

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 [Human Rights Div 2.4 Exemption] - Form 19 - Rule 9.32
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	28/11/2022 12:20:46 PM AWST
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File Number:	WAD251/2022
File Title:	DWB22 & ANOR v STATE OF WESTERN AUSTRALIA
Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Registrar

Important Information

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

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



Form 19; Rule 9.32; Form 116; Rule 34.163(1)

**Originating Application starting a representative proceeding under Part IVA of the
Federal Court of Australia Act 1976 and under the Australian Human Rights
Commission Act 1986**

No:

Federal Court of Australia

District Registry: Western Australia

Division: General

Alexandra Walters and another person identified in the schedule

Applicants

State of Western Australia

Respondent

To the Respondent

The Applicants apply for the relief set out in this application.

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

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

Time and date for hearing:

Place: Peter Durack Commonwealth Law Courts, Building 1, Victoria Avenue, Perth
Western Australia 6000

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

Filed on behalf of	Applicants		
Law firm	Levitt Robinson		
Tel	(02) 9286 3133	Fax	(02) 9283 0005
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Representative action

1. The Applicants bring this proceeding on their own behalf and as representative parties pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth).
2. The Applicants and the Group Members are persons who:
 - (a) are, or have been at any time on or after 5 September 1997 until the commencement of this proceeding (**Relevant Period**), detained in a place declared to be a detention centre under section 13 of the *Young Offenders Act 1994* (WA) (**YO Act**); and
 - (b) while in detention, suffered or claim to have suffered:
 - (i) false imprisonment;
 - (ii) assault and/or battery (including by unlawful strip searches, unlawful use of restraints and/or unlawful use of force);
 - (iii) breach of a duty of care (including by failing to take reasonable steps to prevent psychiatric or psychological injury to, and to provide for the rehabilitation and education of, the Applicants and the Group Members); and/or
 - (iv) unlawful disability discrimination under the *Disability Discrimination Act 1992* (Cth) (**DDA**),
by an act or omission of:
 - (v) the Minister of the Crown in right of Western Australia who was, at the relevant time, responsible for the administration of the YO Act (**Minister**);
 - (vi) the chief executive officer of the department of the Government of Western Australia that was, at the relevant time, principally assisting the responsible Minister in the administration of the YO Act (**CEO**);
 - (vii) a superintendent of a detention centre at the relevant time or a person who was performing, or purporting to perform, the functions of a superintendent under the YO Act in respect of a detention centre at the relevant time (**Superintendent**); and/or
 - (viii) an officer performing functions under the YO Act in respect of a detention centre or a person purporting to perform those functions (**Officer**).



Details of claim and remedies sought

On the grounds stated in the accompanying affidavit of Stewart Levitt sworn on 28 November 2002 and the accompanying complaint, the Applicants, on their own behalf and on behalf of the Group Members, seek the relief set out in A and B below.

A *Relief under s 46PO(4) of the Australian Human Rights Commission Act 1975 (Cth)*

1. A declaration that, during the Relevant Period, the Minister, the CEO, Superintendents and/or Officers engaged in unlawful disability discrimination under sections 5, 6, 22, 24 and 31 of the DDA in relation to the Applicants and the Group Members, for which the Respondent is vicariously liable.
2. Orders requiring the Respondent to pay to the Applicants and to Group Members damages by way of compensation for loss and damage suffered by the Applicants and Group Members because of the unlawful disability discrimination referred to paragraph A1 above.
3. Such further or other orders under the *Australian Human Rights Commission Act 1975 (Cth)*, including orders for costs and interest, as the Court thinks fit.

B *Other relief*

1. Declarations that, during the Relevant Period, the Respondent, the Minister, the CEO, Superintendents and/or Officers engaged in conduct in relation to the Applicants and the Group Members which constituted:

- (a) false imprisonment;
- (b) assault and/or battery (including by unlawful strip searches, unlawful use of restraints and unlawful use of force); and/or
- (c) breaches of the duty of care owed to the Applicants and to Group Members (including by failing to take reasonable steps to prevent psychiatric or psychological injury to, and to provide for the rehabilitation and education of, the Applicants and the Group Members),

for which the Respondent is vicariously liable.

2. Damages
3. Aggravated damages
4. Exemplary damages



5. Interest on compensatory damages
6. Costs
7. Such further or other orders, including orders for costs and interest, as the Court thinks fit.

Questions common to claims of Group Members

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

1. Whether the Minister, the CEO, Superintendents and/or Officers engaged in unlawful disability discrimination under sections 5, 6, 22, 24 and 31 of the DDA in relation to the Group Members.
2. Whether the Respondent is vicariously liable for the unlawful disability discrimination referred to in question 1.
3. Whether the Minister, the CEO, Superintendents and/or Officers falsely imprisoned the Group Members by confining the Group Members to their cells other than in accordance with the YO Act and the *Young Offenders Regulations 1995 (WA)* (**YO Regulations**).
4. Whether the Minister, the CEO, Superintendents and/or Officers assaulted and/or battered the Group Members by strip searching them other than in accordance with YO Act and the YO Regulations.
5. Whether the Minister, the CEO, Superintendents and/or Officers assaulted and/or battered the Group Members by applying restraints other than in accordance with the YO Act and the YO Regulations.
6. Whether the Respondent, the Minister, the CEO, Superintendents and/or Officers owed the Group Members a duty to take reasonable care to avoid causing the Group Members, and to protect the Group Members from suffering, loss or damage in connection with their detention.
7. Whether the scope of the duty referred to in question 6 extended to taking reasonable steps to ensure that:
 - (a) the detention of the Group Members did not cause or exacerbate any psychiatric or psychological injuries;
 - (b) the Group Members had reasonable access to educational programs and opportunities; and/or



- (c) the Group Members had reasonable access to rehabilitation programs and opportunities.
8. Whether the duty referred to in question 6 was non-delegable.
9. Whether, during the Relevant Period, the Respondent, the Minister, the CEO, Superintendents and/or Officers breached the duty referred to in question 6 by failing to take reasonable steps to ensure that:
- (a) the detention of the Group Members did not cause or exacerbate any psychiatric or psychological injuries;
 - (b) the Group Members had reasonable access to educational programs and opportunities; and/or
 - (c) the Group Members had reasonable access to rehabilitation programs and opportunities.
10. Whether the Respondent is vicariously liable for the unlawful conduct and breaches of duty of the Minister, the CEO, Superintendents and/or Officers in the administration of the YO Act and the YO Regulations, including the conduct referred to in questions 3, 4, 5 and 9.
11. Whether the *Limitation Act 2005 (WA)* applies in this matter and, if so, whether section 33 of the *Limitation Act 2005 (WA)* operates to extend the time in which the claims of the Group Members for false imprisonment, assault, battery and breach of a duty of care can be commenced.

Legislation

The Applicants claim that the disability discrimination complained of is unlawful under sections 5, 6, 22, 24, 31 and 123 of the DDA.

Accompanying documents

On 22 June 2022, the Applicants lodged a representative complaint with the Australian Human Rights Commission (**AHRC**) in which they alleged that their treatment in detention centres in Western Australia breached, among other things, the DDA. A copy of the complaint is annexed hereto.

The notice of termination of the complaints was given by the delegate of the President of the AHRC on 14 November 2022. This and the delegate's reasons for the decision is annexed hereto.

**Extension of time**

Date of issue of notice under section 46PH(2) of the *Australian Human Rights Commission Act 1986* (Cth): 14 November 2022.

An extension of time under the *Australian Human Rights Commission Act 1986* (Cth) is not required.

To the extent necessary, the Applicants seek orders pursuant to sections 41 and 42 of the *Limitation Act 2005* (WA) to extend the time in which the claims of the Applicants and the Group Members for false imprisonment, assault, battery and breach of a duty of care can be commenced.

Applicants' addresses

The Applicants' address for service is:

Place: Levitt Robinson
Ground Floor, 162 Goulburn Street
Surry Hills < NSW, 2010

Email: slevitt@levittrobinson.com

The First and Second Applicants' addresses are:

C/- Levitt Robinson
Ground Floor, 162 Goulburn Street
Surry Hills NSW, 2010

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 28th November 2022

A handwritten signature in black ink, appearing to be 'S Levitt', written over a dotted line.

Stewart Levitt

Lawyer for the Applicant



SCHEDULE OF PARTIES

Alexandra Walters

First Applicant

Joel Vida

Second Applicant

State of Western Australia

Respondent