

NOTICE OF FILING

Details of Filing

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Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos". The signature is fluid and cursive, with the first letters of "Sia" and "Lagos" being capitalized and prominent.

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.



Affidavit of Stewart Levitt

No.

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

Affidavit of: Stewart Alan Levitt
Address: Ground Floor, 162 Goulburn St, Surry Hills NSW 2010
Occupation: Solicitor
Date: 28 November 2022

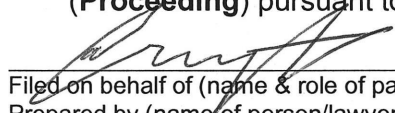
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I Stewart Alan Levitt Ground Floor, 162 Goulburn St, Surry Hills NSW 2010, solicitor, say on oath:

A. INTRODUCTION

1. I am the Senior Partner of Levitt Robinson Solicitors (**Levitt Robinson**). I am the Solicitor on the record in this proceeding. I have 43 years' experience as a solicitor conducting litigation, including 39 years as a principal.
2. I make this affidavit to accompany the Originating Application in this proceeding (**Proceeding**) pursuant to r 8.05(1)(c) of the *Federal Court Rules 2011* (Cth) (**FCR**).


Filed on behalf of (name & role of party) The Applicants
Prepared by (name of person/lawyer) Stewart Levitt
Law firm (if applicable) Levitt Robinson
Tel (02) 9286 3133 Fax (02) 9283 0005
Email slevitt@levittrobinson.com
Address for service C/- Levitt Robinson, Ground Floor, 162 Goulburn Street, Surry Hills, NSW, 2010

3. The terms defined in the Originating Application have the same meaning as in this affidavit.
4. I have the carriage of this matter for the Applicants with the assistance of employees of Levitt Robinson: Dana Levitt, solicitor; and Angelique Gebrayel, solicitor (**Levitt Robinson team**).
5. Levitt Robinson has instructions from over 500 current and former detainees of the Detention Centres referred to below, including the Applicants (**Registered Group Members**). The instructions of the Registered Group Members relate to the way they were treated and their experiences in the Detention Centres defined in Part C of this affidavit.
6. The principal sources of my knowledge of the matters referred to in this affidavit are the instructions from and documents provided by Registered Group Members and the following reports with the following publication dates of the Office of the Inspector of Custodial Services (WA) (**OICS**):
 - 6.1 *Report 37, Report of an Announced Inspection of Banksia Hill Detention Centre*, September 2006;
 - 6.2 *Report 58, Report of an Announced Inspection of Banksia Hill Detention Centre*, December 2008;
 - 6.3 *Report 76, Report of an Announced Inspection of Banksia Hill Detention Centre*, January 2012;
 - 6.4 *Report 85, Directed Review into an Incident at Banksia Hill Detention Centre on 20 January 2013*, July 2013;
 - 6.5 *Banksia Hill Directed Review, Legal and Administrative Context Review Paper*, August 2013;
 - 6.6 *Banksia Hill Directed Review, Emergency Management Review Paper*, August 2013;
 - 6.7 *Banksia Hill Directed Review, Security Review Paper*, August 2013;
 - 6.8 *Banksia Hill Directed Review, Post Incident Management Review Paper*, August 2013;
 - 6.9 *Banksia Hill Directed Review, Physical Infrastructure Review Paper*, August 2013;
 - 6.10 *Banksia Hill Directed Review, Management, Staffing and Amalgamation Review Paper*, August 2013;
 - 6.11 *Report 86, The Management of Young Women and Girls at Banksia Hill Detention Centre*, October 2013;
 - 6.12 *Recidivism rates and the impact of treatment programs*, September 2014;




- 6.13 *Report 97, Report of an Announced Inspection of Banksia Hill Detention Centre, April 2015;*
 - 6.14 *Behaviour management practices at Banksia Hill Detention Centre, June 2017;*
 - 6.15 *Report 116, 2017 Inspection of Banksia Hill Detention Centre, February 2018;*
 - 6.16 *Directed Review of Allegations made by Amnesty International Australia about ill-treatment at Banksia Hill Detention Centre, June 2018*
 - 6.17 *Strip searching practices in Western Australian prisons, March 2019;*
 - 6.18 *Report 135, 2020 Inspection of Banksia Hill Detention Centre, April 2021; and*
 - 6.19 *Report 141, 2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre, March 2022.*
- 7. Except where otherwise indicated, I make this affidavit from my own knowledge. Where I depose to a matter based on information and belief, I believe those matters to be true.
 - 8. I am not authorised to waive any client legal privilege and nothing in this affidavit should be construed as a waiver of privilege. To the extent that anything in this affidavit may be so construed, I withdraw and do not rely on that part of the affidavit.
 - 9. The Applicants commence this claim on their own behalf and on behalf the group members (**Group Members**) as defined the Originating Application.
 - 10. Seven or more Group Members have claims against the Respondent.
 - 11. The Respondent is sued under the title of the "State of Western Australia" pursuant to s 5 of the *Crown Suits Act 1947* (WA).

B. VICARIOUS LIABILITY

- 12. The Applicants claim that the Respondent is vicariously liable to the Applicants and the Group Members in respect of each tort or act of unlawful discrimination alleged in this Proceeding to have been committed by the Minister, the CEO, Superintendents or Officers.

C. DETENTION CENTRES

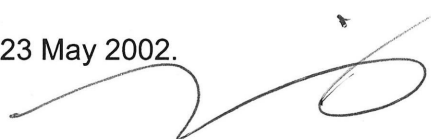
- 13. Over the Relevant Period, the Minister declared, under s 13 of the YO Act, the following places as detention centres (**Detention Centres**):
 - 13.1 Banksia Hill, located in Canning Vale, Western Australia, which has operated as a detention centre from 5 September 1997 to the present (**BHDC**);




- 13.2 Rangeview, located in Murdoch, Western Australia, which operated as a detention centre from 18 March 1994 to 31 October 2012, including, relevantly, from 1 September 1997 to 31 October 2012 (**RDC**);
- 13.3 Hakea, located in Canning Vale, Western Australia, which operated as a detention centre from 22 January 2013 to 6 December 2013 (**HDC**); and
- 13.4 Casuarina, located in Casuarina, Western Australia, which has operated as a detention centre from 14 July 2022 to the present (**Unit 18**).
14. The accommodation for young people in BHDC in the Relevant Period included:
- 14.1 For young women, from about September 2012:
- (a) The Yeeda precinct, a separate compound within BHDC including general accommodation cells, classrooms, an activity room, staff offices, a nursing station.
 - (b) The Cue Unit, comprising 4 observation and isolation cells; used for punishment, confinement, and observation of young female detainees.
- 14.2 For young men:
- (a) A number of residential units including general accommodation cells, education buildings, and recreation facilities.
 - (b) The Intensive Support Unit (**ISU**), formerly known as the Harding Unit, comprising a number of observation and isolation cells; used for punishment, confinement, and observation of young male detainees.

D. APPLICANTS

15. The First Applicant, Alexandra Walters (**Ms Walters**), was born on 8 October 2004.
16. Ms Walters has severe autism spectrum disorder (**ASD**), first diagnosed in 2012.
17. I have been informed by both Dana Levitt and Angelique Gebrayel and verily believe that they have both met with Ms Walters to discuss her experiences in detention, her claims against the respondent, and this Proceeding and are of the opinion that Ms Walters is capable of managing her own affairs in the Proceeding and is able to understand and consider legal advice and to make decisions and give instructions based on any legal advice from the Levitt Robinson Team and counsel briefed in the matter.
18. Ms Walters was detained at BHDC between 23 May 2018 and 21 March 2020 on about 6 different occasions, totalling about 348 days in detention.
19. The Second Applicant, Joel Vida (**Mr Vida**), was born on 23 May 2002.

20. Mr Vida is an Indigenous Australian.
21. Mr Vida has an intellectual disability and mental health disabilities manifesting as mania with psychotic symptoms and schizophrenia, first diagnosed in 2018. When I have met with him on several occasions over a period of eighteen (18) months, he has appeared to be functional and to participate easily in conversation with me and to understand and appreciate what is being discussed. He has appeared to be successfully medicated.
22. I have interviewed Mr Vida in connection with this Proceeding and, as a result of that interview, and my knowledge of Mr Vida, I am satisfied that he is capable of managing his own affairs in this Proceeding and is able to understand and consider legal advice and to make decisions and give instructions based on any legal advice from the Levitt Robinson Team and counsel briefed in the matter.
23. Mr Vida was detained at BHDC at various times for a total of about 55 days between 2014 and 2020.

E. SUMMARY OF RELEVANT FACTUAL ALLEGATIONS OF APPLICANTS

E1. *Alexandra Walters*

24. Ms Walters alleges:

24.1 Her severe ASD manifests in various ways, including becoming fearful, anxious and panicky, and engaging in acting out behaviour when she is:

- (a) subjected to peremptory commands;
- (b) being directed by more than one person at a time;
- (c) feeling rushed or bullied; or
- (d) exposed to a dirty, soiled or stained environment or item of clothing.

24.2 She was detained at BHDC for the following periods:

- (a) 23 May 2018 to 29 April 2019;
- (b) 17 to 18 July 2019;
- (c) 26 to 27 August 2019;
- (d) 3 to 4 September 2019;
- (e) 3 to 6 December 2019; and
- (f) 20 to 21 March 2020.

24.3 She was confined in the Cue Unit for the following periods:

- (a) 23 to 24 May 2018;
- (b) 31 May to 1 June 2018;
- (c) 20 to 21 June 2018;
- (d) 22 to 25 June 2018;
- (e) 27 June to 23 July 2018;
- (f) 10 September 2018 to 29 April 2019;
- (g) 17 to 18 July 2019;
- (h) 26 to 27 August 2019;
- (i) 4 September 2019;
- (j) 3 to 6 December 2019; and
- (k) 20 to 21 March 2020.

24.4 For extended periods while confined in the Cue Unit:

- (a) She was locked confined alone in a cell for approximately 23 hours a day with short periods of recreation of approximately 1 hour each day outside the cell.
- (b) Her recreation time outside the cell was either in an enclosed room of approximately 4 metres by 5 metres or in an enclosed outside structure approximately 3 metres by 3 metres with concrete and brick walls and a cyclone wire cage above.
- (c) She was handcuffed and her legs were shackled when she was allowed out of her cell to see her parents when they visited.
- (d) On several occasions officers at BHDC denied Ms Walters visits from her parents as a punishment.
- (e) She was frequently fed through a grille in the door.
- (f) She was forced to earn her bedding.
- (g) She felt that she was being treated like a dog and responded to this by sleeping on the concrete floor and pretending that she was a dog.

24.5 She was confined in the Cue Unit for extended periods as a result of Officers enforcing disciplinary policies which were unsuitable for Ms Walters because of her severe ASD. A particular instance of this was confinement of Ms Walters in response to her disturbed behaviour in reaction to being forced to dress in BHDC uniform clothing.

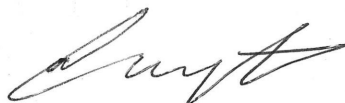



- 24.6 She found it intolerable to wear underwear and outer garments that had visible menstrual stains from their use by other detainees. Ms Walters had many violent interactions with Officers when she was subjected to use of force for refusing to change into underwear or uniforms which had period stains.
- 24.7 She would sleep on the bare floor rather than on a mattress because the mattresses were dirty with saliva and excrement.
- 24.8 She was frequently subjected to strip searches and watched by officers while she was in the shower. She found these experiences distressing and humiliating.
- 24.9 Many times, Officers subjected her to rough handling, including being forcibly held down on the ground and having her head banged against the wall by multiple Officers.
- 24.10 Many times, Officers subjected her to instruments of restraint, such as handcuffs, leg shackles, and spit hoods.
- 24.11 She found the use of force and imposition of restraints on her extremely traumatic and often reacted to these incidents by escalating her non-compliant behaviour and acts of self-harm.
- 24.12 Ms Walters was given very little access to suitable education while in BHDC as a result of:
- (a) her extended confinement in the Cue Unit;
 - (b) failure of the CEO, the Superintendent and/or Officers to provide sufficient teachers and substitute teachers;
 - (c) failure of the CEO, the Superintendent and/or Officers to adequately resource education at BHDC.
- 24.13 When Ms Walters was given access to education it was often at kindergarten level, such that her level of educational competency declined during her time at BHDC.
- 24.14 She was not given adequate therapeutic support for her severe ASD and the trauma of being subjected to the disciplinary regime and punitive culture of BHDC.
- 24.15 The confinement of Ms Walters for extended periods, strip searches, and use of force, had a compounding effect on Ms Walters' existing severe ASD, complex trauma, and psychic distress.

E2. Joel Vida

25. Mr Vida alleges:

25.1 He was detained at BHDC for the following periods:




- (a) 7 to 8 March 2014;
- (b) 9 to 10 March 2016;
- (c) 11 to 12 March 2016;
- (d) 29 September 2016;
- (e) 28 to 30 November 2016;
- (f) 31 July 2017 to 1 August 2017;
- (g) 21 to 22 March 2018;
- (h) 28 March 2018 to 19 April 2018;
- (i) 16 to 30 April 2019; and
- (j) 21 to 22 April 2020.

25.2 He was confined in the Harding Unit/ISU on the following dates:

- (a) 8 March 2014;
- (b) 9 to 10 March 2016;
- (c) 11 to 12 March 2016;
- (d) 29 September 2016;
- (e) 21 to 22 March 2018;
- (f) 28 March to 5 April 2018;
- (g) 17 to 19 April 2018;
- (h) 16 to 17 April 2019;
- (i) 29 to 30 April 2019; and
- (j) 21 to 22 April 2020.

25.3 While in the Harding Unit/ISU he was confined alone in a cell for extended periods.

25.4 He was denied visits from his mother and grandmother while subjected to confinement as punishment.

25.5 He was subjected to excessive use of force. On one occasion, Mr Vida wanted more time out of his cell for exercise and refused to return to his cell. He was then forced to the ground by 5 or 6 Officers and subjected to "folding up", where Officers held him face down on the ground with his arms behind his back and an Officer bent his legs



over so that his heels were near his buttocks and placed pressure on his legs to hold him down. Officers then handcuffed Mr Vida and took him back to his cell.

25.6 On some occasions Officers taunted him about and made fun of his intellectual and mental health disabilities, including by calling him "mental" and laughing at him.

25.7 He was given no access to education while he was at BHDC.

F. DISCRIMINATION CLAIMS

F1. Complaint to AHRC

26. On 22 June 2022 the Applicants and others lodged with the Australian Human Rights Commission (**AHRC**) the representative complaint annexed to the Originating Application (**Complaint**) alleging acts, omissions and practices by the Respondent and its agencies which unlawfully discriminated against the Applicants on the grounds of:

26.1 race, contrary to the *Racial Discrimination Act 1975* (Cth);

26.2 disability, contrary to the *Disability Discrimination Act 1993* (Cth) (**DDA**); and

26.3 age, contrary to the *Age Discrimination Act 2004* (Cth).

27. The Complaint was terminated by a delegate of the President of the AHRC on 14 November 2022. A copy of the Termination Notice is annexed to the Originating Application together with a copy of the delegate's reasons for decision.

28. In this Proceeding, the Applicants for themselves and on behalf of Group Members claim unlawful discrimination on the grounds of disability arising out of substantially the same acts, omissions and practices that were the subject of the Complaint as described below.

29. The Applicants do not pursue in this Proceeding the complaints for themselves and on behalf of Group Members in the Complaint of discrimination on the grounds of race and age.

F2. Disability discrimination

30. Most young people detained in the Detention Centres in the Relevant Period, including Ms Walters and Mr Vida, have serious cognitive impairments, behavioural disorders or other mental health conditions. Independent research conducted between May 2015 and December 2016 indicated that 89 per cent of detainees in BHDC had at least one domain of severe neurodevelopmental impairment.

31. The Applicants claim that they and Group Members with a disability suffered unlawful discrimination on the grounds of disability:

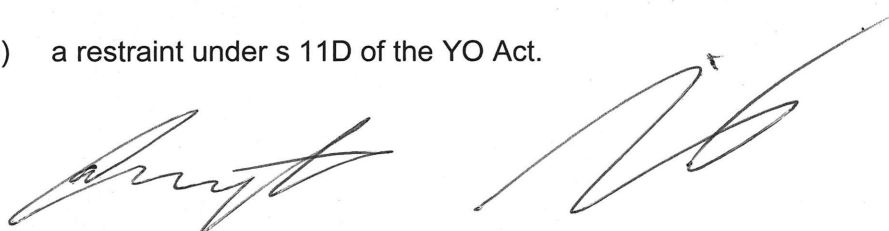
- 31.1 the same in substance as the unlawful disability discrimination that was the subject of the Complaint; and/or
- 31.2 arising out of substantially the same acts, omissions and practices that were the subject of the Complaint.
32. The Applicants claim that, among other things, the Respondent failed to:
- 32.1 assess Group Members for mental health conditions upon admission to custody and many Group Members' impairments went unrecognized and undiagnosed;
- 32.2 provide appropriate treatment, programs and services for Group Members with a disability;
- 32.3 consult with Group Members with a disability about whether their disability affected their ability to participate in educational programs and services;
- 32.4 decide, in light of any such consultation, whether an adjustment was necessary to ensure that Group Members with a disability were able to participate on the same basis as detainees without a disability; or
- 32.5 provide reasonable supports for the learning of Group Members with a disability, such as specialist teacher training and the provision of aides to support curriculum access;
33. The Applicants claim that it was more difficult for Group Members with a disability to access educational programs, as compared to detainees who did not have a disability, due to, among other things, the Respondent's practice of allocating classes by residential units, rather than level of skill or ability.
34. The Applicants claim that the Respondent failed to make reasonable adjustments for Group Members with a disability having the effect that Group Members with a disability were less favourably treated than detainees who did not have a disability in relation to programs, services and facilities and access to education in the Detention Centres.
35. The Applicants claim that Group Members with a disability were subject to unreasonable conditions and requirements which, because of their disabilities, they could not comply with: in particular, requirements to comply with Detention Centre discipline policies and to submit to routine strip searching. This non-compliance was frequently met with punitive sanctions, such as use of force, use of restraints, prolonged confinement and denial of privileges.
36. The Applicants claim that the Respondent, by its employees and agents, failed to comply with the *Disability Standards for Education 2005* (Cth).



G. Unlawful imprisonment, assault and battery

G1. False imprisonment

37. While they were in detention in Detention Centres, the Applicants and Group Members 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 terms of their detention.
38. During the Relevant Period, the Applicants and Group Members were frequently locked in their cells or in designated isolation cells and facilities for prolonged periods. Young people were confined, in isolation, for more than 20 hours per day for days, weeks or months on end.
39. During her detention at BDHC, Ms Walters was confined to a cell for approximately 23 hours per day for a continuous period of seven months and on the other dates of her confinement in the Cue Unit set out in paragraph 24.3 above.
40. During his detention at BHDC, Mr Vida was confined to a cell for approximately 23 hours per day on the dates of his confinement in the Harding Unit/ISU set out in paragraph 25.2 above.
41. Prolonged confinement was frequently imposed generally across the population, or sections of the population, of Detention Centres, rather than specifically in response to a particular individual's conduct. The triggers for prolonged confinement included critical incidents (such as detainee self-harm or damage to facilities), staff shortages, staff breaks, and staff training.
42. The Applicants allege that the Applicants and Group Members could only lawfully be restrained or confined within a detention centre in accordance with the YO Act and the *Young Offenders Regulations 1995 (WA) (YO Regulations)*.
43. The Applicants claim that prolonged confinement of the Applicants and Group Members, as described above, was not authorised by the YO Act and the YO Regulations as follows:
 - 43.1 The prolonged confinement of the Applicants and Group Members was not imposed pursuant to:
 - (a) an order of confinement for commission of a detention offence under s 173(2)(e) of the YO Act and/or reg 74(1) of the YO Regulations;
 - (b) an order for confinement to maintain good government, good order or security in a detention centre under reg 74(2) of the YO Regulations; and/or
 - (c) a restraint under s 11D of the YO Act.



43.2 The prolonged confinement was for longer periods than permitted under the YO Act and the YO Regulations.

44. The Applicants claim that the unauthorised confinement of the Applicants and Group Members, infringed the residual liberty of the Applicants and Group Members and constituted false imprisonment.

G2. Strip searching

45. Over the Relevant Period, officers frequently strip searched young people in Detention Centres.
46. Strip searching was often a matter of routine. The Applicants and Group Members were strip searched pursuant to standard procedures, rather than any reasonable suspicion that the individual was concealing contraband.
47. The Applicants allege that, when being required to submit to strip searches, the Applicants and Group Members apprehended that Officers would make physical contact with them if they did not submit to the search, constituting assault.
48. The Applicants allege that, when the Applicants and Group Members hesitated to submit or failed to submit to strip searches, they were subjected to non-consensual physical contact by Officers, constituting a battery.
49. The Applicants allege that the Applicants and Group Members were assaulted and/or battered by officers when required to submit to strip searches that were not expressly authorised by the YO Act and the YO Regulations.

G3. Restraints

50. Over the Relevant Period, Officers frequently used restraints on Group Members, including the Applicants. Restraints include physical restraints (such as holds) and mechanical restraints (such as handcuffs, ankle cuffs and spit hoods). Restraints were often applied to Group Members, including the Applicants, while they were moving within a centre, making telephone calls within their unit, accessing services (for example, meeting with a psychologist), and when being visited by friends or family members.
51. For example, Ms Walters alleges that during her seven-month period in confinement in the Cue Unit, she was placed in hand cuffs and ankle cuffs for each visit from her parents.
52. Restraints were frequently applied by Officers in a routine fashion pursuant to standard procedures, rather than, as required under the YO Act, a reasonable assessment by the CEO or the Superintendent that restraints were necessary in the individual case:

52.1 to prevent the Group Member from injuring himself, herself or another person;



52.2 on medical grounds following advice from a medical practitioner; or

52.3 to prevent escape during the Group Member's movement to or from a facility or a detention centre.

53. Applicants and Group Members were assaulted and battered when they were subjected to restraints in circumstances not expressly authorised under the YO Act.

G4. Other use of force

54. The YO Act and the YO Regulations authorise a custodial officer to use the minimum force required:

54.1 to control the behaviour of a detainee who is imminently presenting a risk of physical injury to himself or herself, other detainees or staff; or

54.2 to ensure that a detainee complies with lawful orders that are given to them.

55. During the Relevant Period, Officers assaulted and battered Group Members when they used force on Group Members, including the Applicants:

55.1 in circumstances not authorised by the YO Act and Regulations; and/or

55.2 in excess of the minimum force required.

56. Ms Walters alleges that she was assaulted and battered when more than reasonable force was used on her in the situations described in paragraphs 24.6 and 24.9 above.

57. Mr Vida alleges he was assaulted and battered in the incident described in paragraph 25.5 above because more than reasonable force was used in the circumstances.

H. BREACH OF DUTY OF CARE

58. The Applicants allege that:

58.1 the Respondent, the Minister, the CEO, Superintendents and Officers (**YO Act Officials**) had a duty of care to the Applicants and the Group Members to take reasonable steps to protect them from a risk of psychiatric injury and self-harm;

58.2 the scope of that duty extended to taking reasonable steps to ensure that the detention of the Applicants and the Group Members did not cause or exacerbate any psychiatric or psychological injuries;

58.3 YO Act Officials failed to:

- (a) take reasonable care to protect the Applicants and the Group Members from psychiatric injury and self-harm; and

- (b) take reasonable steps to ensure that the detention of the Applicants and the Group Members did not cause or exacerbate any psychiatric or psychological injuries;

58.4 YO Act Officials failed to provide the Applicants and the Group Members with reasonable mental health services and crisis care facilities;

58.5 YO Act Officials subjected the Applicants and the Group Members to extended periods of confinement;

58.6 the Applicants and Group Members suffered psychiatric injury and self-harm as a consequence of the failure of YO Act Officials to take reasonable care.

59. The Applicants allege that:

59.1 YO Act Officials had a duty of care to the Applicants and the Group Members to take reasonable steps to ensure that the Applicants and the Group Members had reasonable access to rehabilitation programs and opportunities;

59.2 YO Act Officials had a duty of care to the Applicants and the Group Members to take reasonable steps to ensure that the Applicants and the Group Members had reasonable access to educational programs and opportunities;

59.3 YO Act Officials breached their duty of care to the Applicants and the Group Members by:

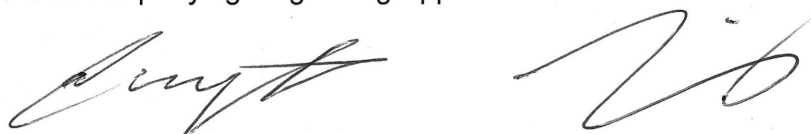
- (a) failing to have adequate rehabilitation programs in Detention Centres;
- (b) failing to provide Applicants and Group Members with reasonable access to education; and
- (c) confining the Applicants and Group Members for extended periods; and

59.4 the Applicants and Group Members suffered loss and damage as a result of being denied any real opportunity to rehabilitate or engage in education.

I. THE RELIEF SOUGHT FROM THE COURT

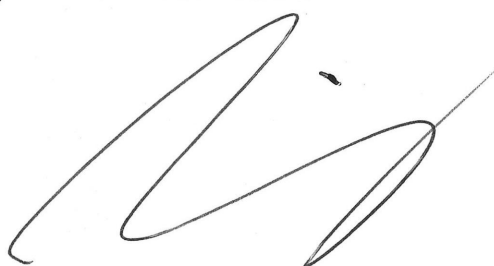
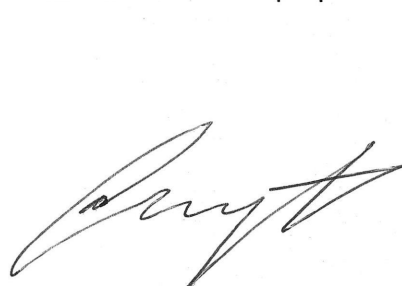
60. The Applicants allege that the Applicants and the Group Members have suffered loss and damage including physical injury, psychiatric injury, economic loss, deprivation of liberty, discomfort, fear and distress, loss of dignity, disgrace, and humiliation, by reason of the conduct summarised above for which the Respondent is vicariously liable under s 123 of the DDA and at common law.

61. The Applicants, on their own behalf and on behalf of the Group Members, seek the relief set out in the accompanying Originating Application.



J. LIMITATION PERIOD

62. The Applicants and Group Members were minors during their time as detainees.
63. With some exceptions, under the *Limitation Act 2005 (WA)* (**Limitation Act**) the time for the Group Members to bring an action on a cause of action in tort is as follows:
- 63.1 For a person aged under 15 when the cause of action accrues, the limitation period is 6 years.
- 63.2 For a person aged 15, 16 or 17 years when the cause of action accrues, the limitation period expires when the person reaches 21 years of age.
- 63.3 If the defendant in the proceedings is in a "close relationship" with the person for whom a cause of action accrues when the person is under 18 years, the limitation period expires when the person reaches 25 years of age.
64. It appears to be the case that the Respondent was in a close personal relationship with Group Member while they were under 18 years and at the time at which the relevant causes of action accrued, within the meaning of the Limitation Act.
65. My firm has received instructions from over 500 people who were detained in the Detention Centres in the Relevant Period. Based on my knowledge of this matter and the circumstances of the people from whom I have received instructions, the limitations period applicable to the tortious causes of action of Group Members is close to expiry for a significant number of Group Members.
66. I consider that in the time it would take to comprehensively investigate and plead the detailed claims of the Applicants, a significant number of Group Members may suffer from the expiration of the limitation period applicable to their tort claims. For this reason, I came to the view that it is in the best interests of Group Members to commence this proceeding by way of Originating Application and this affidavit, rather than by Originating Application accompanied by a Statement of Claim. However, it is proposed to proceed with a Statement of Claim which will be prepared and settled by counsel in due course.



Sworn / Affirmed by the deponent

at Sydney in NSW

on 28 November 2022

Before me:

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)

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Signature of Stewart Alan Levitt

Signature of witness

Name: *Angelique Gebrayel*

Qualification: *Legal Practitioner of New South Wales*

Certificate of lawyer

I, Stewart Levitt, certify to the Court that, in relation to the affidavit 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 affidavit.

Date: 28 November 2022



Signed by Stewart Levitt

Lawyer for the Applicants

SCHEDULE OF PARTIES

Alexandra Walters

First Applicant

Joel Vida

Second Applicant

State of Western Australia

Respondent