to the word, "Autistic" by an unknown Officer or Officers. The board was in full view of Officers, teachers and students at Banksia Hill and the words "Alexandra Walters" and "Autistic" remained on the board despite Ms Walters' complaints that they were offensive, insulting and humiliating and her requests that they be removed.

**Particulars**

Particulars will be provided following discovery.

106B. By reason of the matters in paragraphs 54A and 106A above the State (by the Officers) unlawfully harassed Ms Walters in relation to her ASD in contravention of s 37 of the DDA.

**Disability Standards for Education**

106C. By reason of her ASD Ms Walters would have been assisted in her participation in education at Banksia Hill on the same basis as a student without a disability if the following reasonable adjustments within the meaning of ss 3.3 and 3.4 of the DSE had been made for her by the State:

- (a) assessing Ms Walters' literacy and numeracy competency on admission to Banksia Hill;
- ~~(b) developing a curriculum, learning plan and other educational material tailored to Ms Walters' competency level and designed to encourage Ms Walters' participation, accommodate her style of learning and encourage Ms Walters' educational progress and achievement;~~
- (c) adopting techniques and approaches to communicating with Ms Walters to reduce confrontation and escalation, including:
  - (i) allowing greater time and flexibility in enforcing compliance with directions;
  - (ii) using non-confrontational language and behaviour in response to apprehended incidents of non-compliance so far as reasonably possible; and

- (iii) not engaging in punitive responses to incidents in which Ms Walters had become dysregulated.
- ~~(d) adopting disciplinary practices within educational settings which accommodated the behavioural manifestations of her disability, rather than adopting punitive responses thereto;~~
- ~~(e) adjusting the mode of education provided to Ms Walters to accommodate her disability;~~
- ~~(f) taking steps to allow Ms Walters to continue having lessons with the educational instructors with whom she had developed a good rapport; and~~
- (g) taking steps to arrange for and/or facilitate arranging for and/or facilitating the provision of specialised support services to Ms Walters to accommodate her disability, namely psychologists, counsellors and/or support workers trained in assisting persons with ASD to self-regulate their emotions and behaviour.

106D. In contravention of s 5.2 of the DSE:

- (a) the State did not consult with Ms Walters about whether her disability affected her ability to participate in education; and
- (b) the State either:
  - (i) made no decision with respect to making reasonable adjustments for Ms Walters; or, alternatively,
  - (ii) decided not to make the adjustments in paragraph 404G 106C above or any other reasonable adjustments; and
- (c) by reason of the matters in sub-paragraphs 106D(a) and (b) above, failed to take reasonable steps to ensure that Ms Walters was able to participate in education at Banksia Hill on the same basis as a student without a disability, and without experiencing discrimination.

106E. By reason of Ms Walters being provided with a curriculum and educational materials which were unsuitable by reference to her academic capacity and/or existing level of academic attainment as set out in paragraph 106(b) above, Ms Walters was not allowed to participate in education on the same basis as a student without a disability, in contravention of s 6.2 of the DSE.

- 106F. Ms Walters required the following specialised support services to accommodate her disability and enable her to participate in educational activities provided at Banksia Hill:
- (a) mental health treatment, counselling and support;
  - (b) behavioural therapy to assist her to learn to, and to, better regulate her emotions and behaviour;
  - (c) an appropriately qualified support worker to assist Ms Walters in her interactions with Officers and detainees.
- 106G. To the extent that the specialised support services referred to in paragraph 106F above were of a kind provided by the State at Banksia Hill, the State failed to take reasonable steps to ensure that Ms Walters had access to the service in contravention of s 7.2(2) of the DSE.
- 106H. To the extent that the specialised support services referred to in paragraph 106F above were of a kind not provided by the State at Banksia Hill, the State failed to take reasonable steps to facilitate the provision by another person or agency of the support services referred to in paragraph 106F above to Ms Walters in contravention of s 7.2(3) of the DSE.
- 106I. In contravention of s 7.2(6) of the DSE, Ms Walters was not consulted about her need for specialist support services of the kind referred to in paragraph 106F above.
- 106J. By reason of the matters in paragraphs 106A and 106B above the State, in contravention of s 8.3 of the DSE, failed to implement strategies to prevent Ms Walters from being harassed, failed to take appropriate action after the harassment of Ms Walters occurred and failed to ensure Ms Walters had access to complaint mechanisms available to her.
- 106K. By reason of the matters in paragraphs 54 and 106C to 106J above the State contravened s 32 of the DDA

#### **Goods, services and facilities**

107. While Ms Walters was detained at Banksia Hill, the State of WA provided and/or made available to detainees the goods, services and facilities referred to in paragraph 55 above.
108. By reason of the matters in paragraphs [55], [104] 102A and [107] above, or, alternatively, the matters in paragraphs 55, 103 and 107 above, on the occasions particularised in the Statement of Particulars Part 6 when. From time to time Ms Walters

was punished for alleged misbehaviour by loss of program placement, loss of recreation time, loss of access to the fitness room, loss of canteen privileges, loss of television privileges, and/or confiscation of or denial of access to books, paper, writing and/or drawing implements, the State of WA by its servants or agents, the Superintendent and Officers, refused to provide Ms Walters with goods, services or facilities on the ground of her ASD in contravention of s 24(a) of the DDA.

**Particulars**

- (a) ~~The punishment of Ms Walters for misbehaviour by loss of program placement, loss of recreation time and loss of privileges had the effect of denying Ms Walters access to recreational and/or therapeutic activities, facilities and goods, including art classes and art materials.~~
- (b) Ms Walters was punished for alleged misbehaviour by loss of program placement and/or loss of privileges as particularised in the Statement of Particulars, Part 7.
- (c) Further particulars of loss of program placement and/or loss of privileges will be provided following discovery.

108A By reason of paragraphs 102A, and 107 above, alternatively paragraphs 103 and 107 above, the conduct pleaded in paragraph 108 above was in contravention of section 24(b) of the DDA in that the State by its servants or agents, the Superintendent and Officers, refused to provide Ms Walters with goods, services or facilities on the ground of her ASD.

108B When accommodated in the Cue Unit as referred to in paragraph 98(a) and (b) above:

- (a) Ms Walters was required to submit to handcuffs in order to attend visits from members of her family, including her parents;
- (b) Ms Walters was required to submit to handcuffs in order to attend medical services at Banksia Hill;
- (c) Ms Walters was required to submit to handcuffs in order to access telephone facilities for communicating with her family;
- (d) Ms Walters was required to submit to handcuffs in order to make use of:
- (i) recreation areas outside the Cue Unit;
  - (ii) goods and facilities for recreation and/or therapy outside the Cue Unit, including:
  - (iii) fitness and gymnasium facilities;

- (iv) sport equipment and facilities; and
- (v) art and craft materials and classes.
- (vi) the canteen.

**Particulars**

- (a) *The occasions on which Ms Walters was housed in the Cue Unit and required to be in handcuffs for all movements to and from the Cue Unit include the circumstances particularised in the Statement of Particulars, Part 4, paragraph 1.*
- (b) *Further particulars of the periods when Ms Walters was housed in the Cue Unit and was required to be in handcuffs for all movements to and from the Cue Unit will be provided following discovery.*

109. ~~By reason of the matters in paragraphs [0], [104] 102A and [107] above, or, alternatively, the matters in paragraphs 55, 103 and 107 above, when Ms Walters was required to be handcuffed for movement to and from the Cue Unit, the State by its servants and agents, the Superintendent and Officers, in contravention of s 24(b) of the DDA unlawfully discriminated against Ms Walters on the ground of her ASD in the terms or conditions on which the State provided Ms Walters with goods or services or made facilities available to Ms Walters as follows:~~

- ~~(a) Ms Walters was required to submit to handcuffs in order to attend visits from members of her family, including her parents;~~
- ~~(b) Ms Walters was required to submit to handcuffs in order to attend medical services at Banksia Hill;~~
- ~~(c) Ms Walters was required to submit to handcuffs in order to access telephone facilities for communicating with her family;~~
- ~~(d) Ms Walters was required to submit to handcuffs in order to make use of:
 
  - ~~(i) recreation areas outside the Cue Unit;~~
  - ~~(ii) goods and facilities for recreation and/or therapy outside the Cue Unit, including;~~
  - ~~(iii) fitness and gymnasium facilities;~~
  - ~~(iv) sport equipment and facilities; and~~
  - ~~(v) art and craft materials and classes.~~
  - ~~(vi) the canteen.~~~~

**Particulars**

- (a) ~~The occasions on which Ms Walters was housed in the Cue Unit and required to be in handcuffs for all movements to and from the Cue Unit include the circumstances particularised in the Statement of Particulars, Part 4, paragraph 1.~~
- (b) ~~Further particulars of the periods when Ms Walters was housed in the Cue Unit and was required to be in handcuffs for all movements to and from the Cue Unit will be provided following discovery.~~

109 By reason of paragraphs 102A and 107 above, alternatively 103 and 107 above, the provision to Ms Walters of the goods, services or facilities on the terms and conditions and/or in the manner set out in paragraph 108B above on the ground of her ASD was conduct by the State by its servants or agents, the Superintendent and Officers, in contravention of section 24(b) of the DDA.

**Harassment by provider of goods, services and facilities**

109A. While Ms Walters was at Banksia Hill, Officers repeatedly and unreasonably either refused to provide her with or deprived her of the following goods, services and facilities, or, alternatively, provided those goods, services and facilities to Ms Walters, in a manner which was calculated to cause discomfort and/or distress to Ms Walters.

- (a) toilet paper;
- (b) tampons or other menstrual/period products for menstruating persons;
- (c) clothing and underwear;
- (d) air-conditioning; and
- (e) protection from the risk of self-harm.

**Particulars**

- (a) Ms Walters was repeatedly provided with clothing and underwear which was too small for her to wear, despite larger size clothing being available and despite Ms Walters repeatedly complaining that this caused her extreme discomfort due to sensory issues which were a manifestation of her disability.
- (b) While placed in the Cue Unit, as part of her of being protected against the risk of self-harm, Ms Walters requested that the air-conditioning in her cell be turned up and Officers instead turned off the air-conditioning and turned on the heating and thereafter refused to turn

off the heating despite Ms Walters repeated complaints that she was too hot and could not sleep. Ms Walters was ultimately forced to lie on the floor of her cell in an attempt to reduce her body temperature.

- (c) When Ms Walters was involved in incidents of self-harm whilst she was placed in the Yeeda Unit, she was on numerous occasions escorted to the Cue Unit. In so doing, one male Officer repeatedly chose a route to escort Ms Walters to the Cue Unit which made Ms Walters highly visible to other detainees in the Yeeda Unit, thereby embarrassing and humiliating her, despite there being several other equally suitable routes which would not have made Ms Walters so visible and despite Ms Walters repeatedly requesting that an alternate route be used.
- (d) When placed in the Cue Unit, as part of her of being protected against the risk of self-harm:
- (i) Ms Walters was not allowed to keep either toilet paper or tampons or other menstrual/period products for menstruating persons in her cell.
  - (ii) Ms Walters would request that she be provided with toilet paper or tampons as and when she required those items; and
  - (iii) Officers regularly either:
    1. denied Ms Walters access entirely to those goods;
    2. only provided her with those goods after an unreasonable amount of time had elapsed; or
    3. in the case of toilet paper, provided her with a meagre or insufficient amount thereof.
- (e) It is to be inferred from the unreasonableness of the conduct referred to in paragraphs (a) to (d) above, that Officers deliberately caused discomfort to Ms Walters because they disliked her as a consequence of the behavioural manifestations of her disability set out in paragraph 97 above.
- (f) Further particulars will be provided following discovery.

109B. While Ms Walters was at Banksia Hill, she was repeatedly mocked, humiliated, disparaged and ignored by Officers whilst attempting to request the provision of goods and/or access to services among those set out at paragraph 55 above, being:

- (a) fabric swatches;
- (b) toilet paper;
- (c) tampons;
- (d) telephone services;
- (e) services and facilities for recreation; and
- (f) medical services.

#### Particulars

- (a) Ms Walters was repeatedly mocked by Officers through the intercom in her cell after requesting access to toilet paper, tampons, telephone services, services and facilities for recreation and medical services, with Officers ignoring her, falsely mimicking a message stating that no-one was there to take a call and mimicking dog noises to mock Ms Walters because at times, in a manifestation of her disabilities, Ms Walters had acted like a dog.
- (b) Ms Walters was repeatedly mocked by a male Officer who spoke to her in a high pitch with exaggerated intonation in the manner commonly known as "baby talk", for no apparent reason, as though Ms Walters was incapable of understanding ordinary speech whilst denying her requests to be provided with goods or to access services including fabric swatches, and services and facilities for recreation.
- (c) Ms Walters was repeatedly mocked by a female Officer who made fun of the way Ms Walters spoke and in particular her vocal disfluencies, being how often Ms Walters would use filler words such as "um", "ah" and "like", in response to Ms Walters requests for and use of goods and services, including repeatedly playing a recording of a telephone call between Ms Walters and her father to other Officers whilst mocking Ms Walters in Ms Walters' presence and continuing to do so despite Ms Walters repeated requests that she stop.

109C. By reason of the matters in paragraphs 55, 109A and 109B above, Officers harassed Ms Walters in relation to her disability in circumstances where Ms Walters sought to

acquire goods or services or make use of facilities provided in Banksia Hill, in contravention of s 39 of the DDA.

#### **K.4 Remedies**

110. In respect of the matters in section K1 ~~and K2~~, Ms Walters seeks the declarations referred to in Part B of the Amended Originating Application.
111. In respect of the matters in section K3, Ms Walters seeks the declarations in Part A of the Amended Originating Application.
112. By reason of the matters in paragraphs 56 to 68 above, Ms Walters suffered deprivation of liberty, anxiety, distress, discomfort, humiliation, helplessness, indignity, frustration and outrage.
113. By reason of the matters in paragraphs 69 to 86 above, Ms Walters suffered, pain, discomfort, anxiety, distress, humiliation, helplessness, indignity, frustration and outrage.
114. Further, Ms Walters claims aggravated damages for false imprisonment, assault and battery.

#### **Particulars**

- (a) *At the time of the matters described in paragraphs 56 to 86 Ms Walters was a child between the ages of 13 years and 15 years.*
- (b) *Ms Walters' pain, discomfort, anxiety, distress, humiliation, helplessness, indignity, frustration and outrage caused by the matters in paragraphs 56 to 86 above were exacerbated by:*
- (i) *Ms Walters' ASD;*
- (ii) *her status as a child in detention with no parent or other relative or friend to comfort her.*
- (c) *The conduct of the Superintendent and Officers described in paragraphs 56 to 86 disregarded the limits on the power of the Superintendent and Officers.*
- (d) *Ms Walters' pain, discomfort, anxiety, distress, humiliation, helplessness, indignity, frustration and outrage caused by her confinement in an observation cell in the Cue Unit were exacerbated by the conditions in the observation cells including:*
- (i) *They were smaller than the cells in the general accommodation area of the Yeeda Unit;*

- (ii) *They had a metal toilet bowl and a small sink with one wall being half concrete and half Perspex;*
- (iii) *They had closed circuit television cameras placed in the cell, enabling constant surveillance of the detainee in the cell;*
- (iv) *It was not possible to use the toilet in privacy;*
- (v) *When Ms Walters was first placed in an observation cell after being placed elsewhere, each observation cell had dirt and stains on the walls and floors and each mattress was stained and dirty;*
- (vi) *Ms Walters was required to communicate with Officers by intercom when she needed help, and her intercom calls were frequently ignored.*

(e) *Further particulars may be provided following discovery.*

115. Further, in relation to the matters in paragraphs 56 to 86 above, Ms Walters was treated with contumelious disregard of her personal circumstances, including her ASD, and Ms Walters claims exemplary damages.

**Particulars**

- (a) *The conduct of the Officers described in paragraphs 56 to 86 showed a cruel and reckless disregard of the comfort and dignity of Ms Walters;*
- (b) *The conduct of the Officers described in paragraphs 56 to 86 disregarded the limits on the power of the Superintendent and Officers;*
- (c) *Ms Walters refers to and repeats particulars (a) to (d) to paragraph 114 above;*
- (d) *Further particulars may be provided following discovery.*

116. By reason of the matters in paragraph 93, Ms Walters claims damages for personal injury.

117. ~~By reason of the matters in paragraph 95, Ms Walters claims damages for economic loss.~~

118. By reason of the matters in paragraphs 106, 106B, 106K, 108A, 109 and 109C above, Ms Walters suffered loss and damage.

**Particulars**

- (a) *Hurt, humiliation and injury to feelings;*
- (b) *Educational disadvantage;*
- (c) *Exacerbation of her symptoms of ASD;*

(d) *Further particulars may be provided following discovery and/or information obtained from health service providers.*

119. By reason of the matters in paragraph 118 above, Ms Walters claims damages by way of compensation pursuant to s 46PO(4)(d) of the *Australian Human Rights Commission Act 1975* (Cth) (**AHRC Act**).

120. Further, Ms Walters claims aggravated damages pursuant to s 46PO(4) of the AHRC Act.

#### **Particulars**

(a) *At the time of the matters described in paragraphs ~~96 to 109~~ 109 to 109C above Ms Walters was a child between the ages of 13 years and 15 years.*

(b) *Ms Walters' hurt, humiliation and injury to feeling caused by the matters in paragraphs ~~96 to 109~~ 109 to 109C above were exacerbated by:*

(i) *Ms Walters' ASD;*

(ii) *her status as a child in detention with no parent or other relative or friend to comfort her;*

(iii) *the arbitrariness of loss of program placements and/or loss of privileges;*

(iv) *the boredom and frustration of being confined in a cell while being subjected to loss of program placement and/or loss of privileges;*

(v) *the manner in which she was treated by Officers as described in paragraphs 106A and 109B above.*

(c) *Further particulars may be provided following discovery.*

## **L. CLAIMS OF MR VIDA**

### **L.1 False Imprisonment, assault and battery**

#### ***False imprisonment***

121. During the time that Mr Vida was detained at Banksia Hill, he was usually accommodated in the intensive support unit, which was called "Harding Unit" from 2014 to 2017 and then called "Intensive Support Unit" or "ISU" from 2017 onwards.

#### **Particulars**

(a) *Mr Vida was accommodated in the Harding Unit for the following periods:*

(i) *8 March 2014;*

- (ii) 9 to 12 March 2016;
  - (iii) 29 September 2016;
- (b) Mr Vida was accommodated in the ISU for the following periods:
- (i) 21 to 22 March 2018;
  - (ii) 28 March 2018 to 5 April 2018;
  - (iii) 18 to 19 April 2018;
  - (iv) 16 to 17 April 2019;
  - (v) 29 to 30 April 2019.
- (c) Mr Vida was accommodated elsewhere at Banksia Hill for the following periods:
- (i) In the Karakin Unit from 28 to 30 November 2016.
  - (ii) In the Jasper Unit from 31 July 2017 to 2 August 2017.
122. For almost all the time that Mr Vida was accommodated in the Harding Unit or the ISU, Mr Vida was confined in his cell except for brief periods of time out of the cell for recreation, showering and for telephone calls.
123. Mr Vida was not told the reason for his confinement in his cell in the Harding Unit or the ISU.
124. Mr Vida does not know the reason for his confinement in his cell in the Harding Unit or the ISU.
125. The confinement of Mr Vida in his cell in the Harding Unit or the ISU was not detention offence confinement.
126. The confinement of Mr Vida in his cell in the Harding Unit or the ISU deprived Mr Vida of his residual liberty.
127. The confinement of Mr Vida in his cell in the Harding Unit or the ISU was not justified.

#### **Particulars**

- (a) *If the confinement of Mr Vida in the circumstances referred to in paragraph 122 above purported to be security confinement, the confinement was unlawful for one or more of the following reasons:*
- (i) *It was not directed by the Superintendent;*
  - (ii) *The Superintendent failed to make and maintain a record of the order to confine Mr Vida;*

- (iii) *It was not reasonably necessary to maintain good government, good order or security at Banksia Hill;*
  - (iv) *The Superintendent failed to inform Mr Vida of the reason for the confinement;*
  - (v) *Mr Vida was not given fresh air, exercise and staff company for a period of at least 1 hour every 6 hours during unlock hours.*
- (b) *If the confinement of Mr Vida in the circumstances referred to in paragraph 122 above did not purport to be security confinement, it was unlawful because it deprived Mr Vida of his residual liberty without lawful authority under the YO Act and without lawful justification.*

128. By reason of the matters in paragraphs 121 to 127, the State of WA falsely imprisoned Mr Vida.

#### **Strip search**

129. Mr Vida was subjected to a strip search on a number of occasions during his time in detention at Banksia Hill.

#### **Particulars**

- (a) *Mr Vida was strip searched:*
  - (b) *at or shortly after the time of his admission on each occasion he was admitted to Banksia Hill;*
  - (c) *before and after each transport to or from Banksia Hill for Court appearances or medical assessment or treatment;*
  - (d) *further particulars of strip searches of Mr Vida will be provided following discovery.*
130. On each occasion referred to in paragraph 129 above:
- (a) Mr Vida apprehended on reasonable grounds that if he did not submit to a strip search, Officers would immediately use force on him and make unwanted physical contact with his body;
  - (b) Mr Vida did not freely consent to being strip searched and submitted to strip search out of fear that physical force would be used on him;
  - (c) the Superintendent did not have a reasonable suspicion that Mr Vida might have possession of an item that could jeopardise the safety, good order or security of Banksia Hill or be used for self-harm.

131. By reason of the matters in paragraphs 47(b), 129 and 130 Officers assaulted Mr Vida when they required him to submit to a strip search.

#### **Other assault and battery**

132. At about 2 pm on 3 April 2018:

- (a) Mr Vida was escorted by Officers from his cell in the ISU to the recreation area of the ISU, known colloquially by Mr Vida as “the cage”. Mr Vida was permitted to use the telephone in the cage to make a telephone call. Mr Vida estimates that he had been out of his cell for about 10 to 15 minutes when he was told by Officers to return to his cell;
- (b) Mr Vida pleaded with Officers to be allowed some more recreation time out of his cell;
- (c) an Officer told Mr Vida that he had to return to his cell;
- (d) Mr Vida did not immediately comply with the direction to return to his cell.

133. Immediately following the matters described in paragraph 132 above, Officers and Recovery Officers physically restrained Mr Vida by:

- (a) putting physical pressure on Mr Vida’s hands, arms, neck, head and legs;
- (b) kicking Mr Vida’s feet from under him so that he fell to the ground;
- (c) holding Mr Vida’s face down on the ground and, while Mr Vida was on the ground;
  - (i) ~~pinning~~ two Officers pinned Mr Vida’s arms behind his back;
  - (ii) ~~folding~~ another Officer folded Mr Vida’s legs up and towards Mr Vida’s arms; and
  - (iii) ~~sitting~~ another Officer sat on Mr Vida’s folded legs to keep Mr Vida in a figure 4 position.

134. Mr Vida felt immense pain and struggled to breathe. He called out to the Officers with words to the effect of: “I can’t breathe”; and “Let me get up”.

135. The Officers then half-carried, and half-dragged Mr Vida to his cell, and ~~restrained~~ held him down on the floor of the cell while they each left the cell in turn.

136. On 17 April 2019 about 1 hour after Mr Vida had been locked in a cell in the ISU following his admission to Banksia Hill, several Officers entered Mr Vida’s cell, folded him up, held him to the floor in a figure 4, handcuffed him and dragged him to a transport van.

137. Mr Vida did not consent to physical contact being made with his body when force was used on him on the occasions referred to in paragraphs 132 to 136.
138. Mr Vida had a continuing apprehension that imminent physical contact would be made with his body by Officers on the occasions referred to in paragraphs 132 to 136 above.
139. The use of force on Mr Vida was unlawful on the occasions referred to in paragraphs 132 to 136.

**Particulars**

- (a) *Force was used when it was not in a period when Mr Vida was imminently presenting a risk of injury to himself or other detainees or staff.*
- (b) *Alternatively, force was used after any imminent risk of injury had passed and Mr Vida had been stabilised.*
- (c) *The force used was more than the degree of physical force which was necessary to control Vida's behaviour.*
140. The handcuffing of Mr Vida described in paragraph 136 above was unlawful because:
- (a) The CEO or the Superintendent did not lawfully authorise and direct the restraint of Mr Vida;
- (b) alternatively, if the CEO or the Superintendent did lawfully authorise and direct the restraint of Mr Vida, the CEO or the Superintendent did not form the opinion that the restraint of Mr Vida was necessary to prevent injury to ~~herself~~ himself or any other person;
- (c) alternatively, if the CEO or the Superintendent did lawfully form the opinion that the handcuffing of Mr Vida was necessary to prevent injury, the opinion of the CEO or the Superintendent was not reasonable or based on reasonable grounds.
141. Mr Vida did not consent to physical contact being made with his body when he was handcuffed.
142. By reason of the matters in subparagraphs 46(a) to 46(c), 46(e) and 137 to 141 above, Officers assaulted and battered Mr Vida on the occasions referred to in paragraphs 132 to 136 above.

**L.2 Breach of duty of care**

143. ~~By reason of the matters in paragraphs [48] to [53], the State of WA, the Minister, the CEO, the Superintendent, and Officers owed Mr Vida the duty of care referred to in paragraph [53].~~

144. Throughout the time that he was detained at Banksia Hill and continuing, Mr Vida had ~~and has~~ schizophrenia that was diagnosed in April 2018 and an intellectual disability.
145. Mr Vida's schizophrenia and/or intellectual disability is a disorder that affects Mr Vida's thought processes, emotions, behaviour and judgement such that Mr Vida:
- (a) sometimes behaves in an uninhibited manner, including removing his clothes;
  - (b) appears at times to be irritable, thought-disordered and aggressive;
  - (c) can be paranoid and suspicious; and
  - (d) has difficulty regulating his emotions and behaviour.
- ~~145. By reason of the matters in paragraph [145], Mr Vida had complex support needs while he was in detention at Banksia Hill.~~
146. That Mr Vida had or was likely to have schizophrenia and an intellectual disability, as well as the nature of schizophrenia and Mr Vida's intellectual disability set out in paragraph 145 above, were matters which the State of WA, the Minister, the CEO and the Superintendent ought to have known.

#### Particulars

- (a) Mr Vida had been diagnosed with schizophrenia in 2015.
  - (b) Officers were made aware by Mr Vida and by Mr Vida's ~~parents~~ family that Mr Vida had schizophrenia ASD.
  - (c) Mr Vida repeats the matters in paragraphs (c) of the particulars ~~sub-joined~~ to paragraph 49 above. In the circumstances referred to in that paragraph, the State, the Minister, the CEO and the Superintendent ought to have assessed detainees, including ~~Ms Walters~~ Mr Vida, to determine whether they had any disabilities and, if so, the nature and extent of those disabilities.
- 146A. Further, the State, the Minister, the CEO and the Superintendent ought to have foreseen that a person of normal fortitude might, in the circumstances of Mr Vida's case, suffer a recognised psychiatric injury if reasonable care were not taken.

#### Particulars

- (a) The circumstances of the case include:
  - (i) the matters set out in paragraphs ~~88 to 91~~ 144 to 146 above:

- (ii) the physical injuries suffered by Mr Vida as a result of the assaults and batteries referred to in paragraphs 132 to 139 above;
- ~~(iii) the physical injuries suffered by Mr Vida as a result of his engaging in self-harm;~~
- (iv) the confinement of Mr Vida in the circumstances described in paragraphs 121 to 128 above;
- (v) the strip searching of Mr Vida in the circumstances described in paragraphs 129 to 131 above;
- (vi) the use of force against Mr Vida in the circumstances described in paragraph 139 above;
- (vii) the handcuffing of Mr Vida in the circumstances described in paragraph 140 above;

147. In breach of the duty of care they each owed to Mr Vida, the Minister, the CEO, the Superintendent and Officers failed to take reasonable care to avoid acts or omissions which it was reasonably foreseeable would be likely to cause harm to Mr Vida of the kind set out in paragraphs 53 and 146A above.

#### **Particulars**

- ~~(a) Failing to provide proper or adequate assessment of Mr Vida's complex support needs arising from his schizophrenia and intellectual disability;~~
- ~~(b) Failing to provide proper or adequate mental health services;~~
- ~~(c) Failing to provide proper or adequate crisis care facilities;~~
- ~~(d) Failing to adequately modify the behaviour and discipline policies at Banksia Hill to reduce the occasions of stress, anxiety and upset for Mr Vida;~~
- ~~(e) Failing to ensure that Officers interacting with Mr Vida used appropriate de-escalation techniques before resorting to use of force;~~
- ~~(f) Subjecting Mr Vida to use of force and restraint when he reacted with heightened emotional and physical responses to instructions from Officers and stressful situations;~~
- ~~(g) Subjecting Mr Vida to extended periods of confinement without access to fresh air, recreation or therapeutic activity.~~

147. Further to paragraphs 53 and 144 to 146A above, there was a reasonably foreseeable and not insignificant risk that Mr Vida would suffer physical injury and/or a recognised psychiatric illness by being subjected to:

- (a) confinement to his cell during unlock hours;
- (b) prolonged periods of confinement, namely instances of confinement for over 10 hours and/or on successive days.

147A. In the circumstances:

(a) a reasonable person in the position of the State, the CEO and the Superintendent would have required Officers not to subject detainees (including Mr Vida) to:

- (i) confinement to their cell during unlock hours; and/or
- (ii) prolonged periods of confinement, namely instances of confinement over 10 hours and/or on successive days,

except as authorised by law, namely detention offence confinement or security confinement in accordance with regulation 24 of the YO Regulations;

(b) a reasonable person in the position of the State and Officers would not have subjected Mr Vida to:

- (i) confinement to his cell during unlock hours; and/or
- (ii) prolonged periods of confinement, namely instances of confinement over 10 hours and/or on successive days,

except as authorised by law, namely detention offence confinement or security confinement in accordance with regulation 24 of the YO Regulations.

147B. In the premises:

(a) the State, the CEO and the Superintendent acted in breach of their respective duties of care to Mr Vida by not doing that which is set out in paragraph 147A(a) above;

(b) the State and Officers acted in breach of their respective duties of care to Mr Vida by subjecting him to:

(i) confinement to his cell during unlock hours; and/or

(ii) prolonged periods of confinement, namely instances of confinement over 10 hours and/or on successive days,

as pleaded in paragraphs 121 to 128 above and the particulars thereto.

147C. Further to paragraphs 53 and 144 to 146A above, there was a reasonably foreseeable and not insignificant risk that Mr Vida would suffer physical injury and/or a recognised psychiatric illness by being subjected to unlawful strip searches.

147D. In the circumstances:

(a) a reasonable person in the position of the State, the CEO and the Superintendent would have required Officers not to subject detainees (including Mr Vida) to unlawful strip searches and ensured they did not do so;

(b) a reasonable person in the position of the State and the Officers would not have subjected Mr Vida to unlawful strip searches.

147E. In the premises:

(a) the State, the CEO and the Superintendent acted in breach of their respective duties of care to Mr Vida by failing to do that which is set out in paragraph 147D(a) above;

(b) the State and the Officers breached their respective duties of care to Mr Vida by subjecting him to unlawful strip searches as pleaded in paragraphs 129 to 131 above.

147F. Further to paragraphs 53 and 144 to 146A above, there was a reasonably foreseeable and not insignificant risk that Mr Vida would suffer physical injury and/or a recognised psychiatric illness as a consequence of being subjected to physical force that was unreasonable in all the circumstances, including having regard to the Detainee Characteristics, the Additional Detainee Characteristics and Mr Vida's Disabilities.

147G. In the circumstances, a reasonable person in the position of the State and the Officers would not have subjected Mr Vida to unreasonable use of physical force.

- 147H. In breach of their respective duties of care the State and the Officers subjected Mr Vida to unreasonable, including unlawful, physical force as pleaded in paragraphs 132 to 136 above.
- 147I. Further to paragraphs 53 and 144 to 146A above, there was a reasonably foreseeable and not insignificant risk that Mr Vida would suffer physical injury and/or a recognised psychiatric illness as a consequence of being subjected to handcuffing which was unreasonable in all the circumstances, including having regard to the Detainee Characteristics, the Additional Detainee Characteristics and Mr Vida's Disabilities.
- 147J. In the circumstances, a reasonable person in the position of the State and the Officers would not have subjected Mr Vida to unreasonable use of handcuffing.
- 147K. In breach of their duty of care, the State and the Officers subjected Mr Vida to the unreasonable use of handcuffing as pleaded in paragraphs 136 and 140 above.
- 147L. Further, by reason of the matters set out in paragraphs 147, 147C, 147F and/or 147I above, a reasonable person in the position of the State, the CEO and the Superintendent would have:
- (a) ensured that a comprehensive assessment of Mr Vida was undertaken on admission to custody to identify the Mr Vida's Disabilities and the matters pleaded in paragraph 145 above;
  - (b) ensured that all Officers were informed of the result of the said assessment, including such of Mr Vida's Disabilities as were disclosed by the said assessment;
  - (c) ensured that Officers were trained in relation to the needs of children in detention with mental health and/or cognitive disabilities, including each of Mr Vida's Disabilities.
- 147M. In the premises, the State, the CEO and the Superintendent acted in breach of their respective duties of care to Mr Vida by failing to do that which is set out at paragraph 147L above.
148. As a result of the breaches of duty of care described in paragraphs 146 to 147M above, Mr Vida has suffered injury and damage.

***Particulars***

- (a) ~~*Psychiatric Physical injury including exacerbation of psychotic symptoms pain and suffering from being subjected to use of force by Officers including being dragged along the ground, kicked and pinned to the ground, "folded" and being sat on causing immense pain feeling arms and legs being pulled from their sockets;*~~
  - (b) ~~*Physical injury including pain and suffering from being subjected to use of force by Officers Injury to his mental health, including exacerbation of psychotic symptoms;*~~
  - (c) ~~*Further particulars may be provided following discovery and/or information obtained from health service providers.*~~
149. Further, in breach of the duty of care owed to Mr Vida, the State of WA, the Minister, the CEO, the Superintendent and Officers failed to take reasonable care to avoid acts or omissions which it was reasonably foreseeable could cause economic loss to Mr Vida as a consequence of lack of access to reasonable education and a reasonable opportunity for rehabilitation.

***Particulars***

- ~~(a) *Depriving Mr Vida of reasonable access to education or vocational training by confining him for extended periods;*~~
  - ~~(b) *Failing to provide Mr Vida with sufficient support for his disabilities to enable him to learn adequately;*~~
  - ~~(c) *Failing to provide teaching, teaching resources and materials appropriate to Mr Vida's level of education attainment;*~~
  - ~~(d) *Failing to provide rehabilitation programs.*~~
150. As a result of the breaches of duty of care described in paragraph [149], Mr Vida suffered loss and damage.

***Particulars***

- ~~(a) *Mr Vida has suffered economic loss as a result of failing to progress in his level of educational attainment during the time he was detained at Banksia Hill, having the consequence that Mr Vida has diminished employment opportunities and prospects;*~~
- ~~(b) *Mr Vida has suffered economic loss as a result of the loss of a chance of a better outcome in his level of educational attainment or vocational training during the time he was detained at Banksia Hill, having the consequence that Mr Vida has diminished employment opportunities and prospects.*~~

### L.3 Disability Discrimination Act Claims

150A. Then conduct of the CEO, Superintendent and Officers pleaded herein were within the scope of their actual or apparent authority and thus was conduct engaged in also by the State respondent: Section 123 of the DDA.

150B. Mr Vida's schizophrenia and intellectual disability referred to in paragraph 7 above are disabilities within the meaning of the DDA.

150C. Mr Vida's schizophrenia and/or intellectual disability is a disorder that affects (and at all material times affected) Mr Vida's thought processes, emotions, behaviour and judgement such that Mr Vida:

- (a) sometimes behaves in an uninhibited manner, including removing his clothes;
- (b) appears at times to be irritable, thought-disordered and aggressive;
- (c) can be paranoid and suspicious; and
- (d) has difficulty regulating his emotions and behaviour.

151. While in Banksia Hill, Mr Vida engaged in the following kinds of behaviour that were a symptoms or manifestations of his symptom of or manifestation of his disability and thus caused or contributed by and being an aspect of his schizophrenia and intellectual disability:

- (a) behaving in a disinhibited manner, including removing his clothes;
- (b) being irritable and thought-disordered;
- (c) being verbally aggressive and demanding;
- (d) being emotionally labile;
- (e) failing to follow instructions or commands; and
- (f) damaging property.

#### **Particulars**

*(a) Further particulars will be provided following discovery*

152. Officers responded to the behaviour of Mr Vida described in paragraph 151 above by:

- (a) confining Mr Vida in the Harding Unit and the ISU as described in paragraphs 121 and 122 above.
- (b) restricting Mr Vida's recreation time out of his cell.

- (c) the use of force and handcuffing against Mr Vida described in paragraphs 132 to 136.
- (d) calling Mr Vida names, including: "spastic", "retard", "mental", and "not all right in the head".

**Particulars**

- (a) Further particulars will be provided following discovery.
  - (b) The times, places and the names of the Officers who engaged in the conduct referred to in paragraph 152(d) above are not known by Mr Vida. Further particulars of these matters may be provided following discovery.
153. While Mr Vida was at Banksia Hill, the Superintendent and Officers imposed the following requirements or conditions on Mr Vida:
- (a) he was required to obey all commands, directions and orders given or made by the Superintendent and Officers;
  - (b) he was required to refrain from being verbally aggressive.
154. ~~Because of Mr Vida's schizophrenia and intellectual disability he would only comply or be able to comply with the requirements or conditions referred to in paragraph [153]~~ Mr Vida would have been able to, or alternatively would have been better able to, manage the symptoms and manifestations of his disability described in paragraph 151 above if the CEO, the Superintendent and Officers had made the following reasonable adjustments for Mr Vida:
- ~~(a) Providing Mr Vida with appropriate mental health treatment, counselling and support;~~
  - (b) Providing Mr Vida with appropriate cognitive behavioural therapy to assist him to learn to better regulate his emotions and behaviour;
  - (c) ~~Training Officers about schizophrenia and in~~ Requiring Officers to use techniques and approaches to communication communicating with Mr Vida to reduce confrontation and escalation, namely:
    - (i) using non-confrontational language and behaviour in response to apprehended incidents of non-compliance so far as reasonably possible;
    - (ii) allowing Mr Vida greater time and flexibility in enforcing compliance with directions;

- (iii) not threatening to use force or confinement, or to withdraw privileges.
- ~~(d) Providing Mr Vida with an individual behaviour plan to reduce confrontation and escalation;~~
- (e) providing Mr Vida with an ~~appropriate~~ individual support worker trained and experienced in managing a young person with schizophrenia and intellectual disability to assist him in his interactions with Officers and detainees.
- (f) assisting Mr Vida to cope with the boredom and frustration of detention and/or isolation by providing him, or not depriving him, of access to:
  - (i) a television, radio, games, reading material or other forms of distraction and/or entertainment, including writing and/or drawing implements;
  - (ii) the ability to eat or socialise with other detainees;
  - (iii) in-person contact with visitors or any other person aside from custodial staff; and
  - (iv) telephone contact with family members;

(separately and collectively **Vida Reasonable Adjustments**).

155. The CEO, the Superintendent and Officers did not make the Vida Reasonable Adjustments ~~reasonable adjustments~~ referred to in paragraph 154 above.

155A. Mr Vida's Disabilities were one of the reasons the Officers (and thereby the State) did not make the Vida Reasonable Adjustments in that Officers refused to accept that:

- (a) Mr Vida's Disabilities genuinely impaired his ability to avoid or minimise incidents of non-compliance;
- (b) Mr Vida was not capable of preventing or minimising incidents of dysregulated or disturbed behaviour without adjustments like the Vida Reasonable Adjustments first being made.

155B. At a minimum, the matters set out in paragraph 155A above should be inferred by reason of the following:

- (a) as pleaded in paragraph 49(a) above, amongst others the Officers knew, or ought reasonably to have known that detainees were children who had, or were likely to have, the Detainee Characteristics and the Additional Detainee Characteristics;
- (b) the Office of the Inspector of Custodial Services identified in its 2017 Report "Behaviour Management Practices at Banksia Hill Detention Centre" (2017 OICS

- Report) that staff lack confidence in non-punitive approaches to behaviour problems of detainees;
- (c) the 2017 OICS Report recommended that a trauma informed model be pursued for young people in detention (such as Mr Vida);
- (d) Officers persisted in the use of punitive responses to behaviour problems of detainees following the 2017 OICS Report, including in the Relevant Period;
- (e) Officers did not make any of the Vida Reasonable Adjustments, even during minor incidents and where making the Vida Reasonable Adjustments would have imposed little to no additional burden on the operation of Banksia Hill;

**Particulars**

- a. Particulars of the circumstances in which the Officers refused to make the Vida Reasonable Adjustments and engaged in punitive responses to manifestations of Mr Vida's Disabilities will be given following discovery.
- b. Particulars of the circumstances in which the Officers refused to make the Vida Reasonable Adjustments and deprived Mr Vida of goods, services and facilities in response to manifestations of Mr Vida's Disabilities will be given following discovery.
- c. Further particulars may be provided following discovery.
156. ~~The failure to make the reasonable adjustments~~ Had the Vida Reasonable Adjustments referred to in paragraph 154 above been made, had the effect of disadvantaging Mr Vida:
- (a) would not have been subjected to the matters described in paragraph 152 above either at all or, alternatively, to the extent that occurred;
- (b) would have been able to access and would have attended education activities at Banksia Hill;
- (c) would have been able to access and would have accessed the goods, services and facilities described in paragraph 55 above,
- (d) would not have suffered the additional discrimination pleaded in paragraphs 164 to 168 below.

**Particulars**

- ~~(e) Mr Vida engaged in the behaviour described in paragraph [0] in his periods of detention in Banksia Hill in 2018 to 2020.~~

~~(f) — Because of Mr Vida's disability, the confinement of Mr Vida and the restriction of Mr Vida's access to programs:~~

~~(i) — were not effective to improve Mr Vida's ability to regulate his emotions and to refrain from the behaviour described in paragraph [0]; and~~

~~(ii) — exacerbated Mr Vida's inability to regulate his emotions and refrain from the behaviour described in paragraph [0].~~

~~(g) — Mr Vida was disadvantaged:~~

~~(i) — in his access to education from the State of WA;~~

~~(ii) — by being subjected to detriment in connection with his education from the State of WA;~~

~~(iii) — in his access to goods, services and facilities provided to detainees at Banksia Hill;~~

~~as pleaded and particularised in paragraphs [159] to [163] below.~~

157. — The requirements or conditions referred to in paragraph [~~Error! Reference source not found.~~] were not reasonable having regard to the circumstances of the case.

158. — By reason of the matters in paragraphs [13], [13] and [0] to [0], the State of WA discriminated against Mr Vida on the ground of his disability within the meaning of s 6(2) of the DDA.

#### **Direct discrimination DDA s 5(2)**

156A. By reason of the matters pleaded at paragraphs 150B to 155 above, the State, through the conduct of the CEO, the Superintendent and Officers, discriminated against Mr Vida within the meaning of section 5 of the DDA on the ground of Mr Vida's schizophrenia and intellectual disability in that the State:

~~(a) — did not make the Vida Reasonable Adjustments; and~~

~~the failure to make the Vida Reasonable Adjustments had the effect that by failing to make the Vida reasonable Adjustments, the State treated Mr Vida was, because of his schizophrenia and intellectual disability, treated less favourably than an 11 to 17 year old child without schizophrenia and intellectual disability detained at Banksia Hill would be treated in circumstances that were not materially different.~~

#### **Particulars**

(a) Mr Vida refers to and repeats paragraphs 152 and 156 above.

- (b) An 11 to 17 year old child detainee at Banksia Hill without schizophrenia and intellectual disability:
- (i) would not and did not engage in the behaviour described in paragraphs 150C and 151 above, alternatively would and did so much less frequently and to a much less severe degree;
  - (ii) would not have required adjustments such as the Vida Reasonable Adjustments, alternatively would and did so much less frequently and to a much less severe degree;
  - (iii) would not have been and were not subjected to conduct from Officers of the kind described in paragraph 152 above, alternatively would have been subjected to such conduct much less frequently and to a much less severe degree.
- (c) The less favourable treatment includes:
- (i) directions from Officers to submit to strip searches, to submit to being placed in handcuffs, to reside in the ISU;
  - (ii) threat of force and use of force by Officers;
  - (iii) the matters in paragraphs 159 and 162 below;
  - (iv) further particulars may be provided after discovery.

#### **Indirect discrimination DDA s 6(2)**

157. In the alternative to paragraph 156A above, by reason of the matters pleaded at paragraphs 55A to 55C and 150B to 156 above, the State, through the conduct of the CEO Superintendent and Officers, discriminated against Mr Vida within the meaning of section 6(2) of the DDA on the ground of Mr Vida's schizophrenia and intellectual disability in that:

- (i) the State required Mr Vida to comply with the Behavioural Regime;
- (ii) because of Mr Vida's schizophrenia and intellectual disability, Mr Vida was only able to comply with the Behavioural Regime if the Vida Reasonable Adjustments were made;
- (iii) the State did not make the Vida Reasonable Adjustments;
- (iv) the failure to make the Vida Reasonable Adjustments had, has, was likely to have or is likely to have the effect of disadvantaging Mr Vida.

#### **Particulars**

(a) Mr Vida refers to and repeats the matters in paragraphs 55B, 55C and 152 above.

158. [Not used].

#### **Discrimination in education**

159. When Mr Vida was confined in the ISU ~~as a consequence of his behaviour~~ as referred to in paragraph 152 above, Mr Vida was not permitted to attend school and given no access to education or rehabilitation programs except to the extent that he was given educational packs, which consisted of educational materials that were not tailored to his level of competence and attainment.

#### **Particulars**

*(a) Further particulars will be provided following discovery*

160. By reason of the matters in paragraphs 54, 54A, 156A and 159 above or, alternatively, paragraphs 54, 55 and 103 to 105 above, the State of WA, by its servants and agents, the Superintendents and Officers, unlawfully discriminated against Mr Vida on the ground of his schizophrenia and intellectual disability:

- (a) in contravention of s 22(2)(a) of the DDA by denying or limiting Mr Vida's access to the, or effective enjoyment of the benefit of education; and
- (b) in contravention of s 22(2)(c) of the DDA, by subjecting Mr Vida to being given education materials, that were not tailored to his level of competence.

~~160A. In the alternative to paragraph 160 above, by reason of the matters in paragraphs 54, 54A, 157 and 159 above, the State, by its servants and agents, Superintendents and Officers, unlawfully discriminated against Mr Vida on the ground of his schizophrenia and intellectual disability:~~

- ~~(a) in contravention of s 22(2)(a) of the DDA by denying or limiting Mr Vida's access to, or effective enjoyment of the benefit of education; and~~
- ~~(b) in contravention of s 22(2)(c) of the DDA, by subjecting Mr Vida to being given education materials, that were not tailored to his level of competence.~~

#### **Harassment by staff of an educational institution**

160B. By reason of the matters in paragraphs 54A and 152(d) above the State by its servants and agents, the Superintendent and Officers, harassed Mr Vida in relation to his schizophrenia and intellectual disability in contravention of s 37 of the DDA

#### **Disability Standards for Education**

160C. By reason of his schizophrenia and intellectual disability, Mr Vida would have been assisted in his participation in education at Banksia Hill on the same basis as a student without a disability if the following reasonable adjustments within the meaning of ss 3.3 and 3.4 of the DSE had been made for him by the State:

- (a) assessing Mr Vida's literacy and numeracy competency on admission to Banksia Hill BHDC;
- ~~(g) developing a curriculum, learning plan and other educational material tailored to Mr Vida's competency level and designed to encourage Mr Vida's participation, accommodate her style of learning and encourage Mr Vida's educational progress and achievement;~~
- (h) adopting techniques and approaches to communicating with Ms Walters Mr Vida to reduce confrontation and escalation, namely:
  - (i) allowing greater time and flexibility in enforcing compliance with directions;
  - (ii) using non-confrontational language and behaviour in response to apprehended incidents of non-compliance so far as reasonably possible; and
  - (iii) not engaging in punitive responses to incidents in which Mr Vida had become dysregulated.
- ~~(i) taking steps to adjust the materials or the mode of education provided to Mr Vida (in the extremely limited circumstances in which any education was even provided) to accommodate his disability; and~~
- (j) taking steps to arrange arranging for and/or facilitate the provision of specialised support services to Mr Vida to accommodate his disability namely psychologists, counsellors and/or support workers trained in assisting persons with schizophrenia and intellectual disability to self-regulate their emotions and behaviour.

160D. In contravention of s 5.2 of the DSE:

- (a) the State did not consult with Mr Vida about whether his disability affected his ability to participate in education; and
- (k) the State either:
  - (i) made no decision with respect to making reasonable adjustments for Mr Vida; or, alternatively,

- (ii) decided not to make the adjustments in paragraph 160C above or any other reasonable adjustments; and
  - (l) by reason of the matters in sub-paragraphs 160D(a) and (b) above, failed to take reasonable steps to ensure that Mr Vida was able to participate in education at Banksia Hill on the same basis as a student without a disability, and without experiencing discrimination.
- 160E. By reason of Mr Vida being provided with educational materials which were unsuitable by reference to his competence and level of attainment as set out in paragraph 159 above, Mr Vida was not allowed to participate in education on the same basis as a student without a disability, in contravention of s 6.2 of the DSE.
- 160F. Mr Vida required the following specialised support services to accommodate his disability and enable him to participate in educational activities provided at Banksia Hill:
  - (a) mental health treatment, counselling and support;
  - (b) behavioural therapy to assist him to learn to, and to, better regulate his emotions and behaviour;
  - (c) an appropriately qualified support worker to assist Mr Vida in his interactions with Officers and detainees.
- 160G. To the extent that the specialised support services referred to in paragraph 160F above were of a kind provided by the State at Banksia Hill, the State failed to take reasonable steps to ensure that Mr Vida had access to the service in contravention of s 7.2(2) of the DSE.
- 160H. To the extent that the specialised support services referred to in paragraph 160F above were of a kind not provided by the State at Banksia Hill, the State failed to take reasonable steps to facilitate the provision by another person or agency of the support services referred to in paragraph 158F above to Mr Vida in contravention of s 7.2(3) of the DSE.
- 160I. In contravention of s 7.2(6) of the DSE, Mr Vida was not consulted about his need for specialist support services of the kind referred to in paragraph 160F above.
- 160J. By reason of the matters in paragraphs 160B above the State of WA, in contravention of s 8.3 of the DSE, failed to implement strategies to prevent Mr Vida from being harassed, failed to take appropriate action after the harassment of Mr Vida occurred and failed to ensure Mr Vida had access to complaint mechanisms available to him.

160K. By reason of the matters in paragraphs 160C to 160J above the State of WA contravened s 32 of the DDA.

### **Goods, services and facilities**

161. While Mr Vida was detained at Banksia Hill, the State of WA provided and/or made available to detainees the goods, services and facilities referred to in paragraph 55 above.

### ***Indirect discrimination***

162. When Mr Vida was confined in the ISU ~~as a consequence of his behaviour as referred to in paragraphs [0] and as described in paragraph 152 above~~ Mr Vida was not permitted access goods, to services and facilities outside the ISU, including ~~sport and recreation facilities and equipment, and the canteen~~ some or all of the goods, services and facilities referred to in paragraph 55 above.

### **Particulars**

#### *Particulars will be provided following discovery*

163. By reason of the matters in paragraphs 156A, 161 and 162 above or, alternatively paragraphs 157, 161 and 162 above, the conduct pleaded in paragraph 162 above was in contravention of section 24(b) of the DDA in that the State by its servants or agents, Superintendents and Officers denied the provision of goods, services or facilities to Mr Vida on the ground of his schizophrenia and intellectual disability in contravention of s 24(a) of the DDA.

~~163A. In the alternative to paragraph 163 above by reason of the matters in paragraphs 157, 161 and 162 above, Superintendents and Officers denied the provision of goods, services or facilities to Mr Vida on the ground of his schizophrenia and intellectual disability in contravention of s 24(a) of the DDA.~~

### **Direct discrimination DDA s 5(1)**

164. Further, ~~or in the alternative to paragraphs [162] and [163],~~ Officers engaged in the behaviour described in paragraph 152(d) above while escorting Mr Vida between his cell in the ISU and the recreation yard of the ISU known by Mr Vida as "the cage".

165. Officers called Mr Vida "spastic", "retard", "mental", and "not all right in the head" in the circumstances referred to in paragraph 164 above because of his schizophrenia and intellectual disability.

166. The Officers, had they been escorting a detainee who did not have schizophrenia and an intellectual disability between an ISU cell and the ~~cage~~ ISU recreation yard, would

not have called that detainee names such as, “spastic”, “retard”, “mental”, and “not all right in the head”.

167. By reason of the matters in paragraphs 152(d) [~~152-151~~], and 164 to 166 above, Officers treated Mr Vida less favourably than they would have treated a person without Mr Vida's disability in circumstances that are not materially different.
168. By reason of the matters in paragraphs ~~13, 14~~ 161 and 164 to 167, the State unlawfully discriminated against Mr Vida within the meaning of s 5(1) of the DDA in the manner in which it provided Mr Vida with the service facility of a place and facility of space for recreation and/or exercise in the ISU in contravention of s 24(c) of the DDA.

#### **Harassment by provider of goods, services and facilities**

168A. Further, by reason of the matters in paragraphs 55(c), 164 and 165 above, Officers harassed Mr Vida in relation to his disability in circumstances where Mr Vida sought to acquire goods or services or make use of facilities provided in Banksia Hill, in contravention of s 39 of the DDA.

#### **L.4 Remedies**

169. In respect of the matters in section L.1 ~~and L.2~~, Mr Vida seeks the declarations referred to in Part B of the Amended Originating Application.
170. In respect of the matters in section L.3, Mr Vida seeks the declarations in Part A item 1 of the Amended Originating Application.
171. By reason of the matters in paragraphs 121 to 128 above, Mr Vida suffered deprivation of ~~residual~~ liberty, anxiety, distress, discomfort, humiliation, helplessness, indignity, frustration and outrage.
172. By reason of the matters in paragraphs 129 to 142 above, Mr Vida suffered, pain, discomfort, anxiety, distress, humiliation, helplessness, indignity, frustration and outrage.
173. Further, Mr Vida claims aggravated damages for false imprisonment, assault and battery.

#### **Particulars**

- (a) *At the time of the matters described in paragraphs 121 to 142 above Mr Vida was an Aboriginal child between the ages of 11 years and 17 years.*
- (b) *Mr Vida's pain, discomfort, anxiety, distress, humiliation, helplessness, indignity, frustration and outrage caused by the matters in paragraphs 121 to 142 above were exacerbated by:*

- (i) *Mr Vida's schizophrenia and intellectual disability;*
  - (ii) *his status as an Aboriginal child in detention with no parent or grandparent or other senior family member to comfort him.*
- (c) *The conduct of the Superintendent and Officers described in paragraphs 121 to 142 above disregarded the limits on the power of the Superintendent and Officers.*
- (d) *Mr Vida's pain, discomfort, anxiety, distress, humiliation, helplessness, indignity, frustration and outrage caused by his confinement in a cell in the ISU were exacerbated by the conditions in the observation cells.*
- (e) *Further particulars may be provided following discovery.*
174. Further, in relation to the matters in paragraphs 121 to 142 above, Mr Vida was treated with contumelious disregard of his personal circumstances and Mr Vida claims exemplary damages.

**Particulars**

- (a) *The conduct of the Officers described in paragraphs 121 to 142 above showed a cruel and reckless disregard of the comfort and dignity of Mr Vida;*
  - (b) *The conduct of the Officers described in paragraphs 121 to 142 above disregarded the limits on the power of the Superintendent and Officers;*
  - (c) *Mr Vida refers to and repeats particulars (a) to (d) to paragraph 173 above;*
  - (d) *Further particulars may be provided following discovery.*
175. By reason of the matters in paragraph 147 above, Mr Vida claims damages for personal injury.
176. ~~By reason of the matters in paragraph [150], Vida claims damages for economic loss.~~
177. By reason of the matters in paragraphs 160, 160A, 160B, 160K, 163, 163A, 168 and 168A above, Mr Vida suffered loss and damage.

**Particulars**

- (a) *Hurt, humiliation and injury to feelings;*
- (b) *Educational disadvantage;*
- (c) *Exacerbation of his symptoms of schizophrenia;*
- (d) *Further particulars may be provided following discovery and/or information obtained from health service providers.*

178. By reason of the matters in paragraph 177 above, Mr Vida claims damages pursuant to s 46PO(4) of the *Australian Human Rights Commission Act 1975* (Cth) (**AHRC Act**).

179. Further, Mr Vida claims aggravated damages pursuant to s 46PO(4) of the AHRC Act.

**Particulars**

(a) *At the time of the matters described in paragraphs ~~151 to 168~~ 150A to 168A above, Mr Vida was a child between the ages of 14 years and 17 years.*

(b) *Mr Vida's hurt, humiliation and injury to feeling caused by the matters in paragraphs ~~151 to 168~~ 150A to 168A above were exacerbated by:*

(i) *Mr Vida's schizophrenia and intellectual disability;*

(ii) *his status as an Aboriginal child in detention with no parent, grandparent or other senior family member to comfort him; and*

(iii) *the boredom and frustration of being confined in a cell while being denied access to activities, services and facilities;*

(iv) *the manner in which he was treated by Officers as described in paragraph 152(d) above.*

(c) *Further particulars may be provided following discovery.*

**M. CLAIMS OF GROUP MEMBERS**

180. Group Members within the Tort sub-group, while in detention in Detention Centres, suffered:

(a) false imprisonment; and/or

(b) assault and/or battery (including by unlawful strip searches, unlawful use of restraints and/or unlawful use of force);

by an act or omission of the Minister, the CEO, the Superintendent and/or Officers for which the State of WA is vicariously liable.

181. Group Members within the Tort sub-group, while in detention in Detention Centres, suffered breach of a duty of care by the State of WA, the Minister, the CEO, the Superintendent and/or Officers failing to take reasonable steps to prevent physical and/or psychiatric or psychological injury to ~~and to provide for the rehabilitation and education of~~ the Applicants and the Group Members by an act or omission of the State of WA, the Minister, the CEO, the Superintendent and/or Officers.

182. The State of WA is vicariously liable for the breaches of duty described in paragraph 181 by the Minister, the CEO, the Superintendent and/or Officers.
183. Group Members within the DDA sub-group have, while in detention, suffered unlawful disability discrimination under ss ~~5, 6, 22~~ to 24, 32, 37 and 39 of the DDA by an act or omission of the Minister, the CEO, the Superintendent and/or Officers which the State is taken to have engaged in, and for which the State of WA is vicariously liable.
184. The acts or omissions described in paragraphs 180, 181 and 183 above include acts and omissions of the kind the subject of the claims herein by the applicants.
185. Leave will be sought for the claims of Group Members set out in paragraphs 180 to 183 above which arise from:
- (a) the false imprisonment, assault, and/or battery of Group Members;
  - (b) the breaches of duty of care owed to Group Members; and
  - (c) the unlawful disability discrimination suffered by Group Members;
- to be pleaded and particularised after the determination of the common questions in a trial of the claims of the Applicants and other sample or representative group members in accordance with directions to be given by the Court.

Date:

11 July, 2025

Signed by Stewart Levitt  
Lawyer for the Applicant

The Statement of Claim was prepared by Paul Batley and Ben Slade of Counsel and settled by Ronald Merkel of Kings Counsel and Steven Penglis of Senior Counsel. Amendments have been prepared by Paul Batley, Blaise Prentice-Davidson and Ben Slade of Counsel and settled by Steven Penglis of Senior Counsel.

**Certificate of lawyer**

I, Stewart Alan Levitt, certify to the Court that, in relation to the Statement of Claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date:

11 July, 2025

\_\_\_\_\_  
Signed by Stewart Alan Levitt  
Lawyer for the Applicant

**SCHEDULE OF PARTIES**

**Alexandra Walters**

First Applicant

**Joel Vida**

Second Applicant

**State of Western Australia**

Respondent