

## 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)

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File Number: VID943/2023

File Title: BRETT HAROLD GUNNING 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:

**Brett Harold Gunning**

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) BRETT HAROLD GUNNING (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@belaw.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 develop a process of consultation with the Applicant and each Group Member 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 and their respective children who were removed from their parents by the Respondent. Wherever possible, all such consultations to be undertaken in a trauma-informed and culturally safe way.
2. An order that the Respondent 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 the Respondent 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 whom the Respondent has removed to achieve that aim.
4. An order that the Respondent publish a formal apology in all First Nations languages commonly in use in Queensland for its previous child removal practices.
5. An order 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. Whether during the Parent's Claim Period the Applicant and some or all of the Group Members were required to undertake specified actions before the Respondent would



facilitate or enable Family Healing between a child who had been removed from parental custody and the Applicant or relevant Group Member.

2. If the answer to question 1 is yes, whether the specified actions constituted a condition or requirement which was unreasonable in the circumstances.
3. If the answer to question 1 is yes, whether the specified actions had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the right to remain free from unlawful interference with the parent's family, and the parent's right to the protection of the family as the natural and fundamental group unit of society.
4. If the answer to question 1 is yes, whether the specified actions had the effect of nullifying or impairing the recognition, enjoyment, or exercise of the parent's right to decide what kind of education a parent's children received.
5. Is it and was it during the Parent's Claim Period more difficult for the First Applicant and some or all of the Group Members than non-Indigenous parents to achieve Family Healing with their children post removal by the Respondent?
6. If the answer to 5 is yes, is and was the reason for the greater difficulty a function of the race of the Applicant and some or all of the Group Members?
7. Did the Respondent require the Applicant and some or all of the Group Members to comply with requirements to achieve Family Healing?
8. Is it and was it during the Parent's Claim Period more difficult for the Applicant and some or all of the Group Members than non-Indigenous parents to comply with requirements imposed by the Respondent in order to achieve Family Healing?
9. If the answer to question 8 is yes, is and was the reason for the greater difficulty because of or a function of the race of the Applicant and some or all of the Group Members?
10. Whether the race of the Applicant and some or all of the Group Members affected or had any relevance to decisions about facilitating or enabling Family Healing.
11. Did the race of the Applicant and some or all of the Group Members form part of the basis for decisions about requirements imposed upon the Applicant and the Group Members by the Respondent as conditions for facilitating or enabling Family Healing?



12. Whether the Applicant and some or all of the Group Members were likely to be less able than non-First Nations families to understand the
- a. requirements;
  - b. powers; or
  - c. means of review of the decisions of
- the Respondent, by reason of one or more of
- i. culture;
  - ii. language;
  - iii. lower literacy; or
  - iv. deprived socioeconomic circumstances.
13. Whether the Applicant and some or all of the Group Members generally had limited formal education.
14. If the answer to 13 is yes, whether their level of formal education made them reliant on the information that the Respondent gave them in relation to achieving Family Healing.
15. If the answer to 13 is yes, whether that reliance made it unlikely that the Applicant and some or all of the Group Members would be able to challenge any condition or requirement imposed by the Respondent to achieve Family Healing.
16. If the answer to 13 is yes, whether that reliance put the Applicant and some or all of the Group Members at a disadvantage in the recognition, enjoyment or exercise of their right to remain free from unlawful interference with their family.
17. If the answer to 13 is yes, whether that reliance put the Applicant and some or all of the Group Members at a disadvantage in the recognition, enjoyment or exercise of their right to the protection of their family as the natural and fundamental group unit of society.
18. Whether the Respondent's conduct in relation to Child Removal Interventions has had the effect of nullifying or impairing the right of the Applicant and some or all of the Group Members' to remain free from unlawful interference with their family.
19. Whether the Respondent's conduct in relation to Child Removal Interventions has had the effect of nullifying or impairing the right of the Applicant and some or all of the Group Members' to the protection of the family as the natural and fundamental unit of society.



20. Whether the Respondent breached the principle contained in s 5A of the Act.
21. Whether the Respondent breached the principle contained in s 5B of the Act.
22. Whether the Respondent breached the principle contained in s 5C of the Act.

### **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 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 in the Statement of Claim, at any time between 5 March 1992 and the date of issue of these proceedings (the **Parents' 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. A copy of the second amended representative complaint to the Australian Human Rights Commission dated 22 June 2023.
5. 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



**Australian  
Human Rights  
Commission**



## **ATTACHMENT A**

Our ref: 2022-19924

Your ref: JT:3910

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 Mr Brett Gunning (**Mr Gunning**) on his own behalf and “on behalf of all Aboriginal and Torres Strait Islander people who have been subject to discrimination against a represented person as an adult as defined in paragraph 44 [of the complaint], purportedly pursuant to the *Child Protection Act 1999* (Qld) (the CPA), or the *Children’s Services Act 1965* (Qld) (collectively the CPAs) (together, the child removal intervention) by the Respondent State of Queensland since 5 March 1992”.

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

### **The original complaint**

#### Documents

The Australian Human Rights Commission (**the Commission**) received the original complaint on 21 December 2022. The original complaint totals 17 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

### *Class members*

Mr Gunning's original complaint was made on his own behalf, on behalf of his [REDACTED] children, [REDACTED] (the [REDACTED] Children), and on behalf of the class members as defined in paragraph 7 of his original complaint, namely "all Aboriginal and Torres Strait Islander people who have been subject to discrimination against a represented person as an adult as defined in paragraph 44 [of 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" (**the Class Members**).

Mr Gunning's original complaint was accepted and progressed as a representative complaint against the State of Queensland (**the State**) made by Mr Gunning on his own behalf, on behalf of the [REDACTED] Children, and on behalf of the Class Members.

### *Relevant period*

In the original complaint, Mr Gunning refers to racial discrimination against the State since 1974 to present. However, as explained in the Commission's email of 5 May 2023, the RDA commenced on 31 October 1975 and case law supports that it does not have retrospective operation. Therefore, any alleged conduct said to have occurred prior to the enactment of the RDA is not covered under the RDA. It is also noted from the description of the Class Members in the complaint that the subject matter of the complaint relates to the alleged events said to have occurred since 5 March 1992.

## 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.

## First amendment to the complaint

On 31 May 2023, Mr Gunning through your office requested leave to amend the complaint to:

- carve out the █████ Children, as aggrieved persons, from his complaint.
- replace the eight-page long annexure to his original complaint, filed on 21 December 2022<sup>1</sup> with the eight-page long amended annexure, filed on 31 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 Mr Gunning to amend the complaint as requested.

The amendment to the complaint totals ten (10) 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'.

## Second amendment to the complaint

On 22 June 2023, Mr Gunning through your office requested leave to further amend the complaint to:

- include the *Children's Services Act 1965* (Qld), in addition to the *Child Protection Act 1999* (Qld), as relevant legislative instruments, in paragraph 7 of his complaint in defining the class members.
- replace the eight-page long first amendment annexure to his complaint, filed on 31 May 2023, with the eight-page long further amended annexure, filed on 22 June 2023.
- include the letter of 22 June 2023 received from your office to form part of the complaint.

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<sup>1</sup> This appears at pages 9 – 16 of Attachment B, provided with this letter, a copy of which was emailed to both your office and Crown Law on 5 May 2023.



On 26 June 2023, in accordance with section 46PA of AHRCA, I granted leave for Mr Gunning to amend the complaint as requested.

The second amendment to the complaint totals nine (9) pages, a copy of which was provided to your office and Crown Law on 26 June 2023. Another copy is provided with this letter, marked as 'Attachment D'.

### **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 Mr Gunning 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)
- Attachment D (the second 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 Mr Gunning for his records.

Yours sincerely

A handwritten signature in blue ink that reads 'Jodie Ball'.

Jodie Ball

**Delegate of the President**

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 his [REDACTED] children, [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 Mr Gunning's children 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 family

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**BOTTOMS ENGLISH  
LAWYERS PTY LTD**

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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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contact and reunion following removal, as distinct from the removal itself. 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,

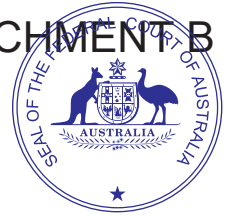
A handwritten signature in blue ink, appearing to read 'Jerry Tucker', written over a horizontal line.

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: Mr  
 First name: Brett  
 Last name: Gunning  
 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 \* \***

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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

**Brett Harold Gunning (DOB: 11/10/1974)**

### 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 man, has suffered from the effects of intergenerational trauma including diagnosed depression.
2. Further, the Complainant as an Aboriginal man has suffered from reduced socioeconomic and educational resources for his entire adult life.
3. Until about 2018 the Complainant was unaware that he could seek redress for the wrongs that have been done to him and others. The Complainant thought that 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**) had all the power. He became aware of such a possibility when a different law firm from the one that currently acts for him and the represented groups told him that it might be possible to do something about what had happened to him. But nothing came of that. He learned about the possibility of taking action under the *Racial Discrimination Act 1975 (RDA)* in August 2022 when that possibility was explained to him by Ms Tucker, the solicitor acting for him now.
4. The ability of the solicitors for the Complainant and representatives 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 a number of 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 his own behalf and as a representative complainant on behalf of all Aboriginal and Torres Strait Islander people who have been subject to discrimination against a represented person as an adult as defined in paragraph 44 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. 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 man. He was born on 11 October 1974. In or about November 1974 he was removed from the custody and guardianship of his biological parents by the Respondent (**the Complainant’s removal**) as a baby and was adopted by the couple he was placed with after 30 days.
9. The Complainant’s biological siblings were also removed from the custody and guardianship of the Complainant’s biological parents by the Respondent (**the siblings’ removal**).

10. The Complainant's removal was based on the Complainant's Aboriginal race within the meaning of s 18 of the *Racial Discrimination Act 1975 (RDA)*.
11. The Complainant's removal was unlawful, contrary to s 9 of the RDA.
12. Following the Complainant's removal, the Complainant was placed with non-Aboriginal carers, and subsequently adopted by them.
13. Following the siblings' removal, the Complainant's siblings were each placed separately from the Complainant and from each other with other families.
14. The Complainant did not find out who his biological family was or what his Country was until about 8 or 10 years ago.
15. Since he found out his Country and people, he has started learning his language, Wirri, mostly from his Aunt Renata Prior, who the Complainant refers to as his mum, and Uncle Mervin Prior.
16. The Complainant tries to speak language with his whole family when possible, but he is not fluent.
17. Since making connection with his family, the Complainant has travelled to Country with Uncle Mervin, who is also teaching him how to make cultural artifacts.
18. From the time of the removal until the Complainant's 18th birthday, no or no adequate attempts were made to:
  - a. Reunite the Complainant with his biological parents;
  - b. Provide the Complainant with opportunities to learn about and practise his Aboriginal culture;
  - c. Provide the Complainant with opportunities to learn and speak his Aboriginal language;
  - d. Reunite the Complainant with his siblings;
  - e. Facilitate regular ongoing or any communication or contact between the Complainant and his biological family

(collectively, **the ongoing conduct**).

19. The ongoing conduct was based on the Complainant's Aboriginal race within the meaning of s 18 of the RDA.
20. The ongoing conduct was unlawful, contrary to s 9 of the RDA.
21. The Complainant's removal or the ongoing conduct or both impaired the Complainant's enjoyment of, *inter alia*:
- a. His 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, contained in Articles 17(1) and 23(1) of the International Convention on Civil and Political Rights (ICCPR), and in Article 12 of the Universal Declaration of Human Rights (UDHR); and
  - b. His right to enjoy his own culture and to use his own language, contained in Article 27 of the ICCPR.
22. The unlawful discrimination set out above caused the Complainant significant harm. As a teenager, the Complainant felt alienated and frequently ran away from home to spend time with Aboriginal people, as well as getting into trouble with the law.

#### **Discrimination against the Complainant as an adult**

23. The Complainant has [REDACTED] children:
- a. [REDACTED];
  - b. [REDACTED] and
  - c. [REDACTED].
24. [REDACTED] is the mother of all of the Complainant's children.
25. When [REDACTED] was about [REDACTED], [REDACTED] was removed from the care and custody of the Complainant and [REDACTED] by the Respondent, purportedly pursuant to the CPA ([REDACTED] removal).
26. [REDACTED] removal was based wholly or in part on the race of the Complainant.
27. When [REDACTED] was about [REDACTED], [REDACTED] was removed from the care and custody of the Complainant and [REDACTED] purportedly pursuant to the CPA ([REDACTED] removal).



28. [REDACTED] removal was based wholly or in part on the race of the Complainant.
29. From approximately the time of [REDACTED] removal, the Complainant tried to regain custody of [REDACTED] and [REDACTED]. The Complainant:
- a. Regularly and cooperatively engaged with the Respondent through Child Safety agencies, and complied with their requests, save that he did not comply with the requirement of Child Safety Toowoomba that to pursue reunification the Complainant move back in with his adoptive parents;
  - b. Completed both indigenous and non-indigenous parenting courses, both at the request of the Respondent through Child Safety agencies, and of his own motion; and
  - c. Arranged and engaged in counselling with Relationships Australia.
30. When [REDACTED] was either [REDACTED], [REDACTED] was removed from the care and custody of the Complainant and [REDACTED] purportedly pursuant to the CPA ([REDACTED] removal).
31. [REDACTED] removal was based wholly or in part on the race of the Complainant.
32. From approximately the time of the removal of each child, the Complainant tried to regain custody of [REDACTED] or [REDACTED]. From the time of [REDACTED] removal, the Complainant continued to:
- a. Regularly and cooperatively engage with the Respondent through Child Safety agencies, and complied with their requests, save that he did not comply with the requirement of Child Safety Toowoomba that to pursue reunification the Complainant move back in with his adoptive parents;
  - b. Complete both indigenous and non-indigenous parenting courses, both at the request of the Respondent through Child Safety agencies, and of his own motion;
  - c. Arrange and engage in counselling with Relationships Australia.
33. In addition, the Complainant engaged with and relied upon a variety of indigenous supports to ensure he was well equipped to parent his children upon reunification.

34. Further, in 2008 the Complainant obtained supported accommodation to allow him to have [REDACTED] live with him, as an initial step in the reunification with all of his children, which accommodation was assessed as suitable by the Child Safety agency in Chermside.
35. Despite all the matters set out above regarding his compliance with the requirements of the Respondent, from the time of each child's removal the Respondent, by the Department of Child Safety, did not permit the Complainant to regain or obtain custody of any of his children, or otherwise to allow them to come back to live with him.
36. At the time of making this complaint the situation described in the preceding paragraph continues.
37. Further, from the time of each child's removal the Respondent, by the Department of Child Safety, would not permit the Complainant unsupervised contact with any of his children.
38. At the time of making this complaint the situation described in the preceding paragraph continues.
39. Further, from the time of each child's removal the Respondent, by the Department of Child Safety, has placed, and from time-to-time when placement has altered has again placed, each child with non-Indigenous carers, even in circumstances when there were at the times of determining placements willing kinship or Indigenous or both carers available to care for them.
40. Further, from the time of each child's removal, the Respondent, by the Department of Child Safety, has prevented the Complainant from deciding what kind of education they would receive.
41. Further, so far as the Complainant is aware, no-one has made any attempt to teach language to any of his children.
42. The conduct set out in the 23 to 41 inclusive above was and is based on the Complainant's Aboriginal race within the meaning of s 18 the RDA.
43. The conduct set out in the 23 to 41 inclusive above was and is unlawful within the meaning of s 9 of the RDA. In particular, that conduct impaired the Complainant's enjoyment of, *inter alia*:

- a. his 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, contained in Articles 17(1) and 23(1) of the ICCPR, and in Article 12 of the UDHR; and
- b. his right to decide what kind of education his children receive, contained in Article 26(3) of the UDHR.

44. For the purposes of this representative complaint, conduct which is the same, similar, or related to the type of conduct described above is taken to be **Discrimination against a represented person as an adult.**

#### **Discrimination against the Complainant's children**

45. As set out above, in addition to bringing this claim on his own behalf, the Complainant also brings claims on behalf of each of [REDACTED] [REDACTED] and [REDACTED]

46. As well as constituting unlawful discrimination against the Complainant, the conduct set out in paragraphs 23 to 41 inclusive above constituted and continues to constitute unlawful discrimination contrary to s 9 of the RDA against each of [REDACTED] [REDACTED] and [REDACTED]. Specifically, that conduct impaired the rights of each of the Complainant's [REDACTED] children:

- a. To enjoy his or her own culture and to use his or her own language, contained in Article 27 of the ICCPR; and
- b. To remain free from unlawful interference with his or her family, and his or her right to the protection of his or her family as the natural and fundamental group unit of society, contained in Articles 17(1) and 23(1) of the ICCPR, and in Article 12 of the UDHR.

#### **Representative complaint**

47. While some of the conduct set out above is particular to the Complainant and his children, the Complainant further claims on behalf of those he 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 within the meaning of s 18 of the RDA. He claims that the Respondent's conduct in child removal interventions has the same, similar, or related features of the conduct which occurred in his case, and constitutes past and

present unlawful discrimination against removed children and their parents, contrary to s 9 of the RDA.

**Relief sought**

48. 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 contact or 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 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. Compensation.



**Australian  
Human Rights  
Commission**



## **AUTHORITY TO ACT**

I, **BRETT HAROLD GUNNING**, 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:

DocuSigned by:  
  
AFC16D991D24443...

Name:

**BRETT HAROLD GUNNING**

Date:

21-12-2022 | 08:52 AEST

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. Mr Gunning's [REDACTED] children, [REDACTED] and [REDACTED] respectively, fall into the amended class definition in Ms Burns' complaint. Mr Gunning's youngest child, [REDACTED], has been specifically named in Ms Burns' class definition as [REDACTED].

There has been a carve out at paragraph 45 of Mr Gunning's complaint of his [REDACTED] children, 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.

**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.



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**

**Brett Harold Gunning (DOB: 11/10/1974)**

**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 man, has suffered from the effects of intergenerational trauma including diagnosed depression.
2. Further, the Complainant as an Aboriginal man has suffered from reduced socioeconomic and educational resources for his entire adult life.
3. Until about 2018 the Complainant was unaware that he could seek redress for the wrongs that have been done to him and others. The Complainant thought that 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**) had all the power. He became aware of such a possibility when a different law firm from the one that currently acts for him and the represented groups told him that it might be possible to do something about what had happened to him. But nothing came of that. He learned about the possibility of taking action under the *Racial Discrimination Act 1975 (RDA)* in August 2022 when that possibility was explained to him by Ms Tucker, the solicitor acting for him now.
4. The ability of the solicitors for the Complainant and representatives 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 a number of 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 his own behalf and as a representative complainant on behalf of all Aboriginal and Torres Strait Islander people who have been subject to discrimination against a represented person as an adult as defined in paragraph 44 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. 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 man. He was born on 11 October 1974. In or about November 1974 he was removed from the custody and guardianship of his biological parents by the Respondent (**the Complainant’s removal**) as a baby and was adopted by the couple he was placed with after 30 days.
9. The Complainant’s biological siblings were also removed from the custody and guardianship of the Complainant’s biological parents by the Respondent (**the siblings’ removal**).

10. The Complainant's removal was based on the Complainant's Aboriginal race within the meaning of s 18 of the *Racial Discrimination Act 1975 (RDA)*.
11. The Complainant's removal was unlawful, contrary to s 9 of the RDA.
12. Following the Complainant's removal, the Complainant was placed with non-Aboriginal carers, and subsequently adopted by them.
13. Following the siblings' removal, the Complainant's siblings were each placed separately from the Complainant and from each other with other families.
14. The Complainant did not find out who his biological family was or what his Country was until about 8 or 10 years ago.
15. Since he found out his Country and people, he has started learning his language, Wirri, mostly from his Aunt Renata Prior, who the Complainant refers to as his mum, and Uncle Mervin Prior.
16. The Complainant tries to speak language with his whole family when possible, but he is not fluent.
17. Since making connection with his family, the Complainant has travelled to Country with Uncle Mervin, who is also teaching him how to make cultural artifacts.
18. From the time of the removal until the Complainant's 18th birthday, no or no adequate attempts were made to:
  - a. Reunite the Complainant with his biological parents;
  - b. Provide the Complainant with opportunities to learn about and practise his Aboriginal culture;
  - c. Provide the Complainant with opportunities to learn and speak his Aboriginal language;
  - d. Reunite the Complainant with his siblings;
  - e. Facilitate regular ongoing or any communication or contact between the Complainant and his biological family

(collectively, **the ongoing conduct**).

19. The ongoing conduct was based on the Complainant's Aboriginal race within the meaning of s 18 of the RDA.
20. The ongoing conduct was unlawful, contrary to s 9 of the RDA.
21. The Complainant's removal or the ongoing conduct or both impaired the Complainant's enjoyment of, *inter alia*:
- a. His 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, contained in Articles 17(1) and 23(1) of the International Convention on Civil and Political Rights (ICCPR), and in Article 12 of the Universal Declaration of Human Rights (UDHR); and
  - b. His right to enjoy his own culture and to use his own language, contained in Article 27 of the ICCPR.
22. The unlawful discrimination set out above caused the Complainant significant harm. As a teenager, the Complainant felt alienated and frequently ran away from home to spend time with Aboriginal people, as well as getting into trouble with the law.

#### **Discrimination against the Complainant as an adult**

23. The Complainant has [REDACTED] children:
- a. [REDACTED];
  - b. [REDACTED]; and
  - c. [REDACTED].
24. [REDACTED] is the mother of all of the Complainant's children.
25. When [REDACTED] was about [REDACTED], [REDACTED] was removed from the care and custody of the Complainant and [REDACTED] by the Respondent, purportedly pursuant to the CPA ([REDACTED] removal).
26. [REDACTED] removal was based wholly or in part on the race of the Complainant.
27. When [REDACTED] was about [REDACTED], [REDACTED] was removed from the care and custody of the Complainant and [REDACTED] purportedly pursuant to the CPA ([REDACTED] removal).

28. [REDACTED] removal was based wholly or in part on the race of the Complainant.
29. From approximately the time of [REDACTED] removal, the Complainant tried to regain custody of [REDACTED] and [REDACTED]. The Complainant:
- Regularly and cooperatively engaged with the Respondent through Child Safety agencies, and complied with their requests, save that he did not comply with the requirement of Child Safety Toowoomba that to pursue reunification the Complainant move back in with his adoptive parents;
  - Completed both indigenous and non-indigenous parenting courses, both at the request of the Respondent through Child Safety agencies, and of his own motion; and
  - Arranged and engaged in counselling with Relationships Australia.
30. When [REDACTED] was either [REDACTED], [REDACTED] was removed from the care and custody of the Complainant and [REDACTED] purportedly pursuant to the CPA ([REDACTED] removal).
31. [REDACTED] removal was based wholly or in part on the race of the Complainant.
32. From approximately the time of the removal of each child, the Complainant tried to regain custody of [REDACTED] or [REDACTED]. From the time of [REDACTED] removal, the Complainant continued to:
- Regularly and cooperatively engage with the Respondent through Child Safety agencies, and complied with their requests, save that he did not comply with the requirement of Child Safety Toowoomba that to pursue reunification the Complainant move back in with his adoptive parents;
  - Complete both indigenous and non-indigenous parenting courses, both at the request of the Respondent through Child Safety agencies, and of his own motion;
  - Arrange and engage in counselling with Relationships Australia.
33. In addition, the Complainant engaged with and relied upon a variety of indigenous supports to ensure he was well equipped to parent his children upon reunification.

34. Further, in 2008 the Complainant obtained supported accommodation to allow him to have [REDACTED] live with him, as an initial step in the reunification with all of his children, which accommodation was assessed as suitable by the Child Safety agency in Chermside.
35. Despite all the matters set out above regarding his compliance with the requirements of the Respondent, from the time of each child's removal the Respondent, by the Department of Child Safety, did not permit the Complainant to regain or obtain custody of any of his children, or otherwise to allow them to come back to live with him.
36. At the time of making this complaint the situation described in the preceding paragraph continues.
37. Further, from the time of each child's removal the Respondent, by the Department of Child Safety, would not permit the Complainant unsupervised contact with any of his children.
38. At the time of making this complaint the situation described in the preceding paragraph continues.
39. Further, from the time of each child's removal the Respondent, by the Department of Child Safety, has placed, and from time-to-time when placement has altered has again placed, each child with non-Indigenous carers, even in circumstances when there were at the times of determining placements willing kinship or Indigenous or both carers available to care for them.
40. Further, from the time of each child's removal, the Respondent, by the Department of Child Safety, has prevented the Complainant from deciding what kind of education they would receive.
41. Further, so far as the Complainant is aware, no-one has made any attempt to teach language to any of his children.
42. The conduct set out in the 23 to 41 inclusive above was and is based on the Complainant's Aboriginal race within the meaning of s 18 the RDA.
43. The conduct set out in the 23 to 41 inclusive above was and is unlawful within the meaning of s 9 of the RDA. In particular, that conduct impaired the Complainant's enjoyment of, *inter alia*:

- a. his 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, contained in Articles 17(1) and 23(1) of the ICCPR, and in Article 12 of the UDHR; and
- b. his right to decide what kind of education his children receive, contained in Article 26(3) of the UDHR.

44. For the purposes of this representative complaint, conduct which is the same, similar, or related to the type of conduct described above is taken to be **Discrimination against a represented person as an adult.**

#### Discrimination against the Complainant's children

45. As set out above, the Complainant brings claims on his own behalf. ~~in addition to bringing this claim on his own behalf, the Complainant also brings claims on behalf of each of~~

██████████████████████

46. As well as constituting unlawful discrimination against the Complainant, the conduct set out in paragraphs 23 to 41 inclusive above constituted and continues to constitute unlawful discrimination contrary to s 9 of the RDA against each of ██████████ ██████████ and ██████████. Specifically, that conduct impaired the rights of each of the Complainant's ██████████ children:

- a. To enjoy his or her own culture and to use his or her own language, contained in Article 27 of the ICCPR; and
- b. To remain free from unlawful interference with his or her family, and his or her right to the protection of his or her family as the natural and fundamental group unit of society, contained in Articles 17(1) and 23(1) of the ICCPR, and in Article 12 of the UDHR.

#### Representative complaint

47. While some of the conduct set out above is particular to the Complainant ~~and his children,~~ the Complainant further claims on behalf of those he 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 within the meaning of s 18 of the RDA. He claims that the Respondent's conduct in child removal interventions has the same, similar, or related features of the conduct which occurred in his case, and constitutes past and

present unlawful discrimination against removed children and their parents, contrary to s 9 of the RDA.

**Relief sought**

48. 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 contact or 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 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. Compensation.

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

22 June 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 COMPLAINT – BRETT  
GUNNING**

We refer to the complaint of Mr Brett Harold Gunning lodged with the Commission on 21 December 2022.

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

Please find **enclosed**, a marked up copy of the Further Amended Annexure to Complaint of Brett Gunning lodged 21 December 2022.

The further amendment seeks to include the removal of children under the *Children's Services Act 1965* (Qld), in addition to the *Child Protection Act 1999* (Qld).

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

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,



KIRSTEN LESINA | Associate  
**BOTTOMS ENGLISH LAWYERS**

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

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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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Further Amended

**Australian Human Rights Commission Representative Complaint**

**Brett Harold Gunning (DOB: 11/10/1974)**

**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 man, has suffered from the effects of intergenerational trauma including diagnosed depression.
2. Further, the Complainant as an Aboriginal man has suffered from reduced socioeconomic and educational resources for his entire adult life.
3. Until about 2018 the Complainant was unaware that he could seek redress for the wrongs that have been done to him and others. The Complainant thought that 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**) had all the power. He became aware of such a possibility when a different law firm from the one that currently acts for him and the represented groups told him that it might be possible to do something about what had happened to him. But nothing came of that. He learned about the possibility of taking action under the *Racial Discrimination Act 1975 (RDA)* in August 2022 when that possibility was explained to him by Ms Tucker, the solicitor acting for him now.
4. The ability of the solicitors for the Complainant and representatives 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 a number of 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 his own behalf and as a representative complainant on behalf of all Aboriginal and Torres Strait Islander people who have been subject to discrimination against a represented person as an adult as defined in paragraph 44 below, purportedly pursuant to the *Child Protection Act 1999 (Qld) (the CPA)*, or the *Children’s Services Act 1965 (Qld) (collectively the CPAs) (together, the child removal intervention)* by the Respondent State of Queensland since 5 March 1992. 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 man. He was born on 11 October 1974. In or about November 1974 he was removed from the custody and guardianship of his biological parents by the Respondent (**the Complainant’s removal**) as a baby and was adopted by the couple he was placed with after 30 days.
9. The Complainant’s biological siblings were also removed from the custody and guardianship of the Complainant’s biological parents by the Respondent (**the siblings’ removal**).

10. The Complainant's removal was based on the Complainant's Aboriginal race within the meaning of s 18 of the *Racial Discrimination Act 1975 (RDA)*.
11. The Complainant's removal was unlawful, contrary to s 9 of the RDA.
12. Following the Complainant's removal, the Complainant was placed with non-Aboriginal carers, and subsequently adopted by them.
13. Following the siblings' removal, the Complainant's siblings were each placed separately from the Complainant and from each other with other families.
14. The Complainant did not find out who his biological family was or what his Country was until about 8 or 10 years ago.
15. Since he found out his Country and people, he has started learning his language, Wirri, mostly from his Aunt Renata Prior, who the Complainant refers to as his mum, and Uncle Mervin Prior.
16. The Complainant tries to speak language with his whole family when possible, but he is not fluent.
17. Since making connection with his family, the Complainant has travelled to Country with Uncle Mervin, who is also teaching him how to make cultural artifacts.
18. From the time of the removal until the Complainant's 18th birthday, no or no adequate attempts were made to:
  - a. Reunite the Complainant with his biological parents;
  - b. Provide the Complainant with opportunities to learn about and practise his Aboriginal culture;
  - c. Provide the Complainant with opportunities to learn and speak his Aboriginal language;
  - d. Reunite the Complainant with his siblings;
  - e. Facilitate regular ongoing or any communication or contact between the Complainant and his biological family

(collectively, **the ongoing conduct**).

19. The ongoing conduct was based on the Complainant's Aboriginal race within the meaning of s 18 of the RDA.
20. The ongoing conduct was unlawful, contrary to s 9 of the RDA.
21. The Complainant's removal or the ongoing conduct or both impaired the Complainant's enjoyment of, *inter alia*:
- a. His 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, contained in Articles 17(1) and 23(1) of the International Convention on Civil and Political Rights (ICCPR), and in Article 12 of the Universal Declaration of Human Rights (UDHR); and
  - b. His right to enjoy his own culture and to use his own language, contained in Article 27 of the ICCPR.
22. The unlawful discrimination set out above caused the Complainant significant harm. As a teenager, the Complainant felt alienated and frequently ran away from home to spend time with Aboriginal people, as well as getting into trouble with the law.

#### **Discrimination against the Complainant as an adult**

23. The Complainant has [REDACTED] children:
- a. [REDACTED];
  - b. [REDACTED]; and
  - c. [REDACTED].
24. [REDACTED] is the mother of all of the Complainant's children.
25. When [REDACTED] was about [REDACTED], [REDACTED] was removed from the care and custody of the Complainant and [REDACTED] by the Respondent, purportedly pursuant to the CPA ([REDACTED] removal).
26. [REDACTED] removal was based wholly or in part on the race of the Complainant.
27. When [REDACTED] was about [REDACTED], [REDACTED] was removed from the care and custody of the Complainant and [REDACTED] purportedly pursuant to the CPA ([REDACTED] removal).

28. [REDACTED] removal was based wholly or in part on the race of the Complainant.
29. From approximately the time of [REDACTED] removal, the Complainant tried to regain custody of [REDACTED] and [REDACTED]. The Complainant:
- Regularly and cooperatively engaged with the Respondent through Child Safety agencies, and complied with their requests, save that he did not comply with the requirement of Child Safety Toowoomba that to pursue reunification the Complainant move back in with his adoptive parents;
  - Completed both indigenous and non-indigenous parenting courses, both at the request of the Respondent through Child Safety agencies, and of his own motion; and
  - Arranged and engaged in counselling with Relationships Australia.
30. When [REDACTED] was either [REDACTED], [REDACTED] was removed from the care and custody of the Complainant and [REDACTED] purportedly pursuant to the CPA ([REDACTED] removal).
31. [REDACTED] removal was based wholly or in part on the race of the Complainant.
32. From approximately the time of the removal of each child, the Complainant tried to regain custody of him or her. From the time of [REDACTED] removal, the Complainant continued to:
- Regularly and cooperatively engage with the Respondent through Child Safety agencies, and complied with their requests, save that he did not comply with the requirement of Child Safety Toowoomba that to pursue reunification the Complainant move back in with his adoptive parents;
  - Complete both indigenous and non-indigenous parenting courses, both at the request of the Respondent through Child Safety agencies, and of his own motion;
  - Arrange and engage in counselling with Relationships Australia.
33. In addition, the Complainant engaged with and relied upon a variety of indigenous supports to ensure he was well equipped to parent his children upon reunification.

34. Further, in 2008 the Complainant obtained supported accommodation to allow him to have [REDACTED] live with him, as an initial step in the reunification with all of his children, which accommodation was assessed as suitable by the Child Safety agency in Chermside.
35. Despite all the matters set out above regarding his compliance with the requirements of the Respondent, from the time of each child's removal the Respondent, by the Department of Child Safety, did not permit the Complainant to regain or obtain custody of any of his children, or otherwise to allow them to come back to live with him.
36. At the time of making this complaint the situation described in the preceding paragraph continues.
37. Further, from the time of each child's removal the Respondent, by the Department of Child Safety, would not permit the Complainant unsupervised contact with any of his children.
38. At the time of making this complaint the situation described in the preceding paragraph continues.
39. Further, from the time of each child's removal the Respondent, by the Department of Child Safety, has placed, and from time-to-time when placement has altered has again placed, each child with non-Indigenous carers, even in circumstances when there were at the times of determining placements willing kinship or Indigenous or both carers available to care for them.
40. Further, from the time of each child's removal, the Respondent, by the Department of Child Safety, has prevented the Complainant from deciding what kind of education they would receive.
41. Further, so far as the Complainant is aware, no-one has made any attempt to teach language to any of his children.
42. The conduct set out in the 23 to 41 inclusive above was and is based on the Complainant's Aboriginal race within the meaning of s 18 the RDA.
43. The conduct set out in the 23 to 41 inclusive above was and is unlawful within the meaning of s 9 of the RDA. In particular, that conduct impaired the Complainant's enjoyment of, *inter alia*:

- a. his 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, contained in Articles 17(1) and 23(1) of the ICCPR, and in Article 12 of the UDHR; and
- b. his right to decide what kind of education his children receive, contained in Article 26(3) of the UDHR.

44. For the purposes of this representative complaint, conduct which is the same, similar, or related to the type of conduct described above is taken to be **Discrimination against a represented person as an adult.**

#### **Discrimination against the Complainant's children**

45. As set out above, the Complainant brings claims on his own behalf.

46. As well as constituting unlawful discrimination against the Complainant, the conduct set out in paragraphs 23 to 41 inclusive above constituted and continues to constitute unlawful discrimination contrary to s 9 of the RDA against each of [REDACTED] [REDACTED] and [REDACTED]. Specifically, that conduct impaired the rights of each of the Complainant's [REDACTED] children:

- a. To enjoy his or her own culture and to use his or her own language, contained in Article 27 of the ICCPR; and
- b. To remain free from unlawful interference with his or her family, and his or her right to the protection of his or her family as the natural and fundamental group unit of society, contained in Articles 17(1) and 23(1) of the ICCPR, and in Article 12 of the UDHR.

#### **Representative complaint**

47. While some of the conduct set out above is particular to the Complainant, the Complainant further claims on behalf of those he 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 within the meaning of s 18 of the RDA. He claims that the Respondent's conduct in child removal interventions has the same, similar, or related features of the conduct which occurred in his case, and constitutes past and

present unlawful discrimination against removed children and their parents, contrary to s 9 of the RDA.

### Relief sought

48. 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 contact or 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 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. Compensation.





## AUSTRALIAN HUMAN RIGHTS COMMISSION

**FILE NO:** 2022-19924

### **Between**

Brett Gunning on his own behalf and on behalf of all Aboriginal and Torres Strait Islander people who have been subject to discrimination against a represented person as an adult as defined in paragraph 44 [of the complaint], purportedly pursuant to the *Child Protection Act 1999* (Qld) (the CPA), or the *Children's Services Act 1965* (Qld) (collectively the CPAs) (together, the child removal intervention) by the Respondent State of Queensland since 5 March 1992

### **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.

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

DATED 14 September 2023.

A handwritten signature in blue ink that reads 'Jodie Ball'.

Jodie Ball

**Delegate of the President**