

IN THE EQUAL OPPORTUNITY DIVISION
OF THE ADMINISTRATIVE DECISIONS TRIBUNAL

NUMBER 1020 OF 99

ISSUED BY:

COMPLAINANT: Valda Kerrison
C/- 12 Alverton Street
Kempsey NSW 2040

On: August 2007

RESPONDENTS: Dr Helen Jagger
Dr Eva Mandel
Dr Helia Gapper
Mr Steven Davison
Central Sydney Area Health (HealthQuest)

Of: Level 2, 187 Thomas Street
Haymarket, NSW 2000

CLAIMANT'S ADDITIONAL POINTS OF CLAIM

AntiDiscrimination Act s52

Aiding and Abetting TAFE to Discriminate and Victimise

This information is provided is additional to the claims and information already filed. It arises due to the difficulties of now more than 14 years of multiple acts and multiple players that this claim encompasses. It is in response to ADT judicial member Ms Pene Goode regarding bringing the claims up to date and judicial member Ms Nancy Hennessey permission to amend.

HEALTHQUEST AIDS AND ABETS TAFE'S UNLAWFUL VICTIMISATION AND DISCRIMINATION

1. On or about 1/5/95 HealthQuest Dr Gapper/Dr Jagger accepted the referral made by Kerrie Walshaw and arranged for Ms Kerrison to be examined by a psychiatrist Dr Mandel on 19/5/95.

2. Sec 52 of the AD Act states

52 Aiding and abetting etc

It is unlawful for a person to cause, instruct, induce, aid or permit another person to do an act that is unlawful by reason of a provision of this Act.

3. HealthQuest aided and abetted the unlawful actions of the TAFE Commission by:

- a. accepting the referral of Ms Kerrison and arranging for her to be psychiatrically examined without first verifying the truthfulness of Ms Walshaw's claims or checking the lawfulness of the referral.
- b. opening a confidential file on Ms Kerrison without her knowledge and consent and entering onto that file personal information about Ms Kerrison along with unsubstantiated false and highly prejudicial allegations concerning her alleged mental health and conduct
- c. Communicating without Mrs Kerrison's knowledge or consent between TAFE and MAP, passing on information and highly prejudicial allegations knowing they were acting without procedural fairness to Mrs Kerrison

4. Sections 49 A B & D of the NSW Anti Discrimination Act 1977 state:

49A Disability includes past, future and presumed disability

A reference in this Part to a person's disability is a reference to a disability:

- (a) that a person has, or
- (b) that a person is thought to have (whether or not the person in fact has the disability), or
- (c) that a person had in the past, or is thought to have had in the past (whether or not the person in fact had the disability), or
- (d) that a person will have in the future, or that it is thought a person will have in the future (whether or not the person in fact will have the disability).

5. 49B What constitutes discrimination on the ground of disability

(1) A person ("**the perpetrator**") discriminates against another person ("**the aggrieved person**") on the ground of disability if, on the ground of the aggrieved person's disability or the disability of a relative or associate of the aggrieved person, the perpetrator:

- (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or

would treat a person who does not have that disability or who does not have such a relative or associate who has that disability, or

(b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have that disability, or who do not have such a relative or associate who has that disability, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

(2) For the purposes of subsection (1) (a), something is done on the ground of a person's disability if it is done on the ground of the person's disability, a characteristic that appertains generally to persons who have that disability or a characteristic that is generally imputed to persons who have that disability.

6. 49D Discrimination against applicants and employees

(2) It is unlawful for an employer to discriminate against an employee on the ground of disability:

(a) in the terms or conditions of employment which the employer affords the employee, or

(b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or

(c) by dismissing the employee, or

(d) by subjecting the employee to any other detriment.

7. Sec 4 of the NSW AD Act states

4 Definitions

(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

"disability" means (inter alia):

(e) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

8. 53 Liability of principals and employers

(1) An act done by a person as the agent or employee of the person's principal or employer which if done by the principal or employer would be a contravention of this Act is taken to have been done by the principal or employer also unless the principal or employer did not, either before or after the doing of the act, authorise the agent or employee, either expressly or by implication, to do the act.

(2) If both the principal or employer and the agent or employee who did the act are subject to any liability arising under this Act in respect of the doing of the act, they are jointly and severally subject to that liability.

(3) Despite subsection (1), a principal or an employer is not liable under that subsection if the principal or employer took all reasonable steps to prevent the agent or employee from contravening the Act.

9. Sec 50 of the AD Act states

27 Part 5 – Other unlawful acts

50 Victimisation

(1) It is unlawful for a person ("**the discriminator**") to subject another person ("**the person victimised**") to any detriment in any circumstances on the ground that the person victimised has:

- (a) brought proceedings against the discriminator or any other person under this Act,
- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act,
- (c) alleged that the discriminator or any other person has committed an act which, whether or not the allegation so states, would amount to a contravention of this Act, or
- (d) otherwise done anything under or by reference to this Act in relation to the discriminator or any other person,

or by reason that the discriminator knows that the person victimised intends to do any of those things, or suspects that the person victimised has done, or intends to do, any of them.

(2) Subsection (1) does not apply to the subjecting of a person to a detriment by reason of an allegation made by the person if the allegation was false and not made in good faith.

10. HealthQuest aided and abetted the unlawful actions of the TAFE Commission by compiling and carrying out TAFE's requests and in doing so denied the requirement for natural justice to Mrs Kerrison, in denial of their responsibilities regarding Privacy law, OH&S law, and natural justice, did the following:

- a. HealthQuest personnel Jagger, Gapper, Mandel accepted the referral of Ms Kerrison and arranged for her to be psychiatrically examined or interrogated by Dr Mandel without first verifying the truthfulness of TAFE's Ms Walshaw's claims or checking the lawfulness of the referral.
- b. Opened a confidential file on Ms Kerrison without her knowledge and consent and entering onto that file personal information about Ms Kerrison along with unsubstantiated false and highly prejudicial allegations concerning her alleged mental health and conduct
- c. Significantly HealthQuest/TAFE did not call Dr Mandel to testify.

MS KERRISON WAS DIRECTED TO HEALTHQUEST 14/5/95 THROUGH THE DELIBERATE DECEIT OF TAFE MANAGEMENT

11. On 14/5/95 Ms Kerrison was directed to attend an appointment at HealthQuest by Ms McGregor Kempsey TAFE Manager but deceived about the true purpose of the appointment.

12. "Ms McGregor informed Ms Kerrison that an appointment had been made for her at

HealthQuest. Ms McGregor's note of 14 May records that she had advised Ms Kerrison that the appointment was for "Workers compensation/rehab" She sent a copy of this note to Ms Kerrison. **The advice was plainly untrue.** In fact, arrangements had been made by Ms Walshaw for Ms Kerrison to be assessed by the Government Medical Officer at HealthQuest for her fitness to continue in employment." Kerrison v TAFE Commission (2003) NSWIRComm 79 at (121)

13. "Ms Kerrison was deliberately deceived as to the reason why she was being sent to HealthQuest." Kerrison v TAFE Commission (2003) NSWIRComm 79 at (197)
14. Ms Kerrison was, prior to and on 14/5/95 and for more than a month later when TAFE used HealthQuest's documents to exclude her from her lawful position teaching, satisfactorily performing her duties as a TAFE teacher and there was no lawful basis to direct her to attend HealthQuest. Ms McGregor on 1/5/95 unlawfully discriminated against Ms Kerrison on the ground of a presumed disability and/or victimised her for reporting racial discrimination by
 - a. deceiving her about HealthQuest and thereby subjecting her to a detriment in breach of sec 49 D (2) (d) of the AD Act.
 - b. directing her to attend HealthQuest when she was satisfactorily performing her duties as a TAFE teacher.

MS KERRISON WAS SUBJECTED TO UNLAWFUL INVOLUNTARY PSYCHIATRIC INTERROGATION AT HEALTHQUEST

15. On 19/5/95 Ms Kerrison was subjected to an unlawful and involuntary psychiatric interrogation at HealthQuest by Dr Eva Mandel
16. Dr Mandel aided and abetted the unlawful actions of the TAFE Commission on 19/5/95 in breach of sec 49 D of the NSW AD Act:
 - Ms Kerrison had continued to satisfactorily perform her duties as a teacher
 - There was no lawful ground for Dr Mandel to commence a psychiatric examination against Ms Kerrison
 - Ms Kerrison's attendance at HealthQuest had been obtained by deliberate deceit perpetrated by Kempsey College Manager Ms Elizabeth McGregor
 - Dr Mandel knew that she did not obtain informed consent before she began her unlawful examination because Dr Mandel held material in her files which she did not show to Mrs Kerrison. Therefore Dr Mandel knew she did not allow her procedural fairness and her right to dispute or try to protect herself.
 - Dr Mandel continued her unlawful actions by inserting those highly prejudicial comments into her "report" as if they were true and properly obtained – they weren't and Dr Mandel should have known it.
 - Dr Mandel would have known that the highly prejudicial comments she gathered and put on the file bearing Mrs Kerrison's name could then influence adversely other/s in HealthQuest, and also Medical Appeals Panel if there was an appeal.

- Further, Dr Mandel became aware during her examination that Ms Kerrison was working contrary to false information supplied by K Walshaw on 1/5/95. Again, instead of Dr Mandel aborting her unlawful psychiatric interrogation Dr Mandel continued and subjected Ms Kerrison to a further unlawful examination/interrogation.
- Dr Mandel obtained Mrs Kerrison's signature under duress to contact a Dr Holmes.
- Dr Mandel made further entries on the unlawful file created by HealthQuest on or about 1/5/95 about Ms Kerrison without her knowledge or consent

MS WALSHAW MAKES FURTHER FALSE CLAIMS TO HEALTHQUEST 23/5/95

17. On 23/5/95 Ms Walshaw to HealthQuest stated that "she would like to arrange to have someone talk to staff about Valda's condition so that they are all prepared for when she comes back to the workforce." if she were not permanently removed from the workplace. Ms Walshaw unlawfully discriminated against Ms Kerrison in breach of sec 49 D of the AD Act in that she:

- Breached Ms Kerrison's privacy by communicating false and misleading information to HealthQuest without her knowledge or consent
- Breached Ms Kerrison's privacy and contacted HealthQuest when Ms Kerrison continued to satisfactorily perform her duties as a teacher
- Took this action on the ground of presumed disability by referring to "Valda's condition"
- Took this action to persuade and influence HealthQuest to make a decision to have Ms Kerrison permanently removed from the workplace.

18. HealthQuest aided and abetted Ms Walshaw's unlawful actions on 23/5/95 by accepting this communication and entering it into file on Ms Kerrison without informing Ms Kerrison or gaining her consent. Maintaining that file, adding documents/comments to it without informing Mrs Kerrison or gaining her consent or rebuttals, and passing it freely between them and MAP.

MS WALSHAW MAKES FURTHER FALSE CLAIMS TO HEALTHQUEST 31/5/95 AND AFTER

19 On 31/5/95 Ms Walshaw phoned HealthQuest yet again asking to speak to Dr Jagger re "*Val Kerrison saying she is very suicidal*", and phoned and spoke to Dr Mandel after that.

Ms Walshaw unlawfully discriminated against Ms Kerrison in breach of sec 49 D of the AD Act in that she:

- Breached Ms Kerrison's privacy by communicating false and misleading information to HealthQuest without her knowledge or consent
- Breached Ms Kerrison's privacy and contacted HealthQuest when Ms Kerrison continued to satisfactorily perform her duties as a teacher

- Took this action on the ground of presumed disability by referring to “Valda’s condition”
- Took this action to persuade and influence HealthQuest to make a decision to have Ms Kerrison permanently removed from the workplace.
- HealthQuest aided and abetted Ms Walshaw’s unlawful actions on 31/5/95 and after by accepting this communication and entering it into their unlawfully created file on Ms Kerrison without informing Ms Kerrison or gaining her consent or rebuttals. Then maintaining that file, adding documents/comments to it without informing Mrs Kerrison or gaining her consent or rebuttals, and passing it freely between them and MAP.

HEALTHQUEST AIDS & ABETS TAFE COMMISSION’S UNLAWFUL DISCRIMINATION ON 16/6/95 BY ISSUING FRAUDULENT CERTIFICATE WITH THE INTENTION TO CAUSE MS KERRISON’S SUMMARY AND PERMANENT LOSS OF EMPLOYMENT

20. On 16/6/95 Dr Mandel and Dr Jagger signed a document titled “retirement certificate” that by its wording induced, caused, permitted Ms Kerrison’s employer TAFE Commission to summarily and permanently remove her from her duties solely on the ground of a presumed disability:

- 20.1. Ms Kerrison was satisfactorily performing her duties on 16/6/95 when Dr Jagger and Dr Mandell signed the certificate
- 20.2. Dr Jagger and Dr Mandel were aware of this fact
- 20.3. Dr Mandel falsely and fraudulently labelled Ms Kerrison with a psychiatric disorder and falsely and fraudulently stated in the certificate that Ms Kerrison was unable to discharge the duties of her office as a consequence of this disorder
- 20.4. The psychiatric label inflicted on Ms Kerrison was based upon false and prejudicial information secretly supplied to HealthQuest by TAFE Manager Ms Walshaw and psychiatrist Dr Holmes without Ms Kerrisons’ knowledge or consent
- 20.5. Drs Mandel and Jagger formed their unlawful opinions by simply reading documents they had unlawfully obtained and unlawfully inserted in the file against Mrs Kerrison.
- 20.6. This information had been entered on HealthQuest’s unlawfully created files
- 20.7. Ms Kerrison was subjected to procedural unfairness in that she was given no opportunity to hear, answer and rebut the claims made against her before Dr Mandel and Dr Jagger issued their fraudulent certificate.
- 20.8. As Mrs Kerrison was, at the time Drs Mandel and Jagger chose to write the document “Retirement Certificate” and both knew this because they referred to TAFE as Mrs Kerrison’s “employer”, this document is as fraudulent in structure as a fraudulent Death Certificate.

20.9. Drs Jagger and Mandel sent their fraudulent “Retirement Certificate” to TAFE who used this unlawful instrument and its unlawfully compiled contents to dupe Mrs Kerrison and others into accepting it and its contents as valid.

20.10. TAFE freely use this document and quote its contents still.

21. For confirmation see factual findings of Schmidt J in Kerrison v TAFE (2003) NSWIRComm 79 at (140) not challenged or overturned on appeal:

“It was obvious from Dr Jagger’s explanations that in coming to their diagnosis of Ms Kerrison , account had been taken by Dr Mandel and Dr Jagger of the information which Ms Walshaw had volunteered in her various phone calls. None of this information was checked with Ms Kerrison who was kept entirely ignorant of Ms Walshaw’s approaches to HealthQuest or the purpose of her reference there. The information provided was plainly inaccurate in a number of important respects , and the evidence in these proceedings has shown.”

22. Mandel interrogated Mrs Kerrison without her informed consent for psychiatric medical process
23. Mandel and Jagger failed to accord procedural fairness to Mrs Kerrison to fully inform her and gave her no opportunity to hear and answer or rebut the claims made against her, or provide contrary evidence before Dr Mandel and Dr Jagger issued their fraudulent “Retirement Certificate”
24. Mandel and Jagger ignored their responsibilities under the AntiDiscrimination Act to not presume incapacity on grounds of assumptions of disability. By turning a blind eye to this, and ignoring their own policies and guidelines re privacy and discrimination they wrote, signed, and sent a fraudulent “Retirement Certificate” to TAFE complete with presumptions of disability thus allowing TAFE to use as they wished, and TAFE still use it against Mrs Kerrison.
25. Mandel and Jagger, in compliance with secret phone calls to TAFE’s Walshaw, applied the highly detrimental psychiatric label and assumptions of permanent incapacity enabling those who wished to, to permanently blacken Mrs Kerrison’s professional reputation and deny her employment.
26. Mandel and Jagger wrote unfounded allegations that the disability concocted between Mandel, Jagger and Walshaw discrediting Mrs Kerrison in TAFE, and any other potential employment for life. TAFE used HealthQuest’s unfounded allegations to exclude Mrs Kerrison from TAFE until the present day, and quote it to potential alternative employers.
27. Jagger and Gapper and MAP’s Dr Harley exchanged files containing information of private and unsubstantiated false and highly prejudicial allegations concerning Mrs Kerrison and her alleged mental health and conduct with NSW Department of Health’s Medical Appeals Panel (MAP) without Mrs Kerrison’s knowledge, consent, or right to dispute.
28. Jagger, without Mrs Kerrison’s knowledge, consent, or right to dispute, around August 1995 accepted from Walshaw of TAFE a purported report containing highly prejudicial unfounded information of a private nature about Mrs Kerrison at Walshaw’s request, placed it in HealthQuest’s files. Dr Jagger added highly inaccurate prejudicial comments to the copy she retained at HealthQuest, then copied it complete with her biased comments, and following Ms Walshaw’s requests,

forwarded it to Dr Harley MAP who inserted it in the MAP files without Mrs Kerrison's knowledge or right to rebut, kept it in the files to be used against Mrs Kerrison for a farcical appeal when/if she appealed, or against her in Court if court proceedings eventuated.

29. Jagger and Gapper continued exchanging these files with Dr Harley of MAP after Mrs Kerrison issuing a cancellation on HealthQuest, MAP and TAFE prohibiting them from transferring any private or medical information regarding her.
30. Steven Davison supervises HealthQuest files but refused to take the steps necessary to correct HealthQuest's purported Retirement Certificate despite Mrs Kerrison supplying him with information regarding the invalidity of decisions due to denial of procedural fairness and natural justice to her, instead he enabled TAFE to continue using the purported Retirement Certificate as they wished.
31. Steven Davison refused to act to correct the maladministration committed by HealthQuest personnel.

32. NSW Ombudsman Good Conduct and Administrative Practice Guidelines (2nd Edition) applies to TAFE, HealthQuest MAP and states:

1. Compliance

1.1 Complying with the law

1.1.1 The principle

A fundamental principle of good public administration is that public officials comply with **both the letter and spirit** of applicable law (be it statutory or common law). No public official has an unfettered power or discretion.

1.1.2 Responsibilities

All public officials are under an obligation to know and understand the law relevant to the performance of their official duties. Any failure to comply with the law could be a criminal act or result in a breach of the law or a breach of discipline.

To facilitate compliance with legal requirements, agencies and their senior staff should ensure that:

- management commitment to compliance is clear and unequivocal
- the legal requirements which apply to each area of activity for which they are responsible are:
 - identified (including updates reflecting changes to the law), and
 - documented (preferably in detail, but as a minimum by reference to relevant provisions)
- all staff are kept fully informed, briefed and/or trained about the key legal requirements relevant to their work
- staff are made aware of the potential repercussions of non-compliance with legal requirements that apply to them, and
- recordkeeping systems and practices which capture evidence of compliance and

non-compliance are in place.

The moral or ethical obligation to mitigate the effects of rigid adherence to the letter of the law

The obligation to comply with legal requirements does not relieve an agency or public official of the moral or ethical obligation to **mitigate** the effects of rigid adherence to the letter of the law where that results in, or would result in, unintended and manifestly inequitable or unreasonable treatment of an individual or organization...

“4.8.1 Any person detrimentally affected by maladministration should , wherever practicable , be put back in the position that they would have been in had the maladministration not occurred.

4.8.2 Agencies have a duty to provide appropriate redress where members of the public have been detrimentally affected by maladministration. This duty is owed to all persons affected by maladministration whether or not they have complained to the agency, to the Ombudsman, or other relevant watchdog agency, or have any legal entitlement to redress.

Maladministration under the Ombudsman’s Act and the NSW Protected Disclosures Act 1994 is defined to include action or inaction of a serious nature that is :
Contrary to law
Improperly discriminatory

33. HealthQuest published information, but Drs Mandel, Jagger, and Gapper aided TAFE by keeping Mrs Kerrison in the dark regarding her rights. HealthQuest, unlike MAP did hold SOME guidelines, but aided and abetted TAFE by not providing ANY information to Mrs Kerrison to inform her of her rights. Instead Dr Mandel Dr Jagger and Dr Gapper commenced their unlawful secret files in Mrs Kerrison’s name as soon as TAFE unlawfully approached.

Excerpts from HealthQuest’s publication

HealthQuest’s publication is for Pre-placement Health Assessment, but I believe its concepts to be generally applicable for health assessments including Fitness to Continue assessment. The publication states in part:

“HEALTHQUEST A Risk Management Approach for Pre-Placement Health Assessment July 1992

Page 20 Paragraph 4:

2.3 Discrimination issues

The Canadian Human Rights Commission provides helpful guidance on the use of health assessments: “[medical] assessment is relevant only when it measures the capacity of a person to perform the essential components of the job safely, reliably and efficiently”.

Page 22 2.3 Discrimination issues

Paragraph 1

The potential for misunderstanding is amplified where the health assessor is unfamiliar with the type of work, the work environment or the occupational ramifications of medical conditions (or the medical ramifications of work arrangements).

Paragraph 2

Discrimination in health assessments can be avoided through the following measures:- Insisting that a thorough job analysis with a statement of health requirements and occupational hazards relevant to the job is prepared prior to the job selection and that it is available to applicants and health assessors; ensuring an appropriate level of professional competence (qualifications, experience, references) in health assessors; and using quality control procedures for health assessments.

Page 38 Paragraph 2

Risk Evaluation or Risk Assessment

When it is proposed that a medical condition or impairment creates a safety or performance risk in particular work contexts, this should be substantiated.

Page 82

13 Protecting Privacy

All records which contain personal information should be dealt with in accordance with data protection principles endorsed by the NSW privacy Committee. In general terms, this requires:

- *Data subject knowledge of, and consent to, the collection of information;*
- *Data subject knowledge of the purposes for which the personal information is collected and the persons to whom it may be disclosed;*
- *Openness in information handling policies and practices;*
- *The right of access by data subjects to data relating to them;*
- *Secure storage of data;*
- *Strict limits on the purpose for which personal information may be used or disclosed.*

Page 82

14 Confidentiality – Record Keeping

*In cases where some form of screening or medical examination is required, the selected provider is required to forward a **recommendation** [HealthQuest’s emphasis] to the prospective employer in regard to a potential employee’s health in terms of capacity to perform rather than a medical diagnosis, within the specified period.*

34. HealthQuest Aided and Abetted many organisations dupe employees into believing they did not have basic rights. HealthQuest aided and abetted TAFE by failing to inform Mrs Kerrison of her basic right, especially
- 34.1. **the right to refuse to submit. And**
 - 34.2. **the right to refuse to comply with an unlawful order by TAFE.**
 - 34.3. The right to refuse

19. Both MAP and HealthQuest showed bias against people such as Mrs Kerrison who would be disadvantaged by a fraudulent “Retirement Certificate” and/or

incompetent/unethical process to appeal the fraudulent “Retirement Certificate”.

- a. “HEALTHQUEST’s publication ”A Risk Management Approach for Pre-Placement Health Assessment July 1992” at Page 82 14 *Confidentiality – Record Keeping* states:

*In cases where some form of screening or medical examination is required, the selected provider is required to forward a **recommendation** [HealthQuest’s emphasis] to the prospective employer in regard to a potential employee’s health in terms of capacity to perform rather than a medical diagnosis, within the specified period.”*

This is knowledge of proper process i.e. HealthQuest were empowered to issue a recommendation. A “Retirement Certificate” is not a recommendation. HealthQuest acted without power and aided and abetted TAFE to unlawfully discriminate/victimise by writing, signing a “Retirement Certificate” which duped.

- b. Dr Harley selected psychiatrists to service MAP on the grounds of their “usefulness”, as opposed to ethical medical practitioners. On the grounds of usefulness he selected Dr Taylor. On the grounds of “usefulness” to MAP, whose requirements and aims may be opposite to State Super Board, Dr Harley attempted to set up with another psychiatrist Dr Dyball another psychiatric interrogation by Mrs Kerrison without disclosing the documents he selected to forward to sent Dr Dyball, TRANSCRIPT of MAP notes

“Thank you. Please see my memo of 3.6.96 to Mr Hawkins. I remain of the opinion that Dr John Taylor is a very useful psychiatric consultant for the Panel, but believe that it would be prudent to arrange for another consultant for Ms Kerrison, and if you agree I would suggest that she be referred to Dr Kenneth H Dyball, 193 Macquarie Street, Sydney Tel 221-2126 making it clear that it is a referral to Dr Dyball from the Panel, not for the State Super Board, and by all means mention to Dr Dyball’s Secretary that I recommended the referral to him. John Harley 3.6.96.”

From this, as well as the implications of bias, the question of MAP and Dr Harley soliciting kickbacks from the psychiatrists they purposely select is relevant to perceptions of their honesty and integrity in an appeal process.

35. SECRET FILES –

PRIVACY ACT EXCERPT - PRIVACY PRINCIPLES

Principle 1 - Manner and purpose of collection of personal information

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:

- (a) the information is collected for a **purpose** that is a lawful purpose directly related to a function or activity of the collector; and
- (b) the collection of the information is necessary for or directly related to that purpose.

2. Personal information shall not be collected by a collector by unlawful or unfair means.

Principle 3 - Solicitation of personal information generally

Where:

(a) a collector collects personal information for inclusion in a record or in a generally available publication; and

(b) the information is solicited by the collector:

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected:

(c) the information collected is relevant to that purpose and is up to date and complete; and

(d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Principle 8 - Record-keeper to check accuracy etc of personal information before use

A record-keeper who has possession or control of a record that contains personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date and complete.

Principle 9 - Personal information to be used only for relevant purposes

A record-keeper who has possession or control of a record that contains personal information shall not use the information except for a purpose to which the information is relevant.

Principle 10 - Limits on use of personal information

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:

(a) the individual concerned has consented to use of the information for that other purpose;

(b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;

(c) use of the information for that other purpose is required or authorised by or under law;

(d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or

(e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.

Principle 11 - Limits on disclosure of personal information

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:

- (a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;
- (b) the individual concerned has consented to the disclosure;
- (c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
- (d) the disclosure is required or authorised by or under law; or
- (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.

2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.

3. A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

36.CONCLUSION:

TAFE, HealthQuest, and MAP personnel were given public funds to administer their agencies within the law, efficiently and effectively. At any time in the past decades they could have corrected themselves and, with the stroke of a pen or phone call addressed everything in Mrs Kerrison's grievances and complaints – if they had done so using an efficient ethical process such as that written in the TAFE Grievance Policy these issues would have been addressed cheaply and in a timely manner. Instead TAFE and their lawyers and service providers (HealthQuest, MAP) apply to the ADT to uphold their behaviour and find and award against Mrs Kerrison.

Public comment on this is now published world-wide on the web, and has been forwarded to the United Nations under their treaty United Nations Convention Against Corruption.

TAFE Commission, HEALTHQUEST and the MAP have a duty to provide full redress for their maladministration against Ms Kerrison by returning her as much as possible to the position she would have been in prior to the maladministration as if it had not occurred.

ORDERS

The Applicant seeks the following orders:

1. That the Respondents' defence be dismissed
2. That the Respondent abide by Ombudsman's Office guidelines and perform their duty to provide full redress for their maladministration against Ms Kerrison by returning her as much as possible to the position she would have been in prior to the maladministration as if it had not occurred.
3. Costs