

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged:	Interlocutory Application (Human Rights Div 2.4 Exemption) - Form 35 - Rule 17.01(1)(a)
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
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File Title:	BRETT HAROLD GUNNING v STATE OF QUEENSLAND
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads "Sia Lagos".

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.



## Interlocutory application

No. VID943 of 2023

Federal Court of Australia  
District Registry: Victoria  
Division:

**Brett Harold Gunning**

Applicant

**State of Queensland**

Respondent

To the Respondent

The Applicant applies for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

**Time and date for hearing:**

**Place:**

The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of (name & role of party) **BRETT HAROLD GUNNING (APPLICANT)**

Prepared by (name of person/lawyer) **Jerry Tucker, Solicitor**

Law firm (if applicable) **Bottoms English Lawyers**

Tel **(07) 4051 5388** Fax **(07) 4051 5206**

Email **bottomslaw@belaw.com.au**

**Address for service** **18 Shields Street, Cairns City QLD 4870**  
(include state and postcode)



### Interlocutory orders sought

1. The Respondent's Application dated 4 April 2024 to strike out the Applicant's Statement of Claim be dismissed without adjudication on the merits.
2. The Applicant have leave to file an Amended Originating Application in the form of Annexure X to this Application.
3. The Applicant have leave to file an Amended Statement of Claim in the form of Annexure Y to this Application, such Amended Statement of Claim to be kept confidential to the parties to this proceeding in the absence of an order to the contrary.
4. A redacted Amended Statement of Claim in the form of Annexure Z to this Application be published to the Court's electronic file in this proceeding.
5. By 16 December 2024, the Respondent make discovery pursuant to Rule 20.15 of the *Federal Court Rules 2011* by filing and serving verified lists of documents in its possession, custody or power in the following categories:
  - a. Documents referring to the Applicant, whether electronic or hard copy, created or referred to between 29 December 2005 and 13 November 2023 in the possession, custody, or power of the Respondent in relation to any of the Applicant's children referred to in the Amended Statement of Claim, including all Case Notes, without redaction or masking, inclusive of referrals to support services, directions or instructions to the Applicant, and confirmation of commencement, progress or completion of any courses, training, education, counselling, lifestyle changes or similar activity prescribed by the Respondent for the Applicant under its powers or functions under the *Child Protection Act 1999* (Qld) (the **Act**);
  - b. Documents, whether electronic or hard copy, created or referred to between 29 December 2005 and 13 November 2023 in the possession, custody, or power of the Respondent, without redaction or masking, relating to or evidencing any steps taken by the Applicant to satisfy any requirement imposed by the Respondent upon him under its powers or functions under the Act;
  - c. Documents, whether electronic or hard copy, created or referred to between 29 December 2005 and 13 November 2023 in the possession, custody, or power of the Respondent, without redaction or masking, relating to or evidencing any assessment by the Respondent of steps taken by the Applicant to satisfy any requirement imposed by the Respondent upon him under its powers or functions under the Act.
  - d. Guidelines or policies operative created or used by the Respondent between 29 December 2005 and 13 November 2023 for facilitating or otherwise participating in



the formation, resumption or restoration of relationships between children subject to protection orders under the Act (**protected children**) and their parents; and

- e. Guidelines or policies created or used by the Respondent and operative between 29 December 2005 and 13 November 2023 relating to the imposition of requirements upon parents of protected children by the Respondent.
- f. Guidelines or policies created or used by the Respondent and operative between 29 December 2005 and 13 November 2023 relating to the assessment of parents, guardians or other care takers of children to be made in deciding whether to seek protection orders under the Act.

### **Service on the Respondent**

It is intended to serve this application on all Respondents.

Date: 17 October 2024

A handwritten signature in blue ink, appearing to be "Jerry Tucker", is written over a horizontal dotted line.

Signed by Jerry Tucker  
Lawyer for the Applicant



Annexure 'X' - Amended Originating Application



**Amended Originating application starting a representative proceeding under Part IVA of  
the Federal Court of Australia Act 1976**

No. of 20

Federal Court of Australia  
District Registry: Victoria  
Division:

**Brett Harold Gunning**

Applicant

**State of Queensland**

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:**

Date:

.....  
Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of (name & role of party) **BRETT HAROLD GUNNING (APPLICANT)**

Prepared by (name of person/lawyer) **Jerry Tucker, Solicitor**

Law firm (if applicable) **Bottoms English Lawyers**

Tel **(07) 4051 5388** Fax **(07) 4051 5206**

Email **bottomslaw@belaw.com.au**

**Address for service** **18 Shields Street, Cairns City QLD 4870**  
(include state and postcode)



## Details of claim

On the grounds stated in the accompanying Statement of Claim, the Applicant claims:

1. An order that the Respondent develop a process of consultation with the Applicant and each Group Member affected by its conduct as set out in the Statement of Claim, directed to facilitating the resumption, restoration or formation of a family relationship between the Applicant and each Group Member and their respective children who were removed from their parents by the Respondent. Wherever possible, all such consultations to be undertaken in a trauma-informed and culturally safe way.
2. An order that the Respondent undertake to train all staff dealing with child protection matters concerning First Nations families in trauma-informed and culturally safe interviewing and decision-making.
3. An order that the Respondent provide the resources reasonably necessary to the Applicant and each Group Member seeking the restoration, resumption or formation of a family relationship with their respective children whom the Respondent has removed to achieve that aim.
4. An order that the Respondent publish a formal apology in all First Nations languages commonly in use in Queensland for its previous child removal practices.
5. An order that the Respondent must exercise its powers and functions under the *Child Protection Act 1999* (Qld) in accordance with law and with the child placement principles within that Act.
6. Compensation.

## Definitions

Terms defined in the Statement of Claim in these proceedings have the same meaning in this document.

## Questions common to claims of Group Members

The questions of law or fact common to the claims of the Group Members are:

1. Whether during the Parent's Claim Period the Applicant and some or all of the Group Members were required to undertake specified actions before the Respondent would facilitate or enable Family Healing between a child who had been removed from parental custody and the Applicant or relevant Group Member.



2. If the answer to question 1 is yes, whether the specified actions constituted a condition or requirement which was unreasonable in the circumstances.
3. If the answer to question 1 is yes, whether the specified actions had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the right to remain free from unlawful interference with the parent's family, and the parent's right to the protection of the family as the natural and fundamental group unit of society.
4. If the answer to question 1 is yes, whether the specified actions had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the parent's right to decide what kind of education a parent's children received.
5. Is it and was it during the Parent's Claim Period more difficult for the First Applicant and some or all of the Group Members than non-Indigenous parents to achieve Family Healing with their children post removal by the Respondent?
6. If the answer to 5 is yes, is and was the reason for the greater difficulty a function of the race of the Applicant and some or all of the Group Members?
7. Did the Respondent require the Applicant and some or all of the Group Members to comply with requirements to achieve Family Healing?
8. Is it and was it during the Parent's Claim Period more difficult for the Applicant and some or all of the Group Members than non-Indigenous parents to comply with requirements imposed by the Respondent in order to achieve Family Healing?
9. If the answer to question 8 is yes, is and was the reason for the greater difficulty because of or a function of the race of the Applicant and some or all of the Group Members?
10. Whether the race of the Applicant and some or all of the Group Members affected or had any relevance to decisions about facilitating or enabling Family Healing.
11. Did the race of the Applicant and some or all of the Group Members form part of the basis for decisions about requirements imposed upon the Applicant and the Group Members by the Respondent as conditions for facilitating or enabling Family Healing?
12. Whether the Applicant and some or all of the Group Members were likely to be less able than non-First Nations families to understand the
  - a. requirements;
  - b. powers; or
  - c. means of review of the decisions of





the Respondent, by reason of one or more of

- i. culture;
  - ii. language;
  - iii. lower literacy; or
  - iv. deprived socioeconomic circumstances.
13. Whether the Applicant and some or all of the Group Members generally had limited formal education.
14. If the answer to 13 is yes, whether their level of formal education made them reliant on the information that the Respondent gave them in relation to achieving Family Healing.
15. If the answer to 13 is yes, whether that reliance made it unlikely that the Applicant and some or all of the Group Members would be able to challenge any condition or requirement imposed by the Respondent to achieve Family Healing.
16. If the answer to 13 is yes, whether that reliance put the Applicant and some or all of the Group Members at a disadvantage in the recognition, enjoyment or exercise of their right to remain free from unlawful interference with their family.
17. If the answer to 13 is yes, whether that reliance put the Applicant and some or all of the Group Members at a disadvantage in the recognition, enjoyment or exercise of their right to the protection of their family as the natural and fundamental group unit of society.
18. Whether the Respondent's conduct in relation to Child Removal Interventions has had the effect of nullifying or impairing the right of the Applicant and some or all of the Group Members' to remain free from unlawful interference with their family.
19. Whether the Respondent's conduct in relation to Child Removal Interventions has had the effect of nullifying or impairing the right of the Applicant and some or all of the Group Members' to the protection of the family as the natural and fundamental unit of society.
20. Whether the Respondent breached the principle contained in s 5A of the Act.
21. Whether the Respondent breached the principle contained in s 5B of the Act.
22. Whether the Respondent breached the principle contained in s 5C of the Act.

### **Representative action**

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.



The Applicant brings this application 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:

- 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 restoration, resumption, or formation of a family relationship (**Family Healing**) the Respondent would not facilitate Family Healing with their children. ~~all Aboriginal and Torres Strait Islander people who 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 in the Statement of Claim, at any time between 5 March 1992 and the date of issue of these proceedings (the **Parents' Claim Period**).~~

#### **Accompanying documents**

1. Reasons for the decision to terminate the amended representative complaint given by the Delegate of the President of the Australian Human Rights Commission dated 14 September 2023.
2. A copy of the representative complaint to the Australian Human Rights Commission dated 22 December 2022.
3. A copy of the amended representative complaint to the Australian Human Rights Commission dated 31 May 2023.
4. A copy of the second amended representative complaint to the Australian Human Rights Commission dated 22 June 2023.
5. Notice of termination of the complaint given by the Delegate of the President of the Australian Human Rights Commission dated 14 September 2023.

#### **Applicant's address**

The Applicant's address for service is: Bottoms English Lawyers

Place: 18 Shields Street, Cairns City QLD 4870

Email: jerrytucker@belaw.com.au

**Service on the Respondent**

It is intended to serve this originating application on the Respondent.

Date: ~~12 November 2023~~

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Signed by Jerry Mae Tucker  
Lawyer for the Applicant



Annexure Y' - Amended Statement of Claim

































Annexure ' - redacted Amended Statement of Claim



Form 17  
Rule 8.05(1)(a)

**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)	<b>BRETT HAROLD GUNNING (APPLICANT)</b>		
Prepared by (name of person/lawyer)	Jerry Tucker, Solicitor		
Law firm (if applicable)	Bottoms English Lawyers		
Tel	(07) 4051 5388	Fax	(07) 4051 5206
Email	bottomslaw@belaw.com.au		
<b>Address for service</b>	18 Shields Street, Cairns City QLD 4870		
(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], [REDACTED] was removed from the care of the Applicant by the Respondent pursuant to the Act.



13. ~~██████ 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, 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. ~~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~~
  - e) ~~both.~~



23. The matters set out in paragraph 22 above were wholly or partly because of or a function of the Applicant's race or the race of one or more of the Applicant's children within the meaning of ss 9(1) and 18(b) of the RDA.

**Particulars**

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

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

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 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 Respondent's actions as set out in paragraphs 11 to 21 above, in failing to facilitate Family Healing despite the Applicant's compliance with the requirements imposed on him by the Respondent occurred wholly or partly because of or were a function of the Applicant's race, or the race of one or more of his children.

The Applicant repeats paragraph 23 above including the particulars to that paragraph.

~~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.~~

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.~~



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.

- ~~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 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 matters set out in paragraphs 30 above were wholly or partly because of or a function of the Group Members' race or the race of one or more of the Group Members' children.

### **Particulars**

Further particulars may be provided following evidence and discovery.

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 purpose 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 as 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

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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~~

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Signed by Jerry Tucker  
Lawyer for the Applicant