

NOTICE OF FILING

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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: NTD64/2016
File Title: Dylan Riley Jenkins & Anor v Northern Territory of Australia
Registry: NORTHERN TERRITORY REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 20/03/2019 1:25:17 PM ACST

Registrar

Important Information

As required by the Court's Rules, 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.

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Fifth Sixth Statement of Claim

Filed on 20 March 2019 pursuant to orders 2 and 3 made by
Justice White on 6 March 2019.

No. NTD64 of 2016

Federal Court of Australia
District Registry: Northern Territory
Division: General

Dylan Riley Jenkins

First Applicant

Aaron Hyde

Second Applicant

Northern Territory of Australia

Respondent

I PARTIES

Group Members

1. Each applicant brings this claim on his own behalf and on behalf of represented persons pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) being themselves and persons (Group Members) who at 27 November 2017:
 - 1.1 were or had been at any time on or after 1 August 2006 detained in a youth detention centre of the Northern Territory of Australia within the meaning of the *Youth Justice Act* (NT) (**Act**) (**youth detention centre**); and
 - 1.2 ~~during the periods in which the Group Member was detained in a youth detention centre, suffered or allege to have suffered unlawful discrimination, by an act or omission of a "commissioner", "superintendent" or "member of staff" as defined in paragraph 1.4, in breach of s 9(1) of the *Racial Discrimination Act 1975* (Cth) (**RDA**); and~~

Filed on behalf of (name & role of party) Dylan Riley Jenkins, First Applicant and
Aaron Hyde, Second Applicant

Prepared by (name of person/lawyer) Ben Slade

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1.3 ~~claim damages for the impairment of their enjoyment of the human rights and fundamental freedoms described in sub-paragraph 114.15 as pleaded in paragraph 138; and~~

1.4 during the period or periods in which the applicant or Group Member was detained in a youth detention centre, suffered or allege to have suffered:

- (a) assault; and
- (b) battery; and/or
- (c) false imprisonment;

by an act or omission of:

(ca) the respondent;

(d) before 9 September 2014, a director or, from 9 September 2014, a commissioner for the purposes of the Act or a person taken to have been delegated the director's or commissioner's powers necessary to perform the director's or commissioner's functions in respect of youth detention centres under the Act or a person purporting to perform the functions of a director or commissioner under the Act (commissioner);

(e) a superintendent of a youth detention centre, a duly authorised delegate of a superintendent, or a person, pursuant to the Act, taken to have been delegated a superintendent's powers and functions necessary to perform a superintendent's functions under section 151(3)(c) of the Act or a person purporting to perform the functions of a superintendent under the Act (superintendent); or

(f) a member of the staff of a detention centre or a person, pursuant to the Act, taken to be a member of the staff of a detention centre (**member of staff**); and

1.5 was not a plaintiff in any of the following proceedings in the Supreme Court of the Northern Territory:

- (a) No. 16 of 2016, Case Number: 21615113; and
- (b) No. 24 of 2016, Case Number: 21617890.

2. ~~Each applicant and each Group Member is an "affected person" of the AHRC Complaint defined in the Fourth Originating Application of this proceeding within the meaning of s 3 of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**).~~

3. As at the date of the commencement of this proceeding, seven or more Group Members have claims against the respondent.

First Applicant

4. The first applicant was born on 11 September 1998 and is 49 20 years old.
5. The first applicant was detained in youth detention centres at various times and for various periods between ~~in~~ on or about 14 May 2014 and on or about 9 September 2016, as follows:
- 5.1 From ~~45~~ 14 May 2014 to 16 May 2014 the first applicant was detained in Don Dale Youth Detention Centre, in its former location (**Old Don Dale**).
- 5.2 From 7 March 2015 to 27 March 2015 the first applicant was detained in Don Dale Youth Detention Centre, in its current location (**New Don Dale**).
- 5.3 From 6 ~~7~~ April 2015 to 10 April 2015 ~~29 June 2015~~ the first applicant was detained at New Don Dale.
- 5.3A From 11 April 2015 to 29 June 2015 the first applicant was detained at New Don Dale;
- 5.4 From 23 ~~24~~ August 2015 to 4 September 2015 the first applicant was detained at New Don Dale.
- 5.5 From 17 ~~48~~ September 2015 to 7 November 2015 the first applicant was detained at New Don Dale.
- 5.6 From 28 ~~29~~ November 2015 to 25 May 2016 the first applicant was detained at New Don Dale.
- 5.7 From 7 July 2016 to 9 August ~~September~~ 2016 the first applicant was detained at New Don Dale.
- 5.8 From 22 August 2016 to 9 September 2016 the first applicant was detained at New Don Dale.
6. The first applicant is an Aboriginal person and was, at all relevant times while he was detained in youth detention centres, a child.

Second Applicant

7. The second applicant was born on 27 June 1996 and is ~~24~~ 22 years old.
8. The second applicant was detained in youth detention centres at various times and for various periods between on or about 20 December 2011 and on or about 27 June 2014, as follows:
 - 8.1 From on or about 20 December 2011 ~~2012~~ to on or about 23 December 2011 ~~2014~~ the second applicant was detained at Old Don Dale.
 - 8.2 From 23 January ~~December~~ 2012 to 24 January 2012 ~~December 2014~~ the second applicant was detained at Old Don Dale.
 - 8.3 From 15 February 2012 to 6 April 2012 the second applicant was detained at Old Don Dale.
 - 8.4 From 3 May 2012 to 3 December 2012 the second applicant was detained at Old Don Dale.
 - 8.5 From 2 January 2013 to 29 ~~22~~ June 2013 the second applicant was detained at Old Don Dale.
 - 8.6 From ~~43~~ 12 July 2013 to 17 July 2013 the second applicant was detained at Alice Springs Youth Detention Centre.
 - 8.7 From ~~48~~ 17 July 2013 to 20 September 2013 the second applicant was detained at Old Don Dale.
 - 8.8 From 3 November 2013 to 30 November 2013 the second applicant was detained at Old Don Dale.
 - 8.9 From 5 June 2014 to 27 June 2014 the second applicant was detained at Old Don Dale.
9. The second applicant is not an Aboriginal person and was, at all relevant times while he was detained in youth detention centres, a child.

Respondent

10. The respondent is liable to be sued pursuant to section 5 of the *Crown Proceedings Act* (NT).

11. Each commissioner, each superintendent and each member of staff was at all relevant times:
- 11.1 a person in the service of, or an agent of, the respondent;
 - 11.2 acting in the performance or purported performance of his or her functions as a commissioner, superintendent or member of staff; and
 - 11.3 so acting where the performance or purported performance of his or her functions was in the course of his or her service of the respondent or was an incident of that service.
12. By reason of the matters pleaded in paragraph 11, the respondent is vicariously liable to the applicants and Group Members in respect of each tort alleged in this proceeding to have been committed by reason of an act or omission of a commissioner, superintendent or a member of staff.
13. ~~Further, each commissioner, each superintendent and each member of staff was at all relevant times an employee or agent of the respondent acting in connection with his or her duties as an employee or agent.~~
14. ~~By reason of the matters pleaded in paragraph 13, the respondent is vicariously liable to the applicants and Group Members in respect of each unlawful act in breach of the *Racial Discrimination Act 1975 (Cth) (RDA)* alleged in this proceeding to have been committed by reason of an act or omission of a commissioner, superintendent or member of staff.~~

II. RELEVANT PROVISIONS OF THE ACT AND REGULATIONS

15. The effect of the provisions of the Act and the *Youth Justice Regulations* (NT) (**Regulations**) that bear directly on the matters pleaded in this Statement of Claim is pleaded in paragraphs 16 to 47 below.

Objects and Principles

16. Section 3 sets out the objects of the Act, including the following:
- 16.1 to specify the general principles of justice in respect of youth (section 3(a));
 - 16.2 to provide how a youth who has committed, or is alleged to have committed, an offence is to be dealt with (section 3(c));
 - 16.3 to ensure that a youth who has committed an offence is given appropriate treatment, punishment and rehabilitation (section 3(e)).

17. Section 4 of the Act provides for general principles that must be taken into account in the administration of the Act, including:
- 17.1 the youth should be dealt with in a way that acknowledges his or her needs and will provide him or her with the opportunity to develop in socially responsible ways (section 4(b));
 - 17.2 a youth who commits an offence should be dealt with in a way that allows him or her to be re-integrated into the community (section 4(f));
 - 17.3 a balanced approach must be taken between the needs of the youth, the rights of any victim of the youth's offence and the interests of the community (section 4(g));
 - 17.4 family relationships between a youth and members of his or her family should, where appropriate, be preserved and strengthened (section 4(h));
 - 17.5 a youth should not be withdrawn unnecessarily from his or her family environment and there should be no unnecessary interruption of a youth's education or employment (section 4(i));
 - 17.6 a youth's sense of racial, ethnic or cultural identity should be acknowledged and he or she should have the opportunity to maintain it (section 4(j));
 - 17.7 a decision affecting a youth should, as far as practicable, be made and implemented within a time frame appropriate to the youth's sense of time (section 4(m));
 - 17.8 punishment of a youth must be designed to give him or her an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways (section 4(n)).

Immunity and limitation

18. Substantive changes to Part 14 of the Act, relating to the time for starting proceedings, commenced on 9 September 2014.
19. Before 9 September 2014, section 215 of the Act provided:
- (1) *This section applies to a person who is or has been:*
 - (a) *the Director; or*
 - (b) *a superintendent of a detention centre; or*

- (c) *a probation officer; or*
 - (d) *a surveillance officer; or*
 - (e) *an employee, within the meaning of the Public Sector Employment and Management Act, performing functions under this Act.*
- (2) *The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.*
- (3) *Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.*
- (4) *No proceedings may be commenced in relation to an act done or omitted to be done by the person under this Act more than 6 months after the act was done or the omission occurred.*
20. From 9 September 2014, section 215 of the Act provides:
- (1) *This section applies to a person who is or has been:*
 - (a) *the Commissioner; or*
 - (b) *a superintendent of a detention centre; or*
 - (c) *a probation and parole officer; or*
 - (e) *an employee, within the meaning of the Public Sector Employment and Management Act, performing functions under this Act.*
 - (2) *The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.*
 - (3) *Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.*
21. From 9 September 2014, section 215A of the Act provides:
- (1) *Proceedings for an offence against this Act may be started only by:*
 - (a) *the Commissioner; or*
 - (b) *a person authorised by the Minister.*

- (2) *The proceedings must be started within 6 months after the date on which the Commissioner first became aware of the commission of the offence.*

22. From 9 September 2014, section 215B of the Act provides:

- (1) *Civil proceedings in relation to an act done or omitted to be done by a person under this Act must be started within 6 months after the act was done or omitted to be done.*
- (2) *However, subsection (1) does not prevent a court exercising its jurisdiction under section 44 of the Limitation Act.*

Regulations

23. Section 217 of the Act relevantly provides that the Administrator may make regulations, not inconsistent with the Act, prescribing matters:

- 23.1 required or permitted by the Act to be prescribed; or
- 23.2 necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Explanation of rights and responsibilities

24. Section 150 of the Act provides:

- (1) *As soon as practicable after a youth is admitted to a detention centre, he or she must be given an explanation of the rules of the centre and his or her rights and responsibilities as a detainee.*
- (2) *The explanation must be given in a language and manner the youth is likely to understand, having regard to the youth's age, maturity, cultural background and English language skills.*
- (3) *Any action taken is not unlawful only because of a failure to comply with this section.*
- (4) *For subsection (1), an explanation of the rights and responsibilities of a detainee must include:*
- (a) *information about the consequences of breaching the rules of the detention centre; and*
- (b) *information about the procedure for making a complaint.*

Determinations and rules

25. Regulation 30 of the Regulations provides:

- (1) *The Commissioner or Superintendent may make a determination in relation to any of the following:*
 - (a) *the management and operation of a detention centre;*
 - (b) *the maintaining of order within a detention centre;*
 - (c) *a grievance or complaint of a detainee;*
 - (d) *the health, welfare, safe custody and protection of a detainee.*
- (2) *A determination may relate to the conduct of persons (whether detainees or other persons) within the detention centre.*
- (3) *The Superintendent must ensure a copy of a determination relating to conduct of detainees is given to each detainee on admission to the detention centre or as soon as practicable after admission.*

26. Regulation 31 of the Regulations provides:

- (1) *Determinations relating to conduct of detainees may be referred to as rules of the detention centre.*
- (2) *The Superintendent must ensure a copy of the rules is posted in a place or places where detainees can access them.*
- (3) *If a detainee is unable to read and understand the rules, a member of staff must explain them to the detainee in a language and manner the detainee is likely to understand, having regard to the detainee's age, maturity, cultural background and English language skills.*
- (4) *A breach of the rules by a detainee may result in disciplinary action.*
- (5) *If a determination is amended or a new determination is made, the Superintendent must ensure all detainees are made aware of any change to the rules.*

Use of force, restraint, searches, isolation and detainees at risk of self-harm

27. Substantive amendments of Part 8 of the Act, relating to the use of approved restraints on detainees of youth detention centres, commenced on 1 August 2016 (**1 August 2016 amendments**) and 1 March 2017 (**1 March 2017 amendments**).

28. The 1 August 2016 amendments permitted the appropriate use of approved restraints defined as follows:
- 28.1 “appropriate” in relation to the use of an approved restraint, means using the restraint (section 151AA):
- (a) in the least restrictive or invasive way reasonable in the circumstances; and
 - (b) for the minimum amount of time reasonable in the circumstances;
- 28.2 “approved restraint” means a mechanical device for restricting the movement of detainees approved by the Commissioner for Corrective Services (sections 151AA and 151AB).
29. The 1 March 2017 amendments added the following to the definition of “appropriate” in section 151AA:
- (c) *[and] in accordance with a determination made by the Commissioner under the Regulations in relation to the use of approved restraints.*
30. The 1 March 2017 amendments redefined “approved restraint” in section 151AB as follows:
- Only the following are approved restraints:*
- (a) *handcuffs;*
 - (b) *ankle cuffs;*
 - (c) *waist restraining belts.*
31. Section 151 of the Act provides:
- (1) *The [Commissioner of ~~Corrective~~ Correctional Services] must appoint an employee, within the meaning of the Public Sector Employment and Management Act, to be the superintendent for a detention centre.*
 - (2) *The superintendent of a detention centre is responsible, as far as practicable, for the physical, psychological and emotional welfare of detainees in the detention centre.*
 - (3) *The superintendent of a detention centre:*
 - (a) *must promote programs to assist and organise activities of detainees to enhance their wellbeing; and*

- (b) *must encourage the social development and improvement of the welfare of detainees; and*
- (c) *must maintain order and ensure the safe custody and protection of all persons who are within the precincts of the detention centre, whether as detainees or otherwise; and*
- (d) *is responsible for the maintenance and efficient conduct of the detention centre; and*
- (e) *must supervise the health of detainees, including the provision of medical treatment and, where necessary, authorise the removal of a detainee to a hospital for medical treatment.*

32. Regulation 69 of the Regulations provides:

- (1) *The Superintendent must maintain a comprehensive case management system to assess each detainee's needs in relation to education, vocational training and rehabilitation.*
- (2) *The Superintendent must ensure an appropriate programme of productive activities that addresses the identified needs of the detainee is available to each detainee.*

33. Section 152 of the Act relevantly:

- 33.1 grants the superintendent the powers necessary or convenient for the performance of his or her functions (section 152(1));
- 33.2 from 1 August 2016, permits the superintendent, to protect a detainee from self-harm, or to protect the safety of another person, to:
 - a) use appropriately an approved restraint on the detainee (section 152(1A)(a)); or
 - b) authorise the appropriate use of an approved restraint on the detainee (section 152(1A)(b)).

34. Section 153 of the Act:

- 34.1 obliges the superintendent of a detention centre to maintain discipline at the detention centre (section 153(1));
- 34.2 permits the superintendent to use the force that is reasonably necessary in the circumstances to maintain discipline (section 153(2));

- 34.3 before 1 August 2016, provided that reasonably necessary force did not include:
- (a) striking, shaking or other form of physical violence (section 153(3)(a));
 - (b) enforced dosing with a medicine, drug or other substance (section 153(3)(b)); or
 - (c) compulsion to remain in a constrained or fatiguing position (section 153(3)(c)); or
 - (d) handcuffing or use of similar devices to restrict normal movement (section 153(3)(d));
- 34.4 before 1 August 2016, provided that despite subsection 153(3)(d) the superintendent may use handcuffs or a similar device to restrain a detainee if the superintendent is of the opinion that (section 153(4)):
- (a) an emergency exists, and
 - (b) a detainee should be temporarily restrained to protect the detainee from self-harm or to protect the safety of another person;
- until the superintendent is satisfied the emergency situation no longer exists.
- 34.5 from 1 August 2016, provides that reasonably necessary force does not include (section 153(3)):
- (a) striking, shaking or other form of physical violence (section 153(3)(a));
 - (b) enforced dosing with a medicine, drug or other substance (section 153(3)(b)); or
 - (c) compulsion to remain in a constrained or fatiguing position (section 153(3)(c)); or
 - (d) use of approved restraints to restrict normal movement (section 153(3)(d));
- 34.6 from 1 August 2016, provides that despite subsection 153(3)(d) the superintendent may use appropriately or authorise the appropriate use of an approved restraint on a detainee if the superintendent is of the opinion that (section 153(4)):
- (a) an emergency exists, or

- (b) restraining a detainee would reduce a risk to the good order or security of the detention centre.

34.7 permits the isolation of a detainee from other detainees in the following circumstances (section 153(5)):

- (a) if the superintendent is of the opinion that the detainee should be isolated to protect the safety of another person (section 153(5)(a)); or
- (b) if the superintendent is of the opinion that the detainee should be isolated for the good order or security of the detention centre (section 153(5)(b)); and
- (c) the period of isolation:
 - (i) does not exceed 24 hours; or
 - (ii) with the approval of the Commissioner of ~~Corrective Services~~, does not exceed 72 hours.

35. Before 1 August 2016, section 155 of the Act provided:

The superintendent of a detention centre may approve handcuffs or a similar device to restrain normal movement to be used when escorting a detainee outside the detention centre.

36. From 1 August 2016, section 155 of the Act provides:

When a detainee is being escorted, whether inside or outside a detention centre, the superintendent of the detention centre may:

- (a) *use appropriately an approved restraint on the detainee; or*
- (b) *authorise the appropriate use of an approved restraint on the detainee.*

37. Regulation 70 of the Regulations provides:

37.1 a member of staff must manage incidents of misbehaviour in the manner the member considers most appropriate, having regard to all the circumstances, including the interests of the detainee or detainees involved and the rules of the detention centre (regulation 70(1));

37.2 a practice that is prohibited by the rules of the detention centre must not be used in the discipline or control of behaviour of detainees (regulation 70(2)).

38. Regulation 71 of the Regulations permits the use of physical force:
- 38.1 if it is necessary to physically restrain a detainee for the protection of the detainee, other detainees or other persons; and
 - 38.2 the force used must not exceed force that is reasonable in the circumstances.
39. Regulation 72 of the Regulations prohibits the isolation of a detainee in a cell except under section 153(5) of the Act, and requires continuous monitoring of a detainee isolated in a cell and written observations at intervals not exceeding 15-minutes during the period of isolation.
40. Regulation 72(3) requires the superintendent to keep a journal recording the following particulars of isolation of a detainee:
- 40.1 the date and time a detainee is isolated;
 - 40.2 the name of the detainee;
 - 40.3 the reason why the detainee was isolated;
 - 40.4 the time the on-call person in charge was notified and the name of that person;
 - 40.5 the observations of a member of staff at intervals not more than 15 minutes and the name of the person making the observation;
 - 40.6 the date and time of exercise periods and ablutions;
 - 40.7 details of any approval by the Commissioner for isolation exceeding 24 hours; and
 - 40.8 the date and time the detainee is released from the isolation cell.
41. Section 161 of the Act permits the superintendent of a detention centre to direct a detainee to submit to a search of his or her clothing and person, including a strip search, in the following circumstances:
- 41.1 if the superintendent believes on reasonable grounds that it is necessary in the interests of the security or good order of the detention centre (section 161(1)); or
 - 41.2 if the superintendent believes on reasonable grounds that a detainee may have a prohibited article in his or her possession (section 161(2)).
42. A search of a detainee must be conducted in accordance with the Regulations (section 161(3)).

43. Regulation 73 of the Regulations provides:
- 43.1 for section 161 of the Act, the Superintendent or a member of staff may search a detainee:
- (a) when the detainee is admitted to the detention centre (reg 73(1)(a)); and
 - (b) on the detainee temporarily leaving, and returning to, the detention centre (reg 73(1)(b)); and
 - (c) on the detainee being transferred from the detention centre to a prison or another detention centre (reg 73(1)(c)); and
 - (d) on other occasions, and in the manner, directed by the superintendent as he or she considers necessary (reg 73(1)(d));
- 43.2 the search must be conducted having regard to the detainee's dignity and self-respect (reg 73(2));
- 43.3 a member of staff may only search the detainee in the presence of another member of staff (reg 73(3));
- 43.4 if the search involves stripping the detainee of clothing, the search must be conducted by not less than 2 members of staff of the same gender as the detainee (reg 73(4));
- 43.5 a detainee must not be stripped of clothing and searched except by direction of the superintendent under section 161 of the Act (reg 73(5));
- 43.6 a detainee must not be stripped of clothing and searched (reg 73(6)):
- (a) in the sight or presence of a person of the opposite gender; or
 - (b) in the presence of another detainee, unless it is impracticable to move either the detainee to be stripped or the other detainee.
44. Regulation 74 of the Regulations requires the superintendent to maintain a search register and to record in the register the prescribed details of each search of a detainee or of a detainee's personal area or effects undertaken, including:
- 44.1 the name of the detainee;
 - 44.2 the names of the members of staff who carried out the search;
 - 44.3 the nature of the search, for example, the detainee's person, clothing or room;
 - 44.4 the date and time the search was carried out;

- 44.5 the reason for the search;
 - 44.6 the results of the search.
45. Section 162 of the Act requires a superintendent to ensure that a detainee who is considered to be at risk of self-harm is dealt with in the manner prescribed in the Regulations.
46. Regulations 38 to 44 of the Regulations prescribe the manner in which a detainee who is considered to be at risk of self-harm is to be dealt with, including:
- 46.1 if a member of staff considers a detainee may be at risk of self-harm, the member of staff must (reg 41(1)):
 - (a) ensure the detainee is in view of a member of staff or a health professional at all times until:
 - (i) the Emergency Management Protocol prepared under regulation 42 is implemented; or
 - (ii) an individual management plan for the particular detainee is implemented; and
 - (b) notify the superintendent or other person in charge of the detention centre at the time.
 - 46.2 The superintendent or person in charge must immediately (reg 41(2)):
 - (a) refer the detainee to a medical practitioner; and
 - (b) implement the Emergency Management Protocol or, if an individual management plan has been formulated for the particular detainee, that plan.
 - 46.3 There must be an Emergency Management Protocol relating to the accommodation of detainees at risk of self-harm in an observation room and addressing the checking and furnishing of the observation room, the monitoring and recording of observations of the detainee, the clothing of the detainee and the provision of water and food (reg 42).
 - 46.4 The superintendent must ensure the Emergency Management Protocol is implemented and maintained until an individual management plan is formulated for the detainee (reg 42(4)).

- 46.5 An Emergency Management Protocol yields to an individual management plan (reg 42(5)).
- 46.6 Regulation 43 of the Regulations requires a medical practitioner who assesses a detainee to be at risk of self-harm to formulate and document a culturally appropriate individual management plan in consultation with people who have relevant knowledge of the detainee and people who are likely to play a key role in the management of the detainee.
- 46.7 Regulation 43(4) of the Regulations requires that an individual management plan is updated as appropriate each time a health professional has contact with the detainee.
- 46.8 Regulation 44(1) of the Regulations provides that a detainee's 'at-risk status' may only be cancelled on the recommendation of a medical practitioner given after consultation with the Superintendent or an authorised member of staff.
- 46.9 Regulation 44(2) of the Regulations requires that the formerly at-risk detainee be given appropriate follow up attention by a medical practitioner or other appropriate health professional.

Record keeping

- 47. In addition to the matters referred to in paragraphs 40 and 44, the Act and Regulations require the following records to be kept:
 - 47.1 Section 158 of the Act and regulation 33 of the Regulations requires the superintendent to keep a register containing particulars of every detainee in the detention centre.
 - 47.2 From 1 August 2016, section 158A of the Act required the superintendent to keep a register containing particulars of the use of approved restraints.
 - 47.3 Regulation 36 of the Regulations requires the superintendent to make an inventory of all property in the possession of a detainee when admitted to the detention centre.
 - 47.4 Regulation 45 requires the superintendent to keep a visitor's book recording particulars of each person visiting a detainee at the detention centre.
 - 47.5 Regulation 67 requires the superintendent to maintain a complaints register containing particulars of every complaint made by or on behalf of a detainee.

III. DETERMINATIONS

48. From time to time in the relevant period, the commissioner and/or the superintendent made determinations within the meaning of regulation 30 of the Regulations, usually entitled “directives”, relating to various subjects including:

48.1 Operating procedures for youth detention centres;

Particulars

- a) *“Youth Detention and Remand Centres Procedures and Instructions”.*
- b) *Variations, amendments and supplements to the Youth Detention and Remand Centres Procedures and Instructions, issued from time to time.*
- c) *The applicants will provide further and better particulars of the date of issue and the details of relevant variations, amendments and supplements to the Youth Detention and Remand Procedures and Instructions following discovery and/or interrogatories.*

48.2 Use of force;

Particulars

- a) *Directive 3.2.2, “Use of Force”, issued on 29 June 2015, replacement editions of Directive 3.2.2 issued on 1 January 2016, and 9 September 2016.*
- b) *The applicants will provide further and better particulars of the date of issue and the details of other relevant determinations relating to the use of force and relevant amendments to determinations relating to the use of force following discovery and/or interrogatories.*

48.3 Handcuffing or other restraint;

Particulars

- a) *Directive 3.1.5, “Handcuffing Detainees for Escort Purposes”, issued 8 May 2012.*
- b) *Directive 3.1.6, “Use of Restraints”, issued on 6 May 2015.*
- c) *Directive 3.2.1, “Use of Restraints”, issued on 29 June 2015, replacement editions issued on 1 January 2016, 1 July 2016 and 30 November 2016.*

- d) *Directive 3.2.4, "Escorts", issued in January 2016.*
- e) *Directive 4.1.4, "High Security Unit Procedure DWN", issued on 1 January 2016.*
- f) *The applicants will provide further and better particulars of the date of issue of other relevant determinations relating to handcuffing or other restraint and the details of relevant amendments to determinations relating to handcuffing or other restraint following discovery and/or interrogatories.*

48.4 Searches;

Particulars

- a) *Standard Operating Procedure number: 9.4, "Detention Centre Searches", issued on 15 August 2013.*
- b) *Directive 3.2.6, "Searches", issued on 29 June 2015, replacement edition issued 9 June 2016.*
- c) *The applicants will provide further and better particulars of the date of issue and the details of relevant amendments to determinations relating to searches following discovery and/or interrogatories.*

48.5 Intensive Management Plans (**IMP**) or Individual Intensive Management Plans (**IIMP**) for detainees;

Particulars

- a) *Directive 2.4.5, "Intensive Management Plan", issued on 14 November 2008, replacement edition issued 31 August 2011.*
- b) *Directive 3.4.2, "Individual Intensive Management Plans", issued on 29 June 2015.*
- c) *The applicants will provide further and better particulars of the date of issue and the details of relevant amendments to determinations relating to Intensive Management Plans and Individual Intensive Management Plans following discovery and/or interrogatories.*

48.6 Management of Swearing and Abusive Language.

Particulars

- a) *Memo from the Assistant General Manager, Juvenile Detention, "Management of swearing and abusive language by detainees", issued on 13 May 2010.*
- b) *Memo from the Assistant General Manager of Juvenile Detention, "Management of Swearing and Abusive Language", issued on 19 March 2012.*
- c) *The applicants will provide further and better particulars of the date of issue and the details of other relevant determinations relating to the management of swearing and abusive language following discovery and/or interrogatories.*

48.7 Incident reporting and recording.

Particulars

Relevant directives relating to incident reporting and recording are pleaded and particularised in paragraph 54.5.

49. The use of force directives referred to in paragraph 48.2 included the requirements:

49.1 That force be used in detention centres as a last resort in the course of the following hierarchy of response:

- (a) Option 1: negotiation through verbal persuasion;
- (b) Option 2: change the officers dealing with the incident;
- (c) Option 3: refer to the senior officer in charge;
- (d) Option 4: low level physical control;
- (e) Option 5: assistance from the Critical Response Team.

49.2 That use of force be limited to the minimum amount necessary.

50. The effects of the restraint directives referred to in paragraph 48.3 included the following:

50.1 Directive 3.1.5 related to use of handcuffs for external escorts.

50.2 Directive 3.1.6 purported to authorise, without reference to the limitations in sections 153(4) and 155 of the Act:

- (a) the use of the following “approved” restraint devices:
 - (i) Key locking handcuffs and ankle cuffs;
 - (ii) Combination Sets – chain linked waist/hand/ankle and hand/ankle;
 - (iii) Waist restraining belt - leather/or other suitable material, handcuffs attached to belt, provision to attach ankle cuffs and lead strap;
 - (iv) Restraint equipment – Velcro locking combination of individual sets - single/double hand/ankle restraints, and waist/hand/ankle/lead strap sets;
 - (v) Emergency Restraint Equipment – Emergency Restraint Chair.
- (b) The use of handcuffs for internal escort within detention centres with authorisation and to exempt such use from the requirement of recording in the Use of Restraints Register or reporting in the Integrated Offender Management System (**IOMS**).
- (c) Exempted use of handcuffs when the detainee is an inpatient in hospital or another medical clinic from the requirement of recording in the Use of Restraints Register or reporting in the IOMS.
- (d) Stipulated that handcuffs be applied with the arms together in front of the body of the detainee.
- (e) Stipulated that restraints were not to be applied as punishment.
- (f) Required restraints to be applied humanely in a manner that causes minimum discomfort.

50.3 The 29 June 2015 edition of directive 3.2.1 purported to authorise, without reference to the limits in sections 153(4) and 155 of the Act, the use of restraints in substantially similar terms to directive 3.1.6.

- 50.4 The January 2016 edition of directive 3.2.1 made reference to the limits in sections 153(4) and 155 of the Act and purported to define ankle cuffs and waist restraining belts as “other similar devices” to handcuffs.
- 50.5 The August 2016 edition of directive 3.2.1 made reference to the limits in the provisions of the Act relating to handcuffs and approved restraints that commenced on 1 August 2016 and provided, among other things:
- (a) Only staff members in detention centres who have satisfactorily completed the nationally recognised training in de-escalation techniques and use of restraints will be authorised to use approved restraints;
 - (b) Approved restraints must not be used as punishment;
 - (c) Use of restraint is a last resort after all other less restrictive options and techniques have been ineffective in controlling or defusing the situation or assisting the detainee to de-escalate his or her behaviour.
 - (d) An approved restraint must be applied:
 - (i) as humanely as possible;
 - (ii) with minimum discomfort to the detainee;
 - (iii) in a manner which respects the dignity of the detainee;
 - (iv) for the minimum period of time reasonable in the circumstances; and
 - (v) to accord with the *United Nations Convention on the Rights of the Child*, while still meeting the duty of care obligations of the Northern Territory Department of Correctional Services.
51. The effect of the search directives referred to in paragraph 48.4 was to purport to authorise searches of the person and property of detainees by members of staff without reference to the requirement in section 161 that search be made by direction of the superintendent based on the superintendent’s belief, on reasonable grounds, of the matter in section 161(1) or the matter in section 161(2).
52. The effect of Directive 2.4.5 referred to in paragraph 48.5(a) was to purport to authorise the isolation of detainees for behaviour management purposes pursuant to IMPs without reference to the limitations on the isolation of detainees contained in sub-section 153(5) of the Act and regulation 72(1) of the Regulations.

Particulars

- a) *The applicants refer to each edition of Directive 2.4.5 for its complete terms and effect.*
- b) *Directive 2.4.5 does not refer to the limits to the reasons for isolation contained in sub-sections 153(5)(a) and (b) of the Act.*
- c) *Directive 2.4.5 does not refer to the requirement in sub-section 153(5) that the superintendent have the opinion that the detainee should be isolated from other detainees for one of the reasons in sub-sections 153(5)(a) and (b) of the Act.*
- d) *Directive 2.4.5 does not refer to the limits to the length of the isolation of detainees in sub-section 153(5).*

53. The effect of Directive 3.4.2 referred to in paragraph 48.5(b) was to purport to authorise the isolation of detainees for behaviour management purposes pursuant to IIMPs without reference to the limitations on the isolation of detainees contained in sub-section 153(5) of the Act and regulation 72(1) of the Regulations.

Particulars

- a) *The applicants refer to Directive 3.4.2 for its complete terms and effect.*
- b) *Directive 3.4.2 does not refer to the limits to the reasons for isolation in sub-sections 153(5)(a) and (b) of the Act.*
- c) *Directive 3.4.2 does not refer to the requirement in sub-section 153(5) that the superintendent have the opinion that the detainee should be isolated from other detainees for one of the reasons in sub-sections 153(5)(a) and (b) of the Act.*
- d) *Directive 3.4.2 does not refer to the limits to the length of the isolation of detainees in sub-section 153(5).*

Record keeping determinations

54. From time to time in the relevant period, the commissioner and/or the superintendent made determinations within the meaning of regulation 30 of the Regulations which required the making and keeping of records on the matters the subject of the determination, including the following:

54.1 Use of force;

Particulars

- a) *The Use of Force directives referred to in paragraph 48.2, required:*
- i) *The maintenance of a register of incidents involving the use of force;*
 - ii) *Details of each incident involving the use of force to be recorded in the register including the following:*
 - (1) *Names of the officer(s) and detainee(s) involved;*
 - (2) *Date and time of incident;*
 - (3) *Nature of force used;*
 - (4) *Details of any injury and medical attention to any officer, detainee or other person; and*
 - (5) *An account of the event leading to the use of force and reasons for its use.*
 - iii) *Visual recording using video-recording equipment of:*
 - (1) *All cell extractions;*
 - (2) *All incidents where violence by the detainee is anticipated.*
 - (3) *From 1 January 2016, incidents that involve the removal of a detainee's clothes.*
- b) *The applicants will provide further and better particulars of determinations relating to the making of records of use of force following discovery and/or interrogatories.*

54.2 Handcuffing or other restraint;

Particulars

- a) *Directive 3.1.5, "Handcuffing Detainees for Escort Purposes", referred to in paragraph 48.3(a) required completion of the handcuff register for each use of restraints.*

- b) Directive 3.1.6, "Use of Restraints", referred to in paragraph 48.3(b), required incidents involving the use of restraints to be recorded in the restraints register.
- c) Directive 3.2.1, "Use of Restraints", referred to in paragraph 48.3(c), required incidents involving the use of restraints to be recorded in the restraints register.
- d) The applicants will provide further and better particulars of determinations relating the making of records of the use of handcuffing or other restraint following discovery and/or interrogatories.

54.3 Searches;

Particulars

- a) Standard Operating Procedure number: 9.4, "Detention Centre Searches" referred to in paragraph 48.4, required records of searches of the detention centre including:
 - i) Date and description of areas searched;
 - ii) Articles of contraband found;
 - iii) Name of detainee if applicable;
 - iv) Complaints if any raised by detainees regarding the conduct of the search;
 - v) Discoveries of any tampering with, or damage to detention centre property.
- b) The applicants will provide further and better particulars of determinations relating to the making of records of searches following discovery and/or interrogatories.

54.4 Intensive Management Plans (IMP) or Individual Intensive Management Plans (IIMP) for detainees;

Particulars

- a) Directive 2.4.5, "Intensive Management Plan", referred to in paragraph 48.5(a) required employees to compile an IMP, which must be clearly defined and record the risk behaviours that need to be

addressed and the reasons for alternative management and include, where applicable, details of:

- i) Duration;*
 - ii) Behavioural standards to be achieved and maintained;*
 - iii) Recommendations for participation in interventions;*
 - iv) Accommodation requirements;*
 - v) Property the detainee is approved or prohibited to have;*
 - vi) Provision of meals;*
 - vii) Internal movement;*
 - viii) External movement;*
 - ix) Visits;*
 - x) Health care;*
 - xi) Telephone access; and*
 - xii) Consequences of non-compliance.*
- b) Directive 3.4.2, "Individual Intensive Management Plans", referred to in paragraph 48.5(b), required officers to compile an IIMP, which had the same requirements for recording of information as those required by Directive 2.4.5 for IMPs particularised in sub-paragraph 54.4(a).*

54.5 Incident reporting and recording.

Particulars

- a) Directive number 1.7.6, "Incident Reporting and Recording", issued 31 March 2008, required all employees who were a witness to and/or involved in an incident to provide a written report to the superintendent before the completion of rostered duty.*
- b) Directive number 3.1.1, "Incident Reporting and Recording – Youth Justice", issued 14 July 2015 replaced directive number 1.7.6 and required all employees directly or indirectly involved in notifiable incidents to provide a written report to the superintendent before the completion of rostered duty or within a timeframe approved by the superintendent.*

- c) *Standard Operating Procedure 9.1.01, "Assault Reporting Procedures", issued 7 January 2013 required the following steps to be taken when (a) a detainee complains to a member of staff that another detainee has assaulted him or her, or (b) when a member of staff complains that a detainee has assaulted him or her:*
- i) *Photographs of injuries;*
 - ii) *Download of CCTV footage and maintenance of three DVD copies of footage of the incident;*
 - iii) *Collection of IOMS (Integrated Offender Management System) reports from each member of staff involved.*
- d) *Standard Operating procedure 9.1.01, "Assault Reporting Procedures", issued 7 January 2013 requires, when a detainee alleges that a member of staff has assaulted him or her, the same steps as items (i), and (iii) of the particulars in sub-paragraph 54.5(c) but does not require the immediate downloading and maintenance of copies of CCTV footage of the incident.*
- e) *The applicants will provide further and better particulars of determinations relating to incident reporting and recording following discovery and/or interrogatories.*

54.6 Visual recording requirements.

Particulars

- a) *Standard Operating Procedure Number 002, Detainee BMU Placement, issued 2 November 2012, required video recording of the whole process of the movement of a detainee into the Behaviour Management Unit (**BMU**) including the following details to be stated by the member of staff making the recording:*
- i) *The name of the person recording;*
 - ii) *The time, date and location;*
 - iii) *The name of the detainee(s) being recorded;*
 - iv) *A brief description of the incident taking place.*
- b) *Directive 3.2.2, "Use of Force", as described in particulars 54.1(a)(iii).*

- c) *The applicants will provide further and better particulars of determinations relating to visual recording requirements following discovery and/or interrogatories.*

54.7 Records of isolation.

Particulars

- a) *Memo from the General Manager of Juvenile Detention to Shift Supervisors and Senior Youth Workers at Don Dale, OIC, Alice Springs issued 22 September 2011 replacing section 10.3.9 - 11 of the Procedures and Instructions Manual requiring written records to be made of the following:*
- i) *In all cases where an isolation cell placement to a maximum of 24 hours is to extend through the night the relevant staff member is to complete an Officers Report detailing the management plan to include:*
- (1) *Details of contact with the senior case worker or on-call manager;*
 - (2) *The approved maximum time for isolation;*
 - (3) *Any other details relevant to the particular detainee or episode including strategies to overcome the emergency management situation and future management of the detainee.*
- ii) *In all cases where an isolation cell placement is approved beyond 24 hours to a maximum of 72 hours, the relevant staff member is to attach a further Officers Report recording details of Director approval for the extension beyond 24 hours and any agreed changes to the management plan.*
- b) *Standard Operating Procedure 5.2.4, "De-escalation rooms", Darwin Specific Procedure, DWN 4.3, issued November 2015 and amended in January 2016 requires:*
- i) *The keeping of a detailed de-escalation journal for any detainee on a placement in a de-escalation room including:*
- (1) *The information required to be recorded pursuant to regulations 72(2) and (3) of the Regulations; and*

- (2) *All activities and all decisions made in regard to a detainee's access to activities.*
- ii) *An incident report in IOMS must be completed upon commencement of the original placement of the detainee in the de-escalation room;*
- iii) *For placements extended beyond 24 hours the shift supervisor is to attach a further report to the original incident in IOMS with details of the Commissioner's approval for the extension and any agreed changes to the management plan.*
- c) *The applicants will provide further and better particulars of determinations relating to recording of matters for detainees in isolation following discovery and/or interrogatories.*

54.8 High security detainees.

Particulars

- a) *Directive number 3.4.1, "High Security Detainees", issued 29 June 2015 requires a record to be made in the appropriate journal of:*
- i) *Significant events, which may include medical attention, shower, exercise, meals and any behaviour warranting officer intervention;*
- ii) *Any time a detainee is denied any usually authorised item or activity.*
- b) *The applicants will provide further and better particulars of determinations relating to recording of matters relating to high security detainees following discovery and/or interrogatories.*

54.9 Isolation cell and room placements for swearing and abusive language.

Particulars

- a) *Memo from the Assistant General Manager, Juvenile Detention, "Management of swearing and abusive language by detainees", issued on 13 May 2010, which mandated room placements, security lounge placements or cell placements for detainees using foul or abusive language, required:*
- i) *Placements to be recorded; and*

- ii) *A case note regarding each instance; and*
 - iii) *In instances involving a security lounge placement or cell placements, a record in the security unit journal.*
- b) *Memo from the Assistant General Manager of Juvenile Detention, "Management of Swearing and Abusive Language", issued on 19 March 2012, which mandated BMU placements for detainees using foul or abusive language, required:*
- i) *An incident report stating the exact verbal abuse that the detainee has threatened or stated; and*
 - ii) *A full BMU placement journal started for each offence, regardless of the duration.*

IIIA. ABSENCE OF VALIDLY APPOINTED COMMISSIONERS AND SUPERINTENDENTS

54A. The appointment of Kenneth Michael Middlebrook as Commissioner of Correctional Services, which commenced on 1 June 2008, expired on 31 May 2012.

Particulars

Instrument of appointment dated 8 April 2008.

54B. For the period 1 June 2012 to 12 November 2015 no person was appointed to the position of Commissioner of Correctional Services except for the following people appointed temporarily as acting Director of or Commissioner of Correctional Services on or about the following periods:

54B.1 Philip Patrick Brown:

- (a) 12 September 2013 to 13 September 2013;
- (b) 30 November 2013 to 6 December 2013;
- (c) 13 December 2013 to 17 December 2013; and
- (d) 27 December 2013 to 1 January 2014.

54B.2 Rosanne Laque:

- (a) 30 September 2013 to 2 October 2013;
- (b) 8 October 2013 to 11 October 2013;

- (c) 17 February 2014 to 18 February 2014;
- (d) 10 April 2014 to 12 April 2014;
- (e) 2 June 2014 to 5 June 2014;
- (f) 19 July 2014 to 21 July 2014;
- (g) 30 July 2014 to 3 August 2014;
- (h) 19 September 2014 to 22 September 2014;
- (i) 3 October 2014 to 12 October 2014;
- (j) 20 October 2014 to 22 October 2014;
- (k) 3 December 2014 to 6 December 2014;
- (l) 25 December 2014 to 11 January 2015;
- (m) 17 March 2015 to 21 March 2015;
- (n) 10 October 2015 to 12 October 2015;
- (o) 13 October 2015 to 15 October 2015; and
- (p) 22 October 2015 to 30 October 2015.

54B.3 Tracy Marie Luke:

- (a) 24 October 2013 to 29 October 2013;
- (b) 2 November 2013 to 7 November 2013; and
- (c) 18 April 2015 to 26 April 2015.

54B.4 Salli Cohen:

- (a) 30 October 2013 to 1 November 2013;
- (b) 30 April 2014 to 1 May 2014; and
- (c) 30 May 2015 to 7 June 2015.

54B.5 Robert Bruce Steer:

- (a) 24 May 2014 to 26 May 2014;
- (b) 9 July 2015 to 20 July 2015;
- (c) 31 July 2015 to 12 August 2015; and

(d) 12 September 2015 to 15 September 2015.

54C. By reason of the matters in paragraph 54B, each purported exercise of power and purported delegation of authority under the Act of a commissioner on or about the following periods was invalid and of no effect:

54C.1 31 May 2012 to 11 September 2013;

54C.2 14 September 2013 to 29 September 2013;

54C.3 3 October 2013 to 7 October 2013;

54C.4 12 October 2013 to 23 October 2013;

54C.5 8 November 2013 to 29 November 2013;

54C.6 7 December 2013 to 12 December 2013;

54C.7 18 December 2013 to 26 December 2013;

54C.8 2 January 2014 to 16 February 2014;

54C.9 19 February 2014 to 9 April 2014;

54C.10 13 April 2014 to 29 April 2014;

54C.11 2 May 2014 to 23 May 2014;

54C.12 27 May 2014 to 1 June 2014;

54C.13 6 June 2014 to 18 July 2014;

54C.14 22 July 2014 to 29 July 2014;

54C.15 4 August 2014 to 18 September 2014;

54C.16 23 September 2014 to 2 October 2014;

54C.17 13 October 2014 to 19 October 2014;

54C.18 23 October 2014 to 2 December 2014;

54C.19 7 December 2014 to 24 December 2014;

54C.20 12 January 2015 to 16 March 2015;

54C.21 22 March 2015 to 17 April 2015;

54C.22 27 April 2015 to 29 May 2015;

54C.23 8 June 2015 to 8 July 2015;

54C.24 21 July 2015 to 30 July 2015;

54C.25 13 August 2015 to 11 September 2015;

54C.26 16 September 2015 to 9 October 2015;

54C.27 16 October 2015 to 21 October 2015; and

54C.28 31 October 2015 to 12 November 2015.

54D. For the period 20 December 2011 to 15 September 2014 no person was validly appointed to the position of superintendent of Old Don Dale.

54E. For the period 15 September 2014 to 21 December 2014 no person was validly appointed to the position of superintendent of Holtze Youth Detention Centre.

54F. For the period 21 December 2014 to 22 April 2015 no person was validly appointed to the position of superintendent of New Don Dale.

54G. For the period 4 May 2015 to 17 January 2016 no person was validly appointed to the position of superintendent of New Don Dale.

54H. By reason of the matters in paragraphs 54D, 54E, 54F and 54G, each purported exercise of power and purported delegation of authority of a superintendent on or about the following periods was invalid and of no effect:

54H.1 20 December 2011 to 22 April 2015; and

54H.2 4 May 2015 to 17 January 2016.

IV. RESIDUAL LIBERTY

55. At all times while the applicants and Group Members were lawfully in detention in youth 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 terms of their detention.

55A. In this Statement of Claim “isolate”, “isolated” and “isolation” refer to “isolate” and “isolated” within the meaning of section 153(5) of the Act and regulation 72 of the Regulations.

56. By reason of the matters in paragraph 55 and 55A, each of the following circumstances constitutes wrongful imprisonment of a detainee:

- 56.1 ~~The isolation of the detainee from other detainees unless the superintendent holds, or continues to hold, on reasonable grounds, one of the opinions referred to in section 153(5)(a) or section 153(5)(b) of the Act.~~
The isolation of the detainee from other detainees in circumstances where the detainee is locked alone in a cell for periods of 20 hours or more in each 24 hours and, during the times when the detainee is permitted out of the cell, the detainee remains confined within a delimited area within the Behaviour Management Unit (BMU) or High Security Unit (HSU) of the detention centre separated from other detainees:
- (a) unless the superintendent holds, or continues to hold, on reasonable grounds, one of the opinions referred to in sub-sections 153(5)(a) or 153(5)(b) of the Act;
 - (b) for more than 24 hours without the approval of the Commissioner of Correctional Services contrary to section 153(5) of the Act; and/or
 - (c) for more than 72 hours contrary to section 153(5) of the Act.
- 56.2 ~~The isolation of the detainee from other detainees for more than 24 hours without the approval of the Commissioner of Corrective Services contrary to section 153(5) of the Act.~~
- 56.3 ~~The isolation of the detainee from other detainees for more than 72 hours contrary to section 153(5) of the Act.~~
- 56.4 The use of a restraint that compels the detainee to remain in a constrained or fatiguing position and confined within an area delimited by the commissioner, superintendent or a member of staff contrary to section 153(3)(c) of the Act.
- 56.5 Before 1 August 2016, the use of a restraint on the detainee that restricted normal movement and confined the detainee within an area delimited by the commissioner, superintendent or a member of staff unless:
- (a) The superintendent held or continued to hold, on reasonable grounds, both of the opinions referred to in section 153(4)(a) and (b) of the Act; and
 - (b) The device used to restrain the detainee was handcuffs or a similar device.

- 56.6 From 1 August 2016, the use of a restraint on the detainee that restricts normal movement and confines the detainee within an area delimited by the commissioner, superintendent or a member of staff, unless:
- (a) The superintendent holds or continues to hold, on reasonable grounds, one of the opinions referred to in section 153(4) of the Act; and
 - (b) Either:
 - (i) The superintendent was using appropriately an approved restraint on the detainee as permitted by section 153(4)(a); or
 - (ii) The superintendent has authorised the appropriate use of the relevant approved restraint on the detainee as permitted by section 153(4)(b).
- 56.7 From 1 August 2016, the use of a restraint on the detainee that is not approved and confines the detainee within an area delimited by the commissioner, superintendent or a member of staff contrary to sections 153(4) and 151AB of the Act.
- 56.8 From 1 August 2016, the inappropriate use of an approved restraint on the detainee that confines the detainee within an area delimited by the commissioner, superintendent or a member of staff contrary to sections 153(4) and 151AB of the Act.
- 56.9 Isolation of a detainee under an IMP under directive 2.4.5 referred to in paragraph 52 unless section 153(5) of the Act had been complied with in full.
- 56.10 Isolation of a detainee under an IIMP under directive 3.4.2 referred to in paragraph 53 unless section 153(5) of the Act had been complied with in full.

V. BATTERY AND/OR ASSAULT

57. By reason of the matters in paragraphs 34 to 36 and 41 to 43, each of the following circumstances constitutes battery of a detainee:
- 57.1 The use of more than reasonably necessary force on a detainee contrary to section 153(2) of the Act;
 - 57.2 Striking, shaking or using other forms of physical violence on the detainee contrary to section 153(3)(a) of the Act;

- 57.3 The enforced dosing with a medicine, drug or other substance, including the use of tear gas, pepper spray, capsicum spray and/or similar substances on the detainee contrary to sections 153(2) and 153(3)(b) of the Act;
- 57.4 The use of a dog to control the detainee contrary to section 153(2) of the Act;
- 57.5 The use of a restraint that compels the detainee to remain in a constrained or fatiguing position contrary to section 153(3)(c) of the Act;
- 57.6 The use of a restraint on the detainee that restricts normal movement unless:
- (a) Before 1 August 2016, the superintendent held or continued to hold, on reasonable grounds, both of the opinions referred to in section 153(4)(a) and (b) of the Act; or
 - (b) From 1 August 2016, the superintendent holds or continues to hold, on reasonable grounds one of the opinions referred to in section 153(4) of the Act; or
 - (c) Before 1 August 2016, the detainee was being escorted outside the youth detention centre and the restraint device used was handcuffs or a similar device approved by the superintendent to restrain normal movement in those circumstances; or
 - (d) From 1 August 2016, the detainee was being escorted inside or outside the youth detention centre and:
 - (i) The superintendent was using appropriately an approved restraint on the detainee; or
 - (ii) The superintendent has authorised the appropriate use of an the relevant approved restraint on the detainee;
- 57.7 Before 1 August 2016, the use of a restraint on a detainee that was not handcuffs or a similar device on the detainee, including the use of ankle cuffs, waist belts and other devices referred to in directive 3.1.6 referred to in paragraph 50.2, contrary to section 153(4) of the Act;
- 57.8 From 1 August 2016, the use of a restraint on the detainee that is not approved contrary to sections 151AB, 153(3) and 153(4) of the Act;
- 57.9 From 1 August 2016, the use that is not appropriate of an approved restraint on the detainee contrary to sections 151AA and 153(4) of the Act;

- 57.10 A search of the detainee that involves physical contact with the person of the detainee in circumstances not authorised by section 161 of the Act, including a search purportedly in compliance with regulation 73(1) of the Regulations, to the extent that regulation 73 is inconsistent with section 161 of the Act;
- 57.11 A search of the detainee that involves physical contact with the person of the detainee in circumstances not authorised by section 161 of the Act, including a search purportedly in compliance with the directives referred to in paragraph 48 to the extent that the directives are inconsistent with section 161 of the Act; and
- 57.12 A search of the detainee that involves physical contact with the person of the detainee conducted in a manner that is not in accordance with the Regulations.
58. By reason of the matters in paragraphs 34 to 43 conduct of a superintendent or a member of staff of a youth detention centre that caused a detainee to apprehend that the superintendent or member of staff might make or cause physical contact with the detainee in the circumstances set out in sub-paragraphs 57.1 to 57.12 above constitutes assault of the detainee.
59. By reason of the matters in paragraphs 34 to 43 conduct of a superintendent or a member of staff of a youth detention centre that caused a detainee to apprehend that the superintendent or member of staff might make or cause physical contact with a detainee in the following circumstances constitutes assault of the detainee:
- 59.1 Search of the detainee that involves the detainee being stripped of his or her clothing in circumstances not authorised by section 161 of the Act, including:
- (a) A search purportedly in compliance with regulation 73 of the Regulations, to the extent that regulation 73 is inconsistent with section 161 of the Act; and
 - (b) A search purportedly in compliance with the directives referred to in paragraph 48 to the extent that the directives are inconsistent with section 161 of the Act; and
- 59.2 Search of the detainee that involves the detainee being stripped of his or her clothing, conducted in a manner that is not in accordance with the Regulations.

VI. FIRST APPLICANT'S INDIVIDUAL TORT CLAIMS

60. In or about April 2016:

- 60.1 a number of members of staff threatened to spray tear gas in the first applicant's room in the High Security Unit (**HSU**) at New Don Dale;
- 60.2 entered the first applicant's room;
- 60.3 pushed the first applicant to the floor;
- 60.4 punched the first applicant twice to the back of his head, causing his face to strike the floor of the cell forcefully;
- 60.5 handcuffed the first applicant's hands behind his back; and
- 60.6 took hold of the first applicant.

Particulars of matters in paragraph 60

- a) *The respondent was obliged to keep records of incidents of this kind pursuant to the matters referred to in paragraphs 54.1 and 54.2. Accordingly, the details of this incident are better known to the respondent than to the first applicant.*
- b) *The first applicant will provide further and better particulars of the date, the personnel involved and other necessary particulars following discovery and/or interrogatories.*

61. Immediately following the matters described in paragraph 60:

- 61.1 the members of staff dragged the first applicant from the room;
- 61.2 while one of the members of staff forcefully pushed the first applicant's handcuffed arms up behind the first applicant's back.

62. Immediately following the matters described in paragraph 61 the members of staff:

- 62.1 dragged the first applicant into cell number 18, which had no closed circuit television monitoring;
- 62.2 one of the members of staff grabbed hold of the first applicant's throat;
- 62.3 forced the first applicant to the floor; and
- 62.4 kicked the first applicant in the ribs.

63. Immediately following the matters described in paragraph 62, a number of members of staff entered the cell carrying batons and shields and struck the first applicant with batons and shields.
64. Immediately following the matters in paragraph 63:
- 64.1 One of the members of staff tried to strip the first applicant of his clothing;
 - 64.2 The first applicant resisted being stripped of his clothing;
 - 64.3 One of the members of staff held the first applicant down on the floor;
 - 64.4 Several other members of staff stripped the first applicant of his clothes except his underpants;
 - 64.5 Members of staff removed the mattress and bedding from the cell;
 - 64.6 The members of staff locked the first applicant in the cell;
 - 64.7 The members of staff left the first applicant in his cell with no clothing, no mattress and no bedding overnight;
 - 64.8 The first applicant lay on the bare concrete bench overnight; and
 - 64.9 It was not until the following morning that a member of staff brought the first applicant a pair of shorts and a shirt to wear.
65. In the course of the incidents described in paragraphs 60 to 64, the members of staff assaulted and/or battered the first applicant.

Particulars

- a) *The first applicant had a continuing apprehension that imminent physical contact would be made with his body by members of staff of the youth detention centre;*
- b) *The members of staff handcuffed the first applicant in circumstances where the superintendent did not hold the opinions required by section 153(4) of the Act and/or had not authorised the use of handcuffs;*
- c) *The members of staff struck and used other forms of physical violence on the first applicant contrary to section 153(3)(a) of the Act;*
- d) *The handcuffing of the first applicant with his hands behind his back compelled him to remain in a constrained and fatiguing position contrary to section 153(3)(c) of the Act;*

- e) *The first applicant suffered physical contact to his body by numerous members of staff of the detention centre numerous times;*
 - f) *The first applicant did not consent to any physical contact being made with his body by any member of staff of the youth detention centre;*
 - g) *The members of staff used force that was not reasonably necessary contrary to section 153(2) of the Act;*
 - h) *The members of staff did not comply with the requirements of the use of force directive referred to in paragraph 49;*
 - i) *Further particulars may be provided following discovery and/or interrogatories.*
66. Immediately following the incidents referred to in paragraphs 60 to 64, the first applicant was isolated in a cell in the HSU for two days and was not permitted out of the cell at any time during that period.
67. The isolation of the first applicant described in paragraph 66 deprived the first applicant of his residual liberty ~~was unlawful.~~

Particulars

- a) *During the periods in which the first applicant was isolated from other detainees, he was confined in a cell for periods exceeding 20 hours.*
 - b) *During the periods in which the first applicant was isolated from other detainees, he was usually only allowed out of the cell once in every 24 hour period to permit him to have a shower and a period of between 15 minutes and 1 hour of recreation in the recreation area of the HSU and he remained isolated from other detainees during this time.*
 - c) *The recreation area of the HSU was enclosed and locked apart from the rest of the youth detention centre such that the first applicant remained isolated when outside his cell in the HSU.*
- ~~a) *The superintendent did not hold the opinions required by s 153(5) of the Act.*~~
 - ~~b) *The isolation of the first applicant for more than 24 hours had not been approved by the commissioner, contrary to section 153(5) of the Act.*~~
 - ~~c) *The isolation of the first applicant infringed the residual liberty of the first applicant.*~~

~~d) — Further particulars may be provided following discovery/or interrogatories.~~

67A. The isolation of the first applicant described in paragraphs 66 and 67 was unlawful for one or more of the following reasons:

67A.1 Contrary to section 153(5) of the Act, the superintendent did not direct the isolation of the first applicant;

67A.2 Further, or in the alternative, the superintendent did not hold the opinions required by section 153(5) of the Act;

67A.3 Further, or in the alternative, the superintendent did not hold the opinions required by section 153(5) of the Act on reasonable grounds;

67A.4 The isolation of the first applicant for more than 24 hours had not been approved by the commissioner, contrary to section 153(5) of the Act;

67A.5 Further, or in the alternative to sub-paragraphs 67A.1 to 67A.4, the deprivation of the first applicant's residual liberty described in paragraphs 66 and 67 was not justified.

68. In addition to the occasion referred to in paragraphs 66 and 67, on the following occasions during his periods in a youth detention centre, the first applicant was confined in a cell in the BMU of Old Don Dale or the HSU of New Don Dale isolated from other detainees:

68.1 15 May 2014 to 16 May 2014;

68.2 31 May 2015 to 2 June 2015;

68.3 12 January 2016 to 13 January 2016;

68.4 3 February 2016 to 4 February 2016;

68.5 9 March 2016 to 12 March 2016;

68.6 3 May 2016 to 7 May 2016;

68.7 12 May 2016 to 14 May 2016;

68.8 2 August 2016 to 3 August 2016.

68A. The isolation of the first applicant on each occasion described in paragraph 68 deprived the first applicant of his residual liberty.

Particulars

- a) During the periods in which the first applicant was isolated from other detainees, he was confined in a cell for periods exceeding 23 hours.
- b) During the periods in which the first applicant was isolated from other detainees, he was usually only allowed out of the cell once in every 24 hour period for a period of between 15 minutes and 1 hour to permit him to have a shower and recreation in the recreation area of the HSU and he remained isolated from other detainees during this time.
- c) The recreation area of the HSU was enclosed and locked apart from the rest of the youth detention centre such that the first applicant remained isolated when outside his cell in the HSU.

69. The isolation of the first applicant described in paragraph 68 was unlawful for one or more of the following reasons:

- 69.1 During the periods described in sub-paragraphs 68.1, 68.2 and 68.3 there was no person validly appointed to the position of superintendent, as described in paragraph 54D and 54G, and, accordingly, the isolation of the first applicant in those periods was not authorised under section 153(5) of the Act;
- 69.2 The isolation of the first applicant for more than 24 hours had not been approved by the commissioner, contrary to section 153(5) of the Act;
- 69.3 Further, or in the alternative to sub-paragraph 69.2, in the period described in sub-paragraph 68.1 there was no person validly appointed to the position of commissioner, as described in paragraph 54C, and, accordingly, any purported approval of the commissioner in that period for the isolation of the first applicant for more than 24 hours was invalid;
- 69.4 Further, or in the alternative, contrary to section 153(5) of the Act, the superintendent did not direct the isolation of the first applicant;
- 69.5 Further, or in the alternative, the superintendent did not hold the opinions required by section 153(5) of the Act;
- 69.6 Further, or in the alternative, the superintendent did not hold the opinions required by section 153(5) of the Act on reasonable grounds;

69.7 Further, or in the alternative to sub-paragraphs 69.1 to 69.6, the deprivation of the first applicant's residual liberty described in paragraphs 68 and 68A was not justified.

69A. In addition to the periods described in paragraphs 66 and 68 the first applicant was housed in the HSU for the following periods, subject to IIMPs:

69A.1. 6 November 2015 to 8 December 2015;

69A.2. 15 January 2016 to 3 February 2016;

69A.3. 4 February 2016 to 9 March 2016;

69A.4. 12 March to 3 May 2016;

69A.5. 7 May 2016 to 12 May 2016;

69A.6. 14 May 2016 to 25 May 2016;

69A.7. 7 July 2016 to 28 August 2016.

69B. During the period described in sub-paragraph 69A.1 the relevant IIMPs referred to in paragraph 69A controlled the time within which the first applicant was to be confined within his cell and the time in which he was permitted to participate in activities outside his cell in accordance with a progressive series of stages with the following standard restrictions:

69B.1 Stage 0 (Assessment) provided for:

- (a) Recreation time of 1 hour per day;
- (b) Detainee to be locked in his cell for the remaining 23 hours per day;
- (c) Detainee to be secured before 3 pm;
- (d) Detainee to have no more than a half hour non-contact visit per week;
- (e) No access to television or tuckshop;
- (f) Classification review suspended;

69B.2. Stage 1 (Basic Privileges) provided for:

- (a) Recreation time of 1 hour per day;
- (b) Detainee to be locked in his cell for the remaining 23 hours per day;
- (c) Detainee to be secured before 3 pm;
- (d) Detainee to have no more than a half hour non-contact visit per week;

- (e) No access to television or tuckshop;
- (f) Classification review suspended;

69B.3 Stage 2 (Restricted Privileges) provided for:

- (a) Recreation time normal out of cell hours with an early lockdown;
- (b) Detainee to be secured before 3 pm;
- (c) Detainee to have no more than one hour non-contact visit per week;
- (d) Access to television and no access to tuckshop;
- (e) Classification review suspended;

69B.4. Stage 3 (Normal Privileges) provided for:

- (a) Recreation time normal out of cell hours;
- (b) Detainee to be secured before 5 pm;
- (c) Normal visits;
- (d) Access to television and access to tuckshop;
- (e) Normal classification review.

Particulars of paragraph 69B

- a) High Security Unit Site Specific Procedure for Don Dale YDC dated July 2015.

69C. In the period described in sub-paragraph 69A.1 the standard schedule for the stages referred to in paragraph 69B was relevantly as follows:

69C.1. Stage 0 must be completed no later than the first scheduled review day 3 weeks following commencement and all new receptions will be housed for at least a 7 day period in the HSU admissions wing;

69C.2. Stage 1 is subject to weekly behavioural reviews and a minimum of 3 reviews undertaken before progression to stage 2 is available.

Particulars of paragraph 69C

- a) High Security Unit Site Specific Procedure for Don Dale YDC dated July 2015.

69D. During the period described in sub-paragraphs 69A.2 to 69A.7 the relevant IIMPs referred to in paragraph 69A controlled the time within which the first applicant was to be confined within his cell and the time in which he was permitted to participate in activities outside his cell in accordance with a progressive series of stages with the following standard restrictions:

69D1 Stage 0 (Basic Privileges) provided for:

- (a) Recreation time minimum 1 hour per day;
- (b) Detainee to be locked in his cell apart from recreation time;
- (c) Detainee to be secured before 3 pm;
- (d) Detainee to have no more than a half hour non-contact visit per week;
- (e) No access to television or tuckshop;
- (f) Classification review suspended;
- (g) School suspended.

69D.2. Stage 1 (Restricted Privileges) provided for:

- (a) Recreation time minimum 1 hour per day;
- (b) Detainee to be secured before 3 pm;
- (c) Detainee to have no more than a half hour non-contact visit per week;
- (d) No access to television or tuckshop;
- (e) Classification review suspended;
- (f) School as per timetable;

69D.3 Stage 2 (Transitional Privileges) provided for:

- (a) Recreation time normal out of cell hours with an early lockdown;
- (b) Detainee to be secured before 3 pm;
- (c) Detainee to have no more than one hour non-contact visit per week;
- (d) Access to television and no access to tuckshop;
- (e) Classification review suspended;
- (f) School as per timetable;

69D.4. Stage 3 (Full Privileges) provided for:

- (a) Recreation time normal out of cell hours;
- (b) Detainee to be secured before 5 pm;
- (c) Normal visits;
- (d) Access to television and access to tuckshop;
- (e) Normal classification review;
- (f) School as per timetable.

Particulars of paragraph 69D

- a) High Security Unit Site Specific Procedure for Don Dale YDC procedure number Dwn 4.1.4, Issue 2, issued January 2016.

69E. During the periods described in sub-paragraphs 69A.2 to 69A.7 the standard schedule for the stages referred to in paragraph 69C was relevantly as follows:

69E.1. Stage 0 is for a minimum of 24 hours and a maximum of 72 hours;

69E.2. Stage 1 is for a minimum of 7 days;

69E.3. Stage 2 is for a minimum of 7 days and a maximum of 4 weeks;

69E.4. Stage 3 continues until rehoused outside the HSU.

Particulars of paragraph 69E

- a) High Security Unit Site Specific Procedure for Don Dale YDC procedure number Dwn 4.1.4, Issue 2, issued January 2016.

69F. During the periods described in paragraph 69A in which the first applicant was housed in the HSU pursuant to IIMPs, the stage of the relevant IIMP was reviewed from time to time by members of staff and the first applicant was, according to the outcome of the review, either progressed to a higher stage, kept on his existing stage or regressed to a lower stage.

69G. For most of the time periods described in paragraph 69A the first applicant was housed in the HSU under the restrictions of stage 0 or stage 1 of an IIMP.

Particulars

- a) Further particulars of the dates on which the first applicant was at each stage referred to in paragraphs 69B to 69E will be provided following discovery.

- 69H. Despite the standard referred to in sub-paragraph 69D.2, when the first applicant was at stage 1 in the periods referred to in sub-paragraphs 69A.2 to 69A.7 he was usually not permitted to attend school and he remained locked in his cell in the HSU during school hours.
- 69I. When the first applicant was at stage 0 or stage 1 of an IIMP in the periods referred to in paragraph 69A the first applicant was confined alone in his cell in the HSU usually for at least 23 hours of each day and when he was permitted out of the cell for recreation he remained confined within an area of the HSU separated from other detainees.
- 69J. By reason of the matters in paragraphs 69H and 69I, during the periods referred to in paragraph 69A when the first applicant was on stage 0 or stage 1 under an IIMP the first applicant was isolated from other detainees within the meaning of section 153(5) of the Act and regulation 72 of the Regulation.
- 69K. By reason of the matters in paragraph 69I, the isolation of the first applicant referred to in paragraph 69J on each occasion deprived the first applicant of his residual liberty.
- 69L. The isolation of the first applicant in the circumstances described in paragraph 69J was unlawful for one or more of the following reasons:
- 69L.1. During the period described in sub-paragraphs 69A.1 and from 15 to 17 January 2016, being part of the period described in sub-paragraph 69A.2, there was no person validly appointed to the position of superintendent, as described in paragraph 54G, and, accordingly, the isolation of the first applicant in those periods was not authorised under section 153(5) of the Act;
- 69L.2. Further, or in the alternative, contrary to section 153(5) of the Act, the superintendent did not direct the isolation of the first applicant;
- 69L.3. Further, or in the alternative, the superintendent did not hold the opinions required by section 153(5) of the Act;
- 69L.4. Further, or in the alternative, the superintendent did not hold the opinions required by section 153(5) of the Act on reasonable grounds;
- 69L.5. The isolation of the first applicant for more than 24 hours had not been approved by the commissioner, contrary to section 153(5) of the Act;
- 69L.6. Further, or in the alternative to sub-paragraphs 69L.1 to 69L.5, the deprivation of the first applicant's residual liberty described in paragraph 69J was not justified.

70. By reason of the matters in paragraphs 55 ~~and~~ to 56 and 66 to 69, the respondent falsely imprisoned the first applicant.

70A. On or about 3 May 2016:

70A.1. The first applicant damaged his cell in the HSU;

70A.2. Immediately following the matter referred to in sub-paragraph 70A.1, six or seven members of staff escorted the first applicant from his damaged room to an undamaged room in the HSU;

70A.3. When the first applicant was placed in the undamaged cell, a member of staff required the first applicant to submit to a search of his person;

70A.4. Following the search of the first applicant, members of staff left the cell and locked the door;

70A.5. Immediately after the members of staff locked the cell door, the first applicant swore at the members of staff through the window in the cell door;

70A.6. Immediately after the first applicant swore at members of staff approximately three members of staff entered the first applicant's cell and forced him to the floor and one or more of the members of staff pushed their knees into the first applicant's back.

70B. In the course of the incident described in paragraph 70A, the members of staff assaulted and/or battered the first applicant.

Particulars

a) The first applicant had a continuing apprehension that imminent physical contact would be made with his body by members of staff.

b) The first applicant suffered physical contact to his body by around three members of staff multiple times.

c) The first applicant did not consent to any physical contact being made with his body by any member of staff.

d) The members of staff used force that was not reasonably necessary.

e) The members of staff struck and used other forms of physical violence on the first applicant contrary to section 153(3)(a).

f) The members of staff did not comply with the requirements of the use of force directive referred to in paragraph 48.2

g) The members of staff did not comply with the requirements of the Youth Detention and Remand Centres Procedures and Instructions referred to in sub-paragraph 48.1.

71. In or about July 2016, the first applicant was in a cell in the HSU and four or five members of staff of New Don Dale:

71.1 entered the cell;

71.2 picked the first applicant up and dropped him head first to the floor;

71.3 restrained the first applicant in handcuffs behind his back;

71.4 pushed and kicked the first applicant in his back while he was on the floor in handcuffs; and

71.5 dragged the first applicant to an isolation cell.

Particulars

a) *The respondent was obliged to keep records of incidents of this kind pursuant to the matters referred to in paragraphs 54.1, 54.2, 54.5, and 54.6. Accordingly, the details of this incident are better known to the respondent than to the first applicant.*

b) *The first applicant will provide further and better particulars of the date, the personnel involved and other necessary particulars following discovery and/or interrogatories.*

72. In the course of the incident described in paragraph 71, the members of staff assaulted and/or battered the first applicant.

Particulars

a) *The first applicant had a continuing apprehension that imminent physical contact would be made with his body by members of staff of the youth detention centre.*

b) *The members of staff handcuffed the first applicant in circumstances where the superintendent did not hold the opinions required by section 153(4) of the Act and/or had not authorised the use of handcuffs.*

- c) *The first applicant suffered physical contact to his body by numerous members of staff of the detention centre numerous times.*
- d) *The first applicant did not consent to any physical contact being made with his body by any member of staff of the youth detention centre.*
- e) *The members of staff used force that was not reasonably necessary.*
- f) *The members of staff struck and used other forms of physical violence on the first applicant contrary to section 153(3)(a).*
- g) *Further particulars may be provided following discovery and/or interrogatories.*

73. During his periods in a youth detention centre, the first applicant was subjected to handcuffing and other restraint of his person in the following circumstances:

73.1 In or about April to July 2015, the first applicant was handcuffed and placed in leg shackles on three occasions:

- (a) When being escorted from the HSU to court and back;
- (b) When being escorted to and from the HSU to a medical appointment within New Don Dale; and/or
- (c) When being escorted from the HSU to the reception area at New Don Dale for a video-link;

73.2 In the periods referred to in paragraphs 66, 68 and 69A, the first applicant was housed in the HSU on a high security classification and was handcuffed for each movement within New Don Dale to and from the HSU in that period, including movements to and from:

- (a) The reception area from which he was taken to court and to which he returned after a court appearance;
- (b) The area in which medical appointments took place;
- (c) The recreation area with the basketball court.

74. On each occasion referred to in paragraph 73 occurring before 1 August 2016 the superintendent or members of staff of the youth detention centre assaulted and battered the first applicant by reason of the following:

74.1 Leg shackles are not a similar device to handcuffs and, accordingly, the use of leg shackles for escort of the first applicant outside the detention centre was contrary to section 155 of the Act;

- 74.2 Leg shackles are not a similar device to handcuffs and, accordingly, the use of leg shackles within the detention centre could not be authorised under section 153(4):
- 74.3 The use of handcuffs on the first applicant within the confines of the detention centre was unlawful because:
- (a) It was contrary to section 155 of the Act; or, alternatively,
 - (b) The superintendent had not authorised the use of handcuffs on the first applicant; or, alternatively
 - (c) The superintendent did not hold the opinions required by section 153(4) of the Act; or alternatively,
 - (d) The superintendent did not hold the opinions required by section 153(4) of the Act on reasonable grounds;
- 74.4 On each occasion, the first applicant had a continuing apprehension that imminent physical contact would be made with his body by members of staff of the youth detention centre, when he was instructed by members of staff to submit to handcuffing or leg shackling;
- 74.5 The first applicant suffered physical contact to his body by members of staff of the detention centre on each occasion when he was placed in handcuffs or leg shackles and on each occasion when the handcuffs or leg shackles were removed.
- 74.6 On each occasion, the first applicant did not consent to any physical contact being made with his body by any member of staff of the youth detention centre when he was subjected to handcuffing.
- 74.7 On each occasion, the first applicant submitted to handcuffing out of fear that he would be subjected to physical force by members of staff if he did not submit.
75. On ~~numerous several~~ occasions during his periods in a youth detention centre, the first applicant was subjected to search of his clothing and person, including a strip search, including:
- 75.1 On admission to the youth detention centre;
 - 75.2 Before placement in isolation;
 - 75.3 Before placement in the HSU;

- 75.4 Before departure from the youth detention centre for a temporary absence, under escort, to attend a medical or dental appointment or to appear in court;
- 75.5 On return to the youth detention centre from a temporary absence, under escort, to attend a medical or dental appointment or to appear in court;
- 75.6 On some occasions, when returning to an isolation cell from the recreation area;
- 75.7 On some occasions, when the first applicant was detained in the HSU, on return to his cell from the recreation area of the HSU;
- 75.8 On some occasions, when he was in the HSU but not in the isolation cells, for no apparent reason;
- 75.9 Following visits from a friend or family member at the youth detention centre;
- 75.10 On other occasions at random for no apparent reason.

Particulars of matters in paragraph 75

- a) *The respondent was obliged to keep records of search pursuant to regulation 74. Accordingly, the details of personal searches of the first applicant are better known to the respondent than to the first applicant.*
 - b) *The first applicant will provide further and better particulars of the date, the circumstances and other necessary particulars of personal searches of the first applicant following discovery and/or interrogatories.*
76. On each occasion referred to in paragraph 75, the superintendent or members of staff of the youth detention centre assaulted and/or battered the first applicant.

Particulars

- a) *In the case of each strip search, the superintendent had not given a direction under s161 of the Act for the strip search as required by regulation 73(5).*
- b) *The superintendent did not hold an opinion, either:*
 - i) *that the search was necessary in the interests of the security or the good order of the detention centre as required by section 161(1) of the Act; or*

- ii) *that the first applicant may have in his possession any article that is not permitted as required by section 161(2) of the Act.*
- c) *In the alternative to particular 76(b), if the superintendent did hold an opinion required by section 161(1) or 161(2) of the Act, he or she did not hold that opinion on reasonable grounds.*
- d) *On each occasion when the first applicant was instructed by members of staff to submit to a search of his clothing and person, he had a continuing apprehension that imminent physical contact would be made with his body by members of staff of the youth detention centre.*
- e) *On each occasion when the first applicant was instructed by members of staff to submit to a strip search, he had a continuing apprehension that imminent physical contact would be made with his body by members of staff of the youth detention centre.*
- f) *On some occasions the first applicant did not agree to undress himself for a strip search and members of staff forced the clothes off the first applicant.*
- g) *The first applicant did not consent to any physical contact being made with his body by any member of staff of the youth detention centre when he was subjected to search of his clothing and person.*
- h) *The first applicant submitted to each search of his clothing and person out of fear that he would be subjected to physical force by members of staff if he did not submit.*
- i) *Further particulars may be provided following discovery and/or interrogatories.*

77. [Struck out]

78. By reason of the matters in paragraphs 60 to 70 ~~to 73~~ and ~~77.6~~, the first applicant suffered on each occasion deprivation of residual liberty, discomfort, humiliation, helplessness, indignity, frustration and outrage.

79. By reason of the matters in paragraphs 70A to 76 ~~71 to 77.5, 77.7 and 77.8~~ the first applicant suffered on each occasion discomfort, humiliation, helplessness, indignity, frustration and outrage.

80. The first applicant claims damages for the injury and loss referred to in paragraphs 78 and 79.

81. Further, the first applicant claims aggravated damages.

Particulars of claim for aggravated damages

- a) *At the time of the matters described in paragraphs 60 to ~~76~~ ~~77~~, the first applicant was an Aboriginal child.*
- b) *The first applicant's feelings of discomfort, humiliation, helplessness, indignity, frustration and outrage caused by the incidents described in paragraphs 60 to 66 were exacerbated by:*
 - i) *the rough handling of him by the members of staff of the detention centre;*
 - ii) *members of staff of the detention centre removed the mattress from the cell in the HSU and it was uncomfortable for the first applicant to sit or lie down for extended periods;*
 - iii) *the cell in the HSU was small, only two and a half paces wide and five paces long;*
 - iv) *the cell had no fresh air and no heating or cooling;*
 - v) *during the matter described in paragraph 66, the first applicant was not taken out of the cell to allow him to have a shower;*
 - vi) *members of staff used abusive language to the first applicant, calling him, "chicken" and "piece of shit";*
 - vii) *the first applicant was given no access to anything to read or anything to do;*
 - viii) *his status as a child and a detainee with no parent or other adult relative to comfort him;*
 - ix) *the lack of an effective means by which he could complain about the conduct of the members of staff involved in the incident or seek redress;*
 - x) *his fear of retribution if he did complain.*
- c) *The first applicant's feelings of discomfort, humiliation, helplessness, indignity, frustration and outrage caused by the incidents described in paragraphs 60 to ~~76~~ ~~77~~ were exacerbated by:*

- i) *his status as a child and a detainee with no parent or other adult relative to comfort him;*
 - ii) *the lack of an effective means by which he could complain about the conduct of the superintendent or the members of staff involved in any incident or seek redress for that conduct;*
 - iii) *his fear of retribution if he did complain.*
- d) *The respondent's conduct in the incidents described in paragraphs 60 to ~~76~~ 77 disregarded the limits on the power of the superintendent and members of staff.*
- e) *The respondent's conduct in the incidents described in paragraphs 66 to ~~70~~ 69 was contrary to legal advice the respondent had received on 18 March 2014.*
- f) ~~*Further particulars may be provided following discovery and/or interrogatories.*~~
- g) *The first applicant's feelings of discomfort, humiliation, helplessness, indignity, frustration and outrage caused by the isolation pursuant to IIMPs described in paragraphs 69A to 69L were exacerbated by:*
 - i) *verbal abuse, including members of staff used abusive language to the first applicant names like "little grub", and saying to him words to the effect "I'd hate to be your parents";*
 - ii) *nigging from members of staff,*

which provoked the first applicant to misbehave and, accordingly, to be subjected to regression or lack of progression when his IIMPs were under review.
- h) *The first applicant's feelings of discomfort, humiliation, helplessness, indignity, frustration and outrage were exacerbated on or about the night of 26 July 2016 when, following the broadcast of an ABC Four Corners program, "Australia's Shame", which featured reference to violent treatment by members of staff of a former detainee of youth detention centres named Dylan Voller, and which had been watched that night by the first applicant, other detainees and members of staff, two members of staff standing outside the first applicant's room said in the hearing of the first applicant words to the effect of, "I think we might have a new Dylan Voller here," and,*

“Good-night Dylan Voller”, which the first applicant understood to be a threat to treat him with violence in a manner similar to that depicted in the ABC Four Corners program;

i) The first applicant’s feelings of discomfort, humiliation, helplessness, indignity, frustration and outrage caused by the isolation referred to in paragraphs 66 to 70 were exacerbated by the living conditions in the HSU cells, including:

i) The isolation cells were cement blocks and only had enough room to walk three steps in one direction and four steps in the other direction.

ii) Each isolation cell had:

A. a toilet, but it was rarely working and quite often had dirty water and faecal matter in it;

B. a sink but the water was unpleasant and undrinkable;

C. a bed, which was a cement slab that would normally have a very thin mattress on it;

D. no shower; and

E. an intercom button on the wall and a CCTV camera that was on at all times for members of staff to watch detainees.

iii) The Isolation Cells were monitored by members of staff on CCTV.

iv) In the Isolation Cells the first applicant could not talk to anyone.

v) The first applicant could not enjoy meals because he was not allowed to have a knife and fork.

vi) The isolation cells were hot during the day but when the sun went down they were cold.

j) Further particulars may be provided following discovery and/or interrogatories.

82. Further, the first applicant was treated with contumelious disregard and the first applicant claims exemplary damages.

Particulars of claim for exemplary damages

- a) *The conduct of the members of staff described in paragraphs 60 to ~~76~~ 77 showed a cruel and reckless disregard of the comfort and dignity of the first applicant;*
- b) *The conduct of the members of staff described in paragraphs 60 to ~~76~~ 77 disregarded the limits on the power of the superintendent and members of staff;*
- c) *The respondent's conduct in the incidents described in paragraphs 66 to ~~70~~ 69 was contrary to legal advice the respondent had received on 18 March 2014.*
- ca) *The first applicant repeats the particulars at paragraphs 81(g) and 81(h).*
- d) *Further particulars may be provided following discovery and/or interrogatories.*

VII. SECOND APPLICANT'S INDIVIDUAL TORT CLAIMS

83. In the late afternoon or early evening on ~~a day in~~ or about 29 May 2012 ~~May or June 2012~~, the second applicant was removed from his room at Old Don Dale by a number of members of staff.
84. In the course of removing the second applicant from his room, the members of staff battered the second applicant by using handcuffs and by using more force than was reasonably necessary to remove him from his room, as follows:
- 84.1 When the members of staff arrived at his room, the second applicant presented his hands through ~~the hatch~~ a broken window in his cell door to accept handcuffs, indicating his preparedness to comply with the directions of the members of staff;
 - 84.2 The members of staff handcuffed the second applicant;
 - 84.3 A number of members of staff held the second applicant's handcuffed hands through the door window hatch, pulled down on the second applicant's arms so that his feet were levered from the floor on the pivot of the cell door window hatch so that the weight of the second applicant's body was supported by his shoulders;

- 84.4 Members of staff entered the room and struck the second applicant in the ribs several times;
- 84.5 The members of staff slammed the second applicant's body to the floor of the cell;
- 84.6 The members of staff lifted the second applicant from the floor and carried the second applicant out of the cell;
- 84.7 The members of staff slammed the second applicant's head into the doorframe of the room and, as they passed through another doorway, slammed the second applicant's head into that doorframe.

Particulars of matters in paragraph 84

- a) *The members of staff handcuffed the second applicant in circumstances when the superintendent did not hold the opinion required by section 153(4) of the Act;*
- b) *The members of staff struck the second applicant and used other forms of physical violence on the applicant in breach of section 153(3)(a) of the Act.*
- c) *The respondent was obliged to keep records of incidents of this kind pursuant to the matters referred to in paragraphs 54.1, 54.2 and 54.5. Accordingly, the details of this incident are better known to the respondent than to the second applicant.*
- d) *The second applicant will provide further and better particulars of the date, the personnel involved and other necessary particulars following discovery and/or interrogatories.*
85. Following the matters described in paragraphs 83 and 84, the members of staff battered and falsely imprisoned the second applicant by:
- 85.1 Putting the second applicant face down on the ground, and kneeling on the second applicant's head and back; and
- 85.2 Handcuffing the second applicant to the fence of the basketball court with his arms above his head by attaching one end of a second pair of handcuffs to the chain of the handcuffs attached to the second applicant's wrists and attaching the other end of the second pair of handcuffs to the chain wire of the basketball court fence; and

85.3 Leaving the second applicant in that position for about 40 minutes to one hour.

Particulars of matters in paragraph 85

- a) *The members of staff used more than reasonably necessary force on the second applicant in breach of section 153(2) of the Act.*
- b) *The handcuffing of the second applicant to the fence was a form of physical violence on the applicant in breach of section 153(3)(a) of the Act.*
- c) *The position in which the second applicant was handcuffed to the fence caused him to lose feeling in his hands and was a constrained position and a fatiguing position contrary to section 153(3)(c) of the Act;*
- d) *The members of staff handcuffed the second applicant to the basketball court fence in circumstances where the superintendent did not hold the opinions required by section 153(4) of the Act;*
- e) *Further, and in the alternative to particular 85.3(d), the members of staff kept the second applicant handcuffed to the fence for longer than was reasonably necessary in the circumstances;*
- f) *The members of staff handcuffed the second applicant in circumstances when the superintendent did not hold the opinion required by section 153(4) of the Act;*
- g) *The respondent was obliged to keep records of incidents of this kind pursuant to the matters referred to in paragraphs 54.2 and 54.5. Accordingly, the details of this incident are better known to the respondent than to the second applicant.*
- h) *The second applicant will provide further and better particulars of the incident following discovery and/or interrogatories.*

86. Following the matters described in paragraph 85, the members of staff placed the second applicant in a cell in the Behaviour Management Unit (**BMU**) of the detention centre and required the second applicant to surrender all his clothing apart from his underpants.

87. In the course of the incidents described in paragraphs 83 to 86, the members of staff assaulted and/or battered the second applicant.

Particulars

- a) *The second applicant had a continuing apprehension that imminent physical contact would be made with his body by members of staff of the youth detention centre;*
- b) *The second applicant suffered physical contact to his body by numerous members of staff of the detention centre numerous times;*
- c) *The second applicant did not consent to any physical contact being made with his body by any member of staff of the youth detention centre;*
- d) *When offering his hands to be handcuffed as described in ~~the particulars to~~ paragraph 84.1, the second applicant did so out of fear that he would be subjected to physical force by members of staff if he did not do so;*
- e) *Members of staff stripped the second applicant of his clothing in circumstances where:*
 - i) *the second applicant was not at risk of self-harm within the meaning of section 162 of the Act;*
 - ii) *members of staff did not hold the opinion required in clauses 41 and 42 of the Regulations for the implementation of the Emergency Management Protocol; or*
 - iii) *in the alternative to sub-paragraphs 87(e)(i) and 87(e)(ii), members of staff did not comply with the Emergency Management Protocol.*

88. Following the matters described in paragraphs 83 to 87, the second applicant was isolated in the cell in the BMU ~~for two to three weeks~~, as follows:

- 88.1 The second applicant was isolated in a cell on a 72-hour placement with no mattress or bedding.
- 88.2 After the conclusion of the 72-hour placement, the second applicant was isolated in a cell in the BMU until 2 July 2012 ~~for two to three weeks~~ subject to an IMP.

Particulars

- a) *The respondent was obliged to keep records of isolation and IMPs pursuant to the matters referred to in paragraphs 40 and 54.4. Accordingly, the details of this period of isolation are better known to the respondent than to the second applicant.*
- b) *The second applicant will provide further and better particulars of the dates and circumstances of his isolation on this occasion following discovery and/or interrogatories.*

89. The isolation of the second applicant described in paragraph 88 deprived the second applicant of his residual liberty ~~was unlawful.~~

Particulars

- a) ~~*The isolation exceeded 72 hours contrary to section 153(5) of the Act.*~~
- b) *During the periods in which the second applicant was isolated from other detainees, he was confined in a cell for periods exceeding 23 hours.*
- c) *During the periods in which the second applicant was isolated from other detainees, he was usually only allowed out of the cell once in every 24 hour period to permit him to have a shower and a period of between 15 minutes and 1 hour of recreation in the recreation area of the BMU and he remained isolated from other detainees during this time.*
- d) *On a number of days in which the second applicant was isolated in his cell in the BMU he was not allowed out of his cell for any period of time.*
- e) *The recreation area of the BMU was enclosed and locked apart from the rest of the youth detention centre such that the second applicant remained isolated when outside his cell.*
- f) ~~*The isolation of the second applicant for more than 24 hours had not been approved by the director, contrary to section 153(5) of the Act.*~~
- g) ~~*The superintendent did not hold the opinions required by section 153(5) of the Act.*~~
- h) ~~*Further particulars may be provided following discovery and/or interrogatories.*~~

90. The isolation of the second applicant described in paragraphs 88 and 89 was unlawful for one or more of the following reasons:

- 90.1 The isolation exceeded 72 hours contrary to section 153(5) of the Act;
- 90.2 During the period described in paragraph 88 there was no person validly appointed to the position of superintendent, as described in paragraph 54D and, accordingly, the isolation of the second applicant in that period was not authorised under section 153(5) of the Act;
- 90.3 In the alternative to sub-paragraph 90.2, if there was in the period described in paragraph 88 a person validly appointed to the position of superintendent, which is denied, the superintendent did not hold the opinions required by section 153(5) of the Act;
- 90.4 The isolation of the second applicant for more than 24 hours had not been approved by the commissioner, contrary to section 153(5) of the Act;
- 90.5 Further, or in the alternative to sub-paragraph 90.4, the appointment of the commissioner expired on 31 May 2012 and in the period described in paragraph 88 there was no person validly appointed to the position of commissioner as from 1 June 2012, as described in paragraphs 54A and 54B, and, accordingly, the purported approval of the commissioner, if any, for the isolation of the second applicant for up to 72 hours commencing on 29 May 2012 expired on 1 June 2012 and the isolation of the second applicant after 1 June 2012 was invalid;
- 90.6 Further, or in the alternative to sub-paragraphs 90.1 to 90.5, the deprivation of the second applicant's residual liberty described in paragraphs 88 and 89 was not justified.

91. In addition to the occasion referred to in paragraphs 88 and 89, on the following occasions during his periods in a youth detention centre, the second applicant was confined in the BMU isolated from other detainees:

- 91.1 21 February 2012 to 23 February 2012;
- 91.2 8 August 2012 to 15 August 2012;
- 91.3 2 January 2013 to 7 January 2013
- 91.4 10 February 2013 to 12 February 2013;

- 91.5 14 February 2013 to 25 February 2013;
- 91.6 7 March 2013 to 29 March 2013;
- 91.7 3 April 2013 to 5 April 2013;
- 91.8 6 May 2013 to 7 May 2013;
- 91.9 6 August 2013 to 11 August 2013;
- 91.10 12 August 2013 to 20 August 2013;
- 91.11 27 August 2013 to 28 August 2013;
- 91.12 8 September 2013 to 9 September 2013;
- 91.13 16 September 2013 to 20 September 2013;
- 91.14 3 November 2013 to 4 November 2013;
- 91.15 24 November 2013 to 30 November 2013;
- 91.16 5 June 2014 to 17 June 2014.

91A. The isolation of the second applicant on each occasion described in paragraph 91 deprived the second applicant of his residual liberty.

Particulars

- (a) *During the periods in which the second applicant was isolated from other detainees, he was usually confined in a cell for periods exceeding 23 hours.*
- (b) *During the periods in which the second applicant was isolated from other detainees, he was usually only allowed out of the cell once in every 24 hour period to permit him to have a shower and a period of between 15 minutes and 1 hour of recreation in the recreation area of the BMU and he remained isolated from other detainees during this time.*
- (c) *On a number of days in which the second applicant was isolated in his cell in the BMU he was not allowed out of his cell for any period of time.*
- (d) *The recreation area of the BMU was enclosed and locked apart from the rest of the youth detention centre such that the second applicant remained isolated and confined when outside his cell.*

91B. The isolation of the second applicant on each occasion described in paragraph 91A was unlawful for one or more of the following reasons:

91B.1 During the periods described in paragraph 91 there was no person validly appointed to the position of superintendent, as described in paragraph 54D and, accordingly, the isolation of the second applicant in those periods was not authorised under section 153(5) of the Act;

91B.2 In the alternative to sub-paragraph 91B.1, if there was in any of the periods described in paragraph 91 a person validly appointed to the position of superintendent, which is denied:

a) the superintendent did not hold the opinions required by section 153(5) of the Act; or

b) the superintendent did not hold the opinions required by section 153(5) of the Act on reasonable grounds;

91B.3 Further, or in the alternative, in the periods described in sub-paragraphs 91.1 to 91.13 and 91.15 there was no person validly appointed to the position of commissioner, as described in paragraph 54C, and, accordingly, any purported approval of the commissioner in that period for the isolation of the second applicant for more than 24 hours was invalid;

91B.4 Further, or in the alternative to sub-paragraph 91B.3, if there was in any of the periods described in sub-paragraphs 91.1 to 91.13 and 91.15, a person validly appointed to the position of commissioner, which is denied, the isolation of the second applicant for more than 24 hours had not been approved by the commissioner, contrary to section 153(5) of the Act;

91B.5 Further, in the periods described in sub-paragraphs 91.14 and 91.16, the isolation of the second applicant for more than 24 hours had not been approved by the commissioner, contrary to section 153(5) of the Act;

91B.6 Further, or in the alternative to sub-paragraphs 91B.2, 91B.3 and 91B.4, in the period described in sub-paragraph 91.16 there was no person validly appointed to the position of commissioner as from 6 June 2014, as described in paragraph 54C, and, accordingly, the purported approval of the commissioner, if any, for the isolation of the second applicant for up to 72 hours commencing on 5 June 2014 expired on 8 June 2014 and the isolation of the second applicant after 8 June 2014 was invalid;

- 91B.7 Further, or in the alternative to sub-paragraphs 91B.1 to 91B.6, the deprivation of the second applicant's residual liberty described in paragraph 91A was not justified.
92. By reason of the matters in paragraphs 55 and 56 and 88 to 91B the respondent falsely imprisoned the second applicant.
93. During his periods in a youth detention centre, in addition to the matters described in paragraphs 84 and 85, the second applicant was subjected to handcuffing in the following circumstances:
- 93.1 In the circumstances referred to in paragraphs 97 to 97A below; and
- 93.2 When the second applicant was housed in the BMU in the periods described in paragraphs 88 and 91 and was handcuffed for each movement to and from the BMU in that period, including movements:
- (a) From the area in the detention centre in which he was present immediately before his placement in the BMU to the BMU;
 - (b) To and from the reception area from which he was taken to court and to which he returned after a court appearance;
 - (c) To and from the area in which medical appointments took place;
 - (d) To and from the location in which visits took place.
94. On each occasion referred to in sub-paragraph 93.2 the superintendent or members of staff of the youth detention centre assaulted and battered the second applicant by reason of the following:
- 94.1 The use of handcuffs on the second applicant within the confines of the detention centre was unlawful because:
- (a) It was contrary to section 155 of the Act; or, alternatively,
 - (b) The superintendent had not authorised the use of handcuffs on the second applicant; or, alternatively
 - (c) The superintendent did not hold the opinions required by section 153(4) of the Act; or alternatively,
 - (d) The superintendent did not hold the opinions required by section 153(4) of the Act on reasonable grounds;
- 94.2 On each occasion, the second applicant had a continuing apprehension that imminent physical contact would be made with his body by members of staff of

- the youth detention centre, when he was instructed by members of staff to submit to handcuffing;
- 94.3 The second applicant suffered physical contact to his body by members of staff of the detention centre on each occasion when he was placed in handcuffs and on each occasion when the handcuffs were removed;
- 94.4 On each occasion, the second applicant did not consent to any physical contact being made with his body by any member of staff of the youth detention centre when he was subjected to handcuffing;
- 94.5 On each occasion when the second applicant submitted to handcuffing, he did so out of fear that he would be subjected to physical force by members of staff if he did not submit;
95. On numerous ~~several~~ occasions during his periods in a youth detention centre, the second applicant was subjected to search of his clothing and person, including strip search, including:
- 95.1 On admission to the youth detention centre;
- 95.2 Before placement in isolation;
- 95.3 Before departure from the youth detention centre for a temporary absence, under escort, to attend a medical or dental appointment or to appear in court;
- 95.4 On return to the youth detention centre from a temporary absence, under escort, to attend a medical or dental appointment or to appear in court;
- 95.5 On some occasions, when the second applicant was detained in the BMU, on return to his cell from the recreation area of the BMU;
- 95.6 Following a visit from a friend or family member at the youth detention centre.
96. On each occasion referred to in paragraph 95, the superintendent or members of staff of the youth detention centre assaulted and/or battered the second applicant.

Particulars

- a) *In the case of each strip search, the superintendent had not given a direction under section 161 of the Act for the strip search as required by regulation 73(5).*

- b) *The superintendent did not hold an opinion, either:*
- i) *that the search was necessary in the interests of the security or the good order of the detention centre as required by section 161(1) of the Act; or*
 - ii) *that the second applicant may have in his possession any article that is not permitted as required by section 161(2) of the Act.*
- c) *In the alternative to particulars 96(b), if the superintendent did hold an opinion required by section 161(1) or 161(2) of the Act, he or she did not hold that opinion on reasonable grounds.*
- d) *On each occasion when the second applicant was instructed by members of staff to submit to a search of his clothing and person, he had a continuing apprehension that imminent physical contact would be made with his body by members of staff of the youth detention centre.*
- e) *On each occasion when the second applicant was instructed by members of staff to submit to a strip search, he had a continuing apprehension that imminent physical contact would be made with his body by members of staff of the youth detention centre.*
- f) *The second applicant did not consent to any physical contact being made with his body by any member of staff of the youth detention centre when he was subjected to strip search.*
- g) *The second applicant submitted to each strip search out of fear that he would be subjected to physical force by members of staff if he did not submit.*
- h) *The respondent was obliged to keep records of search pursuant to regulation 74. Accordingly, the details of personal searches of the second applicant are better known to the respondent than to the second applicant.*
- i) *The second applicant will provide further and better particulars of the date, the circumstances and other necessary particulars of personal searches of the second applicant following discovery and/or interrogatories.*

97. On or about 5 March 2013 members of staff assaulted and battered the second applicant as follows:

97.1 Members of staff commanded the second applicant lie face down on the floor in his room in H block with his hands behind his back;

- 97.2 When the second applicant lay face down on the floor with his hands behind his back, members of staff entered the room and attached handcuffs to the second applicant's wrists behind his back;
- 97.3 The members of staff then escorted the second applicant to a cell in the BMU;
- 97.4 While escorting the second applicant to the cell in the BMU, one of the members of staff had hold of the handcuffs attached to the second applicant's wrists and pulled the second applicant's hands up behind the second applicant's back so that the second applicant was forced into a bending position and his shoulders were strained;
- 97.5 When the second applicant was taken into the cell in the BMU, the members of staff forced the second applicant to the floor and removed the handcuffs;
- 97.6 Shortly after the matters described in sub-paragraphs 97.1 to 97.5, members of staff entered the cell in the BMU, forced the second applicant to the floor of the cell and used a Hoffman knife to cut the second applicant's clothing from his body;
- 97.7 Immediately following the matter described in sub-paragraph 97.6, the second applicant took hold of the grille to the cell door, preventing members of staff from closing the door;
- 97.8 Members of staff then pushed the second applicant into the cell twice;
- 97.9 Following each time the second applicant was pushed into the cell, the second applicant again put his arm through the grille;
- 97.10 After the third time that the second applicant put his arm through the grille, members of staff entered the cell, pushed the second applicant to the floor of the cell, then left the cell and shut the door;
- 97.11 The second applicant did not consent to physical contact being made with his body when the incidents referred to in this paragraph occurred;
- 97.12 The second applicant had a continuing apprehension that imminent physical contact would be made with his body by members of staff;
- 97.13 The members of staff used more than reasonably necessary force on the second applicant in breach of section 153(2) of the Act.
- 97.14 The members of staff did not comply with the requirements of the Youth Detention and Remand Centres Procedures and Instructions referred to in sub-paragraph 48.1;

- 97.15 The handcuffing of the second applicant with his hands behind his back was a form of physical violence on the applicant in breach of section 153(3)(a) of the Act;
- 97.16 The second applicant was handcuffed in a constrained position and a fatiguing position contrary to section 153(3)(c) of the Act;
- 97.17 The handcuffing of the second applicant was contrary to section 153(3)(d) of the Act.
- 97A. On or about 12 August 2013 members of staff assaulted and battered the second applicant as follows:
- 97A.1 Handcuffing the second applicant by attaching to the second applicant's wrists a restraint made of plastic material which dug into the second applicant's wrists and which was removed by the painful insertion of a scissor blade between the plastic restraint material and the second applicant's flesh;
- 97A.2 The second applicant did not consent to physical contact being made with his body when the incidents referred to in this paragraph occurred;
- 97A.3 During the incidents described in this paragraph, the second applicant had a continuing apprehension that imminent physical contact would be made with his body by members of staff;
- 97A.4 The members of staff used more than reasonably necessary force on the second applicant in breach of section 153(2) of the Act.
- 97A.5 The handcuffing of the second applicant with plastic restraints was a form of physical violence on the applicant in breach of section 153(3)(a) of the Act;
- 97A.6 The second applicant was handcuffed in a constrained position and a fatiguing position contrary to section 153(3)(c) of the Act;
- 97A.7 The handcuffing of the second applicant in plastic restraints was contrary to section 153(3)(d) of the Act;
- 97A.8 The plastic restraints were not a similar device to handcuffs within the meaning of section 153(4) of the Act.
98. By reason of the matters in paragraphs 83 to ~~92~~ 96, ~~97.7~~ and 97.10, the second applicant suffered on each occasion deprivation of residual liberty, discomfort, humiliation, helplessness, indignity, frustration and outrage.

99. By reason of the matters in paragraphs 93 to 97A ~~97.6, 97.8, 97.9, 97.11 and 97.12~~ the second applicant suffered on each occasion discomfort, humiliation, helplessness, indignity, frustration and outrage.
100. The second applicant claims damages for the injury and loss referred to in paragraphs 98 and 99.
101. Further, the second applicant claims aggravated damages.

Particulars of claim for aggravated damages

- a) *At the time of the incidents described in paragraphs 83 to 89 the second applicant was 15 years old.*
- b) *The second applicant's feelings of discomfort, humiliation, helplessness, indignity and frustration caused by the incidents described in paragraphs 83 to 89 were exacerbated by:*
- i) *The rough handling of him by the members of staff of the detention centre;*
 - ii) *Just before members of staff entered the second applicant's cell in the incident described in paragraphs 83 to 84 one of the youth justice officers said words to the effect of, "Don't take it easy on the little fucker".*
 - iii) *The discomfort of the position in which he was handcuffed to the basketball court fence;*
 - iv) *His hunger from not having eaten an evening meal and not receiving any food until about 10 am the next day;*
 - v) *Members of staff refusing to allow the second applicant to go to the toilet while handcuffed to the fence of the basketball court;*
 - vi) *Members of staff telling the second applicant while he was handcuffed to the fence of the basketball court that if he needed to go to the toilet he should "piss his pants";*
 - vii) *The second applicant's embarrassment and discomfort at urinating in his clothing while handcuffed to the fence of the basketball court;*

- viii) *The refusal of members of staff to loosen the second applicant's handcuffs or allow him to adopt a more comfortable position, when he complained that his hands were swollen and sore;*
- ix) *The removal of all the second applicant's clothes before placing him in the cell at the BMU;*
- x) *The cell in the BMU had no mattress and the bed shelf was wet;*
- xi) *The second applicant had to use his underpants, as the only cloth available, to wipe the moisture from the wet bed shelf;*
- xii) *The second applicant was naked in the BMU cell with no blanket or other covering available;*
- xiii) *It was a cold night and the second applicant was cold;*
- xiv) *The second applicant was aware that he was under closed circuit television observation by a female member of staff and he had no means to cover his private parts;*
- xv) *The second applicant complained via intercom to the observing female member of staff that he was cold and she responded with words to the effect, "You're not allowed to have a blanket. You're supposed to pull yourselves to keep warm." The second applicant understood this to be an insulting suggestion that he should masturbate himself to keep warm. This comment was broadcast over the intercom and could be heard by all the other detainees in the BMU;*
- xvi) *After his first night in the BMU, the second applicant was given bedding, blankets and clothing;*
- xvii) *On each succeeding day after the first night, he was required to give back the bedding before he would be given his first meal of the day;*
- xviii) *There were no taps in the BMU cell and unless members of staff brought water to the second applicant, his only means to quench his thirst was to drink the water in the toilet bowl and he did, in fact, drink water from the toilet;*
- xix) *The cell was small, only two and a half paces wide and five paces long;*

- xx) *The cell had no fresh air and no heating or cooling;*
- xxi) *The cell was small and the second applicant was confined in the cell for up to 23 hours and 45 minutes each day and only permitted out of the cell for 15 minutes to have a shower;*
- xxii) *Small increments of additional minutes out of the cell, up to a total of 30 minutes, were offered to the second applicant for good behaviour and reduced again for alleged poor behaviour or otherwise at the discretion of members of staff.*

ba) *The second applicant's feelings of discomfort, humiliation, helplessness, indignity and frustration caused by the isolation in the BMU described in paragraphs 91 to 91B were exacerbated by:*

- i) *There were no taps in the BMU cell and unless members of staff brought water to the second applicant, his only means to quench his thirst was to drink the water in the toilet bowl and he did, in fact, drink water from the toilet;*
- ii) *The BMU cells were small, only two and a half paces wide and five paces long;*
- iii) *The BMU cells had no fresh air and no heating or cooling;*
- iv) *The BMU cells were hot during the day and cold at night;*
- v) *The BMU cells were small and the second applicant was confined in the cell for more than 20 hours each day and sometimes for as long as 23 hours and 45 minutes;*
- vi) *Small increments of additional minutes out of the cell were offered to the second applicant for good behaviour and reduced again for alleged poor behaviour or otherwise at the discretion of members of staff;*
- vii) *Members of staff frequently removed the mattress from the second applicant's cell during the day, so that the second applicant had to sit on the hard concrete until the mattress was returned to the cell in the evening;*
- viii) *The second applicant was under constant CCTV surveillance while in his cell in the BMU and had no privacy;*

- ix) The second applicant found the experience of isolation in the BMU for lengthy periods so uncomfortable and frustrating that he resorted to self-harm to try to get taken to more comfortable accommodation;
 - x) Members of staff teased and baited the second applicant to provoke a response that enabled the members of staff to extend the second applicant's time in isolation in the BMU and/or reduce his recreation time out of the cell;
 - xi) Members of staff imposed collective punishment on detainees in isolation in the BMU, including the second applicant, by reducing recreation time for all detainees in the BMU if one of the detainees isolated in the BMU misbehaved;
 - xii) Members of staff swore at the second applicant and called him names.
- c) The second applicant's feelings of discomfort, humiliation, helplessness, indignity frustration and outrage caused by the incidents described in paragraphs 83 to 97A were exacerbated by:
- i) His status as a child and a detainee with no parent or other adult relative to comfort him;
 - ii) The lack of an effective means by which he could complain about the conduct of the superintendent or the members of staff involved in any incident or seek redress for that conduct;
 - iii) His fear of retribution if he did complain.
- d) The respondent's conduct in the incidents described in paragraphs 83 to 97A disregarded the limits on the power of the superintendent and members of staff
- e) The respondent's conduct in the ~~incidents~~ period of isolation described in ~~sub-paragraphs 91.16 88 to 92~~ sub-paragraphs 91.16 88 to 92 was contrary to legal advice the respondent had received on 18 March 2014.
- f) Further particulars may be provided following discovery and/or interrogatories.

102. Further, the second applicant was treated with contumelious disregard and the second applicant claims exemplary damages.

Particulars of claim for exemplary damages

- a) *The conduct of the members of staff described in paragraphs 83 to 88 and the particulars in paragraph 101(b) showed a cruel and reckless disregard of the comfort and dignity of the second applicant;*
- b) *The conduct of the observing female member of staff particularised in paragraph 101(b)(xv) was so outrageous and calculated to humiliate the second applicant that it requires curial condemnation.*
- c) *The conduct of the members of staff described in paragraphs 83 to ~~97A~~ 93 disregarded the limits on the power of the superintendent and members of staff.*
- d) *The respondent's conduct in the incidents described in sub-paragraph 91.16 ~~paragraphs 88 to 92~~ was contrary to legal advice the respondent had received on 18 March 2014.*
- da) *The second applicant repeats the particulars at paragraphs 101(b) and 101(ba).*
- e) *Further particulars may be provided following discovery and/or interrogatories.*

VIII. LIMITATIONS

103. If necessary, which is not admitted, the first applicant seeks on his own behalf and on behalf of Group Members, pursuant to section 44(1) of the *Limitation Act* (NT), an extension of the time for instituting this action otherwise limited by section 215(4) of the Act, in force until 8 September 2014.
104. Additionally or alternatively, if necessary, which is not admitted, the first applicant seeks on his own behalf and on behalf of Group Members, pursuant to section 44(1) of the *Limitation Act* (NT), an extension of the time for instituting this action otherwise limited by section 215B of the Act.
105. If necessary, which is not admitted, the second applicant seeks on his own behalf and on behalf of Group Members, pursuant to section 44(1) of the *Limitation Act* (NT), an extension of the time for instituting this action otherwise limited by section 215(4) of the Act, in force until 8 September 2014.

106. Additionally or alternatively, if necessary, which is not admitted, the second applicant seeks on his own behalf and on behalf of Group Members, pursuant to section 44(1) of the *Limitation Act* (NT), an extension of the time for instituting this action otherwise limited by section 215B of the Act.

IX. TORT CLAIMS OF GROUP MEMBERS

107. Group Members, while detained in a youth detention centre, suffered:

- 107.1 assault; and
- 107.2 battery; and/or
- 107.3 false imprisonment;

by an act or omission of the respondent, or of a commissioner, a superintendent or a member of staff for which the respondent is vicariously liable.

Particulars

The material facts and particulars of Group Member claims will be provided after the initial trial of the applicants' claims and common issues.

108. For the plaintiffs in any of the following proceedings in the Supreme Court of the Northern Territory:
- (a) No. 14 of 2015, Case Number: 21508784;
 - (b) No. 15 of 2015, Case Number: 21508785;
 - (c) No. 19 of 2015, Case Number: 21510204; and
 - (d) No. 26 of 2015, Case Number: 21513348,

the tort claims in this action do not include:

- (e) any of their individual claims determined in those proceedings in the Supreme Court of the Northern Territory; or
 - (f) any other cause of action arising out of the facts which were the subject of those proceedings in the Supreme Court of the Northern Territory.
109. The cognate claims of Group Members, which arise from the false imprisonment, assault, and/or battery of Group Members will be pleaded and particularised after an initial trial of the applicants' claims and common issues.

X. ~~RACIAL DISCRIMINATION ACT CLAIMS~~

110. ~~Section 9(1) of the RDA provides:~~

~~*It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.*~~

111. ~~Section 9(2) of the RDA provides:~~

~~*A reference in this section to a human right or fundamental freedom in the political, economic, social, cultural or any other field of public life includes any right of a kind referred to in Article 5 of the [International Convention for the Elimination of all forms of Racial Discrimination].*~~

112. ~~At all relevant times approximately 90% of children detained in youth detention centres were Aboriginal.~~

113. ~~At all material times during the detention of Group Members:~~

113.1 ~~the RDA had application to the circumstances of the detention and to the acts and omissions of the commissioner, superintendent and/or members of staff as they were involved in the detention;~~

113.2 ~~the commissioner, superintendent and/or members of staff purported to operate youth detention centres;~~

113.3 ~~the commissioner, superintendent and/or members of staff had a duty to comply with, and apply, the law in relation to detainees, including the provisions of the Act, the Regulations, the RDA and the common law; and~~

113.4 ~~the commissioner, superintendent and/or members of staff asserted authority and control over the Group Members.~~

114. ~~[Struck out]~~

115. ~~[Struck out]~~

116. ~~[Struck out]~~

117. ~~[Struck out]~~

XI. ~~FIRST APPLICANT'S INDIVIDUAL RDA CLAIM~~

118. ~~The incident described in paragraphs 60 to 66 followed a protest by the first applicant arising after he had been given his evening meal of stew and rice in his room without bread and without a knife, fork or any other implement with which to eat the meal and the continued refusal of members of staff to give the first applicant bread or any eating utensil when the first applicant requested bread and a knife and fork.~~
119. ~~The first applicant reacted to the matter described in paragraph 118 by damaging fixtures and fittings within his room, including the television.~~
120. ~~Members of staff responded to the behaviour of the first applicant described in paragraph 119 in the manner described in paragraphs 60 to 66.~~
121. ~~While the first applicant was isolated in a cell in the HSU as described in paragraph 66, the first applicant:~~
- 121.1 ~~Was deprived of a mattress for the whole period, so that it was uncomfortable for him to sit or lie down in the cell;~~
 - 121.2 ~~Was forcibly stripped down to his underwear and deprived of clothing until the following day;~~
 - 121.3 ~~Was not permitted to have sheets, blankets or pillows;~~
 - 121.4 ~~Had access to a toilet in the cell but no separate facility for drinking water and he relied on members of staff to bring him food and water;~~
 - 121.5 ~~Asked for water and a mattress and, when he did so, members of staff laughed at him and did not bring a mattress or water;~~
 - 121.6 ~~Was confined in a small area only two and a half paces wide and five paces long;~~
 - 121.7 ~~Had no fresh air and no heating or cooling in the cell; and~~
 - 121.8 ~~Was not taken out of the cell to allow him to have a shower.~~
122. ~~On or about the night of 26 July 2016, following the broadcast of an ABC Four Corners program, "Australia's Shame", which featured reference to violent treatment by members of staff of a former detainee of youth detention centres named Dylan Voller, and which had been watched that night by the first applicant, other detainees and members of staff, two members of staff standing outside the first applicant's room said in the hearing of the first applicant words to the effect of, "I think we might have a new Dylan Voller here,"~~

and, "Good night Dylan Voller", which the first applicant understood to be a threat to treat him with violence in a manner similar to that depicted in the ABC Four Corners program.

123. [Struck out]

124. [Struck out]

125. [Struck out]

126. [Struck out]

127. [Struck out]

128. [Struck out]

129. [Struck out]

~~XII. SECOND APPLICANT'S INDIVIDUAL RDA CLAIM~~

130. ~~The conduct of commissioners, superintendents and members of staff described in paragraphs 83 to [90, 91, 93, 94] 97 are instances, particular to the second applicant, of the conduct described in paragraph 114.~~

Particulars

~~a) The conduct described in paragraphs 83 to 87:~~

~~i) Involved unlawful, unnecessary and inappropriate use of force and restraint of the kind described in paragraph 114.3;~~

~~ii) Involved depriving the second applicant of appropriate food, water, toilet and hygiene facilities, clothing and bedding of the kind described in paragraph 114.7;~~

~~iii) Was a consequence of depriving the second applicant of protection from batteries, assaults, intimidation, and depriving him of security of his person of the kind described in paragraph 114.11;~~

~~iv) Subjected the second applicant to unlawful, arbitrary and disproportionate punishment of the kind described in paragraph 114.12;~~

~~v) Contravened the human rights of the second applicant described in sub-paragraphs 114.15(a), (b)(ii), (c)(i), (c)(ii), (c)(iii), (c)(iv), (c)(v), (c)(vi), (d)(i), (d)(ii), (d)(iii), (d)(iv), (e)(v), and (e)(vi).~~

~~b) The conduct described in paragraphs 88 to [90 &] 91:~~

- ~~i) — Involved unlawful and inappropriate isolation and confinement of the second applicant of the kind described in paragraph 114.2;~~
 - ~~ii) — Ignored and trivialised the needs and rights of the second applicant of the kind described in paragraph 114.5 particular (b)~~
 - ~~iii) — Subjected the second applicant to sub-standard living conditions of the kind described in paragraph 114.6 particular (b);~~
 - ~~iv) — Was a consequence of depriving the second applicant of protection from isolation of the kind described in paragraph 114.11;~~
 - ~~v) — Subjected the second applicant to unlawful, arbitrary and disproportionate punishment of the kind described in paragraph 114.12;~~
 - ~~vi) — Contravened the human rights of the second applicant described in sub-paragraphs 114.15(a), (b)(ii), (c)(i), (c)(ii), (c)(iii), (c)(iv), (c)(v), (c)(vi), (d)(i), (d)(ii), (d)(iii), (d)(iv), and (e)(vi).~~
- ~~c) — The conduct in paragraphs 93 and 94:~~
- ~~i) — Involved unlawful, unnecessary and inappropriate use of force and restraint of the kind described in paragraph 114.3;~~
 - ~~ii) — Was a consequence of depriving the second applicant of protection from batteries, assaults, intimidation, and depriving him of security of his person of the kind described in paragraph 114.11;~~
 - ~~iii) — Subjected the second applicant to unlawful, arbitrary and disproportionate punishment of the kind described in paragraph 114.12;~~
 - ~~iv) — Contravened the human rights of the second applicant described in sub-paragraphs 114.15(a), (b)(ii), (c)(i), (c)(ii), (c)(iii), (c)(iv), (c)(v), (c)(vi), (d)(i), (d)(ii), (d)(iii), (d)(iv), (e)(v), and (e)(vi).~~
- ~~d) — The conduct in paragraphs 95 and 96:~~
- ~~i) — Involved unlawful, unnecessary and inappropriate use of force of the kind described in paragraph 114.3 particular (k);~~

- ~~ii) — Involved ignoring and/or trivialising the needs and rights of the second applicant of the kind described in paragraph 114.5 particular (g);~~
- ~~iii) — Contravened the human rights of the first applicant described in sub-paragraphs 114.15(a), (b)(ii), (c)(iii), (d)(iii), (d)(iv) and (e)(vi).~~
- e) — ~~The conduct in paragraph 97:~~
- ~~i) — Involved unlawful, unnecessary and inappropriate use of force and restraint of the kind described in paragraph 114.3;~~
- ~~ii) — Was a consequence of depriving the second applicant of protection from batteries, assaults, intimidation, and depriving him of security of his person of the kind described in paragraph 114.11;~~
- ~~iii) — Subjected the second applicant to unlawful, arbitrary and disproportionate punishment of the kind described in paragraph 114.12;~~
- ~~iv) — Contravened the human rights of the second applicant described in sub-paragraphs 114.15(a), (b)(ii), (c)(i), (c)(ii), (c)(iii), (c)(iv), (c)(v), (c)(vi), (d)(i), (d)(iii), (d)(iv), (e)(v), and (e)(vi).~~
- ~~f) — Further and better particulars may be provided following discovery and/or interrogatories~~

131. [Struck out]

132. [Struck out]

133. [Struck out]

134. [Struck out]

135. [Struck out]

136. [Struck out]

XIII. — RDA CLAIMS OF GROUP MEMBERS

137. ~~Group Members, while detained in a youth detention centre, suffered one or more of the conduct of commissioners, superintendents and staff members described in paragraphs 114 to 116 with the effects described in paragraph 117.~~

138. ~~Group Members claim damages for impairment of their enjoyment of the human rights and fundamental freedoms described in paragraph 114.15.~~

139. ~~For the plaintiffs in any of the following proceedings in the Supreme Court of the Northern Territory:~~

~~(a) No. 14 of 2015, Case Number: 21508784;~~

~~(b) No. 15 of 2015, Case Number: 21508785;~~

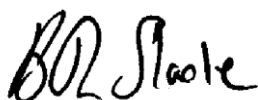
~~(c) No. 19 of 2015, Case Number: 21510204; and~~

~~(d) No. 26 of 2015, Case Number: 21513348,~~

~~the RDA claims in this action do not include any claims arising out of the facts which were the subject of those proceedings in the Supreme Court of the Northern Territory.~~

140. ~~The cognate claims of Group Members, which arise from unlawful discrimination against Group Members in breach of s 9(1) of the RDA for which the respondent is vicariously liable will be pleaded and particularised after an initial trial of the applicants' claims and common issues.~~

Date: 20 March 2019



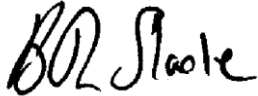
Signed by Ben Slade
Lawyer for the Applicants

This pleading was prepared by Paul Batley of Counsel and Fiona McLeod of Senior Counsel.

Certificate of lawyer

I, Ben Slade, certify to the Court that, in relation to the Sixth 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: 20 March 2019

A handwritten signature in black ink that reads "Ben Slade". The signature is written in a cursive style with a large, stylized 'B' and 'S'.

Signed by Ben Slade
Lawyer for the Applicants