

NOTICE OF FILING

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Important Information

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Form 17
Rule 8.05(1)(a)

STATEMENT OF CLAIM

No. 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

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A. THE PARTIES

A.1 The Applicant

1. The Applicant, Jonnine Jaye Divilli:
 - (a) is a natural person;
 - (b) is an Australian Aboriginal person;
 - (c) was born on 28 April 1988 in Western Australia;
 - (d) at all times material to this proceeding:
 - (i) resided (and presently resides) at [REDACTED] at Yurmulun (**Divilli's Residence**);
 - (ii) leased Divilli's Residence, for which the First Respondent (**the Authority**) was a lessor or lessor's agent (**Divilli's Lease**); and
 - (iii) was, in respect of Divilli's Lease, a 'tenant' within the meaning of the *Residential Tenancies Act 1987 (WA)* (**RTA**).

Particulars

Ms Divilli has resided at Divilli's Residence since around 27 July 2015. As at the commencement of this proceeding, Divilli's Residence comprises a three-bedroom house, with one bathroom, a laundry, a kitchen and a living space, and has 9 occupants.

The Authority is the only lessor named on the tenancy agreement with Ms Divilli dated 27 July 2015.

Particulars of Divilli's Lease are under paragraph 11 below.

A.2 Group Members

2. The Applicant commences this representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976 (Cth)* on their own behalf and on behalf of all other persons who:
 - (a) are Australian Aboriginal persons; and

- (b) during the period between 1 July 2010 to 19 August 2024 (**Relevant Period**):
- (i) entered into an agreement (**Primary Agreement**):
- A. with the Authority or the State of Western Australia (**Western Australia**), or
- B. for which the Authority was a deemed lessor;
- in respect of residential premises (the **Housing**) in the East Kimberley, West Kimberley, Pilbara, Wheatbelt, Mid West, Gascoyne or Goldfields-Esperance regions of Western Australia, (**Remote Communities**); or
- (ii) in respect of any Housing in Remote Communities:
- A. were identified, in an instrument or agreement (**Secondary Agreement**) provided by or on behalf of the Authority or Western Australia and relating to the Housing as a person responsible for payment of any portion of rent for the said Housing; or
- B. were identified in a Primary Agreement or Secondary Agreement (**Tenancy Agreement**), or were otherwise known or notified to the Authority or Western Australia, as persons living in, residing at or inhabiting the Housing (**Notified Occupants**); and
- (c) allege they suffered loss or damage (other than personal injury) by reason of the matters set out in this pleading;
- (the persons referred to herein being **Group Members**, and the Applicant and Group Members being together and severally **Claimants**), and where a person would be a Claimant but for their death after the date of suffering loss and damage alleged herein, then any legal personal representative of such deceased person, or any person who has a right (whether equitable or otherwise) in respect of the administration of or property forming part of the estate of the deceased person, is a Claimant in respect of the said loss or damage.

Particulars

The persons identified in 2(a) above are those who meet the definition of Aboriginal in s 4 of the Aboriginal Affairs Planning Authority Act 1972 (WA) (being the definition to

which the Housing Act 1980 (WA) and Residential Tenancies Regulations 1989 (WA) (**RT Regulations**) refer) and includes those culturally adopted by such people.

The persons identified in 2(b)(i) or (ii)A above (which includes the Applicant) are **Tenants** for the purposes of this pleading.

As to paragraph 2(b), the start of the Relevant Period was the date that the Aboriginal Housing Legislation Amendment Act 2010 (WA) commenced. The end of the Relevant Period will be amended to the date of trial on commencement of that trial.

As to paragraph 2(b)(i)B, the references to 'residential premises' use that term as defined in s 3 of the RTA.

As to 2(b)(i), Primary Agreements included:

- (i) any agreement under which the Authority or Western Australia granted for valuable consideration a right to occupy, whether exclusively or otherwise, any residential premises, or part of residential premises, for the purpose of residence, whether "fixed" or periodic; and
- (ii) any other agreement said to be consistent with the RTA.

Secondary Agreements included any agreements provided by the Authority or Western Australia which divided the rent between contributors, usually being the occupants of the Housing, and prescribed the amount each contributor would pay.

As to Claimants in respect of loss and damage suffered by persons subsequently deceased, the said Claimants include persons entitled to claim under s 14 of the Administration Act 1903 (WA).

3. As at the time of commencement of this proceeding there are seven or more Claimants who have claims against the Authority or Western Australia as set out in this pleading.

Particulars

So far as the Applicant is able to say prior to discovery, there are over 3000 residential premises in the Remote Communities for whom the Authority or Western Australia is a lessor or deemed lessor.

A.3 The First Respondent – the Authority

4. At all material times the Authority was and is:
- (a) a body corporate;
 - (b) capable of being sued in its corporate name;
 - (c) an agent of the Crown in the right of the Second Respondent;
 - (d) required to give effect to a written direction of a Minister of the Crown in the right of the Second Respondent;
 - (e) an authority, a corporation and a trading corporation within the meaning of the definition in s 4 of the *Competition and Consumer Act 2010* (Cth) (CCA); and
 - (f) a person within the meaning of ss 21 and 61 of the *Australian Consumer Law* set out in Schedule 2 of the CCA, as applicable pursuant to:
 - (i) s 131 of the CCA; and
 - (ii) ss 24 and 28 of the *Fair Trading Act 2010* (WA); (ACLWA), (CCA and the Australian Consumer Law text as defined in s 18 of the ACLWA, together and severally, being ACL).

Particulars

Part II Division 1 and s 11A of the Housing Act 1980 (WA) (***Housing Act***)

5. At all material times during the Relevant Period, the Authority was party to various housing management agreements in respect of various Aboriginal lands with various Aboriginal entities as those terms are defined in the *Housing Act* (each of them being, a **Housing Management Agreement**), including with the

Yurmulun Aboriginal Corporation in respect of lots at Yurmulun including Divilli's Residence.

Particulars

Division 2 of the Housing Act.

The Housing Management Agreement relevant to Divilli's Residence was dated 29 October 2012.

6. Where the Authority is party to a Housing Management Agreement, in respect of each lot or house identified in that Agreement:
- (a) rent for the let or lease was payable to the Authority; and
 - (b) the Authority was to be treated as the
 - (i) owner, until 30 July 2012;
 - (ii) lessor, after 30 July 2012;
 - (c) as defined in the RTA in each respective period lessor as defined in the RTA, including bearing the obligations of the lessor under that Act.

Particulars

Section 62E(2) and 62G(1)(b) of the Housing Act, which commenced on the first day of the Relevant Period. As to the change in nomenclature, s 5(2) of the Residential Tenancies Amendment Act 2011 (WA), proclaimed on 30 April 2013 to commence on 1 July 2013.

7. Where the Authority was party to a Primary Agreement, in respect of the lot or house identified in that Primary Agreement:
- (a) rent for the let or lease is payable to the Authority or Western Australia, as specified in that Primary Agreement; and
 - (b) the Authority, as specified in that Primary Agreement, was the:
 - (i) owner, until 30 July 2012;
 - (ii) lessor, after 30 July 2012;
 as defined in the RTA in each respective period (**lessor**), including bearing the obligations of the lessor under that Act.

Particulars

As to the change in nomenclature, s 5(2) of the Residential Tenancies Amendment Act 2011 (WA), proclaimed on 30

April 2013 to commence on 1 July 2013.

A.4 The Second Respondent – Western Australia

8. At all material times the Second Respondent was and is:
- (a) capable of being sued;
 - (b) the principal of the First Respondent;
 - (c) through a Minister, able to give written directions to which the Authority was required to give effect; and
 - (d) a person within the meaning of s 21 of the *Australian Consumer Law* set out in Schedule 2 of the CCA, as applicable pursuant to ss 24 and 28 of the ACLWA.

Particulars

Section 58 of the Judiciary Act 1903 (Cth).

Sections 7(3) and 11A of the Housing Act.

9. Where Western Australia was party to a Primary Agreement, in respect of the lot or house identified in that Primary Agreement:
- (a) rent for the let or lease is payable to Western Australia; and
 - (b) Western Australia was the lessor, including bearing the obligations of the lessor under that Act.
10. At all material times during the Relevant Period, the Authority and a Minister of Western Australia:
- (a) were each authorised to enable Western Australia to participate in any scheme or arrangement for the granting of financial assistance by the Commonwealth for housing purposes;
 - (b) in letting, maintaining, managing or controlling the Housing the subject of each Tenancy Agreement, did so:
 - (i) on its own behalf; or
 - (ii) alternatively, in relation to the Authority, as agent for the Commonwealth.

Particulars

Section 49 of the Housing Act. Such financial assistance

by the Commonwealth including:

- i. *the National Partnership Agreement on Remote Indigenous Housing (dated 19 December 2008) (NPARIH). The Western Australian and Commonwealth governments in connection with the NPARIH agreed that:*

“the key to sustainability of the NPARIH capital works effort and investment was to establish property and tenancy management arrangements that matched public housing standards and practices elsewhere within their jurisdictions, and that they comply with the relevant residential tenancy act standards. This includes the issuing of formal residential tenancy agreements between a state, or Western Australia, housing authority and a tenant... [T]he property and tenancy management reforms being pursued under NPARIH aim to ensure:... residential tenancy agreements are in place where properties meet relevant residential tenancy act requirements”: see National Partnership Agreement on Remote Indigenous Housing – Progress Review (2008-2013) at pp 32-33.

- ii. *the National Partnership on Remote Housing (in 2016).*

B. REMOTE HOUSING – REGULATORY FRAMEWORK

B.1 The Tenancy Agreements

11. On sundry dates during the Relevant Period:

- (a) each Claimant was a Tenant or Notified Occupant named in a Tenancy Agreement:
 - (i) entered by either the Authority or Western Australia and:
 - A. for which either was lessor within the meaning of the RTA; and

- B. for which either received valuable consideration;
 - or
 - (ii) not entered by the Authority but for which the Authority was taken to be a lessor within the meaning of the RTA and for which rent was payable to the Authority;
- (b) Claimants resided in the said Housing (being for each Claimant, **Claimants' Leased Premises**);
- (c) each Claimant referred to herein, during the period of the Tenancy Agreement for their residential premises:
 - (i) was a tenant within the meaning of the RTA; further or alternatively
 - (ii) had a right of occupancy in respect of the Housing; and
- (d) where a Tenant entered into successive Primary Agreements for the same Housing:
 - (i) the earliest such Agreement not terminated in accordance with s 60 of the RTA continues to be in force, or, where the earliest such Agreement was for a "fixed term", it continues as a periodic tenancy on the same terms as that earlier Agreement; and
 - (ii) any Primary Agreement or purported extension of a "fixed term" Primary Agreement subsequent to an Agreement in (i) were and are of no legal force or effect.

Particulars

No tenant at the Applicant's Housing was given a copy of a Tenancy Agreement for that Housing by the Authority when each signed it, nor soon thereafter.

Section 76C(2) of the RTA

Divilli's Residence

The documentation which purported to be Divilli's Lease during the Relevant Period includes a Tenancy Agreement entered into on or around 27 July 2015, in which Ms Divilli was named as a tenant with Bayden Rivers.

The lease did not identify any amount of rent payable by Ms Divilli but purported to identify a method by which it was to be calculated, namely the lower of 25% of household

assessment income and 'the estimated replacement cost of the dwelling over a 25 year period divided by 52 weeks.'
The agreement dated 27 July 2015 was never validly terminated under section 60 of the RTA.

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

B.2 Residences supplied in trade or commerce/ course of business

12. At all times material to each Claimant,

- (a) the Authority, on its own behalf or as agent for Western Australia, or
- (b) Western Australia

offered, made and thereafter performed or purported to perform its obligations as lessor under the RTA, in respect of the Tenancy Agreements in circumstances where the Authority and Western Australia:

- (i) were the duopoly providers of public housing, including through Housing Management Agreements entered with an Aboriginal entity, as defined in the *Housing Act*;
- (ii) provided housing in (i) *in lieu* of, among others, private lessors;
- (iii) were providers of residential housing for valuable consideration;
- (iv) provided the housing as part of a program or system of maintaining, repairing, and carrying out any improvements to and generally controlling and managing residential public housing;
- (v) provided housing in a purportedly organised and systematic way;
- (vi) provided the housing for the purpose or purposes including the purpose of earning revenue, alternatively offsetting expenses, for the Authority (for itself or on behalf of Western Australia or the Commonwealth); and
- (vii) in the premises in (i) to (vi) above:
 - A. was carrying on a business of providing housing; and
 - B. was operating as a trading corporation (**the Authority business**).

Particulars

Section 12(b) of the Housing Act.

The monies received under the Act as rent are credited to an account called the Housing Authority Account, pursuant to s 62 of the Housing Act. The rent is payable to that account where the Authority is a named lessor or by operation of s 62E(2) of the Housing Act.

So far as the Applicant is able to say prior to discovery, the Authority:

- i. held Australian Business Number (ABN) 56 167 671 885 under the entity name Homeswest from 1 February 2009;*
- ii. at all material times during the Relevant Period, held the trading name Department of Housing, Government Regional Officers' Housing and GROH; and*
- iii. operates within Western Australia's Department of Communities.*

The Authority and/or Western Australia's system of maintaining public housing involved from time to time the WA department responsible for the Housing Act entering into contracts with providers of maintenance services.

13. In the circumstances set out in the preceding paragraph, at all material times the Authority and Western Australia in maintaining, repairing, and carrying out any improvements to and generally controlling and managing housing as:
- (a) lessor under the RTA; further or alternatively
 - (b) a supplier of services within the meaning of the ACL (being the services of public housing);
- engaged in:
- (i) within the meaning of the ACL
 - A. conduct in trade or commerce; and
 - B. as a trading corporation;
 - (ii) carrying on a business for the purposes of or within the meaning of:

- A. the CCA; further or alternatively
- B. the ACLWA; and
- (iii) the supply of services to the Claimants, within the meaning of the ACL.

C. CONTRACT CLAIMS

C.1 Terms of Tenancy Agreements

14. The provisions of the RTA set terms of all residential tenancy agreements in Western Australia, and any agreement or arrangement or purported waiver that is inconsistent with those terms is void and of no effect to the extent of that inconsistency.

Particulars

s 82 of the RTA, subject to the exception for agreements by the Authority itself to allow sub-letting in r 7F of the RT Regulations.

See, similarly, since 1 July 2013, s 27A of the RTA (being the date that s 22 of the Residential Tenancies Amendment Act 2011 (WA) was proclaimed to come into operation), except in the circumstances covered by r 5AB of the RT Regulations, notably including premises to which a housing management agreement applies.

15. At all times from 1 July 2013 during the Relevant Period (**Contract Period**), each Tenancy Agreement included terms that or to the effect that the Authority or Western Australia must:
- (i) comply with all requirements in respect of buildings, health and safety under any written law insofar as they apply to the particular Housing, including local health laws (**Health & Safety term**);

Particulars

The said term was incorporated as a term of each agreement by s 42(2)(c) of the RTA, which commenced on 1 July 2013.

Written law includes ‘all Acts... and all subsidiary legislation for the time being in force’, with the latter including ‘any proclamation, regulation, rule, local law, by-law, order, notice, rule of court, local or region planning scheme, resolution, or other instrument, made under any written law and having legislative effect’; s 5 of the Interpretation Act 1984 (WA).

For Divilli’s Tenancy Agreement, the relevant local health law is and was Shire of Derby / West Kimberley Health Local Laws 1998 made under the Health (Miscellaneous Provisions) Act 1911 (WA).

- (ii) provide and maintain means to ensure that residential premises are reasonably secure, such means being prescribed in r 12B of the *RT Regulations* 1989 (WA) (**Secure Housing term**); and

Particulars

The said term was incorporated as a term of each agreement by s 45 of the RTA, which commenced on 1 July 2013, read with r 12B of the RT Regulations 1989 (WA).

That regulation was inserted on 3 May 2013.

For Divilli’s Tenancy Agreement the said term was in writing in cl 2.8 of the Tenancy Agreement.

- (iii) maintain the particular Housing in a reasonable state of repair having regard to its age and character (**Repairs term**)

Particulars

The said term was incorporated as a term of each agreement by s 42(2)(b) of the RTA, which commenced on 1 July 2013.

For Divilli’s Tenancy Agreement the said term was in writing in cl 2.3 of the Tenancy Agreement.

- (iv) not cause or permit any interference with the reasonable peace, comfort or privacy of the Tenant or Notified Occupant in the use of their Housing (**Reasonable Comfort term**).

Particulars

The said term was incorporated as a term of each agreement by s 44(2)(b) of the RTA, which commenced on 1 July 2013.

For Divilli's Tenancy Agreement the said term was in writing in cl 2.7 of the Tenancy Agreement.

- (v) maintain adequate systems to ensure that Claimants' Premises that were not compliant with:
- A. the Health and Safety term;
 - B. the Secure Housing term;
 - C. the Repairs term;
 - D. further or alternatively, the Reasonable Comfort term

(together and severally **defects**) were remediated with reasonable expedition following a report (**Repair Systems term**).

Particulars

A report includes but is not limited to a notice within the meaning of ss 38(1)(b) and 43(2)(a) of the RTA, or a report in any form whether from a Tenant or any other person staying at that Housing, a person acting on behalf of a Tenant.

As to the reasonable expedition, see ss 42(2)(b) and 43(2)(b) of the RTA.

The Repair Systems term is to be implied to give business efficacy to the Health and Safety term; the Secure Housing term; the Repairs term and, the Reasonable Comfort term.

C.2 ACL Guarantee

16. During the Relevant Period, each of the Tenants was a 'consumer' for the purposes of s 61 of the ACL.
17. Further and in the alternative to Section C.1, at the time each Tenant entered a Tenancy Agreement for Claimant's Premises it was made known to, whichever was lessor, the Authority or Western Australia, by or on behalf of some or all of the said Claimants, that the Housing services were being acquired with the intention of the Claimants to use the said Premises as a dwelling, to constitute a place of residence and to be for the purpose of residence and to be of a nature, and quality, state or condition, that they might reasonably expect from a dwelling, within the meaning of s 61(1) and (2) of the ACL.

Particulars

The said use was made known, either expressly or by implication, by the identification of the Claimant, in the Tenancy Agreement or otherwise, as a person who was residing or would reside at the residential premises.

The making known is to be inferred inter alia from the circumstance that the Authority or Western Australia:

- (i) let the residential premises as a house (including under ss 28 and 29(1) of the Housing Act), noting that the definition of that term in s 5 of the Housing Act includes that it is 'intended to be used as a dwelling'*
- (ii) the definition in s 3 of the RTA of*
 - 1. 'residential tenancy agreement' refers to the agreement being concerned with a 'right to occupy... for the purpose of residence'; and*
 - 2. 'residential premises' refers to 'premises.... intended to constitute a place of residence'.*

18. In the premises set out in:
- (a) paragraph 13 (as to supplies in trade or commerce); and
 - (b) paragraph 17 (as to disclosed purpose);

the Authority or Western Australia, whichever was lessor or taken to be the lessor, in making each agreement referred to in paragraph 17 guaranteed to each of the said Claimants that the Claimant's Premises would be provided and maintained in such a condition as to be reasonably fit for the purpose of use as a dwelling and for the purpose of residence and to be of a nature, and quality, state or condition, that they might reasonably expect from a dwelling (**ACL Guarantee**).

D. CONTRACT and ACL GUARANTEE BREACHES

D.1 Contract breach – Health and Safety terms

19. At all times in the Contract Period, the Health and Safety term required that the Authority or Western Australia, whichever was the lessor or deemed lessor ensure, in relation to each Claimant's Premises, *inter alia* that:

(a) each bedroom:

- (i) had an openable window or external door;
- (ii) had a window through which natural light could enter;

Particulars

In relation to the Applicant, the term is implied from clauses 19(j) or 19(k) or 25 of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

(b) each room did not have any significant hole or gap around a door or window or air conditioning unit, or in a ceiling or wall, through which external air entered and insects could enter;

Particulars

In relation to the Applicant, the term is implied from clauses 19(i) of the Shire of Derby / West Kimberley Health

Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (c) had water for drinking that:
- (i) where one was installed by the lessor, passed through a functioning water filter;
 - (ii) did not exceed any level of impurity or toxicity identified in the **Australian Drinking Water Guidelines**; or
 - (iii) was within the pH range identified in the said Guidelines;

Particulars

The Guidelines applicable during the Relevant Period were the Australian Government National Water Quality Management Strategy, Australian Drinking Water Guidelines 6 2011, as endorsed by the Australian Government National Health and Medical Research Council in August 2010. A functioning water filter of the relevant kind would purify the water to fit within those Guideline thresholds.

From October 2017, the applicable copy was Version 3.4. In relation to the Applicant, the term is implied from clauses 10(2), 15(2) or 27(2) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (d) that any sink, toilet or internal drain was serviceable such that it would, in ordinary use, completely drain or flush within a reasonable period;

Particulars

In relation to the Applicant, the term is implied from clauses 10(2)(a) and 18(2) of the Shire of Derby / West

Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (e) had a hot water system:
 - (i) functioning sufficiently to heat, within a reasonable period, adequate water;
 - (ii) capable of heating water to 65 degrees Celsius;

Particulars

In relation to the Applicant, the term is implied from clauses 15(2) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (f) had:
 - (i) a stove with at least two hobs each of which heated to a reasonable temperature for cooking;
 - (ii) an oven which heated to a reasonable temperature for cooking;

Particulars

In relation to the Applicant, the term is implied from clause 18(2) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (g) had at least one shower operating with a shower rose;

In relation to the Applicant, the term is implied from clause 10(2)(a) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (h) had no live electrical wires exposed within reasonable reach of occupants;

Particulars

In relation to the Applicant, the term is implied from clause 19(m) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence. The electric wiring requirements are of:

- i. the Office of Energy until 16 December 2010*
- ii. Energy Safety after 16 December 2010*

made under r 49(1)(b) of the Electricity Licensing Regulations 1991 (WA), including the WA Electrical Requirements 2008, as amended in 2015. For the purposes of those requirements, the lessor is the 'consumer' and is thus under the obligations of a consumer, including requirement 6.2.1 to maintain 'wiring and connections' among other things.

Energy Safety was replaced on 22 January 2018 by the Building and Energy Division of the WA Department of Energy, Mines, Industry Regulation and Safety and further requirements were issued by that entity. The requirements of that entity are not picked up by clause 19(m) of the Shire of Derby / West Kimberley Health Local Laws 1998.

Further particulars to be provided in relation to individual Group Members.

- (i) had any drain or septic tank in the ground securely covered with a cover compliant with law;

Particulars

Regulations 32, 34(8) and 36(1)(e) of the Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974 (WA).

In relation to the Applicant, the term is implied from clause 10(2)(a) or 84(b)(ii) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (j) where it had a septic tank attached to the bathroom and/or toilet – the tank was completely sealed, including by way of a complete lid;

Particulars

In relation to the Applicant, the term is implied from clause 10(2)(a) or 84(b) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (k) had no infestation of insects or rodents;

Particulars

In relation to the Applicant, the term is implied from clauses 86, 87, 92, 93 or 105 of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (l) had complete downpipes and gutters at each point where rain drains from the roof;

Particulars

In relation to the Applicant, the term is implied from clauses 19(a), 20, 21 or 79(b) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence. Clause 79(b) requires that the premises be free of water liable to become the

breeding place of mosquitoes. The absence of complete downpipes or gutters means that water pools under the place where the complete downpipes or gutters would ordinarily be. If there is sufficient rain, that water then pools next to the House and is liable to become a breeding place of mosquitoes.

Further particulars to be provided in relation to individual Group Members.

- (m) had a roof and/or ceiling that did not have any hole or gap through which water could enter;

Particulars

In relation to the Applicant, the term is implied from clauses 19(a) or 19(i) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (n) did not have trip hazards in the flooring of the residential premises;

Particulars

In relation to the Applicant, the term is implied from clauses 19(c) or 19(h) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (o) was sufficiently structurally sound (including as to sound building materials) as to not be at risk of collapse in whole or in any part.

Particulars

In relation to the Applicant, the term is implied from clause 19(b) of the Shire of Derby / West Kimberley Health Local

Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (p) had a functioning smoke detector or alarm;

Particulars

Building Regulations 2012 (WA) rr 58 and/or 60.

Further particulars to be provided in relation to individual Group Members.

- (q) had electrical wiring that was compliant with the law;

Particulars

Refer to and repeat the particulars to (h) above.

Further particulars to be provided in relation to individual Group Members.

- (r) any external door frame was fixed with a complete covering;

Particulars

In relation to the Applicant, clause 19(j) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (s) any external door was affixed with a door handle;

Particulars

In relation to the Applicant, the term is implied from clause 19(j) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (t) any external door was fitted with a functioning lock;

Particulars

In relation to the Applicant, the term is implied from clause 19(j) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (u) any external door had a latch or strike plate that allowed the door to remain closed despite being subjected to pushing or pulling with the force or load ordinarily used for opening a door;

Particulars

In relation to the Applicant, the term is implied from clause 19(j) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (v) any external window frame was fixed with a complete covering;

Particulars

In relation to the Applicant, the term is implied from clause 19(j) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (w) any external window capable of being opened from outside the residential premises had a functioning lock (and for keyed locks, a matching key);

Particulars

In relation to the Applicant, the term is implied from clause 19(j) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (x) had a complete perimeter fence, including a gate frame with a latching gate;

Particulars

By way of example, the term is implied from clause 2.6 of the Wyndham East Kimberley Fencing Local Law 2017 (WA).

Further particulars to be provided in relation to individual Group Members.

- (y) had each tap (including in a shower or bath) in a state where it could be turned off completely;

Particulars

Water Services Act 2012 (WA) s 92

In relation to the Applicant, the term is implied from clauses 10(2)(a) or 15(2) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (z) had the water coming out of each tap flow downward and not spray outside the sink below;

Particulars

In relation to the Applicant, the term is implied from clause 10(2) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (aa) had water pressure out of each tap of at least 5 litres per minute;

Particulars

In relation to the Applicant, the term is implied from clause 10(2)(b) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (bb) had each window covered by unbroken glass; and

Particulars

In relation to the Applicant, the term is implied from clause 19(j) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (cc) had a toilet lid and a cistern lid affixed to each toilet and a proximate toilet roll holder and grab rail affixed; and

Particulars

In relation to the Applicant, the term is implied from clause 10(2)(a) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (dd) had a toilet with a flush which cleared solid waste;

Particulars

In relation to the Applicant, the term is implied from clause 10(2) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (ee) each door will fit the door frame, and could be readily opened and closed;

Particulars

In relation to the Applicant, the term is implied from clause 19(j) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (ff) each door had unbroken hinges;

Particulars

In relation to the Applicant, the term is implied from clause 19(j) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (gg) had a key provided which could unlock each lock; and

Particulars

In relation to the Applicant, the term is implied from clause 19(j) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (hh) had each door affixed with a deadlock or key lockable security screen;

Particulars

In relation to the Applicant, the term is implied from clause 19(j) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (ii) had a plumbing and drainage system that did not leak, and had impervious and complete pipes;

Particulars

Water Services Act 2012 (WA) ss 92, 112

Further particulars to be provided in relation to individual Group Members.

- (jj) each internal wall had a smooth, unbroken surface.

Particulars

In relation to the Applicant, clauses 19(i) of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence.

Further particulars to be provided in relation to individual Group Members.

- (kk) it was in sound condition and fit for use.

Particulars

In relation to the Applicant, clause 19 of the Shire of Derby / West Kimberley Health Local Laws 1998 which is and was applicable to Divilli's Residence

Further particulars to be provided in relation to individual Group Members.

20. On sundry dates during the Contract Period, Claimants' Premises:

- (a) did not have, in each bedroom:

- (i) an openable window or external door;
- (ii) a window through which natural light can enter;

Particulars

Divilli's Residence

*The window in **Bedroom 2** cannot be unlocked. By 26 July 2024 at the latest, this issue was notified to the Authority by way of a letter from Ms Divilli's legal representative. As far as Ms Divilli is aware, this issue has not been rectified to date.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (b) in each occupied internal bedroom and living room there were significant holes or gaps around doors, windows or air conditioning unit, or in the ceiling or a wall, through which external air entered and insects could enter;

Particulars

Divilli's Residence

The air conditioner box cover in Bedroom 1 was missing, creating a hole in the wall that allowed external air and insects to enter.

- 1. As far as Ms Divilli is able to say prior to discovery, the issue started in mid-2021.*
- 2. Around May 2021, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
- 3. This issue was rectified by a contractor engaged by the Authority at some point between 20 June 2023 and 22 June 2023.*

There are mosquitoes in the area that carry Ross River, Barmah Forest and Kunjin virus, as well as Japanese and Murray Valley Encephalitis. Due to the absence of complete fly screens, mosquitoes and other insects could enter the house. This created a risk of infection to

residents including Ms Divilli with those viruses.

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (c) had water for drinking that:
- (i) where one was installed by the lessor, passed through a water filter that was not fully functioning;
 - (ii) exceeded impurity or toxicity standards identified in the Australian Drinking Water Guidelines; further or alternatively
 - (iii) was outside the pH range identified in the said Guidelines;

Particulars

As to the Applicant, public housing in Yurmulun received drinking water which had concentrations of the nephrotoxic agent nitrate above the maximum safe level of 50 mg/L as set out in the Guidelines.

According to publications including Ward et al, Drinking Water Nitrate and Human Health: An Updated Review, Int J Environ Res Public Health. 2018 Jul; 15(7): 1557 and Essein, E et al., Drinking-water nitrate and cancer risk: A systematic review and meta-analysis, Arch Environ Occup Health. 2022;77(1):51-67:

- A. *elevated levels of nitrate in water can affect how blood carries oxygen and can cause methemoglobinemia (also known as blue baby syndrome).*
- B. *people at higher risk of developing nitrate-induced methemoglobinemia are those with anemia, cardiovascular disease, lung disease, sepsis, glucose-6-phosphate-dehydrogenase deficiency, and other metabolic problems.*
- C. *there is a relationship between drinking water nitrate ingestion and gastric cancer, thyroid disease, and neural tube defects.*

Alerts were issued, including in respect of Yurmulun, that recorded when water in an identified place was outside of some of the maximum safe levels set out in the Guidelines. Those alerts usually listed a contact detail of either the WA Department of Health or the Water Corporation. The Department of Health is chair of the Advisory Committee for the Purity of Water. According to its website, that is ‘a non-statutory inter-departmental committee [which] provides advice to the Ministers for Health and Water on protecting, monitoring and managing drinking water quality in Western Australia and fosters inter-agency co-operation on related matters’.

The Water Corporation is a statutory corporation established under Part 2 of the Water Corporations Act 1995 (WA). The board of that corporation is appointed by the Minister for Water, pursuant to s 13 of the Government Trading Enterprises Act 2023 (WA). The Water Corporation has representatives on the Advisory Committee for the Purity of Water.

By way of example, an alert was issued by the Water Corporation in respect of Yurmulun in January 2024 which recorded that ‘nitrate levels in the tap water had been identified at’ between 70 and 82 mg/L between July 2023 and January 2024. The same alert advised that ‘adults and children over 3 months can safely drink water with up to 100 mg/L of nitrate’.

By 28 March 2024 at the latest, the issue was notified to the Authority by way of a letter from Ms Divilli’s legal representative.

As far as Ms Divilli is aware, this issue has not been rectified.

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (d) had sinks, toilets or internal drains that, in ordinary use, did not completely drain or flush within 10 minutes;

Particulars

Divilli's Residence

- i. *The kitchen sink was blocked and did not drain properly.*
1. *As far as Ms Divilli is able to say prior to discovery, this was a recurring issue that first arose prior to 4 March 2016.*
 2. *On 4 March 2016, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 3. *As far as Ms Divilli is aware, this instance of the issue was rectified by a contractor engaged by the Authority on or around 5 March 2016.*
 4. *On 27 November 2019, the issue was again notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 5. *As far as Ms Divilli is aware, this instance of the issue was rectified by a contractor engaged by the Authority at some point between 28 November 2019 and 23 December 2019.*
 6. *On 12 July 2022, the issue was again notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 7. *As far as Ms Divilli is aware, this instance of the issue was rectified by a contractor engaged by the Authority at some point between 14 July 2022 and 20 July 2022.*
- ii. *The bathroom sink was blocked and did not drain properly.*

1. *As far as Ms Divilli is able to say prior to discovery, the issue was caused by a blocked pipe prior to 6 March 2020.*
 2. *On 6 March 2020, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.
The latest instance of the issue was rectified by her mother, in mid-2024.*
- iii. *The internal drains in the house were blocked.*
1. *As far Ms Divilli is able to say prior to discovery, the issue arose prior to October 2020.*
 2. *On 12 October 2020, the issue was notified to the Authority by way of service request logged to the Planned Maintenance Register.*
 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 14 October 2020 and 20 October 2020.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (e) did not have a hot water system:
- (i) functioning sufficiently to heat, within 20 minutes, sufficient water for one shower lasting two minutes;
 - (ii) capable of heating water to at least 65 degrees Celsius;

Particulars

Divilli's Residence

- i. *The Solahart Hot Water Unit leaked and was not operable, meaning the Divilli Residence did not have hot water for a period.*
 1. *As far as Ms Divilli can say prior to discovery, the issue first arose on or about mid-2017.*

2. *On 9 October 2017, the issue was notified to the Housing Authority by way of a service request logged to the Planned Maintenance Register.*
 3. *This instance of the water leak was rectified by a contractor engaged by the Authority at some point between 10 October 2017 and 1 November 2017.*
 4. *As far as Ms Divilli is able to say prior to discovery, the issue arose again between May 2020 and June 2020.*
 5. *On or around 22 July 2020, the issue was again notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 6. *This instance of the issue was rectified by a contractor engaged by the Authority between 23 July 2020 and 30 July 2020.*
- ii. *The quantum heat pump was broken, meaning the Divilli Residence did not have hot water for a period.*
1. *As far as Ms Divilli is able to say, the issue first arose prior to May 2021.*
 2. *On 20 May 2021, the issue was notified to the Authority by way of a service request logged on the Planned Maintenance Register.*
 3. *The issue was rectified by a contractor engaged by the Authority at some point between 1 June 2021 and 10 June 2021.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (f) did not have:
- (i) a stove with at least two hobs each of which heated to above 100 degrees Celsius; or

- (ii) an oven which heated to above 100 degrees Celsius;
- (g) as to bathroom facilities did not have a shower fitted with an operating shower rose;

Particulars

Divilli's Residence

The shower rose in the bathroom was broken.

- 1. As far as Ms Divilli is able to say prior to discovery, this was a recurring issue that first arose prior to August 2017 and appeared to be caused by mineral build up from poor quality water.*
- 2. At some point between 1 August 2017 and 16 August 2017, the directional shower roses and arms at Divilli's Residence were replaced by a contractor engaged by the Authority.*
- 3. At some point between 16 August 2017 and 17 February 2020, the issue arose again.*
- 4. On 17 February 2020, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
- 5. As far as Ms Divilli is aware, this instance of the issue was rectified by a contractor engaged by the Authority at some point between 19 February 2020 and 26 February 2020.*
- 6. On 3 November 2020, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
- 7. As far as Ms Divilli is aware, this instance of the issue was rectified by Ms Divilli's partner.*
- 8. In or around February 2024, the shower rose broke again.*
- 9. This instance of the issue was rectified again by Ms Divilli's partner by 17 March 2024.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (h) had live electrical wires exposed within reach of occupants;

Particulars

Divilli's Residence

- i. There were exposed wires emerging from a power point in the kitchen.*
- 1. As far as Ms Divilli is able to say prior to discovery, this was a recurring issue that first arose prior to 11 October 2017.*
 - 2. On 11 October 2017, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 - 3. As far as Ms Divilli is aware, this instance of the issue was rectified by a contractor engaged by the Authority on or around 16 January 2018.*
 - 4. On 1 July 2020, the issue was again notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 - 5. As far as Ms Divilli is aware, this instance of the issue was rectified by a contractor engaged by the Authority on or around 15 July 2020.*
- ii. There were exposed wires emerging from a power point in the dining room.*
- 1. On 27 November 2019, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 - 2. As far as Ms Divilli is aware, the issue was rectified at some point between 28 November 2019 and 5 December 2019.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (i) did not have any drain or septic tank in the ground securely covered with a cover compliant with law;

Particulars

Divilli's Residence

The access point to the sewerage was faulty.

1. *As far as Ms Divilli is able to say, the issue first arose on or around August 2017.*
2. *By 7 September 2017 at the latest, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 27 September 2017 and 26 October 2017.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (j) where it had a septic tank attached to the bathroom or toilet – the tank was not completely sealed;
- (k) had infestations of insects or rodents;

Particulars

- i. *The house has an infestation of cockroaches.*
 1. *The issue was a recurring problem.*
 2. *On 4 July 2017, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 3. *As far as Ms Divilli is aware, this instance of the issue was rectified by a contractor engaged*

by the Authority at some point between 18 July 2017 and 3 August 2017.

4. *On 8 June 2021, the issue was again notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 5. *As far as Ms Divilli is aware, this instance of the issue was rectified by a contractor engaged by the Authority at some point between 21 June 2021 and 23 August 2021.*
 6. *On 14 November 2022, the issue was again notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 7. *As far as Ms Divilli is aware, this instance of the issue was rectified by a contractor engaged by the Authority at some point between 1 December 2022 and 15 December 2022.*
 8. *On 26 July 2024, the issue was again notified to the Authority by way of a letter from Ms Divilli's legal representative.*
 9. *This instance of the issue is yet to be rectified.*
- ii. *The house had an infestation of spiders.*
1. *On 5 May 2021, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 2. *This issue has not been rectified .*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (l) had no or incomplete gutters at each point where rain falls from the roof;

Particulars

Divilli's Residence

There was no guttering on the roof. Due to the lack of guttering and the insufficient width of the roof over the bedrooms, when it rained water would hit the glass window louvres which directed the water onto the internal windowsills and would then overflow into the bedrooms.

- 1. As far as Ms Divilli is aware, the house was built without guttering.*
- 2. By 28 March 2024 at the latest, the issue was notified to the Authority by way of a letter from Ms Divilli's legal representative.*
- 3. The issue has not been rectified.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (m) had a roof and/or ceiling with significant holes or gaps through which water could and did enter;

Particulars

Divilli's Residence

- i. There was a hole in the bathroom ceiling and water was entering the house.*
 - 1. As far as Ms Divilli is able to say prior to discovery, the issue was caused by water damage from a roof leak prior to May 2018.*
 - 2. On 30 May 2018, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 - 3. As far as Ms Divilli is aware, this issue was rectified by a contractor engaged by the Authority at some point between 2 July 2018 and 5 July 2018.*
- ii. The laundry ceiling had a hole and water was entering the house.*

1. *As far as Ms Divilli is able to say prior to discovery, the hole was caused by a leak in the roof prior to March 2020.*
 2. *On 3 November 2020, Ms Divilli notified the issue to a Housing Officer during an inspection at Divilli's Residence.*
 3. *The issue has not been rectified.*
- iii. *The roof had a hole and water was entering the house.*
1. *On 24 February 2021, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 2. *As far as Ms Divilli is aware, this instance of the issue was rectified by a contractor engaged by the Authority at some point between 25 February 2021 and 4 March 2021.*
 3. *On 31 July 2023, the issue was again notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 4. *The issue was rectified by a contractor engaged by the Authority at some point between 3 August 2023 and 10 August 2023.*
- iv. *There were holes in the kitchen ceiling and water was entering the house.*
1. *As far as Ms Divilli can say prior to discovery, the issue was caused by a roof leak prior to March 2022.*
 2. *On 16 March 2022, Ms Divilli notified this issue to a Housing Officer during an inspection of Divilli's Residence.*
 3. *This issue has not been rectified.*
- v. *The ceiling in the dining room was water damaged.*

1. *As far as Ms Divilli is able to say prior to discovery, the issue was caused by a roof leak prior to May 2021.*
 2. *On 5 May 2021, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 20 June 2023 and 22 June 2023.*
- vi. *The ceiling had holes and the ceiling joinery in the passage was falling apart.*
1. *As far as Ms Divilli is able to say prior to discovery, the issue was caused by water damage from a roof leak.*
 2. *On 16 March 2022, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 20 June 2023 and 22 June 2023.*
- vii. *There was water leaking from the ceiling in Bedroom 3.*
1. *The leak started in the last week of May 2024.*
 2. *Ms Divilli reported the issue to Pennie Gross, Housing Officer, Emama Nguda Aboriginal Corporation in the last week of May 2024.*
 3. *The issue was rectified by a contractor engaged by the Authority at some point between 7 June 2024 and 16 June 2024.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (n) had trip hazards in the flooring or ground of the residential premises; and
- (o) was not sufficiently structurally sound as to not be at real risk of collapse in whole or in any part.

Particulars

Divilli's Residence

- i. *The ceiling in Bedroom 1 was water damaged and collapsed in, causing property damage. Ms Divilli's sons had to sleep in the lounge until the ceiling was fixed.*
 - 1. *As far as Ms Divilli can say prior to discovery, the issue was caused by water leaking from the roof.*
 - 2. *By 16 March 2022 at the latest, Ms Divilli notified the roof leak to a Housing Officer during an inspection at Divilli's Residence.*
 - 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority in approximately June 2022.*
- ii. *The ceiling in Bedroom 3 was water damaged and drooping in the corner. There was a risk that the section of the roof could fall in.*
 - 1. *As far as Ms Divilli can say prior to discovery, the issue was caused by water damage at some point between December 2022 and January 2023.*
 - 2. *By 28 July 2023 at the latest, Ms Divilli notified this issue to Pennie Gross, Housing Officer at Emama Nguda Aboriginal Corporation during an annual inspection at Divilli's Residence.*
 - 3. *It was raised again in November 2023.*
 - 4. *As far as Ms Divilli is aware, there was an attempt rectify the issue by a contractor engaged by the Authority at some point prior to*

March 2024, but the repair is incomplete and requires a plaster and paint.

- iii. *The metal support beams on the veranda were rusted. There was a risk that they would break apart and destabilise Divilli's Residence.*
1. *As far as Ms Divilli can say prior to discovery, the issue was caused by water damage.*
 2. *By 28 March 2024 at the latest, the issue was notified to the Authority by way of a letter from Ms Divilli's legal representative.*
 3. *This issue has not been rectified.*

- (p) had no smoke alarm, or had smoke alarm/s that were broken or unserviceable;

Particulars

Divilli's Residence

The smoke alarms in the house failed testing.

1. *On 15 April 2016, the faulty smoke alarm in the lounge was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
2. *As far as Ms Divilli is aware, the smoke alarm in the lounge was rectified by a contractor engaged by the Authority on or around 16 April 2016.*
3. *On 19 May 2017, the faulty smoke alarm in the dining room was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
4. *As far as Ms Divilli is aware, the smoke alarm in the dining room was rectified by a contractor engaged by the Authority at some point between 19 May 2017 and 30 May 2018.*

5. *On 8 March 2018, the faulty smoke alarm in the passage was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
6. *As far as Ms Divilli is aware, there were at least three rectification attempts in relation to the smoke alarm in the passage , on or around 12 March 2018, on or around 20 August 2020, and on or around 28 August 2020.*

(q) had electrical wiring that was not compliant with the law;

Particulars

Divilli's Residence

- i. *The main earth wire was broken between the main earth stake and copper pipe, and there was also no main earth tag attached to the main earth wire.*
 1. *By 26 July 2024 at the latest, the issue was notified to the Authority by way of a letter from Ms Divilli's legal representative.*
 2. *As far as Ms Divilli is aware, this issue has not been rectified.*
- ii. *The Residual Current Device known as 'Power Circuit 4 Protected RCD/MCB Combo' was not installed in the lounge.*
 1. *On 30 May 2018, this issue was noticed by a Housing Officer during an annual inspection at Divilli's Residence.*
 2. *As far as Ms Divilli is aware, this issue has not been rectified.*
- iii. *The Residual Current Device known as 'Other Circuit Protected 8 RCD/MCB Combo' was not installed in the lounge.*

1. *On 30 May 2018, this issue was noticed by a Housing Officer during an annual inspection at Divilli's Residence.*
 2. *As far as Ms Divilli is aware, this issue has not been rectified.*
- iv. *The Residual Current Device known as 'Other Circuit Protected 7 RCD/MCB Combo' was not installed in the lounge.*
1. *On 30 May 2018, this issue was noticed by a Housing Officer during an annual inspection at Divilli's Residence.*
 2. *As far as Ms Divilli is aware, this issue has not been rectified.*
- v. *The ceiling fans in the passage were hanging loose, with exposed wires and a risk of the fans falling during operation.*
1. *On 16 March 2022, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 2. *On 31 August 2022, Ms Divilli again notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 3. *By 28 March 2024 at the latest, this issue was notified again to the Authority by way of a letter from Ms Divilli's legal representative.*
 4. *This issue has not been rectified.*
- v. *The fluorescent lights in the rear veranda were broken.*
1. *As far as Ms Divilli can say prior to discovery, this was a recurring issue caused by a circuit fault.*
 2. *On 20 April 2016, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*

3. *The issue was temporarily rectified by a contractor engaged by the Authority on or around 21 April 2016.*
 4. *On 17 February 2020, the issue was notified again to the Authority by way of a service request logged to the Planned Maintenance Register.*
 5. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 18 February 2020 and 26 February 2020.*
- vi. *The Solahart Hot Water Unit's booster switch was broken.*
1. *As far as Ms Divilli can say prior to discovery, the issue was caused by an electrical fault.*
 2. *On 20 May 2021, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 15 June 2021 and 29 June 2021.*
- vii. *The fan and light switch in the kitchen were faulty. The switch was jammed, hard to push down and placed in between two power points.*
1. *On 16 March 2022, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 2. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority on or around 25 November 2022.*
- viii. *A ceiling fan in the dining room was broken.*

1. *As far as Ms Divilli can say prior to discovery, the issue was caused by wear and tear sometime prior to February 2023.*
2. *On 14 February 2023, Ms Divilli notified this issue to Pennie Gross, Housing Officer at Emama Nguda Aboriginal Corporation during an inspection at Divilli's Residence.*
3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 3 April 2023 and 12 April 2023.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (r) had external door frames that were not covered by a complete covering, such as a properly-fitted door;
- (s) had external doors missing a serviceable door handle;
- (t) had external doors not fitted with functioning locks, or for which no key was provided or, if misplaced, was replaced within a reasonable time;

Particulars

Divilli's Residence

- i. *The door handle and lock in the entry security screen door was broken.*
 1. *As far as Ms Divilli is able to say prior to discovery, the issue was caused by a broken latch, which prevented the door from closing.*
 2. *On 13 December 2018, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 3. *As far as Ms Divilli is aware, this issue was rectified by a contractor engaged by the Authority at some point between 2 November 2019 and 10 December 2019.*

ii. *The locks to the front and rear external doors needed to be replaced, because the keys were misplaced by Ms Divilli.*

1. *On 17 October 2017, the issue was first notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
2. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 28 March 2024 and 16 July 2024.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (u) had external doors that had no sufficient lock or fixing to enable the door to remain closed despite being subjected to pushing or pulling with the force or load ordinarily used for opening a door;

Particulars

Divilli's Residence

- i. *The security screen door in the entryway had faulty hinges.*
 1. *On 31 August 2022, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 2. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 3 August 2023 and 10 August 2023.*
- ii. *The security screen door frame in the front entry was broken.*
 1. *As far as Ms Divilli is able to say prior to discovery, the issue first arose in or around mid-2023.*

2. *By 11 January 2024 at the latest, Ms Divilli notified this issue to Dave Ishiguchi, Housing Officer at Emama Nguda Aboriginal Corporation, during an inspection at Divilli's Residence.*
3. *This issue has not been rectified.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (v) had external window frames that were not fixed with a complete covering, such as a window and a flyscreen;

Particulars

Divilli's Residence

- i. *Multiple louvre windows in the passageway were broken.*
 1. *As far as Ms Divilli is able to say prior to discovery, the issue arose in around 2017.*
 2. *The issue has not been rectified.*
- ii. *The flyscreen outside the louvres were torn, leaving holes in the surface large enough for insects to enter.*
 1. *As far as Ms Divilli is able to say prior to discovery, the issue arose in around 2017.*
 2. *In around March 2024, Ms Divilli notified this issue to a Housing Officer.*
 3. *The issue has not been rectified.*

- (w) had external windows, capable of being opened from outside the residential premises, without a functioning lock or other protections to prevent them being opened by an intruder; and
- (x) did not have a complete perimeter fence, including a gate frame with a latching gate.

Particulars

Divilli's Residence

A fence surrounding the perimeter of the property has sections missing or damaged, including the front and rear gate. As a result, animals and people can enter freely, including venomous snakes such as the King Brown or Mulga Snake and large cattle.

- 1. As far as Ms Divilli is able to say, this issue first arose prior to November 2020 and was caused by multiple events including floods.*
- 2. On 3 November 2020, Ms Divilli first notified this issue to a Housing Officer during a property inspection at Divilli's Residence.*
- 3. The issue has not been rectified.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (y) had one or more taps (including in a shower or bath) which could not be turned off completely;

Particulars

Divilli's Residence

- i. The shower taps were leaking.*
 - 1. As far as Ms Divilli can say prior to discovery, the issue was caused by faulty tap washers.*
 - 2. As far as Ms Divilli can say prior to discovery, the issue was notified to the Authority sometime prior to 1 August 2017.*
 - 3. As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 1 August 2017 and 16 August 2017.*
- ii. The cold tap in the kitchen was leaking.*
 - 1. On 30 October 2019, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*

2. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 31 October 2019 and 19 November 2019.*
- ii. *The taps in the bathtub were faulty.*
1. *On 30 October 2019, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 2. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 31 October 2019 and 19 November 2019.*
- iii. *The garden tap at the front of the property was leaking.*
1. *As far as Ms Divilli can say prior to discovery, the issue was caused by a faulty copper water service.*
 2. *On 13 September 2022, the leak was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 5 October 2022 and 14 October 2022.*
- iv. *The tap head in the laundry was faulty.*
1. *On 3 November 2020, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 2. *This issue has not been rectified.*
- v. *The tap in the laundry was leaking into the sink and vanity, resulting in water pooling on the floor.*
1. *As far as Ms Divilli can say prior to discovery, the issue arose in the months prior to July 2024.*

2. *By 26 July 2024 at the latest, the issue was notified to the Authority by way of a letter from Ms Divilli's legal representative.*
 3. *The issue has not been rectified.*
- (z) had the water coming out of one or more taps that sprayed outside the sink below;
- (aa) had water pressure out of each tap of less than 5 litres per minute;
- (bb) had one or more windows with broken glass;
- (cc) had a toilet lid and/or a cistern lid missing from a toilet and a proximate toilet roll holder and grab rail affixed;

Particulars

Divilli's Residence

- i. *The toilet roll holder was broken and needed to be replaced.*
 1. *As far as Ms Divilli is able to say, the issue arose from as early as May 2018.*
 2. *As far as Ms Divilli is aware, the issue was first rectified by a contractor engaged by the Authority at some after May 2018.*
 3. *As far as Ms Divilli is able to say, the issue has since re-occurred because of the poor quality of the replacement parts.*
 4. *The issue has not been rectified.*
 - ii. *The grab rail in the toilet was insecure.*
 1. *On 3 November 2020, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 2. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 20 June 2023 and 22 June 2023.*
 3. *As far as Ms Divilli is able to say, the issue has since re-occurred because of the poor quality of the installation.*
- (dd) had a toilet with a flush that did not clear solid waste;
- (ee) had one or more doors that did not fit the surrounding door frame;

Particulars

Divilli's Residence

- i. *The front door in the entryway was too big for its frame.*
 1. *On 1 July 2020, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 2. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 7 July 2020 and 15 July 2020.*
- ii. *The door jam for the sliding door in the passage was broken, and could not open or close properly.*
 1. *As far as Ms Divilli can say prior to discovery, the issue was caused by a bent door frame.*
 2. *On 5 May 2021, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 3. *The issue has not been rectified.*
- iii. *The door in Bedroom 3 needed to be replaced entirely and painted.*
 1. *As far as Ms Divilli is able to say prior to discovery, the issue was caused by a faulty door handle and lock.*
 2. *By 16 March 2022 at the latest, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority before 11 January 2024.*

- (ff) had one or more doors with a broken hinge;
- (gg) was not provided with a key to unlock every lock;
- (hh) had one or more doors without a securable deadlock or key lockable security screen;

Particulars

Divilli's Residence

- i. *The door handle and lock in Bedroom 3 was faulty.*
 - 1. *On 13 December 2018, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 - 2. *On 16 March 2022, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 - 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 16 March 2022 and 14 February 2023.*
- ii. *The door and privacy lock in Bedroom 1 was missing, owing to deterioration around the lock site.*
 - 1. *On 31 August 2022, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's residence.*
 - 2. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 28 July 2023 and 17 March 2024.*

- (ii) had a plumbing and drainage system that leaked or had pervious or broken pipes; further or alternatively

Particulars

Divilli's Residence

- i. *In the alternative, Ms Divilli refers to and repeats the particulars of (o) above.*
- ii. *There was a leak in the kitchen wall.*
 - 1. *As far as Ms Divilli can say prior to discovery, the issue was caused by a burst pipe.*
 - 2. *By 8 March 2016, the issue was notified to the Authority by way of an email from Angela Skewes, Responsive Co-Ordinator, Lake*

Maintenance to Helen Ledger, Housing Maintenance Operations, Authority.

3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority on or around 21 March 2016.*
- iii. *The ceiling and cornice in Bedroom 1 were water damaged and deteriorating.*
1. *As far as Ms Divilli is able to say prior to discovery, the issue started around July 2017.*
 2. *On 30 November 2017, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 17 January 2018 and 14 February 2018.*
- iv. *There was a pipe leak inside the front wall of the property.*
1. *As far as Ms Divilli can say prior to discovery, the issue was caused by a burst pipe.*
 2. *By 11 October 2017 at the latest, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 3. *The issue was rectified by a contractor engaged by the Authority at some point between 11 October 2017 and 26 October 2017.*
- v. *There was a water leak from the bathroom, while the shower was in use, that leaked through the wall into Bedroom 3.*
1. *As far as Ms Divilli can say prior to discovery, the issue was caused by a burst copper pipe in the shower wall.*
 2. *By 16 April 2019 at the latest, the issue was notified to the Authority by way of a service request was logged on the Planned Maintenance Register.*

3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 7 May 2019 and 14 May 2019.*
- vi. *There was a water leak onto a part of the electricity system.*
1. *As far as Ms Divilli is able to say prior to discovery, the issue was caused by water damage.*
 2. *On 3 May 2019, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 17 May 2019 and 22 May 2019.*
- vii. *The water service to the cold-water line in the kitchen was broken.*
1. *As far as Ms Divilli can say prior to discovery, the issue was caused by a faulty ball valve and copper water service.*
 2. *On 22 July 2020, this issue notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 30 July 2020 and 26 August 2020.*
- viii. *The wall in Bedroom 1 was peeling, and needed to be repaired and repainted.*
1. *As far as Ms Divilli can say prior to discovery, the issue was caused by water damage.*
 2. *On 5 May 2021, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 3. *The issue has not been rectified.*
- ix. *The wall and ceiling in the bathroom was peeling needed to be repainted.*

1. *As far as Ms Divilli can say prior to discovery, the issue was caused by water damage.*
 2. *On 5 May 2021, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 3. *This issue has not been rectified.*
- x. *There was a water leak from the external right hand side wall.*
1. *As far as Ms Divilli can say prior to discovery, the issue arose during normal operation of the plumbing and drainage system.*
 2. *On 16 August 2021, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 18 August 2021 and 2 September 2021.*
- xi. *The wall and ceiling in the kitchen was peeling and needs to be repaired and repainted. The splash-back was also loose.*
1. *As far as Ms Divilli can say prior to discovery, the issue was caused by water damage.*
 2. *On 16 March 2022, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 3. *This issue has not been rectified.*
- xii. *The cornice in bathroom 1 was damaged.*
1. *As far as Ms Divilli can say prior to discovery, the issue was caused by water damage sometime between 25 October 2021 and 16 March 2022.*
 2. *At some point between 25 October 2021 and 16 March 2022, the issue was reported to the Authority.*
 3. *The issue has not been rectified.*
- xiii. *The ceiling plaster boards in the lounge were drooping.*

1. *As far as Ms Divilli is able to say prior to discovery, the issue was caused by water damage.*
2. *On 28 July 2023, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
3. *The issue has not been rectified.*

(jj) each internal wall did not have a smooth, unbroken surface.

Particulars

Divilli's Residence

- i. *There is a large hole in the wall on the right-hand side of the vanity in Bathroom.*
 1. *As far as Ms Divilli is able to say prior to discovery, the issue was caused by a contractor on or around 14 May 2019 who was engaged to repair a water leak in the bathroom wall.*
 2. *By 3 November 2020 at the latest, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 3. *This issue has not been rectified.*
- ii. *There was a hole in the passage wall.*
 1. *On 16 March 2022, Ms Divilli notified this issue to a Housing Officer during an inspection of Divilli's Residence.*
 2. *The issue has not been rectified.*
- iii. *There was a hole in the toilet wall above the cistern.*
 1. *On 13 December 2016, Ms Divilli notified the issue to a Housing Officer during an inspection at Divilli's Residence.*
 2. *The issue has not been rectified.*
- iv. *Ms Divilli refers to and repeats the particulars at (ii)viii, ix, x above.*

(kk) were not sound nor fit for purpose.

Particulars

Reference is made to paragraphs 20(a) to (jj), 23(a) to (c), 26(a) to (d) and/or 29(a) to (k) and to the particulars referred to therein.

21. By reason of one or more of the matters set out in the preceding paragraph, during the periods referred to therein the Authority or Western Australia, whichever was the lessor or deemed lessor:
- (a) failed to comply with all requirements of written laws in respect of buildings, health and safety that applied to each Claimant's Premises within the meaning of the Health and Safety term; and
 - (b) thereby breached the Health and Safety term in respect of the Claimants referred to in this Section D.1.

D.2 Contract breach – Secure Housing term

22. At all material times during the Contract Period, the Secure Housing term required that the Authority or Western Australia, whichever was the lessor or deemed lessor, ensure *inter alia*, at each Claimant's Premises, that:
- (a) each external door was fitted with —
 - (i) if it was the main entry door to the premises —
 - 1. a deadlock; or
 - 2. a key lockable security screen door that complied with AS 5039-2008;
 - (ii) if it was not the main entry door to the premises —
 - 1. a dead lock or, if a dead lock cannot be fitted, a patio bolt lock; or
 - 2. a key lockable security screen door that complies with AS 5039-2008.
 - (b) each exterior window was fitted with a lock, whether or not a key lock, that prevented the window from being opened from outside the premises unless the window was fitted with a security window grille that complied with AS 5039-2008.
 - (c) an electrical light was fitted to or near the exterior of the premises that —
 - (i) was capable of illuminating the main entry to the premises; and

- (ii) was operable from inside the premises.

Particulars

RTA s 45(1)(a), read with

RT Regulations r 12B

23. On sundry dates during the Contract Period, in the Claimants' Premises:
- (a) it was not the case that each external door was fitted with —
 - (i) if it was the main entry door to the premises —
 - 1. a deadlock; or
 - 2. a key lockable security screen door that complied with AS 5039-2008;
 - (ii) if it was not the main entry door to the premises —
 - 1. a dead lock or, if a dead lock cannot be fitted, a patio bolt lock; or
 - 2. a key lockable security screen door that complies with AS 5039-2008.
 - (b) it was not the case that each exterior window was fitted with a lock, whether or not a key lock, that prevented the window from being opened from outside the premises unless the window was fitted with a security window grille that complied with AS 5039-2008.
 - (c) it was not the case that an electrical light was fitted to or near the exterior of the premises that —
 - (i) was capable of illuminating the main entry to the premises; and
 - (ii) was operable from inside the premises.
24. By reason of one or more of the matters set out in the preceding paragraph, during the periods of each of the features referred to therein the Authority or Western Australia, whichever was the lessor or deemed lessor:
- (a) failed to provide and maintain such means to ensure that Claimants' Premises were reasonably secure as were prescribed; and
 - (b) in the premises – breached the Secure Housing term in relation to the Claimants referred to in this Section D.2.

D.3 Contract breach – Repairs term

25. At all material times during the Contract Period, the Repairs term required that the Authority or Western Australia, whichever was the lessor or deemed lessor, ensure, in relation to each Claimant's Premises, that the residential premises *inter alia*:

- (a) had each light with a functioning lightbulb installed that was capable of being turned on and off;
- (b) had each power point that provided electrical power when switched on;
- (c) had a clothesline that was taut and functional;
- (d) had a pneumatic or chain door closer that was functional;
- (e) had any metal wardrobe or shelving provided with the residential premises secured to a structural support (for instance, a wall stud);
- (f) in the alternative to the Health and Safety terms pleaded in;
 - (i) 19(i), 19(j), 19(p), 19(y), 19(z), 19(ee), 19(ff); and
 - (ii) 19(a), 19(d), 19(e), 19(f), 19(g), 19(h), 19(l), 19(m), 19(n), 19(o), 19(q), 19(r), 19(s), 19(t), 19(u), 19(v), 19(w), 19(x), 19(aa), 19(bb), 19(cc), 19(dd), 19(ii), 19(jj)

each and every matter alleged therein is required by the Repairs term.

26. On sundry dates during the Contract Period, Claimants' Premises:

- (a) had one or more lights with a functioning lightbulb installed that was not capable of being turned on and off;
- (b) had one or more power point that did not provide electrical power when switched on;
- (c) had a clothesline that was broken or non-functional.

Particulars

Divilli's Residence

- i. *The outdoor clothesline had fallen down on one side.*
 1. *As far as Ms Divilli is able to say, the issue was there from the start of her tenancy.*
 2. *By 5 May 2021 at the latest, Ms Divilli notified this issue to a Housing Officer at an inspection of Divilli's Residence.*
 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the*

Authority at some point between February 2023 and March 2023.

- ii. *The wires in the clothesline were broken.*
 - 1. *On 3 November 2020, Ms Divilli notified this issue to a Housing Officer during an inspection of Divilli's Residence.*
 - 2. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 20 June 2023 and 22 June 2023.*

- (d) had a pneumatic or chain door closer that was not functional;

Particulars

Divilli's Residence

- i. *The pneumatic door closer to the security screen door in the front entry way was broken.*
 - 1. *On 11 July 2016, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 - 2. *The issue was rectified by a contractor engaged by the Authority on or around 3 November 2016.*
- ii. *The restrainer chain to the entry door was faulty.*
 - 1. *On 21 November 2019, the issue was notified to the Authority by way of a service request logged to the Planned Maintenance Register.*
 - 2. *The issue was first rectified by a contractor engaged by the Authority at some point between 28 November 2019 and April 2020.*
 - 3. *As far as Ms Divilli is able to say, the issue arose again some time prior to 21 April 2020.*
 - 4. *This instance of the issue was rectified by a contractor engaged by the Authority on or around 22 June 2023.*
- iii. *The pneumatic door closer in the front entryway was broken.*
 - 1. *This appeared to be a recurring issue.*
 - 2. *As far as Ms Divilli can say prior to discovery, the issue started at some point prior to 21 April 2020.*

3. *This instance of the issue was rectified by a contractor engaged by the Authority on or around 21 April 2020.*
 4. *As far as Ms Divilli can say, the issue arose again between 21 April 2020 and 3 November 2020.*
 5. *On 3 November 2020, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 6. *This instance of the issue was rectified by a contractor engaged by the Authority at some point between 20 June 2023 and 22 June 2023.*
- iv. *The pneumatic door closer to the rear external door was broken.*
1. *As far as Ms Divilli is able to say, the issue arose in December 2020.*
 2. *On 5 May 2021, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
 3. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 20 June 2023 and 22 June 2023.*
- (e) did not have any metal wardrobe or shelving provided with the residential premises secured to a structural support;
- (f) the matters pleaded in;
- (i) 20(i), 20(j), 20(p), 20(y), 20(dd), 20(ee), 20(ff);
 - (ii) 20(a), 20(d), 20(e), 20(f), 20(g), 20(h), 20(l), 20(m), 20(n), 20(o), 20(q), 20(r), 20(s), 20(t), 20(u), 20(v), 20(w), 20(x), 20(aa), 20(bb), 20(cc), 20(dd), 20(ii), 20(jj);
27. By reason of one or more of the matters set out in the preceding paragraph, during the periods referred to therein the Authority or Western Australia, whichever was the lessor or deemed lessor:
- (a) failed to ensure that the said Claimants' Premises met repair requirements specified under an Act applying to Housing; and
 - (b) thereby breached the Repairs term in relation to the Claimants referred to in this Section D.3.

D.4 Contract breach – Reasonable Comfort term

28. At all times in the Contract Period, the Reasonable Comfort term required that the Authority or Western Australia, whichever was the lessor or deemed lessor, ensure, in relation to each Claimant's Premises, *inter alia* that:
- (a) the premises (not including the land and appurtenances appurtenant to the premises) was sufficiently sealable to allow control and maintenance of a consistent internal temperature;
 - (b) each bedroom:
 - (i) had curtains and curtain rails, or drapes, or blinds covering each window;
 - (ii) was affixed with a functioning electric light;
 - (c) each internal bedroom and living room had a functioning air conditioner whose effect was perceptible from all parts of the unobstructed floor of the room in which it was located;
 - (d) had an electricity supply that did not trip or stop often;
 - (e) as to bathroom facilities had each shower surrounded by a shower curtain or screen;
 - (f) had any affixed air conditioning unit located such that the closest power point did not require the electricity cord to extend across the floor;
 - (g) had no infestation or outbreak of mould;
 - (h) had adequate wall and ceiling insulation to maintain reasonable comfort across the temperature range typical for the location of the residential premises;
 - (i) was not left with walls or ceilings made of asbestos;
 - (j) in the alternative to the Health and Safety terms pleaded at;
 - (i) 19(b), 19(c), 19(k), 19(gg), 19(hh), 22(a), 22(b), 22(c); and
 - (ii) in the further alternative to 25(f)(ii); 19(a), 19(d), 19(e), 19(f), 19(g), 19(h), 19(l), 19(m), 19(n), 19(o), 19(q), 19(r), 19(s), 19(t), 19(u), 19(v), 19(w), 19(x), 19(aa), 19(bb), 19(cc), 19(dd);
 each and every matter alleged therein is required by the Reasonable Comfort term.
29. On sundry dates during the Contract Period, Claimants' Premises:

- (a) (not including the land and appurtenances appurtenant to the premises) was not sufficiently sealable to allow control and maintenance of a consistent internal temperature;

Particulars

In Divilli's Residence, the louvre windows could not seal adequately to maintain an internal environment. When closed to their full extent, the louvre windows left gaps through which air, wind and water could enter. The issue has not been rectified to date.

In Divilli's Residence, there was also inadequate insulation in the walls or ceilings at any time in the Contract Period.

1. *On 28 March 2024 at the latest, the issue was notified to the Authority by way of a letter from Ms Divilli's legal representative.*
2. *The issue has not been rectified.*

- (b) did not have, in each bedroom:
- (i) curtains and curtain rails, or drapes, or blinds covering each window;
 - (ii) a functioning, affixed electric light;
- (c) in each occupied internal bedroom and living room did not have a functioning air conditioner whose effect was perceptible from all parts of the unobstructed floor of the room in which it was located;

Particulars

In Divilli's Residence, air conditioners were not provided.

Ms Divilli has purchased four air conditioner units at her own expense.

As Yurmulun where Ms Divilli is resident and much of Western Australia is subject to temperatures above 35 degrees for approximately half of the year, and the monthly average maximum of Yurmulun is 30 degrees year-round, Divilli's Residence was not reasonably comfortable without the use of air conditioners.

Temperatures above 35 degrees have the potential to cause severe health impacts.

The impact of heat stress is known to each of the Respondents, including because of the materials annexed to the letter sent to each of them by Australian Lawyers for Remote Aboriginal Rights dated 24 July 2024.

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (d) had an electricity supply that tripped or stopped more than once per month;

Particulars

At Divilli's Residence, the electricity routinely tripped causing the house to be without power. Generally, the electricity tripped when multiple appliances were being used at once in the premises.

- 1. As far as Ms Divilli is aware, the issue arose from early in her tenancy.*
- 2. It has not been rectified and continues to occur 2 – 3 times per week.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (e) as to bathroom facilities did not have each shower surrounded by a shower curtain or screen;
- (f) did not have any affixed air conditioning unit located such that the closest power point did not require the electricity cord to extend across the floor;

Particulars

There were insufficient power points in the lounge, meaning Ms Divilli had to extend electricity cords to power the air conditioner.

- 1. As far as Ms Divilli can say, this issue was present at the start of her tenancy.*

2. *On 3 November 2020, Ms Divilli notified this issue to a Housing Officer during an inspection at Divilli's Residence.*
3. *The issue has not been rectified.*

(g) had infestations or outbreaks of mould,

Particulars

Divilli's Residence

- i. *The area connecting the bathtub to the wall was affected by black mould or a similar looking substance.*
 1. *As far as Ms Divilli is able to say prior to discovery, the issue first arose in 2020.*
 2. *By 28 March 2024 at the latest, the issue was notified to the Authority by way of a letter from Ms Divilli's legal representative.*
 3. *This issue has not been rectified.*
- ii. *The ceiling in the passage and loungeroom was affected by mould.*
 1. *As far as Ms Divilli is able to say, the issue was first notified to the Authority as early as 2022.*
 2. *This issue has not been rectified.*
- iii. *The ceiling in Bedroom 3 was affected by mould.*
 1. *On 28 July 2023, Ms Divilli notified this issue to a Housing Officer during an inspection of Divilli's Residence.*
 2. *As far as Ms Divilli is aware, the issue was rectified by a contractor engaged by the Authority at some point between 17 January 2024 and 12 January 2024.*
- iv. *The ceiling of the laundry was affected by mould.*

1. *On 3 November 2020, Ms Divilli notified this issue to a Housing Officer during an inspection of Divilli's Residence.*
2. *The issue has not been rectified.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (h) did not have adequate wall and ceiling insulation to maintain reasonable comfort across the temperature range typical for the location of the residential premises;

Particulars

Divilli's Residence

In Divilli's Residence, there was inadequate insulation in the walls or ceilings at any time in the Contract Period.

3. *On 28 March 2024 at the latest, the issue was notified to the Authority by way of a letter from Ms Divilli's legal representative.*
4. *The issue has not been rectified.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (i) had sections of exposed and frayed asbestos in the walls and ceiling;
- (j) to the matters alleged in;
- (i) 20(b), 20(c), 20(k), 20(gg), 20(hh), 23(a), 23(b), 23(c); and
 - (ii) 26(f)(ii); 20(a), 20(d), 20(e), 20(f), 20(g), 20(h), 20(l), 20(m), 20(n), 20(o), 20(q), 20(r), 20(s), 20(t), 20(u), 20(v), 20(w), 20(x), 20(aa), 20(bb), 20(cc), 20(dd).

30. By reason of one or more of the matters set out in the preceding paragraph, during the periods referred to therein the Authority or Western Australia, whichever was the lessor or deemed lessor:

- (a) failed to ensure that each Claimant's Premises complied with the Reasonable Comfort term; and
- (b) thereby breached the Reasonable Comfort term in respect of the Claimants referred to in this Section D.1.

D.5 Contract breach – Repair Systems term

31. At all times material in the Contract Period to each Claimant, the Authority and Western Australia operated a system (**the Authority Repair System**) for responding to notice of repairs, maintenance or other works (**maintenance items**) in premises for which either was responsible (**the Authority Properties**) that:
- (a) allocated priorities between maintenance items according to each item's categorisation as:
 - (i) **emergency**;
 - (ii) **urgent**; or
 - (iii) **priority**; or
 - (iv) none of the above ('**routine**');
 - (b) as to emergency maintenance items:
 - (i) defined them as including, or being equivalent in urgency to:
 - A. no power
 - B. faulty smoke alarm; and
 - C. smell of gas; and
 - D. repair and maintenance issues more urgently justifying repair than those which were urgent;
 - (ii) stipulated that emergency maintenance items be restored to a proper serviceable condition (**remediated**) within eight (8) hours after the item was reported to the Authority or Western Australia, or people acting on either of their behalf (**reported**);
 - (c) as to urgent maintenance items:
 - (i) defined them as or including, or being equivalent in urgency to repairs to the premises that are necessary —
 - A. for the supply or restoration of an essential service, being:
 - (1) electricity;
 - (2) gas;

- (3) a functioning refrigerator, but only if it is provided with the premises;
- (4) sewerage, septic tank or other waste water management treatment;
- (5) water, including the supply of hot water;
- B. to avoid —
 - (1) exposing a person to the risk of injury; or
 - (2) exposing property to damage; or
 - (3) causing the tenant undue hardship or inconvenience.
- (ii) stipulated that urgent maintenance items be remediated within twenty four (24) hours after the item was reported;

Particulars

Section 43 of the RTA read with r 12A of the RT Regulations and noting the modified application of subsection (3) to premises for which the Authority is lessor, but not subsection (2), by operation of r 6 of the RT Regulations.

- (d) as to priority maintenance items:
 - (i) includes:
 - A. faulty stove;
 - B. leaking taps; and
 - C. security lights not working
 - (ii) stipulated that priority maintenance items be remediated within forty eight (48) hours after the item was reported;
- (e) as to routine maintenance items:
 - (i) included:
 - A. rehanging doors,
 - B. replacing washing lines; and
 - C. rewiring flyscreens to windows or doors
 - (ii) defined them as maintenance items not falling within the ‘emergency’, ‘urgent’ or ‘priority’ classifications; and
 - (iii) stipulated that routine items be remediated within twenty eight (28) working days after the item was reported.

32. During the Contract Period, the Authority and Western Australia in Remote Communities:
- (i) had no or an insufficient system to remediate emergency, urgent, or priority maintenance items within the times stipulated above for emergency, urgent and priority maintenance items (**Priority Defect Response Times** or **PDRTs**);
 - (ii) had no or no adequate engagements with contractors or agents to provide reasonable assurance to the Authority and Western Australia that the Authority Repair System would remediate emergency, urgent or priority maintenance items within the PDRTs;
 - (iii) typically did not remediate emergency, urgent, and priority maintenance items within the PDRTs or within any period reasonably close to a PDRT.

Particulars

During the Contract Period, the Housing Authority's Annual Reports record that key performance indicators for emergency, urgent and priority response times were consistently below the required benchmarks outlined in the performance management framework, for areas servicing Remote Communities.

The consistency of the PDRT failures gives rise to an inference that the failures were systemic.

Further particulars to be provided following discovery.

33. The Authority and Western Australia during the Contract Period did not, in respect of Claimants' Premises have or implement adequate systems to ensure that reports of emergency or urgent maintenance items were remediated as soon as practicable.
34. By reason of the matters set out in the preceding paragraph, during the Contract Period the Authority and Western Australia did not remediate, as soon as practicable, emergency or urgent defects reported in respect of Claimants' Premises.

Particulars

Divilli's Residence

- (i) *In respect of emergency defects: Ms Divilli refers to and repeats the particulars to paragraphs 20(h) and 20(p).*
- (ii) *In respect of urgent defects: Ms Divilli refers to and repeats the particulars to paragraphs 20(b), 20(c), 20(d), 20(e), 20(g), 20(i), 20(l), 20(m), 20(o), 20(q), 20(t), 20(u), 20(x), 20(ee), 20(hh), 20(ii), 29(c), 29(d), 29(g) and 29(h).*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

35. In the premises set out in the two preceding paragraphs, the Authority or Western Australia, whichever was the lessor or deemed lessor, breached the Repair Systems term in respect of the Claimants' Premises referred to therein.

D.6 Contract breaches – Claimants' losses and damage

36. By reason of the Authority or Western Australia's breaches set out above, some or all of the Claimants suffered loss and damage.

Particulars of loss and damage

The Applicant:

- i. paid rent during periods when the Housing were not let in accordance with the RTA, by reason of the lessor's breaches of the Tenancy Agreements;*
- ii. suffered as a result of some or all of the breaches:*
 - A. physical inconvenience;*
 - B. disappointment and distress;*
- iii. incurred expenditure, including but not limited to:*
 - A. purchasing and installing air conditioners;*
 - B. paying for power (including electricity and gas), including to run those air conditioners as much as*

required to provide reasonable comfort inside the Housing;

- C. purchasing bottled water or water filtration equipment;*
- D. pest control treatment;*
- E. electrical lighting maintenance;*
- F. repairs to windows;*
- G. installation of doors;*
- H. installation of locks;*
- I. additional electricity expenses*
- J. additional maintenance charges imposed by the lessor.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

D.7 Contract breaches – accruing causes of actions

37. Each of the breaches of contract alleged in Section D,
- (a) occurred on each day while the breach continued; and
 - (b) accrued to each Claimant referred to in this Section a separate cause of action on each such day.

Particulars

Each alleged breach was a breach by the Authority and Western Australia of a continuing obligation.

D.8 ACL Guarantees – breaches and Claimants' losses

38. By reason of the conduct set out in:
- (a) paragraph 20 (regarding health and safety);
 - (b) paragraph 23 (regarding security);
 - (c) paragraph 26 (regarding repairs);

- (d) paragraph 29 (regarding reasonable comfort); further or alternatively
- (e) paragraph 32 (regarding the repair system);

the Authority or Western Australia, whichever was lessor or deemed lessor:

- (i) did not supply Housing services that resulted in Housing that was in, or was maintained in, such a condition as to be reasonably fit for the purpose of use as a dwelling and for the purpose of residence; and/or
- (ii) did not supply Housing services that resulted in Housing that was of a nature, quality, state or condition that a tenant might reasonably expect form a dwelling;
- (iii) by reason of one or more of the matters identified in (i) – breached the ACL Guarantee in respect of the Tenant Claimants referred to in this Section D.

39. Further, by reason of one or more of the matters referred to in the preceding paragraph:

- (a) some or all of the said Claimants' Premises:
 - (i) were not in a condition that would have been rented by a reasonable consumer fully acquainted with the actual condition of the Housing, within the meaning of s 268(1)(a) of the ACL; further or alternatively
 - (ii) were substantially unfit for a dwelling of the same kind that cannot easily and within a reasonable time, be remedied to make them fit for such a purpose, within the meaning of s 268(1)(b) of the ACL; further or alternatively
 - (iii) were unfit for the purpose of rental accommodation in Australia, and this was made known to the lessor and could not easily and within a reasonable time be remedied to make them fit for that purpose, within the meaning of s 268(1)(c) of the ACL; further or alternatively
 - (iv) were not of such a nature, or quality, state or condition, that they might reasonably be expected to achieve a result of being a dwelling, a place of residence and a place for the purpose of residence, as was made known to lessor, and the services could not easily and within a

reasonable time, be remedied to achieve such a result, within the meaning of s 268(1)(d) of the ACL; further or alternatively

- (v) created an unsafe situation, within the meaning of s 268(1)(e) of the ACL;
- (b) By reason of more or more of the matters identified in (a), there was a major failure by the Authority or Western Australia, whichever was lessor or deemed lessor to comply with the ACL Guarantees, giving rise to a right of action under s 267(3)(b) of the ACL.

Particulars

In respect of Divilli's Residence, Ms Divilli refers to any or any combination of paragraphs 20(b), 20(c), 20(d), 20(e), 20(g), 20(h), 20(i), 20(l), 20(m), 20(o), 20(p), 20(q), 20(t), 20(u), 20(x), 20(ee), 20(hh), 20(ii), 29(c), 29(d) and 29(g) and to the notifications referred to therein

- 40. To the extent that any of the matters identified in paragraph 38 were capable of remediation:
 - (a) the Claimants required the lessor to remedy the failure within a reasonable time but the lessor failed to do so;
 - (b) the Claimants thereby had a right of action pursuant to s 267(2)(b) of the ACL.

Particulars

In respect of Divilli's Residence, Ms Divilli refers to any or any combination of paragraphs 20, 23, 26, 29 and 32 and to the notifications referred to therein.

41. It was reasonably foreseeable that Claimants would suffer loss and damage as a result of such failure.
42. By reason of the matters set out in paragraph 39 and 40 the affected Claimants suffered loss and damage.

Particulars of loss and damage

So far as the breaches of the ACL Guarantees were major failures as alleged in paragraph 39 above, affected Tenants suffered a reduction in the value of the Housing, below the rent payable by the said Tenants.

Insofar as the breaches were remediated by or at the expense of the Tenants, the Tenants claim the cost of such remediation.

The Applicant further refers to and repeats the particulars to paragraph 36 above.

Particulars relating to individual Claimants may be provided following the trial of common questions or otherwise as the Court may direct.

D.9 ACL guarantee – accruing causes of action

43. Each breach of the ACL guarantee alleged in this Section D:
- (a) occurred on each day while the breach continued; and
 - (b) accrued to each Claimant referred to in this Section a separate cause of action on each such day.

Particulars

Each alleged breach was a breach by the Authority or Western Australia of a continuing obligation.

E. UNCONSCIONABLE CONDUCT – BACKGROUND

E.1 Claimant group – Class Attributes

44. At all material times during the Relevant Period, the class of persons to whom the Authority and Western Australia offered or supplied Housing in Remote Communities was constituted by persons, or to a material degree included persons:

- (a) who were geographically isolated, being located and resident in a Remote Community;
- (b) who had or were likely to have the kinds of spiritual, cultural or familial connections to the areas in which the person was resident that are peculiar to Australian Aboriginal people from areas like the Remote Communities;
- (c) who had or were likely to have resided in:
 - (i) the Remote Community in which the persons were located and resident; alternatively
 - (ii) Remote Communities; for all or most of the person's lifetime;
- (d) who had or were likely to have limited ability to read or understand technical legal documents like a residential tenancy agreement;
- (e) who had or were likely to have no or low levels of familiarity with:
 - (i) the RTA;
 - (ii) lease documentation;
 - (iii) the rights of tenants and the obligations on lessors under the RTA;
- (f) who had or were likely to have very limited understanding of their rights under the RTA and any residential tenancy agreement;
- (g) of limited financial means;
- (h) who had or were likely to have very limited access to civil legal services;
- (i) who had or were likely to have low levels of trust for, alternatively a high degree of apprehension at the prospect of participating in, the formal legal system;
- (j) who exhibited or were likely to exhibit social or cultural attributes peculiar to Australian Aboriginal people from areas like the Remote Communities including, *inter alia*:
 - (i) the cultural and behavioural trait of acknowledging the fact of a question, and exhibiting respect to the questioner, by expressing

themselves in a manner that in wider Australian society would be interpreted as concurrence or acquiescence (**gratuitous concurrence**);

- (ii) a deference to governmental authority materially more acute than is typical of persons who are not Australian Aboriginal people living in Remote Communities;
 - (iii) an adherence to traditional laws and customs of Australian Aboriginal people in that area, including relating to land ownership and custodianship; further or alternatively;
- (k) were or were likely to be residing in residential premises in which, including by reason of the lack of public housing in the Remote Community, there were likely to be more occupants than the residential premises were designed to accommodate (**Overcrowding**);
- (together and in any combination the **Class Attributes**).

Particulars of Claimants

Ms Divilli:

- (a) *has resided since primary school in a Remote Community which is geographically isolated, other than during secondary school;*
- (b) *lives at Divilli's Residence with 8 other occupants being one other adult (Bayden Rivers), five biological children and two foster children;*
- (c) *is a Nyikiina woman with an inter-generational connection to the land, and family in and around Yurmulun;*
- (d) *finished formal schooling aged 18 years*
- (e) *is not familiar with technical legal documents, lease documentation, or the obligations of a landlord;*
- (f) *has no familiarity with using legal services or navigating the legal system; and*
- (g) *has no savings or assets and is unable to afford legal services on her income.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

45. At all material times during the Relevant Period, the Authority and Western Australia by its officers and employees (**the Authority staff**), or by delegates or agents (**the Authority agents**), when:
- (a) establishing and administering its systems for letting and maintaining public housing; further or alternatively
 - (b) dealing with each Claimant;
- knew or ought reasonably to have known or expected that, or to the effect that, each of the Claimants possessed or was likely to possess Class Attributes.

Particulars of state of mind

The Authority staff included those engaged by an arrangement under s 18A of the Housing Act.

The Authority agents included those contracted to practically fulfil the lessor's obligations under the RTA. In respect of the Divilli Residence, this was employees of Emama Nguda Aboriginal Corporation which manages a government Housing Management Contract for the Western Australian Department of Housing.

The Authority staff's and the Authority agents' actual knowledge of the Class Attributes may be inferred from the circumstances that the said attributes:

- a. were or included some of the characteristics that led to the participation of Western Australia and the Authority in NPARIH and the National Partnership on Remote Housing; and*
- b. had been the subject of widespread studies, media reportage and international attention for decades prior to and during the Relevant Period.*

Further or alternatively, the Authority staff and the Authority agents ought reasonably to have known or expected the Claimants' Attributes:

- A. *because of the matters in 'a' and 'b' of these particulars; and*
- B. *because the said staff and agents were involved in the administration of public housing in Remote Communities and, from their own interactions or reports of other the Authority staff's and the Authority agents' interactions with members of the said Communities, ought reasonably to have been alerted to the likely existence of the Class Attributes.*

E.2 Process for making Tenancy Agreements

46. During the Relevant Period, the Tenancy Agreements were made in circumstances where, *inter alia*, the Authority or Western Australia through the Authority staff or the Authority agents:
- (a) initiated contact with the prospective tenant by attending at the prospective tenant's residence or place of work and handing them a copy of a Tenancy Agreement;
 - (b) took no or no adequate steps to explain the terms of the Tenancy Agreement to the prospective tenant at all, or other than in English and in the form of a general outline;
 - (c) did not encourage the prospective tenant to obtain independent legal advice before signing the Tenancy Agreement;
 - (d) took no or no adequate steps to ensure that the prospective tenants understood the Tenancy Agreement;
 - (e) did not offer or countenance any negotiation over the terms of the Tenancy Agreement, including, in respect of Tenancy Agreements, as to the rent amount; further or alternatively
 - (f) asked the prospective tenant forthwith to sign:
 - (i) a Tenancy Agreement; and/or
 - (ii) authorisations for direct debiting of rent from Centrelink or their employer;
- (such circumstances being, together and in any combination, the **Execution Circumstances**).

Particulars

The Applicant was not provided with a copy of a Tenancy Agreement for their Housing at the time she signed, or since.

47. During the Relevant Period, the Authority and Western Australia by the Authority staff or the Authority agents, knew or ought reasonably to have known that:
- (a) the Tenancy Agreements were, or there was a material risk that the Tenancy Agreements were, entered in circumstances with the features of the Execution Circumstances; and/or
 - (b) by reason of the Class Attributes and the matters in (a) – each of the Claimants had or was likely to have no or no material bargaining power with the Authority in relation to the terms of the Tenancy Agreements.

Particulars of state of mind

The Authority and Western Australia's actual knowledge of the Execution Circumstances may be inferred from the fact that the said circumstances were typical of the manner in which the Authority and Western Australia or those acting on its behalf procured Tenancy Agreements from Claimants.

Further or alternatively, the Authority and Western Australia ought reasonably to have known or expected the Execution Circumstances because the interactions between Authority staff or Authority agents and persons reflecting the Execution Circumstances ought reasonably to have been reported by the Authority agents and Authority staff to the Authority.

E.3 Claimants were and are a captive market

48. At all material times during the Relevant Period, the Authority and Western Australia offered, entered and thereafter performed or purportedly performed the

Tenancy Agreements in the circumstances described in paragraph 12 above (the **Monopoly Conditions**).

49. At all material times during the Relevant Period, the Authority and Western Australian senior officers knew or expected or ought reasonably to have known or expected that by reason of:
- (a) the Class Attributes;
 - (b) the Execution Circumstances; further or alternatively
 - (c) the Monopoly Conditions;
- the Claimants had or were likely to have:
- (i) no or no material bargaining power compared to the Authority and Western Australia;
 - (ii) no practicable alternative but to accept the Tenancy Agreements on the terms set by or on behalf of the Authority or Western Australia, including as to the rent amount;
 - (iii) no material bargaining power with the Authority and Western Australia, as to the performance of the Tenancy Agreement.

Particulars of state of mind

The officers' actual knowledge of the said matters may be inferred from the circumstances set out in paragraphs 12, 44 and 45 above.

Further or alternatively, the Authority senior officers ought reasonably to have known or expected the said matters because of the matters set out in paragraphs 45 and 47 above.

E.4 The Authority knowledge – policy and performance of Tenancy Agreements

50. At all material times:
- (a) the Authority was the, or an, authority, agency or entity through which the Western Australian and Commonwealth governments
 - (b) the Western Australian government

sought to implement the objectives of NPARIH and the National Partnership on Remote Housing referred to in paragraph 51 below.

Particulars

The Applicant refers to and repeats the particulars under paragraph 51(a) and (b) below, as well as s 49 of the Housing Act.

51. At all material times during the Relevant Period, the Authority and Western Australia by its senior officers knew or ought reasonably to have known or expected that or to the effect that:
- (a) the Tenancy Agreements were offered as part of, or a consequence of, Western Australia's participation in NPARIH and the National Partnership on Remote Housing;
 - (b) the breaches by the Authority of:
 - (i) the Health & Safety term;
 - (ii) the Secure Housing term;
 - (iii) the Repairs term;
 - (iv) the Reasonable Comfort;
 - (v) the Repair Systems term; further or alternatively
 - (vi) the ACL Guarantee;
 in the Tenancy Agreements were widespread and indicated systemic problems in the Authority and Western Australia's administration of public housing in Remote Communities (**Systemic Breaches**);

Particulars

The Applicant refers to and repeats the matters set out in Sections C and D above.

- (c) there was a material risk that Claimants' Premises had been leased or supplied by the Authority in circumstances where the Authority was on notice that there were more occupants of the Premises than could sleep there without there being:
 - (i) less than a habitable room used for sleeping purposes:
 - A. for every person over the age of 10 years using the room there is at least 14 cubic metres of air space per person; and

- B. for every person between the ages of 1 and 10 years there is at least 8 cubic metres of air space per person where space is calculated for each person with
 - C. each room is to be considered separately and sufficient space is to be allowed in each room for the number of persons present in the room at any one time; and
 - D. a deduction is to be made for the space occupied by furniture, fittings and projections of the walls into a room; or
- (ii) fewer than one bedroom for each adult couple or each adult single, and for each child to have a separate bedroom shared with not more than one (1) other child; or
 - (iii) fewer rooms in the Premises (excluding the kitchen and any bathroom) than the number of occupants residing there;
- (the said circumstances being Overcrowding as defined above);

Particulars

The Applicant refers to and repeats the particulars under the heading 'The Applicant' above.

As to (c)(i), see, in relation to the Applicant, clauses 23 and 24 of the Shire of Derby / West Kimberley Health Local Laws 1998 (WA) .

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (d) the Authority or Western Australia's ability to let or maintain the Claimant's Premises in the condition in which the Housing was in fact let, without a Tenant Claimant responding by terminating the Tenancy Agreement (as the case may be):
 - (i) only existed; alternatively
 - (ii) was materially enhanced;
 by the circumstance that the Claimant's Housing were let:
 - A. in the Monopoly Conditions;
 - B. to persons having the Class Attributes; further or alternatively
 - C. in the Execution Circumstances.

F. UNCONSCIONABLE CONDUCT

52. The Authority or Western Australia required payment of a rent amount from the Applicant and some of the Claimants (**Overcharged Tenants**) by charging it to or in respect of the Overcharged Tenant:

- (a) on a regular basis, prospectively or contemporaneously; further or alternatively
 - (b) retrospectively by way of arrears,
- whether or not the rent amount had been agreed by that Overcharged Tenant at the time of that collection.

Particulars

The Applicant refers to and repeats the particulars subjoined to paragraphs 11 above and 56 below.

The Tenancy Agreement for the Divilli Residence recorded that rent would be paid per fortnight but left the amount payable blank.

Ms Divilli was charged by the Authority rent in the sum of between \$7.10 and \$242.00 per week, being:

- i. \$126.80 per week from 20 July 2015 to 23 July 2018;*
- ii. \$7.10 per week from 23 July 2018 to 7 January 2019;*
- iii. \$69.60 per week from 7 January 2019 to 6 May 2019;*
- iv. \$70.20 per week from 6 May 2019 to 10 August 2020;*
- v. \$7.90 per week from 10 August 2020 to 24 August 2020.*
- vi. \$43.50 for the week of 24 August 2020;*
- vii. \$70.20 per week from 31 August 2020 to 29 March 2021;*

- viii. \$217.46 for the week of 29 March 2021;
- ix. \$242.00 per week from 5 April 2021 to 14 March 2022;
- x. \$183.03 for the week of 14 March 2022;
- xi. \$138.80 per week from 21 March 2022 to 13 February 2023;
- xii. \$164.35 for the week of 13 February 2023;
- xiii. \$168.60 per week from 20 February 2023 to 27 November 2023;
- xiv. \$143.53 for the week of 27 November 2023;
- xv. \$133.50 from 4 December 2023 to present.

Payment was made, most commonly, by way of direct debit from Centrelink or the Overcharged Tenant's employer..

The amount of rent charged by the Authority and Western Australia for any of the Housing was, often, arbitrary and inexplicable.

By way of illustration only, on occasions, the Authority and Western Australia claimed rent despite the absence of any prior, operative agreement recording that amount of rent.

Particulars of the mechanisms by which the Authority and Western Australia claimed rent (whether or not it was paid in full or in part) may be provided following discovery.

53. During the Relevant Period:

- (a) the reasonable rental value of the Overcharged Tenants' Housing was materially less than the rent they were charged by the Authority or Western Australia; and

Particulars

Particulars of the reasonable rental value of the Applicant's Housing may be provided following discovery and receipt of experts' reports.

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (b) but for:
- (i) the Class Attributes;
 - (ii) the Execution Circumstances; further or alternatively
 - (iii) the Monopoly Conditions;
- the Authority and Western Australia was not reasonably likely to have been able to secure tenants for the said Housing at the same rent rate;

Particulars

So far as the Applicant is able to say prior to discovery and receipt of experts' reports, the said matters are to be inferred from the circumstance that a rational tenant in a competitive market was not likely to agree to rents at rates higher than the reasonable rent value of the leased residential premises.

- (c) the Authority or Western Australia in setting the rent for each Housing:
- (i) failed to have any or any adequate regard to the matters set out in (a) above;
 - (ii) was careless as to the matters set out in (a) above;
 - (iii) engaged in the conduct in (i), further or alternatively (ii), because it:
 - A. knew or expected the Overcharged Tenants:
 - (1) would have Class Attributes;
 - (2) entered or were likely to have entered the Tenancy Agreements in the Execution Circumstances; further or alternatively
 - (3) the Authority and Western Australia enjoyed the Monopoly Conditions;

- B. knew or expected, by reason of the matters in A, that the said Tenants would accept a Primary Agreement upon terms requiring the payment of rent charged;

Particulars

So far as the Applicant is able to say prior to discovery, the Authority and Western Australia's knowledge or expectation is to be inferred from the matters set out in paragraph 53(c).

- (d) the Authority in claiming the rent charged knew or ought reasonably to have known that the Systemic Breaches:
- (i) were not improving the quality of Housing available in Remote Communities; and
 - (ii) were or were likely to be contrary to the objectives of NPARIH and the National Partnership on Remote Housing.

Particulars

*The Authority and Western Australia claimed the said rents either by taking payment of them, or accruing them as debts recorded to be owing from the Claimants, as particularised under paragraph 52 above (together and severally **claiming**).*

So far as the Applicant is able to say prior to discovery, the Authority and Western Australia's knowledge or expectation is to be inferred from the circumstances that:

- i. the Systemic Breaches were occurring and had been occurring throughout the period of the Authority's and Western Australia's provision of public housing in the Remote Communities; and*
- ii. widespread and longstanding breaches of the Health and Safety term, the Secure Housing term, the Repairs term, and the Reasonable Comfort term were obvious upon inspection of public housing stocks in the Remote Communities, and notorious.*

54. The Authority in claiming the rents charged exploited:
- (a) the Overcharged Tenants' possession or likely possession of Class Attributes; alternatively
 - (b) the Overcharged Tenants' possession or likely possession of Class Attributes together with:
 - (i) the Execution Circumstances; further or alternatively
 - (ii) the Monopoly Conditions.
55. Further and in the alternative to the preceding paragraph, the Authority in claiming the rent charged from the Overcharged Tenants knew or ought reasonably to have known that the said Tenants' Premises had been let in circumstances that were likely to result in Overcrowding of the Premises.

Particulars

The Applicant refers to and repeats the particulars under paragraph 53(d) above. The said knowledge is further to be inferred (or ought reasonably to have been derived) from the circumstances that:

- i. it was notorious that there was a shortage of public housing in Remote Communities during the Relevant Period;*
- ii. the Authority and Western Australia's records showed or ought reasonably to have shown that for many Claimants' Leased Premises there were a higher number of Tenants, Notified Occupants or other residents than would reasonably be expected to be reasonably comfortably accommodated in residential premises with the bedroom, bathroom and kitchen features of each of the Claimants' Leased Premises.*

56. In the premises set out in paragraph 52 and:
- (a) paragraph 54; further or alternatively
 - (b) paragraph 55;

the Authority or Western Australia in claiming the rents charged, or payment of an amount asserted by the Authority or Western Australia to be on account of rent charged:

- (i) engaged in conduct that was, in all the circumstances, unconscionable within the meaning of s 21 of the ACL; and
- (ii) in the premises, contravened s 21 of the ACL.

Particulars

The Authority or Western Australia regularly provided Tenants with agreement documents by which the Authority claimed an unpaid amount of rent referable to rent amounts other than those agreed and had the Tenant agree to pay the Authority or Western Australia that amount in instalments.

57. By reason of the contravention alleged in the preceding paragraph, some or all of the Overcharged Tenants suffered loss and damage.

Particulars

The Overcharged Tenants, as a result of the contravention, suffered loss and damage in the form of:

- i. payment of rent referable above that to which there was agreement for a period or periods; and/or*
- ii. disappointment or distress.*

As far as Ms Divilli can say prior to discovery, the Applicant paid rent in the sum of between \$15.80 and \$295.00 per week, or through ad-hoc one-off payments, being:

- i. \$294.99 per week from 25 September 2015 to 2 October 2015;*
- ii. \$589.99 per week from 2 October 2015 to 12 October 2015;*
- iii. \$295.00 per fortnight from 12 October 2015 to 18 July 2018;*
- iv. \$139.20 per fortnight from 7 January 2019 to 13 May 2019;*

- v. *\$140.40 per fortnight from 13 May 2019 to 2 September 2019;*
- vi. *\$183.02 for the fortnight of 2 September 2019 to 16 September 2019;*
- vii. *\$140.40 per fortnight from 16 September 2019 to 17 August 2020;*
- viii. *\$15.80 per fortnight from 17 August to 14 September 2020;*
- ix. *\$140.40 per fortnight from 14 September 2020 to 9 November 2020*
- x. *\$70.20 per fortnight from 9 November 2020 to 23 November 2020;*
- xi. *\$140.40 per fortnight from 4 December 2020 to 29 March 2021;*
- xii. *\$504.00 per fortnight from 9 April 2021 to 6 May 2021;*
- xiii. *\$504.00 per fortnight, from 6 May 2021 to 3 June 2021;*
- xiv. *\$484.00 for the fortnight of 3 June 2021;*
- xv. *\$388.00 per fortnight between 17 June 2021 and 15 July 2021;*
- xvi. *\$484.00 for the fortnight of 15 July 2021 to 29 July 2021;*
- xvii. *\$425.51 for the fortnight of 29 July 2021 to 12 August 2021;*
- xviii. *\$504.00 from 12 August 2021 to 9 September 2021;*
- xix. *\$408.80 per fortnight from 9 September 2021 to 7 October 2021;*
- xx. *\$504 per fortnight, from 7 October 2021 to 4 November 2021;*
- xxi. *\$388.00 for the fortnight of 4 November 2021 to 18 November 2021;*

- xxii. \$474 for the fortnight of 18 November to 2 December 2021;
- xxiii. \$504.00 per fortnight from 16 December 2021 to 25 March 2022;
- xxiv. \$148.80 per fortnight from 25 March 2022 to 21 April 2022;
- xxv. \$297.60 per fortnight from 21 April 2022 to 28 December 2022;
- xxvi. \$277.60 per fortnight from 28 December 2022 to 24 February 2023;
- xxvii. \$337.20 per fortnight from 24 February 2023 to 1 December 2023;
- xxviii. \$267 per fortnight from 1 December 2023 to 3 May 2024.

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

F.1 Unconscionable conduct – Tenants – rents not abated

58. During the Relevant Period the Authority or Western Australia, whichever was lessor or taken to be the lessor:
- (a) in the premises set out in paragraph 19 to 20(kk) above – breached the Health and Safety term in respect of some or all of the Tenants (the said Tenants, including the Applicant, being the **Unsafe Tenants**, and the periods while the Authority was in breach being, in respect of each such Claimant, the **Unsafe Periods**).

Particulars

The Applicant refers to and repeats the particulars as to breaches of the Health and Safety Term set out under paragraph 20 above.

- (b) took no or no adequate step to rebate, waive or refund (in whole or part) for Unsafe Tenants the rents paid or payable by the said Tenants during or in respect of the Unsafe Periods.

Particulars

Where it was to receive rent, the Authority did not have or did not use provisions of a determination to rebate the rent under either ss 30(2)(c) or 62E(4)(c) of the Housing Act.

59. By the conduct set out in the preceding paragraph, the Authority or Western Australia, whichever was lessor or taken to be the lessor:
- (a) acted in a manner that would not have been commercially viable for a lessor dealing with tenants who did not possess:
- (i) the Class Attributes; alternatively
 - (ii) the Class Attributes in:
 - A. the Execution Circumstances; further or alternatively
 - B. the Monopoly Conditions; and

Particulars

So far as the Applicant is able to say prior to discovery and receipt of experts' reports, the said matters are to be inferred from the circumstance that a rational tenant with bargaining power and knowledge of the Authority and Western Australia's legal obligations in a competitive market was not likely to continue to pay rents for housing in the condition in which the Housing was in fact let.

- (b) in the premises in (a) – took advantage of:
- (i) the Tenants' possession or likely possession of the Class Attributes;
 - (ii) the Execution Circumstances; further or alternatively
 - (iii) the Monopoly Conditions.
60. In the premises set out in the preceding paragraph, the Authority or Western Australia, whichever was lessor or taken to be the lessor in claiming payment of the rent from Unsafe Tenants during or in respect of the Unsafe Periods:

- (a) engaged in conduct that was, in all the circumstances, unconscionable within the meaning of s 21 of the ACL; and
 - (b) in the premises, contravened s 21 of the ACL;
- in respect of the Unsafe Tenants.

61. By reason of the contravention alleged in the preceding paragraph, some or all of the Unsafe Tenants suffered loss and damage.

Particulars of loss and damage

The Applicant refers to and repeats the particulars to paragraph 36 above.

The Unsafe Tenants, as a result of the contraventions:

- i. paid rent during or in respect of the Unsafe Periods;*
- ii. suffered:*
 - A. physical inconvenience;*
 - B. disappointment and distress;*
- iii. incurred expenditure in undertaking maintenance and repairs, including but not limited to:*
 - A. purchasing bottled water or water filtration equipment;*
 - B. pest control treatment;*
 - C. electrical lighting maintenance;*
 - D. repairs to windows;*
 - E. installation of doors;*
 - F. installation of locks; and*
 - G. additional maintenance charges imposed by the lessor.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

F.2 Unconscionable conduct – repairs and maintenance

62. During the Relevant Period the Authority or Western Australia, whichever was lessor or taken to be the lessor breached, in respect of some or all of the Tenant

Claimants, including the Applicant (together **Delayed Repairs Tenants**), the Repair Systems term.

Particulars

The Applicant refers to and repeats the circumstances in and particulars to paragraph 31 to 35 above.

63. The Authority or Western Australia, whichever was lessor or taken to be the lessor, engaged in the conduct alleged in the preceding paragraph in circumstances where it knew or expected, or ought reasonably to have known or expected, that or to the effect that:
- (a) the Delayed Repairs Tenants possessed or were likely to possess the Class Attributes;
 - (b) the said breaches by the Authority were or were likely to be occurring in respect of residential premises in which there was Overcrowding; or

Particulars

The Applicant refers to and repeats the particulars to paragraph 53 and 55 above.

- (c) the said breaches by the Authority or Western Australia, whichever was lessor or taken to be the lessor:
 - (i) were not improving the quality of Housing available in Remote Communities;
 - (ii) were or were likely to be contrary to the objectives of the NPARIH and the National Partnership on Remote Housing.

Particulars

The Applicant refers to and repeats the particulars to paragraph 53(d) above.

64. By the conduct set out in the preceding paragraph, the Authority or Western Australia, whichever was lessor or taken to be the lessor:
- (a) acted in a manner that would not have been commercially viable for a lessor dealing with tenants who did not possess:
 - (i) the Class Attributes; alternatively
 - (ii) the Class Attributes in:

- A. the Execution Circumstances; further or alternatively
- B. the Monopoly Conditions; and

Particulars

So far as the Applicant is able to say prior to discovery and receipt of experts' reports, the said matters are to be inferred from the circumstance that a rational tenant with bargaining power and knowledge of the Authority and Western Australia's legal obligations in a competitive market was not likely to continue to let housing in the condition in which the Housing was in fact let.

- (b) acted in a manner that:
 - (i) was contrary to the objectives of the NPARIH and the National Partnership on Remote Housing;
 - (ii) took advantage of the Claimants' possession of Class Attributes;
 - (iii) took advantage of the Execution Circumstances; further or alternatively
 - (iv) took advantage of the Monopoly Conditions.
65. In the premises set out in the preceding paragraph, the Authority or Western Australia, whichever was lessor or taken to be the lessor:
- (a) engaged in conduct that was, in all the circumstances, unconscionable within the meaning of s 21 of the ACL; and
 - (b) in the premises, contravened s 21 of the ACL.
66. By reason of the contravention alleged in the preceding paragraph:
- (a) the Delayed Repair Tenants; and
 - (b) some or all of the Claimants who resided in the said Tenants' residential premises;
- (together and severally **Delayed Repairs Claimants**) suffered loss and damage.

Particulars of loss and damage

The Delayed Repairs Claimants:

- i. suffered:*
 - A. physical inconvenience;*

- B. *disappointment and distress;*
- ii. *incurred expenditure in undertaking maintenance and repairs, including but not limited to:*
 - A. *purchasing and installing air conditioners;*
 - B. *paying for power (including electricity and gas), including those to run those air conditioners as much as required to provide reasonable comfort inside the Housing;*
 - C. *purchasing bottled water or water filtration equipment;*
 - D. *pest control treatment;*
 - E. *electrical lighting maintenance;*
 - F. *repairs to windows;*
 - G. *installation of doors;*
 - H. *installation of locks; and*
 - I. *additional maintenance charges imposed by the lessor.*

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

Jonnine Divilli

- i. *Ms Divilli refers to and repeats the particulars subjoined to paragraph 31 above relating to the Authority's repairs system timeframes.*
- ii. *Ms Divilli refers to and repeats the particulars relating to Divilli's residence subjoined to paragraph 20 above.*
- iii. *So far as Ms Divilli can say prior to discovery, at least several of the repair items particularised in paragraph 20 above were not rectified within the Authority's own repair timeframes as set out in paragraph 31.*

F.3 Unconscionable conduct – cause of action accrued each day

67. In respect of each breach of s 21 of the ACL alleged in this Section F:
- (a) the breach occurred on each day while the ACL guarantees were not observed;
 - (b) the Claimants suffered loss and damage on each such day; and
 - (c) in the premises, the Claimants accrued a cause of action for each such breach on each day.

Particulars

RTA s 36

Each alleged breach was a breach by the Authority of a continuing obligation.

Loss/ damage accrued on each day that the Claimants' Premises were not habitable.

G. EXCESSIVE RENT

68. By reason of the matters alleged separately and in any combination above at paragraphs 20 (other than (c), (l), (o), (t) and (hh)), 26 and/or 29 ((i), (b(i)), (e) and (f)), there has been, without any default on the part of Ms Divilli and each Group Member, a significant reduction in the chattels or facilities provided with their Housing.
69. By reason of the matters alleged above at paragraph 68 and having regard to:
- (a) the accommodation and amenities provided in the premises and the state of repair and general condition thereof in light of the matters alleged at paragraphs 20, 23, 26 and/or 29 for the Applicant and each Group Member; and
 - (b) being relevant matters;
 - (i) the Class Attributes;
 - (ii) the Execution Circumstances; further or alternatively
 - (iii) the Monopoly Conditions;

- (c) the evidence at trial concerning all matters listed in s 32(3)(a)-(e) of the RTA,
the rent for the Divilli Residence and each Group Member's Housing is and was excessive.

H. RESTITUTION FOR RENT OVERPAYMENT – TENANTS

70. Each Tenant entered each Tenancy Agreement for valuable consideration, being rent (**Rent Payers**).
71. The amount of rent:
- (a) was specified and agreed in the Tenancy Agreement (**Lawful Rent**); and
 - (b) was not:
 - (i) where the Authority was both a party to that Tenancy Agreement and a Housing Management Agreement, determined under s 62E(3) of the *Housing Act*, including because no Minister ever approved a rent rate for each of the Housing;
 - (ii) determined under s 30 of the *Housing Act*, including because:
 - A. where the Authority was both a party to that Tenancy Agreement and a Housing Management Agreement, it was not operative as s 62E was the only available rent determination power operative;
 - B. otherwise, no Minister ever approved a rent rate for each of the Housing;
 - (iii) capable of increase under the Tenancy Agreement because the rent clause was inconsistent with s 30(1) of the RTA, which otherwise applied and could not be lawfully contracted out; nor
 - (iv) determined or calculated by reference to an annexure of the Tenancy Agreement which relied on the concept of a Rent Policy because it was void for uncertainty including by reason that there is and was no estimated replacement cost of the Housing (over a 25 year period divided by 52 weeks, nor for any other periods).

72. Rent for the Housing in a Remote Community was paid by the Tenant or tenants for that Housing:
- (a) to Western Australia, where it was a lessor named on the Tenancy Agreement;
 - (b) otherwise, to the Authority.

Particulars

Housing Act s 62E(2)

73. During the Relevant Period, the Authority or Western Australia, whichever was lessor or taken to be the lessor, collected, from or in respect of Rent Payers, rent in a sum greater than the Lawful Rent (**Rent Overpayment**).

Particulars

The Applicant further refers to and repeats the particulars to paragraph 52 above.

Rent was most commonly collected from Claimants by way of deductions from Centrelink entitlements or garnishee-type arrangements in respect of employment income, including by payroll deduction.

Particulars of the Rent Overpayments from the Applicant will be provided following discovery or other compulsory process.

74. The payment of each Rent Overpayment by each Rent Payer was to the detriment of the said Claimant.
75. In the premises set out in paragraphs 70 to 74, the Authority or Western Australia, whichever was lessor or taken to be the lessor, during the Relevant Period had and still has no lawful entitlement to collect or retain each Rent Overpayment from each Rent Payer.
76. By reason of the matters set out in paragraphs 70 to 75, Rent Payers paid each Rent Overpayment, or suffered the sum to be paid on their behalf, pursuant to a mistake of fact or law as to the amount of rent required by law to be paid by each of them.

Particulars

RTA s 83

77. The Authority or Western Australia, whichever was lessor or taken to be the lessor, has failed to repay Rent Overpayments to the Rent Payers referred to in the preceding paragraph.
78. By reason of the foregoing, the Authority or Western Australia, whichever was lessor or taken to be the lessor, has accepted the benefit of each Rent Overpayment, and has been enriched thereby.
79. At all material times:
- (a) the Authority collected each Rent Overpayment directly from Centrelink, or employers of Rent Payer, without any notice to the Rent Payer of the amount as it was collected;
 - (b) each such Rent Payer had most or all of the Claimants' Attributes; and
 - (c) the Rent Payer was not informed, or not informed in a way that that person understood, that each had overpaid rent.
80. In the premises set out in the paragraphs 75 to 79, it would be unjust for the Authority or Western Australia, whichever was lessor or taken to be the lessor, to retain each Rent Overpayment.
81. By reason of the matters alleged at paragraphs 70 to 78:
- (a) each Rent Overpayment was and is money had and received by or on behalf of the Authority or Western Australia, whichever was lessor or taken to be the lessor, to the use of the Rent Payer, and
 - (b) the Authority or Western Australia, whichever was lessor or taken to be the lessor, is obliged to repay each of those sums to each Rent Payer.

Particulars

RTA s 83(a)

H.1 Restitution claims – cause of action accrued each day

82. In respect of each restitution claim in this Section G:
- (a) each affected Claimant suffered loss or damage on each occasion that rent was received by the Authority or Western Australia, whichever was lessor or taken to be the lessor, as described in this Section G; and
 - (b) in the premises, each Claimant accrued a fresh cause of action on each occasion described in (a).

AND THE APPLICANT CLAIMS on her own behalf and on behalf of the Group Members:

1. For breach of contract:
 - (a) damages or statutory compensation under s 15(2)(c) of the RTA;
 - (b) for any ongoing breach of a Tenancy Agreement at the time of judgment, an order under s 15(2)(a)(ii) of the RTA or for specific performance by the Authority or Western Australia, whichever was lessor or taken to be the lessor each of such Tenancy Agreement;
2. For claims under the ACL Guarantee:
 - (a) a declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) that during the Relevant Period the Authority or Western Australia, whichever was lessor or taken to be the lessor contravened s 61 of the ACL;
 - (b) damages pursuant to s 267(4) of the ACL;
 - (c) an order for compensation pursuant to s 267(2) and/or (3) of the ACL;
3. For unconscionable conduct:
 - (a) a declaration pursuant to s 21 of the FCA Act and/or s 237 of the ACL that during the Relevant Period the Authority or Western Australia, whichever was lessor or taken to be the lessor engaged in conduct that contravened s 21 of the ACL;
 - (b) a declaration pursuant to s 21 of the FCA Act and/or s 237 of the ACL that any rental arrears agreement in contravention of s 21 of the ACL was invalid and of no legal effect;
 - (c) an injunctive order pursuant to s 232(1) of the ACL that the Authority or Western Australia, whichever was lessor or taken to be the lessor not engage in any of the conduct referred to in Section F of the Statement of Claim;

- (d) damages pursuant to s 236 of the ACL;
 - (e) in the alternative to (c) – an order for compensation pursuant to s 237 of the ACL;
4. For excessive rent, order under s 32(4) and (5) of the RTA that from a specified day and until 6 months after the date of the order, the rent payable in respect of the premises under the residential tenancy agreement shall not exceed the amount that is just and meritorious for each Housing.
 5. Under s 83(a) of the RTA or in restitution, for the action for money had and received – an order for payment to each affected Claimant of monies paid by that Claimant to which the Authority or Western Australia, whichever was lessor or taken to be the lessor, had no lawful entitlement;
 6. Interest according to statute;
 7. Costs, having regard to s 24 of the RTA;
 8. Such further or other relief as the Court may deem appropriate.

Date: 19 August 2024



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Signed by Rory John Walsh
Lawyer for the Applicant

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

Certificate of lawyer

I, Rory John Walsh, certify to the Court that, in relation to the statement of claim 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: 19 August 2024



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Signed by Rory John Walsh
Lawyer for the Applicant