

## 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 8:59:03 AM AEST

A handwritten signature in blue ink that reads '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 General Damages Sub-Group

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

- 1 Yvette Gail Wotton (*Ms Gail Wotton*) who is a Group Member in these proceedings brings a claim against the respondents on her own behalf and on behalf of a sub-group (the *General Damages Sub-Group*) consisting of those group members who:
- (a) have registered their intentions 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;
  - (b) do not fall into:
    - (i) the proposed Travel Restriction Sub-Group, identified in the Statement of Sub-Group Claim and Interlocutory Application filed by Delphine Dawn Robertson; nor
    - (ii) the existing sub-group identified in the Further Amended Originating Application filed by the Applicants on 24 August 2015 (*SERT Sub-Group*); and

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[Form approved 01/08/2011]

- (c) have suffered loss or damage by reason of the conduct of the Queensland Police Service pleaded in the Third Further Amended Statement of Claim filed by the Applicants on 24 August 2015.
- 2 Ms Gail Wotton and the members of the General Damages Sub-Group together number more than seven people.

### **Breaches of s 9 of the Racial Discrimination Act**

- 3 Ms Gail Wotton and the General Damages Sub-Group rely upon the following declarations made by the Honourable Mortimer J on 5 December 2016 in relation to the Applicants and the Group Members:
- (a) Detective Inspector Warren Webber, Detective Senior Sergeant Raymond Joseph Kitching and Inspector Mark Williams committed unlawful discrimination, in contravention of section 9(1) of the *Racial Discrimination Act 1975 (Cth) (RDA)*, by failing to treat Senior Sergeant Christopher Hurley as a suspect in the death of Cameron Doomadgee and by allowing Senior Sergeant Hurley to continue to perform policing duties on Palm Island between 19 and 22 November 2004;
- (b) the failure of any officer of the Queensland Police Service with appropriate command responsibilities, including Inspector Gregory Strohfeldt and Acting Assistant Commissioner Roy Wall, to suspend Senior Sergeant Hurley from active duty on Palm Island after the death of Cameron Doomadgee on 19 November 2004 constituted unlawful discrimination in contravention of section 9(1) of the RDA;
- (c) the failure of any officer of the Queensland Police Service with appropriate command responsibilities on Palm Island between 22 and 26 November 2004, including Inspector Brian Richardson and Senior Sergeant Roger Whyte, to communicate effectively with the Palm Island community and defuse tensions within that community relating to the death in custody of Cameroon Doomadgee, and the subsequent police investigation, constituted unlawful discrimination in contravention of section 9(1) of the RDA;
- (d) Detective Inspector Webber, in making at 1.45 pm on 26 November 2004 and continuing until 8.10 am on 28 November 2004 a declaration of an emergency situation under section 5 of the Public Safety Preservation Act 1986 (Qld) engaged in unlawful discrimination in contravention of section 9(1) of the RDA.

### **Particulars**

- (i) Third Further Amended Statement of Claim filed by the Applicants on 24 August 2015.
- (ii) *Wotton v State of Queensland (No 5)* [2016] FCA 1457.
- 4 Pursuant to section 18A of the RDA, the RDA applies in relation to the first respondent as if the first respondent had engaged in the conduct of the officers of the Queensland

Police Service referred to in paragraph 3 above (the *Contraventions*), and the first respondent is taken to have contravened section 9(1) of the RDA in the manner there set out.

### **Impact of the Breaches on Ms Gail Wotton**

5 Ms Gail Wotton is a daughter of the Second Applicant and a sister of the First Applicant.

6 In November 2004, Ms Gail Wotton:

- (a) had known Mulrunji Doomadgee her entire life;
- (b) was a close friend of Mulrunji's partner, Tracey Twaddle;
- (c) was in a domestic relationship with Richard Poynter;
- (d) was (and is) the mother of Krysten Harvey;
- (e) was living in the house of the Second Applicant together with Mr Poynter and Ms Harvey;
- (f) had no proprietary interest in the house of the Second Applicant.

7 On or about 20 November 2004, Ms Gail Wotton learned that Mulrunji Doomadgee had died in police custody on Palm Island.

8 Between about 20 November 2004 and 26 November 2004 Ms Gail Wotton:

- (a) was distressed at the death of Mulrunji in police custody;
- (b) was concerned to find out what had really happened to Mulrunji;
- (c) was distressed that Senior Sergeant Hurley remained on Palm Island conducting duties despite the incident with Mulrunji;
- (d) perceived that the police had locked themselves in the police station away from the community instead of informing her and the community of what had happened to Mulrunji or what steps were being taken to uncover what had happened; and
- (e) was distressed that the police had locked themselves in the police station away from the community instead of informing her and the community of what had happened to Mulrunji or what steps were being taken to uncover what had happened.

9 In the premises, by reason of the contravention of s 9(1) of the RDA pleaded at paragraphs 3(a), 3(b) and 3(c) above, Ms Gail Wotton suffered loss and damage.

### Particulars

- (i) Vindication for breach of rights.
  - (ii) Emotional pain and suffering.
- 10 On 26 November 2004 Ms Gail Wotton attended at the Mall on Palm Island to hear the Palm Island Aboriginal Shire Council Chairperson, Erykah Kyle, inform the community of the results of the preliminary autopsy report into Mulrunji's death.
- 11 As a result of or as an incident to the declaration of an emergency situation referred to in paragraph 3(d) above:
- (a) the police presence on Palm Island was increased by:
    - (i) between approximately 59 and 82 ordinary police officers;
    - (ii) about 18 officers from the Special Emergency Response Team (*SERT*);  
and
    - (iii) about 11 officers from the Public Safety Preservation Team (*PSRT*);
  - (b) officers of the SERT and PSRT were deployed to apprehend persons suspected of involvement in the protests and fires and to enter and search the houses in which they were suspected to be located.
- 12 On the evening of 27 November 2004 Ms Gail Wotton accompanied her mother, the Second Applicant, and her sister, Agnes Wotton Junior, to watch the news on television in a location up the hill from the Second Applicant's home.
- 13 During the evening of 27 November 2004, whilst she was away from home and with the Second Applicant and Ms Wotton Junior, Ms Gail Wotton received a telephone call from her daughter, Ms Harvey, in the course of which Ms Harvey:
- (a) was audibly distressed and crying;
  - (b) informed Ms Gail Wotton, as was the fact, that:
    - (i) officers of the Queensland Police Service (who in fact were officers of the SERT and PSRT) had entered and searched the home of the Second Applicant whilst Ms Harvey was present;
    - (ii) the officers conducting the entry and search had been carrying large guns and had their faces covered with balaclavas;
    - (iii) in the course of that entry and search, the officers had arrested Mr Poynter, who had been located in shower at the time of his arrest;
    - (iv) Ms Harvey had been terrified by the experience.

- 14 After the telephone call from Ms Harvey, Ms Gail Wotton:
- (a) returned home to comfort Ms Harvey;
  - (b) did not leave home again that day or the next day because she was scared by the scale of the police presence;
  - (c) was in fear that the police would return to enter and search the Second Applicant's home again;
  - (d) feared for her own safety and the safety of her family; and
  - (e) was distressed by the way her family had been treated by the Queensland Police Service.
- 15 In the premises, by reason of the contravention of s 9 of the RDA pleaded at paragraph 3(d) above, Ms Gail Wotton suffered loss and damage.

**Particulars**

- (i) Vindication for breach of rights.
- (ii) Emotional pain and suffering.

**Impact of the Contraventions on members of the General Damages Sub-Group**

- 16 By reason of one or more of the Contraventions, the members of the General Damages Sub-Group suffered loss and damage.

**Particulars**

Particulars will be provided after the determination of the common questions set out below relating to the General Damages Sub-Group.

**Questions of Fact and Law Common to the General Damages Sub-Group**

- 1 Did the contravention of s 9(1) of the RDA committed by Detective Inspector Warren Webber, Detective Senior Sergeant Raymond Joseph Kitching and Inspector Mark Williams by failing to treat Senior Sergeant Christopher Hurley as a suspect in the death of Cameron Doomadgee and by allowing Senior Sergeant Hurley to continue to perform policing duties on Palm Island between 19 and 22 November 2004 cause any and, if so, what loss and damage to Yvette Gail Wotton and the members of the General Damages Sub-Group?
- 2 Did the contravention of s 9(1) of the RDA in the failure of any officer of the Queensland Police Service with appropriate command responsibilities, including Inspector Gregory Strohfeldt and Acting Assistant Commissioner Roy Wall, to suspend Senior Sergeant Hurley from active duty on Palm Island after the death of Cameron Doomadgee on 19 November 2004 cause any and, if so, what loss and damage to Yvette Gail Wotton and the members of the General Damages Sub-Group?

- 3 Did the contravention of s 9(1) of the RDA in the failure of any officer of the Queensland Police Service with appropriate command responsibilities on Palm Island between 22 and 26 November 2004, including Inspector Brian Richardson and Senior Sergeant Roger Whyte, to communicate effectively with the Palm Island community and defuse tensions within that community relating to the death in custody of Cameroon Doomadgee, and the subsequent police investigation, cause any and, if so, what loss and damage to Yvette Gail Wotton and the members of the General Damages Sub-Group?
- 4 Did the contravention of s 9(1) of the RDA committed by Detective Inspector Webber, in making at 1.45 pm on 26 November 2004 and continuing until 8.10 am on 28 November 2004 a declaration of an emergency situation under section 5 of the *Public Safety Preservation Act 1986* (Qld) cause any and, if so, what loss and damage to Yvette Gail Wotton and the members of the General Damages Sub-Group?
- 5 If the answer to any of the preceding questions is yes, what if any relief should be awarded to Yvette Gail Wotton and each of the members of the General Damages Sub-Group pursuant to s 46PO(4) of the *Australian Human Rights Commission Act 1986* (Cth)?
- 6 If damages or compensation should be awarded to Yvette Gail Wotton or any member of the General Damages Sub-Group, the proper measure of such damages or compensation.

Date: 30 August 2017



Signed by Stewart A Levitt

Solicitor for the Applicants and for Yvette Gail Wotton

by his employed solicitor for and on behalf of Stewart Alan Levitt

### **Certificate of lawyer**

I, Stewart Alan Levitt, certify to the Court that, in relation to the statement of claim filed on behalf of Yvette Gail Wotton, 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 A Levitt

Solicitor for the Applicants and for Yvette Gail Wotton

by his employed solicitor for and on behalf of Stewart Alan Levitt

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.