

COMMENT: SEC 18C RACIAL DISCRIMINATION ACT – APPEAL DISMISSED

Readers will be well aware of this case involving students from the Queensland University of Technology (“QUT”) and the surrounding controversy and extensive media coverage.

Refer to our earlier article (click [here](#)) on the decision in [Prior v Queensland University of Technology & Ors \[2016\] FCCA 2853](#).

In that case Ms Prior, a former employee of QUT sought to sue 3 students, Mr Wood, Mr Powell and Mr Thwaites, for infringing Sec 18C of the [Racial Discrimination Act](#) and for damages.

Ms Prior’s initial application was comprehensively rejected by the Federal Circuit Court of Australia as “*having no reasonable prospects for success*”.

Ms Prior sought to appeal that decision to the Federal Court. That appeal was also comprehensively rejected in [Prior v Wood \[2017\] FCA 193](#) in a judgement delivered on 3 March 2017.

Ms Prior’s case was not without some initial difficulties as she had not appealed within the timeframe prescribed by the Court rules. Her Solicitor, apparently, was not familiar with the Court rules. Not only did she need approval by the Court to an extension of time to lodge the appeal, but also needed the Court’s leave to hear the appeal.

A detailed 56 page judgement again comprehensively rejected Ms Prior’s appeal and concluded:-

“In the circumstances, the proposed grounds of appeal offer no more than disagreement with the primary Judge’s conclusions. They do not suggest any reason to doubt the correctness of the decision. In those circumstances, leave to appeal would not be granted. The application for an extension of time in which to seek leave to appeal must be dismissed.”

In our view, this has been an unjust punishment for the 3 students. The administration and conduct of the Human Rights Commission is highly questionable. Ms Prior’s

pursuit and conduct against the 3 students has proven to be misplaced. Failing to lodge the appeal on time may be indicative of ideology swamping proper process.

In this decision his Honour noted:-

“.....Mr Wood and Mr Thwaites only became aware of Ms Prior’s complaint in late July 2015. Mr Powell became aware of it in late August 2015. It seems that Ms Prior’s solicitor, QUT and the Commission all knew that the respondents had not previously been notified of the proceedings in the Commission. To say the least, it is surprising that those parties assumed that it was appropriate to proceed in that way.”

The action by Ms Prior against QUT for damages proceeds.

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Victor Hamit
Wentworth Lawyers Pty Ltd
Level 40
140 William Street
MELBOURNE VIC 3000

Tel: +61 3 9607 8380
Mobile +61 408 590 706

Email: vhamit@wentworthlawyers.com.au
Website: www.wentworthlawyers.com.au

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