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File Title: BRETT HAROLD GUNNING 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.

Defence

No. VID943 of 2023

Federal Court of Australia
District Registry: Victoria
Division: General

Brett Harold Gunning

Applicant

State of Queensland

Respondent

Definitions

1. In this Defence the Respondent refers to “VID943 of 2023” as the “**Proceeding**”.
2. As to the definitions within the Statement of Claim (**SOC**), the Respondent:
 - a. acknowledges the Applicant’s defined terms of “Child Removal Intervention”, “Family Healing”, “parent” and “race” for the purpose of the Applicant’s SOC (**Applicant’s Definitions**);
 - b. does not adopt the Applicant’s Definitions in this Defence or in the Proceeding;
 - c. adopts the Applicant’s defined terms for the “Parent’s Claim Period”, the *Child Protection Act 1999* (Qld), “**the Act**”, the *Children Services Act 1965* (Qld), “**the 1965 Act**”, collectively referred to as the “**CPAs**”, and that “**Indigenous**” or “**First Nations**” means Aboriginal and/or Torres Strait Islander as appropriate in context, in this Defence and the Proceeding;
 - d. says in relation to “Child Removal Intervention” that there is no such term used or defined within the CPAs or within the Respondent’s Departmental processes and procedure;

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- e. says in relation to “Family Healing” that there is no such term used or defined within the CPAs or within the Respondent’s Departmental process and procedure and repeats and relies on paragraph 18 below;
- f. says in relation to “race”, that race is identified and referred to separately to colour, descent, national origin or ethnic origin within the *Racial Discrimination Act 1975 (RDA)*;
- g. denies that “parent” has the meaning given to it by s 11 of the Act as “parent” is defined within the Act within s 11 and schedule 3 of the Act, and the Respondent adopts the definition of “parent” as provided under s 11 and schedule 3 of the Act and the prior definitions within the Act and the 1965 Act as they applied at the relevant time.

Representative proceeding

- 3. As to paragraph 1 of the SOC the Respondent:
 - a. says that while the Applicant seeks to bring the Proceeding as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976 (FCA Act)*, the Respondent is unable to determine if the threshold requirements of s 33C of the FCA Act have been met, due to the insufficient and ambiguous pleading and particularisation of the Applicant’s and Group Members’ claims against the Respondent, within the SOC;
 - b. is otherwise not required to plead to paragraph 1 as it contains no allegations against it.
- 4. As to paragraph 2 of the SOC the Respondent:
 - a. says that while the Applicant seeks to bring this Proceeding pursuant to ss 46PO and 46PB of the *Australian Human Rights Commission Act 1986 (AHRC Act)*, the Respondent is unable to determine if the alleged discrimination against Aboriginal and Torres Strait Islander people by the Respondent “was the same, similar, or related to” the alleged discrimination suffered by the Applicant during the Parent’s Claim Period, due to the insufficient and ambiguous pleading and particularisation of the Second Amended Australian Human Rights Commission Representative Complaint (*AHRC*) dated 22 June 2023;

- b. is otherwise not required to plead to paragraph 2 as it contains no allegations against it.

Legislation

5. As to paragraph 3 of the SOC the Respondent:

- a. denies that the CPAs have provided power for the Respondent to remove children from the custody of their parents since 1965, as:
 - i. the 1965 Act, for the period 5 March 1992 until the commencement of the Act, in its entirety, on 23 March 2000; and
 - ii. the Act from 23 March 2000,contains no legislative power that uses the terminology to “remove” children from the custody of their parents.
- b. says that the 1965 Act, for the period 5 March 1992 until the commencement of the Act on 23 March 2000 enabled:
 - i. the Director pursuant to s 47 of the 1965 Act to declare that a child be admitted to the care and protection of the Director, subject to meeting the requirements of the 1965 Act;
 - ii. an officer of the Department authorised by the Director or any police officer of the Respondent to take a child into custody on behalf of the Director pursuant to ss 49(2) or 61(2) of the 1965 Act, subject to meeting the requirements of the 1965 Act;
- c. says that any other power exercised under the 1965 Act to admit a child or infant into the care and protection, or care and control of the Director, was a power exercised by the Children’s Court or Supreme Court, and not the Respondent’s Department of Child Safety, Seniors and Disability Services and its predecessors (the **Department**), in accordance with the provisions and requirements of the 1965 Act;
- d. says that the Act, from its commencement on 23 March 2000 provides an authorised officer or police officer of the Respondent may take a child in immediate risk into the custody of the Chief Executive pursuant to s 18 of the Act, subject to meeting the requirements of the Act;

- e. says that any other power to take a child into custody or guardianship is a power exercised by a Magistrate or the Children's Court, and not the Respondent's Department, in accordance with the provisions and requirements of the Act.
6. As to paragraph 4 of the SOC the Respondent admits that the RDA has been in force for the entirety of the Parent's Claim Period and prohibits unlawful discrimination on the basis of race.

The Applicant

7. As to paragraph 5 of the SOC the Respondent admits the Applicant is a First Nations man of Aboriginal descent.
8. As to paragraph 6 of the SOC the Respondent admits the Applicant was born on 11 October 1974.
9. As to paragraph 7 of the SOC the Respondent:
 - a. denies the allegations contained therein as they are untrue;
 - b. says that on 15 October 1974, the Applicant's birth mother signed a consent form for the adoption of the Applicant, in accordance with ss 20(1) and 23(1) of the *Adoption of Children Act 1964 – 1972 (Consent Form)*;
 - c. says that on 13 November 1974 an Adoption Order was made by the Director, Department of Children's Services, on the application of Leslie William Gunning and Ferne Lynnette Gunning, authorising Mr and Mrs Gunning, non-First Nations parents, to adopt the Applicant pursuant to the *Adoption of Children Act 1964 – 1972 (Adoption Act)*.
10. As to paragraph 8 of the SOC the Respondent:
 - a. denies the allegations contained therein as they are untrue;
 - b. repeats and relies on paragraph 9 above;
 - c. says that the Consent Form signed by the Applicant's birth mother indicates that:
 - i. she understood the nature and effect of the Adoption Order for which application may be made;
 - ii. the effect of the Adoption Order will be to deprive her permanently and totally of her parental rights in relation to the Applicant;

- iii. she consented to the making of an Adoption Order in respect of the Applicant in favour of any person or persons whose application for an Adoption Order with respect to the Applicant is approved by the Director of the Department of Child Services; and
 - iv. she desired that the Applicant to be brought up in the adopting parent's faith.
- d. says that the effect of the Adoption Order pursuant to s 28 of the Adoption Act was that:
- i. the Applicant became a child of Mr and Mrs Gunning, and Mr and Mrs Gunning became the parents of the Applicant, as if the Applicant had been born to Mr and Mrs Gunning; and
 - ii. the Applicant ceased to be the child of the Applicant's birth mother and father;
- e. says that pursuant to s 41 of the Adoption Act, the Applicant's birth parents were prevented from:
- i. "interfering in or influencing" the upbringing of the Applicant, or the relationship of the Applicant with Mr and Mrs Gunning;
 - ii. communicating with the Applicant or Mr and Mrs Gunning unless the approval of the Director was obtained;
- f. says that pursuant to s 59 of the Adoption Act, the Respondent was prevented from disclosing any matter or information in Departmental documents reasonably likely to enable the Applicant or the Applicant's birth parents to be identified;
- g. says that the Applicant, as a minor, that is prior to turning 18 on 11 October 1992, did not have a legal right to access information about his biological family, repeating and relying on the above subparagraphs;
- h. says that pursuant to s 39B of the Adoption Act, the Applicant was entitled to access identifying information about each of his birth parents from age 18, that is from 11 October 1992, subject to either the child or a birth parent lodging an objection to information being released;
- i. says that on 12 July 2012 it received the Applicant's application for adoption information dated 15 May 2012 and provided the Applicant with details of his: birth information; birth mother and father, their relationship, medical information and the adoption decision; the adoption process; and that there may be other information

about his birth family history available through the Community and Personal Histories Unit, Indigenous Partnerships and Coordination: (**Birth Family Information**);

- j. says that it acted in accordance with the prescribed legislative processes, pleaded above, which were amended in 1987 and 1991 to allow the disclosure of the Birth Family Information to the Applicant on his application and after he turned 18 years old;
 - k. says that these legislative processes applied to all adopted children regardless of their race, colour, descent, national origin or ethnic origin.
11. As to paragraph 9 of the SOC the Respondent:
- a. denies that the matters set out under paragraph 7 of the SOC occurred as alleged, repeating and relying on paragraph 9 above, and therefore denies the allegation that these matters occurred wholly or partly because of or a function of the Applicant's race;
 - b. cannot plead further to the allegations because paragraph 9 of the SOC does not plead or particularise how the matters alleged in paragraph 7 of the SOC occurred wholly or partly because of or a function of the Applicant's race.
12. As to paragraph 10 of the SOC the Respondent:
- a. denies that it has contravened s 9 of the RDA, repeating and relying on paragraphs 9 to 11 above;
 - b. further denies that the Applicant has a cause of action under the RDA in relation to the allegations in paragraph 7 of the SOC, which are pleaded to have occurred in November 1974, as s 9 of the RDA did not commence until 31 October 1975;
 - c. says that the International Covenant on Civil and Political Rights (**ICCPR**) did not enter into force internationally until 23 March 1976 and was not ratified by Australia until 13 August 1980;
 - d. cannot plead further to the allegations in paragraph 10 of the SOC, as paragraph 7, 8 9, and/or 10 of the SOC are insufficiently pleaded and/or particularised in relation to a contravention of s 9 of the RDA, where the pleading is evasive or ambiguous, is likely to cause prejudice, embarrassment and/or delay to the Respondent, and/or fails to disclose a reasonable cause of action under s 9 of the RDA.

Alleged Discrimination against the Applicant

13. As to paragraph 11 of the SOC the Respondent:

- a. admits that the Applicant has [REDACTED] children;
- b. admits paragraph 11(a) of the SOC that the Applicant has a child, [REDACTED]
[REDACTED];
- c. admits paragraph 11(b) of the SOC that the Applicant has a child, [REDACTED]
[REDACTED];
- d. denies paragraph 11(c) of the SOC as [REDACTED]
[REDACTED].

14. As to paragraph 12 of the SOC the Respondent:

- a. denies the allegations contained therein as they are not true;
- b. says that [REDACTED] was removed from [REDACTED] parents and came into the care of the Respondent under a Temporary Assessment Order (TAO) made by a Magistrate under the Act on 8 December 2006, when [REDACTED] after witnessing a domestic violence incident during which [REDACTED] mother was alleged to have been assaulted by the Applicant;
- c. says that between December 2005 and March 2006, Police were called nine times due to alleged domestic violence incidents by the Applicant against [REDACTED]
[REDACTED], with at least two of these alleged incidents occurring in [REDACTED] presence;
- d. says that up to and including 8 December 2006, there had been:
 - i. three priority one notifications to the Respondent, where a 'priority one' is a recommendation by the Respondent for the notification to be investigated and assessed within 24 hours) and a 'notification' is an allegation of harm or risk of harm to a child, where there is a reasonable suspicion that the child is in need of protection:, namely:
 1. on 23 February 2006, it was reported that: Ms [REDACTED] had allegedly been assaulted by the Applicant; the Applicant held a singlet across [REDACTED] throat, who was [REDACTED], because the baby was crying and he wanted to smoke a cone; the Applicant was a heavy cannabis user and smokes 5 cones a day; [REDACTED] had a bruise under her left eye

that she said had come from the Applicant on 22 February 2006; [REDACTED] [REDACTED] said that the Applicant throws her around about twice a week; there were no signs of injury to the baby; and police requested that [REDACTED] not return to her residence that evening;

2. on 21 March 2006, it was reported that: Police had attended due to domestic violence occurrence whereby the Applicant and [REDACTED] were arguing while driving a car and the Applicant had attempted to slap [REDACTED] in the backseat, where [REDACTED] was located; and that a Child Concern Report had been taken by Crisis Care regarding a domestic violence incident where the Applicant broke a glass plate door and assaulted [REDACTED] with [REDACTED] present; and
 3. on 7 December 2006 it was reported that: the Applicant had punched and slapped [REDACTED], while heavily pregnant, on the face, resulting in [REDACTED] having a split lip and swelling to the left cheek; a current Domestic Violence Order was in place; [REDACTED] witnessed the altercation; and the Applicant was in possession of drugs during the incident; and
 - ii. one child concern report in relation to allegations of domestic violence in the Applicant and [REDACTED] relationship;
- e. says that after an investigation by the Respondent [REDACTED] was assessed in January 2007 as:
- i. being at an unacceptable risk of suffering future emotional and physical harm as a result of the reported severe domestic violence at the home and [REDACTED] exposure to this violence, and an unacceptable risk of suffering emotional harm due to neglect;
 - ii. being at moderate risk due to prior notifications for the family, the young age of the child, the parents inability to provide basic care needs, two or more domestic violence incidents in the last year, and one of the parents having a drug problem;
 - iii. having parents who are willing but not able, and therefore not willing and able, to protect [REDACTED] from harm, due to an inability to protect [REDACTED] from exposure to domestic violence and not providing [REDACTED] with basic care needs;
 - iv. being a child in need of protection;

- f. says that [REDACTED] living environment was assessed as inadequate to provide for [REDACTED] care and protective needs;
- g. says that the Children's Court made a Court Assessment Order (CAO) on 15 December 2006 and the first interim Child Protection Order, granting short term custody to the Chief Executive, was made by the Children's Court on 30 March 2007.

15. As to paragraph 13 of the SOC the Respondent:

- a. denies the allegations contained therein, repeating and relying on paragraph 14 above;
- b. assumes that the addition of the words "of the Applicant" at the end of the paragraph are a typographical error, or otherwise does not admit the allegation contained therein as it is ambiguous;
- c. cannot plead further to the allegations in paragraph 13 of the SOC as it is inadequately pleaded and/or particularised, where it is ambiguous as to how [REDACTED] coming into the care of the Respondent was wholly or in part because of or a function of the race of the Applicant, and is it is likely to cause prejudice and/or embarrassment to the Respondent.

16. As to paragraph 14 of the SOC the Respondent:

- a. denies the allegations contained therein as they are not true;
- b. says that [REDACTED] was removed from [REDACTED] parents and came into the care of the Respondent under a TAO made by a Magistrate under the Act on 5 January 2007, when [REDACTED] was [REDACTED];
- c. says that [REDACTED] was removed from [REDACTED] parents due to:
 - i. the risk of emotional and physical harm due to severe and escalating domestic violence by the Applicant to [REDACTED], repeating and relying on paragraph 14 above; and
 - ii. the Applicant and [REDACTED] inadequate living conditions and facilities to meet the protective needs of their children,
 where [REDACTED] was [REDACTED] on [REDACTED], [REDACTED] after the removal of [REDACTED] from [REDACTED] parents for the reasons pleaded in paragraph 14 above;

- d. says that in addition to the three priority one notifications and one child concern report pleaded at paragraph 14 above:
- i. on or around [REDACTED], the Respondent was notified that [REDACTED] had given birth to [REDACTED] who was subject to an unborn baby notification;
 - ii. on or around [REDACTED], the Respondent was notified of concerns that: [REDACTED] had been exposed to a chronic pattern of domestic violence throughout gestation and this placed the child in danger of physical harm; [REDACTED] had abandoned her other children in the care of the maternal grandmother; [REDACTED] and the Applicant were living in unsuitable accommodation (caravan); inadequate food was provided to [REDACTED] drug utensils had been found in the parents home created a risk of the child intaking fumes in a confined space (caravan); and parental drug use had the potential to reduce their capacity to adequately supervise [REDACTED] and may precipitate further violence between the parents;
 - iii. on or around 2 January 2007, [REDACTED] told staff of the Respondent that she had been involved in a further domestic violence incident with the Applicant on 26 December 2006, where the Applicant had hit her across the stomach with a didgeridoo, but denied that she had suffered bruising to the face from the Applicant punching her (information reported to the Respondent);
- e. says that after an investigation by the Respondent [REDACTED] was assessed in January 2007 as:
- i. being at an unacceptable risk of suffering emotional and physical harm as a result of exposure to the reported severe domestic violence, and an unacceptable risk of suffering emotional harm due to neglect;
 - ii. not having a parent able and willing to protect [REDACTED]; and
 - iii. being a child in need of protection.
- f. repeats and relies on paragraph 14 in relation to the facts and circumstances pleaded in relation to the circumstances of the Applicant and [REDACTED].
17. As to paragraph 15 of the SOC the Respondent:
- a. denies the allegations contained therein, repeating and relying on paragraph 16 above;

- b. cannot plead further to the allegations in paragraph 15 of the SOC as it is inadequately pleaded and/or particularised, where it is ambiguous as to how [REDACTED] coming into the care of the Respondent was wholly or in part because of or a function of the race of the Applicant.
18. As to paragraph 16 of the SOC the Respondent:
- a. does not admit that the Applicant tried to achieve Family Healing, as defined in the SOC, with [REDACTED] and [REDACTED] as this is outside the direct knowledge of the Respondent;
 - b. says that the Applicant's alleged efforts to try and achieve Family Healing and/or what constitutes Family Healing is insufficiently pleaded and/or particularised, is evasive or ambiguous, and is likely to cause the Respondent prejudice and/or embarrassment;
 - c. says that the term "Family Healing" is not a term used within the Act or within the Respondent's processes and procedures;
 - d. says in relation to the child protection interventions for [REDACTED] [REDACTED] and [REDACTED] the Respondent facilitated and managed processes from the time of the children's removal of:
 - i. assessing the strengths and needs of the children;
 - ii. assessing the risks and safety needs of the children;
 - iii. engaging in family group meetings and case planning, which amongst other matters sought to:
 1. provide information to and involve members of the family group (including parents);
 2. receive information from members of the family group;
 3. determine the resources available within the family group and wider network of support that can be mobilised for the case plan, including maintaining connections with the child and assisting the child with connections with family and community members; and
 4. addressing issues raised by the family group members, where the assessments identified at 18d.(i) and (ii) above, inform the development of case plans (where case plans address the child's protection

and care needs), which include the outcomes and actions required for the children and parents (including case plan goals for parents) to: reduce the risk of harm to the children; identify critical areas of need; and build on strengths within the family group; and

iv. undertaking reviews as needed,

where the safety, wellbeing and best interests of [REDACTED] [REDACTED] and [REDACTED] has been paramount;

- e. says that the focus of case planning was ‘reunification’ for [REDACTED] and [REDACTED] from January 2007, and for [REDACTED] from 30 March 2010, where the case management and planning process included both supervised and unsupervised contact between the Applicant and his children in accordance with the goals and objectives of the case plans;
- f. says that ‘reunification’ is the process of working with one or both parents, to safely return a child to their care;
- g. says a decision to reunify a child will only be made once immediate harm indicators are resolved, risk of future harm sufficiently reduced, and at least one parent is assessed as likely to be able and willing to meet the child’s need of safety, belonging and wellbeing in the near future; and
- h. says that, while repeating and relying on paragraphs 18b. and 18c. above, the matters identified in 18d. and 18e. above, and all the actions taken by the Respondent in relation to these matters, including the facilitation of contact between the Applicant and his children, contributed to and assisted in ‘Family Healing’, as defined in the SOC.

19. As to paragraph 17 of the SOC the Respondent:

- a. repeats and relies on paragraph 18 above;
- b. does not admit the allegations contained therein as they are insufficiently pleaded and/or particularised, where it is evasive or ambiguous as to what conditions or requirements were imposed by the Respondent that the Applicant was allegedly required to comply with, and it is likely to cause the Respondent prejudice and/or embarrassment;

- c. says that the prejudice to the Respondent includes the inability to plead as to the reasonableness or otherwise of the alleged terms, and the Respondent reserves its rights in this regard;
 - d. says that from January 2007, the ongoing focus of case planning for [REDACTED] and [REDACTED] was reunification, repeating and relying on paragraphs 18.e, 18.f and 18.g above.
20. As to paragraph 18 of the SOC the Respondent:
- a. does not admit the allegations contained therein as they are insufficiently pleaded and/or particularised, where it is evasive or ambiguous as to what conditions or requirements were imposed by the Respondent that the Applicant was required to comply with, or what the Applicant allegedly complied wholly or substantially with, and this is likely to cause the Respondent prejudice and/or embarrassment;
 - b. says that the prejudice to the Respondent includes the inability to plead as to the Respondent's knowledge of the Applicant's compliance with any alleged imposed conditions and/or requirements, and the Respondent reserves its rights in this regard.
21. As to paragraph 19 of the SOC the Respondent:
- a. says that it is ambiguous as to what "contraventions of the RDA" are referred to, however the Respondent repeats and relies on its non-admissions and denials pleaded above in response to any alleged contraventions of the RDA pleaded in paragraphs 5 to 18 of the SOC;
 - b. denies that the Applicant, from approximately the time of [REDACTED] removal, was a parent able and willing to protect each of his children within the meaning of s 10 of the Act, repeating and relying on paragraphs 14 and 16 above, and paragraph 22 below.
22. As to paragraph 20 of the SOC the Respondent:
- a. denies the allegations contained therein as they are not true, where the Applicant alleges that [REDACTED] was born on [REDACTED];
 - b. says that [REDACTED] was ordered to come into the care of the Respondent under a TAO made by a Magistrate on 6 January 2010, when [REDACTED] was [REDACTED], due to: the risk of domestic violence by the Applicant to [REDACTED] mother; the risks of substance abuse, harm, and neglect; and the parents' inability and unwillingness to

meet the care and protection needs of their children because of their physically and emotionally violent relationship;

- c. says that [REDACTED] was unable to be taken into the custody of the Respondent as [REDACTED] and [REDACTED] were unable to be located;
- d. says that a CAO was made by a Magistrate on 11 January 2010, where [REDACTED] was taken into the custody of the Respondent on 24 January 2010, when [REDACTED] brought [REDACTED] to the Respondent;
- e. says that in addition to notifications and child concern report, pleaded in paragraphs 14 and 16 above, the Respondent was notified:
 - i. on or around 4 January 2010, that: [REDACTED] had given birth on [REDACTED] and was discharged on 4 January 2010; the father is thought to be the Applicant; [REDACTED] had presented to the Royal Brisbane Women's Hospital on 23 January 2009 following a domestic violence incident with the Applicant; there were major child protection concerns in relation to substance abuse and domestic violence and that is why other siblings have been removed;
 - ii. on 6 January 2010 by the Applicant that he did not know that [REDACTED] had given birth and that he had not seen her for a number of years, despite information received by the Respondent from the hospital that a male person meeting the Applicant's description was with [REDACTED] at [REDACTED] birth;
 - iii. on or around 13 January 2010, that [REDACTED] has had dealings with the Queensland Police Service in relation to unlawful use of a motor vehicle, breach of probation, obstructing Police, supply of dangerous drugs, tainted property, stealing and possession of drug utensil;
 - iv. on or around 19 January 2010, that: [REDACTED] and [REDACTED] were at the Applicant's house, but that she left with [REDACTED] after the Applicant called the police; [REDACTED] had been at the Applicant's house the previous day, following him around and arguing with him, as if she was trying to get the Applicant to hit her; the Applicant threatened to call the police; [REDACTED] left [REDACTED] lying on couch all day, not giving [REDACTED] appropriate attention and trying to get the Applicant to feed the baby, but he would not and [REDACTED] would not do anything, where [REDACTED]

- did not feed [REDACTED] all day; and [REDACTED] was aware that the Respondent had custody of [REDACTED]
- v. on or around 19 January 2010, that: [REDACTED] had attended the Woodridge Indigenous Health Centre on 15 January 2010 and appeared shaken because [REDACTED] would not feed and had issues with constipation; child health workers were concerned for [REDACTED] the doctor had provided [REDACTED] feeding tips and advised that she should attend a follow up appointment on 16 January 2010, however [REDACTED] did not attend;
- vi. on or around 24 January 2010, [REDACTED] contacted the Respondent and advised that she no longer was able to care for [REDACTED] and that she wished for [REDACTED] to be placed with [REDACTED];
- f. says that in or around March 2010, an investigation and assessment was conducted by the Respondent, where at this time the Applicant had not been confirmed as the biological father of [REDACTED] where [REDACTED] was assessed as:
- i. being at risk of physical and emotional harm due to neglect and exposure to domestic violence based on [REDACTED] substantial child protection history and her current lack of safe and stable accommodation;
 - ii. not having a parent able and willing to protect [REDACTED]
 - iii. being a child in need of protection;
- if [REDACTED] remained in the care of [REDACTED];
- g. repeats and relies on paragraph 14 and 16 above in relation to the facts and circumstances pleaded in relation to the Applicant and [REDACTED].
23. As to paragraph 21 of the SOC the Respondent:
- a. denies the allegations contained therein, repeating and relying on paragraph 22 above;
 - b. cannot plead further to the allegations in paragraph 21 of the SOC as it is inadequately pleaded and/or particularised, where it is ambiguous as to how [REDACTED] coming into the care of the Respondent was wholly or in part because of or a function of the race of the Applicant.

24. As to paragraph 22 of the SOC the Respondent:

- a. admits that following the TAO in relation to each of the children, where each child was removed and came into the care of the Respondent, repeating and relying on paragraphs 14, 16, and 22 above, the following orders were made:
 - i. a COA was made for [REDACTED] on 15 December 2006, for [REDACTED] on 11 January 2010, and for [REDACTED] on 8 February 2010;
 - ii. an interim child protection order was made by the Children's Court pursuant to s 59 of the Act in relation to the short-term custody of [REDACTED] on 30 March 2007;
 - iii. an interim child protection order was made by the Children's Court pursuant to s 59 of the Act in relation to the short-term custody of [REDACTED] on 30 March 2007;
 - iv. an interim child protection order was made by the Children's Court in relation to the short-term custody of [REDACTED] on 15 March 2010.

25. As to paragraph 23 of the SOC the Respondent:

- a. does not admit the allegations contained therein as they are insufficiently pleaded and/or particularised, where it is evasive or ambiguous as to what requirements were allegedly imposed by the Respondent that the Applicant was required to comply with, or what the Applicant allegedly complied wholly or substantially with, and this is likely to cause the Respondent prejudice and/or embarrassment;
- b. repeats and relies on paragraph 18 above.

26. As to paragraph 24 of the SOC the Respondent:

- a. while repeating and relying on the objections, non-admissions and denials in relation to "Family Healing" at paragraph 18 above, the Respondent denies that it did not seek "Family Healing" and/or the reunification of the Applicant with his children, repeating and relying on paragraph 18 above;
- b. cannot plead further to the allegations contained therein as they are insufficiently pleaded and/or particularised, where it is evasive or ambiguous as to:
 - i. how the Respondent did not permit, facilitate, or adequately facilitate Family Healing between the Applicant and his children; and
 - ii. what the Applicant allegedly complied with,

and this is likely to cause the Respondent prejudice and/or embarrassment;

- c. says that the focus of case planning was ‘reunification’ for [REDACTED] [REDACTED] from January 2007, and for [REDACTED] from 30 March 2010 repeating and relying on paragraph 18.e, 18.f and 18.g above.

27. As to paragraph 25 of the SOC the Respondent:

- a. while repeating and relying on the objections and non-admissions in relation to “Family Healing” at paragraph 18 above, denies the premise of the allegation, that is that the Respondent did not permit, facilitate or adequately facilitate seek ‘Family Healing’, and/or the ‘reunification’ of the Applicant with his children, repeating and relying on paragraph 18 above;
- b. denies that any actions or alleged inactions of the Respondent in relation to the reunification of the Applicant with his children were because of or a function of the race of the Applicant, his children or both;
- c. cannot plead further to the allegations due to the inadequate pleading and particularisation:
 - i. of paragraph 24 of the SOC, repeating and relying on paragraph 26.b above; and
 - ii. how the matters alleged in paragraph 24 and/or 25 of the SOC occurred wholly or partly because of or a function of the race of the Applicant, his children or both.

28. As to paragraph 26 of the SOC the Respondent:

- a. denies that the Respondent contravened s 9 of the RDA due to the removal of [REDACTED] [REDACTED] or [REDACTED] from the care of their parents on the 8 December 2006, 5 January 2007 and 6 January 2010, respectively;
- b. says that at all material times, the Respondent based its actions on an assessment of the safety, wellbeing and best interests of [REDACTED] [REDACTED] and [REDACTED]
- c. says that the decision to remove [REDACTED] [REDACTED] or [REDACTED] was made by the Magistrate who made the TAO on 8 December 2006, 31 December 2006 and 6 January 2010, respectively, and not the Respondent’s Department;
- d. says that the reference to “Child Protection Interventions” with reference to the Applicant’s children is ambiguous, where it has been assumed for the purposes of the

denial that the “Child Protection Interventions” refers to the removal of [REDACTED] or [REDACTED] from the custody of their parents on the 8 December 2006, 5 January 2007 and 6 January 2010, respectively, and the Respondent reserves its rights in this regard;

- e. cannot plead further to the allegations in paragraph 26 of the SOC, as it is insufficiently pleaded and/or particularised in relation to a contravention of s 9 of the RDA, where the pleading and the particulars are evasive or ambiguous, is likely to cause prejudice, embarrassment and/or delay to the Respondent, and/or fails to disclose a reasonable cause of action under s 9 of the RDA.
29. As to paragraph 27 of the SOC the Respondent:
- a. while repeating and relying on the objections and non-admissions in relation to “Family Healing” at paragraph 18 above, denies the premise of the allegation, that is that the Respondent did not permit, facilitate or adequately facilitate seek Family Healing, that is the reunification of the Applicant with his children, repeating and relying on paragraph 18 above;
 - b. denies that any actions or alleged inactions of the Respondent in relation to the reunification of the Applicant with his children constituted a contravention of s 9 of the RDA, repeating and relying on paragraph 18 above;
 - c. cannot plead further to the allegations in paragraph 27 of the SOC, as it is inadequately pleaded and/or particularised in relation to a contravention of s 9 of the RDA, where the pleading and the particulars are evasive or ambiguous, is likely to cause prejudice, embarrassment and/or delay to the Respondent, and/or fails to disclose a reasonable cause of action under s 9 of the RDA.
30. As to paragraph 28 of the SOC, the Respondent denies that the Applicant, from the time of [REDACTED] removal, continued to be a parent able and willing to protect each of his children within the meaning of the Act, repeating and relying on paragraphs 14, 16, 21, and 22 above.
31. As to paragraph 29 to 36 of the SOC the Respondent:
- a. says that there is no allegation against the Respondent that the Respondent is required to plead to as the Applicant has failed to disclose a reasonable or identifiable cause of action against the Respondent;

- b. the Respondent reserves its right to make an application to the Court to have these paragraphs struck out on this basis;
- c. under cover of that objection does not admit the allegations therein.

Group members

32. As to paragraph 37 of the SOC the Respondent:

- a. says that the Respondent is unable to plead to the allegations contained therein due to the insufficient and ambiguous pleading and particularisation of the Applicant's and Group Members' claims against the Respondent, repeating and relying on paragraphs 11, 12, 15, 17, 23 and 28 above;
- b. under cover of that objection does not admit the allegations contained therein.

33. As to paragraph 38 of the SOC the Respondent:

- a. says that there is no allegation against the Respondent that the Respondent is required to plead to as the Applicant has failed to disclose a reasonable or identifiable cause of action against the Respondent;
- b. the Respondent reserves its right to make an application to the Court to have this paragraph of the SOC struck out on this basis.
- c. under cover of that objection does not admit the allegations contained therein.

34. As to paragraph 39 to 44 of the SOC the Respondent:

- a. says that there is no allegation against the Respondent that the Respondent is required to plead to as the Applicant has failed to disclose a reasonable or identifiable cause of action against the Respondent;
- b. the Respondent reserves its right to make an application to the Court to have these paragraphs within the SOC struck out on this basis;
- c. under cover of that objection does not admit the allegations contained therein.

Date: 15 March 2024



Signed by Catriona McPherson
Assistant Crown Solicitor
For GR Cooper
Lawyer for the Respondent

This pleading was prepared by C Murdoch KC and N A-Khavari, Counsel for the Respondent

Certificate of lawyer

I Catriona McPherson certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 15 March 2024



Signed by Catriona McPherson
Assistant Crown Solicitor
For GR Cooper
Lawyer for the Respondent