

NOTICE OF FILING

Details of Filing

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File Title: JONNINE JAYE DIVILLI v HOUSING AUTHORITY & ANOR
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

Important Information

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

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

REPLY

No. VID809 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

JONNINE JAYE DIVILLI

Applicant

HOUSING AUTHORITY

First Respondent

STATE OF WESTERN AUSTRALIA

Second Respondent

TO THE DEFENCE of the Respondents dated 14 March 2025 (the **Defence**) the Applicant replies as follows:

1. In answer to paragraphs 4.2, 8.2, 10.2(a) and 12.1 of the Defence, the Applicant denies the allegations and refers to s 6(c) of the RTA, and the RT Regulations that specifically identify the Authority as an agency that is acting on behalf of the Crown, as caught by s 6(c), including rr 5AD(3) and 5A(1).
2. In answer to paragraph 5A of the Defence, the Applicant:
 - a. to subparagraphs 5A.1-5A.10, refers to Part VIIA of the *Housing Act* and admits to its terms properly construed; and
 - b. to subparagraph 5A.11, refers to ss 38(1)(c), 42(2)(b) and 50 as well as s 82 of the RTA;and otherwise denies the allegations.

Filed on behalf of	Jonnine Jaye Divilli, the Applicant		
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3. In answer to paragraph 11A of the Defence, the Applicant refers to the terms of Divilli's Lease, admits to its terms properly construed and otherwise denies the allegations.
4. In answer to paragraph 14.1-14.3 of the Defence, the Applicant denies the allegations and, in respect of 14.3, refers to and repeats the reply to paragraph 5A.11 of the Defence (at 2(b) above).
5. In answer to paragraph 19A of the Defence, the Applicant responds with the following:
 - a. s 42(2)(c) of the RTA provides that it is a term of every residential tenancy agreement that the lessor must comply with all requirements in respect of buildings, health and safety under any other written law insofar as they apply to the premises;
 - b. the requirements of the laws pleaded in 19A of the Defence are requirements in respect of buildings, health and safety under any other written law;
 - c. by reason of s 62G of the *Housing Act*, where there is a Housing Management Agreement and the Authority is not a party to the residential tenancy agreement, the Authority is deemed to be the lessor for the purposes of the RTA;
 - d. by reason of the matters above and where the Authority is a party to the residential tenancy agreement or a deemed lessor, the Authority is required to comply with the laws identified in 19A as lessor;and otherwise denies the allegations.
6. In answer to paragraph 20A of the Defence, the Applicant:
 - a. admits the allegations in 20A.1;
 - b. admits the allegations in 20A.2, save that Divilli's Residence has housed five biological children and at least two foster children;and, pending discovery, otherwise denies the allegations.
7. In answer to paragraph 20B of the Defence, the Applicant:

- a. says that the Respondents have not identified any and what damage to Divilli's Residence they allege was caused by Ms Divilli, or other occupants of Divilli's Residence, or their lawful invitees and so cannot plead to any such allegation; and
 - b. otherwise denies the allegations.

8. In answer to paragraph 32A of the Defence, the Applicant:
 - a. to subparagraph 32A.1-32A.3, does not know and therefore cannot admit the allegations;
 - b. to subparagraph 32A.4, denies the allegations; and
 - c. to subparagraph 32A.5, denies the allegations and says further that section 5X of the *Civil Liability Act 2002* (WA) is not engaged including because of the nature of the claims pleaded.

9. In answer to paragraph 32B of the Defence, the Applicant:
 - a. denies the allegations; and
 - b. says further that section 5W of the *Civil Liability Act 2002* (WA) is not engaged including because of the nature of the claims pleaded.

10. In answer to paragraph 52, 53, 69 and 71 of the Defence, the Applicant:
 - a. denies the allegations; and
 - b. says further that:
 - i. the Rent Setting Policy alleged did not apply to houses or lots not listed in a Housing Management Agreement;
 - ii. the Rent Setting Policy alleged did not apply to Ms Divilli because it applies only to houses listed in Schedule B of the relevant Housing Management Agreement, and hers was not so listed; and
 - iii. any determination under s 62E of the *Housing Act* was invalid when it was not both determined by the Authority and approved by the Minister.

Particulars

Divilli's Residence, being [REDACTED] at Yurmulun is listed in Schedule A of the Housing Management Agreement relevant to Divilli's Residence.

Item 3 of Divilli's Lease.

11. In answer to paragraph 79 of the Defence, the Applicant:

- a. to subparagraph 79.1, refers to and repeats each reply to paragraphs 5A, 11A and 53 of the Defence; and
- b. otherwise does not know and cannot admit the allegations in subparagraph 79.2-79.4.

Save as aforesaid, and save as to admissions contained in the Defence, the Applicant joins issue with the Respondents upon the whole of their Defence.

Date: 11 April 2025



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Signed by Benedict Tobin Hardwick
Lawyer for the Applicant

This pleading was prepared by Fiona Forsyth of King's Counsel, Matthew Albert and Hannah Hofmann of Counsel.

Certificate of lawyer

I, Benedict Tobin Hardwick, certify to the Court that, in relation to the reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 11 April 2025



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Signed by Benedict Tobin Hardwick
Lawyer for the Applicant