

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



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

Registrar

Important Information

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

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



STATEMENT OF CLAIM

No. of 20

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**)

“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.

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

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 children;
 - (b) 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.

Legislation

3. The Act has provided power for the Respondent to remove children from the custody of their parents since 30 March 1999.
4. The *Racial Discrimination Act 1975* (Cth) (the **RDA**) has been in force for the entirety of the Children's Claim Period and prohibits discrimination on the basis of race.

The Applicant

5. 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, the Applicant remained in the custody 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 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.
16. The matters set out in paragraph 8 to 14 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 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.

17. Further to the above, when the Applicant's [REDACTED] the Applicant was initially involved in her care, but the Respondent severed that care after a month and prevented the Applicant from having a relationship with [REDACTED]

Particulars

Particulars may be provided following 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.
19. The matters set out in paragraph 17 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 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

20. 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.

21. The Respondent made no, or no adequate, attempts to facilitate Family Healing with the Applicant's Indigenous family despite her requests to the Respondent.
22. 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 discovery and evidence.

23. 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 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 discovery and evidence.

24. The matters set out in paragraphs 20 to 23 above occurred wholly or partly because of or were a function of the Applicant's race.
25. The matters set out in paragraph 20 to 23 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 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.

26. Further to the Respondent's contraventions of the RDA, pursuant to s 10 of the Act, 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.
27. 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.
29. 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 the Applicant.
30. Accordingly, the Respondent did not know whether there was a parent within the meaning of the Act who was willing and able to protect the Applicant.
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 Orders 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.

33. 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 constituted a breach of the Child Placement Principles set out in ss 5A, 5B and 5C of the Act.

Group Members

34. 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 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

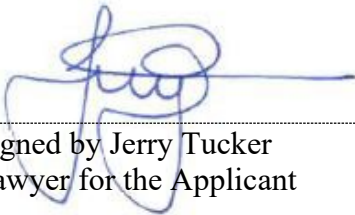
The Respondent's conduct has had the effect of nullifying or impairing the recognition, enjoyment, or exercise of each group member's right to remain free from unlawful interference with their family, and their right to the protection of their family as the natural and fundamental group unit of society,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

35. Further, the Respondent did not permit, facilitate or adequately facilitate Family Healing between group members and their First Nations family.
36. 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**").

38. During the Children's Claim Period, the Respondent made no, or 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.
41. Further or alternatively, the Respondent's failure to make any or adequate investigations into whether for each 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 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

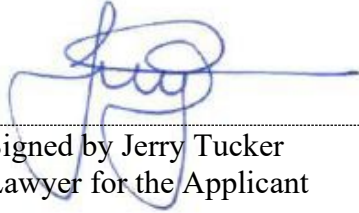
This pleading was prepared by:

K P Hanscombe
K A Bowshell
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Certificate of lawyer

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

Date: 12 November 2023



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Signed by Jerry Tucker
Lawyer for the Applicant