FEDERAL CIRCUIT COURT OF AUSTRALIA

PRIOR v QUEENSLAND UNIVERSITY OF TECHNOLOGY & ORS *[2016] FCCA 2853*

Catchwords:
HUMAN RIGHTS – Claim of racial discrimination – section 18C – whether words reasonably to likely to offend, assault, humiliate or intimidate – words not reasonably likely to likely to offend, assault, humiliate or intimidate.

PRACTICE & PROCEDURE – Summary dismissal – whether applicant has reasonable prospect of successfully prosecuting – application dismissed.

Legislation:
Federal Circuit Court Act 1999 (Cth), ss. 17A(2), 17A(3)
Federal Circuit Court Rules 2001, rr. 13.07, 13.10
Federal Court of Australia Act1975 (Cth), s. 31A
Racial Discrimination Act 1975 (Cth), ss. 18C, 18D

Cases cited:
Australian Securities and Investments Commission v Cassimatis (2013) 220 FCR 256
Bloomfield v Grainger [2014] FCCA 2074
Bropho v Human Rights & Equal Opportunity Commission (2004) 135 FCR 105
Clarke v Nationwide News Pty Ltd trading as The Sunday Times (2012) 201 FCR 389
Creek v Cairns Post Pty Ltd (2001) 112 FCR 352
Crocker v Toys R Us (Australia) Pty Ltd (No 3) [2015] FCA 728
Eatock v Bolt (2011) 197 FCR 261
Ejueyitsi v Bond University [2012] FMCA 872
Hagan v Trustees of the Toowoomba Sports Ground Trust [2000] FCA 1615
Henry v Leighton Admin Services Pty Ltd [2015] FCCA 1923
Jackson v P/T Constructions WA Pty Ltd [2015] FCCA 1014
Jefferson Ford Pty Ltd v Ford Motor Company of Australia Limited [2008] FCAFC 60
Keenan v Bundaberg Port Authority [2016] FCA 134
Krajniw v Newman (No 2) [2015] FCA 673
McGlade v Lightfoot (2002) 124 FCR 106
Spencer v Commonwealth (2010) 241 CLR 118
Three Rivers District Council v Bank of England [No 3] [2003] 2 AC 1
Toben v Jones (2003) 129 FCR 515

Applicant:	CYNTHIA PRIOR
First Respondent:	QUEENSLAND UNIVERSITY OF TECHNOLOGY
Second Respondent:	MARY KELLY
Third Respondent:	ANITA LEE HONG
Fourth Respondent:	ALEX WOOD
Sixth Respondent:	JACKSON POWELL
Seventh Respondent:	CALUM THWAITES
Ninth Respondent:	CHRIS LEE
File Number:	BRG 990 of 2015
Judgment of:	Judge Jarrett
Hearing date:	11 March 2016
Date of Last Submission:	11 March 2016
Delivered at:	Brisbane
Delivered on:	4 November 2016

REPRESENTATION

Counsel for the Applicant:	Ms Anderson
Solicitors for the Applicant:	Susan Moriarty & Associates
Counsel for the Fourth Respondent:	Mr Henry
Counsel for the Sixth and Seventh Respondent:	Mr Morris QC with Mr Murphy

ORDERS

(1) Pursuant to rule 13.10(a) of the *Federal Circuit Court Rules 2001*, the applicant's claim against the fourth respondent be dismissed;

(2) Pursuant to rule 13.10(a) of the *Federal Circuit Court Rules 2001*, the applicant's claim against the sixth respondent be dismissed;

(3) Pursuant to rule 13.10(a) of the *Federal Circuit Court Rules 2001*, the applicant's claim against the seventh respondent be dismissed;

(4) The application be otherwise adjourned to 21 November, 2016 at 9.30am for further directions.

FEDERAL CIRCUIT COURT
OF AUSTRALIA
AT BRISBANE

BRG 990 of 2015

CYNTHIA PRIOR
Applicant

And

QUEENSLAND UNIVERSITY OF TECHNOLOGY
First Respondent

MARY KELLY
Second Respondent

ANITA LEE HONG
Third Respondent

ALEX WOOD
Fourth Respondent

JACKSON POWELL
Sixth Respondent

CALUM THWAITES
Seventh Respondent

CHRIS LEE
Ninth Respondent

REASONS FOR JUDGMENT

1. On 28 May, 2013 three men entered the computer lab in the Oodgeroo Unit at the Gardens Point campus of the Queensland University of Technology. At that time Ms Prior was working there as an administration officer. As one of the respondents in this case, Alex Woods, was preparing to log on to a computer in the lab, Ms Prior approached them and asked them if they were indigenous. They told her they were not. In response she said words to the effect: "Ah …

this is the Oodgeroo Unit, it's an indigenous space for indigenous students at QUT. There are other computer labs in the University you can use. There are computers in "P" block or the library that you can access". The men left the computer lab.

2. Mr Wood found another available computer in another part of the Gardens Point campus. He logged onto his Facebook account and accessed a "Facebook page" called "QUT Stalker Space". He posted a comment as follows:

> *Just got kicked out of the unsigned Indigenous computer room. QUT stopping segregation with segregation…?*

3. Thereafter followed a number of posts by various people who were able to post comments to that Facebook page. Of the various comments, Ms Prior focusses upon a post by the sixth respondent, Jackson Powell, as follows:

> *I wonder where the white supremacist computer lab is..*

a later post by Mr Powell in response to another unidentified post:

> *…it's white supremacist, get it right. We don't like to be affiliated with those hill-billies.*

and a final post by Mr Powell responding to the ninth respondent, Chris Lee:

> *Chris Lee today's your lucky day, join the white supremacist group and we'll take care of your every need!*

4. Ms Prior also alleges that the seventh respondent Callum Thwaites, posted an entry to the "QUT Stalker Space" Facebook page in the following terms:

> *ITT niggers*

5. Ms Prior claim against Mr Wood, Mr Jackson and Mr Thwaite's is that each of the messages posted to the "QUT Stalker Space" Facebook page as I have set out above offend s.18C(1) of the *Racial Discrimination Act 1975* (Cth). She claims an apology and damages from each of them.

Some procedural matters

6. On 20 October, 2015 Ms Prior commenced these proceedings against ten respondents. She has, however, discontinued the proceedings against the fifth, eighth and tenth respondents. The proceedings remain on foot against all other respondents.

7. Relevantly, on 7 December, 2015 I made some procedural orders as follows:

> *1. Any amended points of claim be filed and served by 4:00pm 14 January 2016.*
>
> …
>
> *3. Each respondent file and serve a response by 4:00pm 11 February 2016.*
>
> *4. The applicant file and serve her evidence in chief by 4:00pm 1 March 2016.*
>
> *5. Each respondent file and serve their evidence in chief by 4:00pm 22 March 2016.*
>
> …
>
> *7. If any of the respondents in the proceedings wish to apply to have the proceedings summarily dismissed any interlocutory application must be filed and served by 4:00pm 11 February 2016.*
>
> *8. In the event that any interlocutory applications to summarily dismiss the proceedings are filed they shall be listed for hearing to 9:30am 11 March 2016.*

8. On 14 January, 2016 Ms Prior filed and served upon the respondents an Amended Statement of Claim.

9. Mr Wood, Mr Jackson and Mr Thwaites have each filed defences to Ms Prior's application. They each take many points in answer to Ms Prior's claims. For the purposes of these summary dismissal applications, however, they do not rely on each of the matters they have raised by way of defence.

10. On 2 March, 2016 Ms Prior filed an affidavit sworn by her. That affidavit comprises the evidence-in-chief upon which she intends to rely at the trial of these proceedings and was filed in accordance with the Court's directions. The applicant did not rely upon that affidavit at the hearing of the summary dismissal applications. Rather, she relied upon an affidavit by her solicitor filed on 4 March, 2016 and an affidavit by the third respondent filed on 7 March, 2016.

11. Mr Wood has filed his affidavit of evidence in chief. He does not deny posting the messages to the "QUT Stalker Space" Facebook page that Ms Prior alleges that he posted.

12. Mr Powell has filed his affidavit of evidence in chief. He does not deny posting the messages to the "QUT Stalker Space" Facebook page that Ms Prior alleges that he posted. He takes issue with the timing of those posts attributed by Ms Prior, but nothing seemingly turns upon that.

13. Mr Thwaites has filed his affidavit of evidence in chief. He denies posting the messages to the "QUT Stalker Space" Facebook page that Ms Prior attributes to him. His case is, amongst other matters, that another person has posted the relevant message pretending to be him.

The present applications

14. Mr Wood seeks to have Ms Prior's proceeding against him stayed or dismissed on the basis that Ms Prior's claim for relief against him has no reasonable prospect of success or alternatively, on the basis that:

    a) the proceeding or claim for relief is frivolous or vexatious; or

    b) the proceeding or claim for relief is an abuse of the process of the Court.

15. He seeks relief pursuant to rule 13.10 of the *Federal Circuit Court Rules 2001*. In the further alternative, he argues that Ms Prior's amended points of claim filed on 14 January 2016 be struck out, with leave for her to replead her case. In his written submissions, Mr Wood poses eight questions that arise in the context of his application, but in my view they can be conveniently summarised into four propositions for which he contends, namely:

a) Ms Prior does not have any reasonable prospect of successfully prosecuting the proceeding because Mr Wood's Facebook statement:

   i) is not reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate her or the groups she nominates in her amended points of claim; and

   ii) was not published because of the race, colour or national or ethnic origin of Ms Prior or of some or all of the people in the groups nominated by her.

b) Ms Prior does not have any reasonable prospect of successfully prosecuting the proceeding on the basis that Mr Wood's Facebook statement was made in circumstances which engage s.18D of the of the Racial Discrimination Act.

c) Ms Prior's proceeding against him is frivolous or vexatious; and

d) Ms Prior's proceeding against him is an abuse of process.

16. Mr Powell contends that Ms Prior's proceedings against him should be summarily dismissed for three reasons, namely:

a) there is no arguable case that the words published by Mr Powell were reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate the members of either of the "groups" identified by Ms Prior in subparagraph 46(b) of her Amended Points of Claim;

b) there is no arguable case that Mr Powell posted those words "because of the race, colour or national or ethnic origin" of the "group" identified in subparagraph 46(c) of the Amended Points of Claim; and

c) there is no arguable case to negate the exemption under section 18D of the Act.

17. Mr Thwaites contends that he has simply no case to answer. It is alleged that he posted the words "ITT Niggers" to the QUT Stalker Space Facebook page. He denies that he posted those words, or indeed, any words at all. In circumstances where Ms Prior has filed all

the evidence in chief upon which she intends to rely at the trial of these proceedings and Mr Thwaites contends that she produces no evidence at all that establishes that he published the relevant post, he says her claim against him should be dismissed without the necessity for a trial.

Summary dismissal

18. The Court has power to summarily dismiss an application or part of it where the Court is satisfied that the applicant has no reasonable prospect of successfully prosecuting the proceeding or that part of the proceeding: s.17A(2) of the *Federal Circuit Court Act* 1999 (Cth). To exercise the power, the Court does not need to conclude that the proceeding or the relevant part is hopeless or bound to fail: s.17A(3) of the FCCA Act.

19. This section is cognate with s.31A of the *Federal Court of Australia Act 1976* (Cth). Judges of this Court have consistently been guided in the application of s.17A of the FCCA Act by the principles which govern the application of s.31A of the FCA Act: *Jackson v P/T Constructions WA Pty Ltd* [2015] FCCA 1014 at [14]; *Henry v Leighton Admin Services Pty Ltd* [2015] FCCA 1923 at [5]; *Bloomfield v Grainger* [2014] FCCA 2074 at [10]; *Ejueyitsi v Bond University* [2012] FMCA 872 at [24].

20. The High Court discussed s.31A in *Spencer v Commonwealth* (2010) 241 CLR 118 and made a number of observations (which I set out as follows in no particular order). First, the joint majority (Hayne, Crennan, Kiefel and Bell JJ) noted (at CLR 139) that s.31A departs radically from the basis upon which earlier forms of provision permitting the entry of summary judgment have been understood and administered. Those earlier provisions were understood as requiring formation of a certain and concluded determination that a proceeding would necessarily fail.

21. Second, the High Court observed in *Spencer* that where an application for summary dismissal has been made, rather than dismissing a proceeding on the state of its pleadings alone, a court might demur to the possibility of a party providing subsequent evidence that gives substance to their allegations. On this point, French CJ and Gummow

J (at [23]) distinguished between the Court's power to summarily dismiss a proceeding with the power to strike out pleadings.

22. Third, the joint majority observed that where there are real issues of fact and/or law to be decided upon which the rights of the parties depend, it is generally appropriate that the matter go to trial.

23. Fourth, French CJ and Gummow J reiterated that a court should not exercise the power to dismiss an action summarily lightly (at [24]-[25]). However, their Honours also observed that such caution does not necessarily require a court to conduct a complex interlocutory hearing or "mini-trial" in order to decide a summary dismissal application—as Lord Hope observed in *Three Rivers District Council v Bank of England [No 3]* [2003] 2 AC 1 at 260-261 [95], the object of summary dismissal rules is to deal with cases that are not fit for trial at all.

24. Finally, the joint majority was at pains to stipulate that the phrase "no reasonable prospect" should not be paraphrased, defined, or further explained. The joint majority (at CLR 141) was adverse to the possibility that the phrase would spawn a lexicon or list of words or phrases intended to capture most or all cases in which a court might be satisfied that there is no "reasonable prospect". Rather, their Honours said that:

> *full weight must be given to the expression as a whole. The Federal Court may exercise power under s 31A if, and only if, satisfied that there is "no reasonable prospect" of success.*

25. *Spencer* has been and continues to be applied by the Federal Court: *Keenan v Bundaberg Port Authority* [2016] FCA 134 at [45]; *Australian Securities and Investments Commission v Cassimatis* (2013) 220 FCR 256; [2013] FCA 641 at [15]-[30]; *Krajniw v Newman* (No 2) [2015] FCA 673 at [9]-[13]; *Crocker v Toys R Us (Australia) Pty Ltd (No 3)* [2015] FCA 728 at [8]-[11]. In *Cassimatis* (above), Reeves J considered the apparent difference in approach between the joint majority judgment and the approach taken by French CJ and Gummow J. His Honour considered that the apparent difference is confined merely to the weight or relevance each considers should be accorded to authorities that were decided in the procedural regime that existed prior

to the introduction of s.31A. His Honour also noted that, in any event, all of the judgments in *Spencer* were agreed that where there are real issues of fact or mixed fact and law, or of law being serious, difficult, not straightforward or well-settled, and requiring lengthy argument, the matter should go to trial.

26. Section 17A(2) is manifested by the *Federal Circuit Court Rules 2001* in Division 13.3. That division distinguishes between summary judgment and summary dismissal (see rr.13.07 and 13.10 respectively). Thus the terms "summary judgment" and "summary dismissal" are not interchangeable in the context of this Court's rules. It is of some significance, I think, that counsel for the applicant referred to the application as one for "summary judgment" rather than "summary dismissal". The applications by the fourth, sixth and seventh respondents are for summary dismissal.

27. In *Jefferson Ford Pty Ltd v Ford Motor Company of Australia Limited* [2008] FCAFC 60 at [127] Gordon J observed:

> *Thirdly, each case must be considered separately. No particular hard and fast rules can be set down, only general principles. One principle is that the moving party bears the onus of persuading the court that the opponent has no reasonable prospect of success (see* Crayford Freight Services Ltd v Coral Seatel Navigation Co *(1998) 82 FCR 328 at 333). As noted earlier, however, s 31A has lessened the standard that must be met.* ***In that regard, it must be emphasised that once a moving party has established a prima facie case that the opponent has no reasonable prospect of success, the opposing party must respond by pointing to specific factual or evidentiary disputes that make a trial necessary; general or non-particularised denials will be insufficient to defeat the motion****: see* Fortron Automotive Treatments Pty Ltd v Jones (No 2) *[2006] FCA 1401 at [22]. In other words, it is inappropriate in defence of a claim for judgment under s 31A of the Federal Court Act to seek to defend by merely putting a claimant to formal proof:* Vans Inc v Offprice.Com.Au Pty Ltd *[2006] FCA 137 at [12]. This is not a new concept. It finds earlier reflection in ss 190(4) and 191 of the* Evidence Act 1995 *(Cth) and O 33, O 34 and O 34B of the* Federal Court Rules 1979 *(Cth).*

(my emphasis)

28. There was some incongruity in the way in which the fourth, sixth and seventh respondents on the one hand and the applicant on the other hand, approached the present applications. The respondents' approach was to invite the Court to consider all of the evidence relied upon by the parties in the present applications and to conclude that the applicant had no reasonable prospect of successfully prosecuting her claim. The applicant, on the other hand, seems to have approached the applications as applications to strike out her amended points of claim or have the proceedings dismissed on the basis that her pleading did not disclose a reasonable cause of action.

The statutory context for Ms Prior's claim

29. Before proceeding further, it is appropriate to set out the statutory regime within which Ms Prior prosecutes her claim. Relevantly ss.18C and 18D of the *Racial Discrimination Act 1975* (Cth) provide:

> ***18C Offensive behaviour because of race, colour or national or ethnic origin***
>
> *(1) It is unlawful for a person to do an act, otherwise than in private, if:*
>
> *(a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and*
>
> *(b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.*
>
> *Note: Subsection (1) makes certain acts unlawful. Section 46P of the Australian Human Rights Commission Act 1986 allows people to make complaints to the Australian Human Rights Commission about unlawful acts. However, an unlawful act is not necessarily a criminal offence. Section 26 says that this Act does not make it an offence to do an act that is unlawful because of this Part, unless Part IV expressly says that the act is an offence.*
>
> *(2) For the purposes of subsection (1), an act is taken not to be done in private if it:*
>
> *(a) causes words, sounds, images or writing to be communicated to the public; or*
>
> *(b) is done in a public place; or*

(c) is done in the sight or hearing of people who are in a public place.

…

18D Exemptions

Section 18C does not render unlawful anything said or done reasonably and in good faith:

(a) in the performance, exhibition or distribution of an artistic work; or

(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or

(c) in making or publishing:

(i) a fair and accurate report of any event or matter of public interest; or

(ii) a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment.

Section 18C – Some principles guiding its application

30. There are a number of cases that have been decided concerning s.18C of the Racial Discrimination Act. From those authorities, the following propositions can be derived:

a) s.18C is constitutionally valid as an exercise of the external affairs power of the Commonwealth: *Toben v Jones* (2003) 129 FCR 515 at [21], [50] and [145];

b) neither the heading to Part IIA – "Prohibition of offensive behaviour based on racial hatred" – nor the legislative history of that Part or of s.18C in particular supports the proposition that the operation of Part IIA is restricted to racist behaviour based upon racial hatred or behaviour calculated to induce racial violence. It should not be read down so as to encompass only the expression

of racial hatred: *Toben v Jones* at [28], [50], and [145]; *Eatock v Bolt* (2011) 197 FCR 261 at [196];

c) the assessment required by s.18C(1)(a) is an assessment of the reasonable likelihood of a person or group of people being offended, insulted, humiliated or intimidated by the act of another person. That requires an assessment of the reasonably likely reaction of the person or people within the group concerned: *Eatock v Bolt* at [241];

d) whilst relevant to the question of whether offence was reasonably likely, the fact that a person has actually been offended in the way contemplated by s.18C(1)(a) is not to the point. What is to the point is the likelihood or risk of a person or a member of a particular group of people being affected in the way contemplated by s.18C(1)(a). "Proof of actual offence for a particular person or group is neither required nor determinative…": *Eatock v Bolt* at [241]. See also *Jones v Scully* (2002) 120 FCR 243 at [99]-[101]; *Hagan v Trustees of the Toowoomba Sports Ground Trust* [2000] FCA 1615 at [28] and *McGlade v Lightfoot* (2002) 124 FCR 106 at [44]-[45];

e) an objective test must be applied in determining whether the act complained of has the necessary offensive, insulting, humiliating or intimidatory quality for it to be within s.18C(1)(a). "The question so far as s 18C(1)(a) is concerned is not: how did the act affect the particular complainant? But rather would the act, in all the circumstances in which it was done, be likely to offend, insult, humiliate or intimidate a person or a group of people of a particular racial, national or ethnic group?": *Hagan v Trustees of the Toowoomba Sports Ground Trust* [2000] FCA 1615 at [15]; *Bropho v Human Rights & Equal Opportunity Commission* (2004) 135 FCR 105*; Creek v Cairns Post Pty Ltd* (2001) 112 FCR 352 at [12]; *Jones v Scully* at [98]-[100]; *Eatock v Bolt* at [243]; *Clarke v Nationwide News Pty Ltd trading as The Sunday Times* (2012) 201 FCR 389 at [46];

f) the assessment needs to be undertaken by reference to a "person or group of people". Section 18C(1)(a) does not identify the persons or group of persons that should be considered as the

possible victims for the purpose of deciding whether the impugned act was reasonably likely to cause offence *Eatock v Bolt* at [243];

g) "… the reference to a "person" must be intended as a reference to an identified person (or persons) that the conduct in question was directed at. In that respect, the provision is addressing an act directed to an identified individual or individuals. In contrast, the reference to "a group of people" is dealing with a class to whom the conduct was directed in a general sense. That distinction facilitates what logic suggests are the different approaches to be taken in the assessment process between a claim of personal offence and a claim of group offence.": *Eatock v Bolt* at [246];

h) "Where allegedly offensive conduct is directed at both an identified person and a group of people and the claim made is that both the identified person or persons and the group of people were offended, the conduct should be analysed from the point of view of the hypothetical representative in relation to the claim that the group of people were offended, and in relation to each of the identified persons where a personal offence claim has been made. If no claim of personal offence is made and only a claim of group offence is made, the conduct is to be analysed from the point of view of the hypothetical representative of the group, despite the fact that the conduct is directed at both identified individuals and the group of people of which they form part.": *Eatock v Bolt* at [250];

i) "The assessment as to the likelihood of people within a group being offended by an act directed at them in a general sense, is to be made by reference to a representative member or members of the group.": *Eatock v Bolt* at [251]. An "ordinary" or "reasonable" member or members of the relevant group are to be isolated: *Campomar Sociedad Limitada v Nike Internation Ltd* (2000) 202 CLR 304 at [102]; *National Exchange Pty Ltd v Australian Securities and Investments Commission* [2004] FCAFC 90 at [24]; *Eatock v Bolt* at [251];

j) it is the values, standards and other circumstances of the person or group of people to whom s 18C(1)(a) refers that will bear upon

the likely reaction of those persons to the act in question. It is the reaction from their perspective which is to be assessed: *Creek* at [16]; *Scully* at [108]; *Eatock v Bolt* at [253];

k) the objective nature of the assessment required by s.18C(1)(a) does not import an objective assessment of community standards into the test of the reasonable likelihood of offence for the purposes of s.18C(1)(a): *Eatock v Bolt* at [253];

l) however, "…the burdens created by Part IIA were not imposed for the benefit of persons whose intolerance to the points of view of others is the true cause of the offence, insult, humiliation or intimidation that those persons experienced. In those situations it may be properly said that it is the intolerance of the receiver of the message rather than the intolerance of the speaker that is responsible for causing the offence.": *Eatock v Bolt* at [256];

m) the phrase "in all the circumstances" in s.18C(1)(a) requires that the social, cultural, historical and other circumstances attending the person or the people in the relevant group be considered when assessing whether the relevant act was reasonably likely to have the proscribed effect: *Eatock v Bolt* at [257];

n) in s.18C(1)(a), the phrase "reasonably likely" ought to be construed as speaking "of a chance of an event occurring or not occurring which is real – not fanciful or remote": *Eatock v Bolt* at [260];

o) to "offend, insult, humiliate or intimidate" are profound and serious effects, not to be likened to mere slights: *Creek v Cairns Post* at [16]; *Clarke v Nationwide News* at [65]-[76]; *Eatock v Bolt* at [268];

p) "… "offend, insult, humiliate or intimidate" were not intended to extend to personal hurt unaccompanied by some public consequence of the kind Part IIA is directed to avoid. That public consequence need not be significant. It may be slight. Conformably with what I regard as the intent of Part IIA, a consequence which threatens the protection of the public interest sought to be protected by Part IIA, is a necessary element of the

conduct s 18C is directed against. For the reasons that I have sought to explain, conduct which invades or harms the dignity of an individual or group, involves a public mischief in the context of an Act which seeks to promote social cohesion.": per Bromberg J in *Eatock v Bolt* at [267];

q) to determine whether the act complained of has the necessary offensive, insulting, humiliating or intimidatory quality for it to be within s.18C(1)(a), what brought about the action constituting the behaviour, or act in question and what the applicant felt are not relevant: *Creek v Cairns Post* at [12];

r) the questions of the satisfaction of ss.18C(1)(a) and 18C(1)(b) are different and separate enquiries, although the material relevant to one may be relevant to another: *Toben v Jones* at [154];

s) "Section 18C(1) is not enlivened unless the relevant act is done "because of the race, colour or national or ethnic origin of the person or group likely to be offended by the act". As earlier indicated, the phrase "because of" requires consideration of the reason or reasons for which the relevant act was done. …. the expression "because of" in par (b) necessitates a consideration of the reasons for which the act in question was done": *Hagan v Trustees of the Toowoomba Sports Ground Trust* (2001) 105 FLR 56 at [23];

t) What is necessary to consider for the application of s.18C(1)(b), is whether the act was "because of" race, colour or national or ethnic origin of the other person or of some or all of the people in the group: *Toben v Jones* at [154];

u) "It is the reason or reasons for the act which must be discerned. … An investigation of the reason or reasons for the act will involve, as a matter of meaning and language, an enquiry into the explanation for the act or why the act was done. Whilst it may be accurate to say that this is not the same thing as enquiring as to the motive or purpose or intention behind such conduct … proof of those matters (motive, purpose or intention) may, in any given case, be relevant, perhaps even central, to the ascertainment of the reason or reasons for the act in question. It is unwise,

however, to go too far in explication of the language of s 18B and par 18C(1)(b) lest words be substituted for those chosen by Parliament.": *Toben v Jones* at [151].

31. Finally, it is worth recording that in *Bropho v HREOC*, (above) at [69] French J said in relation to the proper construction of s.18C(l)(a):

> *The criteria for determining the outer limits of the conduct caught by Pt IIA and the words 'offend, insult, humiliate or intimidate' must be judged according to their ordinary meaning, in their context, acknowledging their somewhat elastic content and having regard to the objectives of the legislation which are to be derived from its terms and from extraneous material including the second reading speech and the explanatory memorandum. As a general principle freedom of expression is not limited to speech or expression which is polite or inoffensive. The European Court of Human Rights observed in Handyside's case that Art 19 of the JCCPR applies not only to information or ideas that are favourably received or regarded as inoffensive but, also subject to para 2:*
>
> > *...those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broad mindedness without which there is no 'democratic society'.*

Consideration

32. The two common arguments raised by both Mr Wood and Mr Powell are that:

a) the words attributed to each of them in their Facebook posts are not reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate Ms Prior or the groups of people identified by her in her amended points of claim; and

b) in any event there is no causal connection between the words published by each of them and of the race, colour or national or ethnic origin of either Ms Prior or the groups of people nominated by her in her amended points of claim.

33. Ms Prior has advanced her proceedings as both a personal offence claim and a group offence claim. The groups that she identifies are set out in paragraph 46(b) of her points of claim as "Aboriginal and Torres

Strait Islander students of the First Respondent" and "Aboriginal or Torres Strait Islander people".

34. In this respect, senior counsel for Mr Powell argued that it was incumbent upon Ms Prior to prove to the requisite standard that the words about which she complains were reasonably likely to offend, insult, humiliate, or intimidate all members of the groups identified by her. He argued that having regard to the textual differences between s.18C(1)(a) and s.18C(1)(b) it was beyond argument that whilst s.18C(1)(b) may apply to a subset of the relevant group ("some or all of the people in the group"), s.18(C)(1)(a) must apply to every member of the group. Accordingly, senior counsel for Mr Powell submitted that:

> *38. It follows that, on the best view for the Applicant, the only version of her pleaded case on which she can succeed is if she establishes that:*
>
> *(a) the words published were "reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate" all of the members of one or other of the two groups identified for the purposes of s.18C(l)(b), which is to say either -*
>
> > *(i) every person who is an Aboriginal or Torres Strait Islander student of QUT; or*
> >
> > *(ii) ever person who is an Aboriginal or a Torres Strait Islander; and*
>
> *(b) the words were published "because of the race, colour or national or ethnic origin of ... [only] some ... of the people in" one or other of those groups, namely all of the specific subset which is defined as being "Aboriginal and Torres Strait Islander students of the First Respondent entitled to use the facilities of the Oodgeroo Unit".*

35. After pointing out that each of the groups identified by Ms Prior in her amended points of claim potentially contain very large groups of people, senior counsel for Mr Powell submitted:

> *39. For the reasons already canvassed, it would not be sufficient for the Applicant to prove, at trial, that Mr Powell's words were "reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate" some members of one group or the other. Having defined the "groups" which she*

> *puts forward, the onus which the Applicant has assume is to prove that each and every member of one of these two group was "reasonably likely, in all the circumstances, to [be] offend[ed], insult[ed], humiliate[d] or intimidate[d]". Obviously, that is utterly impossible.*

36. Counsel for Mr Wood made submissions to a similar effect (at paragraph 43 of his written submissions, but which somewhat inconsistently, seem to have been withdrawn at paragraph 47 of submissions) and suggested that Ms Prior carried the burden of establishing that all Aboriginal and Torres Strait Islanders students at QUT or alternatively all Aboriginal and Torres Strait Islanders were reasonably likely to be offended, insulted, humiliated or intimidated by Mr Wood's Facebook statement on an "objective application of community standards".

37. However, in my view, those submissions do not accord with the principle derived from the authorities set out above that the assessment as to the likelihood of people within a group being offended by an act directed at them in a general sense is to be made by reference to a representative member or members of the group. The task of the Court in a case of group offence is to identify a hypothetical representative of the group or groups to whom it was suggested the impugned conduct was directed: *Eatock v Bolt* at [250] and the authorities there cited. The Court must carry out the necessary assessment by reference to that hypothetical representative. Where it is alleged that the impugned conduct is directed at both an identified person and a group of people and the claim made is that both the identified person and the group of people were reasonably likely to have been offended, the conduct should be analysed from the point of view of a hypothetical representative of the group of people and in relation to each of the identified persons where a personal offence claim has been made.

38. As cases like *Creek v Cairns Post*, *Eastock v Bolt* and *Clarke v Nationwide News* (above) demonstrate, where a group offence claim is made, it is the task of the Court to formulate the characteristics of the hypothetical representative of the group or groups concerned. No party addressed me on that matter. No party suggested what characteristics might attend a hypothetical representative of the groups identified by Ms Prior in her amended points of claim. Contrary to the position

taken by the submissions for Mr Powell and Mr Wood, for her to succeed in her claim, it would be sufficient for Ms Prior to prove that the impugned words were reasonably likely in all of the circumstances to offend, insult, humiliate or intimidate a hypothetical representative of one or other of the groups she has identified.

39. Moreover, the necessary assessment is not to be carried out by reference to "an objective application of community standards". That approach was expressly rejected by Bromberg J in *Eatock v Bolt* at [253]:

> *It is the values, standards and other circumstances of the person or group of people to whom s 18C(1)(a) refers that will bear upon the likely reaction of those persons to the act in question. It is the reaction from their perspective which is to be assessed:* Creek *at [16] (Kiefel J);* Scully *at [108] (Hely J). Further, to import general community standards into the test of the reasonable likelihood of offence runs a risk of reinforcing the prevailing level of prejudice. To do that would be antithetical to the promotional purposes of Part IIA. Such an approach has been rejected in relation to sexual harassment:* Ellison v Brady *924 F.2d 872 (9th Cir. 1991) at 878-879;* Stadnyk v Canada (Employment and Immigration Commission) *(2000) 38 CHRR 290 at [11]; and see* Corunna v West Australian Newspapers Ltd *(2001) EOC 93-146 at [75467]-[75468]. Sexual harassment legislation is the arena from which the words "offend, insult, humiliate or intimidate" were deliberately borrowed: see Explanatory Memorandum at 10 and the Second Reading Speech to the RDA at column 3341.*

40. The real issue for determination is whether Ms Prior has reasonable prospects of prosecuting her claim that the impugned words were reasonably likely to have the proscribed effect contended for by her. The submissions made by senior counsel for Mr Powell emphasise the point that Ms Prior has not filed any evidence to the effect that anyone was actually offended, insulted, humiliated or intimidated by Mr Powell's words. In that circumstance, Mr Powell argues that the absence of evidence that anyone was actually offended, insulted, humiliated or intimidated is "a compelling reason to assume that this was not a "reasonably likely" outcome".

41. But when considering whether the impugned conduct might be regarded as reasonably likely to contravene the prescription of

s.18C(1)(a), what the applicant felt, in response to the conduct, is not relevant: *Creek v Cairns Post* at [12]. Indeed, evidence that someone was offended, insulted, humiliated, or intimidated by the relevant conduct is entirely unnecessary: *Eatock v Bolt* (above) at [241] and authorities there cited. In my view, the absence of evidence to that effect cannot be, either as a matter of law, "a compelling reason to assume that [the proscribed effect] was not a "reasonably likely" outcome".

42. I will return to these matters later in these reasons but at this point, I intend to consider the position of each of the respondents who apply for summary dismissal individually.

The Fourth Respondent

43. Mr Wood was responsible for one post to QUT Stalker Space Facebook group. His post consists of two sentences. The first sentence consists of the following words: "Just got kicked out of the unsigned indigenous computer room." It is a statement of fact. It is an accurate statement of fact. It is difficult to see how, and counsel for Ms Prior made no attempt to demonstrate how, that statement was reasonably likely to infringe the prescription of s.18C(1)(a).

44. The second sentence consists of the following words: "QUT stopping segregation with segregation…?" It is a statement of opinion, arguably posed as a question. Used in the sense that it was, the word "segregation" has a racial tone. It is plainly a reference to the separation of people into ethnic or racial groups. Historically, the use of that word in that way has a negative connotation. However, to the extent that the sentence carries a negative connotation because of the use of the word "segregation" the negative connotation is directed towards the first respondent, QUT.

45. Taken together the two sentences carry a negative connotation with a racial undertone that derives from the propositions carried within the sentences that QUT has a computer room from which people who are not indigenous are excluded by reason of their race or ethnicity.

46. To determine whether those words are reasonably likely to exceed the proscription of s.18C(1)(a), it is necessary to consider the perspective

of the hypothetical person in the applicant's position or the group of which the applicant claims is reasonably likely to be offended by those words. In performing that exercise, and adapting the words of Keifel J in *Creek v Cairns Post* at [12], a reference to Ms Prior's race or indigenous heritage alone is too wide a description in this case. Aboriginal and Torres Strait Islander peoples' views about being provided with facilities or areas from which others, not of the same race or ethnicity are by that reason alone, excluded, will almost certainly differ. So too, the views of Aboriginal and Torres Strait Islanders students at QUT. No party suggested any perspective from which the impugned words might be properly considered. The importance of the adoption of an appropriate perspective from which to consider the impugned act was emphasised by Barker J in *Clarke v Nationwide News* (above) at [51] – [52]:

> *[51] The "reasonable victim" perspective: When applying the objective test it is, however, necessary to regard the perspective of the hypothetical person or group – sometimes referred to as the "reasonable victim" – who might possibly be offended by an act of the type complained of.*
>
> *[52] The adoption of such a perspective is important because, if the Court were not to do so there would be a real risk that the standards of some other, different person or group would be adopted without any sensitivity to cultural differences between groups in the community. This point is well made in human rights literature…*

47. The facts and circumstances of each case in which it is alleged that s.18C(1)(a) has been transgressed must guide the correct identification of the reasonable victim in each case: *Clarke v Nationwide News* at [64]. But in every case, the hypothetical person or member of the relevant group from whose perspective the relevant conduct is to be considered will be a person who:

a) exhibits characteristics consistent with what might be expected of a member of a free and tolerant society: *Eatock v Bolt* at [255]; *Clarke v Nationwide News* at [59];

b) meets the description of an ordinary or reasonable member or members of the identified group. "That is so because a group of people may include the "sensitive as well as the insensitive, the

passionate and the dispassionate, the emotional and the impassive". For that reason it is necessary to consider only the perspective of the ordinary or reasonable member or members of the group, not those at the margins of the group whose view may be considered unrepresentative.": *Eatock v Bolt* at [251] and *Clarke v Nationwide News* at [62].

48. All the parties before me emphasise that the relevant assessment needs to be undertaken in light of all of the circumstances, including the social, cultural, historical and other circumstances attending the person or the people in the relevant group. However, beyond the factual matters that I have described at the commencement of these reasons and having regard to the course of the Facebook posts, set out in exhibit 1in these proceedings, no party, particularly Ms Prior suggested that there were, or was likely to be, any other relevant circumstances that would inform the relevant assessment.

49. In my view, it is not reasonably likely that a hypothetical person in the position of the applicant, or a hypothetical member of the groups identified by Ms Prior who is a reasonable and ordinary member of either of the groups who exhibits characteristics consistent with what might be expected of a member of a free and tolerant society and who is not at the margins of those groups would feel offended, insulted, humiliated or intimidated by Mr Woods words. This is so because:

    a) Mr Wood's words were directed to QUT and its actions; and

    b) Mr Wood's words were rallying against racial discrimination.

50. Even if that view is erroneous, the relevant conduct must be undertaken because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group found to be reasonably likely to be offended by the conduct. In paragraph 46(c) of her amended points of claim Ms Prior pleads, in effect, that Mr Wood made his Facebook post "because of the race, colour or national or ethnic origin of Aboriginal and Torres Strait Islander students of the First Respondent entitled to use the facilities of the Oodergoo Unit."

51. On 15 February, 2016 Mr Wood filed an affidavit deposed by himself in which he sets out the reasons for his Facebook post. In that affidavit, he gives three reasons for his Facebook post, namely:

a) his moral abhorrence to racial discrimination and his concern that "racial segregation was policy administered on the campus of my university";

b) his concern that his HECS fees were being applied to provide a facility which excluded particular racial or ethnic groups from using; and

c) his concern that the first respondent's policy impacts upon the opportunity for interaction between students from different backgrounds which he considered to be invaluable and an important aspect of his university education..

52. As Mr Wood explains:

> *17. The fact that these facilities were provided exclusively for indigenous students - rather than, say, Chinese students, or Muslim students, or Native American students, or Anglo-Saxon students - was quite irrelevant to me when I made the post. What I objected to was the apparent policy of racial or ethnic discrimination and racial or ethnic segregation; not any particular "race, colour or national or ethnic origin" of the students who use such facilities.*

53. Further, Mr Wood swears that he had did not know Ms Prior's race or ethnicity.

54. In my view, Mr Wood's evidence establishes a prima facie case for relief because according to his evidence he did not make the Facebook post because of Ms Prior's race, colour, nationality, or ethnic origin. Moreover, he did not make his Facebook post because of the race, colour, nationality or ethnic origin of a member or members of the groups identified by her. He made the Facebook post for the sworn reasons he gives in his affidavit. On the basis of Mr Wood's sworn evidence, Ms Prior cannot be said to have any reasonable prospects of succeeding on her application against him.

55. Having established a prima facie case for relief, Ms Prior "must respond by pointing to specific factual or evidentiary disputes that make a trial necessary": *Jack Jefferson Ford* at [127]. Ms Prior did not attempt to point to any specific factual or evidentiary disputes about the reasons given by Mr Wood for his Facebook post.

56. Apart from an inference that might be drawn from the fact that Mr Wood made his Facebook post in the terms that he did, when he did, there is no other evidence concerning the reasons for his remarks. His sworn evidence answers and negates the inference to which I have just referred. In the absence of any evidence or the suggestion of any evidence that Mr Wood made his Facebook post because of the race, colour, nationality, or ethnicity of Ms Prior or a person in either of the groups identified by her, her claim against him has no reasonable prospects of success.

57. Moreover, s.18C(1)(a) is only concerned with profound and serious effects, not mere slights. To the extent that Mr Wood's post is capable of being seen as offensive or insulting or amounting to humiliation or intimidation, in my view the effect of that is such that it might be described as a "mere slight". In my view, Mr Wood's post on any assessment is outside of the range of conduct which might attract the operation of section 18 C1 A.

58. Accordingly, Mr Wood establishes that Ms Prior has no reasonable prospects of successfully prosecuting her claim against him because:

    a) his Facebook post is not reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people as claimed by Ms Prior;

    b) he did not make his Facebook post because of Ms Prior's race, colour or national or ethnic origin or that of some or all of the people in the groups she identifies; and

    c) even if those two conclusions are erroneous, the effect of Mr Wood's conduct is not such as to engage in s.18C(1)(a) because the effect of his act could not be seen as sufficiently profound or serious.

The sixth respondent

59. Mr Powell was responsible for three posts to QUT Stalker Space Facebook group about which Ms Prior complains. The first post is as follows:

> *I wonder where the white supremacist computer lab is..*

60. A later post by Mr Powell in response to another post unidentified in the pleadings:

> *…it's white supremacist, get it right. We don't like to be affiliated with those hill-billies.*

61. The final post by Mr Powell responding to the ninth respondent, Chris Lee:

> *Chris Lee today's your lucky day, join the white supremacist group and we'll take care of your every need!*

62. The reference in each of those posts to "white supremacist" is plainly a reference is a racist ideology that promotes the belief that "white" people are superior to people of other racial backgrounds and that "white" people should politically, economically and socially rule people of other racial backgrounds. To ordinary and reasonable members of a free and tolerant society such an idea is plainly offensive and insulting.

63. But words and concepts which are ordinarily insulting and offensive may nonetheless not engage in s.18C(1)(a) because the circumstances in which the relevant acts performed means that they are not reasonably likely to offend, insult, humiliate or intimidate in the way envisaged by that subsection. Drummond J's decision in *Hagan v Trustees of the Toowoomba Sports Ground Trust* (above) is the exemplar.

64. It is for that reason that I have appended to these reasons the message thread on the QUT Stalker Space Facebook page which sets out the flow of posts commencing with Mr Wood's initial post. I have concealed the identity of any person who has not been a respondent to these proceedings at all, or who has been a respondent but in respect of whom the proceedings have been discontinued. In all other respects,

however, appendix A to these reasons is a reproduction of the relevant parts of Exhibit 1 that was tendered on the hearing of this application.

65. When considered in context, it is immediately apparent, in my view that Mr Powell's posts are a poor attempt at humour. Each of the posts fall into the same category. It might be said, as was said by senior counsel for Mr Powell, that his posts and his attempt at humour was in bad taste, or as Mr Powell himself now accepts having regard to his affidavit filed on 3 February, 2016 one which "could potentially be regarded as distasteful by some people".

66. I accept senior counsel for Mr Powles submission that s.18C(1)(a) is not concerned with tasteless jokes, or "smart Alec" remarks, unless there is a likelihood that it will in all the circumstances either offend, insult, humiliate or intimidate the members of the relevant group.

67. In my view, it is not reasonably likely that a hypothetical person in the position of the applicant, or a hypothetical reasonable and ordinary member of either of the groups identified by Ms Prior and who exhibits characteristics consistent with what might be expected of a member of a free and tolerant society and who is not at the margins of those groups would feel offended, insulted, humiliated or intimidated by Mr Powell's words. I have specifically considered whether the use of the words "white supremacist" would have an in intimidatory effect upon a hypothetical person in the position of the applicant or a hypothetical member of the relevant groups. In my view, they would not do so because of the context in circumstances in which they were used as demonstrated by the appendix to these reasons.

68. In any event, for similar reasons expressed in respect of the claim against Mr Woods, Ms Prior does not enjoy reasonable prospects of successfully prosecuting her claim against Mr Powell because she cannot establish that Mr Powell posted the relevant messages because of her race, colour or national or ethnic origin or that of any member of the groups that she has identified. It is no part of Ms Prior's case that she had met or knew Mr Power. He swears that he did not know Ms Prior and has never met her. Further, he swears in his affidavit filed on 3 February, 2016:

13. I totally reject that assertion, in sub-paragraph 46(c) of the Points of Claim, that the messages which I posted were "done because of the race, colour or national or ethnic origin of Aboriginal and Torres Strait Islander students ... entitled to use the facilities of the Oodgeroo Unit".

14. The fact that these facilities were provided exclusively for indigenous students - rather than, say, Chinese students, or Muslim students, or Native American students, or Anglo-Saxon students - was quite irrelevant to me when I posted the messages. What I objected to was the fact of racial or ethnic discrimination; not the particular "race, colour or national or ethnic origin" of the students who benefit from it.

15. To illustrate this point, I believe that I would have reacted in precisely the same way if I had learnt that QUT had set up a "James Joyce Unit" providing educational facilities exclusively for the benefit of students of the Celtic race or ethnicity, or an "Omar Khayyam Unit" providing educational facilities exclusively for the benefit of students of Iranian/Persian descent.

69. There is no evidence to the contrary. Mr Powell's evidence near ties any inference that might be drawn from the fact the posts themselves in the circumstances in which they occurred. As submitted by senior counsel for Mr Powell, what Mr Powell deposes is consistent with the words of the messages which he posted.

70. Again, to the extent that Mr Powell's posts are capable of being seen as offensive or insulting or amounting to humiliation or intimidation, in my view the effect of that is such that it might be described as a "mere slight". Mr Powell's posts on any assessment are outside of the range of conduct which might attract the operation of section 18 C1 A.

71. In my view, Mr Powell establishes that Ms Prior has no reasonable prospects of successfully prosecuting her claim against him because:

a) his Facebook posts is not reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people as claimed by Ms Prior;

b) he did not make his Facebook posts because of Ms Prior's race, colour or national or ethnic origin or that of some or all of the people in the groups she identifies; and

c) even if those two conclusions are erroneous, the effect of Mr Powell's conduct is not such as to engage in s.18C(1)(a) because the effect of his posts could not be seen as sufficiently profound or serious.

The seventh respondent

72. The argument put by Mr Thwaites is different to those put by Mr Wood and Mr Powell. Mr Thwaites denies that he posted the comment attributed to him. In that sense, his primary reason for seeking a dismissal of the proceedings against him relies solely upon his claim that he did not post the Facebook message that he is alleged to have posted.

73. In his affidavit filed on 11 February, 2016 Mr Thwaites deposes that he did not post the message. He descends into particularity in his evidence. He provides evidence that demonstrates, on a prima facie basis, that he did not post and could not have posted the relevant message.

74. As senior counsel for Mr Thwaites concedes the fact that he deposes that he did not post the message attributed to him would not suffice to entitle him to summary dismissal of Ms Prior's claim if there were any evidence to the contrary - however slight or tenuous, just so long as it was not demonstrably implausible or unreliable. However, as he points out, there is none.

75. Ms Prior's case rests solely on the fact that the name of Mr Thwaites is associated with the relevant message as its author and the inferences that might be drawn from that. But that fact that his name appears upon the post is not evidence of his authorship. Senior counsel for Mr Thwaites submits that in legal cognisance, the message posted in the name of Mr Thwaites is an unproved document, conceptually no different from a typescript letter with a typescript "signature", or a document created by cutting letters from newspaper headlines and pasting them on a blank page. Until there is proof regarding the document's true authorship, its contents have no probative value; and, for that very reason, one cannot prove the document's authorship solely from the document itself. To put matters in a slightly different way: the issue is whether or not Mr Thwaites was responsible for the

contents of the document. Until that is proved, the document is merely unsourced documentary hearsay, placed on the computer screen through the agency of Facebook. If it is proved that Mr Thwaites was responsible, then the document can be tendered against him. But the document, itself, cannot afford such proof, since its admissibility as an admission against interest depends on its authorship first being proved from another source.

76. I accept those submissions.

77. As I have already recorded, the authorities make it clear that, on an application like the present one, where the party seeking summary dismissal files evidence which would entitle that party to judgment, the onus shifts to the party resisting the application to adduce some evidence to the contrary. On the present application, Ms Prior has not adduced any evidence supporting her claim against Mr Thwaites. As senior counsel for Mr Thwaites points out, that failure has occurred in a context where Ms Prior was required to file her evidence in chief by 4 pm on 1 March, 2016. She did so, but her legal representatives have chosen not to read any part of that evidence in chief on the hearing of the present application.

78. There is no evidence that would put in contest the factual assertions made by Mr Thwaites.

79. In my view he is entitled to summary dismissal of the claim made against him by Mr Prior.

Other matters

80. I have not dealt with the arguments made by each of the respondents in respect of s.18D of the Act. The submissions for each of the parties reveal that there is a conflict in the authorities about the way in which s.18D might operate. The conflict is significant. Having regard to the warnings set out in the passages to which I have earlier referred from *Spencer*, it seems to me that given the complex issues that arise having regard to having regard to the various approaches demonstrated by the authorities to s.18D of the Act, it would be inappropriate to determine those issues on an application for summary dismissal such as this.

81. I have also not dealt with Mr Wood's application to have the Ms Prior's claim against him dismissed on the basis that it is frivolous and vexatious or an abuse of process. In my view, were he to fail on his application for summary dismissal that would provide a powerful reason for concluding that her claim was not frivolous or vexatious or an abuse of process.

Conclusion

82. For the reasons I have expressed above, in my view Ms Prior does not enjoy reasonable prospects of successfully prosecuting her proceedings against each of Mr Wood, Mr Powell and Mr Thwaites.

83. Her proceedings against each of them must be dismissed.

I certify that the preceding eighty-three (83) paragraphs are a true copy of the reasons for judgment of Judge Jarrett.

Date: 4 November, 2016

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[redacted]

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Chat is currently off. To chat with your friends, turn on chat.

QUT StalkerSpace About Events Photos Files

Open Group

What is StalkerSpace? Stalkerspace is actually everything you stalk around campus. It's like whe see that cute girl... See More

RECENT POSTS

[redacted]

To whoever it was playing Runescape in the KG library last night, I commend your bravery and thank you for the nostalgia hit.

Share · 10 minutes ago

5 people like this.

Alex Wood

Just got kicked out of the unsigned Indigenous computer room. QUT stopping segregation with segregation...?

Share · about an hour ago near Brisbane

81 people like this.

[redacted] ...we have an Indigenous computer room? Dafuq?
about an hour ago · 29

Alex Wood Yeah at the end level 4 or 5 of Y block, near the study rooms
about an hour ago

[redacted] That is more retarded than a Women's Collective.

inb4 1000 comment argument
about an hour ago · 34

[redacted] B block ftw
about an hour ago

[redacted] I pay for my uni and i don't get no private computer room.
about an hour ago · 5

[redacted] Should have said your Indigenous. They wouldn't know any different, you can't tell these days.
about an hour ago · 1

[redacted] Shoulda screamed RACIST
about an hour ago via mobile

Jackson Powell I wonder where the white supremacist computer lab is..
about an hour ago · 35

[redacted] · Surely there's an Indian computer room?
But to be honest, that's just India.
about an hour ago · 11

Jackson Powell Indian computer room is, and I'm sorry to say this, lvl 6+ of S block.
about an hour ago · 2

[redacted] I will not rest until I have a brunette, hetero, skinny, white girl-only computer room.
about an hour ago via mobile · 17

Calum Thwaites ITT niggers
about an hour ago

[redacted] I find it funny that everyone thinks a room solely for Indigenous people is bad, but a room meant to be exclusive to women is totally fine.
59 minutes ago · 9

[redacted] It's not.
58 minutes ago

[redacted] - Sorry but there is nothing 'retarded' about a Woman's Collective. If you take offence to a women's room, by all means your prerogative. But the Women's Collective is merely a group of like-minded women who meet to discuss issues regarding women's rights and organise uni events specific to women. They have a very important role to play at the university. A lot of people disagree with the fact they have a special room to conduct their meetings in but the Women's Collective and women's room are two separate entities so please check your facts before passing judgement.
58 minutes ago via mobile · 2

[redacted] A room exclusive to anyone is bullshit, unless you do it for everyone, in which case that's just stupid.
58 minutes ago · 4

[redacted] http://images2.fanpop.com/image/photos/13100000/Take-The-Bait-penguins-of-madagascar-13156955-700-511.jpg
57 minutes ago · 10

Jackson Powell http://www.nastyhobbit.org/data/media/2/i-like-where-thread-is-going.jpg
56 minutes ago · 1

[redacted] my non-qut student friend got forced off the computers by security, that's discrimination. computer labs shouldn't be exclusive to qut students.
55 minutes ago · Edited · 1

[redacted] There's a difference between kicking people off resources for QUT and anyone who pays to attend and kicking people off computers because they're not Indigenous, Rosalind.
54 minutes ago · 9

Jackson Powell I mean it's not like we pay to go to Uni... oh wait.
52 minutes ago

[redacted] if you want a special room, go ask for a special room. start a collective called Students Against Room Discrimination and campaign for your own non-segregated rooms. but I bet you'll all be too distracted by facebook to get around to it.
52 minutes ago

[redacted] I don't mind I have my own special room muhahaha
Or you can join the chess club Chat (Off)

brother
50 minutes ago via mobile · 1

[redacted] http://blainefaircloth.files.wordpress.com/2010/10/hannibalsmith-1.jpg
50 minutes ago

[redacted] "These rooms are only for 'Students Against Room Discrimination' members! All others will be removed."

Somebody please start this.
50 minutes ago · Edited · 13

[redacted] are these not resources for indigenous students?
49 minutes ago

[redacted] since we all feel outraged over rooms that aren't ours on campus let's complain about the post-grad student labs, lecturers' offices, staff rooms, etc.
47 minutes ago · 2

[redacted]: But you have a special room ^
47 minutes ago

Jackson Powell I support the idea of an alcoholic's room consisting of a beerpong table, cocktail bar and 8 large bean bag chairs. Purely for study.
45 minutes ago · Edited · 5

[redacted] Clubs that take up student resources should be open to every student. Why would any student get special privilege over another student based on gender or race?

We've both got assignments due in a couple days but you're telling me I'll have to go look else where because of my skin or sexual organs? That's pretty brutal.
45 minutes ago · 9

[redacted] I support that as well Jackson
44 minutes ago

[redacted] haha.
44 minutes ago

[redacted] was arguing against male privilege the other day, and now she's arguing for Indigenous student privileges. Heh.
44 minutes ago · Edited · 2

[redacted] How did the aboriginal gentlemen gain entry to university?... Through the window. Sorry i had to say it
43 minutes ago · 3

[redacted] the way i see it, by virtue of being a club it is not all inclusive. not everyone can be in every club. the robotics/motorsport/business students/etc club; i have no interest or involvement in either so how dare they have a room or their own resources they should be shut down.
41 minutes ago

Chat (Off)

resource management (i.e. making sure that people in different faculties have their own labs with software specific to them, offices for the people who have to manage students, storage spaces, EDIT: and clubs get a share of the total resources specific to them etc) and segregation (singling out rooms and resources for use by a specific race, creed, gender, or what have you, suggesting that they need special treatment or they need resources more than other people).
40 minutes ago · Edited · 2

[redacted] · club != attribute.
37 minutes ago · 1

[redacted] i'm not trying to do anything. resources like rooms are allocated to different groups/people if they apply for and get approval for them. everyone has equal opportunity to apply for those resources. for someone who is unwilling/hasn't put in the effort to go through the process to argue that those who have put in the effort shouldn't get such resources is stupid IMO.
36 minutes ago · 1

[redacted] Idk I don't think there's anything wrong with a separate room, it's just action trying to undo past oppression. You can liken it to giving someone on the outer lane of a running race a head start because they've got further to run?
36 minutes ago · 2

[redacted] if you want said room apply for it just like whoever else has one did. it's pretty simple.
36 minutes ago

[redacted] I hope that makes sense!
36 minutes ago

[redacted] By the logic in this thread: University is also a club with inclusion / exclusion criteria. Therefore you're all a bunch of segregationists.

/thread.
35 minutes ago · 4

[redacted] By [redacted] logic its also fine to start a KKK Klub
33 minutes ago · 2

[redacted] Strawman^
32 minutes ago · 1

Jackson Powell Michael McGrath, it's white supremacist, get it right. We don't like to be affiliated with those hill-billies.
32 minutes ago · 4

[redacted] my logic is, if you want a room apply for it or do whatever the other guys did to get one. don't bitch about segregation or what not if you can't be bothered getting one.
27 minutes ago

[redacted] not a strawman, because as she herself said "are these not resources for indigenous students?" and "resources like rooms are allocated to different groups/people if they apply for and get approval for them. everyone has equal opportunity to apply for those resources. for someone who is unwilling/hasn't put in the effort to go through the process to argue that those who have put in the effort shouldn't get such resources is stupid ", suggesting that a club or room that denies entry or use of resources based on race is fine, as long as the room provides resources for that group.
27 minutes ago

[redacted] Okay, so we can all apply for the room. True.

Too bad every application does **Chat (Off)**

I'm sure the people applying for rooms didn't make that choice.
22 minutes ago · 1

[redacted] And I agree, disadvantaged people should get extra help, but when you try to get them ahead by pushing other people back it doesn't make much sense as you're just harming another innocent person's chances.

There must be a way that allows both equality in chances to succeed and the support those who are not at that level yet.

I don't think throwing money at one group instead of another is the right solution, just an easy one.
18 minutes ago · 1

[redacted] I Obviously financial help is crucial to a lot of people's uni studies. Don't get me wrong. I just don't think it's the sole answer.
17 minutes ago

[redacted] is right. Equality for Indigenous students, for example, would not be giving them a room away from everyone else. That implies two things: They need extra resources because they have special needs; and they can't study around people who are not like them. It's not exactly flattering.
14 minutes ago

Jackson Powell You know what this wall post reminds me of? https://i.chzbgr.com/maxW500/6759119616/h6CEE230C/
13 minutes ago · 2

[redacted] I disagree with a room solely for ANYONE on an inclusive campus.
13 minutes ago

[redacted] I think the easiest current solution would be:

The rooms full: give up your spot for someone that may not have a computer, Oh well.

The rooms not full: ALL ARE WELCOME, LETS LISTEN TO SOME S CLUB SON!.

Everyone likes S club.
11 minutes ago · 1

[redacted] We need a room strictly for white males, so I can wear my fedora and wallet chain without being mocked. I'm being oppressed here!
7 minutes ago · 1

Jackson Powel [redacted] today's your lucky day, join the white supremacist group and we'll take care of your every need!
6 minutes ago

[redacted]

Are you a boy? with tattoos and brown hair? and just left the lawbry? so, I have your USB.

Share · 38 minutes ago near Brisbane

[redacted]

Where is your favourite QUT sex Chat (Off)