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Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: NTD64/2016
File Title: Dylan Riley Jenkins & Anor v Northern Territory of Australia
Registry: NORTHERN TERRITORY REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 11/10/2019 12:56:22 PM ACST

Registrar

Important Information

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Form 33
Rule 16.32

Fourth Defence

(Further Amended Defence to the Sixth Statement of Claim)

No. NTD64 of 2016

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

DYLAN RILEY JENKINGS

First Applicant

AARON HYDE

Second Applicant

NORTHERN TERRITORY OF AUSTRALIA

Respondent

PARTIES

Group Members

1. The respondent admits that the first and second applicants bring this claim as a representative action in the manner pleaded in paragraph 1.
- 1A For this defence, the respondent adopts the abbreviations used in paragraphs 1, 5, 15, and 55A of the 6SOC.
3. The respondent does not know and cannot admit paragraph 3.

First Applicant

4. The respondent admits paragraph 4.

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[Form approved 01/08/2011]

5. As to paragraph 5, the respondent admits that the first applicant was detained in youth detention centres for the periods pleaded in paragraph 5 of the 6SOC and says further that the applicant was also detained at New Don Dale between 30 and 31 July 2015.

6. The respondent admits paragraph 6.

Second Applicant

7. The respondent admits paragraph 7.

8. As to paragraph 8, the respondent admits that the second applicant was detained in youth detention centres for the periods pleaded in paragraph 8 of the 6SOC save that the respondent denies that the second applicant was detained between 3 May 2012 and 3 December 2012 as pleaded in sub-paragraph 8.4 and says that the second applicant was detained at Old Don Dale between 3 May 2012 and 30 November 2012.

9. The respondent admits paragraph 9.

Respondent

10. The respondent admits paragraph 10.

11. As to paragraph 11, the respondent:

11.1. says that at all relevant times each commissioner, superintendent and member of staff was acting in the performance or purported performance of their functions under the Act and Regulations;

11.2. says that in the performance of their functions under the Act and Regulations each commissioner and superintendent was exercising independent authority of their own conferred under the Act and Regulations and was not acting in the service of, or as agents of, the respondent;

11.3. says that in the performance of their responsibilities as detention centre staff each member of staff was acting in the services of, or as agents of, the superintendent not the respondent; and

11.4. otherwise denies the allegations.

12. The respondent denies paragraph 12 on the premises of paragraph 11.

RELEVANT PROVISIONS OF THE ACT AND REGULATIONS

13. The respondent does not plead in answer to paragraphs 15 to 47 of the 6SOC which do not contain any material allegations of fact.

DETERMINATIONS

48. The respondent admits paragraph 48.
49. The respondent denies paragraphs 49 to 53 and says that any directive or other determination under reg 30 of the Regulations in force from time to time:
- 49.1. applies in accordance with its terms interpreted in accordance with the directive or determination as a whole and any related directives or determinations;
 - 49.2. does not operate as a restriction on power conferred on any person under the Act, Regulations or any other Act;
 - 49.3. operates to direct particular members of staff or staff generally in the exercise of powers and functions conferred on other persons, particularly the superintendent, under the Act and Regulations; and
 - 49.4. further or in the alternative to 49.3, operates to delegate authority conferred under the Act and Regulations in accordance with ss 157 and 216 of the Act to particular members of staff or staff generally.

Record keeping determinations

54. The respondent does not plead in answer to paragraph 54 which does not contain any material allegations of fact.

APPOINTMENTS OF COMMISSIONERS AND SUPERINTENDENTS

- 54A As to paragraph 54A, the respondent:
- 54A.1 admits that the appointment of Kenneth Middlebrook as commissioner commenced on 1 June 2008;
 - 54A.2 denies that the appointment expired on 31 May 2012; and
 - 54A.3 says further that the appointment continued until 12 November 2015 when Kenneth Middlebrook resigned as commissioner.
- 54B The respondent denies paragraph 54B save to the extent admitted in this paragraph and says that:
- 54B.1 the persons identified in sub-paragraphs 54B.1 to 54B.5 of the 6SOC were appointed as acting commissioners for the periods pleaded in those sub-paragraphs;
 - 54B.2 Philip Brown was also appointed acting commissioner between the following dates:
 - (a) 12 December 2012 to 14 January 2013.

- (b) 8 April 2013 to 10 April 2013.
- (c) 16 May 2013 to 21 May 2013.
- (d) Anytime during the period pleaded in paragraph 54B of the 6SOC when the commissioner was unable to perform the duties of the position.

54C The respondent denies paragraph 54C on the premises of paragraphs 54A and 54B.

54D The respondent denies paragraph 54D and says that:

54D.1 between 20 December 2011 and 16 December 2012 Michael Yaxley was the acting superintendent of Old Don Dale;

54D.2 between 17 December 2012 and 11 Nov 2013 Peter Rainbird was the superintendent of Old Don Dale; and

54D.3 from 12 November for the balance of the pleaded period Russell Caldwell was the superintendent of Old Don Dale.

54E The respondent denies paragraph 54E and says that during the pleaded period Russell Caldwell was the superintendent of Holtz Youth Detention Centre.

54F The respondent denies paragraph 54F and says that during the pleaded period Russell Caldwell was the superintendent of New Don Dale.

54G The respondent denies paragraph 54G and says that during the pleaded period Victor Williams was the superintendent of New Don Dale.

54H The respondent denies paragraph 54H on the premises of paragraphs 54D to 54G.

RESIDUAL LIBERTY

55. The respondent does not admit paragraph 55.

55A The respondent does not plead to paragraph 55A which does not contain any material allegations of fact.

56. The respondent denies paragraph 56 and says that it does not contain any material allegations of fact.

BATTERY AND/OR ASSAULT

57. The respondent denies paragraph 57 and says that it does not contain any material allegations of fact.

58. The respondent denies paragraph 58 and says that it does not contain any material allegations of fact.

59. The respondent denies paragraph 59 and says that it does not contain any material allegation of fact.

FIRST APPLICANT'S INDIVIDUAL TORT CLAIMS

In Or About April 2016 Claims

60. The respondent denies paragraph 60 and says that there was no incident corresponding to the allegations pleaded in paragraphs 60 to 66 of the 6SOC.
61. The respondent denies paragraph 61.
62. The respondent denies paragraph 62.
63. The respondent denies paragraph 63.
64. The respondent denies paragraph 64.
65. The respondent denies paragraph 65.
66. The respondent denies paragraph 66.
67. The respondent denies paragraph 67.
- 67A The respondent denies paragraph 67A.

Isolation Claims

68. Save to the extent admitted in this paragraph, the respondent denies paragraph 68 and says that:
- 68.1 the first applicant was accommodated overnight in the BMU on 15 to 16 May 2014 in the following circumstances not amounting to isolation:
- (a) the first applicant and three other detainees were admitted to Old Don Dale at approximately 23:30 on 15 May 2014;
 - (b) at the time of their admission all detainees in Old Don Dale were locked down for the night;
 - (c) the first applicant and the other three newly admitted detainees were allocated BMU cells as bedrooms for the night.
 - (d) when confined in his cell for the night the first applicant was able to hear and speak to the other newly admitted detainees;
 - (e) the first applicant was not kept separate from other detainees;
 - (f) in the morning on 16 May 2014 the first applicant was unlocked from his bedroom and he was permitted to participate in ordinary

daily activities and routines for the remainder of the period pleaded in sub-paragraph 68.1 of the 6SOC;

- 68.2 the first applicant was given a 24 hour room placement in the HSU on 30 May 2015 in the following circumstances not amounting to isolation or alternatively in accordance with s 153(5) of the Act:
- (a) at approximately 22:00 on 30 May 2015 during general evening lockdown the first applicant smashed the television in his room;
 - (b) the first applicant was moved to HSU room 2 in A wing;
 - (c) deputy superintendent Kevin Cooper authorised a 24 hour room placement in consequence of the first applicant's misbehaviour;
 - (d) during the period of the room placement the first respondent was permitted time out of his room for meals, visits and telephone calls, daily hygiene, recreational time, and to attend a medical appointment;
 - (e) when confined in his room the first applicant was able to hear and speak to another detainee confined in the adjoining room;
 - (f) the room placement expired after general evening lockdown on 31 May 2015 and the first applicant remained in room 2 overnight as his bedroom;
 - (g) in the morning on 1 June 2015 the first applicant was unlocked from his bedroom and he was permitted to participate in ordinary daily activities and routines for the remainder of the period pleaded in sub-paragraph 68.2 of the 6SOC.
- 68.3 on 12 January 2016 the first applicant was briefly returned to his bedroom in K Block in the following circumstances not amounting to isolation:
- (a) at approximately 12:40 the first applicant attempted to trip another detainee resulting in a physical altercation between the two detainees;
 - (b) both detainees were separated by staff and returned to their rooms where they were separately spoken to about the incident;
 - (c) the first applicant's bedroom was room 12 in K Block;
 - (d) K Block is not part of the HSU;
 - (e) the other detainee did not wish to make a complaint to police about the incident and the first applicant refused to indicate whether he wished to make a complaint;

- (f) the first applicant was released from his bedroom shortly thereafter and was permitted to participate in ordinary daily activities and routines for the remainder of the period pleaded in sub-paragraph 68.3 of the 6SOC;
- 68.4 on 3 February 2016 the first applicant was given a 24 hour room placement in the HSU in the following circumstances not amounting to isolation or alternatively in accordance with s 153(5) of the Act:
- (a) at approximately 13:05 the first applicant was involved in a fight with another detainee;
 - (b) the first applicant was separated from the other detainee and escorted to his room in the HSU where he was spoken to about the incident;
 - (c) neither detainee wished to make a complaint to police about the incident;
 - (d) a 24 hour room placement was authorised by acting superintendent Kevin Cooper in consequence of the first applicant's misbehaviour;
 - (e) during the room placement the first respondent was permitted out of his room for visits, telephone calls, recreation time, and daily hygiene;
 - (f) from the conclusion of the placement the first applicant was regressed to Stage 1 of his Individual Intensive Management Plan (**IIMP**) commencing 4 February 2016;
- 68.5 on 9 and 10 March 2016 the first applicant was given 24 hour room placements in the HSU in the following circumstances not amounting to isolation or alternatively in accordance with s 153(5) of the Act:
- (a) at approximately 12:50 on 9 March 2016 the first applicant was involved in a fight with another detainee;
 - (b) the first applicant was separated from the other detainee who was violent towards staff;
 - (c) after the other detainee had been restrained and escorted to his bedroom, the first applicant was then returned to his bedroom in the HSU;
 - (d) both detainees sustained minor injuries from the fight;
 - (e) neither detainee wished to make a complaint to police about the incident;

- (f) a 24 hour room placement was authorised by deputy superintendent Kevin Cooper in consequence of the first applicant's misbehaviour;
- (g) during the period of the room placement the first applicant was permitted out of his room for visits, telephone calls, recreational times, and daily hygiene;
- (h) when confined in his room the first applicant was able to hear and speak to detainees in the nearby rooms and the B wing recreation yard;
- (i) from the conclusion of the room placement the first applicant was permitted to participate in ordinary daily activities and routines;
- (j) at approximately 21:30 on 10 March 2016 the first applicant and other nearby HSU occupants were kicking the doors of their rooms and damaging property in their rooms;
- (k) the first applicant threatened to stab staff if they approached him or entered his room;
- (l) at approximately 22:45 the first applicant told staff that he wanted to be moved as other detainees nearby were stirring him up;
- (m) shortly thereafter the first applicant was moved to HSU room 3 in A wing and given a 24 hour placement authorised by deputy superintendent Kevin Cooper in consequence of the first applicant's misbehaviour;
- (n) during the period of the room placement the first applicant was permitted out of his room for recreation time and daily hygiene in company with another detainee in the adjoining room;
- (o) during the period of the room placement the first applicant was permitted out of his room for visits and telephone calls;
- (p) when confined in his room the first applicant was able to hear and speak to another detainee confined in the adjoining room;
- (q) from the conclusion of the room placement the first applicant returned was permitted to participate in ordinary daily activities and routines;

68.6 on 3 May 2016 the first applicant was given a 24 hour room placement in the HSU in the following circumstances not amounting to isolation or alternatively in accordance with s 153(5) of the Act:

- (a) at approximately 19:55 the first applicant damaged the light fittings in HSU room 11 in which he was accommodated resulting in hazardous debris in the room;

- (b) the first applicant threatened to assault staff if they attempted to move him to a different room;
- (c) the first applicant attempted to use the light fittings as weapons to further damage his room;
- (d) at approximately 22:45 the first applicant was moved to HSU room 16 with the assistance of correctional officers;
- (e) once moved to room 16 the first applicant continued to kick his door and swear at staff;
- (f) at approximately midnight a 24 hour room placement was authorised by deputy superintendent Kevin Cooper in consequence of the first applicant's misbehaviour;
- (g) during the period of the room placement the first applicant was permitted out of his room for visits, telephone calls, recreation time, and daily hygiene;
- (h) when confined in his room the first applicant was able to speak to hear and speak to other detainees in nearby rooms and in the B wing recreation yard;
- (i) the following morning the first applicant was moved to C wing in the HSU;
- (j) at the conclusion of the room placement the first applicant was regressed to stage 1 of his IIMP for the remainder of the period pleaded in sub-paragraph 68.6 of the 6SOC;
- (k) during the period of the IMP the first applicant was permitted out of his room for ordinary block operations including meals, schooling and some programs and activities, recreation time, telephone calls and visits;
- (l) during the period of the IMP the first applicant was not kept separate from other detainees in the HSU;
- (m) during the remainder of the period pleaded in sub-paragraph 68.6 of the 6SOC the first applicant remained aggressive and non-compliant and on 6 May 2016 the first applicant damaged room 29 in which he was accommodated with a large piece of pipe he broke off from the toilet privacy screen;

68.7 on 12 May 2016 at approximately 15:15 the first applicant was given a 24 hour room placement in the HSU in the following circumstances not amounting to isolation or alternatively in accordance with s 153(5) of the Act:

- (a) on 12 May 2016 at approximately 14:40 the first applicant kicked another detainee in the leg;
 - (b) the first respondent was separated from the other detainee who was distressed;
 - (c) the first respondent was escorted by staff to HSU room 4 and spoken to separately about the incident;
 - (d) the other detainee indicated that he wished to make a complaint to police about the first applicant;
 - (e) a 24 hour room placement was authorised by deputy superintendent Kevin Cooper in consequence of the first applicant's misbehaviour;
 - (f) during the period of the room placement the first applicant was moved rooms several times because he damaged his allocated room;
 - (g) during the period of the room placement the first respondent was not permitted to participate in ordinary daily routines and was confined to his room except for visits, telephone calls, exercise, and daily hygiene;
 - (h) when confined in his room the first applicant was able to hear and speak to other detainees in nearby rooms;
 - (i) the placement ended at approximately 14:45 on 13 May 2016 after which time the first applicant was regressed to stage 1 of his IIMP for the remainder of the period pleaded in sub-paragraph 68.7 of the 6SOC;
 - (n) during the period of the IMP the first applicant was permitted out of his room for ordinary block operations including meals, schooling and some programs and activities, recreation time, telephone calls and visits;
 - (o) during the period of the IMP the first applicant was not kept separate from other detainees in the HSU;
- 68.8 on 2 August 2016 the first applicant was briefly moved to a holding cell in the admissions building in the following circumstances not amounting to isolation:
- (a) at approximately 10:45 on 2 August 2016 the first applicant was escorted to the admissions building for an audio-visual link connection;
 - (b) while in the admissions building the first applicant was involved in a fight with another detainee;

- (c) both detainees were separated and moved into the holding cells in the admissions building where they were spoken to separately about the incident;
- (d) neither detainee wished to make a complaint to police and it was determined that the first applicant was not the aggressor in this instance;
- (e) the first applicant was released from the holding cell shortly thereafter and was permitted to participate in ordinary daily activities and routines for the remainder of the period pleaded in sub-paragraph 68.8 of the 6SOC;
- (f) the admissions building is not in the HSU.

68A The respondent denies paragraph 68A.

69. The respondent denies paragraph 69 on the premises of paragraphs 54C, 54D, 54G, and 68 of the Defence and says further that:

- 69.1 if (which is denied) a room placement imposed on the first applicant on any of the pleaded occasions amounted to isolation it was not continued for more than 24 hours;
- 69.2 if (which is denied) a room placement imposed on the first applicant on any of the pleaded occasions amounted to isolation it was approved by the superintendent or a person having a written delegation of the superintendent's power under s 153(5) in accordance with s 157 of the Act;
- 69.3 on each pleaded occasion a room placement was justified and reasonable in all the circumstances including the behaviour of the first applicant at the time and his history of misbehaviour in detention.

69A Save to the extent admitted in this paragraph, the respondent denies paragraph 69A and says that:

- 69A.1 on admission to detention on 28 November 2015 the first applicant was accommodated in the HSU but was not subject to an IIMP and was permitted to participate in ordinary daily activities and routines for the remainder of the period pleaded in sub-paragraph 69A.1;
- 69A.2 on 15 January 2016 the first applicant was relocated from K Block to the HSU as his bedroom in consequence of misbehaviour when temporarily released from detention to attend Court but was not subject to an IIMP and was permitted to participate in ordinary daily activities and routines for the period pleaded in sub-paragraph 69A.2;
- 69A.3 the first applicant was accommodated in the HSU subject to an IIMP between 4 February 2016 and 9 March 2016;

- 69A.4 the first applicant was accommodated in the HSU subject to an IIMP between 11 March 2016 and 3 May 2016;
- 69A.5 the first applicant was accommodated in the HSU subject to an IIMP between 7 May 2016 and 12 May 2016;
- 69A.6 the first applicant was accommodated in the HSU subject to an IIMP between 14 May 2016 and 25 May 2016;
- 69A.7 the first applicant was accommodated in the HSU subject to an IIMP between 8 July 2016 and 4 August 2018 at which time he was reclassified medium security and moved to S Block outside the HSU.
- 69B The respondent denies paragraph 69B on the premise of sub-paragraph 69A.1 of this Defence.
- 69C The respondent denies paragraph 69C and says that it does not contain any material allegations of fact.
- 69D The respondent admits paragraph 69D, save that the respondent denies:
- 69D.1 the allegations at sub-paragraphs 69B.1 (b) and (d) and says that:
- (a) in addition to recreation time the first applicant was permitted time out of his room for personal hygiene, telephone calls, visits, and ordinary block operations including meals, schooling and some programs and activities as approved by the superintendent.
 - (b) no restriction was imposed on professional visits under an IIMP.
- 69D.2 the allegations at sub-paragraphs 69B.2 (b) and (d) and says that:
- (a) in addition to recreation time the first applicant was permitted time out of his room for personal hygiene, telephone calls, visits, and ordinary block operations including meals, schooling and some programs and activities as approved by the superintendent.
 - (b) no restriction was imposed on professional visits under an IIMP.
- 69D.3 the allegations at sub-paragraphs 69B.1 (d) and says that:
- (a) no restriction was imposed on professional visits under an IIMP.
- 69E The respondent admits paragraph 69E as reflecting the standard terms in the HSU Site Specific Procedure Directive 4.1.4.
- 69F The respondent admits paragraph 69F and says further that:
- 69F.1 the first respondent's behaviour in detention determined his progress through the stages such that the scheme incentivised good behaviour and discouraged misbehaviour; and

69F.2 Independently of the IIMP stage classification scheme within the HSU, where the first respondent demonstrated consistent good behaviour he could become eligible for reclassification out of the HSU.

69G Save to the extent admitted in this paragraph the respondent denies paragraph 69G and says that:

69G.1 the first applicant was never accommodated at Stage 0 of an IIMP during the periods pleaded in paragraph 69A; and

69G.2 the first applicant was accommodated at Stage 1 of an IIMP during the following periods:

(b) 4 to 10 February 2016.

(c) 2 to 9 March 2016.

(d) 11 to 17 March 2016.

(e) 7 to 12 May 2016.

69H The respondent denies paragraph 69H and says that the first applicant was only not permitted to attend school when he was suspended by teaching staff or when he was on a room placement in consequence of misbehaviour.

69I The respondent denies paragraph 69I in the premise of sub-paragraph 69G.1 and paragraph 69H of this Defence and says further that:

69I.1 the HSU was the high security unit of New Don Dale;

69I.2 the HSU accommodated newly admitted detainees, High Security and Medium Security detainees, males and females;

69I.3 while numbers fluctuated during the pleaded period, the HSU generally accommodated approximately a third of the detainees in New Don Dale;

69I.4 the HSU had its own education unit, laundry, kitchen, eating and recreational areas;

69I.5 when accommodated in the HSU on an IIMP the first applicant was permitted to exercise and spend his allocated recreation time with other detainees in the HSU;

69I.6 when accommodated in the HSU on an IIMP the first applicant was permitted to attend school with other detainees unless suspended;

69I.7 when accommodated in the HSU on an IIMP the first applicant was able to hear and speak to other detainees in the HSU even when confined in his room; and

- 69I.8 when accommodated in the HSU on an IIMP the first applicant was not separated from other detainees in the HSU.
- 69J The respondent denies paragraph 69J.
- 69K The respondent denies paragraph 69K.
- 69L The respondent denies paragraph 69L on the premises of paragraphs 54G of this Defence and says further that the accommodation of the first applicant on Stage 1 of an IIMP as admitted in this Defence was authorised and approved by the superintendent, alternatively:
- 69L.1 to maintain order, safe custody and the efficient conduct of the detention centre under ss 151(3)(c)-(d) and 152(1) of the Act; or
- 69L.2 to maintain discipline under ss 153(1) and 152(1) of the Act.
70. The respondent denies paragraph 70 and says that at all relevant times the detention of the first applicant in a detention centre was authorised by judicial warrant under, alternatively, ss 24(1), 65(1) and (2) or 83(1)(l) of the Act.

3 May 2016 Claim

- 70A The respondent denies paragraph 70A save to the extent admitted in this paragraph and says that:
- 70A.1 on 3 May 2016 at approximately 19:55 the first applicant damaged the light fittings in his room in the HSU resulting in hazardous debris in the room;
- 70A.2 the first applicant was acting in coordination with other detainees in the HSU who also damaged their rooms;
- 70A.3 the first applicant threatened to assault any staff member who attempted to enter his room;
- 70A.4 the first applicant armed himself with debris from the damaged light fittings as a weapon to threaten staff and to further damage his room;
- 70A.5 correctional officers were called to assist in the emergency situation;
- 70A.6 at approximately 22:45 the first applicant was moved from room 11 to room 16 by correctional officers;
- 70A.7 once moved to room 16 the first applicant was required to submit to a search of his person to ensure that he did not bring any debris from his damaged room with him;
- 70A.8 once moved to room 16 the first applicant was spoken to about his behaviour;

70A.9 immediately following, the first applicant was secured in room 16 and staff left to deal with another detainee;

70A.10 after being secured, the first applicant continued to kick his door and swear at staff;

70A.11 no member of staff or correctional officer re-entered room 16 at that time.

70B The respondent denies paragraph 70B.

In or About July 2016 Claim

71. The respondent denies paragraph 71 and says that there was no incident corresponding to the allegations pleaded in paragraphs 71 and 72.

72. The respondent denies paragraph 72.

Handcuffing and Similar Device Claims

73. Save to the extent admitted in this paragraph, the respondent denies paragraph 73 and says that:

73.1 during the period pleaded in sub-paragraph 73.1 of the 6SOC the first applicant was handcuffed on the following occasion:

(a) On 14 April 2015 when being escorted to Court and back.

73.2 during the periods pleaded in sub-paragraph 73.2 by reference to paragraph 68 of the 6SOC the first applicant was handcuffed on the following occasion:

(a) 10 March 2016 when moving from HSU room 11 to HSU room 3.

74. The respondent denies paragraph 74 and says that:

74.1 if (which is denied) leg shackles were used, they were a “similar device” within the meaning of ss 153(4) and 155 of the Act and authorised by those provisions, or alternatively:

(a) to maintain order and ensure safe custody under ss 151(3)(c) and 152 of the Act; or

(b) under regs 70 and 71 of the Regulations;

the use of handcuffs by staff admitted at sub-paragraph 73.1 (a) of this Defence for external escort was approved by the superintendent under NTCS Directive 3.1.5 and authorised under s 155 of the Act;

74.2 the use of handcuffs by staff admitted at sub-paragraph 73.2 (a) of this Defence for internal escort was approved by the superintendent under

NTDCS Directive 3.2.1 to maintain order and ensure safe custody and authorised under ss 151(3)(c) and 152 of the Act;

74.3 further and alternatively, the use of handcuffs by staff admitted at sub-paragraphs 73.1 and 73.2 of this Defence was authorised under regs 70 and 71 of the Regulations;

further and alternatively, the use of handcuffs by staff was authorised under the Carltona principle;

74.4 if (which is denied) handcuffs or leg shackles were used during the periods pleaded in sub-paragraph 73.2 by reference to paragraph 69A, they were approved by the superintendent under the IIMP in force;

74.5 the use of handcuffs and leg shackles as alleged and admitted was reasonable and justified in the circumstances.

Search Claims

75. The respondent denies paragraph 75 save to the extent admitted in this paragraph and says that:

75.1 the first applicant was strip searched on admission to detention on the following dates:

- (a) 7 March 2015.
- (b) 7 April 2015.
- (c) 30 July 2015.
- (d) 23 August 2015.
- (e) 17 September 2015.
- (f) 28 November 2015.
- (g) 7 July 2016.

75.2 the first applicant was searched before a room placement or being moved to or within the HSU on the following dates:

- (a) 3 May 2016.
- (b) 10 March 2016.
- (c) 2 August 2016.

75.3 the first applicant was searched before temporary departure from a youth detention centre on the following dates:

- (a) 27 March 2015 when attending Court.
- (b) 27 April 2015.
- (c) 26 May 2015.
- (d) 29 June 2015 when attending Court.
- (e) 31 July 2015 when attending Court.
- (f) 24 August 2015 when attending Court.
- (g) 28 August 2015 when attending court.
- (h) 4 September 2015 when attending Court.
- (i) 18 September 2015 when attending Court.
- (j) 5 October 2015 when attending Court.
- (k) 16 October 2015 when attending Court.
- (l) 2 December 2015 when attending Court.
- (m) 4 December 2015 when attending Court.
- (n) 15 January 2016 when attending Court.
- (o) 5 February 2016 when attending Court.

75.4 the first applicant was searched on return to a youth detention centre after a temporary absence on the following dates:

- (a) 9 October 2015 when returning from Court.
- (b) 26 May 2015.
- (c) 24 August 2015 when returning from Court.
- (d) 18 September 2015 when returning form Court.
- (e) 5 October 2015 when returning form Court.
- (f) 16 October 2015 when returning form Court.
- (g) 2 December 2015 when returning from Court.
- (h) 4 December 2015 when returning from Court.
- (i) 15 December 2015 when returning from Court.

(j) 5 February 2016 when returning from Court.

76. The respondent denies paragraph 76 and says further that:
- 76.1 searches of the first applicant by staff on admission to detention were authorised under s 161(1) of the Act and reg 73(1)(a) of the Regulations;
 - 76.2 searches of the first applicant before placement or accommodation in the HSU were authorised under s 161(1) of the Act and reg 73(1)(d) of the Regulations, or alternatively, under s 161(2) of the Act and reg 73(1)(d) of the Regulations;
 - 76.3 searches of the first applicant by staff before and after a temporary absence were authorised under s 161(1) of the Act and reg 73(1)(b) of the Regulations;
 - 76.4 the superintendent had delegated his power under s 161 of the Act to the Deputy General Manager (AO7) (also known as the deputy superintendent) and Shift Supervisor (AO5);
 - 76.5 further and in the alternative, the superintendent had given direction to staff as to the exercise of his power under s 161 of the Act under NTCS Directives 9.4 and 3.2.6;
 - 76.6 further and in the alternative, the exercise of the superintendent's power under s 161 by staff was authorised under the Carltona principle; and
 - 76.7 further and in the alternative, the superintendent had given direction to staff as to the exercise of his power under s 161 of the Act under the terms of any IIMP in force.

Damages and Liability

78. The respondent denies paragraph 78.
79. The respondent denies paragraph 79.
80. As to paragraph 80, the respondent denies that the first applicant is entitled to damages as pleaded or at all.
81. As to paragraph 81, the respondent denies that the first applicant is entitled to aggravated damages as pleaded or at all, ~~and says further that:~~
- ~~81.1 on the occasion of each pleaded allegation in the 6SOC the conduct of the commissioner, superintendent or members of staff complained about was in response to misconduct by the first applicant;~~
 - ~~81.2 on the occasion of each pleaded allegation in the 6SOC the first applicant engaged in misconduct knowing the likely consequences of doing so; and~~

~~81.3 at all times the first applicant was able to, and knew that he was able to, complain about his treatment by staff to his family, the Children's Commissioner, and his legal representatives.~~

82. As to paragraph 82, the respondent:

82.1 denies that the first applicant was treated with contumelious disregard; and

82.2 denies that the first applicant is entitled to exemplary damages as pleaded or at all.

SECOND APPLICANT'S INDIVIDUAL TORT CLAIMS

29 May 2012 Claims

83. As to paragraph 83, the respondent admits that in the evening on 29 May 2012 the second applicant was removed from his room at Old Don Dale by prison officers in attendance pursuant to a request under s 157(2) of the Act but denies that the prison officers were members of staff at Old Don Dale.

84. As to paragraph 84, the respondent admits that handcuffs and physical force were used in the manner pleaded below, and otherwise denies the allegations and says that:

84.1 In the evening on 29 May 2012 there was an incident which occurred in the BMU of Old Don Dale which required the detainees in the to be removed from their cells due to a detainee deploying two fire extinguishers;

84.2 The fire extinguisher deployment affected visibility and breathing in the BMU;

84.3 the BMU occupants were removed from their cells and escorted outside into the fresh air where they were handcuffed to the basketball fence;

84.4 the BMU occupants were handcuffed to the basketball fence to ensure their safe custody while staff and prison officers were responding to the emergency situation in the BMU because there was not any alternative cells to safely and securely accommodate them;

84.5 while staff and prison officers were responding to the emergency in the BMU, the second applicant damaged room 8 in H Block in which he was accommodated;

84.6 the second applicant smashed the glass window pane in the door causing shards of glass and debris to fall within the room;

84.7 as a result of the damage room 8 became unsafe to accommodate the second applicant and immediate removal of the second applicant from room 8 was necessary to ensure his safe custody;

- 84.8 due to the second applicant's behaviour and the damage caused to his room, a decision was made to move the second applicant to a secure cell in the BMU;
- 84.9 the BMU was at that time inoperable by reason of the matters pleaded above at sub-paragraphs 84.1 and 84.2;
- 84.10 prison officers entered room 8 and handcuffed the second applicant;
- 84.11 once secured in handcuffs, the second applicant was escorted outside by the prison officers;
- 84.12 minimal physical force was used during the removal to safely apply handcuffs and control the second applicant's movements;
- 84.13 the second applicant was not handcuffed through the judas hatch;
- 84.14 the second applicant was not struck in the ribs several times, or at all;
- 84.15 the second applicant's body was not slammed to the floor of the cell;
- 84.16 the second applicant was not carried out of the cell;
- 84.17 the second applicant's head was not slammed into a doorframe;
- 84.18 the use of handcuffs and minimal physical force were reasonable precautions in the circumstances;
- 84.19 the minimal physical force used by prison officers was authorised alternatively:
- (a) to maintain order and ensure safe custody under ss 151(3)(c) and 152 of the Act;
 - (b) to maintain discipline under s 153(2) of the Act;
 - (c) under *Prisons (Correctional Services) Act* s 9;
 - (d) under *Prisons (Correctional Services) Act* s 61(1); or
 - (e) under *Prisons (Correctional Services) Act* s 62(3).
- 84.20 the handcuffs used by prison officers were authorised alternatively:
- (a) to maintain order and ensure safe custody under ss 151(3)(c) and 152 of the Act;
 - (b) under s 153(4) of the Act;
 - (c) under *Prisons (Correctional Services) Act* s 9;

- (d) under *Prisons (Correctional Services) Act* s 61(1); or
- (e) under *Prisons (Correctional Services) Act* s 62(3).

85. The respondent denies paragraph 85, says that the use of physical force and handcuffs were authorised as pleaded above, and says that:
- 85.1 once removed from his room the second applicant was escorted outside;
 - 85.2 minimal physical force was used during the escort to safely control the second applicant's movements;
 - 85.3 the second applicant was not put face down on the ground and no one knelt on the second applicant's head or back;
 - 85.4 the second applicant was handcuffed with one hand to the fence of the basketball court with the BMU occupants;
 - 85.5 the second applicant was not handcuffed to the fence in an uncomfortable or fatiguing position;
 - 85.6 the second applicant was handcuffed to the fence for his safe custody for approximately 20-30 minutes while prison officers and detention centre staff were responding to the emergency situation in the BMU;
 - 85.7 the second applicant was handcuffed to the fence because there was not any alternative cell to safely and securely accommodate him while the BMU was inoperable and after he had damaged his room;
 - 85.8 the second applicant was escorted to BMU cell 1 as soon as the BMU area was cleared for his safety and wellbeing;
 - 85.9 the second applicant was not detained at a place or in a manner prohibited by the Act; and
 - 85.10 the detention of the second applicant at Old Don Dale was authorised by remand warrant dated 4 May 2012 issued under s 65 of the Act.
86. As to paragraph 86, the respondent admits that the second applicant was placed in cell 1 in the BMU and otherwise denies the allegations.
87. Save to the extent admitted in ~~response to~~ paragraphs 83 to 86 of this Defence ~~above~~, the respondent denies paragraph 87 and denies in particular that the second applicant was unlawfully assaulted and/or battered.
88. Save to the extent admitted in this paragraph ~~below~~, the respondent denies paragraph 88 and says that:
- 88.1 immediately following the events described in paragraphs 83 to 87 of this Defence, the second applicant was accommodated overnight without a

mattress or bedding which had been removed for cleaning and decontamination of the fire extinguisher residue;

- 88.2 a clean and dry mattress and bedding were provided to the second applicant the next morning on 30 May 2012;
 - 88.3 the second applicant was accommodated in the BMU on a room placement between approximately 20:30 on 29 May 2012 and 17:00 on 2 June 2012;
 - 88.4 other detainees were accommodated in the BMU during the entire period of the room placement and the second applicant was able to hear and speak to those other detainees at all times;
 - 88.5 during the period of the room placement the second applicant was permitted out of his cell to shower and exercise, make telephone calls, to attend Court, and to meet with NT Police;
 - 88.6 after 17:00 on 2 June 2012 the second applicant was accommodated in the BMU under an Intensive Management Plan (**IMP**);
 - 88.7 during the period of the IMP the second applicant was permitted to participate in ordinary daily activities and routines;
 - 88.8 during the period of the IMP other detainees were accommodated in the BMU and the second applicant was able to hear and speak to those other detainees when confined in his cell;
89. The respondent denies paragraph 89 and says that:
- 89.1 the placement period did not amount to isolation within the meaning of s 153(5) of the Act and was authorised under ss 151(3)(c) and 152 of the Act;
 - 89.2 in the alternative, if the placement period did amount to isolation, it was in accordance with s 153(5) of the Act; and
 - 89.3 the IMP period did not amount to isolation within the meaning of s 153(5) of the Act and was authorised under ss 151(3)(c) and 152 of the Act.
90. The respondent denies paragraph 90 and says that:
- 90.1 the arrangements for the management and accommodation of the second applicant in the BMU were approved by acting commissioner Philip Brown; and
 - 90.2 the accommodation of the second applicant in the BMU was justified in the circumstances of the behaviour of the second applicant.

Isolation Claims

91. Save to the extent admitted in this paragraph, the respondent denies paragraph 91 and says that:
- 91.1 on 21 February 2012 the second applicant was given a room placement in the BMU for less than 24 hours in the following circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:
- (a) on 21 February 2012 the second applicant attempted to escape custody while he was temporarily released from Old Don Dale attending court;
 - (b) at approximately 21:50 the second applicant was moved to BMU cell 2 on a BMU cell placement authorised by Barrie Clee in consultation with acting superintendent Michael Yaxley consequence of the second applicant's misbehaviour at court;
 - (c) the BMU cell placement occurred entirely during ordinary evening lockdown times and the second applicant did not leave his cell during the placement;
 - (d) during the period of the BMU placement there were other detainees in the BMU and the second applicant was able to hear and talk to them when confined in his cell;
 - (e) at approximately 06:45 am on 22 February 2012 the second applicant was released from the BMU cell placement but remained accommodated in the BMU;
 - (f) from the conclusion of the BMU cell placement, the second applicant was permitted to participate in ordinary daily routines and activities for the remainder of the period pleaded in sub-paragraph 91.1 of the 6SOC.
- 91.2 the second applicant was accommodated in the BMU on several occasions during the period pleaded in sub-paragraph 91.2 of the 6SOC in circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:
- (a) on 7 August 2012 the second applicant was suspended from school;
 - (b) the second applicant was given a BMU room placement in consequence of his misbehaviour;
 - (c) the second applicant remained on that BMU room placement for 35 minutes;
 - (d) immediately following, the second applicant threatened to kill himself and at approximately 12:50 on 7 August 2012 the "At Risk"

procedures under reg 41 of the Regulations were initiated in relation to the second applicant;

- (e) the “At Risk” procedures required pursuant to NTCS Directive 3.1.4 and the “At Risk” Procedures Manual that the second applicant be secured in a room under CCTV observation and cleared of all hazards;
- (f) the second applicant was secured in the BMU while “At Risk”;
- (g) the second applicant was removed from “At Risk” status at approximately 12:00 on 8 August 2012 after which time he was removed from the BMU and was permitted to participate in ordinary daily activities and routines;
- (h) on 10 August 2012 at approximately 17:00 the second applicant was given a 30 minute time out in the BMU for abusing staff;
- (i) at the conclusion of the time out the second applicant was removed from the BMU and permitted to participate in ordinary daily activities and routines;

91.3 on 2 January 2013 the second applicant was briefly allocated BMU cell 2 as his bedroom on his admission to detention in circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:

- (a) the second applicant was admitted to Old Don Dale on 2 January 2013 and allocated BMU cell 2 as his bedroom during the afternoon while he was being admitted;
- (b) when allocated BMU cell 2 as his bedroom the second applicant was permitted to participate in ordinary daily activities and routines;
- (c) the second applicant was subsequently allocated H Block Dorm 1 before evening lockdown and did not return to the BMU for the remainder of the period pleaded in sub-paragraph 91.3 of the 6SOC;
- (d) H Block is not part of the BMU.

91.4 on 10 February 2013 the second applicant was given a 24 hour room placement and subsequently accommodated in the BMU pursuant to an IMP in circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:

- (a) at approximately 23:30 am on 9 February 2013 the second applicant damaged the ceiling in H Block room 12 in an attempt to escape from the room in which he was accommodated;

- (b) shortly thereafter the second applicant was allocated BMU cell 2 as his bedroom for the night as room 12 was now damaged;
- (c) the other occupants of room 12 were also moved to the BMU;
- (d) while allocated BMU cell 2 as a bedroom the second applicant was permitted to participate in ordinary daily activities and routines;
- (e) at approximately 15:00 on 10 February 2013 the second applicant was given a 24 hour room placement in the BMU in consequence of his misbehaviour the night before;
- (f) the room placement was approved by superintendent Peter Rainbird;
- (g) during the placement period the second applicant was allowed out of his cell to shower and exercise, and make telephone calls;
- (h) during the placement period there were other detainees accommodated in the BMU and the second applicant was able to hear and speak with those detainees when confined in his cell;
- (i) during the placement period the second applicant threatened a staff member, was uncooperative, spat in a staff member's face, and encouraged other detainees to misbehave;
- (j) at the conclusion of the BMU placement at approximately 15:00 on 11 February 2013 the second applicant was accommodated in the BMU on an IMP intended to address his aggressive behaviour;
- (k) the second applicant was accommodated in the BMU on an IMP until approximately 19:30 on 12 February 2013 when he made threats to kill himself and the "At Risk" procedures under reg 41 of the Regulations were initiated;
- (l) during the IMP period the second applicant was permitted time out of his cell for personal hygiene, exercise, telephone calls, and visits or appointments;
- (m) during the IMP period there were other detainees accommodated in the BMU and the second applicant was able to hear and talk with those detainees when confined in his room.

91.5 between 14 and 25 February 2013 the second applicant was accommodated in the BMU pursuant to an IMP and then as a bedroom in circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:

- (a) the second applicant was removed from "At Risk" status at approximately 11:30 on 14 February 2013;

- (b) thereafter he was accommodated in the BMU pursuant to an IMP intended to address his aggressive behaviour;
 - (c) on 14 February 2013 under the terms of his IMP the second applicant was permitted normal recreation time with other maximum security detainees;
 - (d) on 15 February 2013 under the terms of his IMP the second applicant was permitted to mix with other detainees for meals and during normal recreation time;
 - (e) from the evening of 15 February 2013 the second applicant was no longer on an IMP and was allocated BMU cell 1 as his bedroom;
 - (f) while allocated BMU cell 1 as his bedroom the second applicant was permitted to participate in ordinary daily activities and routines;
 - (g) on 17 February 2013 the second applicant was given a 15 minute time out in his room in the BMU for shouting at female detainees after being directed not to;
 - (h) from the afternoon on 18 February 2013 the second applicant was accommodated in the BMU on an IMP intended to address misbehaviour;
 - (i) on 18 and 19 February 2013 under the terms of his IMP the second applicant was permitted recreation time out of his room with another detainee;
 - (j) on 20 February 2013 under the terms of his IMP the second applicant was permitted recreation time out of his room with other maximum security detainees;
 - (k) from 21 February 2013 for the remainder of the period pleaded in sub-paragraph 91.5 of the 6SOC the second applicant was permitted to participate in ordinary daily activities and routines;
 - (l) during the whole period pleaded in sub-paragraph 91.5 of the 6SOC there were other detainees accommodated in the BMU and the second applicant was able to hear and speak with those detainees when confined in his room;
- 91.6 between 7 and 23 March 2013 the second applicant was accommodated in the BMU on a room placement and then pursuant to an IMP in circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:

- (a) at approximately 12:00 on 7 March 2013 the second applicant was given a room placement in BMU cell 2 in consequence of misbehaviour on 5 March 2013;
- (b) the room placement was authorised by deputy superintendent Michael Yaxley in consultation with the superintendent Peter Rainbird;
- (c) an extension of the room placement beyond 24 hours was subsequently approved by the commissioner;
- (d) during the room placement the second applicant was permitted time out of his cell to shower and exercise, for telephone calls and for visits;
- (e) at the conclusion of the room placement at approximately 11:45 am on 9 March 2013 the second applicant was accommodated in the BMU on an IMP intended to address his misbehaviour including violence towards corrections staff;
- (f) during the IMP period the second applicant was permitted time out of his room for personal hygiene, recreation, chores, visits, appointments, and telephone calls;
- (g) from 13 March 2013 the second applicant was permitted recreational time in company with another detainee in the BMU;
- (h) from 20 March 2013 under the terms of his IMP the second applicant was permitted to attend school;
- (i) on the evening of 23 March 2013 the second applicant was moved from the BMU to H Block and was permitted to participate in ordinary daily activities and routines for the remainder of the period pleaded in sub-paragraph 91.6 of the 6SOC;
- (j) during the whole period pleaded in sub-paragraph 91.6 of the 6SOC there were other detainees accommodated in the BMU and the second applicant was able to hear and speak with those detainees when confined in his room;
- (k) H Block is not part of the BMU;

91.7 on 3 April 2013 the second applicant was given a room placement in the BMU less than 24 hours in circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:

- (a) at approximately 17:20 on 3 April 2013 the second applicant was placed in BMU cell 2 on an overnight room placement due to threatening teaching staff;

- (b) the room placement was authorised by assistant general manager Michael Yaxley in consultation with superintendent Peter Rainbird;
 - (c) the room placement concluded at approximately 9:45 am on 4 April 2013;
 - (d) at the conclusion of the placement the second applicant was moved to H Block and was permitted to participate in ordinary daily activities and routines for the remainder of the period pleaded in sub-paragraph 91.7 of the 6SOC;
 - (e) H Block is not part of the BMU;
- 91.8 On 6 May 2013 the second applicant was allocated the security lounge as his bedroom overnight in circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:
- (a) on 6 May 2013 the second applicant was allocated the security lounge as his bedroom;
 - (b) the second applicant was permitted to take part in ordinary daily activities and routines while accommodated in the security lounge;
 - (c) on 7 May 2013 the second applicant was allocated a room in H Block.
- 91.9 on 6 August 2013 the second applicant was given a 24 hour room placement in the BMU in circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:
- (a) at approximately 10:00 am on 6 August 2013 the second applicant was involved in a fight with another detainee;
 - (b) the second applicant was separated from the other detainee and escorted to the BMU;
 - (c) the second applicant was placed in BMU cell 1 on a room placement authorised by Michael Yaxley in consultation with superintendent Peter Rainbird;
 - (d) during the BMU placement when confined in his cell, the second applicant was able to speak to other detainees in the BMU;
 - (e) the placement ended at approximately 10:20 am on 7 August 2013 from which time the second applicant was removed from the BMU and permitted to participate in ordinary daily activities and routines;
- 91.10 on 12 August 2013 the second applicant was given room placements in the BMU and thereafter accommodated in the BMU on an IMP in

circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:

- (a) at approximately 15:30 on 12 August 2013 the second applicant was given a room placement in BMU cell 4 in consequence of the matters pleaded in paragraph 97A of this Defence;
- (b) a 24 hour room placement was authorised by superintendent Peter Rainbird;
- (c) an extension up to 72 hours was approved ~~by acting~~ commissioner ~~Amanda Nobbs-Carcure~~ Kenneth Middlebrook;
- (d) during the period of the room placement the second applicant was permitted time out of his room for personal hygiene, recreation, and telephone calls;
- (e) during the period of the room placement the second applicant continued to intimidate staff and refused to follow directions from staff;
- (f) at the conclusion of the placement at approximately 15:30 on 15 August 2013 the second applicant was accommodated in BMU cell 4 on an IMP;
- (g) during the IMP the second applicant was permitted time out of his room for personal hygiene, recreation, and telephone calls;
- (h) from approximately 14:45 on 15 August 2013 the second applicant commenced damaging the water bubbler in his room and threatened to assault staff if they entered;
- (i) the second applicant was acting in coordination with another detainee who also damaged the water bubbler in his cell and threatened to assault staff if they entered;
- (j) sometime after 21:15 on 15 August 2013 the second applicant was moved to BMU cell 3 after he had damaged BMU cell 4;
- (k) on 19 August 2013 the second applicant was moved out of the BMU to H Block pursuant to his IMP during which time he was permitted to attend school and eat meals with other detainees;
- (l) H Block is not part of the BMU.

91.11 on 27 August 2013 the second applicant was given a 30 minute time out in the BMU and subsequently on 28 August 2013 the second applicant was allocated BMU cell 2 as his bedroom in circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:

- (a) during lunchtime on 27 August 2013 the second applicant was given a time out in his room for refusing to follow staff directions;
- (b) due to his continued non-compliance the second applicant was given the time out for 30 minutes in the BMU;
- (c) at the conclusion of the time out the second applicant was removed from the BMU and was permitted to participate in ordinary daily activities and routines;
- (d) the next day on 28 August 2013 the second applicant was allocated BMU cell 3 as his bedroom;
- (e) while allocated BMU cell 3 as a bedroom the second applicant was permitted to participate in ordinary daily activities and routines;

91.12 on 8 September 2013 the second applicant was moved to a cell in the BMU in circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:

- (a) in the evening on 7 September 2013 the second applicant damaged the ceiling in his room in H Block and threatened to assault staff if they entered his room;
- (b) the second applicant was acting in coordination with another detainee in the same room who was also damaging the ceiling;
- (c) the second applicant refused staff directions to stop damaging the ceiling and allow staff to enter and remove him to another undamaged room;
- (d) at approximately 23:30 the second applicant and another detainee escaped from their room into the ceiling cavity;
- (e) prison officers, police officers and the fire department were called to Old Don Dale in response to the escape;
- (f) additional staff were also called back on duty to assist;
- (g) the second applicant and the other detainee broke through the ceiling into a number of parts of Old Don Dale to allow other detainees to escape into the ceiling;
- (h) multiple detainees of both sexes escaped into the ceiling cavity;
- (i) while in the ceiling cavity the second applicant fashioned weapons out of wire which he distributed to other detainees;
- (j) the detainees in the ceiling cavity were persuaded or agreed to come down at various times;

- (k) the second applicant remained in the ceiling cavity the longest until approximately 15:30 on 8 September 2013;
- (l) once he came down from the ceiling, the second applicant was immediately secured in BMU cell 4;
- (m) the second applicant remained accommodated in BMU cell 4 until approximately 15:00;
- (n) during that time ordinary activities and routines were limited due to the damage caused to Old Don Dale the night before;
- (o) there were other detainees in the BMU and when confined in BMU cell 4 and the second applicant was able to hear and speak with those detainees at all times;
- (p) at approximately 15:00 on 9 September 2013 the second applicant damaged the toilet in BMU cell 4 from which he removed a length of rubber tubing;
- (q) shortly thereafter the second applicant wrapped the length of rubber tubing around his neck and the "At Risk" procedures under reg 41 of the Regulations were initiated;
- (r) the "At Risk" procedures required pursuant to NTCS Directive 3.1.4 and the "At Risk" Procedures Manual that the second applicant be secured in a room under CCTV observation and cleared of all hazards;
- (s) the second applicant was secured in BMU cell 1 while "At Risk";

91.13 between 16 and 20 September 2013 the second applicant was accommodated in the BMU on an IMP in circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:

- (a) at approximately 07:15 on 16 September 2013 the second applicant was removed from "At Risk" status and accommodated in cell 1 in the BMU on an IMP;
- (b) during the period of the IMP there were other detainees in the BMU on IMPs and the second applicant was able to hear and speak to those detainees when secured in his room;
- (c) during the IMP period the second applicant was suspended from school;
- (d) during the IMP period the second applicant was permitted time out of his room for daily hygiene, exercise, telephone calls and visits;

- (e) the second applicant was permitted to exercise and socialise with other detainees accommodated in the BMU;
 - (f) on 17 September 2013 the second applicant attended court between 8:40 am and 18:55;
 - (g) the second applicant remained accommodated in the BMU on an IMP until approximately 13:30 on 20 September 2013 when he was removed to Darwin Correctional Centre under a sentence of imprisonment;
- 91.14 on 3 November 2013 the second applicant was allocated a cell in the BMU as his bedroom in circumstances not amounting to isolation:
- (a) the second applicant was admitted to detention on 3 November 2013 and allocated BMU cell 5 as his bedroom overnight;
 - (b) while allocated BMU cell 5 as a bedroom the second applicant was permitted to participate in ordinary daily activities and routines;
- 91.15 between 24 and 30 November 2013 the second applicant was accommodated in H Block and participated in ordinary daily activities and routines;
- 91.16 between 4 and 7 June 2014 the second applicant was allocated a room in the BMU as his bedroom and subsequently was accommodated in the BMU on an IMP in circumstances not amounting to isolation or alternatively authorised under s 153(5) of the Act:
- (a) the second applicant was allocated BMU cell 4 on admission to detention on 5 June 2014;
 - (b) the second applicant was permitted to participate in ordinary daily activities and routines save that he did not attend school on 5 or 6 June 2014;
 - (c) the second applicant attended court between approximately 9:20 am and 14:00 on 6 June 2014;
 - (d) in the morning on 7 June 2014 the second applicant was removed from the BMU and allocated a room in H Block as his bedroom;
 - (e) later that day staff learned that the second applicant had told a female detainee to assault another female detainee because he believed that the first detainee had snitched to police about him;
 - (f) the second applicant's conduct caused considerable agitation and unrest amongst the female detainees;

- (g) between 7 and 17 June 2014 the second applicant was accommodated in the BMU on an IMP in consequence of his misbehaviour;
- (h) during the IMP period the second applicant was permitted to participate in ordinary daily activities and routines;
- (i) during the IMP period except for 16 June 2014 there was one or more other detainees accommodated in the BMU and the second applicant was able to hear and speak to those detainees when confined in his room.

91A The respondent denies paragraph 91A.

91B The respondent denies paragraph 91B on the premises of paragraphs 54C, 54D, and 91 of this Defence and says further that:

91B.1 If (which is denied) a room placement in the BMU imposed on the first applicant on any of the pleaded occasions amounted to isolation it was not continued for more than 24 hours without the approval of the commissioner.

91B.2 If (which is denied) a room placement in the BMU imposed on the first applicant on any of the pleaded occasions amounted to isolation it was not continued for more than 72 hours.

91B.3 If (which is denied) a room placement in the BMU imposed on the first applicant on any of the pleaded occasions amounted to isolation it was approved by the superintendent or a person having a written delegation of the superintendent's power under s 153(5) in accordance with s 157 of the Act or alternatively was in accordance with the direction of the superintendent as to the exercise of power under s 153(5) pursuant to:

- (a) Youth Detention and Remand Centres Procedures and Instructions Manual.
- (b) Standard Operating Procedure 002: Detainee BMU Placement.

91B.4 On each pleaded occasion a room placement in the BMU was justified and reasonable in all the circumstances including the behaviour of the first applicant at the time and his history of misbehaviour in detention.

92. The respondent denies paragraph 92.

Handcuffing Claims

93. Save to the extent admitted in this paragraph, the respondent denies paragraph 93 and says that:

93.1 the second applicant was handcuffed in the manner and circumstances described in paragraphs 97 and 97A of this Defence;

93.2 the second applicant was handcuffed in the following circumstances within the terms and periods pleaded in sub-paragraph 93.2 by reference to paragraphs 88 and 91 of the 6SOC:

- (a) The second applicant was handcuffed by prison officers when he was moved from the outside basketball court to the BMU on 29 May 2012 which movement is described in sub-paragraph 85.8 of this Defence.

94. The respondent denies paragraph 94 and says further that:

94.1 the handcuffs as admitted at sub-paragraph 93.2 of this Defence were authorised alternatively:

- (a) to maintain order and ensure safe custody under ss 151(3)(c) and 152 of the Act;
- (b) under s 153(4) of the Act;
- (c) under s 9 of the *Prisons (Correctional Services) Act*;
- (d) under s 61(1) of the *Prisons (Correctional Services) Act*, or
- (e) under s 62(3) of the *Prisons (Correctional Services) Act*.

Search Claims

95. Save to the extent admitted in this paragraph, the respondent denies paragraph 95 and says further that:

95.1 the second applicant was strip searched on admission to a youth detention centre on the following dates:

- (a) 20 December 2011.
- (b) 3 May 2012.
- (c) 12 July 2013.
- (d) 17 July 2013.
- (e) 6 June 2014.

95.2 the second applicant was searched on the following dates before being accommodated or placed in the BMU:

- (a) 10 February 2013.
- (b) 4 April 2012.

95.3 the second applicant was searched before temporary departure from a detention centre on the following dates:

- (a) 4 May 2012 (going to court).
- (b) 20 September 2013 (going to prison).

95.4 the second applicant was searched on return to a youth detention centre after a temporary absence on the following dates:

- (a) 16 February 2012 (returning from court).
- (b) 1 March 2012 (returning from medical appointment).
- (c) 15 March 2012 (returning from a medical appointment).
- (d) 21 March 2012 (returning form court).
- (e) 4 May 2012 (returning form court).
- (f) 30 May 2012 (interview with NT Police).
- (g) 31 May 2012 (interview with NT Police).
- (h) 1 June 2012 (returning form court).
- (i) 18 July 2012 (returning from court).
- (j) 17 August 2012 (returning from court).
- (k) 13 October 2012.
- (l) 4 January 2013 (returning form court).
- (m) 8 January 2013 (returning form court).
- (n) 24 January 2013 (returning form court).
- (o) 30 March 2013.
- (p) 19 July 2013 (returning form court).
- (q) 23 July 2013 (returning form court).
- (r) 3 November 2013 (returning from prison).

95.5 the second applicant was searched on the following occasions following a visit:

- (a) 1 March 2012.

- (b) 17 March 2012.
- (c) 24 March 2012.
- (d) 20 May 2012.
- (e) 20 June 2012.
- (f) 22 June 2012.
- (g) 26 June 2012.
- (h) 30 June 2012.
- (i) 11 July 2012.
- (j) 19 July 2012.
- (k) 21 July 2012.
- (l) 28 July 2012.
- (m) 23 August 2012.
- (n) 29 August 2012.
- (o) 26 September 2012.
- (p) 29 September 2012.
- (q) 2 November 2012.
- (r) 17 November 2012.
- (s) 30 January 2013.
- (t) 2 February 2013.
- (u) 10 March 2013.
- (v) 10 April 2013.
- (w) 1 May 2013.
- (x) 16 May 2013.
- (y) 18 May 2013.
- (z) 22 May 2013.
- (aa) 30 May 2013.

96. The respondent denies paragraph 96 and says further that:
- 96.1 searches of the second applicant by staff on admission to detention were authorised under s 161(1) of the Act and reg 73(1)(a) of the Regulations;
 - 96.2 searches of the second applicant before accommodation or placement in the BMU were authorised under s 161(1) of the Act and reg 73(1)(d) of the Regulations, or alternatively, under s 161(2) of the Act and reg 73(1)(d) of the Regulations;
 - 96.3 searches of the second applicant by staff before and after a temporary absence were authorised under s 161(1) of the Act and reg 73(1)(b) of the Regulations;
 - 96.4 searches of the second applicant after a visit were authorised under s 161(1) of the Act and reg 73(1)(d) of the Regulations;
 - 96.5 the superintendent had delegated his power under s 161 of the Act to members of staff under various determinations under reg 30 of the Regulations;
 - 96.6 further and in the alternative, the superintendent had given direction to staff as to the exercise of his power under s 161 of the Act under various determinations under reg 30 of the Regulations;
 - 96.7 further and in the alternative, the exercise of the superintendent's power under s 161 by staff was authorised under the Carltona principle.

Particulars

(1) *Youth Detention and Remand Centres Procedures and Instructions Manual.*

(2) *Standard Operating Procedure 9.4.*

(3) *Email from Michael Yaxley dated 2 March 2010: "Security Vehicles".*

(4) *Email from Michael Yaxley dated 28 March 2013: "New Admission Procedures".*

(5) *Email from Michael Yaxley dated 31 December 2011: "Detainee Strip searches".*

(6) *Email from Trevor Hansen dated 17 August 2010: "Duty Procedures Instructions for Seniors".*

(7) *Email from Michael Yaxley dated 16 December 2010: "Pat Downs and Metal Detector".*

(8) *Youthworkers Induction Training Manual: Don Dale Centre and Alice Springs Juvenile Holding Centre.*

(9) *Further particulars may be provided.*

5 March 2013 Claims

97. Save to the extent admitted in this paragraph, the respondent denies paragraph 97 and says that:
- 97.1 at approximately 16:30 on 5 March 2013 the second applicant damaged the locking mechanism on his door and threatened staff;
 - 97.2 the second applicant was acting in coordination with several other detainees in H Block who were also being aggressive towards staff and damaging property;
 - 97.3 staff were called away from processing new detainees into the centre to respond to the second applicant's misbehaviour;
 - 97.4 prison officers were called to assist in response to the emergency situation in order to safely escort the second applicant to the BMU;
 - 97.5 the second applicant was directed to lie face down on the ground and complied;
 - 97.6 the second applicant was handcuffed behind his back;
 - 97.7 the second applicant was escorted by prison officers to the BMU where the handcuffs were removed while the second applicant was lying on the ground at the direction of the prison officers;
 - 97.8 minimum force was used to direct and control the second applicant's movement during the escort;
 - 97.9 the second applicant was secured in BMU cell 3;
 - 97.10 at approximately 17:35 the second applicant was observed by staff ripping his shorts into pieces and attempting to put the strips around his neck creating a danger of asphyxiation;
 - 97.11 staff requested that the second applicant hand over his shorts but he refused;
 - 97.12 staff then entered BMU cell 3 and restrained the second applicant on the ground while they removed his clothing from around his neck with a Hoffman knife;
 - 97.13 the second applicant was abusive, violent and spat on staff;

- 97.14 the “At Risk” procedures under reg 41 of the Regulations were initiated in relation to the second applicant;
- 97.15 the “At Risk” procedures required pursuant to NTCS Directive 3.1.4 and the “At Risk” Procedures Manual that the second applicant be secured in a room under CCTV observation and cleared of all hazards;
- 97.16 the second applicant was secured in the BMU while “At Risk”;
- 97.17 at approximately 18:10 the second applicant was observed laying on the ground in BMU cell 3;
- 97.18 a code blue signalling a self-harm emergency was called and all available staff attended;
- 97.19 when staff entered BMU cell 3 to check on the second applicant’s welfare, he was found to be smiling and quickly got to his feet;
- 97.20 staff attempted to exit cell 3 but the second applicant held onto the door so that it could not be closed;
- 97.21 the second applicant refused repeated staff directions to release the door and allow it to be closed;
- 97.22 staff then re-entered cell 3 and restrained the second applicant on the ground so that a controlled exit could be achieved and his cell secured;
- 97.23 the second applicant was then secured in BMU cell 3;
- 97.24 immediately after the door was secured the second applicant spat on staff;
- 97.25 the second applicant was acting in coordination with another detainee who was also threatening to self-harm and physically violent towards staff;
- 97.26 as soon as staff had secured the second applicant, staff attended to the other detainee;
- 97.27 the second applicant subsequently urinated through the bars of his cell onto the ground outside his cell instead of in the toilet in his cell;
- 97.28 the physical force used by prison officers and referred to in sub-paragraphs 97.1 to 97.9 was authorised, alternatively:
- (a) to maintain order and ensure safe custody under ss 151(3)(c) and 152 of the Act;
 - (b) to maintain discipline under s 153(2) of the Act;
 - (c) under *Prisons (Correctional Services) Act* s 9;
 - (d) under *Prisons (Correctional Services) Act* s 61(1);

- (e) under *Prisons (Correctional Services) Act* s 62(3); and/or
- (f) at common law in self-defence or defence of another;

97.29 the handcuffs used by prison officers were authorised, alternatively:

- (a) to maintain order and ensure safe custody under ss 151(3)(c) and 152 of the Act;
- (b) to maintain discipline under s 153(2) of the Act;
- (c) under *Prisons (Correctional Services) Act* s 9;
- (d) under *Prisons (Correctional Services) Act* s 61(1);
- (e) under *Prisons (Correctional Services) Act* s 62(3);

97.30 the physical force used by staff and referred to in sub-paragraphs 97.10 to 97.21 was authorised, alternatively:

- (a) to maintain order and ensure safe custody under ss 151(3)(c) and 152 of the Act;
- (b) to maintain discipline under s 153(2) of the Act;
- (c) under s 153(4) of the Act;
- (d) under s 162 of the Act; and/or
- (e) at common law in self-defence or defence of another.

12 August 2013 Claims

97A Save to the extent admitted in this paragraph, the respondent denies paragraph 97A and says that:

97A.1 at approximately midnight on 11/12 August 2013 the second applicant and two other detainees damaged the ceilings in their rooms in H Block and escaped into the ceiling cavity;

97A.2 the second applicant and other detainees caused damage to Don Dale breaking through the ceiling to access different parts of the detention centre and breaking from the ceiling cavity onto the roof;

97A.3 prison officers, police, ambulance personnel, and the fire department attended in response to the emergency situation;

97A.4 the detainees in the ceiling cavity refused directions from staff, police and prison officers to come down;

- 97A.5 at approximately 02:30 am the second applicant broke into the admission holding cell where his girlfriend was being held with some other female detainees and attempted to remove her from the holding cell by lifting her into the ceiling cavity;
- 97A.6 staff intervened and removed the female detainees from the holding cell;
- 97A.7 staff were forced to move detainees from their bedrooms to different areas of the detention centre to maintain their safe custody;
- 97A.8 at approximately 04:19 on 12 August 213 the second applicant climbed down and was restrained by police;
- 97A.9 police are not staff of Don Dale;
- 97A.10 police handcuffed the second applicant and escorted him to the Watch House;
- 97A.11 minimal physical force was used by police to prevent the second applicant from escaping or injuring anyone;
- 97A.12 the physical force used by police was authorised, alternatively:
- (a) to maintain order and ensure safe custody under ss 151(3)(c) and 152 of the Act;
 - (b) to maintain discipline under s 153(2) of the Act;
 - (c) under s 123 of the *Police Administration Act 1978*;
 - (d) at common law in the exercise of the police powers to take all reasonable measures to prevent a person escaping from lawful custody, injuring himself or others, or committing further crime; and/or
 - (e) at common law in self-defence or defence of another;
- 97A.13 the handcuffs used by police were authorised, alternatively:
- (a) to maintain order and ensure safe custody under ss 151(3)(c) and 152 of the Act;
 - (b) to maintain discipline under s 153(2) of the Act;
 - (c) under s 123 of the *Police Administration Act 1978*; and/or
 - (d) at common law in the exercise of the police powers to take all reasonable measures to prevent a person escaping from lawful custody, injuring himself or others, or committing further crime.

Damages and Liability

98. The respondent denies paragraph 98.
99. The respondent denies paragraph 99.
100. As to paragraph 100, the respondent denies that the second applicant is entitled to damages as pleaded or at all.
101. As to paragraph 101, the respondent denies that the second applicant is entitled to aggravated damages as pleaded or at all, ~~and says further that:~~
- ~~101.1 on the occasion of each pleaded allegation in the 6SOC the conduct of the commissioner, superintendent or members of staff complained about was in response to misconduct by the first applicant;~~
- ~~101.2 on the occasion of each pleaded allegation in the 6SOC the first applicant engaged in misconduct knowing the likely consequences of doing so; and~~
- ~~101.3 at all times the first applicant was able to, and knew that he was able to, complain about his treatment by staff to his family, the Children's Commissioner, and legal representatives.~~
102. As to paragraph 102, the respondent:
- 102.1 denies that the second applicant was treated with contumelious disregard;
- 102.2 denies that the second applicant is entitled to exemplary damages as pleaded, or at all; and
- 102.3 says that exemplary or punitive damages are not available in respect of a tort committed by a police officer pursuant to s 148C(3) of the *Police Administration Act 1978*.

LIMITATIONS


103. As to paragraph 103, the respondent admits that the first applicant seeks a contingent extension of time under the *Limitation Act 1981 s 44* as pleaded.
104. As to paragraph 104, the respondent admits that the first applicant seeks a contingent extension of time under the *Limitation Act 1981 s 44* as pleaded and says that an extension of time is required in respect of any cause of action which accrued on or before 23 June 16.
105. As to paragraph 105, the respondent admits that the second applicant seeks a contingent extension of time under the *Limitation Act 1981 s 44* as pleaded.
106. As to paragraph 106, the respondent admits that the second applicant seeks a contingent extension of time under the *Limitation Act 1981 s 44* as pleaded and says that an extension of time is required in respect of any cause of action which accrued on or before 23 June 16.

- 106A The respondent relies on s 162(1) of the *Police Administration Act 1978* and says that any claim against it arising from a tort committed by a police officer was not commenced within 2 months as required by that provision.

TORT CLAIMS OF GROUP MEMBERS

107. The respondent does not plead to paragraph 107 which does not contain any material allegations of facts.
108. The respondent admits paragraph 108 and says further that the plaintiffs referred to in paragraph 108 cannot now pursue any tort claims relating to their detention arising before 26 September 2017 (being the first day of the hearing of their claims in the Supreme Court proceedings referred to in paragraph 108).
109. The respondent does not plead to paragraph 109.

Date: 11 October 2019


Signed by Maria Pikoulos
Lawyer for the Respondent

This pleading was prepared by David McLure SC and Trevor Moses for the Respondent

Certificate of lawyer

I Maria Pikoulos certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 11 October 2019



Signed by Maria Pikoulos
Lawyer for the Respondent