

## NOTICE OF FILING

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 12/11/2023 8:50:28 AM AEDT  
Date Accepted for Filing: 13/11/2023 11:20:51 AM AEDT  
File Number: VID943/2023  
File Title: BRETT HAROLD GUNNING v STATE OF QUEENSLAND  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*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 17  
Rule 8.05(1)(a)

## STATEMENT OF CLAIM

No.                      of 20

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.

“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.

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

---

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> (include state and postcode)	18 Shields Street, Cairns City QLD 4870		

---

## **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 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 below, at any time during the Parent's Claim Period.

## **Legislation**

3. The CPAs have provided power for the Respondent to remove children from the custody of their parents since 1965.
4. 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**

5. The Applicant is a First Nations man of Aboriginal descent.
6. The Applicant was born on 11 October 1974.
7. 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.
8. 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

11. The Applicant has [REDACTED] children:
  - a) [REDACTED];
  - b) [REDACTED]; and
  - c) [REDACTED].
12. When [REDACTED] was around [REDACTED] [REDACTED] was removed from the care of the Applicant pursuant to the Act.
13. [REDACTED] 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.
14. When [REDACTED] was about [REDACTED] old, he was removed from the care of the Applicant pursuant to the Act.
15. [REDACTED]'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.
16. From approximately the time of [REDACTED]'s removal, the Applicant tried to achieve Family Healing with [REDACTED] and [REDACTED].
17. 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.

18. From approximately the time of [REDACTED]'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.

19. 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.
20. 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.
22. Following the removal of each of the Applicant's children, a Child Protection Order was made pursuant to s 59 of the Act.
23. 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.
24. 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.

25. Further or alternatively to paragraphs 24, the Respondent's 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
  - c) both.
26. The Respondent's Child Removal Interventions with the Applicant's children contravened s 9 of the RDA.

#### **Particulars**

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

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

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

#### **Particulars**

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

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

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

### **Particulars**

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

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

11(3) of the Act in relation to the Applicant's children constituted a breach of the child placement principles set out in ss 5A, 5B and 5C of the Act.

### **Group members**

37. 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, 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**

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.

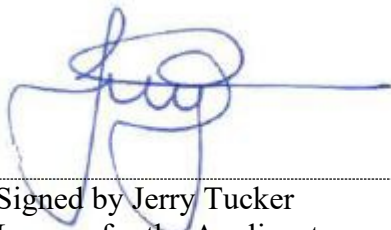
The Respondent's failures have had the effect of nullifying or impairing the recognition, enjoyment, or exercise of each group member's right to decide what kind of education their children receive, contrary to Art 29 of the Convention on the Rights of the Child.

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



---

Signed by Jerry Tucker  
Lawyer for the Applicant

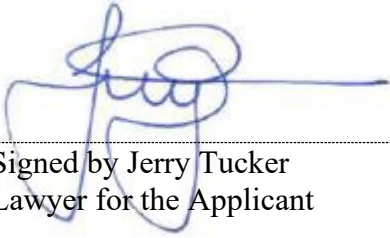
This pleading was prepared by:

**K P Hanscombe**  
**K A Bowshell**  
**J Creamer**  
**M Benn**

**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



.....

Signed by Jerry Tucker  
Lawyer for the Applicant