

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 30/08/2017 4:04:22 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: QUD535/2013  
File Title: Lex Wotton & Ors v State of Queensland & Anor  
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 31/08/2017 8:58:47 AM AEST

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

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.

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**Federal Court of Australia**  
District Registry: Queensland  
Division: General Division

**Lex Wotton and Others**  
Applicants

**State of Queensland and Another**  
Respondents

## Statement of Sub-Group Claim Travel Restriction Group

(Filed pursuant to the Court's Orders dated 29 August 2017)

- 1 Delphine Dawn Clay brings a claim against the first respondent on her own behalf and on behalf of a sub-group (the *Travel Restriction Sub-Group*) consisting of those group members who:
- (a) have registered their intention to make a claim in accordance with the Orders made in this matter by the Honourable Mortimer J on 20 April 2017, as varied on 12 July 2017; and,
  - (b) as a result of the making of a declaration of an emergency situation on Palm Island at or about 1:45pm on 26 November 2004 and the conduct of officers of the Queensland Police Service incidental to or arising from that declaration until the revocation of that declaration at 8:10am on 28 November 2004, were the subject of one or more distinctions, exclusions, restrictions or preferences based on race which nullified or impaired the recognition, enjoyment or exercise on an equal footing of the rights of those sub-group members:
    - (i) as persons lawfully within the territory of the Commonwealth of Australia, to the liberty of movement within that territory, under Article

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|---------------------|--|
| Filed on behalf of  | Delphine Dawn Clay   |
| Prepared by         | Benjamin Brady, Daniel Meyerowitz-Katz and Christina McClellan           |
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[Form approved 01/08/2011]

12(1) of the *International Covenant on Civil and Political Rights (ICCPR)*; and/or

- (ii) to freedom of movement and residence within the border of the Commonwealth of Australia, under Article 5(d)(i) of the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*; and/or
- (iii) of access to any service intended for use by the general public, under Article 5(f) of the ICERD.

2 Ms Clay and the members of the Travel Restriction Group together number more than seven people.

### The Restrictions

3 At or about 1.45pm on 26 November 2004 Detective Inspector Warren Webber (*DI Webber*) made an oral declaration (the *Declaration*) that an emergency situation existed on Palm Island, pursuant to s 5 of the *Public Safety Preservation Act 1986 (Qld) (PSP Act)*.

4 At the time that the Declaration was made DI Webber was satisfied on reasonable grounds that a fire had arisen and therefore an “emergency situation” existed within the meaning of the PSP Act.

5 The emergency situation that existed at the time that the Declaration was made ceased to exist in about the evening of 26 November 2004 or the early morning of 27 November 2004.

6 The Declaration was revoked at about 8.10am on 28 November 2004.

7 The Declaration was made and continued by DI Webber in circumstances where it would not have been made and continued if a different, non-Aboriginal community were affected by protests and fires.

8 At about the time that the Declaration was made DI Webber caused to be issued a Notice to Airmen (*NOTAM*) pursuant to r 4.12 of the *Air Services Regulations 1995 (Cth)*.

9 A result of the NOTAM was that all commercial flights to and from the island:

- (a) were officially suspended between 1.45 pm on 26 November 2004 and 1.30 pm on 27 November 2004; and
- (b) were in fact suspended between 1.45 pm on 26 November 2004 and about 12.30pm on 28 November 2004.

10 Despite the NOTAM, at about 3pm on 26 November 2004, officers of the QPS permitted a number of non-Aboriginal or Torres Strait Islander persons to depart from Palm Island airport on a commercial flight.

- 11 Between about 3.10pm and 8.08pm on 26 November 2004 various officers of the Queensland Police Service on Palm Island or in a Major Incident Room that had been established at Mundingburra in Townsville, which officers included Inspector Brian Richardson, Detective Senior Sergeant Raymond Kitching (*DSS Kitching*), and Detective Senior Sergeant Cheryl Scanlon (*DSS Scanlon*), arranged with the operator of the regular commercial ferry service to and from Palm Island that:
- (a) ordinary ferry services to and from the island were suspended; and
  - (b) the ferry was instead used that day to transport some non-Aboriginal or Torres Strait Islander persons from Palm Island to Townsville.
- 12 The ordinary ferry services to and from Palm Island resumed at or about 5pm on 28 November 2004.
- 13 The making of the Declaration was an “act” involving the following “restrictions”, within the meaning of s 9 of the *Racial Discrimination Act 1975 (Cth) (RDA)*, to which the Travel Restriction Group were subjected (the *Restrictions*):
- (a) the closing of Palm Island to air traffic between about 1.45pm on 26 November 2004 and 12.30pm on 28 November 2004 by reason of the NOTAM; and
  - (b) the suspension of ferry services to and from Palm Island between about 26 and 28 November 2004.
- 14 The Restrictions were “based on” the race of the Travel Restriction Group, within the meaning of s 9 of the RDA.

#### **Impact of the Restrictions on Ms Clay**

- 15 On the morning of 26 November 2004, Ms Clay travelled from Palm Island to Townsville by commercial airplane with her two-year-old son, Duran Clay.
- 16 Ms Clay travelled to Townsville for the purpose of grocery shopping for her family.
- 17 Ms Clay intended to return to Palm Island on a later flight on 26 November 2004 after she had completed her grocery shopping.
- 18 By reason of the Restrictions, Ms Clay was unable to return to Palm Island on a later flight on 26 November 2004 with Duran Clay and was unable to bring the groceries she had purchased to her family.
- 19 But for the restrictions, Ms Clay and Duran Clay would have returned to Palm Island on a later flight on 26 November 2004.
- 20 Ms Clay and Duran Clay in fact returned to Palm Island by commercial airplane on 28 November 2004.

- 21 In November 2004, Ms Clay was lawfully within the territory of the Commonwealth of Australia.
- 22 The commercial ferry services and airplane services to and from Palm Island were, in November 2004, transport services intended for use by the general public.
- 23 By preventing Ms Clay from travelling to Townsville between 26 and 28 November 2004, the officers of the QPS responsible for the imposition of the Restrictions, including DI Webber, Inspector Richardson, DSS Kitching, and DSS Scanlon nullified or impaired the recognition, enjoyment or exercise on an equal footing of Ms Clay's rights:
- (a) as a person lawfully within the territory of the Commonwealth of Australia, to the liberty of movement within that territory, under Article 12(1) of the ICCPR;
  - (b) to freedom of movement and residence within the border of the Commonwealth of Australia, under Article 5(d)(i) of the ICERD;
  - (c) of access to any service intended for use by the general public, under Article 5(f) of the ICERD;
  - (d) to equality before the law and equal protection under the law, under Art 26 of the ICCPR.
- 24 In the premises, by making and continuing the Declaration and by imposing the Restrictions, the officers of the QPS responsible for the imposition of the Restrictions, including DI Webber, Inspector Richardson, DSS Kitching, and DSS Scanlon and, through them, the first respondent engaged in unlawful discrimination in contravention of s 9(1) of the RDA in relation to Ms Clay.
- 25 By reason of that contravention of s 9(1) of the RDA, Ms Clay suffered loss and damage.

#### **Particulars**

- (i) Vindication for breach of rights.
- (ii) Emotional pain and suffering.
- (iii) Cost of accommodation, clothing, and other necessities required to be purchased to facilitate the unanticipated stay in Townsville.
- (iv) Further particulars will be provided by the service of expert evidence.

#### **Impact of the Restrictions on members of the Travel Restriction Group**

- 26 As a result of the Restrictions, the members of the Travel Restriction Group were not able to travel to or from Palm Island through the commercial ferry or airplane services between 26 and 28 November 2004.

#### **Particulars**

Particulars will be provided after the determination of the common questions.

27 The members of the Travel Restriction Group had planned or intended to travel to or from Palm Island between 26 and 28 November 2004 through the commercial ferry or airplane services and, but for the Restrictions, would have done so.

**Particulars**

Particulars will be provided after the determination of the common questions.

28 In November 2004, the members of the Travel Restriction Group were lawfully present in the territory of the Commonwealth of Australia.

29 The Restrictions nullified or impaired the recognition, enjoyment or exercise on an equal footing of the following rights of the members of the Travel Restriction Group:

- (a) as persons lawfully within the territory of the Commonwealth of Australia, to the liberty of movement within that territory, under Article 12(1) of the ICCPR;
- (b) to freedom of movement and residence within the border of the Commonwealth of Australia, under Article 5(d)(i) of the ICERD;
- (c) of access to any service intended for use by the general public, under Article 5(f) of the ICERD;
- (d) to equality before the law and equal protection under the law, under Art 26 of the ICCPR.

30 In the premises, by making and continuing the Declaration and by imposing the Restrictions, the officers of the QPS responsible for the imposition of the Restrictions, including, DI Webber, Inspector Richardson, DSS Kitching, and DSS Scanlon and, through them, the first respondent engaged in unlawful discrimination in contravention of s 9(1) of the RDA in relation to the members of Travel Restriction Group.

31 By reason of those contraventions of s 9(1) of the RDA, the members of the Travel Restriction Group suffered loss and damage.

**Particulars**

Particulars will be provided after the determination of the common questions set out below relating to the Travel Restriction Group.

**Ms Clay's SERT Claim**

32 In November 2004 Ms Clay and her family resided in a house on Farm Road on Palm Island.

33 At about 5:10am on 27 November 2004, Ms Clay's house was forcibly entered and searched by officers from the Special Emergency Response Team (*SERT*) of the Queensland Police Service.

- 34 In the course of forcibly entering Ms Clay's house, the QPS officers severely damaged Ms Clay's door, such that it had to be replaced.
- 35 Ms Clay's door was replaced by the Palm Island Aboriginal Shire Council on or about 4 December 2004.
- 36 The entry and search of Ms Clay's house on 27 November 2004 was an act involving distinctions based on race, in that:
- (a) SERT officers were used to affect the entry and search;
  - (b) the door was violently broken down; and
  - (c) the entry and search was conducted with no lawful basis,
- none of which would have occurred if Palm Island were not an Aboriginal community.
- 37 Given the appearance, methods and tactics adopted by the SERT officers, the use of SERT officers to carry out a forcible entry and search of Ms Clay's house nullified or impaired the recognition, enjoyment or exercise on an equal footing of Ms Clay's right to be free of arbitrary and unlawful interference with her privacy, family or home under Article 17 of the ICCPR.
- 38 In the premises, by carrying out the entry and search of Ms Clay's home on 27 November 2004 and in using SERT officers to carry out that entry and search, officers of the Queensland Police Service with command responsibilities for the police operations on Palm Island at that time, including DI Webber, Inspector Steven Underwood and Inspector Glen Kachel, engaged in unlawful discrimination in contravention of section 9(1) of the RDA.
- 39 By reason of that contravention of s 9(1) of the RDA, Ms Clay suffered loss and damage.

#### **Particulars**

- (i) Vindication for breach of rights.
- (ii) Emotional pain and suffering.
- (iii) Further particulars will be provided by the service of expert evidence.

#### **Questions of Fact and Law Common to the Travel Restriction Group**

- 1 Did the making of a declaration of an emergency situation on Palm Island at 1:45pm on 26 November 2004 and the continuing of that declaration until 8:10am on 28 November 2004, including the conduct of officers of the Queensland Police Service incidental to or arising from that declaration, nullify or impair the recognition, enjoyment or exercise on an equal footing of the rights of Ms Clay and the members of the Travel Restriction Group:
- (a) as persons lawfully within the territory of the Commonwealth of Australia, to the liberty of movement within that territory, under Article 12(1) of the ICCPR?

- (b) to freedom of movement and residence within the border of the Commonwealth of Australia, under Article 5(d)(i) of the ICERD?
  - (c) to the right of access to any service intended for use by the general public, under Article 5(f) of the ICERD?
- 2 Did the officers of the Queensland Police Service with command and control responsibilities thereby engage in unlawful discrimination in contravention of section 9 of the *Racial Discrimination Act 1975 (RDA)* in relation to Ms Clay and the members of the Travel Restriction Group?
  - 3 If the answer the preceding question is yes, did the contravention of section 9 of the RDA referred to above cause any and if so what loss and damage to Ms Clay and the members of the Travel Restriction Group?
  - 4 If the answer the preceding question is yes, what if any relief should be awarded to Ms Clay and each of the members of the Travel Restriction Group pursuant to s 46PO(4) of the *Australian Human Rights Commission Act 1986 (Cth)*?
  - 5 If damages or compensation should be awarded to Ms Clay or any member of the Travel Restriction Group, the proper measure of such damages or compensation.

Date: 30 August 2017



Signed by Stewart Alan Levitt,  
by his employed solicitor for and on behalf of Stewart Alan Levitt  
Solicitor for the Applicants and Delphine Dawn Robertson

Certificate of lawyer

I, Stewart Alan Levitt, certify to the Court that, in relation to the statement of claim filed on behalf of the Delphine Dawn Robertson, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 30 August 2017



Signed by Stewart Alan Levitt,  
by his employed solicitor for and on behalf of Stewart Alan Levitt  
Solicitor for the Applicants and Delphine Dawn Robertson

This pleading was prepared by Daniel Meyerowitz-Katz, Benjamin Brady, and Christina McClellan of Levitt Robinson and settled by Dr Kristine Hanscombe QC and Dean Guidolin of counsel.