

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33  
File Number: NTD64/2016  
File Title: Dylan Riley Jenkings & Anor v Northern Territory of Australia  
Registry: NORTHERN TERRITORY REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 18/10/2019 2:04:15 PM ACST

Registrar

A handwritten signature in blue ink that reads "Warwick Soden".

### Important Information

As required by the Court's Rules, 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.

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## Third Reply

(Reply to the Fourth Defence)

*Filed on 18 October 2019 pursuant to  
Order 2 made by Justice White on 10 October 2019.*

No. NTD64 of 2016

Federal Court of Australia

District Registry: Northern Territory

Division: General

**Dylan Riley Jenkins and another**

Applicants

**Northern Territory of Australia**

Respondent

The Applicants reply to the Fourth Defence of the Respondent (**Fourth Defence**) filed on 11 October 2019 as follows:

1. As to paragraph 69L of the Fourth Defence, the Applicants say that during the period 6 November 2015 to 12 November 2015 there was no person validly appointed to the position of Commissioner, as described in paragraph 54C.28 of the Sixth Statement of Claim (**6SOC**) and, accordingly, the isolation of the First Applicant for any longer than 72 hours in that period was not authorised under section 153(5) of the Act.
2. As to paragraph 74 of the Fourth Defence, the Applicants say that:
  - (a) Directives 3.1.5 and 3.2.1 were not a valid exercise, or delegation, of the power conferred upon the Superintendent by subsections 153(3) or 154(4) of the Act;
  - (b) in the circumstances Directives 3.1.5 and 3.2.1 did not, and could not, authorise the handcuffing or other restraint of the First Applicant as pleaded;
  - (c) further to sub-paragraphs (a) and (b) above, to the extent that the approving of the Individual Intensive Management Plans (**IIMPs**) by the Superintendent purported to authorise the handcuffing or other restraint of the First Applicant as

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Filed on behalf of (name & role of party) Dylan Riley Jenkins, First Applicant and  
Aaron Hyde, Second Applicant

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pledged it was not a valid exercise, or delegation, of the Superintendent's powers;

(d) in the circumstances IIMPs did not, and could not, authorise the handcuffing or other restraint of the First Applicant as pleaded.

3. As to paragraph 76 of the Fourth Defence, the Applicants say that:

(a) Directives 9.4 and 3.2.6 were not a valid exercise, or delegation, of the power conferred upon the Superintendent by section 161 of the Act;

(b) in the circumstances Directives 9.4 and 3.2.6 did not, and could not, authorise the strip-searching of the First Applicant as pleaded;

(c) further to sub-paragraphs (a) and (b) above, to the extent that the approving of the IIMPs by the Superintendent purported to authorise the strip-searching of the First Applicant as pleaded it was not a valid exercise, or delegation, of the Superintendent's powers;

(d) in the circumstances IIMPs did not, and could not, authorise the strip-searching of the First Applicant as pleaded.

4. As to paragraph 76 of the Fourth Defence, the Applicants say that on 29 May 2012 there was no person validly appointed to the position of Superintendent, as described in paragraph 54D of the 6SOC and, accordingly, the handcuffing of the Second Applicant was not authorised under section 153(4) of the Act.

5. As to paragraph 76 of the Fourth Defence, the Applicants say that during the period of the Second Applicant's detention in youth detention centres there was no person validly appointed to the position of Superintendent, as described in paragraph 54D of the 6SOC and, accordingly, the handcuffing of the Second Applicant at any time in that period was not authorised under section 153(4) of the Act.

6. As to paragraph 96 of the Fourth Defence, the Applicants:

(a) say that any purported delegation of power or direction as to the exercise of power as pleaded in paragraphs 96.5 and 96.6 of the Fourth Defence was invalid and of no effect;

(b) in the circumstances any purported delegation or direction did not, and could not, authorise the strip searching of the Second Applicant as pleaded;

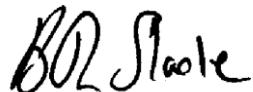
(c) further to sub-paragraphs (a) to (b) above, say that during the period of the Second Applicant's detention in youth detention centres there was no person validly appointed to the position of Superintendent, as described in paragraph 54D of the 6SOC, and accordingly the search of the Second Applicant at any time in that period was not authorised under section 161 of the Act.

7. As to paragraphs 103 to 106 of the Fourth Defence, the Applicants say that by failing to plead to the contingent requests by the Applicants for an extension of time, the Respondent is taken to have admitted that such extensions should be granted.

8. As to paragraph 106A of the Defence to the 6SOC, the Applicants say that, to the extent necessary, they seek on their own behalves and on behalf of Group Members (as defined in the 6SOC), pursuant to s 44(1) of the *Limitation Act* (NT), an extension of the time for instituting this action otherwise limited by s 162(1) of the *Police Administration Act* (NT).

9. The Applicants otherwise join issue with the Defence (including generally as to matters pleaded in paragraphs in relation to which specific matters are pleaded above).

Date: 18 October 2019



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Signed by Ben Slade  
Lawyer for the Applicants

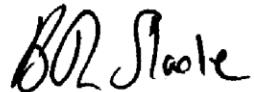
This pleading was prepared by Paul Batley of Counsel and settled by Nicholas Owens SC.

**Certificate of lawyer**

I, Ben Slade, certify to the Court that, in relation to the reply filed on behalf of the Applicants, 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: 18 October 2019

A handwritten signature in black ink that reads "Ben Slade". The signature is fluid and cursive, with "Ben" on the top line and "Slade" on the bottom line.

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Signed by Ben Slade  
Lawyer for the Applicants