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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: NSD1968/2013
File Title: Paul Leslie McAlister by his Litigation Representative the NSW Trustee & Guardian v State of New South Wales & Ors
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 15/12/2015 12:00:23 PM AEDT

Registrar

Important Information

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

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Form 17
Rule 8.05(1)(a)

Further Amended Statement of Claim

No. NSD1968 of 2013

Federal Court of Australia
District Registry: NSW
Division: General

Paul Leslie McAlister by his litigation representative the NSW Trustee & Guardian

Applicant

State of New South Wales

First respondent

Avibin Pty Ltd (ACN 2669267)

Second respondent

Adrian Alan Powell

Third respondent

Filed pursuant to order 5(b) made by Justice Griffiths on 27 October 2015 & order 1 made by Justice Mortimer on 14 December 2015.

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Filed on behalf of (name & role of party) Paul Leslie McAlister by NSW Trustee and Guardian, Applicant

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I. PARTIES

1. The applicant brings this proceeding for and on behalf of Paul Leslie McAlister on his own behalf and on behalf of represented persons pursuant to Part IVA of the *Federal Court of Australia Act (Cth) (1976)* being persons (**Group Members**) who:
 - 1.1. resided at Grand Western Lodge, Millthorpe, New South Wales (**GWL**) for some time within the period 1 January 2000 to 15 August 2011 (**Relevant Period**); and
 - 1.2. suffered loss or damage as a consequence of some or all of the conduct referred to in paragraph 111 of the Further Amended Statement of Claim.
2. As at the date of the commencement of this proceeding, seven or more Group Members have claims against each of the first, second and third respondents.
3. At all material times, GWL:
 - 3.1. was a “residential centre for handicapped persons” within the meaning of the *Youth and Community Services Act 1973 (NSW)* (**YACS Act**);
 - 3.2. operated at two premises in Millthorpe, which were “licensed premises” within the meaning of the YACS Act, namely:
 - 3.2.1. 27 Victoria Street (**Victoria Street**); and
 - 3.2.2. 5 Kingham Street (**Kingham Street**);
 - 3.3. was operated by the second respondent;
 - 3.4. was managed by the third respondent.

The applicant

4. The applicant resided at GWL at the Victoria Street premises from about 1988 until 28 July 2011.

5. The applicant was, during the period of his residence at GWL, a “handicapped person” within the meaning of the YACS Act.

Particulars

- 5.1. The applicant has a mild to moderate developmental or intellectual disability;
- 5.2. During the period of his residence at GWL, the applicant had a diagnosis of, and received treatment for, schizophrenia;
- 5.3. The applicant requires supervision and assistance with daily living.

The first respondent

6. The first respondent is sued pursuant to section 5 of the *Crown Proceedings Act 1988 (NSW)* and is liable to be sued as the Crown in right of the Department of Family & Community Services (Ageing, Disability and Home Care division) (“**the Department**”) under the title “State of New South Wales”.
7. The first respondent is liable for the actions and inactions of all persons in the service of the Department pursuant to the *Law Reform (Vicarious Liability) Act 1983 (NSW)*.
8. The first respondent performed functions and exercised powers given to “the Department” by the YACS Act at the following relevant times, under the following names:
 - 8.1. from September 1995 to April 2001: Ageing and Disability Department;
 - 8.2. from April 2001 to June 2009: Department of Ageing, Disability and Home Care;
 - 8.3. from July 2009 to April 2011: Department of Human Services, Ageing Disability and Home Care; and
 - 8.4. from April 2011 to 30 June 2013: Ageing Disability and Home Care within the Department of Family and Community Services.

The second respondent

9. The second respondent is a corporation which at all material times operated GWL and supplied goods and services to the applicant and Group Members in trade or commerce as a “licensee” within the meaning of the YACS Act under licence numbers A-2329-1115 (originally issued as R 84/039/58) and A-2330-1114 (originally issued as R/ 88/16/494) (**licences**) granted on 15 December 1987 pursuant to the YACS Act.

The third respondent

10. At all material times, the third respondent was a director and shareholder of the second respondent and an employee or agent of the second respondent who managed GWL under the licences as “licensed manager” within the meaning of the YACS Act.
11. Where it is alleged in this statement of claim that the third respondent engaged in conduct, it is alleged that the third respondent was engaging in the conduct on his own behalf and on behalf of the second respondent as a director, employee or agent of the second respondent acting within the scope of his actual or apparent authority.
- 11A. Where it is alleged in this statement of claim that the third respondent knew or ought to have known something, it is alleged that the second respondent knew or ought to have known that thing.

II. YACS ACT AND LICENCE MONITORING POLICY*YACS Act*

12. At all material times, pursuant to s 25 of the YACS Act, any officer of the first respondent was authorised, at any time, to enter licensed premises and inspect them and observe and converse with any person apparently residing at the premises for the purposes of ensuring that:
- 12.1. Part 3 of the YACS Act and the regulations were being complied with on the premises; and
- 12.2. the conditions of the licence for the premises were being complied with.

- 12A. At all material times, pursuant to s 18 of the YACS Act, the first respondent, by the Director-General of the Department, had the power to suspend or revoke a licence on the following grounds, among others:
- 12A.1 that either the licensee or the licensed manager is no longer a fit and proper person to be concerned in the conduct of a residential centre for handicapped persons; or
- 12A.2 that either the licensee or the licensed manager has contravened or failed to comply with a provision of Part 3 of the YACS Act or of the regulations that is applicable to the licensee or the licensed manager or that the premises to which the licence relates do not comply with a provision of Part 3 of the YACS Act or of the regulations or a condition of the licence applicable to the premises.
- 12B. At all material times, pursuant to s 28 of the YACS Act, the first respondent, by a person acting with the authority of the Minister, had the power to take and prosecute proceedings for an offence under the Act in a Local Court.
- 12C. At all material times, under s 21 of the YACS Act a licensee of licensed premises was guilty of an offence if:
- 12C.1 the premises did not comply with any condition of the licence or permit for the premises, being a condition applicable to the premises; or
- 12C.2 he or she contravened or failed to comply with any condition of the licence or permit for the premises, being a condition applicable to him or her.
- 12D. At all material times, under s 22 of the YACS Act it was an offence for a licensed manager of licensed premises to contravene or fail to comply with the conditions of the licence or permit, being conditions applicable to the licensed manager.

Licensing, Monitoring and Closure Policy Manual

13. In or about August 2003 the first respondent published for the use of its officers a policy manual entitled, *Licensed Residential Centres, Licensing, Monitoring and Closure Policy* (**Policy Manual**).

- 13A. The Policy Manual included, among other applicable principles, the following principle: “ensuring the health, safety and welfare of residents is maintained”.
14. The Policy Manual contained, among other things, the first respondent’s policy for:
- 14.1 the frequency and type of monitoring required for a licensed residential centre;
 - 14.2 the assessment of the level of risk to the health, comfort, safety and proper care of residents associated with breaches of licence conditions;
 - 14.3 setting compliance timeframes; and
 - 14.4 action on breaches of licence conditions including suspension and revocation of a licence, collecting evidence of offences, issuing a warning of a prosecutable offence, prosecution of the licensee or licensed manager and closure of a licensed residential centre.

III. LICENCE CONDITIONS

15. The licences imposed conditions on the operation of GWL (**licence conditions**) requiring, in summary, among other things:
- 15.1. the second respondent and the third respondent to comply with the licence conditions and relevant legislation;
 - 15.2. the premises to be adequately and safely fenced;
 - 15.3. the second respondent to continue to observe the conditions and to provide the facilities required by the conditions of the licence to ensure the health, comfort, safety and proper care of persons with disabilities or other persons cared for or present on the premises;
 - 15.4. the second respondent to serve food to the persons with disabilities adequate in quantity and nutritional value to meet each person’s daily food requirements;

- 15.5. the second respondent to maintain records including information about residents with a disability, records of PRN medication administration, PRN psychotropic medication case management plan, record of efforts to facilitate integration of residents into recreational or therapeutic community activities, notice of any alleged sexual assault, notice of any alleged impropriety or criminal conduct of the manager or any member of staff;
- 15.6. the second respondent to employ staff of good character and repute, who have a commitment to and capacity to care for the welfare of people with disabilities and ensure that there are sufficient competent staff to perform all duties necessary for the proper care of the residents at all times;
- 15.7. the second respondent to provide opportunities for each person with a disability to participate in activities in the community;
- 15.8. the second respondent and the third respondent to actively participate in the linking of residents to recreational or therapeutic community activities;
- 15.9. each person with a disability to have adequate, suitable clothing and footwear;
- 15.10. the second respondent to ensure that a resident is not required to undertake domestic tasks unless the task is an integral part of an approved program or the resident chooses to undertake those tasks;
- 15.11. the second respondent, the third respondent and all staff to observe the following principles relating to the rights of residents:
 - 15.11.1. each resident has the same rights as any member of Australian society;
 - 15.11.1A each resident should be encouraged as far as possible to be self reliant in matters relating to his or her personal, domestic and financial affairs;
 - 15.11.2. each resident should be protected from abuse or neglect;

- 15.11.3. each resident has the right to receive from the second respondent support to enhance his or her quality of life;
- 15.11.4. each resident has the right to be assisted by the second respondent to maintain his or her optimum physical and mental health;
- 15.11.4A each resident has the right to be assisted by the second respondent to maintain his or her optimum social well-being;
- 15.11.5. the welfare and interests of persons with a disability should be given paramount consideration;
- 15.11.6. there should be as little restriction as possible on the freedom of decision and freedom of action of a resident;
- 15.11.7. residents should be encouraged, as far as possible to live a normal life in the community;
- 15.11.8. the views of residents in relation to the exercise of the functions of the second respondent should be taken into consideration; and
- 15.11.9 the importance of preserving the family relationships and cultural and linguistic environments of residents should be recognised;
- 15.12. the second respondent, the third respondent and staff not to abuse a resident;
- 15.13. the second respondent, the third respondent and staff not to neglect a resident;
- 15.14. the second respondent, the third respondent and staff to allow residents to have access to independent advocacy support and foster the relationship between any available advocacy service and the residents and not obstruct

any resident's access to service providers or advocates of the resident's choice;

- 15.15. the third respondent to issue receipts for board, the second respondent to maintain a record system to provide receipts for any money received from or on behalf of a resident and itemised receipts for rent paid and any other fixed costs such as personal care;
- 15.16. the third respondent and staff to encourage residents to the extent they are able to be self-reliant in matters relating to their personal, domestic and financial affairs;
- 15.17. the second respondent to maintain and care for the physical and mental health of persons with disabilities;
- 15.18. the second respondent to store medication safely and securely; and
- 15.19. the second respondent to provide adequate medical care in cases of accident or illness.

IV. OPERATION OF GWL LICENCE

- 16. At all material times during the Relevant Period the second respondent operated and managed GWL in continuing serious breach of the licence conditions.

Particulars

- 16.1. The second respondent:
 - 16.1.1. failed to adequately maintain and care for the physical and mental health of the residents;
 - 16.1.2. failed to have the premises adequately and safely fenced;
 - 16.1.3. failed to ensure that there were adequate competent staff to perform all duties necessary for the proper care and safety of the residents at all times;

- 16.1.4. failed to provide food to the residents in adequate quantity or nutritional value to meet each resident's daily food requirements;
 - 16.1.5. failed to provide suitable clothing or footwear;
 - 16.1.6. failed to maintain a record system to provide receipts for any money received from or on behalf of a resident and itemised receipts for rent paid and other costs;
 - 16.1.7. failed to maintain adequate records about the residents including records of PRN medication administration and records regarding integration of residents into community activities;
 - 16.1.8. required residents to perform domestic tasks that were not part of an approved program; and
 - 16.1.9. failed to observe the principles relating to the rights of residents referred to in paragraph 15.11.
17. At all material times during the Relevant Period the third respondent operated and managed GWL in continuing serious breach of the licence conditions.

Particulars

- 17.1. The third respondent participated in, encouraged and permitted control of residents' behaviour by a committee of residents using:
 - 17.1.1. physical assault of residents by the third respondent, GWL staff or other residents;
 - 17.1.2. threats of physical assault of residents by the third respondent, GWL staff or other residents;
 - 17.1.3. confinement of residents in a room for extended periods as punishment; and

- 17.1.4. administration by or at the request of the third respondent of unprescribed quantities of psychotropic medication to sedate residents.
- 17.2. The third respondent restricted and opposed communications between the residents and outside carers, visitors or independent advocates and restricted and opposed the participation of residents of GWL in activities in the community.
- 17.3. The third respondent controlled the finances of the residents and in most cases paid 100% of the residents' Centrelink payments to the second respondent without any proper record system to issue receipts for board or fixed costs or any money received from or on behalf of residents.
18. On or about 12 June 2002 media articles published in the *Sydney Morning Herald* newspaper under the headlines "*Cut off: the frightened patients of Millthorpe*" and "*Cut off the forgotten patients of Millthorpe*" and published in electronic format under the heading "*Mentally ill confined at lodge in country*" written by a journalist, Adele Horin (**SMH articles**), reported on the operation of GWL and the conduct and attitude of the third respondent to contact between residents of GWL and the world outside GWL. The SMH articles, in summary, stated:
 - 18.1. documents from government inspectors obtained under freedom of information laws, showed how the third respondent had opposed repeated efforts to allow his residents contact with the outside world;
 - 18.2. the third respondent had resisted the State Government's community care reform program;
 - 18.3. GWL was a "closed system" and "residents are completely dependent on the owner";
 - 18.4. recreational officers contracted by the Government had been turned away;
 - 18.5. the Health Department and Home Care Service of NSW had trouble getting access to the residents;

- 18.6. a federally funded employment agency that wanted to offer jobs to residents was snubbed;
 - 18.7. a departmental briefing note said that officers of the Department had been “frustrated in their attempts to enter the premises ... and speak freely with the residents”;
 - 18.8. outsiders could not talk to residents without the third respondent’s permission;
 - 18.9. the documents recorded a history of allegations of physical assaults of and by residents;
 - 18.10. a committee of seven residents exercised control over the others, even though it had no legal power to make decisions for them; and
 - 18.11. Lithgow Information and Neighbourhood Centre had stopped providing recreational services to GWL because its staff were not able to have unrestricted access to all residents without conversations being monitored by GWL staff.
19. GWL continued to function as a licensed residential centre for handicapped persons and residents remained at GWL until orders were made for their removal by the Guardianship Tribunal and residents were removed from July 2011 to August 2011.
 20. The effect of the operation and management of GWL by the second and third respondents in the manner described in paragraphs 16 and 17 was that the applicant and some or all Group Members:
 - 20.1. were exposed to and suffered physical assaults, threats of physical assaults, chemical assaults, threats of chemical assaults, deprivation of liberty, and threats of deprivation of liberty;
 - 20.1A were subjected to an environment in which residents were regularly assaulted, threatened with assault, chemically assaulted, threatened with chemical assault, confined in the back room as punishment, threatened

with confinement in the back room and subject to a range of punishments ordered by the third respondent, staff or the residents' committee;

- 20.2. lived in a state of anxiety, discomfort and fear of the third respondent, GWL staff and the committee of residents;
- 20.3. were at risk of self-harm by reason of inadequate fencing of the first floor balcony of the Victoria Street premises and insufficient staff to provide adequate supervision of residents;
- 20.4. were inappropriately medicated;
- 20.5. were isolated and neglected;
- 20.6. were without access to adequate primary and secondary health care or sufficient attention to their health and personal hygiene needs;
- 20.7. were without adequate access to recreational or therapeutic community activities;
- 20.8. were inadequately clothed and nourished;
- 20.9. were vulnerable to financial exploitation by the second respondent and third respondent;
- 20.9A were required by the second respondent and the third respondent to perform unpaid work;
- 20.10. were dependent upon the third respondent and without any financial means of providing for food, clothing, travel or other personal items for themselves;
- 20.11. had no choice but to accede to the conduct of the second respondent and third respondent.

V. NEGLIGENCE CLAIMS AGAINST FIRST RESPONDENT

Duty of care

21. During the Relevant Period it was reasonably foreseeable that failure by the first respondent to effectively exercise its powers under the YACS Act might result in injury, loss or damage to the applicant and each Group Member.
22. By reason of the matters in paragraphs 12 to 12D, the first respondent had power and was in a position to protect the applicant and each Group Member from the risk of harm by conduct in breach of the licence conditions of the second respondent and/or the third respondent.
23. The applicant and each Group Member were vulnerable in that the applicant and each Group Member could not reasonably be expected to safeguard himself or herself adequately from harm.
24. The first respondent knew or ought to have known of the risk of harm to the applicant and each Group Member if it did not exercise its powers under the YACS Act with reasonable care.

Particulars

The applicant repeats the matters pleaded and particularised in paragraphs 27A to 27C below.

25. The existence of a duty by the first respondent to take reasonable care in the exercise of its powers under the YACS Act referred to in paragraphs 12 to 12B is consistent with the terms, scope and purpose of the YACS Act.
26. During the Relevant Period, by reason of the matters in paragraphs 21 to 25, the first respondent owed the applicant and each Group Member a duty to take reasonable care in the exercise of its powers under the YACS Act to prevent or minimise foreseeable injury, loss or damage occurring to the applicant and each Group Member by conduct in breach of the licence conditions of the second respondent and/or the third respondent.

27. Further or in the alternative during the period 12 June 2002 (the date of publication of the SMH articles referred to in paragraph 18) to 15 August 2011 by reason of the matters referred to in the SMH articles and the matters in paragraph 21 to 25, the first respondent:

27.1. knew or ought reasonably to have been aware that failure to monitor compliance with and to enforce the licence conditions placed the residents of GWL at risk of loss or harm, including the risk of physical assault; and

27.2. owed the applicant and each Group Member a duty to take reasonable care in the exercise of its powers under the YACS Act to prevent or minimise foreseeable injury, loss or damage occurring to the applicant and each Group Member by conduct in breach of the licence conditions of the second respondent and/or the third respondent.

Breach of duty

27A. During the Relevant Period, the first respondent should have taken precautions against the following risks of harm to Group Members within the meaning of s 5B of the *Civil Liability Act 2002 (NSW) (CLA)*:

27A.1. The risk of personal injury or death to residents falling from or jumping from the first floor balcony of the Victoria Street premises;

27A.2. The risk of personal injury to residents from assaults by the third respondent, staff, members of the residents' committee or other residents of GWL acting at the direction of or as permitted by the third respondent;

27A.3. The risk of personal injury to residents from inappropriate medication;

27A.4. The risk of personal injury to residents from some or all of the following:

27A.4.1 being exposed to and suffering physical assaults, threats of physical assaults, chemical assaults, threats of chemical assaults, deprivation of liberty, and threats of deprivation of liberty;

- 27A.4.2 being subjected to an environment in which residents were regularly assaulted, threatened with assault, chemically assaulted, threatened with chemical assault, confined in the back room as punishment, threatened with confinement in the back room and subject to a range of punishments ordered by the third respondent, staff or the residents' committee;
 - 27A.4.3 being isolated and neglected;
 - 27A.4.4 being without access to adequate primary and secondary health care or sufficient attention to their health and personal hygiene needs;
 - 27A.4.5 being without adequate access to recreational or therapeutic community activities;
 - 27A.4.6 being inadequately clothed and nourished;
 - 27A.4.7 being required by the second respondent and the third respondent to perform unpaid work;
 - 27A.4.8 being financially exploited by the second respondent and the third respondent;
 - 27A.4.9 being inadequately supervised in circumstances where the residents included aged and high care residents;
- 27A.5 The risk of economic loss as a consequence of financial exploitation by the second respondent and the third respondent.
- 27B. Before and during the Relevant Period, the first respondent knew of the risks described in paragraph 27A.

Particulars

- 27B.1 The residents of GWL were “handicapped persons” who “required supervision or social habilitation” within the meaning of s 3 of the YACS Act.
- 27B.2 From at least the date of the issue of the licences referred to in paragraph 9 in December 1987, the first respondent knew that residents of licensed residential centres were at risk of harm of the kind described in paragraph 27A and the conditions of the licences were imposed with a view to preventing or minimising harm of that kind.
- 27B.3 From at least 1993 it was a matter of public knowledge that residents of licensed residential centres were at risk of exploitation and abuse. As evidenced by:
- 27B.3.1 the speech given in the Legislative Assembly of New South Wales by the then Minister for Community Services on 26 October 1993 and reported in Hansard for the 1993 Parliamentary session at page 4412; and
- 27B.3.2 the 1993 NSW Government Report of the Task Force on Private “For Profit” Hostels noted, “the vulnerability of [licensed residential centre] residents to neglect, abuse, and exploitation arising from their disabilities and life experiences and their depending on the management of the boarding houses in which they live” and “the neglect, abuse and exploitation that does in fact occur in many boarding houses”.
- 27B4 In 1998 the NSW Government initiated the Boarding House Reform Program to address the risk of harm to vulnerable residents of licensed residential centres.
- 27B.5 Before and during the Relevant Period the first respondent had received numerous complaints by residents of GWL, relatives of residents, health and welfare service agencies and at least one resident of Millthorpe about

the conduct of the second and third respondent in the management and running of GWL and the care of the residents.

- 27B.6 Before and during the Relevant Period officers of the first respondent corresponded with the second and third respondents regarding the second and third respondents' non-compliance with licence conditions including concerns about, inter alia, insufficient competent staff, residents presenting with bruises and other evidence of physical assaults, the role and operation of the residents' committee and the consistent obstruction of service agencies.
- 27B.7 Before and during the Relevant Period officers of the first respondent reported being subjected to aggressive and intimidating behaviour by the third respondent as they attempted to perform their functions under the YACS Act.
- 27B.8 On 26 November 2001, an officer of the first respondent evaluated safety issues at GWL and given "the nature of Mr Powell" issued a direction for the Department staff safety which required all licensing inspections of GWL to be undertaken by two licensing officers working together.
- 27B.9 During the Relevant Period, the first respondent was required to provide information and assistance to the NSW Ombudsman regarding, inter alia, its monitoring of licensed residential centres in NSW and was privy to the following which made reference with varying degrees of detail to the vulnerability of residents of licensed residential centres to abuse and exploitation:
- 27B.9.1 2003 Allen Consulting Group review of the YACS Act and regulation of the Licenced Residential Centre Sector in NSW;
- 27B.9.2 August 2003 Policy Manual referred to in paragraph 13 with the principle referred to in paragraph 13A; and
- 27B.9.3 NSW Ombudsman investigations and inquiries on which reports were published in June 2004, March 2006, and June 2011.

27B.10 In June 2002, the SMH articles referred to in paragraph 18 were published.

27B.11 “Whistleblower” reports were made to the first respondent by staff/former staff of GWL, Mr Russell Bradford on or around 16 December 2009, 18 December 2009 and 31 December 2009, and Mr Peter Ringham on or around 31 December 2009 and 3 August 2010, detailing allegations of: physical, sexual and chemical assault and false imprisonment of GWL residents by the third respondent, GWL staff and GWL residents, as well as mismanagement of medication, neglect and financial exploitation of residents, the third respondent’s obstruction of residents’ contact with their family and friends, and various other matters constituting breaches of licence conditions.

27C. Further, and alternatively, before and during the Relevant Period, the first respondent ought to have known of the risks described in paragraph 27A.

Particulars

If the first respondent did not know the risks described in paragraph 27A it ought to have known of those risks by reason of the matters particularised in paragraph 27B.

27D. The risks of harm described in paragraph 27A were not insignificant.

Particulars

27D.1 The residents were “handicapped persons” within the meaning of s 3 of the YACS Act and were vulnerable to abuse and exploitation.

27D.2 The applicant repeats paragraph 23.

27D.3 The nature of licenced residential centres and residents of licenced residential centres places residents at real risk of harm.

27D.4 The matters particularised in paragraphs 27B.5 to 27B.8, 27B.10 and 27B.11.

27E. From 1 January 2000 up until August 2003 when the Policy Manual was published for the use of the first respondent's officers, a reasonable person in the first respondent's position would have taken the following precautions against the risks of harm referred to in paragraph 27A:

27E.1 Performed routine, frequent, random inspections of GWL premises at least once every 6 to 8 weeks (**routine monitoring**);

27E.2 Conducted monitoring inspections without giving the second respondent, the third respondent or staff of GWL prior warning;

27E.3 Conducted monitoring inspections using the powers of the Department under s 25 of the YACS Act to enter, inspect, observe and converse and:

27E.3.1 Inspected the records required to be kept by the second respondent and the third respondent;

27E.3.2 Followed up on breaches of licence conditions identified in previous monitoring inspections;

27E.3.3 Assessed compliance with licence conditions during the current monitoring inspection;

27E.3.4 Made a written record of any outstanding breaches of licence conditions or new breaches of licence conditions;

27E.3.5 Assessed the level of risk to the health, comfort, safety and proper care of residents of GWL of any breaches of licence conditions;

27E.3.6 Established, with reference to the degree of risk to the health, comfort, safety and proper care of residents of GWL, timeframes for compliance for new or outstanding breaches of any licence conditions.

27E.4 Regularly reviewed any unresolved breaches of licence conditions and re-assessed the risk to the health, comfort, safety and proper care of residents

of GWL of the unresolved breaches of licence conditions and the timeframes for compliance.

27E.5 Responded to any breaches identified as high risk to the health, comfort, safety and proper care of residents of GWL in any one or more of the following ways:

27E.5.1 Investigating and collecting evidence of offences under the YACS Act;

27E.5.2 Referring as necessary and/or appropriate to the Police, ambulance service, and/or health service mental health crisis team for the protection of any individual resident or groups of residents identified as being placed at high risk of harm by the breach of licence conditions;

27E.5.3 Strictly monitoring the compliance timeframe, including by frequent, random inspections conducted without notice to the second respondent, the third respondent or staff of GWL;

27E.5.4 Giving consideration to and implementing as appropriate in the circumstances:

27E.5.4.1 Varying licence conditions, with compliance timeframes and a strict monitoring routine;

27E.5.4.2 Issuing a warning to the second respondent and/or the third respondent that action may be taken to prosecute an offence or to vary or revoke the licence(s);

27E.5.4.3 Initiating a prosecution of the second respondent and/or the third respondent;

27E.5.4.4 Revoking the licence(s).

- 27E.6 Responded to any breaches identified as less than high risk to the health, comfort, safety and proper care of residents of GWL by:
- 27E.6.1 Setting timeframes required for rectification of the breach;
 - 27E.6.2 Investigating and collecting evidence of the breach and the potential risk for residents;
 - 27E.6.3 Continuing to monitor GWL for rectification of the identified breaches, required actions and compliance timeframes as well as general compliance with the Licence Conditions;
 - 27E.6.4 In the case of failure to rectify ongoing breaches within defined timeframes, escalated the risk assessment and responded in the manner described in sub-paragraph 27E.5.
- 27E.7 Assessed the level of risk of harm to residents suggested by any complaints about GWL, and:
- 27E.7.1 Responded immediately to any complaints assessed as indicating the possibility of high risk of harm to residents by inspecting the premises without prior warning to the second respondent, the third respondent or staff of GWL, using the full power of the Department to enter, inspect, observe and converse and dealing with high level breaches of licence conditions in the manner described in sub-paragraph 27E.5.
 - 27E.7.2 Given particular attention to any complaint assessed as indicating less than a high risk of harm during routine monitoring.
- 27E.8 Conducted a full service review at least once every three years in which GWL's compliance with all licence conditions at the point in time of the full service review was assessed and dealt with any breaches of licence conditions identified in a full service review in the manner described in sub-paragraphs 27E.4 to 27E.6.

- 27F. At all relevant times on and after the publication of the Policy Manual in August 2003 until 15 August 2011 a reasonable person in the first respondent's position would have taken the precaution of monitoring and enforcing compliance with licence conditions in accordance with the policies and procedures in the Policy Manual.

Breach of duty

28. During the Relevant Period (or alternatively from 12 June 2002, when the SMH articles were published) to August 2003, when the Policy Manual was published, the first respondent breached its duty of care to the applicant and each Group Member who were resident at GWL in that period by failing to take or failing to adequately take the precautions described in paragraph 27E against the risks of harm referred to in paragraph 27A.
29. Further, or in the alternative, during the period August 2003 to August 2011, commencing on the date of the publication of the Policy Manual, the first respondent breached its duty of care to the applicant and each Group Member resident at GWL in that period by failing to take or failing to adequately take the precautions described in paragraph 27F against the risks of harm referred to in paragraph 27A.

Causation

30. By reason of the first respondent's breaches of its duty of care to the applicant and Group Members the second respondent and third respondent were enabled to continue to manage and operate GWL in the manner described in paragraphs 16 to 17 with the effect described in paragraph 20.
- 30A. By reason of the first respondent's breaches of its duty of care to the applicant and Group Members, the applicant and Group Members in the individual circumstances of each case suffered loss or damage of the following kinds:
- 30A.1. Personal injury, following falling from or jumping from the first floor balcony of the Victoria Street premises;
- 30A.2 Personal injury, from assaults by the third respondent, staff, members of the residents' committee or other residents of GWL acting at the direction of, or as permitted by the third respondent;

- 30A.3 Personal injury, from inappropriate medication;
- 30A.4 Personal injury from some or all of the following:
 - 30A.4.1 being exposed to and suffering physical assaults, threats of physical assaults, chemical assaults, threats of chemical assaults, deprivation of liberty, and threats of deprivation of liberty;
 - 30A.4.2 being subjected to an environment in which residents were regularly assaulted, threatened with assault, chemically assaulted, threatened with chemical assault, confined in the back room as punishment, threatened with confinement in the back room and subject to a range of punishments ordered by the third respondent, staff or the residents' committee;
 - 30A.4.3 being isolated and neglected;
 - 30A.4.4 being without access to adequate primary and secondary health care or sufficient attention to their health and personal hygiene needs;
 - 30A.4.5 being without adequate access to recreational or therapeutic community activities;
 - 30A.4.6 being inadequately clothed and nourished;
 - 30A.4.7 being required by the second respondent and the third respondent to perform unpaid work;
 - 30A.4.8 being financially exploited by the second respondent and the third respondent.
- 30A.5 Economic loss as a consequence of financial exploitation by the second respondent and the third respondent.

- 30B. The negligence of the first respondent was a necessary condition of the loss or damage suffered by the applicant and Group Members referred to in paragraph 30A.
- 30C. It is appropriate for the first respondent's liability to extend to the loss or damage suffered by the applicant and Group Members referred to in paragraph 30A.
- 30D. Alternatively, if the negligence of the first respondent is not a necessary condition of the loss or damage suffered by the applicant and Group Members referred to in paragraph 30A, it is appropriate to impose responsibility for that harm on the first respondent because:
- 30D.1 The applicant and Group Members were uniquely vulnerable and exposed to the risk of abuse and exploitation;
 - 30D.2 The applicant and each Group Member could not be reasonably expected to protect himself or herself from the risk of harm;
 - 30D.3 The first respondent granted the licences to the second respondent and the third respondent and created and controlled the circumstances in which the second respondent and the third respondent were permitted and enabled to operate GWL; and
 - 30D.4 The first respondent was best placed to prevent or minimise harm to the applicant and Group Members because it had the powers under the YACS Act described in paragraphs 12 to 12B and no other person or agency had powers of similar scope and extent.

VI. APPLICANT'S CLAIMS AGAINST FIRST RESPONDENT

Assaults by the third respondent and others, false imprisonment by the third respondent

31. During the applicant's residence at GWL (including the Relevant Period) the third respondent:
- 31.1. frequently assaulted and battered the applicant who lived in a state of fear and unease and distress in the circumstances pleaded in paragraphs 80 and 82; and

- 31.2. frequently falsely imprisoned and unlawfully deprived the applicant of his liberty by confining him to a room in the Victoria Street premises used by the third respondent for, inter alia, the purpose of punishing residents of GWL.
32. The applicant was assaulted, battered and falsely imprisoned by the third respondent and servants and agents of the second respondent in consequence of the first respondent's negligence as pleaded and particularised in paragraphs 21 to 30D.
33. The applicant suffered ongoing distress and injury as a result of the assaults and false imprisonment.

Particulars of injury

The injuries sustained by the applicant as a result of the assaults and false imprisonment are listed in paragraph 1 of the Schedule. Further particulars of the applicant's injuries may be provided after the service of the applicant's expert evidence.

34. During the applicant's residence at GWL (including the Relevant Period) the third respondent frequently chemically assaulted the applicant by administering to the applicant psychotropic medication without prescription.
35. The third respondent and servants and agents of the second respondent were permitted to chemically assault the applicant in consequence of the first respondent's negligence as pleaded and particularised in paragraphs 21 to 30D.
36. The applicant suffered ongoing distress and injury as a result of the chemical assaults and false imprisonment.

Particulars of injury

The injuries sustained by the applicant as a result of the chemical assaults are listed in paragraph 2 of the Schedule. Further particulars of the applicant's injuries may be provided after the service of the applicant's expert evidence.

Fall from balcony

37. On or about 2 February 2000 the applicant jumped from the first floor balcony of the Victoria Street premises in an attempt to harm himself.
38. The applicant jumped from the balcony in consequence of the first respondent's negligence as pleaded and particularised in paragraphs 21 to 30D.
39. The applicant has suffered loss and damage in consequence of jumping from the balcony.

Particulars of injury

The injuries sustained by the applicant as a result of falling from the balcony are listed in paragraph 3 of the Schedule. Further particulars of the applicant's injuries may be provided after the filing of the applicant's expert evidence.

Neglect/hunger/malnutrition

40. The second respondent and the third respondent neglected the applicant in the circumstances pleaded and particularised in paragraphs 53 and 95.
41. The second and third respondents were permitted to neglect the applicant for the period in which they did in consequence of the first respondent's negligence as pleaded and particularised in paragraphs 21 to 30D.
42. The applicant has suffered physical and psychiatric injury in consequence of this neglect.

Particulars of injury

The injuries sustained by the applicant as a result of the neglect and malnutrition are listed in paragraph 4 of the Schedule. Further particulars of the applicant's injuries may be provided after the filing of the applicant's expert evidence.

42A. In addition to the matters in paragraphs 31 to 42, during the period of his residence at GWL the applicant was exposed to and experienced the environment at GWL produced by:

42A.1 The second respondent's continuing serious breach of the licence conditions as pleaded and particularised in paragraph 16; and

42A.2 The third respondent's continuing serious breach of the licence conditions as pleaded and particularised in paragraph 17;

with the effect described in paragraph 20.

42B. During the period of his residence at GWL, the applicant felt continuing fear, stress and anxiety that he might be assaulted by the third respondent or staff of GWL or other residents of GWL acting for or at the direction of or as permitted by the third respondent and/or punished by being required to spend time in the back room of the Victoria Street premises if:

42B.1. he did not comply with the demands of the third respondent, GWL staff or members of the residents' committee;

42B.2. he attempted to intervene to protect or minimise the harm to other residents being assaulted by the third respondent, staff of GWL or residents of GWL acting for or at the direction of or as permitted by the third respondent;

42B.3. he complained or told anybody about the conditions at GWL.

42C. During the Relevant Period the applicant suffered injury as a result of the matters in paragraphs 42A and 42B.

Particulars

The injuries sustained by the applicant as a result of the matters in paragraphs 42A and 42B are listed in paragraph 5 of the Schedule. Further particulars of the applicant's injuries may be provided after the service of the applicant's expert evidence

42D. During the Relevant Period the applicant suffered the matters referred to in paragraphs 42A and 42B with the injury referred to in paragraph 42C as a consequence of the first respondent's negligence as pleaded and particularised in paragraphs 21 to 30D.

Applicant's financial losses

43. The applicant suffered financial loss as a consequence of the misappropriation of the applicant's funds by the second respondent and the third respondent in the circumstances pleaded in paragraphs 56 to 63 and 97 to 101.
44. The second and third respondents were placed in a position to and did misappropriate the applicant's funds in the circumstances pleaded in paragraphs 56 to 63 and 97 to 101 in consequence of the first respondent's negligence as pleaded and particularised in paragraphs 21 to 30D.
45. The applicant has suffered economic loss and damage as a result of the misappropriation.

Particulars

- 45.1. Centrelink income misappropriated by the second respondent and third respondent. Further particulars may be supplied following discovery.
- 45.2. Commonwealth government stimulus payment to the applicant on or about 8 December 2008 misappropriated by the second respondent and third respondent. Further particulars may be supplied following discovery.

VII CLAIMS AGAINST SECOND RESPONDENT*Negligence*

46. During the Relevant Period it was reasonably foreseeable that failure by the second respondent to take reasonable care in the operation of GWL including the maintenance of the premises, the employment of sufficient staff and the control of the conduct of the residents of GWL might result in injury to the applicant and Group Members.
47. As the operator of GWL the second respondent had the power and responsibility to control the premises of GWL, to employ and manage staff at GWL, to provide the residents of GWL with adequate support and care, food and clothing and to control the conduct of the residents of GWL.

48. By reason of the matters in paragraphs 46 to 47 the second respondent owed the applicant and Group Members a duty to take reasonable care in its management of GWL to prevent foreseeable loss or injury to the applicant and Group Members.
- 48A During the relevant period, the second respondent should have taken precautions against the following risks of harm to Group Members within the meaning of s 5B of the CLA:
- 48A.1. The risk of personal injury, or death to residents falling from or jumping from the first floor balcony of the Victoria Street premises;
- 48A.2. The risk of personal injury to residents from assaults by the third respondent, staff, members of the residents' committee or other residents of GWL acting at the direction of or as permitted by the third respondent;
- 48A.3. The risk of personal injury to residents from inappropriate medication;
- 48A.4. The risk of personal injury to residents from some or all of the following:
- 48A.4.1 being exposed to and suffering physical assaults, threats of physical assaults, chemical assaults, threats of chemical assaults, deprivation of liberty, and threats of deprivation of liberty;
- 48A.4.2 being subjected to an environment in which residents were regularly assaulted, threatened with assault, chemically assaulted, threatened with chemical assault, confined in the back room as punishment, threatened with confinement in the back room and subject to a range of punishments ordered by the third respondent, staff or the residents' committee;
- 48A.4.3 being isolated and neglected;
- 48A.4.4 being without access to adequate primary and secondary health care or sufficient attention to their health and personal hygiene needs;

48A.4.5 being without adequate access to recreational or therapeutic community activities;

48A.4.6 being inadequately clothed and nourished;

48A.4.7 being required by the third respondent to perform unpaid work;

48A.4.8 being inadequately supervised in circumstances where the residents included aged and high care residents;

48A.4.9 being financially exploited by the third respondent.

48B. During the relevant period, the second respondent knew of the risks described in paragraph 48A.

Particulars

48B.1. The residents of GWL were “handicapped persons” who “required supervision or social habilitation” within the meaning of s 3 of the YACS Act;

48B.2. The third respondent was a registered psychiatric and geriatric nurse with many years’ experience working in the licensed residential centre sector and knew, as a result of that experience, the risks of harm to residents of licensed residential centres in general and GWL in particular;

48B.3. Before the Relevant Period, the third respondent was aware of incidents of residents falling from the balcony;

48B.4. Before the Relevant Period, the third respondent was aware of incidents at GWL of physical assaults, threats of physical assaults, chemical assaults, threats of chemical assaults, deprivation of liberty, and threats of deprivation of liberty.

- 48C. Further, and alternatively, before and during the Relevant Period, the second respondent ought to have known of the risks described in paragraph 48A.

Particulars

- 48C.1. If the second respondent did not know the risks described in paragraph 48A by reason of the matters particularised in paragraph 48B, it ought to have known of those risks by reason of the matters particularised in paragraph 48B.
- 48D. The risks of harm described in paragraph 48A were not insignificant.

Particulars

- 48D.1. The residents were “handicapped persons” within the meaning of s 3 of the YACS Act and were vulnerable to abuse and exploitation.
- 48D.2. The residents were vulnerable in that the applicant and each Group Member could not reasonably be expected to safeguard himself or herself adequately from harm.
- 48D.3. The nature of licenced residential centres and residents of licenced residential centres places residents at real risk of harm.
- 48E. During the relevant period a reasonable person in the second respondent’s position would have taken the following precautions against the risks of harm identified in paragraph 48A:
- 48E.1. Complied with the licence conditions;
- 48E.2. Had a system to monitor and review compliance with the licence conditions and for rectifying breaches of licence conditions;
- 48E.3. Facilitated and encouraged monitoring by the first respondent of the second respondent’s and/or the third respondent’s compliance with licence conditions;

- 48E.4. Encouraged, facilitated and accepted the assistance of the first respondent in providing residents with case management services and access to primary healthcare and secondary healthcare services;
- 48E.5. Encouraged, facilitated and accepted the assistance of the first respondent and other agencies in providing residents with access to recreational and therapeutic activities;
- 48E.6. Encouraged, facilitated and accepted scrutiny of GWL and advocacy on behalf of residents by Official Community Visitors and disability access groups;
- 48E.7. Encouraged residents to speak openly and freely to visitors without fear of retribution;
- 48E.8. Implemented a system of investigating and resolving complaints openly and honestly and without creating fear or threat of retribution to residents;
- 48E.9. Implemented a safe system to protect the applicant and Group Members from violence, threats of violence, false imprisonment and administration of unprescribed quantities of psychotropic medication by the third respondent, staff of GWL or other GWL residents;
- 48E.10. Implemented a system to identify and remove high care or violent residents;
- 48E.11. Not used a committee of residents to maintain order;
- 48E.12. In the alternative to 48E.11, implemented a system of supervision of the residents' committee to ensure that the residents' committee did not breach the criminal law or tort law in its dealings with residents;
- 48E.13. Safely fenced the first floor balcony of the Victoria Street premises so as to prevent injury to residents from accidentally falling or falling as a result of attempts to harm themselves;
- 48E.14. Implemented a system to ensure that residents received food adequate in quantity and nutritional value to meet the daily needs of the applicant;

- 48E.15. Implemented a system to ensure that residents had adequate clothing;
- 48E.16. Implemented a system to ensure that staff were fit and proper people to care for residents;
- 48E.17. Employed sufficient staff to provide the services required by residents and to supervise residents;
- 48E.18 Encouraged and facilitated autonomy and self-reliance by residents in the handling of their financial affairs;
- 48E.19 Implemented a system to ensure that expenditure by or on behalf of residents and any dealings with residents' money was fully, accurately and clearly documented and open to scrutiny by or on behalf of residents.
49. During the Relevant Period the second respondent breached its duty of care to the applicant and Group Members by failing to take or failing to adequately take the precautions described in paragraph 48E against the risks of harm identified in paragraph 48A.
- 49A By reason of the second respondent's breaches of its duty of care to the applicant and Group Members, the applicant and Group Members in the individual circumstances of each case suffered loss or damage of the following kinds:
- 49A.1. Personal injury following falling from or jumping from the first floor balcony of the Victoria Street premises;
- 49A.2 Personal injury from assaults by the third respondent, staff, members of the residents' committee or other residents of GWL acting at the direction of or as permitted by the third respondent;
- 49A.3 Personal injury from inappropriate medication;
- 49A.4 Personal injury from some or all of the following:
- 49A.4.1 being exposed to and suffering physical assaults, threats of physical assaults, chemical assaults, threats of chemical

assaults, deprivation of liberty, and threats of deprivation of liberty;

49A.4.2 being subjected to an environment in which residents were regularly assaulted, threatened with assault, chemically assaulted, threatened with chemical assault, confined in the back room as punishment, threatened with confinement in the back room and subject to a range of punishments ordered by the third respondent, staff or the residents' committee;

49A.4.3 being isolated and neglected;

49A.4.4 being without access to adequate primary and secondary health care or sufficient attention to their health and personal hygiene needs;

49A.4.5 being without adequate access to recreational or therapeutic community activities;

49A.4.6 being inadequately clothed and nourished;

49A.4.7 being required by the third respondent to perform unpaid work;

49A.4.8 being financially exploited by the third respondent;

49A.5 Economic loss as a consequence of financial exploitation by the third respondent.

49B. The negligence of the second respondent was a necessary condition of the loss or damage suffered by the applicant and Group Members referred to in paragraph 49A.

49C. It is appropriate for the second respondent's liability to extend to the loss or damage suffered by the applicant and Group Members referred to in paragraph 49A.

VIII APPLICANT'S CLAIMS AGAINST SECOND RESPONDENT

Fall from balcony

50. On or about 2 February 2000 the applicant jumped from the first floor balcony of the Victoria Street premises in an attempt to harm himself.
51. The applicant was injured in consequence of the second respondent's negligence as pleaded in paragraphs 46 to 49C.
52. The applicant suffered injury, loss and damage as a consequence of the fall from the balcony.

Particulars of injury

The injuries sustained by the applicant as a result of falling from the balcony are listed in paragraph 3 of the Schedule. Further particulars of the applicant's injuries may be provided after the filing of the applicant's expert evidence.

Conditions at GWL

53. In breach of its duty of care, the second respondent neglected the applicant in the Relevant Period.

Particulars of neglect

- 53.1. Failing to serve food to the applicant adequate in quantity or nutritional value to meet the applicant's requirements;
- 53.2. The second respondent substituted protein shakes for two of the applicant's three daily meals from time to time;
- 53.3. Failing to provide the applicant with adequate, suitable clothing and footwear;
- 53.4. The second respondent provided a pool of clothing to be shared by residents of all shapes and sizes;

53.5. Failing to ensure that the applicant received adequate attention to his health needs when the applicant was suffering from injury or illness;

53.6. The circumstances pleaded in paragraph 95.

54. The applicant has suffered injury, loss and damage as a result of this neglect.

Particulars of injury

The injuries sustained by the applicant as a result of the neglect, hunger and malnutrition are listed in paragraph 4 of the Schedule. Further particulars of the applicant's injuries may be provided after the filing of the applicant's expert evidence.

54A. In addition to the matters in paragraphs 53 and 54, during the period of his residence at GWL the applicant was exposed to and experienced the environment at GWL produced by the second respondent's continuing and serious breach of the licence conditions as pleaded and particularised in paragraph 17, including the third respondent;

54A.1. frequently assaulting and battering the applicant who lived in a state of fear and unease and distress in the circumstances pleaded in paragraphs 80 and 82;

54A.2. instructing or permitting GWL staff and residents of GWL to assault and batter the applicant;

54A.3. frequently falsely imprisoning and unlawfully depriving the applicant of his liberty by confining him to a room in the Victoria Street premises used by the third respondent for, inter alia, the purpose of punishing residents of GWL; and

54A.4. frequently chemically assaulting the applicant by administering to the applicant psychotropic medication without prescription;

with the effect described in paragraph 20.

54B. During the period of his residence at GWL, the applicant felt continuing fear, stress and anxiety that he might be assaulted by the third respondent or staff of GWL or

other residents of GWL acting for or at the direction of or as permitted by the third respondent and/or punishment by being required to spend time in the back room of the Victoria Street premises if:

54B.1. he did not comply with the demands of the third respondent or the members of the residents' committee;

54B.2. he attempted to intervene to protect or minimise the harm to other residents being assaulted by the third respondent, staff of GWL or residents of GWL acting for or at the direction of or permitted by the third respondent; or

54B.3. he complained or told anybody about the conditions at GWL.

54C. During the Relevant Period the applicant suffered injury as a result of the matters in paragraphs 54A and 54B.

Particulars

54C.1 The injuries sustained by the applicant as a result of the matters in paragraphs 54A and 54B, are listed in paragraph 5 of the Schedule. Further particulars of the applicant's injuries may be provided after the service of the applicant's expert evidence.

54D. During the Relevant Period the applicant suffered the matters referred to in paragraphs 53, 54A and 54B with the injuries described in paragraphs 54 and 54C as a consequence of the second respondent's negligence as pleaded in paragraphs 46 to 49C.

55. The second respondent is vicariously liable for the tortious conduct of the third respondent pleaded in paragraphs 80 to 101.

Applicant's financial claims against the second respondent

Misappropriation of the applicant's funds

56. During the Relevant Period, the applicant received Centrelink pension payments paid to a bank account in the applicant's name.

57. During the Relevant Period the applicant received other payments to his bank account including a Commonwealth government stimulus payment of \$1400 on or about 8 December 2008.
58. During the Relevant Period the applicant at the request of the third respondent permitted the withdrawal of sums held to the applicant's credit at the applicant's bank and payment of the amounts withdrawn to the second respondent.
59. The second respondent received the withdrawals of 100% of the applicant's pension income for the following purposes:
- 59.1. payment for the applicant's board and lodging at GWL;
 - 59.2. payment for the annual holiday of the applicant;
 - 59.3. to make funds available to the applicant for discretionary expenditure by the applicant;
 - 59.4. to pay for goods and services such as hairdressing, podiatry and other personal care services provided to the applicant by third parties.
60. The second respondent and third respondent did not provide the applicant with any invoice for any board or other expenditure paid on his behalf nor receipts for any money received from or on behalf of the applicant for any board or other expenditure on the applicant's behalf.
61. The services provided by the second respondent were not provided to a standard which justified payment to the second respondent of 100% of the pension income.

Particulars

- 61.1. The second respondent did not provide adequate competent staff to perform all duties necessary for the proper care and safety of the residents;
- 61.2. The second respondent did not provide the applicant with adequate food or clothing;

- 61.3. The protein shakes provided to the applicant were funded by a government subsidy and were not purchased using the applicant's money;
- 61.4. The second respondent did not provide the applicant with any money for the applicant's discretionary expenditure apart from the occasional payment of amounts of about \$5;
- 61.5. The second respondent did not provide the applicant with adequate access to hairdressing, podiatry and other personal care services;
- 61.6. The second respondent, in breach of the licence conditions, did not maintain a record system to provide receipts for any money received from or on behalf of the applicant and itemised receipts for any rent paid or other fixed costs.
62. By reason of the matters in paragraph 61 the second respondent misappropriated to its own use and benefit part of the applicant's pension income.
63. The second respondent misappropriated to its own use and benefit the applicant's Commonwealth government stimulus payment.
64. By reason of the matters in paragraphs 56 to 63 the applicant has suffered financial loss.

Unconscionable conduct

65. The applicant was a person at special disadvantage to the second respondent because of the applicant's intellectual disability, diagnosis of schizophrenia, need for supervision, need for assistance with daily living, financial dependence on the second and third respondent and the applicant's fear of the third respondent caused by the third respondent's conduct described in paragraphs 80, 82, 84 and 86 all of which seriously affected the applicant's ability to make a judgment in his best interests.

- 65A. The second respondent knew or ought to have known of the special disadvantage of the applicant referred to in paragraph 65.

Particulars

- 65A.1 At all material times, the third respondent was a registered geriatric and psychiatric nurse.
- 65A.2 The matters in paragraph 5.
- 65A.3 At all material times, the third respondent had access to written information about the applicant's mental health and intellectual capacity.
- 65A.4 At all material times, the third respondent had the opportunity and the ability to observe the applicant and to form a judgement about the applicant's mental health and intellectual capacity based on the third respondent's training, skill and experience as a registered psychiatric nurse.
- 65A.5 The matters in paragraph 11A.
66. The second respondent took unconscientious advantage of the applicant by procuring the applicant's consent to the release of all of the applicant's income and assets into the control of the second respondent.
- 66A. The arrangement referred to in paragraph 66 by which the applicant consented to the release of all the applicant's income and assets into the second respondent's control was not fair, just and reasonable.
67. It is unconscionable of the second respondent to have retained for its own benefit any income or assets of the applicant exceeding the amount that ought reasonably to have been payable for board and lodging at the standard provided by the second respondent and the reasonable cost of any goods and services provided to the applicant by other persons.
68. The unconscionable conduct of the second respondent referred to in paragraphs 65 to 67 above occurring in the Relevant Period to and including 31 December 2010 was in breach of s 51AA of the *Trade Practices Act 1974 (Cth)*.

69. The unconscionable conduct of the second respondent referred to in paragraphs 65 to 67 above occurring in the Relevant Period from and including 1 January 2011 was in breach of s 20 of the *Australian Consumer Law (Cth)*.

Undue influence

70. The applicant was a person at special disadvantage to the second respondent because of the applicant's intellectual disability, diagnosis of schizophrenia, need for supervision, need for assistance with daily living, and the applicant's fear of the third respondent caused by the third respondent's conduct described in paragraphs 80, 82, 84 and 86 all of which seriously affected the applicant's ability to make a judgment in his best interests.
71. The third respondent had a position of ascendancy over the applicant in relation to financial matters by reason of the matters in paragraph 70.
72. The agreement between the applicant and the second respondent under which the applicant paid 100% of his Centrelink income to the second respondent for board and lodging was disadvantageous to the applicant because it exceeded the reasonable value of the board and lodging provided to the applicant by the second respondent.
- 72A. By reason of the matters in paragraphs 70 and 71 it is presumed that the agreement referred to in paragraph 72 was procured by the undue influence over the applicant of the second respondent and the third respondent.
73. It is unconscionable of the second respondent to have retained for its own benefit any income or assets of the applicant exceeding the amount that ought reasonably to have been payable for board and lodging at the standard provided by the second respondent and the reasonable cost of any goods and services provided to the applicant by other persons.

Statutory Unconscionability

74. During the Relevant Period:
- 74.1. there was material inequality of bargaining position between the second respondent and the applicant as described in paragraph 70;

- 74.2. the applicant was unable to complain about the second and third respondents' conduct as a result of the control of his behaviour by assaults and confinement described in paragraphs 17.1, 80, 82, 84 and 86; and by reason of his isolation and restricted communication with outside carers, visitors or independent advocates described in paragraph 17.2;
- 74.3. there was no record or accounting system whereby the second and third respondent accounted to the applicant for monies paid for board and outgoings expended on his behalf as described in paragraphs 56 to 60.
75. As a result of the matters in 74.1 to 74.3 the applicant had no choice but to comply with any direction by the third respondent regarding the withdrawal of 100% of his pension and other monies in favour of the second respondent without a receipt or record of payment.
76. In the Relevant Period the applicant could have acquired equivalent goods and services from suppliers of board and lodging to handicapped persons at a higher standard and a lower price than was available from the second respondent.
77. In the Relevant Period to and including 31 December 2010, by reason of the matters in paragraphs 74 to 76 the second respondent engaged in unconscionable conduct in breach of s 51AB of the *Trade Practices Act 1974*.
78. In the Relevant Period from and including 1 January 2011, by reason of the matters in paragraphs 74 to 76 the second respondent engaged in unconscionable conduct in breach of s 21 of the *Australian Consumer Law*.
79. By reason of the matters in paragraphs 68, 69, 77 and 78 the applicant has suffered loss and damage.

IX APPLICANT'S CLAIMS AGAINST THIRD RESPONDENT

Assault/battery, false imprisonment claims

80. Between about 1 January 2000 and 28 July 2011 the third respondent repeatedly and regularly assaulted the applicant by striking the applicant.

81. As a result of the conduct of the third respondent referred to in paragraph 80, the applicant suffered injury.

Particulars of injury

The injuries sustained by the applicant as a result of the assaults are listed in paragraph 1 of the Schedule. Further particulars of the applicant's injuries may be provided after the filing of the applicant's expert evidence.

82. In or about late September 2010 to early October 2010 the third respondent assaulted the applicant.

Particulars of assault

- 82.1. In or about late September 2010 to early October 2010 the applicant and another resident of GWL, Tony Turner, ran away from GWL and travelled to Newcastle where they attended Newcastle Police Station.
- 82.2. Following contact between police and the third respondent, the applicant and Mr Turner were collected from Newcastle Police Station by the third respondent's wife and taken in a car by Mrs Powell back to GWL.
- 82.3. On the night of their return to GWL the applicant went to bed in his room at GWL. The third respondent entered the room and said, "*You fucking cunt, if you run away again I will fucking kill you.*"
- 82.4. The third respondent then pulled the applicant out of his bed and onto the floor and kicked the applicant several times and punched him several times with a closed fist.
- 82.5. Approximately half an hour later that night two residents of GWL, Robert Mahomet and Edward Broadhurst, acting on the instructions of the third respondent entered the applicant's bedroom and bashed the applicant.

83. As a result of the conduct of the third respondent referred to in paragraph 82, the applicant suffered injury.

Particulars of injury

The injuries sustained by the applicant as a result of the assaults and false imprisonment are listed in paragraph 1 of the Schedule. Further particulars of the applicant's injuries may be provided after the filing of the applicant's expert evidence.

84. Between about 1 January 2000 and 28 July 2011, the third respondent frequently assaulted the applicant by administering to the applicant psychotropic medication without prescription.
85. As a result of the conduct of the third respondent referred to in paragraph 84 the applicant suffered injury.

Particulars of injury

The injuries sustained by the applicant as a result of the chemical assaults are listed in paragraph 2 of the Schedule. Further particulars of the applicant's injuries may be provided after the filing of the applicant's expert evidence.

86. Between about 1 January 2000 and 28 July 2011 the third respondent frequently unlawfully deprived the applicant of his liberty by delineating the area within which the applicant was to be confined and by confining the applicant to a room in the Victoria Street premises for the purpose of punishing him.
87. As a result of the assault and/or battery and/or false imprisonment committed upon the applicant as pleaded above, the applicant suffered pain, bruising, deprivation of liberty, distress, humiliation and indignity.

88. The applicant suffered unusual loss and claims aggravated damages.

Particulars of aggravated damages

- 88.1. The applicant was vulnerable to abuse and unable to protect himself by reason of his intellectual disability, his schizophrenia and his dependence upon the third respondent for personal care and assistance.
- 88.2. The assault and/or battery and/or false imprisonment were inflicted upon the applicant in his home and the applicant was unable, by reason of his disabilities to leave the home or find a new home.

89. The applicant was treated with contumelious disregard and claims exemplary damages.

Particulars of claim for exemplary damages

- 89.1. The conduct of the third respondent in the assaults and/or batteries and/or false imprisonment described above was deliberate and calculated to inflict suffering on the applicant.

Negligence

90. During the Relevant Period it was reasonably foreseeable that failure by the third respondent to take reasonable care in the management of GWL, the maintenance of the premises, the employment of sufficient staff and the control of the conduct of the residents of GWL would result in injury to the applicant and Group Members.
91. During the Relevant Period the third respondent breached his duty of care to the applicant and Group Members.

Particulars of Breach of Duty of Care

- 91.1. Failure to comply with the licence conditions in the manner described in paragraph 17.
- 91.2. Failure to implement a safe system to protect the applicant and Group Members from violence, threats of violence, false imprisonment and

administration of unprescribed quantities of psychotropic medication by staff of GWL or other GWL residents.

- 91.3. Using a committee of residents to maintain order.
- 91.4. Permitting the committee of residents to punish the applicant and Group Members by means of assault, threatened assault, deprivation of liberty for extended periods and administration of unprescribed quantities of psychotropic medication.
- 91.5. Failing to adequately or safely fence or secure the first floor balcony of the Victoria Street premises so as to prevent injury to the applicant and Group Members from accidentally falling or falling as a result of attempts to harm themselves.
- 91.6. Failing to ensure that the applicant and Group Members had access to adequate primary and secondary health care or received sufficient attention to the health and personal hygiene needs of the applicant and Group Members.
- 91.7. Failing to ensure that the applicant and Group Members received food adequate in quantity and nutritional value to meet the daily needs of the applicant and Group Members.

Applicant's fall from balcony

92. On or about 2 February 2000 the applicant jumped from the first floor balcony of the Victoria Street premises in an attempt to harm himself.
93. The applicant was injured in consequence of the third respondent's negligence.
94. The applicant has suffered injury, loss and damage as a consequence of the fall from the balcony.

Particulars of injury

The injuries sustained by the applicant as a result of falling from the balcony are listed in paragraph 3 of the Schedule. Further particulars of

the applicant's injuries may be provided after the filing of the applicant's expert evidence.

Conditions at GWL

95. The third respondent neglected the applicant in the Relevant Period.

Particulars of neglect

- 95.1. Failing to serve food to the applicant adequate in quantity or nutritional value to meet the applicant's requirements;
- 95.2. The third respondent substituted protein shakes for two of the applicant's three daily meals from time to time;
- 95.3. Failing to provide the applicant with adequate, suitable clothing and footwear;
- 95.4. The third respondent provided a pool of clothing to be shared by residents of all shapes and sizes;
- 95.5. Failing to ensure that the applicant received adequate attention to his health needs when the applicant was suffering from injury or illness.
- 95.6. The circumstances pleaded in paragraph 53.
96. The applicant suffered injury as a result of the neglect.

Particulars of injury

The injuries sustained by the applicant as a result of the neglect and malnutrition are listed in paragraph 4 of the Schedule. Further particulars of the applicant's injuries may be provided after the filing of the applicant's expert evidence.

*Financial claims**Misappropriation of the applicant's funds*

97. During the Relevant Period, the applicant received Centrelink pension payments paid to a bank account in the applicant's name.
98. During the Relevant Period the applicant received other payments to his bank account including a Commonwealth government stimulus payment of \$1400 on or about 8 December 2008.
99. During the Relevant Period, the third respondent was the agent of the applicant for the purposes of:
 - 99.1. making withdrawals from the applicant's bank account;
 - 99.2. making payments on behalf of the applicant to the second respondent for board and lodging;
 - 99.3. making payments on behalf of the applicant for goods and/or services provided to the applicant by third parties.
100. During the Relevant Period, the third respondent, as the applicant's agent, owed the applicant the following duties:
 - 100.1. to ensure that any money withdrawn from the applicant's account was used for the applicant's benefit;
 - 100.2. to obtain and maintain receipts for expenditure on behalf of the applicant;
 - 100.3. to account for the applicant's money;
 - 100.4. not to use the applicant's money for the third respondent's own benefit;
 - 100.5. not to allow any other person to use the applicant's money for that other person's own benefit.

101. In breach of the duties set out in paragraph 100 the third respondent:
- 101.1. intermingled the applicant's funds with funds held by the third respondent for other residents of GWL;
 - 101.2. did not maintain a system to ensure that the applicant's money was used for the applicant's benefit;
 - 101.3. did not obtain and maintain receipts for expenditure of the applicant's money;
 - 101.4. did not account for the applicant's money;
 - 101.5. used the applicant's money for his own benefit;
 - 101.6. allowed the second respondent to use the money for its benefit.
102. By reason of the matters in paragraphs 97 to 101 the applicant has suffered financial loss.

Unconscionable conduct

103. The applicant was a person at special disadvantage to the third respondent because of the applicant's intellectual disability, diagnosis of schizophrenia, need for supervision, need for assistance with daily living, and the applicant's fear of the third respondent caused by the third respondent's conduct described in paragraphs 80, 82, 84 and 86.
- 103A. The second respondent knew or ought to have known of the special disadvantage of the applicant referred to in paragraph 103.

Particulars

- 103A.1 At all material times, the third respondent was a registered geriatric and psychiatric nurse.
- 103A.2 The matters in paragraph 5.

103A.3 At all material times, the third respondent had access to written information about the applicant's mental health and intellectual capacity.

103A.4 At all material times, the third respondent had the opportunity and the ability to observe the applicant and to form a judgement about the applicant's mental health and intellectual capacity based on the third respondent's training, skill and experience as a registered psychiatric nurse.

104. The third respondent took unconscientious advantage of the applicant by procuring the applicant's consent to the release of all of the applicant's income and assets into the control of the third respondent.

105. It is unconscionable of the third respondent to have retained for his own benefit any income or assets of the applicant exceeding the amount that ought reasonably to have been payable for board and lodging at the standard provided by the second respondent and the reasonable cost of any goods and services provided to the applicant by other persons.

Undue influence

106. The applicant was a person at special disadvantage to the third respondent because of the applicant's intellectual disability, diagnosis of schizophrenia, need for supervision, need for assistance with daily living, and the applicant's fear of the third respondent caused by the third respondent's conduct described in paragraphs 80, 82, 84 and 86.

107. The third respondent had a position of ascendancy over the applicant in relation to financial matters by reason of the matters in paragraph 106.

108. The agreement between the applicant and the second respondent under which the applicant paid 100% of his Centrelink income to the second respondent for board and lodging was disadvantageous to the applicant because it exceeded the reasonable value of the board and lodging provided to the applicant by the second respondent.

- 108A. By reason of the matters in paragraphs 106 and 107 it is presumed that the agreement referred to in paragraph 108 was procured by the undue influence over the applicant of the second respondent and the third respondent.
109. The third respondent was a person involved in the second respondent's breaches of s 51AA and s 51AB of the *Trade Practices Act 1974* referred to in paragraphs 68 and 77 above.
110. The third respondent was a person involved in the second respondent's breaches of s 20 and s 21 of the *Australian Consumer Law* referred to in paragraphs 69 and 78 above.

X. CLAIMS OF GROUP MEMBERS

111. The applicant and each of the Group Members have suffered loss and/or injury as a consequence of some or all of the following conduct of the first, second and third respondents:
- 111.1. the breach by the second respondent and/or the third respondent of the licence conditions, which loss or injury would not have occurred had the first respondent performed its functions and exercised its powers under the YACS Act in the Relevant Period with reasonable care;
 - 111.2. the breach by the second respondent of its duty of care to each of the Group Members in the Relevant Period;
 - 111.3. the breach by the third respondent of his duty of care to each of the Group Members in the Relevant Period;
 - 111.4. unconscionable conduct or undue influence of the second respondent or the third respondent;
 - 111.5. contraventions of the *Trade Practices Act* and/or the *Australian Consumer Law* (Cth) by the second respondent, contraventions in which the third respondent was involved;

- 111.6. misappropriation of funds by the second respondent or the third respondent;
- 111.7. assault by or at the request of the third respondent;
- 111.8. false imprisonment by or at the request of the third respondent;
- 111.9. administration by or at the request of the third respondent of medication exceeding the prescribed dose for that Group Member or which was not prescribed for that Group Member;
- 111.10. neglect by the second respondent or the third respondent.
- 111.11 intentional infliction of mental harm on group members by the third respondent.

Particulars of injury, loss and damage

The material facts and particulars of Group Members, other than John Harragon, will be provided after a trial of the common issues. (It is proposed to have John Harragon's claim, pleaded at paragraphs 113 to 138 of the Further Amended Statement of Claim, determined together with the applicant's claim at a trial of common issues.)

- 112. The second respondent is vicariously liable to the Group Members for losses suffered by the Group Members for tortious conduct of the third respondent.

XI. CLAIM OF GROUP MEMBER JOHN HARRAGON

- 113. John Harragon resided at GWL from about 1993 until 12 August 2011.
- 114. For part of his residence at GWL John Harragon resided at the Victoria Street premises and for the other part of his residence at GWL he resided at the Kinhgam Street premises.

115. John Harragon was, during the period of his residence at GWL, a “handicapped person” within the meaning of the YACS Act.

Particulars

115.1 During the Relevant Period and continuing John Harragon has schizophrenia.

115.2 During the Relevant Period John Harragon required supervision and assistance with daily living.

Personal Injury Negligence claims of John Harragon

116. During the period of his residence at GWL, John Harragon frequently saw or heard assaults of residents committed by the third respondent, including seeing the third respondent assault the applicant numerous times.
117. On a number of occasions during the period of his residence at GWL John Harragon saw or heard a resident named Athol Darby assault other residents at the request of the third respondent.
118. John Harragon was not himself assaulted by the third respondent or any person acting at the direction of or with the consent of the third respondent during the period of his residence at GWL.
119. During the period of his residence at GWL John Harragon saw residents being required by the third respondent to stay in the back room of the Victoria Street premises, on some occasions for several days in succession, as punishment for breach of the rules at GWL.
120. During the period of his residence at GWL, John Harragon had no control over his personal finances.
121. During the period of his residence at GWL John Harragon was required by the third respondent to work in a lawn mowing team of residents of GWL and, on each lawn mowing work day, performed about 4 hours of lawn mowing work. There were about 3 lawn mowing work days each week in summer and about 1 lawn mowing work day

per week in winter. John Harragon and other members of the lawn mowing team were not paid for their work.

122. In addition to the matters in paragraphs 116 to 121, during the period of his residence at GWL John Harragon was exposed to and experienced the environment at GWL produced by:

122.1. the second respondent's continuing serious breach of the licence conditions as pleaded and particularised in paragraph 16; and

122.2. the third respondent's continuing serious breach of the licence conditions as pleaded and particularised in paragraph 17;

with the effect described in paragraph 20.

123. During the period of his residence at GWL John Harragon felt continuing fear, stress and anxiety that he might be assaulted by the third respondent or staff of GWL or other residents of GWL acting for or at the direction of or as permitted by the third respondent and/or punishment by being required to spend time in the back room of the Victoria Street premises if:

123.1. he did not comply with the demands of the third respondent and/or members of the residents' committee;

123.2. he attempted to intervene to protect or minimise the harm to other residents being assaulted by the third respondent, staff of GWL or residents of GWL acting for or at the direction of or as permitted by the third respondent; or

123.3. he complained or told anybody about the conditions at GWL.

124. During the period of his residence at GWL John Harragon felt anxiety and guilt, about his failure to intervene to protect or minimise the harm to other residents being assaulted by the third respondent, staff of GWL or residents of GWL acting for or at the direction of or as permitted by the third respondent or to make a complaint about the conditions at GWL.

125. As a consequence of the matters in paragraphs 116 to 124 John Harragon suffered injury during the Relevant Period.

Particulars

- 125.1 Aggravation of his schizophrenia;
- 125.2 A deterioration in his mental health in the aggravation of his acute positive symptoms and negative symptoms of schizophrenia;
- 125.3 Long term psychological sequelae consistent with post-traumatic stress disorder;
- 125.4 Further particulars of injury will be provided at the time of filing expert evidence.
126. The injuries referred to in paragraph 125 were caused by the negligence of the first respondent during the Relevant Period.

Particulars

- 126.1 The first respondent owed John Harragon a duty of care by reason of the matters in paragraphs 21 to 27.
- 126.2 The first respondent breached its duty of care to John Harragon by reason of the matters in paragraphs 27A to 29.
- 126.3 The first respondent's negligence caused John Harragon's injuries by reason of the matters in paragraphs 30 to 30D.
127. The injuries referred to in paragraph 125 were caused by the negligence of the second respondent during the Relevant Period.

Particulars of negligence of the second respondent

- 127.1. The second respondent owed John Harragon a duty of care by reason of the matters in paragraphs 46 to 48E.

- 127.2. The second respondent breached its duty of care to John Harragon by reason of the matters in paragraph 49.
- 127.3. John Harragon would not have suffered the injuries but for the negligence of the second respondent; and
- 127.4. It is appropriate for the second respondent's liability to extend to the harm suffered by John Harragon.
128. The injuries referred to in paragraph 125 were caused by the negligence of the third respondent during the Relevant Period.

Particulars of negligence of the third respondent

- 128.1. The third respondent owed John Harragon a duty of care by reason of the matters in paragraph 90.
- 128.2. The third respondent breached its duty of care to John Harragon by reason of the matters in paragraph 91.
- 128.3. John Harragon would not have suffered the injuries but for the negligence of the third respondent; and
- 128.4. It is appropriate for the third respondent's liability to extend to the harm suffered by John Harragon.

Financial Claims of John Harragon

129. During the period of his residence at GWL John Harragon experienced financial loss in circumstances not materially different from the circumstances experienced by the applicant as pleaded in paragraphs 43 to 45, 56 to 64 and 97 to 102.
130. During the period of his residence at GWL John Harragon was subject to misappropriation of his funds, unconscionable conduct, undue influence and statutory unconscionability at the hands of the second respondent and the third respondent in similar circumstances to the experience of the applicant described in paragraphs 65 to 79 and paragraphs 97 to 110 except that John Harragon was not

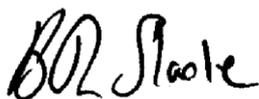
subjected to the conduct of the third respondent described in paragraphs 80, 82, 84 and 86.

Intentional infliction of mental harm by the third respondent on John Harragon

131. During the Relevant Period the third respondent engaged in the conduct described in paragraphs 17 and 116 to 122.
132. When engaging in the conduct referred to in paragraph 131, the third respondent intended to cause or was recklessly indifferent to causing psychological harm to John Harragon.
133. In the alternative to paragraph 132, the third respondent intended to cause harm to residents who witnessed or were subject to the third respondent's behaviour of the kind described in paragraphs 17 and 116 to 122 and was recklessly indifferent to whether harm was caused to John Harragon who was a bystander in the immediate vicinity of the third respondent when he engaged in that behaviour.
134. As a result of the conduct of the third respondent referred to in paragraph 131 the applicant suffered harm, including the psychiatric injury pleaded and particularised in paragraph 125.
135. The conduct of the third respondent referred to in paragraph 131 was reasonably likely to cause harm in a normal person.
136. The third respondent engaged in the conduct referred to in paragraph 131 without justification or lawful excuse.
137. By reason of the matters in paragraphs 131 to 136 the third respondent is liable to compensate John Harragon for the injuries described in paragraph 134.

138. The second respondent is vicariously liable to John Harragon for the conduct of the third respondent and the injuries of John Harragon referred to in paragraphs 131 to 137.

Date: 15th day December 2015



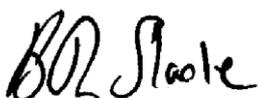
Signed by Ben Slade
Lawyer for the Applicant

This pleading was prepared by Paul Batley of counsel and settled by Michael Lee SC.

Certificate of lawyer

I Ben Slade 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: 15th day December 2015



Signed by Ben Slade
Lawyer for the Applicant

Schedule

Plaintiff's Injury Schedule

1. Injuries [assault and false imprisonment]
 - (a) Psychological distress, including a perpetual state of fear and anxiety while in the presence of the third defendant;
 - (b) Pain;
 - (c) Bruising;
 - (d) Closed head injury;
 - (e) Surgical scarring;
 - (f) Aggravation of psychiatric disorder/s;
 - (g) Post-traumatic stress disorder.

2. Injuries [chemical assaults]
 - (a) Psychological distress, including a perpetual state of fear and anxiety while in the presence of the third defendant;
 - (b) Sedation;
 - (c) Drowsiness;
 - (d) Slurred speech;
 - (e) Dry mouth;
 - (f) Constipation;
 - (g) Urinary retention;
 - (h) Lack of enjoyment of life;
 - (i) Post-traumatic stress disorder.

3. Injuries [fall from balcony]
 - (a) Bilateral calcaneal fractures;
 - (b) Compression fracture of lumbar spine L4 with posterior fragment;
 - (c) Spinal canal narrowing;
 - (d) Pulmonary contusion;
 - (e) Deep venous thrombosis in the superficial femoral;

- (f) Loss of consciousness;
 - (g) Tear of the medial collateral ligament;
 - (h) Collapse of right ankle into valgus position;
 - (i) Aggravation of pre-existing left ankle injury;
 - (j) Secondary osteoarthritis in the left knee;
 - (k) Secondary arthritis in the right knee;
 - (l) Valgus collapse of left knee;
 - (m) Valgus collapse of right knee;
 - (n) Unsteady gait;
 - (o) Pain and suffering and loss of enjoyment of life;
 - (p) Aggravation of psychiatric disorder/s;
 - (q) Post-traumatic stress disorder.
4. Injuries [neglect/hunger/malnutrition]
- (a) Feeling cold from inadequate clothing;
 - (b) Discomfort from ill-fitting clothing;
 - (c) Hunger;
 - (d) Malnutrition;
 - (e) Discomfort, pain and suffering from untreated or inadequately treated injuries and illnesses;
 - (f) Humiliation;
 - (g) Distress;
 - (h) Aggravation of psychiatric disorder/s;
 - (i) Post-traumatic stress disorder.
5. Injuries [exposure to conditions at GWL]
- (a) Humiliation;
 - (b) Distress;
 - (c) Aggravation of psychiatric disorder/s.
 - (d) Post-traumatic stress disorder.