

NOTICE OF FILING

Details of Filing

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File Title:	BRETT HAROLD GUNNING v STATE OF QUEENSLAND
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

Important Information

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

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

AMENDED STATEMENT OF CLAIM

No. VID943 of 2023

Federal Court of Australia

District Registry: Victoria

Division:

Brett Harold Gunning

Applicant

State of Queensland

Respondent

Definitions

~~“Child Removal Intervention” means removal of a child from the care of his or her parents during the period from 5 March 1992 to the date of issue of these proceedings (the **Parent’s Claim Period**) pursuant to whichever of the CPAs was in force at the time of the removal.~~

“CPAs” means the *Child Protection Act 1999* (Qld) (the **Act**) or the *Children’s Services Act 1965* (Qld) (the **1965 Act**) according to temporal context.

“Family Healing” means any of:

- a) restoration;
- b) resumption; or
- c) formation

of a family relationship.

“First Nations Parent” in relation to an Aboriginal child means a person who under Aboriginal tradition is regarded as a parent of the relevant child within the meaning of s 11(3) of the Act or in relation to Torres Strait Islander children, a person who, under Island custom, is regarded as a parent of the relevant child within the meaning of s 11(4) of the Act.

Filed on behalf of (name & role of party)	BRETT HAROLD GUNNING (APPLICANT)		
Prepared by (name of person/lawyer)	Jerry Tucker, Solicitor		
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(include state and postcode)			

“Indigenous” or “First Nations” means Aboriginal and/or Torres Strait Islander, as appropriate in context.

~~“parent” in relation to a Child Removal Intervention purportedly pursuant to the Act has the meaning given to it by s 11 of the Act.~~

“Parents’ Claim Period” means 5 March 1992 to the date of issue of these proceedings.

“race” includes colour, descent, nationality or ethnic origin.

Representative proceeding

1. The Applicant brings this proceeding on his own behalf and as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976 (FCA Act)*.
2. The Applicant sues pursuant to ss 46 PO and 46 PB of the *Australian Human Rights Commission Act 1986 (AHRC Act)* on his own behalf, and as a representative on behalf of all:
 - a) Aboriginal and Torres Strait Islander people;
 - b) who had children removed from their care by the Respondent between 5 March 1992 and 13 November 2023; and
 - c) allege that despite their complete or substantial compliance with the conditions or requirements the Respondent imposed on them for Family Healing, the Respondent would not facilitate Family Healing with their children.
~~have been subject to discrimination by the State of Queensland which was the same, similar, or related to the discrimination suffered by the Applicant, as set out below, at any time during the Parent’s Claim Period.~~
3. As at the date of the commencement of this proceeding, seven or more Group Members have claims against the Respondent within the meaning of s 33C of the FCA Act.

Legislation

4. The CPAs have provided power for children to be effectively removed from the custody of their parents and placed into the custody of the Respondent ~~to remove children from the custody of their parents since 1965.~~
5. The *Racial Discrimination Act 1975 (Cth)* (the **RDA**) has been in force for the entirety of the Parent’s Claim Period and prohibits discrimination on the basis of race.

The Applicant

6. The Applicant is a First Nations man of Aboriginal descent.
7. The Applicant was born on 11 October 1974.
8. In or about November 1974, the Applicant was taken into the custody of the Respondent by the Director of the Department of Children's Services pursuant to the 1965 Act shortly after his birth and placed with a non-First Nations family who adopted him as a baby.
9. The Applicant was denied the right to know who his biological family was or what his traditional Language, Country and Culture were.
- ~~9. The matters set out in paragraph 7 above occurred wholly or partly because of or a function of the Applicant's race.~~
- ~~10. The matters set out in paragraphs 7 to 9 were in contravention of s 9 of the *Racial Discrimination Act* 1975.~~

Particulars

~~The Respondent's actions had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the Applicant's right to remain free from unlawful interference with his family, and his right to the protection of his family as the natural and fundamental group unit of society.~~

~~The Respondent's actions had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the Applicant's right to enjoy his own Culture and to use his own Language, contrary to Art 27 of the International Covenant on Civil and Political Rights (ICCPR).~~

Discrimination against the Applicant

10. The Applicant has [REDACTED] children:
 - a) [REDACTED];
 - b) [REDACTED]; and
 - c) [REDACTED].
11. When [REDACTED] was around [REDACTED] old, [REDACTED] was removed from the care of the Applicant by the Respondent pursuant to the Act.

13. ~~██████'s removal was wholly or in part because of or a function of the race of the Applicant within the meaning of s 18 of the RDA of the Applicant.~~
12. When ██████ was about ██████ old, ██████ was removed from the care of the Applicant by the Respondent pursuant to the Act.
15. ~~██████'s removal was wholly or in part because of or a function of the race of the Applicant within the meaning of s 18 of the RDA.~~
13. From approximately the time of ██████'s removal, the Applicant tried to achieve Family Healing with ██████ and ██████.
14. The Respondent imposed conditions or requirements for the Applicant to comply with before it would facilitate Family Healing between the Applicant and his children.

Particulars

The Respondent required the Applicant to complete parenting courses it prescribed, engage in counselling, and undertake other actions. Further particulars may be provided after discovery and evidence.

15. From approximately the time of ██████'s removal the Applicant complied wholly or substantially with the requirements imposed by the Respondent for the:
- a) restoration;
 - b) resumption; or
 - c) formation
- of a family relationship with his children.

Particulars

The Applicant regularly and cooperatively engaged with the Respondent through child safety agencies and complied with their requests.

The Applicant completed both Indigenous and non-Indigenous parenting courses.

The Applicant arranged and engaged in counselling.

Further particulars may be provided following discovery and evidence.

16. ~~Further to the Respondent's contraventions of the RDA set out above, f~~From approximately the time of [REDACTED]'s removal, the Applicant was a parent able and willing to protect each of his children within the meaning of s 10 of the Act.
17. Shortly after [REDACTED] was born, [REDACTED] was removed from the care of the Applicant pursuant to the Act.
21. ~~[REDACTED]'s removal was wholly or in part because of or a function of the Applicant's race within the meaning of s 18 of the RDA.~~
18. Following the removal of each of the Applicant's children, a Child Protection Order was made pursuant to s 59 of the Act.
19. From the time of [REDACTED]'s removal, the Respondent continued to impose conditions or requirements on the Applicant before it would facilitate Family Healing between the Applicant and his children.

Particulars

The particulars to paragraph 14 above are repeated.

20. From the time of [REDACTED]'s removal, the Applicant complied wholly or substantially with the requirements imposed by the Respondent for the facilitation or permission of Family Healing between the Applicant and his children.
21. Despite the compliance referred to above, between [REDACTED] to [REDACTED] the Respondent did not permit, facilitate, or adequately facilitate Family Healing between the Applicant and his children.
22. ~~Further or alternatively to paragraphs 24,~~ By reason of the matters set out in paragraphs 10 to 21 above, the Respondent's excluded and/or restricted the Applicant having access to Family Healing despite the Applicant complying wholly or substantially with the requirements imposed on him by the Respondent failure to permit, facilitate or adequately facilitate Family Healing between the Applicant and his children (the Family Healing failure). ~~was because of or a function of the race within the meaning of s 18 of the Act of:~~
- a) ~~the Applicant, or~~
 - b) ~~his children, or~~
 - c) ~~both.~~

23. The Applicant infers that the Family Healing failure occurred wholly or partly because of or was a function of race-related factors including the following:
- a) Historic racism in Queensland in relation to First Nations people;
 - b) The statistically higher involvement of the Respondent in relation to First Nations families;
 - c) The apparent failure of the Respondent to give sufficient or any weight to the fact of the Applicant's:
 - (i) Completion of parenting courses, counselling, and need to move from time to time to where work was available;
 - (ii) Own inter-generational trauma, including the distress of searching for his own biological kin; and
 - (iii) The unreasonable nature of some of the imposed conditions or requirements such as for a time requiring him to reside with his non-First Nations adoptive parents, and at other times not to let the children's mother have contact with them;
 - d) The Respondent's apparent failure in assessing compliance with the imposed conditions or requirements to take into account, sufficiently or at all, common aspects of First Nations' living circumstances.

Particulars

The Applicant refers to and repeats paragraphs 13 to 16 and 19 to 21 above, including the particulars to those paragraphs.

The Respondent's assessment of the Applicant's compliance with the requirements were affected by cultural factors including food and baby needs available in the Applicant's home, his residence, and his employment choices and availability.

The Respondent failed to support the Applicant and the Applicant's children to develop and maintain a connection with his family, community, kinship network, Country, culture, traditions and language.

Further particulars may be provided following evidence and discovery.

24. The matters set out in paragraphs 22 and 23 above had the effect of nullifying and/or impairing the Applicant's recognition, enjoyment or exercise of his fundamental human rights and freedoms.

Particulars

The Applicant was denied access to and separated from his children and kinship network and family group.

The Respondent's failure had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the Applicant's right to remain free from unlawful interference with his family, and his right to the protection of their family as the natural and fundamental group unit of society, contrary to Art 23(1) of the ICCPR.

The Respondent's failure had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the Applicant's right to decide what kind of education his children receive, contrary to Art 29 of the Convention on the Rights of the Child.

25. The matters set out in paragraphs 10 to 24 above, were in contravention of The Respondent's Child Removal Interventions with the Applicant's children contravened s 9(1) of the RDA.

Particulars

The Applicant refers to and repeats paragraph 23 and 24 above including their particulars.

~~The Respondent's action, including the failures above, had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the Applicant's right to remain free from unlawful interference with his family, and his right to the protection of his family as the natural and fundamental group unit of society, contrary to Art 23(1) of the ICCPR.~~

~~The Respondent's action had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the Applicant's right to decide what kind of education his children receive, contrary to Art 29 of the Convention on the Rights of the Child.~~

26. By reason of the matters set out in paragraphs 22 to 25 above, the Applicant has suffered loss and damage.

Particulars

The Applicant was denied access to and separated from his children and his kinship network and family group.

The Applicant lost the right to raise his children.

The Applicant lost his right to remain free from unlawful interference with his family, and his right to the protection of his family as the natural and fundamental group unit of society, contrary to Art 23(1) of the ICCPR.

The Applicant lost his right to enjoy his own Culture and to use his own Language with his children, contrary to Art 28 of the United Nations Declaration on the Rights of Indigenous Peoples.

27. ~~Further or alternatively, the Respondent's failure to permit, facilitate, or adequately facilitate Family Healing between the Applicant and his children was a contravention of s 9 of the RDA.~~

Particulars

~~The Respondent's failure had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the Applicant's right to remain free from unlawful interference with his family, and his right to the protection of their family as the natural and fundamental group unit of society, contrary to Art 23(1) of the ICCPR.~~

~~The Respondent's failure had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the Applicant's right to decide what kind of education his children receive, contrary to Art 29 of the Convention on the Rights of the Child.~~

28. ~~Further to paragraph 26 and 27 above, from the time of [REDACTED]'s removal, the Applicant continued to be a parent able and willing to protect each of his children within the meaning of the Act.~~
29. ~~Pursuant to s 10 of the Act, a child can only be a "child in need of protection" within the meaning of the Act if there is not at least one parent who is willing and able to protect the child.~~
30. ~~At the time that each of the Applicant's children was removed from the care of the Applicant, that child was not a "child in need of protection" within the meaning of the Act.~~

Particulars

~~At all relevant times the Applicant was willing and able to protect each of his children.~~

- ~~31. Further or alternatively to paragraph 30, pursuant to s 10 of the Act, a child born after the commencement date of the Act, is only a child in need of protection if he or she has suffered, is suffering, or is at unacceptable risk of harm and does not have a parent able and willing to protect the child from harm.~~
- ~~32. Pursuant to s 11(3) of the Act, "parent" in relation to Aboriginal children includes a person who under Aboriginal tradition is regarded as a parent of the child.~~
- ~~33. In relation to each of the Applicant's children, the Respondent made no, or no adequate, investigations as to whether there was a person or persons who under Aboriginal tradition was regarded as a parent of that child.~~
- ~~34. To make a Child Protection Order pursuant to s 59 of the Act, a Magistrate must be satisfied that the child the subject of the order is a child in need of protection within the meaning of s 10 of the Act.~~
- ~~35. By reason of the matters set out in paragraphs 33, in making Child Protection Orders about the Applicant's children pursuant to s 59 of the Act, a Magistrate could not have been satisfied that the Applicant's children were children in need of protection within the meaning of s 10 of the Act.~~
- ~~36. Further or alternatively, the Respondent's failure to make any or adequate investigations into whether there was a person falling with the definition of parent in s 11(3) of the Act in relation to the Applicant's children constituted a breach of the child placement principles set out in ss 5A, 5B and 5C of the Act.~~

Group members

27. The Respondent imposed conditions or requirements for each group member to comply with before it would facilitate Family Healing between the group member and their removed children.
28. To the extent practicable, the group members wholly or substantially complied with requirements imposed by the Respondent.
29. Despite the matters pleaded in paragraphs 27 and 28 above, the Respondent did not facilitate Family Healing between the group member and their removed children.

30. The Applicant further claims on behalf of those he represents pursuant to s 46 PB of the AHRC Act that the conduct of the Respondent, as set out in paragraphs 27 to 29 above, restricted and/or excluded the Group Members from having access to Family Healing despite the Group Members' complying wholly or substantially with the requirements imposed on them by the Respondent to permit, facilitate or adequately facilitate Family Healing between the Group Members and their respective children. ~~in Child Removal Interventions pursuant to the CPAs, was because of or a function of the race of the removed children or their parents or both within the meaning of s 18 of the RDA. He claims that the Respondent's conduct in Child Removal Interventions is the same, similar, or related to the conduct which occurred in his case and constituted discrimination contrary to s 9 of the RDA.~~

Particulars

Further particulars to be provided following discovery and evidence.

31. The Applicant, as representative of the Group Members, infers that the matters set out in paragraph 30 above occurred wholly or partly because of or were a function of race-related factors including the following:
- a) Historic racism in Queensland in relation to First Nations people;
 - b) The statistically higher involvement of the Respondent in relation to First Nations families;
 - c) The apparent failure of the Respondent to give sufficient weight or any weight to the fact of Group Members':
 - (i) Complete or substantial compliance with conditions or requirements imposed by the Respondent before it would facilitate Family Healing between a Group Member and their removed children;
 - (ii) Own inter-generational trauma;
 - (iii) The nature of some of the imposed conditions or requirements.
 - d) The Respondent's apparent failure in assessing compliance with imposed conditions or requirements to take into account, sufficiently or at all, common aspects of First Nations' living circumstances.
32. Further or in the alternative to paragraph 31 above, the Respondent's assessment of whether a Group Member had complied wholly or substantially with the requirements

imposed by the Respondent was adversely affected or influenced by the group member's race or a function of the group member's race.

Particulars

Such assessments were affected by cultural factors including food available in the Group Members' homes, composition of households, linguistic abilities, and employment choices and availability.

Further particulars may be provided after discovery and evidence, including expert evidence.

33. The matters set out in paragraphs 31 and 32 above had the effect of nullifying and / or impairing the Group Members' recognition, enjoyment or exercise of their fundamental human rights and freedoms.

Particulars

The Respondent's conduct has had the effect of nullifying or impairing the recognition, enjoyment, or exercise of each group member's right to remain free from unlawful interference with their family, and their right to the protection of their family as the natural and fundamental group unit of society, contrary to Art 23(1) of the ICCPR.

The Respondent's failures have had the effect of nullifying or impairing the recognition, enjoyment, or exercise of each group member's right to decide what kind of education their children receive, contrary to Art 29 of the Convention on the Rights of the Child.

- ~~38. — Further, the Respondent did not permit, facilitate or adequately facilitate Family Healing between group members and their removed children.~~

34. The Respondent's actions in set out in paragraphs 31 to 33 above contravened s 9(1) of the RDA.

Particulars

The Respondent's actions as set out in paragraphs 27 to 29 above occurred wholly or partly because of or were a function of the Group Members' race, or the race of one or more of their First Nations children.

The Respondent failed to support the Group Members and the Group Members' children to develop and maintain a connection with their family, community, kinship network, Country, culture, traditions and language.

Further particulars may be provided after discovery and evidence, including expert evidence.

35. By reason of the matters set out in paragraphs 32 to 34 above, the Group Members have suffered loss and damage.

Particulars

The Group Members were denied access to and separated from their First Nations children and family group.

The Group Members lost the right to raise their children.

The Group Members lost their right to remain free from unlawful interference with their family, and their right to the protection of their family as the natural and fundamental group unit of society, contrary to Art 23(1) of the ICCPR.

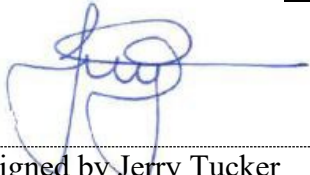
The Group Members lost their right to enjoy their own Culture and to use their own Language with their children, contrary to Art 28 of the United Nations Declaration on the Rights of Indigenous Peoples.

39. ~~Further or alternatively to paragraph 37, in relation to children who were removed following the commencement of the Act, pursuant to s 10 of the Act, a child is only a child in need of protection if he or she has suffered, is suffering, or is at unacceptable risk of harm and does not have a parent able and willing to protect the child from harm.~~
40. ~~Pursuant to s 11(3) of the Act, "parent" in relation to Aboriginal children includes a person who under Aboriginal tradition is regarded as a parent of the child. Further, pursuant to s 11(4) of the Act, "parent" in relation to Torres Strait Islander children who, under Island custom, is regarded as a parent of the child (collectively "First Nations parents").~~
41. ~~In relation to each of the Group Members' children, the Respondent made no, or no adequate, investigations as to whether there was a person or persons who was a First Nations Parent.~~
42. ~~To make a Child Protection Order pursuant to s 59 of the Act, a Magistrate must be satisfied that the child the subject of the order is a child in need of protection within the meaning of s 10 of the Act.~~
43. ~~By reason of the matters set out in paragraph 41, in making any Child Protection Orders about the Group Members' children pursuant to s 59 of the Act, a Magistrate could not have been satisfied that the Group Members' children were children in need of protection within the meaning of s 10 of the Act unless adequate investigations had been~~

~~undertaken and there was no First Nations parent able and willing to protect the child from harm.~~

- ~~44. Further or alternatively, the Respondent's failure to make any or adequate investigations into whether for each Group Members' children there was a person falling with the definitions of parent in ss 11(3) and 11(4) of the Act in relation to their respective children constituted a breach of the child placement principles set out in ss 5A, 5B and 5C of the Act.~~

Date: ~~12 November 2023~~ 21 March 2025



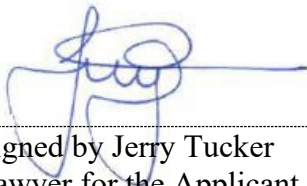
Signed by Jerry Tucker
Lawyer for the Applicant

This amended pleading was prepared by K P Hanscombe, K Bowshell and M Benn of Counsel.

Certificate of lawyer

I, Jerry Tucker, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~12 November 2023~~ 21 March 2025



Signed by Jerry Tucker
Lawyer for the Applicant