

AFFIDAVIT

I, Valda June Kerrison
of Unit 5 at 71 Probert Street Newtown in the State of NSW, teacher
duly sworn, say on oath

I have prepared this affidavit in reply to the Respondents Affidavit of 20 October 2000 for the Industrial Relations Commission in Court Session 3124 of 2000

To the Respondent's Affidavit in reply I say that:

1 In relation to paragraph C i) the Respondent does not deny ground 1 of the applicant's "Application for Declaration under s 154"..This ground states that on 2 February 1989 I was appointed a permanent employee of Department of Technical and Further Education (TAFE) as a technical teacher pursuant to provisions of the Education Commission Act 1980.

1.1 NOTE: It would appear that MacMahon Associates made an error of nomenclature when drawing up this Application and the last part of the sentence should in fact read that I "was appointed....pursuant to Teaching Services Act 1980

1.2 In further support of this ground I detailed in my Affidavit 9 Sept 2000 all the steps that were taken before the (then) TAFE Director General made the decision to appoint me (refer Paragraphs 8-22 of the Applicant's Affidavit 9 September 2000).

1.3 At that relevant time TAFE informed me of the procedural steps required for this administrative process and the reasons for them. The processes were that I applied and signed my application for permanent appointment, then after all required forms, processes, and signatures had been processed the Permanent Appointments Clerk wrote and recommended to the Director General that I be appointed to the position.

1.4 After that the Director General made the formal decision as to whether or not he would appoint me. His decision to do so was formally gazetted. TAFE duly notified me that TAFE Director General had accepted my application, appointed me and gazetted that appointment.

2 In relation to paragraph C ii) :

2.1 The Respondent relies on a letter from the Managing Director of the TAFE Commission dated 17 January 1995 to the Director of North Coast Institute as legitimate authorisation to refer the applicant to HealthQuest (annexure E)

2.1.1. I had lodged grievances that:

2.1.1.1 TAFE managers including Ms Elizabeth McGregor had sent summary letter of termination to Aboriginal students in the Kempsey TAFE Djigay Centre of Excellence in Aboriginal Education,

2.1.1.2 Kempsey TAFE staffmember Ms Rhonda Hayes had turned newly enrolled Aboriginal students away from their initial Business Services class,

2.1.1.3 Ms Hayes had victimised/discriminated against vulnerable women in a Work Opportunity for Women EEO course, and

2.1.1.4 Ms Hayes had, personally victimised myself and others for years.

2.1.2. Dr Ramsey selected the TAFE officers to investigate.

- 2.1.3. On 25 October 1994 I wrote to Dr Ramsey in relation to the purported investigation. (SEE TAB 1).
- 2.1.4. In that letter I expressed grievance including that:
 - 2.1.4.1 his appointed investigators did not contact key witnesses
 - 2.1.4.2 I had commenced raising these issues to TAFE management in 1989;
 - 2.1.4.3 my Occupational Health and Safety (OH&S) situation in TAFE was worsened, and
 - 2.1.4.4 I was taking the matters outside TAFE seeking resolution.
- 2.1.5. Dr Ramsey explored options with Mr John Allsopp TAFE Group General Manager Resources and wrote " "Mr Allsopp -> IR. Could I please have a personal (oral) briefing on this. What action can we take? [initials] MD 2/11/94" (Tab 1)
- 2.2 Following his deliberations, Dr Ramsey wrote a response to my 25 October 1994 letter. Dr Ramsey forwarded his letter dated 17 January 1994 to me just prior to his writing on the same day his letter (Respondent's Annexure E) to Dr Willmott.
 - 2.2.1. TAFE's copy of Dr Ramsey's letter 17 January 1995 letter to me is attached. (SEE TAB 2)
 - 2.2.1.1 Dr Ramsey had asked Mr Allsopp specifically for oral communication.
 - 2.2.1.2 TAFE's copy of this letter has markers pointing to some undisclosed matter.
 - 2.2.1.3 That information has not been supplied by the Respondents although summonsed for them to be produced to the court.
 - 2.2.2. Dr Ramsey then actively concealed his decision and actions from me by producing on the same day two entirely different letters about the same situation.
 - 2.2.3. Dr Ramsey's letter to me gave no hint of the course of action urged upon to Dr Wilmot as a result of my correspondence.
 - 2.2.4. Instead Dr Ramsey in his letter to me gave a false assurance that victimisation was not to be tolerated in TAFE (Tab 2)..
- 2.3 Dr Ramsey referred to both the letter I wrote to him (25 October 1994) and his reply (17 January 1995) when he wrote on 17 January 1995 to Dr Willmott and enclosed copies of the correspondence.
- 2.4 Dr Willmott had all the relevant documents showing Dr Ramsey's deceitful conduct and the improper purpose behind this conduct.
- 2.5 The Respondent has not identified in what way Annexure E represents any valid or lawful exercise of statutory power right or authority by Dr Ramsey in relation me and my employment.
- 2.6 The Respondent has not produced any evidence to show that I was afforded natural justice/procedural fairness in any decisions made by Dr Ramsey on 17 January 1994 with regard to her legal personal rights and legitimate expectations.
- 2.7 Those legitimate expectations included the expectation that the TAFE Commission and its Managing Director would abide by the terms and conditions of the TAFE Commission Enterprise Agreement .signed jointly on 31 January 1994 by Dr Ramsey and John Hennessey (General Secretary of the NSW Teachers Federation)

2.7.1. Clause 32 of the Enterprise Agreement is titled Grievance Resolution and states inter alia:

“This process shall apply to all education staff as defined.

“4.1.1.1 A grievance is a statement or approach by a staff member(s) to a supervisor/manager on a work related problem, concern or complaint, which may relate to:

* harassment and/or discrimination on the basis of sex, race, marital status, Aboriginality, physical/intellectual impairment, homosexuality... psychiatric disability or age in relation to compulsory retirement (see Prevention of Harassment Policy).

* interpersonal conflict at work including supervisor-staff and co-worker conflicts

4.2.1 All supervisors and managers have an obligation to identify and resolve, as far as possible, causes of stress to staff without waiting for a grievance to be expressed.

4.2.13 Victimization of any staff member as a result of using this policy is totally unacceptable and could lead to formal discipline action.

5.1.1 Where a staff member(s) has a grievance the matter should be brought to the attention of the immediate supervisor/manager as soon as practicable...

5.1.4 Supervisors will address the matter within 5 working days, either by way of resolving the grievance or negotiating an agreed method and time-frame of proceeding

Page 9 *grievances can be raised either verbally or in writing...

Page 2: * line managers are responsible for handling grievances...

there are specified time-frames for dealing with grievances

Page 3: 3.1 This policy aims to create and maintain a productive and positive, non discriminatory and harassment free work environment.

3.2 The Commission's management has a responsibility to prevent, identify and resolve problems in the workplace

3.3 Every staff member has a responsibility to treat other staff in a way which will not cause distress.

Page 7: 5.0.2 ...The emphasis is on the resolution of grievances in the workplace at the level at which they occur. The objective is to resolve the grievance as soon as possible.

5.1.4 Supervisors will address the matter within 5 working days, either by way of resolving the grievance or negotiating an agreed method and time-frame of proceeding.

Page 4: 4.2.9 A grievance is considered concluded, although not necessarily resolved, when a person with a grievance chooses to withdraw. The grievant should advise the person handling the grievance either in writing or verbally.

4.2.10 Wherever possible grievances should be resolved in a way that is satisfactory to all those involved. Grievances are usually only considered resolved when the cause of the grievance has been removed or dealt with, and when arrangements have been made to repair and make good any damage and distress suffered by the grievant and/or respondent.

- 2.8 Dr Ramsey ignored the TAFE Commission Enterprise Agreement and its Grievance Resolution procedures and proceeded to victimise me as his preferred option to resolve the grievances lodged with him since 1993 and those in my letter 25 October 1994.
- 2.8.1. Dr Ramsey explored options then victimised me in response to grievances lodged with Dr Ramsey, the highest level of TAFE, and signatory to the TAFE Grievance policy.
- 2.8.2. Dr Ramsey victimised me by misusing his power of office to authorise an invalid HealthQuest purported assessment of me.
- 2.9 At all times Dr Ramsey had other, less damaging processes to me available.
- 2.9.1. Dr Ramsey could have decided to properly investigate; and/or
- 2.9.2. Efficiently and effectively address the workplace issues of reports of discrimination, victimisation, and Occupational Health and Safety (OH&S) concerns in TAFE.
- 2.10 Dr Ramsey chose the process which caused the most damage to me.
- 2.11 Dr Ramsey did not tell me what he was doing, or give me any options so that I could protect my family and myself from the devastating consequences of his decision.
- 2.12 Instead, Dr Ramsey decided to arbitrarily 'authorise' the process which could and did:
- 2.12.1. discredit me and my reports past, present and future,
- 2.12.2. discredit my previously good reputation both professionally and personally and through implication the members of my family as well
- 2.12.3. stigmatise my reputation through government departments including the DET/TAFE system, Department of Health, and superannuation
- 2.12.4. detrimentally affect if not destroy my career interests and options (SEE TAB 3 and TAB 4)
- 2.12.5. deprive me of my possessions such as job, income, and reputation.
- 2.12.6. enable NCI TAFE under Dr Gary Willmott to purport that HealthQuest arbitrarily retired me in 1995
- 2.12.7. enable the Minister Mr Aquilina to purport that I was "retired" in June 1995 (SEE TAB 5)
- 2.12.8. enable the Minister Mr Aquilina, through the Hon Jeff Shaw to represent to Parliament in 1997 that I was "retired" "effective from 13 September 1996" (SEE TAB 6)
- 2.12.9. enable TAFE to represent to the superannuation authority that I was somehow arbitrarily "retired" without my knowledge or input in 1995 and 1996 and 1998
- 2.12.10. keep me in employment limbo for more than 5 years while TAFE arbitrarily changed my employment status at will and without my knowledge through the years 1995 to the present day.
- 2.12.11. cause physical stress, pain and suffering
- 2.12.12. cause professional harm which has not ended to this day and is structured by HealthQuest and TAFE in such a way that it could extend through my lifetime, and through implication, damage my children's career options:
- 2.12.13.

- 2.12.14. Cause me to leave my home and husband in Kempsey to come Sydney to work with others treated similarly to address and attempt to rectify at least some of the detriments listed in this paragraph.
- 2.13 After receiving Dr Ramsey's letter to Dr Willmott of January 17 1995, (respondent's Annexure E). Dr Willmott added the following annotation:
"Noted 25/1/95 For attention Kerry Walshaw" (SEE TAB 7)
- 2.14 Dr Willmott then acted promptly in forwarding Dr Ramsey's letter along with attachments to Ms Walshaw.
- 2.15 On the same day 25 January 1995 he wrote the following note:
"To: 25/1/95 Kerry, Did I send on to you the Report referred to in this letter. I remember it and thought I had it, but can't find it. Gary". SEE TAB 8)
- 2.16 Therefore, on or about the 17 - 25 January 1995 Dr Ramsey, Dr Willmott and Ms Walshaw (A Manager Human Resources) all had in their possession:
- 2.16.1. My original complaints which included allegations of racial and gender discrimination and victimisation in TAFE
- 2.16.2. My letter dated 25 October 1994 informing Dr Ramsey that key witnesses named in my complaint were not contacted by any investigators, and that I was going outside TAFE to seek assistance
- 2.16.3. Dr Ramsey's letter dated 17 January 1995 to Dr Willmott acknowledging that my complaints were true and urging a forced psychiatric assessment to deal with the issues.
- 2.17 On this basis, Ms Walshaw's office, under the Directorship of Dr Gary Willmott, wrote the letter to HealthQuest 1 May 1995 (Respondent's Annexure D) .
- 3 Ms Walshaw and Dr Willmott had access to their own internal files which showed that
- 3.1.1. I continued to work to a high standard promoting TAFE, its management, its students and courses (See all of Affidavit 9 August 2000) and TAB 9
- 3.2 TAFE themselves at all times deemed my work to be satisfactory (See all of Affidavit 9 August 2000 and Tab 4)
- 4 The Respondent states at Paragraph C ii a) "*the New South Wales Government Medical Officer (GMO) issued a medical certificate recommending the retirement of the applicant for health reasons. That certificate was issued on 16 June 1995, a copy of that certificate is attached and marked 'A' "*
- 4.1 The respondent has not shown that the GMO (HealthQuest or any practitioner practicing therein) has any statutory right authority or power to issue a Retirement Certificate or other authoritative certificate relating to the appointment of the Applicant.
- 4.2 The respondent admits that the GMO HealthQuest can only recommend actions to an employer
- 4.3 Any decision made by the GMO on 16 June 1995 in relation to the applicant failed to observe the rules of natural justice/procedural fairness.
- 4.4 The respondent fails to explain how a purported document entitled "Retirement Certificate" could possibly be a recommendation when:
- 4.4.1. That document does not contain the word "recommendation"

4.4.2. The word "certificate" is a word of normal usage. The Macquarie Dictionary defines "*Certificate; n a writing on paper certifying to the truth of something or to status, qualification, privileges etc. 2 a document issued to a person passing a particular examination 3 ... 4 Law a statement written and signed which is by law made evidence of the truth of the facts stated for all or for certain purposes. "* and "*Certify; v to guarantee as certain; a writing on paper certifying to the truth of something or to status, qualification, privilege, position."*

4.5 The respondent has produced no defence in relation to the Applicant's grounds 2-4.

5 In relation to Respondents Affidavit Paragraph C iii

5.1 the Respondent has not identified any statutory right or authority for the Medical Appeals Panel to conduct any "appeal"

5.2 The Medical Appeals Panel has no statutory right or power to conduct any appeal.

6 The Respondent has produced no defence in relation to Applicant's ground 5-7.

7 In relation to Respondent's Affidavit Paragraph C iv a)

7.1 the Respondent relies on a purported investigation done at HealthQuest on 19 May 1995 as evidence that I had been found unfit to discharge or incapable of discharging my duties.

7.1.1. HealthQuest did not obtain my informed consent for any procedure conducted by them on 19 May 1995.

7.1.2. HealthQuest found the Applicant fit to continue on 19 May 1995

7.2 Following any purported investigation done at HealthQuest on 19 May 1995 (when HealthQuest found the Applicant Fit to Continue (FTC) the applicant continued working to TAFE's satisfaction.

7.3 The applicant has provided evidence in support of her satisfactory work performance in her affidavit 9 August 2000.

7.4 The respondent in its affidavit of defence 20 October 2000 did not contest any of this evidence.

7.5 The Respondent has produced no defence in relation to Applicant's ground 8.

7.6 The Respondent's defence against the applicant's ground 8 fails.

8 In relation to Respondent's Affidavit Paragraph C iv b)-c}

8.1 The respondent relies on a letter signed by a paediatrician J D Harley dated 13 September 1996 to claim that my employment was terminated on that day pursuant s 20 of the TAFE Commission Act 1990.

8.2 The Medical Appeals Panel did not supply that letter to the applicant. The Medical Appeals Panel supplied its letter to the Respondent. The Respondent did not contact the Applicant in relation to this document.

8.3 The Medical Appeals Panel has no statutory power right or authority to terminate anyone's employment with TAFE pursuant s 20 of the TAFE Commission Act (the Act).

8.4 s 20 of the Act states that the Commission may cause a member to be retired.

8.5 Any statutory power conferred by s 20 of the Act can only be exercised by the Commission itself.

- 8.6 An exercise of power causing a member to be retired requires as a condition precedent findings to be have been made under subsections (i) and (ii) but does not automatically follow such findings (s 20 of the Act states "may", it does not state "shall" or "must")
- 8.7 Any lawful and valid exercise of power pursuant s 20 of the Act has to be a bona fide exercise of that power and strictly limited to the purpose intended by Parliament when conferring that power.
- 8.8 Any exercise of power pursuant s 20 of the Act must observe the rules of procedural fairness, natural justice.
- 8.9 None of these preconditions for a valid lawful exercise of power pursuant s 20 of the Act terminating the applicant's employment with TAFE existed on 13.9.96 or upon any other day.
- 8.10 J D Harley paediatrician could not have terminated my employment with TAFE on 13 September 1996 or upon any other day.
- 8.11 The Respondent has not produced any document to show that any person with statutory power right or authority to terminate my employment pursuant the TAFE Commission Act 1990 did so on the 13 September 1996.or on any other day.
- 9 The respondent has not produced any evidence to contest the applicant's Ground 9,
- 10 In relation to everything within the Respondents Affidavit under Ground C
- 10.1 All decisions and actions taken with regard to the applicant instigated by Dr Ramsey's letter to Dr Willmott on 17 January 1995 and relied upon by the Respondent are invalid (beyond power) and unlawful on the ground of improper purpose/bad faith/and or uncertainty.
- 10.2 Even if there were no or insufficient evidence to show improper purpose bad faith and or uncertainty a further ground would remain.
- 10.3 All the decisions and actions instigated against the applicant by Dr Ramsey and TAFE from 17 January 1995 onwards are invalid (beyond power) and unlawful on the ground also of denial of natural justice/procedural fairness.
- 10.4 I have never accepted any of these decisions as lawful or valid and have continued to act on the basis that I am still an employee of TAFE
- 10.5 I have asked TAFE to allow me to continue in my job. TAFE officers did not accord this.
- 10.6 On three consecutive days in April 1999 I presented myself ready for duties. No duties or valid reason for not allocating duties was given to me. TAFE publicly turned me away.
- 11 The TAFE Commission has acted on occasions contrary to their purported claim that my employment was terminated 13 September 1996. This is shown by:
- 11.1 TAFE admitted to Superannuation Administration Authority on 17 July 1997 inter alia that "... nothing has been finalised." (SEE TAB 10)
- 11.2 During 1997, the Minister Mr John Aquilina still kept me in employment limbo through his various offices:
- 11.2.1. Letter on TAFE letterhead dated 29 June 1997 and addressed to Ms Val Kerrison (SEE TAB 11)
- 11.2.2. And further letter on Minister for Education and Training letterhead dated 29 July 1997 to Mr B Jeffery MP (SEE TAB 12)

- 11.3 And also the changes TAFE made to my employment status as set out in my Affidavit 9 August 2000 Points 151.1 to 151.7.
- 11.3.1. Just some of those records are annexed hereto at TAB 13 and TAB 14
- 11.3.2. These show TAFE arbitrarily deciding to alter my employment status in 1998 to firstly Sick Leave Without Pay, and then Leave Without Pay purportedly retrospective to 1996.
- 12 When Dr Ramsey wrote to me on 17 January 1995 he did not put forward a solution to the grievances I had raised. Therefore I duly took the issues outside TAFE. I took my file, containing students' letters including that of the Aboriginal student Michael Smith (SEE TAB 15) to the legal firm Stacks the Law Firm and asked them for advice and assistance.
- 13 During this time there was an election and change of government.
- 14 Mr Robert Carr became Premier. Mr Carr appointed Mr John Aquilina as Minister.
- 15 Stacks the Law Firm told me that Mr Aquilina had got rid of Dr Ramsey as TAFE MD and did not appoint anyone else at that time as Managing Director of TAFE.
- 16 As Mr Aquilina was administering TAFE, on 6 June 1995 Stacks the Law Firm wrote to Mr Aquilina (SEE TAB 16).
- 17 Stacks the Law Firm, in their letter to Mr Aquilina, attached my original complaint and other relevant documents and stated in part: *"It would appear from reading the documentation which our client [Kerrison] has provided us, that the actual problem is simply being avoided rather than effectively solved... We confirm that we have forwarded a copy of this letter and the information to the State Ombudsman."*
- 17.1 Mr Aquilina replied on 21 June 1995 stated in part: "I shall be in touch with you again as soon as I have completed an examination of the position." (SEE TAB 17).
- 17.2 Following that letter (Tab 17), on 7 September 1995 Mr Aquilina wrote in part: *"the NSW TAFE Commission has provided advice which indicates that Ms Kerrison was medically retired on June 22, 1995"*. (SEE TAB 18)
- 17.2.1. At that significant time, Mr Aquilina was in charge of TAFE.
- 17.2.2. Mr Aquilina had power to cause my retirement but had not.
- 17.2.3. Mr Aquilina should have been aware that he had not retired me, and that I was in fact on the payroll of my employer (TAFE) and receiving my wages.
- 17.2.4. Mr Aquilina had in his possession my original complaint which included allegations of discrimination and victimisation in TAFE, and the letter written to him on my behalf by Stacks the Law Firm.
- 17.2.5. Mr Aquilina could have ordered a proper investigation into the issues, but he did not.
- 18 TAFE themselves refer to the unaddressed issues and my requests to them for assistance, proper investigation and remedy.
- 18.1 On 13 January 1998 Mr Peter Cribb Senior Legal Officer TAFE wrote to Mr Chris Lockwood North Coast Institute of TAFE inter alia "Nothing further to do at this stage. I expect to receive a letter from Ms Kerrison seeking further material and making continued demands for an inquiry. I'll deal with it when it arrives, and shall keep you informed." (SEE TAB 19)
- 19 To date there has never been any investigation into TAFE's and HealthQuest's actions (See my Affidavit 9 October 2000 particularly Points 168.1 - 168.17). Nor has any remedy been

attempted: instead TAFE continued to carry out more improper processes through the years as they attempted to sever my employment, destroy my reputation, and deprive me of my rights and entitlements. (See Tabs above)

20 NSW Department of Health's Medical Appeals Panel (MAP) is an affirmation of HealthQuest declaration therefore the decision to send me to HealthQuest must be declared void and everything which flowed from it also null and void.

21 s20 of the TAFE Act is based upon an officer being found unable to perform duties. No-one - neither TAFE nor HealthQuest (nor MAP) - found me incapable or lacking in my duties of office.

22 Re Annexure "G" of Respondent's Affidavit: MAP do not have statutory authority to terminate my employment.

22.1 The Respondents have not put forward any documents authorising the termination of my employment.

23 This has cost me dearly both financially and personally.

24 In summary the Respondent's reply affidavit:

- a) does not deny the validity of my permanent appointment as an employee of the TAFE Commission.
- b) does not dispute that I have been a competent teacher throughout;
- c) has not produced evidence of any lawful or valid grounds whether of conduct or services upon which the TAFE Commission could seek to terminate my employment
- d) has not produced any evidence to show any lawful or valid termination of my employment with the TAFE Commission..
- e) is lacking any defence against my claims.

-Annexure "E" is relied upon by my respondent as sole authorisation for referring me to HealthQuest but gives clear evidence instead of improper purpose and bad faith

-Annexure "G" (the Medical Appeals Panel [MAP] letter 13 September 1996) is the sole document they rely on for the purported termination of my employment.

MAP (as with HealthQuest) do not have statutory authority or power to terminate a TAFE teacher.

This is consistent with the fact that neither HealthQuest nor MAP have statutory authority or power to appoint a TAFE teacher.

25 Even if the respondent's plethora of decisions and actions purporting to terminate my employment in 1995, 1996, 1997 and 1998 etc could successfully be defended against claims of improper purpose bad faith and/ or uncertainty there would remain a final insurmountable ground of invalidity.

25.1 All the actions and decisions taken by the TAFE Commission, HealthQuest and the Medical Appeals Panel in relation to my employment status and relied upon by the Respondent in these proceedings involved a denial of the rules of procedural fairness/natural justice.

- 25.2 On 3 October 2000 TAFE were summonsed to produce:
 "8 All documents showing that procedural fairness was accorded to the abovenamed applicant prior to TAFE's decisions
 8.1-Send her to HealthQuest
 8.2 -Exclude her from duties at TAFE
 8.3-Alter her employment status at any time
 8.4-Alter her accumulated sick and extended leave records."
- 25.3 Also on 3 October 2000 the Department of Health were summonsed to produce:
 "5 All documents showing that procedural fairness was accorded to the above mentioned applicant prior to any decision by the Government Medical Office."
- 25.4 Neither TAFE nor the Department of Health produced any such documents, nor could they produce any such documents to show that procedural fairness was accorded to the applicant.
- 25.5 The applicant was at no time accorded procedural fairness.
- 25.6 This is all the more incomprehensible given the range of devastating consequences that flowed from the respondent's actions as summarised in paragraph 2.12 of this affidavit.
- 25.7 The respondent has no defence against this ground

SWORN By the Deponent)
 At Sydney)
 Before me:)

On the 20 DAY OF November IN THE YEAR TWO THOUSAND

.....
 Solicitor/Justice of the Peace Deponent