

This Further Amended Statement of Claim is filed pursuant to orders made by Justice Garling on 28 February 2025

Form 3A (version 7)
UCPR 6.2

FURTHER AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2023/00209918

TITLE OF PROCEEDINGS

Plaintiff	GP1 <u>CA1</u>
Defendant	State of New South Wales

FILING DETAILS

Filed for	GP1 <u>CA1</u>, plaintiff
Legal representative	Luke Geary, Mills Oakley
Legal representative reference	LXG/GXD/9362081
Contact name and telephone	Georgia Davis (07) 3010 8020
Contact email	gdavis@millsoakley.com.au

TYPE OF CLAIM

Trespass. False imprisonment.

RELIEF CLAIMED

- 1 Damages, including aggravated damages.
- 2 Damages, including aggravated damages, for the Group Members.
- 3 Exemplary damages.
- 4 Exemplary damages for the Group Members.
- 5 Interest pursuant to s 100 of the *Civil Procedure Act 2005* (NSW).
- 6 Costs.
- 7 Interest on costs pursuant to s 101(4) of the *Civil Procedure Act 2005* (NSW).

PLEADINGS AND PARTICULARS

Group Members

- 1 The plaintiff brings this proceeding on her own behalf and on behalf of represented persons pursuant to Pt 10 of the *Civil Procedure Act 2005* (NSW) being persons (**Group Members**) who prior to the date of filing this statement of claim:
 - a. were inmates at **Dillwynia** Corrections Centre;
 - b. were under the direction and/or supervision of Wayne **Astill**, ~~a Chief Correctional Officer or Acting Chief Correctional Officer~~ whilst he was employed or otherwise engaged at Dillwynia;
 - c. were subjected to trespass to their person and/or false imprisonment by Astill.
- 2 As at the date of the commencement of this proceeding, there are 7 or more Group Members.

Defendant

- 3 The defendant is sued pursuant to s 5 of the *Crown Proceedings Act 1988* (NSW).
- 4 At all material times up to and including 30 June 2019, Corrective Services NSW was a division of the Department of Justice, a Department of the New South Wales State Government under the control of the responsible Minister.
- 5 On 1 July 2019, Corrective Services NSW became a division of the Department of Communities and Justice (**DCJ**), a Department of the New South Wales State Government under the control of responsible Ministers.
- 6 At all material times, Corrective Services NSW operated Dillwynia.

- 7 At all relevant times, Astill was employed or otherwise engaged by Corrective Services NSW as a ~~Senior Correctional Officer attached to Dillwynia.~~
- 8 From 26 September 2016, Astill was appointed to the position of Acting Chief Correctional Officer at Dillwynia.
- 9 As Acting Chief Correctional Officer, Astill was a senior member of staff at Dillwynia.

The plaintiff

- 10 The plaintiff was born on 5 January 1971. ~~4 August 1982.~~
- 11 The plaintiff ~~has been~~ was an inmate at Dillwynia from 2015 to 2021 and again from 2023 to present. ~~from June 2016 save for a period in July and August 2017 during which time she was transported repeatedly between Silverwater Women's Correctional Centre and a court house.~~
- 12 At all material times while the plaintiff was an inmate at Dillwynia:
- a. she was under the direction and/or supervision of Astill;
 - b. Astill was in a position of control over the plaintiff;
 - c. Astill had physical access to the plaintiff; and
 - d. there existed a disproportionate bargaining position between Astill and the plaintiff.
- 13 ~~As at late 2016, the plaintiff had a 17-year-old step-daughter who was pregnant.~~

Abuse

- 13A In or about late 2016, the plaintiff was working as an inmate sweeper at Dillwynia.
- 13B The role of sweeper required the plaintiff to, among other things, clean the reception area of Dillwynia using cleaning tools including a dustpan and a brush.

First Slapping/Grabbing Incident

- 13C While working as a sweeper in the reception area of Dillwynia, the plaintiff was directed by Astill to attend to his office in relation to what Astill said was a pending internal charge laid against the plaintiff by a Dillwynia correctional officer.
- 13D The plaintiff attended Astill's office in the company of inmate Bianca Santos.
- 13E Once inside Astill's office, Astill:
- a. informed the plaintiff that a correctional officer of Indian descent had laid an internal charge against the plaintiff as a result of the plaintiff being rude and

disrespectful to that correctional officer; and

- b. proceeded to shred paperwork in front of the plaintiff in a manner that suggested the internal charge was being disposed of by Astill.

13F As the plaintiff was leaving Astill's office, Astill approached the plaintiff from behind and:

- a. slapped the plaintiff on her buttocks; and
- b. grabbed the plaintiff's buttocks with his hand and fingers.

13G The plaintiff had not been the subject of an internal charge laid by a correctional officer of Indian descent relating to conduct by the plaintiff as alleged by Astill as set out in paragraph 13E(a) above.

Dustpan Incident

13H In about 2017, while performing sweeping duties at Dillwynia, the plaintiff was kneeling in the reception area using a dustpan and brush at which time Astill approached and intentionally stood by the plaintiff in a sexually suggestive manner without the plaintiff's consent.

Particulars

- a) Astill stood close to the plaintiff;
- b) Astill stood with his groin at the level of the plaintiff's face;
- c) Astill placed his hand on the zipper of his pants; and
- d) Astill told the plaintiff that he wanted her in the position in which he had positioned himself.

(collectively, the **Dustpan Incident**)

13I As a consequence of the Dustpan Incident, the plaintiff feared that Astill was going to:

- a. expose his penis to the plaintiff;
- b. touch the plaintiff in a manner outside the scope of his employment or authority; and

c. require the plaintiff to perform oral sex on him.

without the plaintiff's consent.

13J Astill's conduct constituting the Dustpan Incident was repeated by Astill on a subsequent occasion in substantially the same manner.

Groping Incidents

13K On approximately four separate occasions Astill intentionally and without the plaintiff's consent grabbed and held onto the plaintiff's buttocks with his hand.

BIU Cell Incidents

13L As at about October 2018, the plaintiff was housed in a single cell in the segregation area known as the Behavioural Intervention Unit (BIU).

13M In or about October 2018, Astill entered the plaintiff's cell in BIU without notice to the plaintiff.

13N Astill entered the plaintiff's cell after lock-in at a time after the plaintiff had showered and changed into her pyjamas which was shortly prior to the plaintiff going to sleep.

13O Upon entering the plaintiff's cell, Astill commented on the plaintiff's buttocks.

Particulars

a) Astill said to the plaintiff words to the effect, "I'm so disappointed...look after that arse".

13P As a consequence of the comments made by Astill as referred to in paragraph 13O above, the plaintiff feared that Astill was going to touch her on the buttocks without her consent in circumstances where he had entered the plaintiff's cell without notice.

13Q The following night, while the plaintiff remained housed in the BIU, Astill entered the plaintiff's cell without notice to the plaintiff.

13R Upon entering the plaintiff's cell, Astill grabbed the plaintiff around the waist, pulled the plaintiff towards him and attempted to kiss the plaintiff.

13S. In response to the conduct of Astill described in paragraph 13R above, the plaintiff attempted to resist being pulled towards him.

13T. The conduct of Astill described in paragraph 13R above was interrupted by another correctional officer at which time Astill left the plaintiff's cell.

14 In late 2016, Astill, while on duty, asked the plaintiff to masturbate him in exchange for information on the welfare of her 17 year old pregnant step daughter.

15 Astill's request described in paragraph 14 above occurred in circumstances where Astill had previously told the plaintiff that he knew NSW police officers and private investigators who could conduct welfare checks on the plaintiff's step daughter.

16 A few weeks after the events described in paragraph 14 above, Astill, while on duty, sexually abused the plaintiff.

Particulars of abuse

i. Astill put his hand down the plaintiff's shirt and touched her breasts.

ii. Astill attempted to put his hand down the plaintiff's pants.

iii. Astill put grabbed the plaintiff's vulva from outside of her clothing.

17 The abuse described in paragraph 16 above occurred in circumstances where:

a. Astill asked the plaintiff why she would not masturbate him;

b. Astill told the plaintiff that the price for information in relation to her step daughter had gone up;

c. Astill told the plaintiff that the price for information in relation to her step daughter was now oral sex; and

d. Astill did not have the plaintiff's consent.

18 In late 2016, Astill, while on duty, again sexually abused the plaintiff.

Particulars of abuse

i. Astill grabbed the plaintiff's face with his hands and tried to kiss the plaintiff on the lips.

ii. Astill pushed the plaintiff onto a table, pushed her shorts so as to expose her vulva, and had penile vaginal intercourse with the plaintiff.

iii. Astill repeatedly grabbed and groped the plaintiff's breasts, torso and legs.

iv. Astill ejaculated into the plaintiff's vagina.

v. Astill told the plaintiff to make sure she looked normal and not to tell anyone of that assault.

19 The abuse described in paragraph 18 above occurred in circumstances where:

- a. ~~Astill had called the plaintiff to attend his office and told her to make a statement regarding a physical altercation she had with another inmate called Kristie Abrahams;~~
- b. ~~Astill told the plaintiff that he would protect her from Ms Abrahams;~~
- c. ~~Astill then told the plaintiff she looked nervous and assured her there was nothing to be nervous about;~~
- d. ~~Astill, in front of the plaintiff, advised other staff members that he would account for the plaintiff's absence for the lunchtime muster.~~
- e. ~~Astill did not have the plaintiff's consent.~~

20 ~~In around early 2017, Astill, while on duty, sexually abused the plaintiff.~~

Particulars of abuse

- i. ~~Astill tried to kiss the plaintiff on the lips and touched the plaintiff's neck.~~
- ii. ~~Astill grabbed the plaintiff's breasts.~~
- iii. ~~Astill placed the plaintiff's hand on his penis.~~
- iv. ~~Astill pulled down the plaintiff's leggings and underwear, pushed the plaintiff face down onto a table, told the plaintiff that she was going to enjoy what he was about to do to her and proceeded to have penile-vaginal intercourse with the plaintiff while telling the plaintiff that she wanted what he was doing to her.~~
- v. ~~Astill told the plaintiff to look normal, not to tell anyone of the abuse, and that he could make her life hell.~~

21 ~~The abuse described in paragraph 20 above occurred in circumstances where:~~

- a. ~~Astill and another corrections officer approached the plaintiff and Astill told her she was needed for an inter-gaol phone call;~~
- b. ~~The plaintiff was taken by Astill and the corrections officer to an office known as the High Needs Office at which point Astill dismissed the corrections officer and closed the door behind the officer;~~
- c. ~~Astill told the plaintiff that she knew why he had brought her to the High Needs Office, to which the plaintiff responded it was for an inter-gaol phone call;~~
- d. ~~Astill told the plaintiff it was not for an inter-gaol phone call and then proceeded to assault the plaintiff as set out in paragraph 20 above.~~

22 ~~In around late 2018, Astill, while on duty, sexually abused the plaintiff.~~

Particulars of abuse

i. ~~Astill put his hand down the plaintiff's shirt and groped her breasts at a time when the plaintiff was waiting to see a doctor at a medical clinic within Dillwynia.~~

ii. ~~Astill told the plaintiff to see him after she had seen the doctor at the clinic.~~

23 ~~The abuse set out in paragraphs 14 to 22 above took place in circumstances where:~~

- a. ~~Astill had advised the plaintiff that it would only take a bad case note for her to not get parole;~~
- b. ~~Astill had told the plaintiff that no one would believe her if she reported the matter;~~
- c. ~~Astill caused the plaintiff to fear being punished; and~~
- d. ~~Astill had told the plaintiff that he was a former NSW police officer and that he still had contacts within NSW police and with private investigators.~~

24 ~~In the premises of paragraph 23, the plaintiff did not immediately report any of the abuse because:~~

- a. ~~she still had a number of years of her prison sentence to serve;~~
- b. ~~she feared retribution from Astill, other corrections officers or NSW police;~~
- c. ~~she feared retribution against her step-daughter from, or at the request of, Astill; and~~
- d. ~~she feared no one would believe her.~~

Trespasses to the person

25 The allegations set out in paragraphs 13F, 13H, 13I, 13J, 13K, and 13M to 13T 44 to 23 above constitute trespass to the person, namely, assault and battery.

Particulars

- i. Astill caused the plaintiff to fear being touched punished.
- ii. ~~Astill had told the plaintiff that he was a former police officer and that he still had contacts within NSW Police.~~
- iii. Astill placed the plaintiff in reasonable apprehension of imminent contact with her body.
- iv. Astill intentionally subjected the Plaintiff to non-consensual physical contact.

- v. Astill did not have the plaintiff's consent to touch her.

Unlawful imprisonment

26 Further, and in the alternative, by reason of the matters pleaded in paragraphs 13A to 13T ~~14 to 22~~ the plaintiff was imprisoned by Astill without lawful authority.

26A Further or in the alternative to paragraph 26, by reason of the matters pleaded in paragraphs 13A to 13T above, the plaintiff was denied of her residual liberty by Astill without lawful authority.

Misfeasance in public office

27 At all material times, Astill was a person exercising or performing a power, authority, duty or function under the law of the State, namely, the *Crimes (Administration of Sentences) Act 1999* as determined by the Commissioner of Corrective Services from time to time.

28 At all material times, Astill purported to deal with the plaintiff as an officer in the employ of, and with the authority of, the defendant.

29 Astill's conduct pleaded at paragraphs 13A to 13T ~~14 to 23~~ above was deliberate, wrong and without lawful authority.

30 In the premises, Astill's conduct pleaded at paragraphs 13F, 13H, 13I, 13J, 13K, and 13M to 13T ~~14 to 23~~ above constituted an abuse of power or was otherwise unauthorised.

31 Astill knew that he was abusing his authority or was recklessly indifferent as to the limits or restraints upon his power and authority.

32 Astill knew or was recklessly indifferent as to the probability that his conduct pleaded above would likely cause loss and damage to the plaintiff.

33 The conduct of Astill was carried out, or purportedly carried out, in the course of his employment by the defendant.

34 At the time of Astill's conduct pleaded above, he had or purported to have the authority of the defendant to deal with the plaintiff.

35 In the premises, Astill has a personal liability to the plaintiff for misfeasance in public office.

36 By reason of the matters pleaded in paragraphs 42 and 43 below, the defendant is vicariously liable in respect of Astill's personal liability to the plaintiff for misfeasance in public office.

Damages

- 37 As a result of Astill's trespass to the person (in the form of assault and battery of the Plaintiff), and of the unlawful imprisonment of the plaintiff by Astill, the plaintiff has suffered loss and damage.

Particulars of loss and damage

- i. loss of dignity;
- ii. disgrace;
- iii. humiliation;
- iv. interference with bodily integrity;
- v. deprivation of liberty;
- vi. distress.

Aggravated Damages

- 38 Astill's conduct towards the plaintiff:
- a. amounted to a conscious wrongdoing in contumelious disregard of the plaintiff's rights and needs as an individual under his direct supervision and care;
 - b. occurred while the plaintiff was vulnerable;
 - c. was carried out in a predatory manner;
 - d. subjected the plaintiff to distress and humiliation;
 - e. shamed the plaintiff and added to her suffering,
- so as to warrant an award of aggravated damages.

Exemplary Damages

- 39 By reason of the matters pleaded above, Astill's conduct towards the plaintiff amounted to a contumelious disregard of the plaintiff's rights and needs as a vulnerable individual and under Astill's and the defendant's direct care and a violation of her rights to personal and bodily integrity as a person so as to warrant an award of exemplary damages.
- 40 Further, the conduct of Astill occurred at a time when officers of the Department of Justice/DCJ knew that Astill was abusing his position toward female inmates, and committing trespasses to the person of and/or unlawful imprisonment of female inmates and failed to take steps to prevent such trespasses to the person and/or

unlawful imprisonments from occurring so as to warrant an award of exemplary damages.

Direct liability

41 By reason of Astill's trespasses upon the person of the plaintiff ~~referred to in paragraph 25 above,~~ and/or the unlawful imprisonment of the plaintiff ~~referred to at paragraph 26 above,~~ occurring at a time when:

- a. the defendant had allocated to Astill a senior role within Dillwynia; and
- b. the role, function, conduct and scope of authority the defendant allocated to Astill was such that he could be regarded as the mind and the will of the Department of Justice, DCJ and/or the defendant;

the defendant is directly liable for the plaintiff's loss and damage as a result of those trespasses to the person and/or unlawful imprisonment.

Vicarious liability

42 In the alternative, at all material times the Department of Justice and/or DCJ operated Dillwynia through its servants, employees and/or agents and is vicariously liable for each of the acts and omissions of its servants, employees and/or agents, including Astill, which caused loss and damage to the plaintiff.

Particulars

- i. At the time of each act of assault pleaded above, Astill was an employee, servant or agent of the defendant.
- ii. Each act of assault pleaded above occurred in the course of, or closely in connection with, Astill's duties and services in the service of the defendant at the School.
- iii. The defendant placed Astill in a position of authority, trust and intimacy in respect of the plaintiff.
- iv. The defendant provided the occasion and the opportunity to commit each assault upon the plaintiff pleaded above.
- v. The conduct of Astill occurred in the course of his employment by the defendant.

43 Further, by operation of s 8(1) of the *Law Reform (Vicarious Liability) Act 1983* (NSW), the defendant is vicariously liable for each of the acts and omissions of Astill

which caused loss and damage to the plaintiff.

44 In the premises, the plaintiff is entitled to the relief claimed.

CLAIMS OF GROUP MEMBERS

45 Group Members were intentionally assaulted, battered and unlawfully deprived of their liberty by Astill at a time when they were inmates at Dillwynia and Astill was in a senior role at Dillwynia ~~was a Chief Corrections Officer at Dillwynia.~~

Particulars

The material facts and particulars of Group Members will be provided in due course.

COMMON QUESTIONS OF LAW OR FACT WHICH ARE SAID TO ARISE

In accordance with paragraph 4.1(c) of *Practice Note SC Gen 17 – Supreme Court Representative Proceedings*, the plaintiff identifies the following common questions of fact or law which are said to arise in the proceeding:

- 1 Whether the conduct of Astill with respect to the plaintiff constituted a trespass to the person of the plaintiff.
- 2 Whether the conduct of Astill with respect to the plaintiff constituted unlawful imprisonment.
- 3 Whether the plaintiff consented to any of the conduct of Astill.
- 4 Whether the plaintiff was capable at law of providing consent to any of the conduct of Astill
- 5 Whether the threats of retribution against the plaintiff vitiated any consent given by the plaintiff for the conduct of Astill.
- 6 Whether the conduct of Astill with respect to the plaintiff constitutes the tort of misfeasance in public office.
- 7 What was the role, function, and scope of authority given to Astill by the Department of Justice and/or DCJ?
- 8 Was the role, function, and scope of authority given to Astill by the Department of Justice and/or DCJ such that the defendant is directly liable for any trespass to the person and/or unlawful imprisonment perpetrated by Astill?
- 9 Was the role, function and scope of authority given to Astill by the Department of Justice and/or DCJ such that the defendant is vicariously liable for any trespass to the person and/or unlawful imprisonment perpetrated by Astill?

- 10 What is the appropriate measure of damages for trespasses to the person and/or unlawful imprisonment of offenders in custody?
- 11 Whether exemplary damages are available to be awarded with respect to trespasses to the person and/or unlawful imprisonment of inmates having regard to the criminal convictions of Astill, and if so in what circumstances?
- 12 Whether exemplary damages are available to be awarded with respect to trespasses to the person and/or unlawful imprisonment of inmates having regard to the conduct of other officers of Corrective Services in failing to report and/or take steps to prevent such conduct, notwithstanding the criminal convictions of Astill, and if so in what circumstances?

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor for the plaintiff

Date of signature

3 March 2025

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim, by filing a defence and/or making a cross-claim.**
- 2 If money is claimed, and you believe you owe the money claimed, by:**
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed, by:**
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Law Courts Building, 184 Phillip Street, Sydney NSW 2000
Postal address	Supreme Court of NSW, GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

FURTHER DETAILS ABOUT PLAINTIFF**Plaintiff**

Name CA1
 Address c-/ Mills Oakley Lawyers, address listed below

Legal representative for plaintiff

Name Luke Geary
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 Firm Mills Oakley
 Contact solicitor Georgia Davis

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DETAILS ABOUT DEFENDANT**Defendant**

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