



ANTHONY J.H. MORRIS QC

BARRISTER-AT-LAW ABN 53 857 558 263

Level 7 Inns of Court 107 North Quay Brisbane Queensland Australia 4000
direct line: +61 7 3229 0267 | secretary: +61 7 3221 3996 | facsimile: +61 7 3221 6715
email: morrisqc@lexscripta.com | secretary's email: morrissec@qldbar.asn.au | website: www.lexscripta.com



24 October 2016

Senator the Hon. Ian Macdonald
Chair
Legal And Constitutional Affairs Legislation Committee
The Australian Senate
Parliament House
CANBERRA A.C.T. 2700

Dear Senator Macdonald,

**Re: Testimony of Professor Gillian Triggs,
President, Australian Human Rights Commission
Monday, 12 December 2016**

As you know, I am counsel for two of the seven students who are the subject of claims under Section 18C of the *Racial Discrimination Act* in "*the QUT Case*" (*Cynthia Irene Prior v. Queensland University of Technology and Others*).

I have now seen the transcript of testimony given by Professor Triggs before the Legal and Constitutional Affairs Legislation Committee on Monday, 12 December 2016, in the course of which the QUT Case was again discussed.

I observe that Professor Triggs repeatedly refused to discuss the QUT Case – despite her previously having done so in other public forums, such as the ABC current affairs programme "7:30" – on the basis, or pretext, that any comments by her might "prejudice" that case.

Thus, on page 11 of the transcript, we find the following exchange:

Senator FAWCETT: So can I come back to the QUT case, which is now no longer before the courts and no longer before the commission.

Prof. Triggs: Perhaps I could, if I may, respectfully interrupt you. The QUT case is before the court, before the Federal Court.

CHAIR: On appeal.

Senator FAWCETT: My understanding is that the appeal was not allowed because they were out of time, or am I out of date?

Prof. Triggs: An application for leave to appeal has been filed with the court, and it is for the court to determine whether it grants that leave.

CHAIR: But that is a matter of a civil claim for \$250,000 in damages. It is not related to the Human Rights Commission as such, is it?

Ms O'Brien: The application for leave to appeal has been lodged in respect of the decision of the Federal Circuit Court to dismiss the proceedings against the students, so it is those proceedings that an application for leave to appeal has been filed in.

CHAIR: To dismiss the civil claim for \$250,000 against the seven students, most of whom were not even advised that a complaint had been made?

Ms O'Brien: That is right: for the claim under section 18C. That was what was dismissed by the Federal Circuit Court and that is what the application for leave to appeal has been.

CHAIR: Okay. Well, I do not think that interferes with Senator Fawcett's question, which was: how does the commission operate?

Ms O'Brien: It only does insofar as the students have raised, in their defence to those proceedings, the commission's handling of the complaint while it was before the commission. Whilst there is no problem answering general questions about the commission's statutory processes, in terms of the commission's handling of the complaint—

CHAIR: I think Senator Fawcett's question is: as president, Professor Triggs, what did you do to investigate and conciliate, as required by law?

Prof. Triggs: Again, I cannot discuss the QUT case because of the absolute requirement of confidentiality. Perhaps I can say that were I able to discuss this case I would be pleased to do so because there has been such a high level of misinformation in some segments of the media. It will be, I think, very important ultimately for the public to understand this case if and when it becomes possible to discuss the details, but there is a very clear provision, section 49 of the statute, which makes it a strict requirement that matters relating to the parties to these cases remain confidential. That is a critically important feature of all alternative dispute resolution but in particular our processes under the statute.

Likewise, on page 12 of the transcript, Professor Triggs is recorded as saying:

I can only repeat the position, and that is that this matter is proceeding before the court, before the Federal Court of Australia, and it would be entirely inappropriate for me in any way to prejudice those legal proceedings.

Again, on pages 25 and 26 of the transcript, this exchange appears:

Senator REYNOLDS: I want to pick up a couple of questions of fact for some of the issues that you have gone through this morning. You were saying this morning to Senator Fawcett that you could not comment

at all on any aspect of the QUT case. I think you referred to section 49, which I have here. Could you clarify exactly where you are legally constrained to comment on any aspect of the QUT case—which section—just so we can understand and have a look at it?

Prof. Triggs: Yes. Section 49, as you quite correctly say, does impose obligations of confidentiality, but my particular reason, and the most important reason, for not disclosing the details of the QUT case is that the matter continues before the Federal Court of Australia.

Senator REYNOLDS: So does that preclude you from discussing any aspect of the entire case? Are you a respondent or is this an issue of fact that is being discussed in the Federal Court at the moment?

Prof. Triggs: We are constrained from revealing any details relating to any person in relation to a complaint under our statute, and in relation to a matter that is before the Federal Court we are completely constrained from discussing the matter.

Senator REYNOLDS: So you cannot discuss any procedural issues in the matter at any stage of the commission's handling of this particular case?

Prof. Triggs: Not in relation to that case. I am very happy, as I was attempting to do with Senator Di Natale, to go through the process as it would normally or typically apply, but I am not in a position to discuss the handling of the complaint in any detail or any particular respect.

I feel compelled to inform you, and the Committee, that the explanation given by Professor Triggs for her refusal to answer questions concerning the QUT Case is arrant persiflage and falderal. Had such an excuse been trotted out by a person without legal training or qualifications, it might (perhaps) be dismissed as a genuine misconception. But when a lawyer of the standing of Professor Triggs mouths such tendentious drivel – and does so, moreover, before a standing committee of the Upper House of the National Legislature – it has to be called out for the diversionary tactic which it plainly is.

The Powers and Privileges of a Senate Committee

Some of the greatest lawyers in Anglo-Australian legal history have acknowledged that, whilst the rôle of the judicial branch of government is fundamental to our liberal and democratic system of government, the rôle of the legislative branch is, if anything, superior. In the great case of *Stockdale v. Hansard*¹ – the case, more than any other, which lies at the foundation of the Westminster system of Parliamentary democracy – Mr Justice Patteson described the legislative houses and their committees as:

“... the grand inquest of the nation, [which] may inquire into all alleged abuses and misconduct in any quarter, of course in the Courts of Law, or any of the members of them; but it cannot, by itself, correct or punish any such abuses or misconduct; it can but accuse or institute proceedings against the supposed delinquents in some Court of Law, or conjointly with the other branches of the Legislature, may remedy the mischief by a new law.”

¹ (1839) 9 Ad & El 1

Subsequently, in the equally celebrated (and deservedly so) case of *Howard v. Gossett*², the Lord Chief Justice of England, Lord Coleridge – also, coincidentally, great-nephew of the poet Samuel Taylor Coleridge – said:

That the Commons are, in the words of Lord Coke, the general inquisitors of the realm, I fully admit: it would be difficult to define any limits by which the subject matter of their inquiry can be bounded: It is unnecessary to attempt to do so now: I would be content to state that they may inquire into everything which it concerns the public weal for them to know; and they themselves, I think are entrusted with the determination of what falls within that category. Coextensive with the jurisdiction to inquire must be their authority to call for the attendance of witnesses, to enforce it by arrest where disobedience makes that necessary, and, where attendance is required, or refused, in either stage, of summons or arrest, there need be no specific disclosure of the subject matter of inquiry, because that might often defeat the purpose of the examination.

On appeal, Mr Baron Parke (“Mr Baron” rather than “Mr Justice” being, in those days, the correct title of a Judge of the Court of Exchequer) – later Lord Wensleydale – added³:

... it cannot be disputed that the House of Commons has by law the particular powers to take into custody which in the three first pleas it is expressly averred to have exercised; and we have nothing to do with any other. First, that House which forms the Great Inquest of the Nation, has a power to institute inquiries and to order the attendance of witnesses, and, in case of disobedience (whether it has not even without disobedience, we need not inquire), bring them in custody to the Bar for the purpose of examination.

It is of some significance, in this context, to note that – whereas the cases just mentioned may suggest some inequality between the functions and powers of the two chambers in the UK legislature – no similar distinction exists in Australia. This is because the Founding Fathers, in their inestimable wisdom, drafted section 49 of the Australian Constitution to provide:

49. Privileges etc. of Houses

The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

² (1845) 10 QB 359

³ (1847) 10 QB 411

The effect of this provision – and its effective adoption of the principle that each House of the Australian Parliament, separately from and independently of the other, and the respective committees and members thereof, constitute for this country “*the Great Inquest of the Nation*” and “*the general inquisitors of the realm*” – was recognised by the High Court of Australia in *The Queen v. Richards; Ex Parte Fitzpatrick and Browne*⁴, where the Court (Chief Justice Sir Owen Dixon and Justices McTiernan, Williams, Webb, Fullagar, Kitto and Taylor) unanimously observed that:

The answer, in our opinion, lies in the very plain words of s. 49 itself. The words are incapable of a restricted meaning, unless that restricted meaning be imperatively demanded as something to be placed artificially upon them by the more general considerations which the Constitution supplies. Added to that simple reason are the facts of the history of this particular branch of the law. Students of English constitutional history are well aware of the controversy which attended the establishment of the powers, privileges and immunities of the House of Commons. Students of English constitutional law are made aware at a very early stage of their tuition of the judicial declarations terminating that controversy, and it may be said that there is no more conspicuous chapter in the constitutional law of Great Britain than the particular matter with which we are dealing. It is quite incredible that the framers of s. 49 were not completely aware of the state of the law in Great Britain and, when they adopted the language of s. 49, were not quite conscious of the consequences which followed from it. We are therefore of opinion that the general structure of this Constitution, meaning by that the fact that it is an instrument creating a constitution of a kind commonly described as rigid in which an excess of power means invalidity does not provide a sufficient ground for placing upon the express words of s. 49 an artificial limitation.

The Specious Contentions advanced by Professor Triggs

On its face, it is a very noble and high-sounding sentiment to wish to avoid prejudicing proceedings before a court of law. And, if there were any genuine risk of such a prejudice, I am (speaking for myself) completely confident, both that no Honourable Senator – regardless of political affiliations or agendas – would knowingly ask a question which exposes such a risk; and also that the Committee as a whole would disallow such a question, or excuse the witness from answering it, once any such risk became apparent.

But the demonstrable reality is that no such risk exists, ever existed, or (indeed) could exist. And it is rather less noble and high-sounding for a witness, like Professor Triggs, to suggest the existence of such a risk merely as a calculated subterfuge to avoid answering embarrassing questions, where the only potential for prejudice is a prejudice to the

⁴ (1955) 92 CLR 165.

witness's own reputation (assuming that she possesses one) for honesty, integrity, competence or diligence.

So that you and the Committee are in a position to give this matter further consideration based on the facts as they are – rather than the facts as Professor Triggs might like them to be – let me provide this summary:

- (1) Of the students who are respondents in the QUT Case, only two of them – Mr Alex Wood and Mr Jackson Powell – have raised any issue in that case regarding the AHRC's handling of pre-litigation processes and procedures.
- (2) On 4 November 2016, the case against each of Mr Alex Wood and Mr Jackson Powell – along with Mr Calum Thwaites – was summarily dismissed.
- (3) There is no appeal.
- (4) An affidavits since filed by Ms Susan Moriarty – the solicitor for the applicant, Ms Cindy Prior – assert that, on the very day that judgement was delivered (4th November), Ms Prior instructed Ms Moriarty to lodge an appeal. But Ms Moriarty still managed, somehow, to miss the 14-day time limit.
- (5) Ms Moriarty has sought to blame this on His Honour Judge Jarrett – the judge who dismissed the claims against Mr Alex Wood, Mr Jackson Powell, and Mr Calum Thwaites – by alleging that an “off the cuff” remark by His Honour led her to suppose that she had 21 days, or maybe 28 days, within which to lodge the appeal, rather than the 14 days prescribed under the relevant legislation. But that is a furphy. His Honour's “off the cuff” remark, if it was made at all (and I, having been present at the time, have no recollection of that), was made on 21st November; i.e., well after the 14-day time-limit had expired. So, in truth, Ms Moriarty has nobody to blame but herself.
- (6) In any event, as matters now stand, Ms Prior (through Ms Moriarty) has two applications pending in the Federal Court:
 - an application for leave to apply, out of time, for leave to appeal; and
 - if that application succeeds, an application for leave to appeal.
- (7) Those applications are to be heard by the Honourable Justice Dowsett, the senior Brisbane-based Judge of the Federal Court, this coming Friday (16th December).

- (8) If those applications both succeed – and, needless to say, that is not a foregone conclusion – that will only mean that Ms Prior has an opportunity to appeal, despite her solicitor’s incompetence. Of course, it will not mean that any appeal will succeed, or even that it is likely to succeed.
- (9) Moreover, there is a significant prospect that, as a condition for having leave to appeal, Ms Prior will be required to provide security for costs of the appeal. The amount (for all three respondents to the appeal) is likely to be several tens of thousands of dollars. Unless Ms Prior is being supported by some indigenous welfare organization, probably taxpayer-funded, it is difficult to see how a former “administrative assistant”, who claims not to have been able to work since May of 2013, will be able to scrape that money together.
- (10) It is trite to say that only a very small proportion of appeals against summary dismissal orders are successful. It is not appropriate for me to comment on Ms Prior’s prospects of success, if leave to appeal is granted, so I will leave that to others: I shall not be entirely surprised should they choose to use terms like “slight” or “negligible”.
- (11) I can, however, draw attention to the Reasons for Judgement of His Honour Judge Jarrett, where His Honour explained – in considerable detail – the reasons why he found that Ms Prior’s claim “has no reasonable prospect of success”. Amongst other matters, His Honour mentions that:
- *“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.”* (paragraph 28)
- You, and the Committee, may well interpret this passage as “Judge-speak” meaning, in substance, that Ms Prior lost because – amongst other reasons – her lawyers simply did not understand the issues which had to be addressed.
- *“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.” (paragraph 10)

You, and the Committee, may well interpret this passage as “Judge-speak” meaning, in substance, that – perhaps due to her lawyers’ misunderstanding of the issues which had to be addressed – Ms Prior simply offered the Court no evidence, on the hearing of the summary dismissal application, even by way of an attempt to prove that she had “reasonable prospect of success”.

- (12) But, once again, even if the appeal were to succeed, that does not mean that Ms Prior’s claim is upheld, or even that it is likely to be upheld. Success on appeal simply means that she has a case which, on further analysis, is not so utterly bereft of an arguable foundation that she should be prevented from taking it to trial. It would amount to no more than this: one experienced Judge (His Honour Judge Jarrett) has concluded that the case is practically hopeless; an appellate bench may conclude that the case, whilst very weak, is not quite hopeless.
- (13) What must be understood, in the context of the professed basis on which Professor Triggs declined to answer questions from members of your Committee, is that no contested issues of fact have yet fallen for determination in this case. To take one example, there is the question whether Mr Thwaites posted the message in his name containing the words “ITT Niggers”. Mr Thwaites made an affidavit deposing that he did not. Ms Prior offered no evidence to the contrary. And, having seen the affidavits which she has filed comprising “*the evidence-in-chief upon which she intends to rely at the trial of these proceedings*” – even though these affidavits were not relied upon at the hearing of the summary dismissal application – I can confirm that they contain no evidence inculpating Mr Thwaites. So Judge Jarrett did not have to determine who is telling the truth and who isn’t; His Honour merely had to note that Ms Prior offered no evidence to support her case against Mr Thwaites, or to contradict his sworn denial.
- (14) Nor will any contested issues of fact fall to be determined on the hearing of:
- the application for leave to apply, out of time, for leave to appeal; or
 - if that application succeeds, the application for leave to appeal; or
 - if that application succeeds, the appeal.

For each of those purposes, Ms Prior is stuck with the material – inadequate though it plainly is – which her lawyers prepared for and relied upon at the hearing of the summary dismissal application. No further evidence can be adduced; no witnesses

will be examined or cross-examined; no disputed factual questions can be, or will be, resolved.

- (15) Nor, even more critically, will the issues on any of those hearings include any issue regarding the AHRC's handling of pre-litigation processes and procedures. To put it bluntly, His Honour Judge Jarrett summarily dismissed Ms Prior's claims, not on the technical basis that the AHRC had stuffed up the pre-litigation processes and procedures, but simply because Ms Prior does not have an arguable case on the substantive merits.
- (16) For there ever to be any judicial consideration of the question whether the AHRC stuffed up the pre-litigation processes and procedures, the following things will have to happen:
- **first**, Ms Prior will have to succeed on the application for leave to apply, out of time, for leave to appeal;
 - **secondly** – and if that application succeeds – Ms Prior will have to succeed on the application for leave to appeal;
 - **thirdly** – and if that application succeeds – Ms Prior will have to stump up any security for costs which she may be ordered to provide;
 - **fourthly**, Ms Prior will have to succeed on the appeal;
 - **fifthly**, having won the appeal, Ms Prior will still have to prosecute her case to trial;
 - **sixthly**, at the trial, Ms Prior will have to present evidence sufficient to support a conclusion that either Mr Wood or Mr Powell (they being the only two of the student respondents who have raised any issue regarding the AHRC's handling of pre-litigation processes and procedures) has a case to answer; and
 - **seventhly**, counsel for Mr Wood and/or Mr Powell will have to make a forensic judgement as to whether or not there is any point in canvassing issues regarding the AHRC's handling of pre-litigation processes and procedures, which will depend on whether counsel consider that they (or either of them) is at risk of losing the case unless that issue is also thrown into the mix – an eventuality which, as matters presently stand, looks about as remote as the Sun rising in the West.
- (17) Let us assume, however, that – against all the odds – the Federal Circuit Court, at some stage of the proceedings, may have to wrestle with the question whether the AHRC stuffed up the pre-litigation processes and procedures. In that eventuality, the issue will fall to be determined by a full-time professional judge, appointed under

Chapter III of the Australian Constitution: not, for instance, a jury of ordinary citizens, or a lay Justice of the Peace who has another day-job. How could it seriously be suggested that the decision of such a Judge could be “prejudiced” by any testimony given by Professor Triggs before your Committee? Even to hint at such a possibility is a gross insult to the Australian judiciary, which (with the possible exception of one recently-departed Vice-President of the Fair Work Commission, who was never a “Chapter III Judge”) is unsurpassed, worldwide, in its reputation for fairness, integrity, competence and diligence.

(18) Some other points are relevant in this context:

- Whilst, in my experience, most members of the judiciary do try to keep abreast of current affairs and national political issues, I have never encountered one who makes a habit of reading the transcripts of Senate committee hearings. Despite some occasional suggestions otherwise, the fact is that most Australian judges work very hard and for long hours. They do not have a great deal of spare time, and what spare time they do have is often devoted to keeping themselves up-to-date with new developments in the law. And when opportunities for entertainment or relaxation do present themselves, then – and at the risk of disillusioning you or the members of your Committee – I have to say that there are forms of entertainment or relaxation which are more immediately attractive than reading transcripts of Senate committee hearings.
- Indeed, if a member of the judiciary has any awareness of anything said by Professor Triggs regarding the QUT Case – and at the risk, again, of disillusioning you or the members of your Committee⁵ – it is much more likely to come from her appearances on the ABC’s “7:30”, than from her appearances before your Committee.
- Should a Judge ever have to consider whether the AHRC stuffed up the pre-litigation processes and procedures in relation to the QUT Case, that issue will be decided on the evidence. Some of that evidence may come from witnesses: for instance, Mr Thwaites will doubtless testify that he did not learn about Ms Prior’s complaint to the AHRC for 14 or 15 months, and was only told about it 3 business days before the pretended “conciliation conference”; Mr Powell’s testimony will be that he first learnt about the complaint after the file had been closed by the AHRC. But such testimony is unlikely to be contentious; and in any case, since Professor Triggs was “missing in action” at the relevant times, there is no prospect of her version of history (however she cares to repackage it for your Committee) will conflict with the accounts given by such witnesses.

⁵ I am wondering if this is what is known as a “double disillusion”.

- Most of the evidence, however, will be entirely documentary. At the end of a process which has been long and tortuous, I believe that (as counsel for Mr Powell and Mr Thwaites) I now hold copies of every relevant document from the AHRC's archives concerning Ms Prior's complaint – with the exception of a few redacted passages, indicating how much "go away money" QUT was prepared to offer to Ms Prior, and how much she wanted (which matters, in any event, are now "open secrets") –; and, unlike Professor Triggs, I have also read all of that documentation. Proof that the Prior complaint was never referred to Professor Triggs, in contravention of section 46PD of the AHRC Act, will not depend on anyone's testimony: it is clear from the documents. Proof that there was no genuine attempt to "inquire into" the Prior complaint, and only a solemn farce of a pretended "attempt to conciliate the complaint", in contravention of section 46PF(1) of the AHRC Act, will not depend on anyone's testimony: again, it is clear from the documents. The fact that these functions were left entirely to junior staffers at the AHRC, none of them holding a delegation from the President, will be proved in the same way. So will the fact that, for 14 months, the AHRC made no attempt to contact any of the students – and not that the AHRC was prevented from doing so because somebody was on holidays, as Professor Triggs mendaciously told Leigh Sales on the ABC's "7:30".
- It therefore really doesn't matter what Professor Triggs tells your Committee, or indeed what she says in any other forum. If she speaks only the truth, it will just reflect what can be proved from the documents. And if she says anything other than what is reflected in the documents – that is, in the file notes, internal memoranda, correspondence, and other documentation received or generated by her own organization – a court is not going to be hamstrung in ascertaining where the truth actually lies.
- There is a certain egotism in the supposition by Professor Triggs that what she says regarding the QUT Case will somehow prejudice a Judge's view of the facts. The case has been widely discussed and debated across a range of media organs, some notably sympathetic to the AHRC and Professor Triggs, and some less so. Yet Professor Triggs seems to be under the arrogant belief that her pronouncements may be prejudicial, where pronouncements by lesser mortals will not be.
- Maybe Professor Triggs imagines that her reputation for honesty will give her observations added weight. My experience, as a member of the legal profession, is that she is supported by some (mainly left-leaning) lawyers, and also disparaged by some (whose political inclinations mainly lie in the opposite direction); and that the great majority have no strong views about her, aside from the fact that she is invariably well-presented and has a very cultured speaking voice. But I am yet to

meet a single lawyer who, regardless of his or her political disposition, would choose, as an exemplar, Professor Triggs as the ultimate paragon of veracity or credibility.

- (19) In any case, if Professor Triggs is truly of the belief that what she says about the QUT case is likely to have a “prejudicial” impact, it is bizarre that she saw fit to discuss it on the ABC’s “7:30”, yet now pretends to some compunction about discussing it in front of your Committee. As already noted, despite generally dismal ratings, the ABC still seems to attract more viewers than hearings of your committee (though I, for one, cannot imagine why); and the likelihood is that those viewers include a larger number of members of the judiciary. So how is it possible that Professor Triggs has persuaded herself that comments made in one forum may be “prejudicial”, whilst comments made in the other forum will not be ?
- (20) Indeed, if anything, the reverse is true – and not merely because more people (and more judges) are likely to see Professor Triggs on the ABC. Under article 9 of the *Bill of Rights 1689* – which remains part of the law of Australia – “*the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament*”. What this means, in practice, is that (generally speaking) nothing said in the Senate or the House of Representatives, or in any committee thereof, can be tendered as evidence in a court of law. The same does not apply to the ABC’s “7:30”. So if Professor Triggs does choose to say something about the QUT Case before your committee, it can never form part of the evidence in that case. Whereas if (for instance) Professor Triggs were called as a witness in the QUT Case, it is almost certain that she will be cross-examined – and probably at quite considerable length – regarding some of the assertions made by her on that programme, such as:
- her statement that “*this is still before the Federal Court against the university and one student*” (at the time, it was before the Federal Circuit Court rather than the Federal Court; and it was against the University, two members of the University staff, three students who have been served, and one student who is yet to be served);
 - her statement that “*what we did was do what we normally do which is investigate the facts, get a sense of what each of the parties is saying and then attempt to conciliate the matter*” (in fact, as the AHRC’s own documents demonstrate, there was no investigation; there was no attempt to “*get a sense of what each of the parties is saying*” [emphasis added]; and was no genuine “*attempt to conciliate the matter*”);
 - her statement that “*Some students had gone away on holidays, were difficult to connect [connect with (?); or contact (?)] and so on. So that was why it took much longer than usual.*” (every part of that assertion is falsified by the AHRC’s own documents);

- her statement that *“for 14 months or at least for 12 of those months we believed that in good faith we were going to get a conciliation”* (an assertion belied by the fact that the AHRC had not even made contact with seven of the ten respondents);
- her statement that *“... over those months ... we, in good faith, believed that the parties would actually resolve the matter and that would mean it would not have to go to court.”* (an assertion again belied by the fact – demonstrable from the AHRC’s own documents – that the AHRC had not even made contact with seven of the ten respondents);
- her statement that *“Some cases are vexatious or frivolous ... But this one was one that had a level of substance.”* (an assertion which obviously did not find favour with His Honour Judge Jarrett, and which – in any case – has no foundation given that, according to the AHRC’s own records, Professor Triggs never once looked at the case whilst it was with the AHRC, and any views regarding whether or not it *“had a level of substance”* were arrived at by junior staffers holding no delegation from Professor Triggs).

(21) Finally – but most critically of all – Professor Triggs seems to be ignorant of the fact that (as the case-law makes perfectly clear) it is a matter for your Committee to decide whether a particular topic is ‘off limits’; not a matter for the individual witness. A witness may draw to the attention of the Committee circumstances which could support a decision by the Committee not to pursue a particular line of inquiry – whether because of a potential to “prejudice” legal proceedings, or for any other reason – but it is utterly contemptuous for a witness to refuse to answer a question which the Committee allows, because the witness feels that he or she knows better than the Committee which issues should be, and which issues ought not to be, traversed.

I have the honour to be, Senator Macdonald,
Your obedient servant,

Anthony J H Morris QC