

Form 19
Rule 9.32

**Amended Originating application starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976**

No. VID809 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

JONNINE JAYE DIVILLI

Applicant

HOUSING AUTHORITY

First Respondent

And

STATE OF WESTERN AUSTRALIA

Second Respondent

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Federal Court of Australia

Date: ~~19 August 2024~~ 5 November 2025

Signed by an officer acting with the authority of
the District Registrar

Filed on behalf of: Jonnine Jaye Divilli, Applicant
Prepared by: Rory John Walsh
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Details of claim

On the grounds stated in the accompanying Further Amended Statement of Claim, the Applicant claims for herself ~~themselves~~ and on behalf of the Group Members:

1. For breach of contract:
 - a. damages or statutory compensation under s 15(2)(c) of the *Residential Tenancies Act 1987 (WA)(RTA)*;
 - b. for any ongoing breach of a Tenancy Agreement at the time of judgment, an order under s 15(2)(a)(ii) of the RTA or for specific performance by the Authority or the State of Western Australia, whichever was lessor or taken to be the lessor each of such Tenancy Agreement;

2. For claims under the Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*) and/or as applied by s 19 of the *Fair Trading Act 2010 (WA)* (together or separately, the **ACL**):
 - a. a declaration pursuant to s 21 of the *Federal Court of Australia Act 1976 (Cth) (FCA Act)* that during the Relevant Period the Authority or the State of Western Australia, whichever was lessor or taken to be the lessor, contravened s 61 of the ACL;
 - b. damages pursuant to s 267(4) of the ACL;
 - c. an order for compensation pursuant to s 267(2) and (3) of the ACL;

3. For unconscionable conduct:
 - a. a declaration pursuant to s 21 of the FCA Act and/or s 237 of the ACL that during the Relevant Period the Authority or the State of Western Australia, whichever was lessor or taken to be the lessor, engaged in conduct that contravened s 21 of the ACL;
 - b. a declaration pursuant to s 21 of the FCA Act and/or s 237 of the ACL that any rental arrears agreement in contravention of s 21 of the ACL was invalid and of no legal effect;
 - c. an injunctive order pursuant to s 232(1) of the ACL that the Authority or the State of Western Australia, whichever was lessor or taken to be the lessor not engage in any of the conduct referred to in Section F of the Further Amended Statement of Claim;

- d. damages pursuant to s 236 of the ACL;
 - e. in the alternative to ed. – an order for compensation pursuant to s 237 of the ACL.
4. For excessive rent, order under s 32(4) and (5) of the RTA that from a specified day and until 6 months after the date of the order, the rent payable in respect of the premises under the residential tenancy agreement shall not exceed the amount that is just and meritorious for each Housing;
5. Under s 83(a) of the RTA or in restitution, for the action for money had and received – an order for payment to each affected Claimant of monies paid by that Claimant to which the Authority or the State of Western Australia, whichever was lessor or taken to be the lessor, had no lawful entitlement;

5A. For claims under the *Racial Discrimination Act 1975 (Cth) (RDA)*:

- a. Declarations of contraventions of s 9(1) and/or s 10(1) and/or s 12(1)(b) of the RDA during the Relevant Period or any part thereof pursuant to s 46PO(4)(a) of the *Australian Human Rights Commission Act 1986 (Cth) (AHRC Act)* by the Authority or, alternatively (including by operation of s 18A of the RDA) by the State of Western Australia; and
- b. an order requiring the Authority or Western Australia pursuant to s 46PO(4)(b) of the AHRC Act to install and maintain in the Housing of each Heat-Stressed Group Member:
 - i. in each bedroom and living room,
 - 1. a functioning air conditioning unit;
 - 2. curtains and curtain rails, or drapes, or blinds covering each external window; or
 - ii. adequate external wall and ceiling insulation to maintain reasonable comfort across the temperature range typical for the Heat-Stressed Zone.
- c. orders for compensation by way of damages, including aggravated damages, pursuant to s 46PO(4)(d) of the AHRC Act.

6. Interest ~~according to statute~~;
7. Costs, having regard to s 24 of the RTA;
8. Such further or other relief as the Court may deem appropriate.

Questions common to claims of Group Members

The questions of law or fact common to the claims of the Applicant and Group Members are:

1. whether the Group Members were tenants within the meaning of the RTA or had a right of occupancy in respect of Housing (as defined);
2. whether the Authority and/or, the State of Western Australia, was the lessor, or deemed to be the lessor, in respect of Claimants' Tenancy Agreements;
3. whether the conduct of the Authority and/or, the State of Western Australia, in offering, making or performing or purportedly performing its obligations as landlord was for the purposes of the ACL:
 - a. conduct in the course of carrying on a business;
 - b. conduct in trade or commerce with the meaning of the ACL and/or;
 - c. supply of services to the Tenants and / or Notified Occupants;
4. whether the terms in operation at law for all Tenancy Agreements contain the terms implied by the RTA sections 42, 43, 44 and ~~section~~ 45;
5. whether the terms in operation at law of the Tenancy Agreement for all Relevant Tenancies contained following obligations:
 - a. the Health & Safety term as defined at the paragraph 15(i) of the Further Amended Statement of Claim;
 - b. the Secure Housing term, as defined at paragraph 15(ii) of the Further Amended Statement of Claim;
 - c. the Repair term, as defined at paragraph 15(iii) of the Further Amended Statement of Claim;

- d. the Reasonable Comfort term, as defined at paragraph 15(iv) of the Further Amended Statement of Claim; and
 - e. the Repair Systems term, as defined in paragraph 15(v) of the Further Amended Statement of Claim;
6. whether the Health and Safety term required that the Authority, or the State of Western Australia, whichever was the lessor or deemed lessor, ensure in relation to each Claimant's premises any one or more of the matters identified in paragraph 20(a) to (kk) of the Further Amended Statement of Claim;
7. whether the Secure Housing term required that the Authority or the State of Western Australia, whichever was the lessor or deemed lessor, ensure in relation to each Claimant's premises any one or more of the matters identified in paragraph 23(a) to (c) of the Further Amended Statement of Claim;
8. whether the Repair term required that the Authority or the State of Western Australia, whichever was the lessor or deemed lessor, ensure in relation to each Claimant's premises any one or more of the matters identified in paragraph 26(a) to (f) of the Further Amended Statement of Claim;
9. whether the Reasonable Comfort term required that the Authority or the State of Western Australia, whichever was the lessor or deemed lessor, ensure in relation to each Claimant's premises any one or more of the matters identified in paragraph 29(a) to (j) of the Further Amended Statement of Claim;
10. whether the Authority and the State of Western Australia operated the Authority Repair System as pleaded in paragraph 31 of the Further Amended Statement of Claim;
11. whether the matters pleaded at 32 in relation to the Authority Repair System were true;
12. whether the Authority or the State of Western Australia, whichever was the lessor or deemed lessor breached the Repair Systems term as pleaded in paragraphs 34 of the Further Amended Statement of Claim;
13. whether each Group Member was a consumer for the purposes of s 61 of the ACL;

14. whether it was an implied guarantee of the Tenancy Agreements in respect of the services of the Authority and/or, the State of Western Australia in providing the Housing that the Housing would be reasonably fit for use as a dwelling or of a nature, quality, state or condition that a tenant might reasonably expect from a dwelling (**the ACL Guarantee**);
15. what principles or considerations are relevant to the assessment of whether, and if so how, the Authority and/or, the State of Western Australia breached any of the alleged terms referred to in Question 5;
16. what principles or considerations are relevant to the assessment of whether, and if so how, the Authority and/or, the State of Western Australia breached the ACL Guarantee;
17. what are the applicable principles for assessing the damages and/or statutory compensation recoverable in respect of any breach of an alleged term referred to in Question 5;
18. what principles apply in assessing the compensation recoverable by Claimants in respect of the contravention of the ACL Guarantee;
19. whether the Claimants have the Class Attributes;
20. whether the Execution Circumstances included the circumstances identified at paragraph 46;
21. whether the Monopoly Conditions included the conditions identified at paragraph 12;
22. whether the Authority, and/or the State of Western Australia knew or expected, or ought reasonably to have known or expected:
 - a. the Class Attributes;
 - b. the Execution Circumstances;
 - c. the Monopoly Conditions;
23. whether the Authority and/or, the State of Western Australia engaged in the conduct alleged in paragraph 52 to 56 of the Further Amended Statement of Claim;
24. whether by the conduct alleged in paragraphs 52 to 56 of the Further Amended Statement of Claim, the Authority and/or, the State of Western Australia engaged in unconscionable conduct in contravention of the ACL;

25. what principles apply in assessing the compensation recoverable by group members in respect of unconscionable conduct as alleged in paragraphs 52 to 56 of the Further Amended Statement of Claim;
26. whether the Authority and/or, the State of Western Australia engaged in conduct alleged in paragraphs 58 to 60 of the Further Amended Statement of Claim;
27. whether by the conduct alleged in paragraph 58 to 60 the Authority and/or, the State of Western Australia engaged in unconscionable conduct in contravention of the ACL;
28. what principles apply in assessing the compensation recoverable by Group Members in respect of unconscionable conduct as alleged in paragraph 58 to 60 of the Further Amended Statement of Claim;
29. whether the Authority and/or, the State of Western Australia engaged in conduct alleged in paragraph 62 to 65 of the Further Amended Statement of Claim;
30. whether by the conduct alleged in paragraph 62 to 65 the Authority and/or, the State of Western Australia engaged in unconscionable conduct in contravention of the ACL;
31. what principles apply in assessing the compensation recoverable by group members in respect of unconscionable conduct as alleged in paragraph 62 to 65 of the Further Amended Statement of Claim;
32. whether the matters identified in paragraph 69, if established, amounted to a significant reduction in the chattels or facilities provided with Housing;
33. whether the amount of rent that could lawfully be collected from each Overpayment Subgroup member was the amount as defined in paragraph 71 of the Further Amended Statement of Claim;
34. whether, if the Authority and/or, the State of Western Australia collected rent in excess of lawful amounts, the Authority and/or the State of Western Australia has
 - a. no lawfully entitlement to retain; and, or
 - b. been enriched by retainingeach Rent Overpayment from each Overpayment Subgroup member;

35. what principles apply in assessing the remedial relief recoverable by each Overpayment Subgroup member in respect of each such Rent Overpayment;
36. whether the right to adequate housing was and is a human right or a fundamental freedom in the political, economic, social or cultural life of Australians;
37. whether the Housing Rights, as defined in paragraph 84 of the Further Amended Statement of Claim, require that a person must:
 - (a) have access to housing which has (i) adequate protection inside the home from external heat and (ii) is habitable; and
 - (b) enjoy or exercise the Housing Rights on an equal footing;
38. whether the Authority and Western Australia were and are vicariously liable for the conduct of their officers, servants and agents for the purpose of s 18A of the RDA for the purposes of each allegation against the Authority or Western Australia in section H of the Further Amended Statement of Claim;
39. whether, by reason of the matters pleaded at paragraphs 87 to 93 of the Further Amended Statement of Claim (if established), the Authority and/or Western Australia contravened s 9(1) of the RDA;
40. what principles apply in assessing the compensation recoverable by Heat-Stressed Group Members (as defined in paragraph 83(a)) in respect of contraventions of s 9(1) of the RDA as alleged in paragraphs 92 and 93 of the Further Amended Statement of Claim;
41. whether, by reason of the matters pleaded at 95 to 99 of the Further Amended Statement of Claim (if established), the Authority acted in respect of each Non-Repair Group Member (as defined in paragraph 83(b)) contrary to s 12(1)(b) of the RDA;
42. whether, by reason of s 62G(1) of the Housing Act and the matters pleaded in paragraphs 96, 97 and 101 of the Further Amended Statement of Claim (if established), the Authority acted in respect of each Non-Repair Group Member contrary to s 10(1) of the RDA;
43. whether, by reason of the matters pleaded at paragraphs 96, 99, 103 and 104 of the Further Amended Statement of Claim (if established), the Authority contravened s 9(1) of the RDA;

44. what principles apply in assessing the compensation recoverable by Non-Repair Group Members in respect of contraventions of s 9(1), 10(1) or 12(1)(b) of the RDA as alleged in section I.3 of the Further Amended Statement of Claim;
45. whether, by reason of the matters pleaded at paragraphs 109 to 113 of the Further Amended Statement of Claim (if established), the Authority acted in respect of each Tenant Liability Group Member (as defined in paragraph 83(c)) contrary to s 12(1)(b) of the RDA;
46. whether, by reason of the matters pleaded at paragraphs 109, 115 and 116 of the Further Amended Statement of Claim (if established), the Authority contravened s 9(1) of the RDA;
47. what principles apply in assessing the compensation recoverable by each Tenant Liability Group Member in respect of contraventions of s 9(1) or 12(1)(b) of the RDA as alleged in section I.4 of the Further Amended Statement of Claim.
48. whether, in the circumstances found, declaratory relief should be made.
49. what is the appropriate form of any declaratory relief to be made.
50. whether, in the circumstances found, orders compelling action by the Housing Authority and/or the State of Western Australia should be granted.
51. what is the appropriate form of any relief compelling action by the Housing Authority and/or the State of Western Australia.

Representative action

The Applicant brings this application as representative parties under Part IVA of the *Federal Court of Australia Act 1976*.

The Group Members to whom the proceeding relates are the persons identified in paragraph 2 of the Further Amended Statement of Claim.

Applicant's address

The Applicant's address for service is:

Place: Slater and Gordon, Level 35, 530 Collins Street, Melbourne, Vic, 3000

Email: Rory.Walsh@slatergordon.com.au

The Applicant's address is [REDACTED], Yurmulun Community, Western Australia, 6728.

Service on the Respondents

It is intended to serve this application on all Respondents.

Date: ~~19 August 2024~~ 5 November 2025

A handwritten signature in blue ink that reads "Rory Walsh". The signature is written in a cursive style with a large, looped 'R' and 'W'.

Signed by Rory John Walsh
Lawyer for the Applicant