

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/03/2019 12:06:34 PM ACST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	NTD64/2016
File Title:	Dylan Riley Jenkins & Anor v Northern Territory of Australia
Registry:	NORTHERN TERRITORY REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Case Management Hearing
Time and date for hearing:	23/05/2019, 9:00 AM
Place:	Court Room 18D, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney; Court 9, Level 4 - Supreme Court, Level 2, Supreme Court Building State Square, Darwin



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 20/03/2019 1:24:40 PM ACST

Registrar

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.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Fourth Fifth Originating Application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976 and under the Australian Human Rights Commission Act 1986

Filed on 20 March 2019 pursuant to orders 1 and 3 made by Justice White on 6 March 2019.

No. NTD64 of 2016

Federal Court of Australia
District Registry: Northern Territory
Division: General

Dylan Riley Jenkins

First Applicant

Aaron Hyde

Second Applicant

Northern Territory of Australia

Respondent

To the Respondent

The Applicants apply 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:

Signed by an officer acting with the authority
of the District Registrar

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

Prepared by (name of person/lawyer) Ben Slade

Law firm (if applicable) Maurice Blackburn Pty Limited

Tel (02) 9261 1488

Email BSlade@mauriceblackburn.com.au

Address for service Level 32, 201 Elizabeth Street, Sydney NSW 2000



Details of claim

1. On the grounds stated in the accompanying ~~Fifth~~ Statement of Claim, the first applicant and the second applicant each on his own behalf and on behalf of Group Members claim:
 - a. An order extending the limitation periods applicable to the claims made in this proceeding pursuant to section 44 of the *Limitation Act* (NT) for themselves and for Group Members and, to the extent necessary, an extension of the time for instituting this action otherwise limited by operation of the *Youth Justice Act* (NT) (**Act**) or otherwise;
 - b. Damages;
 - c. Aggravated damages;
 - d. Interest on compensatory damages;
 - e. Exemplary damages;
 - ~~ea~~ ~~The remedies under s 46PO of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**) set out under the heading, "Remedy Sought", below.~~
 - f. Costs; and
 - g. Such further or other orders as the Court deems fit.

~~Details of claim under the *Australian Human Rights Commission Act 1986* (Cth)~~

~~The Applicants claim that:~~

- ~~1. On 22 December 2016 the first applicant lodged a complaint with the Australian Human Rights Commission (AHRC) under ss 46P and 46PB of the AHRC Act alleging that the Respondent unlawfully discriminated against the first applicant and Group Members, including the second applicant, in breach of s 9(1) of the *Racial Discrimination Act 1975* (Cth) (**AHRC Complaint**).~~
- ~~2. On 28 March 2017 the delegate of the President of the AHRC terminated the AHRC Complaint pursuant to s 46PH(1)(g) of the AHRC Act.~~
- ~~3. Pursuant to s 46PO(1) of the AHRC Act, by reason of the matters pleaded in paragraphs 1, 1A, 10, 11, and 75 to 102 of the Fifth Statement of Claim (**5SOC**), the Respondent unlawfully discriminated against the applicants and Group Members in breach of s 9(1) of the *Racial Discrimination Act 1975* (Cth).~~



Legislation

The Applicants claim that the discrimination complained of is unlawful under the ~~Racial Discrimination Act 1975 (RDA)~~, section 9(1).

Remedy sought

The Applicants ask the Court for:

1. ~~Orders pursuant to s 46PO(4)(a) of the AHRC Act declaring that the respondent has committed unlawful discrimination and directing it not to continue that discrimination;~~
2. ~~Orders pursuant to s 46PO(4)(b) of the AHRC Act directing the respondent to make a public statement acknowledging the Court's findings of unlawful discrimination;~~
3. ~~Orders pursuant to s 46PO(4)(d) of the AHRC Act requiring the respondent to pay to the applicants and Group Members damages by way of compensation for any loss or damage suffered because of the conduct of the respondent, including losses constituted by the impairment of the applicants' and Group Members' enjoyment of the Human Rights and fundamental freedoms described in paragraph 101 of the 5SOC;~~
4. ~~Interest on damages under the AHRC Act;~~
5. ~~Costs;~~
6. ~~Such further or other orders under the AHRC Act as the Court deems fit.~~

Accompanying documents

This application is accompanied by:

1. ~~A copy of the original complaint to the Australian Human Rights Commission; and~~
2. ~~The notice of termination of complaint given by the President of the Australian Human Rights Commission.~~

Applicant's details

Each applicant's and each Group Member's relationship to the respondent is as a detainee of the respondent in youth detention centres as defined in the 5SOC Statement of Claim at various times before 27 November 2017.

Both applicants are over 18 years of age.



Questions common to claims of Group Members

The questions of law or fact common to the claims of the Group Members are:

1. [Deleted]
2. [Deleted]
3. The nature and scope of the respondent's vicarious liability for conduct of commissioners, superintendents and members of staff as pleaded in paragraphs 10 to 12 of the Statement of Claim 14 of the 5SOG.
4. Whether the common law of Australia recognises the existence of residual liberty of persons who are otherwise lawfully detained on remand or under sentence of a court.
5. The nature and scope of the residual liberty, if any, of detainees in youth detention centres within the meaning of the Act (**youth detention centre**).
6. Whether isolation of detainees, within a youth detention centre contrary to s 153(5) of the Act, infringes the residual liberty of a detainee.
7. [Deleted]
8. The extent to which the use of force or threat of the use of force to the person of a detainee not specifically authorised by the Act infringes residual liberty or is otherwise tortious conduct.
9. [Deleted]
10. The limits to the power to use restraints under the Act.
11. Whether regulation 73 of the *Youth Justice Regulations* (NT) (**Regulations**) is inconsistent with section 161 of the Act.
12. Whether a search of a detainee conducted in purported compliance with regulation 73 of the Regulations (but not in terms authorised by section 161 of the Act) can constitute an assault and/or battery of the detainee.
13. The appropriate measure of damages for false imprisonment infringing the residual liberty of persons under the age of 18 at the time.



14. Whether the young age of a person subjected to deprivation of residual liberty is an aggravating factor.
- ~~15. Whether the conduct alleged in paragraphs 78 to 80 of the 5SOC occurred.~~
- ~~16. Whether the conduct alleged in paragraph 79 of the 5SOC was based on race within the meaning of s 9(1) of the RDA.~~
- ~~17. Whether non-Aboriginal detainees of youth detention centres suffered unlawful discrimination based on race in breach of s 9(1) of the RDA in the circumstances alleged in paragraphs 77 to 82 of the 5SOC.~~
- ~~18. Whether the conduct alleged in paragraphs 79 and 81 of the 5SOC had the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of the human rights or fundamental freedoms of Aboriginal and non-Aboriginal Group Members alleged in paragraph 82 of the 5SOC.~~
- ~~19. Whether damages are available under s 46PO(4)(d) of the AHRC Act as compensation for losses constituted by the impairment of the applicants' and Group Members' enjoyment of the human rights and fundamental freedoms described in paragraph 79 and referred to in paragraphs 82 and 101A of the 5SOC.~~

Claim for interlocutory relief

Further, or in the alternative to prayer 1(a) of the details of claim above, the first applicant and the second applicant also claim on their own behalf interlocutory relief:

1. An order extending the limitation periods applicable to the claims made in this proceeding pursuant to section 44 of the *Limitation Act* (NT) for themselves and/or for Group Members and, to the extent necessary, an extension of the time for instituting this action otherwise limited by operation of the *Youth Justice Act* (NT) or otherwise.

Representative action

The applicants bring this application as representative parties under Part IVA of the *Federal Court of Australia Act 1976* (Cth) and ~~section 46P(2)(b) of the AHRC Act.~~

In this Originating Application references to the Statement of Claim mean the current version of the Statement of Claim from time to time as amended with the leave of the Court.



Terms defined in the Statement of Claim accompanying 5SOC carry the same meaning when used in this Further-Amended Originating Application.

The Group Members to whom this proceeding relates are defined in the Statement of Claim, persons who at 27 November 2017:

1. ~~Were or had been detained in a youth detention centre of the Northern Territory of Australia on or after 1 August 2006; and~~
2. ~~during the periods in which the Group Member was detained in a youth detention centre, suffered or allege to have suffered unlawful discrimination, by an act or omission of a “commissioner”, “superintendent” or “member of staff” as defined in paragraph 4 in breach of s 9(1) of the *Racial Discrimination Act 1975* (Cth) (**RDA**); and~~
3. ~~claim damages for the impairment of their enjoyment of the human rights and fundamental freedoms described in sub-paragraph 77.15 of the 5SOC as pleaded in paragraph 101A of the 5SOC; and~~
4. ~~during the period or periods in which the Group Member was detained in a youth detention centre, suffered or allege to have suffered:~~
 - a) ~~assault; and~~
 - b) ~~battery; and/or~~
 - c) ~~false imprisonment;~~

by an act or omission of:

 - d) ~~before 9 September 2014, a director or, from 9 September 2014, a commissioner for the purposes of the Act or a person taken to have been delegated the director’s or commissioner’s powers necessary to perform the director’s or commissioner’s functions in respect of youth detention centres under the Act (**commissioner**);~~
 - e) ~~a superintendent of a youth detention centre, a duly authorised delegate of a superintendent, or a person, pursuant to the Act, taken to have been delegated a superintendent’s powers and functions necessary to perform a superintendent’s functions under s 151(3)(c) of the Act (**superintendent**); or~~



f) ~~a member of the staff of a detention centre or a person, pursuant to the Act, taken to be a member of the staff of a detention centre (**member of staff**); and~~

5. ~~Was not a plaintiff in any of the following proceedings in the Supreme Court of the Northern Territory:~~

~~a) No. 16 of 2016, Case Number: 21615113; and~~

~~b) No. 24 of 2016, Case Number: 21617890.~~

(Group Members)

Applicant's address

The Applicants' address for service is:

Place: C/- Ben Slade, Maurice Blackburn, Lawyers,
Level 32, 201 Elizabeth Street, Sydney NSW 2000

Email: bslade@mauriceblackburn.com.au

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 20 March 2019

A handwritten signature in black ink that reads 'Ben Slade'.

Signed by Ben Slade
Lawyer for the Applicants

Prepared by Paul Batley of Counsel and Fiona McLeod of Senior Counsel.