

NOTICE OF FILING

Details of Filing

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File Title:	MADISON MAY BURNS 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. VID944 of 2023

Federal Court of Australia
District Registry: Victoria
Division:

Madison May Burns

Applicant

State of Queensland

Respondent

Definitions

~~“Child Removal Intervention” means removal of a child from the care of his or her parents pursuant to the *Child Protection Act 1999 (Qld)* (as amended) (the Act)~~

“Act” means the Child Protection Act 1999 (Qld) (as amended).

“Children’s Claim Period” means 30 March 1999 to the date of issue of these proceedings.

“Family Healing” means any of:

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

of a family relationship.

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

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

~~“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.~~

“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

Filed on behalf of (name & role of party)	MADISON MAY BURNS (APPLICANT)
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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.

Representative proceeding

1. The Applicant brings this proceeding on her own behalf and as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976* (FCA Act).
2. The Applicant brings this application pursuant to ss 46 PO and 46 PB of the *Australian Human Rights Commission Act 1986* (AHRC Act) on her own behalf, and as a representative on behalf of:
 - (a) Aboriginal and Torres Strait Islander persons ~~children~~;
 - (b) who were aged 14 years or older on 13 November 2023; and
 - (c) who were removed by the Respondent from their families between 5 March 1992 and 13 November 2023; and
 - (d) allege that following their removal their connection with their family, kinship network, community, culture, country, traditions and/or language, was not adequately facilitated by the Respondent.
 - ~~(e) 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 at any time during the Children'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 Act has provided power for the Respondent to remove children from the custody of their parents since 30 March 1999.
5. The *Racial Discrimination Act 1975* (Cth) (the **RDA**) has been in force for the entirety of the Children's Claim Period and prohibits unlawful discrimination on the basis of race.

The Applicant

6. The Applicant is a First Nations woman of Aboriginal descent ~~on her father's side.~~
- ~~6. The Applicant's maternal family is not First Nations.~~
7. The Applicant was born on 27 August 2002.

8. The Applicant was removed from her maternal family by being taken into the custody of the Respondent by the Chief Executive, pursuant to the Act shortly after she was born.
9. Following the Applicant's removal, a Child Protection Order was made pursuant to s 59 of the Act.
10. The Applicant was initially placed with a foster family whose race she is not aware of.

Particulars

Particulars may be provided following discovery and evidence.

11. From the time of her removal, at various times the Applicant remained in the custody, under the guardianship, or subject to some other form of supervision of the Chief Executive within the meaning of the Act until she was aged 18 years.
12. During her time in the custody of the Respondent, it refused to tell the Applicant who her paternal family was or what her traditional Language, Country and Culture were.

Particulars

The Applicant is presently unable to provide particulars of her requests and the Respondent's failures. Particulars may be provided after discovery and evidence.

13. During her time in the custody of the Respondent the Applicant was separated from her siblings and was placed from time to time with non Indigenous carers and in residential group homes.

Particulars

During her period in the custody of the Chief Executive, the Applicant was placed in numerous different foster families, both Indigenous and non-Indigenous, and in residential group homes. The Applicant can remember being placed with:

- a) a foster family of unknown race;
- b) her maternal grandmother's sister;
- c) her aunt;
- d) another foster family;
- e) her maternal grandmother;
- f) her aunt Erin;
- g) Indigenous foster carers;
- h) residential group homes;
- i) foster parents called Stephanie and Brian;
- j) an abusive boyfriend when the Respondent said it had no capacity with foster families or residential group homes; and
- k) alone in various motels.

Further particulars may be provided following discovery and evidence.

14. During her time in the custody of the Respondent, the Applicant received a sporadic and disruptive schooling.

Particulars

- a) Attended at least five different schools; and
- b) Was not able or supported to attend school past grade 9.

Further particulars may be provided after discovery and evidence.

- ~~15. The matters set out in paragraph 8 to 14 above were wholly or partly because of or a function of the Applicant's race.~~

15. By reason of the matters set out in paragraphs 10 to 14 above, the Respondent restricted and/or excluded the Applicant from having access to her First Nations Parents, family group and/or community and/or connection to kin, country and culture.

Particulars

The Applicant refers to and repeats paragraphs 12 and 13 above, including the particulars to those paragraphs.

16. The Applicant infers that the matters set out in paragraphs 10 to 14 above occurred 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 repeated placement of the Applicant in non-First Nations residential settings;
- d) The Respondent's refusal to give the Applicant any information about her First Nations culture, community or language;
- e) The apparent failure of the Respondent to give sufficient or any weight to the fact of the Applicant's First Nations descent in identifying and/or assessing potential residential placements and/or the Respondent's failure to support or maintain the Applicant's connection to kin, country and culture.

Particulars

The Applicant refers to and repeats paragraphs 10, 12, 13 and 15 above, including the particulars to those paragraphs.

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

17. The matters set out in paragraphs 10, 12, 13, 15 and 16 above had the effect of nullifying and/or impairing the Applicant's recognition, enjoyment or exercise of her fundamental human rights and freedoms.
- ~~16. The matters set out in paragraph 8 to 14 were in contravention of s 9 of the *Racial Discrimination Act 1975*.~~

Particulars

The Applicant was denied access to her First Nations culture, community and language.

The Applicant was denied access to and separated from her First Nations Parents and family group.

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 her family, and her right to the protection of her family as the natural and fundamental group unit of society, contrary to Art 23(1) of the International Covenant on Civil and Political Rights (ICCPR).

The Respondent's actions had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the Applicant's right to enjoy her own Culture and to use her own Language, contrary to Art 28 of the United Nations Declaration on the Rights of Indigenous Peoples.

The Applicant refers to and repeats paragraphs 10, 12, and 13 above, including the particulars to those paragraphs.

18. The matters set out in paragraphs 10 to 17 were in contravention of s 9(1) of the *Racial Discrimination Act 1975*.

Particulars

The Respondent's actions after the Applicant's removal, in failing to place the Applicant into the care of a person or persons who were members of the Applicant's own family, community and/or family group and subsequent residential placements pursuant to ss 5C and 83 of the Act occurred wholly or partly because of or were a function of the Applicant's race, or the race of one or both of her First Nations Parents and/or family group.

The Applicant refers to and repeats the particulars to paragraphs 10, 12, 13 and 16 above including the particulars.

19. Further to the above, when the Applicant's sister [REDACTED] was born in 2016, the Applicant was initially involved in [REDACTED] care, but the Respondent, ~~severed that care~~ after a

month placed [REDACTED] with a foster family who would not facilitate and prevented the Applicant from having a relationship with [REDACTED].

Particulars

Particulars may be provided following analysis of discovery and evidence.

- ~~18. The matters set out in paragraph 17 above were wholly or partly because of or a function of the Applicant's race.~~
20. By reason of the matters set out in paragraph 19 above, the Respondent further restricted and/or excluded the Applicant from having access to her First Nations Parents, family group and/or community and/or connection to kin, country and culture.
21. The matters set out in paragraphs 19 to 20 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 sibling, First Nations Parents or family group.

Particulars

The Applicant was denied access to her First Nations culture, community and language.

The Applicant was denied access to and separated from her First Nations family group.

The Applicant refers to and repeats paragraph 10, 12, 13, 15, 16 and 19 above, including the particulars.

22. The matters set out in paragraphs 20 to 21 above had the effect of nullifying and/or impairing the Applicant's recognition, enjoyment or exercise of her fundamental human rights and freedoms.

Particulars

The Applicant refers to and repeats the particulars to paragraph 21 above.

23. The matters set out in paragraphs 20 to 22 above ~~17~~ were in contravention of s 9(1) of the *Racial Discrimination Act* 1975.

Particulars

The Respondent's actions in failing to place the Applicant into the care of a person or persons who were members of the Applicant's own family, community and/or family group pursuant to ss 5C and 83 of the Act occurred wholly or partly because of or were a function of the Applicant's race, or the race of one or both of her First Nations Parents, community and/or family group (as provided by ss 5C and 83(4)-(5) of the Act).

The Applicant refers to and repeats paragraph 16 above including the 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 her family, and her 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 actions had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the Applicant's right to enjoy her own Culture and to use her own Language, contrary to Art 28 of the United Nations Declaration on the Rights of Indigenous Peoples.~~

Loss of Cultural Connection

24. The Applicant requested the Respondent connect her to her Indigenous relatives on various occasions between 2017 and 2019.

Particulars

Particulars may be provided following discovery and evidence.

25. The Respondent made no, or no adequate, attempts to facilitate Family Healing with the Applicant's Indigenous family despite her requests to the Respondent.
26. While in the care of the Respondent the Applicant's cultural needs were not met as required by s 83 of the Act.

Particulars

The Applicant is presently unable to particularise her own specific losses of culture without information which is in the sole possession of the Respondent. Particulars may be provided following analysis of discovery and evidence.

27. The Respondent made no, or no adequate, attempts to provide the Applicant with opportunities to learn about and practise her Aboriginal Culture, to know her Aboriginal Language, and to know her traditional Aboriginal Country.

Particulars

The Applicant refers and repeats paragraphs 12 and 13 above.

The Applicant is presently unable to particularise further her own specific losses of culture without information which is in the sole possession of the Respondent. Particulars may be provided following analysis of discovery and evidence, including expert evidence.

28. By reason of the matters set out in paragraphs 24 to 27 above, the Respondent restricted and/or excluded the Applicant from having access to her First Nations Parents, family group, community and/or a connection to her kin, country and culture.
29. The matters set out in paragraphs 24 to 27-20 to 23 above occurred wholly or partly because of or were a function of the Applicant's race or the race of one or more of the Applicant's First Nations Parents or family group.

Particulars

The Applicant refers to and repeats paragraphs 12, 13 and 16 above.

The Applicant was denied access to her First Nations culture, community and language.

30. The matters set out in paragraphs 28 and 29 above had the effect of nullifying and/or impairing the Applicant's recognition, enjoyment or exercise of her fundamental human rights and freedoms.

Particulars

The Applicant refers to and repeats the particulars to paragraph 17 above.

31. The matters set out in paragraph 24 to 30 20 to 23 were in contravention of s 9 of the *Racial Discrimination Act 1975*.

Particulars

The Respondent's actions in failing to make adequate attempts to place the Applicant into the care of a person or persons who were members of the Applicant's own family, community and/or family group pursuant to the Act occurred wholly or partly because of or were a function of the Applicant's race, or the race of one or both of her First Nations Parents, community and/or family group (as provided by ss 5C and 83(4)-(5) of the Act).

The Applicant refers to a repeats paragraph 16 above, including the 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 her family, and her 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 actions had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the Applicant's right to enjoy her own Culture and to use her own Language, contrary to Art 28 of the United Nations Declaration on the Rights of Indigenous Peoples.~~

32. Further to the Respondent's contraventions of the RDA, 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.
33. Further or alternatively, 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.
- ~~28. 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.~~
34. At no relevant time did the Respondent make any or any adequate investigations as to whether there was a First Nations Parent person or persons who under Aboriginal tradition was regarded as a parent of the Applicant who was willing and able to protect the Applicant from harm.
35. Accordingly, the Respondent did not know whether there was a First Nations Parent within the meaning of the Act who was willing and able to protect the Applicant in breach of s 10 of the Act.
- ~~31. 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.~~
- ~~32. By reason of the matters set out in paragraphs 29 and 30, in making a Child Protection Order about the Applicant children pursuant to s 59 of the Act, a Magistrate could not have been satisfied that the Applicant was in need of protection within the meaning of s 10 of the Act.~~
36. Sections 5C and 83 of the Act create specific statutory duties owed by the Respondent to Aboriginal and Torres Strait Islander Children who are removed from their family and placed in care pursuant to the Act, including compliance with:

- a) the principle that if a child is to be placed in care, the child has a right to be placed with a member of the child's family group (the **Child Placement Principle**) (pursuant to s 5C(2)(c) and s 83(4)-(5) of the Act); and
 - b) the principle that a child has the right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language, particularly when the child is in the care of a person who is not an Aboriginal or Torres Strait Islander person (the **Connection Principle**) (pursuant to s 5C(2)(e), s 83 of the Act).
37. If the Respondent has not made adequate investigations as to whether there is a First Nations Parent or a member of the child's family group to care for the child, it is not possible for the Respondent to comply with the Child Placement Principle or the Connection Principle.
38. Further ~~or alternatively~~, the Respondent's failure to make any or adequate investigations into whether there was a First Nations parent or member of the Applicant's family group to care for person falling with the definition of parent in s 11(3) of the Act in relation to the Applicant constituted a breach of the Child Placement Principles, and the Connection Principle set out in ss 5A, 5B and 5C and 83 of the Act.
39. By reasons of the breaches of the Child Placement Principle and the Connection Principle, the Applicant has suffered loss and damage.

Particulars

The Applicant lost any opportunity to grow up learning about her traditional Country.

The Applicant lost access to her First Nations Culture, Community and Language.

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

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

Group Members

40. The Applicant further claims on behalf of those she represents pursuant to s 46 PB of the AHRC Act that the conduct of the Respondent, after removing a Group Member from their family and in failing to place each Group Members into the care of their First Nations Parents and/or family group, restricted and/or excluded Group Members from having

access to their respective First Nations Parents, family group, community and/or a connection to kin, country and culture, in Child Removal Interventions pursuant to the Act, 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. She claims that the Respondent's conduct in Child Removal Interventions is the same, similar, or related to the conduct which occurred in her case, and constituted discrimination contrary to s 9 of the RDA.

Particulars

Further Particulars to be provided following discovery and evidence, including expert evidence, and determination of the common questions.

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 28 of the United Nations Declaration on the Rights of Indigenous Peoples.

41. The Applicant, as the representative of the Group Members, infers that the matters set out in paragraph 40 above were wholly or partly because of or a function of race-related factors including:
- 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 repeated placement of Group Members in non-First Nations residential settings;
 - d) The Respondent's apparent failure to give sufficient or any weight to common aspects of First Nations living circumstances; and
 - e) The apparent failure of the Respondent to give sufficient or any weight to the fact of the Group Members' First Nations descent in identifying and/or assessing potential residential placements.

Particulars

Particulars to be provided following discovery and evidence, including expert evidence, and determination of the common questions.

42. The matters set out in paragraphs 40 and 41 above had the effect of nullifying and/or impairing the Group Members' recognition, enjoyment or exercise, on an equal footing, of their fundamental human rights and freedoms.

Particulars

The Group Members were denied access to their First Nations culture, community and language.

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

The Respondent's actions had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the Group Members' rights 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 actions had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the Group Members' right to enjoy their own Culture and to use their own Language, contrary to Art 28 of the United Nations Declaration on the Rights of Indigenous Peoples.

43. Further, the Respondent did not permit, facilitate or adequately facilitate Family Healing between Group Members and their First Nations Parents and/or family group.

Particulars

Particulars of the Respondent's failure to permit, facilitate or adequately facilitate Family Healing may be provided after discovery, evidence including expert evidence, and determination of the common questions.

44. The Respondent's actions set out in paragraphs 40 to 43 were in contravention of s 9(1) of the *Racial Discrimination Act 1975*.
45. By reason of the matters set out in paragraphs 40 to 44 above, the Group Members have suffered loss and damage.

Particulars

The Group Members lost adequate access to their First Nations culture, community and language or that access was significantly impaired.

The group members lost their right to remain free from unlawful interference with their families, and their rights to the protection of their families 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 Cultures and to use their own Languages, contrary to Art 28 of the United Nations Declaration on the Rights of Indigenous Peoples.

Further Particulars to be provided following discovery and evidence, including expert evidence, and determination of the common questions.

46. Further to the Respondent's contraventions of the RDA, a child is only a child in need of protection within the meaning of the Act 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.
- ~~37. 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").~~
47. At no relevant time ~~During~~ the Children's Claim Period, did the Respondent make any ~~no~~, or any ~~no~~ adequate, investigations as to whether there was a person or persons who was a First Nations Parent able and willing to protect each group member from harm.
- ~~39. 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.~~
- ~~40. By reason of the matters set out in paragraphs 37 to 39, in making any Child Protection Orders about a Group Member pursuant to s 59 of the Act, a Magistrate could not have been satisfied that the Group Member was a child in need of protection.~~
48. Section 5C and s 83 of the Act create specific statutory duties owed by the Respondent to Aboriginal and Torres Strait Islander Children removed from their family by the Respondent to place that child in care pursuant to each of the Child Placement Principle and the Connection Principle.

Particulars

The Applicant refers to and repeats paragraphs 36(a) to 36(b).

49. If the Respondent has not made adequate investigations as to whether there is a First Nations Parent and/or a member of the child's family group who is able and willing to care for that child, it is not possible for the Respondent to comply with the Child Placement Principle or the Connection Principle.
50. Further or alternatively, whenever the Respondent's failure to make any or adequate investigations into whether there was a First Nations Parent or a member of a for each Group Member's family group, who was able and willing to care for the Group Member,

~~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~~ it breached ~~of the~~ Child Placement Principles and the Connection Principle set out in ss ~~5A, 5B and 5C~~ and 83 of the Act.

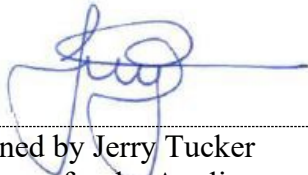
51. By reason of the matters set out in paragraphs 46 to 50 above each Group Member has suffered loss and damage.

Particulars

The Applicant refers to and repeats the particulars to paragraph 45.

Further Particulars to be provided following discovery and evidence, including expert evidence, and determination of the common questions.

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

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

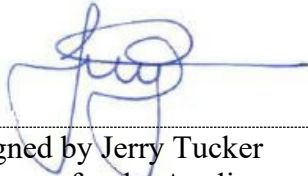
Signed by Jerry Tucker
Lawyer for the Applicant

This amended pleading was prepared by Dr K P Hanscombe KC, 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