

AUSTRALIAN CAPITAL TERRITORY DISCRIMINATION TRIBUNAL

CITATION: MCCORMACK AND CHARLES STURT UNIVERSITY [2008]
ACTDT 4 (30 June 2008)

DT07/21

Catchwords: Discrimination because of disability in the area of education - knowledge of effect of disability - failure to provide ergonomic furniture - requirement to enrol by email - application to strike out complaint as lacking in substance

Discrimination Act 1991, ss 8, 18, 77A, 79
Human Rights Commission Act 2005, s 78(2)(iv)

Legal Aid Commission (ACT) & Ors v Grundy [1999] ACTSC 318
State Electricity Commission v Rabel & Ors [1997] EOC 92/875
Clean Ocean Foundation v Environment Protection Authority (2003)
20 VAR 227 at 230-231
Lucy Couper and ACT Housing [2004] ACTDT 4 (22 June 2004)
Worrall v ACT Health [2006] ACTDT 1 (18 January 2006)
Jamal v Secretary Department of Health (1988) 14 NSWSR 252

Tribunal: Mr M H Peedom, Deputy President

Date: 30 June 2008

AUSTRALIAN CAPITAL TERRITORY
DISCRIMINATION TRIBUNAL

)
)

NO: DT07/21

RE: **CATHLEEN
MCCORMACK**
Applicant

AND: **CHARLES STURT
UNIVERSITY**
Respondent

ORDER

Tribunal : Mr M H Peedom, Deputy President

Date : 30 June 2008

Order :

THE TRIBUNAL ORDERS, pursuant to section 79 of the Discrimination Act 1991,
that the complaint be dismissed on the ground that it lacks substance.

.....
Deputy President

AUSTRALIAN CAPITAL TERRITORY
DISCRIMINATION TRIBUNAL

)

NO: DT07/21

RE: **CATHLEEN
MCCORMACK**
Applicant

AND: **CHARLES STURT
UNIVERSITY**
Respondent

REASONS FOR DECISION

30 June 2008

Mr M H Peedom, Deputy President

The application

The respondent in this case has applied for the complainant's complaint of unlawful discrimination to be struck out pursuant to section 79 of the Discrimination Act 1991 ("**the Discrimination Act**"). Section 79 empowers the Tribunal, at any time before it begins hearing the complaint, to strike out the complaint on the grounds that it is frivolous, vexatious or not made honestly or that it lacks substance. The ground relied upon by the respondent in this case is that the complaint lacks substance.

The complaint

2. In her complaint, lodged with the Human Rights Commission on 14 March 2007, the complainant alleged that she had been treated unfavourably in the area of education because of disabilities from which she suffered. The disabilities which she identified were "mobility problems, leg/hip, jaw joint condition".
3. In response to requests contained in the form of complaint for information about the treatment of which she complained and the reasons for that treatment she said that she was asked to enrol by email at the educational institution operated by the respondent and that this was extremely hard for her because of her disabilities. She also alleged that she had not been provided with ergonomic furniture because the

respondent's disability officer had requested a specialist's medical report regarding her disabilities and she could not afford to obtain one.

4. In support of her complaint the complainant provided to the Human Rights Commission an email message received by her from an officer of the respondent dated 14 February 2007, her email reply also dated 14 February 2007 and a copy of a further email from the respondent's officer to the complainant which does not show its date. The first email from the respondent's officer to the complainant referred to a telephone conversation between the officer and the complainant and advised that it was cheapest for the complainant to contact the respondent by email and to include her student number in any email communication. The complainant's response explained that she had experienced difficulty getting an Internet link to activate display of an enrolment form and asked for advice. She went on to say:

Tried twice to re-enrol BUT cannot do, due to no information through Course information. 2nd Student Administration they made MISTAKE on two phone calls – directed to Student Liaison Officer sick. (Student contacted on Wed 14/2/06 early afternoon. Student cannot make phone calls neither use computer REGULAR NO access on – Thursdays. Please avoid asking to phone Friday. Student has number of medical appointments to attend.

5. The undated email response sent on behalf of the respondent to the complainant stated that the complainant was enrolled in Bachelor of Business (Accounting). It provided an Internet address and identified the location on the webspace of the source of information regarding re-enrolment.

6. The complainant also attached to her complaint a form of request for a health practitioner's report that had been signed by her and dated 5 March 2007. The form contained advice that the respondent provided services, study and assessment, accommodation for students with disabilities or health conditions which aimed to reduce the impact of the conditions on study. In space provided on the form to be completed by a health practitioner a general medical practitioner stated that the complainant's disabilities related to her hip, back and neck. It said that there was a problem with the flexion of the complainant's neck and she needed a book holder.

She was unable to write for long and needed rest breaks, a typist and a trolley to carry books.

Procedural matters

7. The complainant's complaint was referred by the Human Rights Commission to the Tribunal on 17 December 2007 with a request that the matter be set down for a public hearing. The request was accompanied by the completed complaint form to which were attached the email communications referred to in paragraphs 4-6 above, a copy of the decision of the Human Rights Commission in relation to the complaint, the complainant's request that the matter be referred to the Tribunal and letters to the parties notifying them that the matter had been referred to the Tribunal.

8. In her decision, dated 11 October 2007 the delegate of the Human Rights Commission closed the complaint, pursuant to Section 78 (2)(iv) of the Human Rights Commission Act 2005, being satisfied that the complaint lacked substance.

9. On 18 December 2007 a directions hearing was listed before the Tribunal for 14 January 2008. On 11 January 2008 the respondent lodged an application pursuant to section 79 of the Discrimination Act that the complaint be struck out on the ground that it was lacking in substance. On 14 January 2007 the complainant requested an adjournment of the directions hearing listed for that day by telephone to the Registry of the Tribunal on the ground that she had only received notice of the directions hearing on that date on return to her home from interstate and that she wished to arrange for assistance to be provided to her by a disability advocate. The directions hearing was adjourned to 21 January 2008.

10. At the directions hearing on 21 January 2008 the consent of the Tribunal was given to the respondent being represented by a legal practitioner. The complainant represented herself but was assisted by an advocate from Advocacy for Inclusion, an organisation which, inter alia, provides assistance to and represents persons who have a disability. The Tribunal indicated to the parties that it was not prepared to consider the strike out application prior to the complainant having opportunity to present to the Tribunal the evidence on which she relied in support of her complaint. It directed that

the complainant file and serve a response to the respondent's strike out application by 22 February 2008.

11. On 22 February 2008 the complainant contacted the Registry of the Tribunal by telephone and requested that it extend the time for compliance with the directions given on 21 January 2008. She said that she had not been aware that the Human Rights Commission had not forwarded all of the documents relevant to her complaint to the Tribunal and she needed time for her advocate to assist her in preparing the documents. She was requested to make a written application for an extension of time explaining the reasons for her failure to comply with the direction and to provide a copy to the respondent.

12. By letter dated 28 February 2008 the complainant's advocate requested the Tribunal to provide advice as to what was required to be done by the complainant to comply with the Tribunal's direction.

13. The advocate was given telephone advice by the Tribunal Registry on 4 March 2008 that a request for an extension of time to comply with the Tribunal's directions explaining why it had not been possible to comply with the directions should be provided to the Tribunal and a copy given to the respondent. She was given further explanation regarding the Tribunal's procedures for dealing with such applications.

14. By email dated 4 March 2008 the advocate advised the Tribunal that the complainant had left a message for her to say that she had left to go to Wagga Wagga and did not explain clearly when she would return.

15. By letter dated 6 March 2008 the Tribunal Registry advised the advocate (and the parties) that the matter had been listed for a further directions hearing on 17 March 2008 and that the complainant should respond to the strike out application prior to that date and file and serve a copy of any witness statement and evidence on which she intended to rely prior to that date. If she was unable to do so she should provide a written explanation to the Tribunal and the respondent. The complainant did not lodge any of the material as requested by it but she contacted the Tribunal by

telephone and said that she could not attend the Tribunal on 17 March 2008, as her advocate did not work on that day.

16. At a directions hearing on 17 March 2008, at which the complainant did not appear, the Tribunal directed her to lodge with the Tribunal and serve on the respondent any witness statement and any other material intended to be relied upon by her by 14 April 2008. The respondent was directed to serve any material in reply by 28 April 2008 and the matter was listed for hearing on 13 May 2008.

17. The complainant's advocate contacted the Tribunal Registry by telephone on 19 March 2008 and advised that she had arranged a meeting with the complainant on 26 March 2008 and hoped to then progress the matter. She further advised that a meeting was, in fact, held on 3 April 2008 and a further meeting arranged for 10 April 2008.

18. The complainant lodged with the Tribunal a document signed by her and dated 10 April 2008. The content of that letter is referred to below. No other material was filed or served on behalf of the complainant in compliance with the Tribunal's directions dated 17 March 2008 or otherwise.

19. On 23 April 2008 the Tribunal received a letter from the respondent's solicitors, which asserted that the complainant's letter dated 10 April 2008 did not satisfy the Tribunal's directions and that it raised new complaints not contained in the complaint to the Human Rights Commission. The letter requested that the Tribunal exercise its power under section 77A of the Discrimination Act to strike out the complaint. Section 77A empowers the Tribunal to refuse to hear, or further hear, a complaint if the complainant fails to comply with a reasonable direction of the Tribunal.

20. Following confirmation by the respondent's solicitors that they had served a copy of their letter to the Tribunal dated 23 April 2008 on the complainant on 30 April 2008 the Tribunal advised the parties that it proposed to hear the respondent's applications made pursuant to section 77A and section 79 of the Discrimination Act on 13 May 2008.

21. By letter dated 7 May 2008 the respondent's solicitors advised that the application made pursuant to section 77A was withdrawn.

The Hearing

22. At the hearing of the application by the respondent to strike out the complaint pursuant to section 79 of the Discrimination Act the complainant represented herself but was assisted by Mr I Goodacre, an advocate from Advocacy for Inclusion. The respondent was represented, with the consent of the Tribunal, by Ms W Li, a legal practitioner.

23. The Tribunal admitted in evidence on behalf of the complainant the documents referred to in paragraph 7 above and the document dated 10 April 2008 (referred to in paragraph 18 above). In that document the complainant stated that she had provided a series of medical certificates to the respondent in 2007. She understood that the respondent had the necessary ergonomic furniture recommended by the certificates but the respondent had refused to provide it to her. She said that anti-glare screens for computers (which, presumably she had requested) did exist and they were on the computers at the university. She suggested that a further search could be made for the screens.

24. On behalf of the Respondent, email correspondence between the complainant and an officer of the Respondent dated 9 November 2007 and a statement of Miriam Dayhew dated 24 April 2008 were admitted in evidence.

25. The email message from the complainant to an officer of the Respondent dated 9 November 2007 thanked the officer for giving the complainant a reminder about her re-enrolment at the university and said that she would like to enrol in ACC100 Accounting 1 Information and Business MKT110 Marketing Principal for 2008. In her reply, also dated 9 November 2007, the officer stated that she had completed the complainant's enrolment and that she was taking annual leave.

26. Miriam Dayhew occupies the position of University Ombudsman employed by the respondent. In a written statement admitted in evidence Ms Dayhew said that the

complainant first registered with the university's disability service on 2 March 2005 with supporting medical documentation indicating that she had "right elbow, forearm, wrist and hand, occupational overuse syndrome/repetitive strain injury". In accordance with usual practise, on registering with the disability services, the respondent developed a support plan to accommodate the complainant's disabilities. This was done in consultation with the complainant and the co-ordinators for the courses in which the complainant was enrolled. The support plan was developed in 2005 and subsequently monitored by the Respondent and amended as considered appropriate. Copies of the support plans were attached to Ms Dayhew's statement.

27. Steps taken by the Respondent to accommodate the complainants disabilities included, without charge, the provision of a mobility scooter for use when visiting the university campus, a track-ball ergonomic mouse, a light weight aluminium trolley for carrying heavy books, a copy of voice recognition software and accessories for software for use in her home study environment and an ergonomically suitable work station. The respondent also allowed the complainant extra time for the completion of assignments, special provision for exams and early distance education study packages and being provided with individual training sessions in the use of the voice recognition software.

28. Ms Dayhew stated that when the complainant registered with the disability service she did not advise that she could not use the internet or type nor did she subsequently provide such advice to the respondent. The respondent first became aware that the complainant said she had a typing difficulty was when it received a copy of the complaint made to the Human Rights Commission. She said that she was aware that the complainant had used the Internet and email frequently in the past to study and communicate with the university. She attached to her statement a number of emails received by the respondent from the complainant.

29. Ms Dayhew had subsequently become aware that the complainant did not enrol online but had been personally enrolled by the respondent's staff after they had been informed that the complainant had difficulty enrolling online.

30. Ms Dayhew said that, to verify the nature of a student's disability and to determine what assistance was necessary to be provided, the respondent required supporting documentation from an appropriate health professional. In order to revise and update the complainant's disability support plan for 2007 the respondent requested an update of the complainant's medical information. When contacted by the respondent's disability liaison officer on 28 February 2007 the complainant indicated that she had no objection to the provision of such information. The disability liaison officer did not request a specialist report, but asked for an updated report from the complainant's treating medical practitioner. No disability service was withheld pending receipt of that information.

31. Ms Dayhew said that the respondent received a number of medical certificates from the complainant in 2007. A certificate from Dr. Dutta dated 15 March 2007 stated that the complainant had "neck, shoulder, hip & thigh pain aggravated by use of the library chair and table setting". The certificate stated that the complainant would benefit from an ergonomic chair (preferably gas lift) in the library. This was apparently a reference to the National Library of Australia, where the complainant undertook study/research.

32. A report by an unidentified health practitioner dated 5 March 2007 stated that the complainant suffered:

hip pain, back pain, neck pain for 12/12. Unable to look down...shock reaction 3 months ago...unable to read with flexion of neck. Need book holder. Unable to write for long. Need break and typist. Need aluminium trolley to carry textbooks.

The respondent had supplied these adjustments and provided information to the complainant on how to create a book holder.

33. A medical certificate from Dr S Lo dated 5 March 2007 stated:

Suffers from soft tissue injuries and chronic pain on her neck back and hip. She requires aluminium trolley, book holder, <adjustable>, regular breaks,

gas lift ergonomic chair, trackball device, antiglare screen blue glass, electric scooter. She also requests a typist for assistance.

34. In relation to Dr Lo's report, Ms Dayhew said that when attending the university campus, the complainant was provided with regular breaks, an ergonomically suitable workstation, track-ball device and an electric scooter. The use of either a typist or voice recognition software to assist with typing tasks was also provided to the complainant. The respondent had made no provision for the provision of an ergonomic chair at the National Library of Australia. She said that the respondent's computer monitors were not fitted with antiglare screens as the computers were antiglare and did not require them.

35. In oral evidence given at the hearing Ms Dayhew said that the complainant was contacted by the respondent's disability liaison officer to enquire whether she wished to re-enrol at the university in 2007. When she indicated that she did she was directed to the university's website with instructions as to the manner in which the re-enrolment should be made. She was advised what information needed to be provided but when she said that she was unable to complete the enrolment form this was done on her behalf by university staff.

36. There was produced in evidence an email from the complainant to an officer of the respondent, which thanked her for reminding the complainant about her re-enrolment. She identified the subjects in which she was to be enrolled and provided her student identification number. An email reply, also dated 9 November 2007, confirmed that the complainant had been enrolled as requested.

37. In cross-examination by the complainant it was put to Ms Dayhew that the complainant had requested the provision of an ergonomic chair about three weeks prior to attending a lecture on one of her subjects. Ms Dayhew agreed that the respondent had received a request by the complainant for the provision to her of an ergonomic chair at a voluntary seminar conducted by Macquarie University in Sydney. The respondent's disability liaison officer had contacted Macquarie University and requested that a gas filled chair be provided to the complainant as well as a heat pack and access to a microwave oven and acceptance of the need for the

complainant to move around from time to time which could be a cause of disturbance to other students at the seminar. Macquarie University has advised a few days in advance of the seminar that it would be unable to provide a gas filled chair at the venue at which the seminar was to be conducted but could arrange for the complainant to be located in a position where she could move from her seat from time to time. The disability liaison officer contacted the complainant and advised her that an ergonomic chair could not be provided so that she could make the decision as to whether she wish to continue with her attendance at the seminar or not.

38. The complainant suggested to Ms Dayhew that the respondent had failed to provide the equipment referred to in the request for health practitioner's report dated 5 March 2007. In particular it was suggested that the complainant had not been provided with a monitor raiser or an adjustable book holder. Ms Dayhew disagreed that the health practitioner's report did, in fact, contain a request for the provision for either such item. She said that on the occasions when the complainant visited the university campus arrangements had been made by the disability liaison officer to provide a workstation specifically designed to meet her needs. This had included the positioning of a computer screen at the correct height, a chair that could be adjusted to suit her posture and a book holder that was positioned so as to avoid the need for her to look down at reading material. This had specifically addressed the inability of the complainant to read with flexion of her neck. The disability liaison officer who assisted the complainant was a qualified occupational therapist and had attended the complainant on each occasion on which she had attended the university campus to assist in addressing the requirements identified in the medical certificates provided by the complainant to the respondent.

39. In response suggestions by the Tribunal that the complainant might wish by her questions to identify specific items or requirements that she alleged had been identified by medical certificates as required for use by her and not provided to her, the complainant stated that they appeared in documents that she would need to forward to the university.

The law to be applied

40. Having regard to the nature of the allegations made by the complainant consideration is required to be given as to whether the respondent acted contrary to Section 18 of the Discrimination Act. That section provides:

18 Education

(1) It is unlawful for an educational authority to discriminate against a person-

(a) by failing to accept the person's application for admission as a student; or

(b) in the terms or conditions on which it is prepared to admit the person as a student.

*Note The Legislation Act, dict, pt 1 defines **fail** to include refuse.*

(2) It is unlawful for an educational authority to discriminate against a student-

(a) by denying the student access, or limiting the student's access, to any benefit provided by the authority; or

(b) by expelling the student; or

(c) by subjecting the student to any other detriment.

Under Section 8 of the Discrimination Act discrimination occurs if-

(a) the person treats or proposes to treat the other person unfavourably because the other person has, inter alia, a disability; or

(b) the person imposes or proposes to impose a condition or requirement (other than a condition or requirement which is reasonable in the circumstances) that has, or is likely to have, the affect of disadvantaging people because of the disability.

Section 79 of the Discrimination Act, pursuant to which the respondents strike out application was made, provides:

Application to strike out complaint

The person against whom a complaint is made may, at any time after the complaint is referred to the tribunal and before the tribunal begins hearing the complaint (other than a time when the complaint is being conciliated under the HRC Act), apply to the tribunal to strike out the complaint on any of the following grounds:

- (a) *the complaint is frivolous, vexatious or not made honestly;*
- (b) *the complaint lacks substance.*

Reason for decision

41. In order for the complaint to be substantiated there would need to be some evidence favourable to the complainant's contentions which, taken at their highest in favour of those contentions, would render them seriously arguable (see Legal Aid Commissioner (ACT) & Ors v Grundy [1999] ACTSC 318). In determining whether a complaint should be struck out pursuant to section 79 of the Discrimination Act, the Tribunal ordinarily accepts that it should be assumed that the factual allegations relied on by the complainant are true and such inferences in favour of the respondent as are open should be drawn (see Grundy's Case, paras 4 and 5). If, however, it is clear beyond doubt that the complainant has no arguable case, which should be allowed to be resolved at a full hearing, a complaint may be dismissed as lacking in substance pursuant to section 79 of the Act (see State Electricity Commission v Rabel & Ors [1997] EOC 92/875). The power to dismiss a claim as without substance is required to be exercised with considerable caution (see Clean Ocean Foundation v Environment Protection Authority (2003) 20 VAR 227 at 230-231. See also Lucy Couper and ACT Housing, [2004] ACTDT 4 (22 June 2004).

42. In this case it was not disputed that at the relevant times the respondent was an educational authority and that the complainant suffered from a disability. The respondent did, however, submit that the complainant had failed to substantiate her allegations that she had been treated unfavourably because of her disability, or at all, or that the respondent had imposed any condition or requirement that had, or was likely to have, the affect of disadvantaging the complainant because of her disability.

43. In Rabel's Case, referred to above, in holding that the Victorian Equal Opportunity Board, where exercising the power under section 44C of the Equal Opportunity Act, which is in substantially the same terms as section 79 of the Discrimination Act, was entitled, though not obliged, to determine the matter without receiving evidence, Tadgell JA observed:

The board...did conclude that the complaint was "lacking in substance" because, as I understand, there was an insufficiently solid factual foundation for it. That, of course, is a justification for dismissing a complaint after hearing the complainant's evidence. It is not, in my opinion, a justification for ordering that a complaint be "struck out" pursuant to Section 44C at all events without allowing evidence to be called by the complainant with a view to establishing a prima facie case.

44. At page 119 of Rabel's Case, however, Phillips JA adverted to the possibility that a strike out application could be determined in circumstances where the complainant did concede, at some preliminary and interlocutory stage, that the whole of his material was before the Equal Opportunity Board and that material plainly demonstrated that the complaint was lacking in substance.

45. The application to strike out the complaint, when initially made by the respondent, preceded the giving of the directions by the Tribunal on 21 January 2008 and 17 March 2008 and any opportunity for the complainant to present the evidence on which she relied in support of her complaint. Nor had she by then made any concession that she had provided to the Tribunal all of the material that she might wish to rely upon in support of her complaint. The strike out application was then plainly premature (see also Worrall v ACT Health [2006] ACTDT 1 (18 January 2006)).

46. Opportunity was, however, given by the Tribunal's directions for the complainant to present to it and the respondent the evidence on which she did rely. Although, as is noted below, the complainant indicated at the hearing that there was other material that she considered may support her case, in the view of the Tribunal, reasonable opportunity had been given to her by the Tribunal's directions to lodge the evidence on which she wished to rely before the hearing and, in the absence of any explanation

as to why the directions had not been complied with or as to the detail of such evidence, there was no justification for delaying resolution of the strike out application by adjourning the hearing to allow further evidence to be tendered by the complainant.

47. In relation to the complainant's complaint regarding her re-enrolment at the university in 2007, although some of the email communications between the complainant and the respondent suggest that the respondent's staff expressed a preference for communication with the respondent by the complainant to be by email, the emails from the complainant do not suggest that any difficulty which she encountered with that form of communication was attributable to her disabilities. On the contrary, there was a significant use of email communication by the complainant without any suggestion that this form of communication was made difficult by her disabilities. To the extent to which the complainant experienced difficulty re-enrolling online her emails suggest that this was attributable to difficulty which she experienced in understanding the directions given by the online enrolment facility.

48. In order to constitute discrimination the conduct complained of must be advertent and done with knowledge of the disability. It is not possible to discriminate against a person with a disability contrary to section 18 of the Discrimination Act unless the person against whom the complaint is made knows the existence of the fact (see Jamal v Secretary Department of Health (1988) 14 NSWSR 252).

49. In the absence of evidence of knowledge of the respondent that the complainant experienced difficulty in using email communication because of her disability and having regard to the evidence before the Tribunal of a history of use by the complainant of email communication, a finding that the respondent acted unlawfully is not open to the Tribunal. I note that in any event, the complainant was not required to complete her enrolment online as this was done by staff of the respondent on her behalf following a request made by her by telephone. This aspect of her complaint should be struck out.

50. In relation to the complainant's allegation that the respondent refused or failed to provide her with ergonomic furniture because she had not provided to it a report from

a specialist medical practitioner, no documentary evidence of any such request by the respondent or other requirement imposed by it for such a report was provided to the Tribunal. Nor did the complainant present any evidence of such a request being made to her or of any such requirement being imposed on her. I see no reason to not accept the evidence of Ms Dayhew that no such request was made or that any such requirement was imposed. This aspect of her complaint, as formulated by it, cannot be substantiated.

51. At the hearing of the complaint, however, the respondent did not seek to restrict the complainant's complaint regarding the inadequacy of ergonomic furniture or the failure to provide it as requested by the complainant to the terms of her complaint to the Human Rights Commission. It relied upon additional grounds.

52. I accept the submission made on behalf of the respondent that the fact that ergonomic furniture was not provided to the complainant when she attended a seminar in New South Wales, is a matter that is beyond the jurisdiction of the Tribunal.

53. In relation to the complainant's attendance of the respondent's university campus, Ms Dayhew gave evidence that the complainant's requirements for ergonomic furniture on these occasions when she attended the university campus were individually assessed and arranged to be provided by a qualified occupational therapist and were designed to meet her personal requirements. Aside from any question of lack of jurisdiction in relation to this aspect of her complaint, the absence of any evidence to support a finding that ergonomic furniture provided to her was deficient her complaint cannot be substantiated.

54. Whether the failure of the respondent to provide ergonomic furniture at a location in the Australian Capital Territory involved unfavourable treatment of the complainant or involved the imposition of a condition or requirement that was unreasonable would depend upon a consideration of a range of factors including the nature and extent of the student's disability, the particular equipment required, the capacity of the venue to accommodate it, the frequency with which the equipment would be used, the availability and practicality of the use of alternative venues for

study and any necessary research, the cost of providing the equipment and other factors.

55. The absence of evidence to enable these kinds of matters to be assessed precludes any finding by the Tribunal that the complainant has been able to substantiate a complaint that she has been treated unfavourably or that an unreasonable condition or requirement had been imposed upon her.

Conclusion

56. I therefore conclude that the complainant's complaints lack substance and should be struck out.

PUBLICATION DETAILS

TO BE PUBLISHED

To be completed by Member's Staff

PART A

FILE NO: DT07/21

COMPLAINANT: CATHLEEN MCCORMACK
RESPONDENT: CHARLES STURT UNIVERSITY
PARTY JOINED: N/A

COUNSEL APPEARING: **COMPLAINANT:**
RESPONDENT: MS W LI
PARTY JOINED:

SOLICITORS: **COMPLAINANT:**
RESPONDENT: MINTER ELLISON
PARTY JOINED:

OTHER: **COMPLAINANT:**
RESPONDENT:
PARTY JOINED:

TRIBUNAL MEMBER/S: MR M H PEEDOM, DEPUTY PRESIDENT

DATE/S OF HEARING: 13 MAY 2008 **PLACE:** CANBERRA

DATE OF DECISION: 30 JUNE 2008 **PLACE:** CANBERRA