

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged: Originating Application Starting a Representative Proceeding under Part IVA  
Federal Court of Australia Act 1976 [Human Rights Div 2.4 Exemption] - Form  
19 - Rule 9.32

Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)

Date of Lodgment: 12/11/2023 8:58:52 AM AEDT

Date Accepted for Filing: 13/11/2023 11:23:42 AM AEDT

File Number: VID944/2023

File Title: MADISON MAY BURNS 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



*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.

Form 19  
Rule 9.32



**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:

**Madison May Burns**

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) MADISON MAY BURNS (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@below.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 sets up a process of consultation with the Applicant and each Group Member person 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 who were removed from their parent or parents by the Respondent, wherever possible all such consultations to be undertaken in a trauma-informed and culturally safe way.
2. An order that it 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 it 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 it has removed.
4. An order that Respondent publish formal apology in all First Nations languages commonly in use in Queensland for its previous child removal practices.
5. An order that 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. Was the Applicant and each Group Member removed from their family by the Respondent wholly or partly because of their race?



2. Was the placement of the Applicant and each Group Member wholly or partly because of their race?
3. Did the Respondent consider or adequately consider:
  - a. Kinship care; or alternatively
  - b. Care with indigenous people of the same or similar language groupswhen determining where to place the Applicant and the Group Members after removal?
4. Did the Respondent consider or adequately consider one or more of the Applicant's and the group members':
  - a. Connection to their traditional or cultural country;
  - b. Connection to their traditional culture;
  - c. Connection to their traditional or cultural language;when determining where to place the Applicant and the Group Members after removal?
5. Did the Respondent facilitate or adequately facilitate one or more of the Applicant's and the Group Members':
  - a. Connection to their traditional or cultural country;
  - b. Connection to their traditional culture;
  - c. Connection to their traditional or cultural language;after removal?
6. Did the Respondent investigate or adequately investigate whether the Applicant and each of the group members had a parent within the meaning of section 11 of the Act?
7. Were the Applicant and the group members less able than non-indigenous children who had been removed and placed by the Respondent to understand the
  - a. Bureaucracy;
  - b. Requirements;
  - c. Powers; and
  - d. Means of review of the decisions ofthe Respondent, by reason of:
  - e. culture,
  - f. language,



- g. lower literacy, or
- h. more deprived socioeconomic circumstances

than non-indigenous children removed from their parents by the Respondent?

### **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 her own behalf and as a representative on behalf of all Aboriginal and Torres Strait Islander people, aged at least 14 years at the date of issue of these proceedings, who have been subject to the same similar or related discrimination as the Applicant set out in the Statement of Claim at any time between 5 March 1992 and the date of issue of these proceedings (the **Children's 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. 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](mailto:jerrytucker@belaw.com.au)



**Service on the Respondent**

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

Date: 12 November 2023

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

Signed by Jerry Mae Tucker  
Lawyer for the Applicant

Our ref: 2022-19844

14 September 2023

Ms Jerry Tucker  
Special Counsel  
Bottoms English Lawyers

Sent by email: [JerryTucker@belaw.com.au](mailto:JerryTucker@belaw.com.au)

Dear Ms Tucker

### **Termination of the complaint**

I am writing to advise you of my decision regarding the complaint which has been accepted and progressed as a representative complaint against the State of Queensland made by Ms Madison Burns (**Ms Burns**) on her own behalf and “on behalf of all Aboriginal and Torres Strait Islander people who at the time of issue of this application were aged at least 14 years, and who have been subject to conduct of the kind set out [in the complaint], purportedly pursuant to the *Child Protection Act 1999* (Qld) (the CPA) (together, the child removal intervention) by the Respondent State of Queensland since 5 March 1992, plus [REDACTED]”.

The complaint alleges race and descent discrimination under the *Racial Discrimination Act 1975* (Cth).

### **The original complaint**

#### Documents

The Australian Human Rights Commission (**the Commission**) received the original complaint on 21 December 2022. The original complaint totals 14 pages,

a copy of which was emailed to your office on 5 May 2023. Another copy is provided with this letter, marked as 'Attachment B'.

### Scope

Ms Burns' original complaint was made on her own behalf and on behalf of the class members as defined in paragraph 7 of her original complaint, namely "all Aboriginal and Torres Strait Islander people who have been subject to conduct of the kind set out [in the complaint], purportedly pursuant to the *Child Protection Act 1999* (Qld) (the CPA) (together, the child removal intervention) by the Respondent State of Queensland since 5 March 1992, save for [REDACTED] [REDACTED]" (**the Class Members**).

Ms Burns' original complaint was accepted and progressed as a representative complaint against the State of Queensland (**the State**) made by Ms Burns on her own behalf and on behalf of the Class Members.

### Contact with the State

The Commission provided a copy of the original complaint to the Queensland Crown Law (**Crown Law**), representing the State, on 5 May 2023.

### **Amendment to the complaint**

On 31 May 2023, Ms Burns through your office requested leave to amend the complaint to:

- redefine the class members as follows:  
"all Aboriginal and Torres Strait Islander people who at the time of issue of this application were aged at least 14 years, and who have been subject to conduct of the kind set out [in the complaint], purportedly pursuant to the *Child Protection Act 1999* (Qld) (the CPA) (together, the child removal intervention) by the Respondent State of Queensland since 5 March 1992, plus [REDACTED] [REDACTED]".
- replace the five-page long annexure to her original complaint, filed on 21 December 2022<sup>1</sup> with the five-page long amended annexure, filed on 31 May 2023.

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<sup>1</sup> This appears at pages 9 – 13 of Attachment B, provided with this letter, a copy of which was emailed to your office and Crown Law on 5 May 2023.





- include the letter of 31 May 2023 received from your office to form part of the complaint.

On 7 June 2023, in accordance with section 46PA of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRCA**), I granted leave for Ms Burns to amend the complaint as requested.

The amendment to the complaint totals seven (7) pages, a copy of which was provided to your office and Crown Law on 7 June 2023. Another copy is provided with this letter, marked as 'Attachment C'.

### **My decision**

Under section 46PH(1B)(b) of the AHRCA, the President must terminate a complaint if satisfied that there is no reasonable prospect of the matter being settled by conciliation.

I note that the Commission held a conciliation conference on 8 September 2023. I understand that the complaint could not be resolved at that time or since, because the parties could not agree on how to resolve the complaint.

I have therefore decided to terminate the complaint under section 46PH(1B)(b) of the AHRCA, as I am satisfied that there is no reasonable prospect of the matter being settled by conciliation.

### **Possible further action**

The AHRCA says that after a complaint is terminated, the person(s) affected by the alleged discrimination may be able to apply to the Federal Circuit and Family Court of Australia (**FCFCOA**) or the Federal Court of Australia (**FCA**) to have the allegations decided by the court.

If Ms Burns and/or the class members apply to the FCFCOA or the FCA, they will need to attach the following documents to the application:

- Notice of Termination (enclosed)
- Attachment A (this letter)
- Attachment B (the complaint, as enclosed)
- Attachment C (the amendment to the complaint, as enclosed)

Any application to the court must be made within 60 days of the date on the Notice of Termination.



If a matter proceeds to court, the [FCFCOA](#) and [FCA](#) can award costs against either party. Information about the court or the court process is available from a court registry or from its websites.

Please provide a copy of this letter to Ms Burns for her records.

Yours sincerely

A handwritten signature in cursive script that reads 'Jodie Ball'.

Jodie Ball

**Delegate of the President**



**BOTTOMS  
ENGLISH  
LAWYERS**

Our Ref: JT: 3910

21 December 2022

**Emeritus Professor Rosalind Croucher AM**  
**President**  
**Australian Human Rights Commission**  
**GPO Box 5218**  
**SYDNEY NSW 2001**

Email: [complaints@humanrights.gov.au](mailto:complaints@humanrights.gov.au)

Dear President,

**RE: REPRESENTATIVE COMPLAINTS - SECTION 46P AND 46PB  
 AUSTRALIAN HUMAN RIGHTS COMMISSION ACT 1986 –  
 MADISON MAY BURNS & BRETT HAROLD GUNNING**

1. We act for First Nations people, Mr Brett Harold Gunning, and Ms Madison May Burns (**the Complainants**) in relation to each of their complaints, brought pursuant to Sections 46P and 46PB of the *Australian Human Rights Commission Act 1986* (Cth).
2. Mr Gunning's complaint, **enclosed**, alleges unlawful discrimination contrary to the *Racial Discrimination Act 1975* (Cth) (**RDA**) on his own behalf, and on behalf of [REDACTED]. He also brings the complaint as a representative complainant on behalf of persons who have been subject to similar alleged unlawful discrimination (**Mr Gunning's complaint**).
3. Ms Burn's complaint, **enclosed**, likewise alleges unlawful discrimination under the RDA on her own behalf. She also makes a representative complaint on behalf of persons who have been subject to similar alleged unlawful discrimination (**Ms Burn's complaint**), save for [REDACTED] referred to in paragraph 2.
4. The Respondent to the complaint is the State of Queensland (**the Respondent**).
5. Mr Gunning's complaint and Ms Burn's complaint are related insofar that both complaints allege unlawful discrimination by the Respondent in its activities around removal and placement of First Nations children in Queensland. The focus of the claims is the Respondent's approach and activities in relation to [REDACTED].

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**BOTTOMS ENGLISH  
LAWYERS PTY LTD**

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 18 Shields Street  
 Cairns, Queensland 4870

**Postal Address**  
 PO Box 5196  
 Cairns, Queensland 4870

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**Daniel Chang**  
 Principal J.D., MBA

**Jerry Tucker**  
 Associate LL.B.

**Kirsten Lesina**  
 Associate LL.B.

**Lynette Lyons**  
 Solicitor LL.B.(Hons)

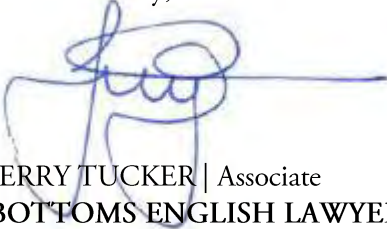
**Julia Petratos**  
 Solicitor LL.B.

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[REDACTED] However, due to the different composition of the two represented groups, the alleged conduct is not identical but parallel.

6. It is respectfully requested that the two complaints herein are investigated by the Commission together to minimise costs.
7. We confirm that Ms Burns and Mr Gunning together represent many thousands of people affected by the alleged conduct.
8. We further **enclose**, as required, Authorities signed by Ms Burns and Mr Gunning.
9. Should the President have any queries in relation to the representative complaints or generally, you are invited to contact the writer, Ms Jerry Tucker of our office, on (07) 4051 5388.

Yours faithfully,



JERRY TUCKER | Associate

**BOTTOMS ENGLISH LAWYERS**

*Individual liability limited by a scheme approved under professional standards legislation*

Encl.



## Australian Human Rights Commission

### COMPLAINT FORM \*

The Australian Human Rights Commission investigates and conciliates complaints about discrimination and breaches of human rights.

We will need to contact you about your complaint, so please provide your name and contact details, including one contact number if possible. If you do not provide this information we may not be able to deal with your complaint.

We will use the information you provide to assess, investigate and/or conciliate your complaint. We will usually provide a copy of your complaint (excluding your contact details) to the person or organisation you are complaining about and, if necessary, others who have relevant information about your complaint. By completing and submitting this form you consent to the Commission using your information for these purposes. If you have any questions about this or need help to complete this form please contact our National Information Service on 1300 656 419 or 02 9284 9600.

Your personal information will be used and stored in accordance with the *Privacy Act 1988* (Cth). The Commission's privacy policy is available at [www.humanrights.gov.au](http://www.humanrights.gov.au).

\*\*\*\*\*

### Part A – About you, the complainant \*

Title: Ms

First name: Madison

Last name: Burns

Address: C/- Bottoms English Lawyers  
Level 1, 18 Shields Street

Suburb: Cairns

State/Territory: QLD

Postcode: 4870

Email: C/- JerryTucker@belaw.com.au

Phone (AH): (07) 4051 5388

Phone (BH): (07) 4051 5388

Mobile: N/A

Fax: (07) 4051 5206

TTY: N/A



If you require assistance to participate in the complaint process, please outline the assistance you require: Nil

**If you are complaining on behalf of someone else, please provide the following details about this person. \***

Title:

First name:

Last name:

Address:

Suburb:

State/Territory:

Postcode:

What is their relationship to you?

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:

**If someone is assisting you with the complaint, for example, a legal representative, advocate or union representative, please provide the following details about this person. \***

Title: Ms  
First name: Jerry  
Last name: Tucker  
Position: Associate  
Organisation: Bottoms English Lawyers  
Address: Level 1, 18 Shields Street  
Suburb: Cairns  
State/Territory: QLD  
Postcode: 4870  
Email: JerryTucker@belaw.com.au  
Phone (BH): (07) 4051 5388  
Mobile: N/A  
Fax: (07) 4051 5206  
TTY: N/A

Please advise if they need assistance to participate in the complaint process and the kind of assistance they need:



## Part B – Who is the complaint about? \*

### Respondent 1 \*

Name of person or organisation: State of Queensland

ABN of organisation (if relevant):

Address: C/- Crown Law, State Law Building, 50 Ann Street

Suburb: Brisbane

State/Territory: QLD

Postcode: 4001

Email: crownlaw@qld.gov.au

Phone (BH): 07 3031 5600

Mobile:

Fax: 07 3031 5998

TTY:

What is your relationship to this respondent?

### Respondent 2 \*

Name of person or organisation:

ABN of organisation (if relevant):

Address:

Suburb:

State/Territory:

Postcode:

Email:

Phone (BH):

Mobile:

Fax:

TTY:

What is your relationship to this respondent?

Note: If you are complaining about more than two people or organisations, please provide information about each additional person or organisation.



## Part C – What are you complaining about? \*

For information about the types of complaints the Commission can consider, please go to <https://www.humanrights.gov.au/complaints/complaint-guides/information-people-making-complaints>.

I am complaining because I believe:  
(Please select at least one reason below)

- I have been discriminated against because of my**
- Age  
What is your age?
  - Disability  
What is your disability?
  - Association with a person with a disability  
What is the person's disability?
  - Status as a person with a disability who uses an assistance animal or disability aid or has a carer
  - Sex  
What is your sex?
  - Pregnancy
  - Breastfeeding
  - Marital or relationship status  
What is your marital or relationship status?
  - Family responsibilities
  - Sexual orientation  
What is your sexual orientation?
  - Gender identity  
What gender do you identify as?
  - Intersex status
  - Race (this includes colour, national origin, descent or ethnic origin)  
What is your race/national or ethnic origin/descent?
- I have been sexually harassed**
- I have experienced sex based harassment**





- I have experienced racial hatred**  
What is your race/national or ethnic origin/descent?
- I have been discriminated against in my employment because of my**
- Trade union activity
  - Criminal record  
What is your criminal record?
  - Religion  
What is your religion?
  - Political opinion  
What is your political opinion?
- My human rights have been breached by a Commonwealth government body.**
- I have been victimised because I made, or tried to make, a complaint about discrimination**

**When did the alleged event(s) happen? See annexure.**

Note: The President of the Commission can decide not to investigate into a complaint alleging unlawful discrimination where the complaint is lodged more than twenty four (24) months after the alleged events(s) happened. If the event(s) being complained about happened more than twenty four (24) months ago, please explain the reasons for the delay in making a complaint to the Commission.

For complaints alleging human rights breaches and discrimination in employment under the ILO Convention, the relevant time frame is twelve (12) months.

Reason(s) for delay: See annexure.

### **What happened?**

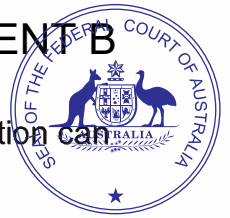
Describe the event(s) that you want to complain about. We need to know what you say happened, where it happened and who was involved. Please give us all the dates and other details that you can remember.

If you are complaining about employment, please tell us when you commenced employment, your job title and whether you are still employed.

See annexure.

### **Supporting documents**

Please attach copies of any documents that support the claims in your complaint. For example - letters, separation certificate, doctors certificate. If you cannot do this,



please tell us about the documents or other information and how this information can be obtained.

### How do you think this complaint could be resolved?

For example, a complaint may be resolved with an agreement that a respondent will change its procedures, introduce training or policies on anti-discrimination, take other action to prevent possible discrimination and/or by payment of compensation.

See annexure.

### Have you made a complaint to another organisation?

For example, a state anti-discrimination or equal opportunity agency, a worker's compensation agency, an ombudsman or the Fair Work Commission.

Yes

If yes, you must provide the name of the agency, the date the complaint was made, the status of the complaint, or outcome of the complaint. Please also attach copies of relevant documents, including a copy of your complaint and any letters you have received from the agency.

No

### Were you referred to the Commission by another organisation?

If so, what organisation?

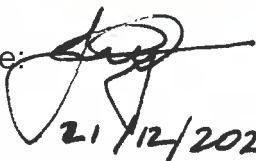
## Part D – Lodging the complaint \* \*

Please send the complaint form to the Commission by:

Post: Australian Human Rights Commission  
 GPO Box 5218  
 Sydney NSW 2001  
 Fax: 02 9284 9611  
 Email: [complaints@humanrights.gov.au](mailto:complaints@humanrights.gov.au)

Signature:

Date:

  
 21/12/2022



## Australian Human Rights Commission Representative Complaint

**Madison May Burns (DOB: 27/08/2002)**

### Reasons for Delay

1. Many indigenous families and communities deal with the trauma of historical events, including displacement from Country, institutionalisation, and the effect of the Stolen Generations. This trauma can be, and often is, passed from the first generation of survivors that have experienced or witnessed it directly to the second and further generations of descendants of the survivors. Such passed on trauma is known as intergenerational trauma. Trauma can produce short and long-term negative psychological and social consequences, including interpersonal difficulties. The Complainant, as an Aboriginal woman, has suffered from the effects of intergenerational trauma.
2. Further, the Complainant as an Aboriginal woman has suffered from reduced socioeconomic and educational resources for her entire life. She also only turned 18 in 2020, and prior to that was subject to intervention by the Queensland Department of Children, Youth Justice and Multicultural Affairs as it, presently is, and its predecessor Departments exercising similar child protection functions (**the Department**), all of which restricted her opportunity to understand or access possibilities for redress.
3. Until about 2022, the Complainant was unaware that she could seek redress for the wrongs that have been done to her and others. The Complainant thought that the Department had all the power. She became aware of such a possibility when Ms Tucker, solicitor from Bottoms English Lawyers, told her. She learned about the possibility of taking action under the *Racial Discrimination Act 1975 (RDA)* in February 2022 when that possibility was explained to her by Ms Tucker.
4. The ability of the solicitors for the Complainant to prepare the complaint was hampered significantly by the effects of the Covid-19 pandemic between 2020 and 2022. It took a lot of time to identify a suitable representative complainant. The sensitivity of aspects of the Complaint, including impacts on culture by the actions of the Respondent on potential representatives, and the traumatic incidents which the Complaint address, made face-to-face, trauma-informed instruction taking essential.

5. In-person interviews, undertaken in accordance with community preference and cultural protocols, were delayed through Queensland's public health orders. Travel into many indigenous communities between March 2020 and 2022 by non-residents was heavily restricted through public health orders, and in some cases, at the request of the community. Those restrictions made the necessary face-to-face meetings impossible.
6. At a community level, cultural participation in ceremonies surrounding a death in community, means that conducting business is restricted or discouraged within the community for the duration of the ceremonial period. As a mark of respect, community visits to advance the complaint were cancelled due to "Sorry Business" on several occasions for varying time periods. Such periods of extended mourning caused the cancellation of several attempts to interview potential lead representatives. These periods, combined with the Covid restrictions, had the effect that it took a very long time to identify a suitable and willing representative for the represented groups.

## **Representative complaint**

7. The Complainant brings this application pursuant to ss 46 P and 46 PB of the *Australian Human Rights Commission Act 1986 (AHRC Act)* on her own behalf and as a representative complainant on behalf of all Aboriginal and Torres Strait Islander people who have been subject to conduct of the kind set out below, purportedly pursuant to the *Child Protection Act 1999 (Qld) (the CPA)* (together, the **child removal intervention**) by the Respondent State of Queensland since 5 March 1992, save for [REDACTED]  
[REDACTED] In this complaint, a reference to "Indigenous" or "First Nations" people is a reference to Aboriginal and/or Torres Strait Islander people, as appropriate in context.

## **Discrimination against the Complainant as a child and young person**

8. The Complainant is an Aboriginal woman. She was born on 27 August 2002. She was removed from the custody and guardianship of her biological mother by the Respondent (**the Complainant's removal**) as a baby.
9. The Complainant's removal was based on the Complainant's Aboriginal race or descent or both of them within the meaning of s 18 of the RDA.
10. The Complainant's removal was unlawful, contrary to s 9 of the RDA.

11. Further to the Complainant's removal, the Respondent made no, or no adequate attempts to reunite her with her birth mother.
12. Further to the Complainant's removal, the Respondent arbitrarily interfered with her family life from time to time.

**Particulars**

The Complainant was moved around between various family members and non-kinship carers from time to time, generally with no explanation and often with no reason.

When the Complainant's [REDACTED]  
[REDACTED]  
[REDACTED] severing the  
Complainant's relationship with her.

13. From the time of the removal until the Complainant's 18th birthday, no or no adequate attempts were made to:
  - a. Provide the Complainant with opportunities to learn about and practise her Aboriginal culture;
  - b. Provide the Complainant with opportunities to learn and speak her Aboriginal language;
  - c. Unite the Complainant with her extended family, or her siblings;(collectively **the ongoing conduct**).
14. The ongoing conduct was based on the Complainant's Aboriginal race, further or alternatively on her descent, within the meaning of s 18 of the RDA.
15. The ongoing conduct was unlawful, contrary to s 9 of the RDA.
16. The Complainant's removal or the ongoing conduct or both impaired the Complainant's enjoyment of, inter alia:
  - a. 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, contained in Articles 17(1) and 23(1) of the International Convention on Civil and Political Rights (**ICCPR**), and in Article 12 the Universal Declaration of Human Rights (**UDHR**); and



- b. Her right to enjoy her own culture and to use his own language, contained in Article 27 of the ICCPR.
17. Further to the above, from time to time the Complainant was placed in residential group homes or with non-Indigenous carers.
18. Further, at various times between 2017 and 2019, the Complainant sought family contact or reunion with her Indigenous relatives. Case workers told her at different times that this was not possible and that she had no Indigenous family. When the Complainant raised the possibility of contact or reunion with her father's family, with her case workers but she was told to the effect that they were not her family. The Complainant understands and believes that her Aboriginality comes from her father. Thus she feels that she has been deprived of contact with her Aboriginal heritage.
19. Further to the unlawful discrimination, the conduct set out in paragraphs [8] to [18] inclusive above collectively and severally breaches the child placement principles set out in s 5C of the CPA.
20. The unlawful discrimination set out above caused the Complainant significant harm. At times, the Complainant was placed in residential group homes which caused her such significant trauma that she would commit crimes in order to be placed in juvenile detention where she received a bare minimum of the support she needed. At other times she was unable to remain in her placement and she was homeless, sleeping in the open and unable to wash. The Respondent was aware of this, since caseworkers supplied the Complainant with food vouchers so she could feed herself.

### **Representative complaint**

21. While some of the conduct set out above is particular to the Complainant, the Complainant further claims on behalf of those she represents pursuant to s 46 PB of the AHRC Act that the conduct of the Respondent, purportedly under the CPA, in relation to removal and placement of First Nations children has been, and is, based on race or descent or both within the meaning of s 18 of the RDA. She claims that the Respondent's conduct in child removal interventions and related ongoing conduct has the same, similar, or related features of the conduct which occurred in her case, and constitutes past and present unlawful discrimination against removed children, contrary to s 9 of the RDA.



22. The Complainant further claims that the conduct complained of is in breach of the child placement principles set out in s 5C of the CPA.

### **Relief sought**

23. The Complainant seeks from the Department:

- a. That as soon as possible it sets up a process of consultation with each First Nations person affected by the actions set out above directed to facilitating family reunion wherever possible;
- b. That all such consultations are undertaken in a trauma-informed and culturally safe way;
- c. That it undertake to train all staff dealing with child protection matters concerning First Nations families in trauma-informed and culturally safe interviewing and decision-making;
- d. That it provide all represented persons seeking family contact or reunion with children it has removed from First Nations parents with the resources reasonably necessary to facilitate such family contact or reunion;
- e. A formal apology to be published in all First Nations languages commonly in use in Queensland for its previous child removal practices;
- f. A declaration 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 the meaning of that Act; and
- g. Compensation.



## **AUTHORITY TO ACT**

I, **MADISON MAY BURNS** authorise **MS JERRY TUCKER OF BOTTOMS ENGLISH LAWYERS** to act on my behalf in relation to the complaint I have made to the Australian Human Rights Commission (the Commission) against the **DEPARTMENT OF CHILDREN, YOUTH JUSTICE, AND MULTICULTURAL AFFAIRS (QLD)**.

I understand that officers of the Commission will deal directly with **MS JERRY TUCKER OF BOTTOMS ENGLISH LAWYERS** in relation to this complaint.

I authorise **MS JERRY TUCKER** to:

- Provide information and documents to the Commission in connection with the Commission's assessment, investigation and conciliation of my complaint.
- Receive information and documents from the Commission about my complaint. These documents could include responses provided by the **DEPARTMENT OF CHILDREN, YOUTH JUSTICE, AND MULTICULTURAL AFFAIRS (QLD)** and correspondence from the Commission.
- Discuss my complaint with officers of the Commission.

I understand that I can withdraw my authority to act at any time by contacting the Commission.

I understand that the Commission will use and store my personal information in accordance with the *Privacy Act 1988* (Cth).

Signed:   
3A67335438EF447...

Name: **MADISON MAY BURNS**

Date: 20-12-2022 | 15:36 AEST





**BOTTOMS  
ENGLISH  
LAWYERS**

Our Ref: JT:3910  
Your Ref: 2022-19844 & 2022-19924

31 May 2023

*Attn: Hyun Joo Lee*  
Principal Investigator/Conciliator  
Australian Human Rights Commission  
GPO Box 5218  
SYDNEY NSW 2001

Email: [hyunjoo.lee@humanrights.gov.au](mailto:hyunjoo.lee@humanrights.gov.au);  
[infoservice@humanrights.gov.au](mailto:infoservice@humanrights.gov.au)

Dear Ms Lee,

**RE: REQUEST TO AMEND REPRESENTATIVE COMPLAINTS –  
MADISON BURNS AND BRETT GUNNING**

We refer to the complaints of Ms Madison May Burns and Mr Brett Harold Gunning lodged with the Commission on 21 December 2022.

We write to seek leave from the President's Delegate to amend the annexure to the complaints of the abovenamed.

Please find **enclosed**, marked up copies of:

1. Amended Annexure to Complaint of Brett Gunning lodged 21 December 2022; and
2. Amended Annexure to Complaint of Madison Burns lodged 21 December 2022.

The amendments to the class definition in Ms Burns' representative complaint limits the class to those who were aged at least 14 years at the time of issue of the application. [REDACTED] respectively, fall into the amended class definition in Ms Burns' complaint. [REDACTED] has been specifically named in Ms Burns' class definition as she is under 14 years of age.

There has been a carve out at paragraph 45 of Mr Gunning's complaint of [REDACTED] as they are now dealt with in Ms Burns' class definition. There has also been a typographical error fixed in Mr Gunning' complaint at paragraph 23(c).

There are no changes to Mr Gunning or Ms Burns' details within the Complaint Form lodged 21 December 2022.

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**BOTTOMS ENGLISH  
LAWYERS PTY LTD**

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**Daniel Chang**  
Principal J.D., MBA

**Jerry Tucker**  
Associate LL.B.

**Kirsten Lesina**  
Associate LL.B.

**Lynette Lyons**  
Solicitor LL.B.(Hons)

**Julia Petratos**  
Solicitor LL.B.

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Should the President or delegates have any queries in relation to the amendments or generally in relation to the complaints, please do not hesitate to contact the writer.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Jerry Tucker', is written over a horizontal line.

JERRY TUCKER | Associate

**BOTTOMS ENGLISH LAWYERS**

*Individual liability limited by a scheme approved under professional standards legislation*



Amended

**Australian Human Rights Commission Representative Complaint**

**Madison May Burns (DOB: 27/08/2002)**

**Reasons for Delay**

1. Many indigenous families and communities deal with the trauma of historical events, including displacement from Country, institutionalisation, and the effect of the Stolen Generations. This trauma can be, and often is, passed from the first generation of survivors that have experienced or witnessed it directly to the second and further generations of descendants of the survivors. Such passed on trauma is known as intergenerational trauma. Trauma can produce short and long-term negative psychological and social consequences, including interpersonal difficulties. The Complainant, as an Aboriginal woman, has suffered from the effects of intergenerational trauma.
2. Further, the Complainant as an Aboriginal woman has suffered from reduced socioeconomic and educational resources for her entire life. She also only turned 18 in 2020, and prior to that was subject to intervention by the Queensland Department of Children, Youth Justice and Multicultural Affairs as it, presently is, and its predecessor Departments exercising similar child protection functions (**the Department**), all of which restricted her opportunity to understand or access possibilities for redress.
3. Until about 2022, the Complainant was unaware that she could seek redress for the wrongs that have been done to her and others. The Complainant thought that the Department had all the power. She became aware of such a possibility when Ms Tucker, solicitor from Bottoms English Lawyers, told her. She learned about the possibility of taking action under the *Racial Discrimination Act 1975 (RDA)* in February 2022 when that possibility was explained to her by Ms Tucker.
4. The ability of the solicitors for the Complainant to prepare the complaint was hampered significantly by the effects of the Covid-19 pandemic between 2020 and 2022. It took a lot of time to identify a suitable representative complainant. The sensitivity of aspects of the Complaint, including impacts on culture by the actions of the Respondent on potential representatives, and the traumatic incidents which the Complaint address, made face-to-face, trauma-informed instruction taking essential.

5. In-person interviews, undertaken in accordance with community preference and cultural protocols, were delayed through Queensland's public health orders. Travel into many indigenous communities between March 2020 and 2022 by non-residents was heavily restricted through public health orders, and in some cases, at the request of the community. Those restrictions made the necessary face-to-face meetings impossible.
6. At a community level, cultural participation in ceremonies surrounding a death in community, means that conducting business is restricted or discouraged within the community for the duration of the ceremonial period. As a mark of respect, community visits to advance the complaint were cancelled due to "Sorry Business" on several occasions for varying time periods. Such periods of extended mourning caused the cancellation of several attempts to interview potential lead representatives. These periods, combined with the Covid restrictions, had the effect that it took a very long time to identify a suitable and willing representative for the represented groups.

#### **Representative complaint**

7. The Complainant brings this application pursuant to ss 46 P and 46 PB of the *Australian Human Rights Commission Act 1986 (AHRC Act)* on her own behalf and as a representative complainant on behalf of all Aboriginal and Torres Strait Islander people who at the time of issue of this application were aged at least 14 years, and who have been subject to conduct of the kind set out below, purportedly pursuant to the *Child Protection Act 1999 (Qld) (the CPA)* (together, the **child removal intervention**) by the Respondent State of Queensland since 5 March 1992, ~~save~~ for [REDACTED]. In this complaint, a reference to "Indigenous" or "First Nations" people is a reference to Aboriginal and/or Torres Strait Islander people, as appropriate in context.

#### **Discrimination against the Complainant as a child and young person**

8. The Complainant is an Aboriginal woman. She was born on 27 August 2002. She was removed from the custody and guardianship of her biological mother by the Respondent (**the Complainant's removal**) as a baby.
9. The Complainant's removal was based on the Complainant's Aboriginal race or descent or both of them within the meaning of s 18 of the RDA.

10. The Complainant's removal was unlawful, contrary to s 9 of the RDA.
11. Further to the Complainant's removal, the Respondent made no, or no adequate attempts to reunite her with her birth mother.
12. Further to the Complainant's removal, the Respondent arbitrarily interfered with her family life from time to time.

**Particulars**

The Complainant was moved around between various family members and non-kinship carers from time to time, generally with no explanation and often with no reason.

When the Complainant's [REDACTED]  
[REDACTED]  
[REDACTED] severing the  
Complainant's relationship with her.

13. From the time of the removal until the Complainant's 18th birthday, no or no adequate attempts were made to:
  - a. Provide the Complainant with opportunities to learn about and practise her Aboriginal culture;
  - b. Provide the Complainant with opportunities to learn and speak her Aboriginal language;
  - c. Unite the Complainant with her extended family, or her siblings;(collectively **the ongoing conduct**).
14. The ongoing conduct was based on the Complainant's Aboriginal race, further or alternatively on her descent, within the meaning of s 18 of the RDA.
15. The ongoing conduct was unlawful, contrary to s 9 of the RDA.
16. The Complainant's removal or the ongoing conduct or both impaired the Complainant's enjoyment of, inter alia:
  - a. 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, contained in Articles 17(1) and 23(1) of the International Convention on Civil and Political Rights (**ICCPR**), and in Article 12 the Universal Declaration of Human Rights (**UDHR**); and



- b. Her right to enjoy her own culture and to use his own language, contained in Article 27 of the ICCPR.
17. Further to the above, from time to time the Complainant was placed in residential group homes or with non-Indigenous carers.
18. Further, at various times between 2017 and 2019, the Complainant sought family contact or reunion with her Indigenous relatives. Case workers told her at different times that this was not possible and that she had no Indigenous family. When the Complainant raised the possibility of contact or reunion with her father's family, with her case workers but she was told to the effect that they were not her family. The Complainant understands and believes that her Aboriginality comes from her father. Thus she feels that she has been deprived of contact with her Aboriginal heritage.
19. Further to the unlawful discrimination, the conduct set out in paragraphs [8] to [18] inclusive above collectively and severally breaches the child placement principles set out in s 5C of the CPA.
20. The unlawful discrimination set out above caused the Complainant significant harm. At times, the Complainant was placed in residential group homes which caused her such significant trauma that she would commit crimes in order to be placed in juvenile detention where she received a bare minimum of the support she needed. At other times she was unable to remain in her placement and she was homeless, sleeping in the open and unable to wash. The Respondent was aware of this, since caseworkers supplied the Complainant with food vouchers so she could feed herself.

### **Representative complaint**

21. While some of the conduct set out above is particular to the Complainant, the Complainant further claims on behalf of those she represents pursuant to s 46 PB of the AHRC Act that the conduct of the Respondent, purportedly under the CPA, in relation to removal and placement of First Nations children has been, and is, based on race or descent or both within the meaning of s 18 of the RDA. She claims that the Respondent's conduct in child removal interventions and related ongoing conduct has the same, similar, or related features of the conduct which occurred in her case, and constitutes past and present unlawful discrimination against removed children, contrary to s 9 of the RDA.



22. The Complainant further claims that the conduct complained of is in breach of the child placement principles set out in s 5C of the CPA.

### **Relief sought**

23. The Complainant seeks from the Department:

- a. That as soon as possible it sets up a process of consultation with each First Nations person affected by the actions set out above directed to facilitating family reunion wherever possible;
- b. That all such consultations are undertaken in a trauma-informed and culturally safe way;
- c. That it undertake to train all staff dealing with child protection matters concerning First Nations families in trauma-informed and culturally safe interviewing and decision-making;
- d. That it provide all represented persons seeking family contact or reunion with children it has removed from First Nations parents with the resources reasonably necessary to facilitate such family contact or reunion;
- e. A formal apology to be published in all First Nations languages commonly in use in Queensland for its previous child removal practices;
- f. A declaration 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 the meaning of that Act; and
- g. Compensation.

**AUSTRALIAN HUMAN RIGHTS COMMISSION**

**FILE NO:** 2022-19844

**Between**

Madison Burns on her own behalf and on behalf of all Aboriginal and Torres Strait Islander people who at the time of issue of this application were aged at least 14 years, and who have been subject to conduct of the kind set out [in the complaint], purportedly pursuant to the *Child Protection Act 1999* (Qld) (the CPA) (together, the child removal intervention) by the Respondent State of Queensland since 5 March 1992, [REDACTED]  
[REDACTED]

**Complainants**

**AND**

State of Queensland

**Respondent**

**NOTICE OF TERMINATION**

**Issued under section 46PH(2) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRCA).**

This complaint alleging unlawful discrimination under the *Racial Discrimination Act 1975* (Cth) has been terminated under section 46PH(1B)(b) of the AHRCA on the ground that I am satisfied that there is no reasonable prospect of the matter being settled by conciliation.

Section 46PO(1) of the AHRCA provides that if a complaint has been terminated under section 46PH(1B)(b) of the AHRCA, an affected person may make an application to the Federal Circuit and Family Court of Australia (FCFCOA) or the





Federal Court of Australia (FCA) alleging unlawful discrimination by one or more of the respondents to the terminated complaint.

The FCFCOA and FCA can award costs against either party in proceedings under section 46PO of the AHRCA.

Any application to the court must be made within 60 days of the date on this Notice of Termination.

Reasons for this decision are provided in Attachment A.

A copy of the complaint is provided at Attachment B.

A copy of the amendment to the complaint is provided at Attachment C.

DATED 14 September 2023.

A handwritten signature in cursive script that reads 'Jodie Ball'.

Jodie Ball

**Delegate of the President**