

IN THE EQUAL OPPORTUNITY DIVISION
OF THE ADMINISTRATIVE DECISIONS TRIBUNAL

NUMBER 1019 of 99

ISSUED BY:

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

On: 17 August 2007

RESPONDENTS: Dr Harley
NSW Dept Health (Medical Appeals Panel) [MAP]

Of: Level 13, 601 Princes Highway, St Leonards,
New South Wales, 2065

CLAIMANT'S ADDITIONAL POINTS OF CLAIM

AntiDiscrimination Act s52

Aiding and Abetting TAFE to Discriminate and/or 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

The Claimant claims under section 113 of the Anti-Discrimination Act 1977 (Number 48) damages in respect of the cause of action, and will submit this as a separate document before or after the hearing. The complaint is pleaded as follows:

DEPARTMENT OF HEALTH'S MEDICAL APPEALS PANEL (MAP), DR HARLEY
AIDS AND ABETS TAFE'S UNLAWFUL VICTIMISATION AND DISCRIMINATION

BACKGROUND TO MAP APPEAL

MRS KERRISON'S PERFORMANCE OF DUTIES WAS SATISFACTORY

1. Ms Kerrison, was satisfactorily performing all the duties of her position as a teacher at Kempsey College TAFE. This fact has been repeatedly acknowledged by Ms Kerrison's employer and was part of the undisputed evidence in Ms Kerrison's s154 proceedings in the NSW Industrial Relations Commission:

See Kerrison v TAFE Commission (2003) NSW IRComm 79

(6) (Ms Kerrison worked in Kempsey, at a campus which was a part of TAFE's North Coast Institute, as a teacher of business studies and other subjects. There was no issue that her work performance as a teacher was anything other than satisfactory throughout her employment.)

2. *(197) Ms Kerrison had taken sick leave for a period in 1994 in respect of which worker's compensation liability had been accepted. She had returned to work in July. When she was sent to HealthQuest in May 1995, she was at work and had taken insignificant sick leave in the meantime. There was no question in these proceedings, or otherwise, that her work was other than satisfactory, both before and after her sick leave in 1994.*

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

3. 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.

4. "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)

5. "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)

6. 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

- 6.1. deceiving her about HealthQuest and thereby subjecting her to a detriment in breach of sec 49 D (2) (d) of the AD Act.
- 6.2. 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

7. On 19/5/95 Ms Kerrison was subjected to an unlawful and involuntary psychiatric interrogation at HealthQuest by Dr Eva Mandel

8. 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:

- 8.1. Ms Kerrison had continued to satisfactorily perform her duties as a teacher
- 8.2. There was no lawful ground for Dr Mandel to commence a psychiatric examination against Ms Kerrison
- 8.3. Ms Kerrison's attendance at HealthQuest had been obtained by deliberate deceit perpetrated by Kempsey College Manager Ms Elizabeth McGregor
- 8.4. 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.
- 8.5. 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.
- 8.6. 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.

HEALTHQUEST AND MAP AIDED & ABETTED 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

9. 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:

- 9.1. Ms Kerrison was satisfactorily performing her duties on 16/6/95 when Dr Jagger and Dr Mandell signed the certificate
- 9.2. Dr Jagger and Dr Mandel were aware of this fact
- 9.3. 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
- 9.4. 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
- 9.5. 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.
- 9.6. This information had been entered on HealthQuest's unlawfully created files
- 9.7. 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.
- 9.8. 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.

10. 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.

11. 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."

12. When Dr Harley unlawfully sent TAFE the letter he wrote on 13 September 1996, TAFE use it freely – it enables them to quote its contents to unlawfully keep Mrs Kerrison out of her job.

13. 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”

14. Mandel and Jagger and later Dr Harley all 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.

15. Mandel and Jagger, and later Dr Harley 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 the means to do so..

16. Mrs Kerrison was in the dark. One day she was working capably, the next day presumed “medically retired” backdated for a week or 2. Mrs Kerrison had no idea of the false and misleading allegations HealthQuest had unlawfully enabled TAFE to lodge in files bearing Mrs Kerrison’s name; files which would be secretly supplied to MAP for an “appeal”. Mrs Kerrison had to either lodge an appeal, or permanently forego that option. Mrs Kerrison, in the dark as to what TAFE and HealthQuest had done, lodged an appeal.

MAP ACCEPTS “APPEAL” FORM

17. On or about July 1995MAP’s Dr Harley accepted an appeal form from Mrs Kerrison.

18. 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.

19. MAP Dr Harley aided and abetted the unlawful actions of the TAFE Commission by:

19.1. accepting the referral of Ms Kerrison and arranging for her to be psychiatrically examined without first verifying the truthfulness of documents and claims or checking the lawfulness of the referrals **including the initial unlawful referral to HealthQuest.**

19.2. opening confidential files 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

20. MAP Dr Harley aided and abetted the unlawful actions of the TAFE Commission; he: commenced a file in Mrs Kerrison’s name and put in it documents without Mrs Kerrison’s knowledge. And Dr Harley conducted procedural unfairness, i.e. he did not obtain Mrs Kerrison’s informed consent or give her the right to know and to deny or rebut.

DR HARLEY'S "APPEAL" PROCESS

21. Dr Harley, who acted alone as NSW Health Department's appeal panel did not meet or examine any appeal applicant. Dr Harley sometimes negotiated a fee-for-service psychiatrist of his choosing submit a "report" on the appeal applicant.
22. At the time Mrs Kerrison lodged a purported appeal, there was no record available to Mrs Kerrison at that time that any person had actually successfully appealed any part of HealthQuest documents.
23. Similar to HealthQuest process, MAP and Dr Harley did not provide, publish or exhibit guidelines for appellants. There were no procedures or guidelines made available to Mrs Kerrison for MAP.
24. Dr Harley made procedurally unfair "decisions" which affected the lives of employees such as Mrs Kerrison, on unspecified documents or whim.
25. MAP Dr Harley aided and abetted the unlawful actions of the TAFE Commission by:
 - 25.1. accepting the appeal by Ms Kerrison,
 - 25.2. obtaining documents without Mrs Kerrison's informed consent or right to rebut, or informing her of her rights.

DR HARLEY SELECTS PSYCHIATRISTS DR TAYLOR AND DR DYBALL

26. Dr Harley arranged for Mrs Kerrison to be psychiatrically examined by a Dr John Taylor of St John of God. When Mrs Kerrison requested copies of the information Dr Harley had already sent to Dr Taylor, both Dr Taylor and Dr Harley failed to provide it. That appointment was cancelled.
27. Then Dr Harley used the same unfair, anti-Privacy process and asked Dr Dyball to "assess" on Mrs Kerrison, using criteria hidden in the file/s supplied by Dr Harley to Dr Dyball, but again purposely hidden from Mrs Kerrison.
28. MAP informed Ms Kerrison that an appointment had been made for her at psychiatrists including Dr Taylor, but neither Dr Harley nor Dr Taylor accorded Mrs Kerrison the right to know what she was accused of or anything else in the files passed between Dr Harley and other parties.
29. Dr Harley unlawfully asked psychiatrist/s including Dr Taylor to write "reports" "about" Mrs Kerrison, based solely on documents MAP/Dr Harley had sent them unlawfully without the knowledge or consent of Mrs Kerrison, allowing her no rights or process.

FREE COMMUNICATION BETWEEN DR HARLEY, MS WALSHAW OF TAFE, AND HEALTHQUEST DRs JAGGER AND GAPPER.

30. Dr Harley breached Privacy and medical rules of conduct:

31. Dr Harley unlawfully freely communicated with TAFE's Kerrie Walshaw and exchanged documents for each other's files on Mrs Kerrison – likewise he communicated and exchanged material with (at least) Drs Taylor and Dr Dyball, and with HealthQuest's Dr Jagger and Gapper, even after Mrs Kerrison cancelled any purported permissions for any of them to transfer records etc.
32. Dr Harley compounded HealthQuest's unlawful actions when Dr Harley accepted from HealthQuest another highly prejudicial "report" written by Ms Walshaw, sent to HealthQuest where Dr Jagger added more highly biased uninformed comments, then forwarded to Dr Harley who put it in a file he had on Mrs Kerrison. knew, or should have known, that the HealthQuest process was flawed, that it did not hold evidence of procedural fairness, that he unlawfully received unlawful documents from TAFE's Kerry Walshaw unlawfully through HealthQuest, and they bore HealthQuest's highly prejudicial private unlawful comments of Jagger who had not even seen Mrs Kerrison to form any opinion, but were contrived to influence the mind of further unlawfully acting practitioners..
33. This aided and abetted TAFE to promulgate their procedurally unfair, highly prejudicial allegations to MAP and other locations without Mrs Kerrison's knowledge, consent, or right to rebut to protect herself and her reputation.

DR HARLEY EXPLORED OPTIONS RE "USEFUL" PSYCHIATRIST

34. Dr Harley explored options to appoint a "useful" psychiatrist to write a report on Mrs Kerrison Dr Harley wrote: " *...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, "*

MRS KERRISON'S AND HER LAWYERS' REQUESTS – TURCO ETC

35. Dr Harley and Mr Graham Hawkins of Dept Health had received and acknowledged receipt of legal advice from Mrs Kerrison's lawyers fully informing them sufficiently to alert them that:
 - 35.1. The TAFE, HealthQuest, and now MAP files were tainted/corrupted, and
 - 35.2. the processes leading to MAP's involvement were based on discrimination and victimisation
 - 35.3. See EXH 79 particularly the attachments (which TAFE have omitted from their Appeal Books), this is by solicitor Mary Turco and explicitly informs Dr Harley and Mr Hawkins of the unlawfulness of TAFE and HealthQuest's actions and their discriminatory hidden actions..
 - 35.4. On 12 July 1996 Dr Harley/MAP and Mr Graham Hawkins of Dept Health were sent material from Mrs Kerrison's lawyer Mary Turco outlining discrepancies in the HealthQuest process, and issues in TAFE regarding discrimination (Aboriginal students) and victimisation of Mrs Kerrison after reporting racial and gender discrimination See Exh 79.

- 35.5. Mrs Kerrison's lawyers asked Dr Harley MAP to provide any written "processes" for his appeal process, or purported panel but Dr Harley, Mr Hawkins failed or refused to do so
- 35.6. MAP ignored Mrs Kerrison's lawyers' legal advice, and also ignored its own professional responsibilities and
- 35.7. *breached procedural fairness law by accepting and passing on opinions/documents/messages without giving Mrs Kerrison her right to be heard and refute, and without her knowledge or consent
- 35.8. * Breached Mrs Kerrison's Privacy making and receiving phone calls and documents between both HealthQuest and TAFE and adding to its secreted files,
- 35.9. * took these actions to put together material to persuade and influence its own selected psychiatrists Taylor and Dyball to support Healthquest's and TAFE's actions and support HealthQuest's decision to have Mrs Kerrison permanently removed from the TAFE workplace, and possibly never able to obtain such employment again.

THERE WAS NO COMPETENT HEALTHQUEST OR APPEAL PROCESS

- 36. At HealthQuest Drs Mandel, and Jagger read unlawful undisclosed documents and from behind closed doors wrote and signed an unlawful "Retirement Certificate" and sent it to their client, TAFE to use at will.
- 37. At MAP Dr Harley read unlawful undisclosed documents and from behind closed doors, wrote and signed a documents "disallowing" Mrs Kerrison's appeal.
- 38. HealthQuest and MAP enabled TAFE to then dupe Mrs Kerrison and/or IRC judges into thinking she was terminated on discriminatory grounds of presumed disability.
- 39. This aided TAFE to permanently get rid of Mrs Kerrison out of TAFE, and turn their back on the grievances which included reports of contraventions of the A-D Act on the grounds of racial and gender discrimination, and now presumed disability discrimination.
- 40. When TAFE's McGregor told Mrs Kerrison in June 1995 "you don't come in any more" and Mrs Kerrison stayed at home. Mrs Kerrison, in the dark, sought a remedy
- 41. The only avenue TAFE and HealthQuest allowed to Mrs Kerrison was to appeal HealthQuest's unlawful decision.
- 42. **There was no competent appeal process.**
- 43. This aided and abetted TAFE to unlawfully discriminate and victimise its internal reporter (whistleblower)

DR HARLEY REFUSES TO CANCEL/ABORT MAP'S UNLAWFUL PROCESS

- 44. MAP refused to abort or investigate the underlying issues before proceeding, and this aided and abetted TAFE to unlawfully discriminate and victimise Mrs Kerrison.

45. MAP aided and abetted TAFE/Ms Walshaw's unlawful actions throughout by accepting all communications from Ms Walshaw/TAFE and HealthQuest, entering it into files on Ms Kerrison without informing Ms Kerrison or gaining her consent. Maintaining those files, adding documents/comments to them without informing Mrs Kerrison or gaining her consent or rebuttals, and passing it freely between HealthQuest and MAP and MAP's "useful" psychiatrists Taylor, Dyball, etc.

MAP AND HEALTHQUEST SHOW BIAS

46. Both MAP and HealthQuest showed bias against people such as Mrs Kerrison who would be disadvantaged by a fraudulent "Retirement Certificate" .

- 46.1. "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."*

HealthQuest had 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.

- 46.2. Dr Harley selected psychiatrists to service MAP on the grounds of their "usefulness", as opposed to competent, 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 to unlawfully commit psychiatric interrogation on Mrs Kerrison. Again Dr Harley did not disclose documents he selected to send to 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.*"

3 June 1996 MAP Dr Harley proposed conducting its "appeal" by either reading a purported report written by a psychiatrist who had not seen Mrs Kerrison, or simply acting without any basis for "appeal".

MAP notes

“Re formulating draft procedures.

Also comments Dr Taylor ". . . and decide whether a report is to be obtained from Dr Taylor or another consultant. This should depend upon whether there are grounds to charge for Dr Taylor, and then whether a report is required. Ms Kerrison should then be advised that the appeal will be decided 30 days after "receipt of FOI date" and ... of any consultants report that we request"

47. 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.

MAP ‘DISALLOWS’ ‘APPEAL’

48. On or around 13 September 1996 Dr Harley, without according Mrs Kerrison her rights to procedural fairness, privacy, ethical medical process, and unlawfully simply using whatever MAP pleased, aided and abetted TAFE’S unlawful acts by making unlawful decision to ‘disallow’ Mrs Kerrison’s appeal, i.e. rubber-stamping HealthQuest process and its unlawfulness.

49. MAP aided and abetted the unlawful actions of the TAFE Commission by continuing and compounding the unlawful HealthQuest process which carried 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, and issued another document to TAFE to use as it wished.

50. The document was dated 13 September 1996. It was addressed to Mrs Kerrison but not received by Kerrison from MAP. MAP did supply it to TAFE to use at will. TAFE quote that document as having “medically retired” Mrs Kerrison “as at 13 September 1995. and quote this document and its psychiatric label against Mrs Kerrison widely to Courts, authorities, Mrs Kerrison’s prospective employers, etc. to NCI TAFE

“NSW Health Dept
MAP

“I refer to your appeal to the Medical Appeals Panel against an assessment of HealthQuest on 16 June 1995 that you are suffering from personality disorder; that you are in consequence unable to discharge the duties of your office; and that your disability will in all likelihood prove permanent.

“Your medical file has been carefully reviewed, with reports from your psychiatrist who you nominated, and on the basis of the available medical evidence the Panel is of the opinion that the assessment of HealthQuest was appropriate at the time of your examination. Your appeal is therefore disallowed.

“Yours sincerely
J D Harley

Chairman Medical Appeals Panel”

A copy of this letter has been forwarded to the North Coast Institute of TAFE for attention.

Copy forwarded for your information

State Super

SASS“

51. Dr Harley unlawfully communicated this unlawful decision privately to TAFE, without Mrs Kerrison’s knowledge, rights, or consent. Dr Harley supplied TAFE/Walshaw/Willmott/Gallagher/Cribb/Lockwood/other/s with a letter dated September 1995 for them to use as they wished, including State Super and SASS.
52. That letter provided more material enabling TAFE to unlawfully victimise and/or discriminate against Ms Kerrison on the grounds of presumed disability and to publish and circulate this.
53. MAP/ Dr Harley unlawfully breached Ms Kerrison’s privacy by unlawfully communicating false and misleading information to TAFE without her knowledge or consent, this aided TAFE.
54. Dr Harley took **this action on the ground of presumed disability: Dr Harley simply repeated HealthQuest “are suffering from personality disorder; that you are in consequence unable to discharge the duties of your office; and that your disability...”**
55. Dr Harley, MAP did this to unlawfully persuade, influence and/or enable TAFE to have Ms Kerrison unlawfully permanently removed from the workplace.
56. TAFE and its lawyers then unlawfully used this document to change computer records to “medically retired”, and to sever/discontinue Mrs Kerrison’s employment rights in TAFE, then in NSW Industrial Relations Commission before justices Walton, Staunton and Staff, and generally anywhere else they chose.

HEALTHQUEST AND MAP ENABLED TAFE TO “RETIRE” MRS KERRISON

57. In the past TAFE personnel Quinn, O’Sullivan, Wykes, and Lockwood had all suggested or urged Mrs Kerrison to “resign or retire”., but she did not.
58. September 1994 TAFE Briefing Paper stated in part: “5. Recommendations 5.1 That Option 1 be implemented. ...This option may result in stress related leave by Ms Kerrison. However, this in the long term, **may better position the Institute to refer Ms Kerrison to the Government Medical Officer [HealthQuest] for an assessment.”**
59. HealthQuest and MAP provided the “retirement” for TAFE.
60. HealthQuest and MAP documents enabled TAFE to “retire”, or pretend to retire Mrs Kerrison.
61. HealthQuest and MAP documents unlawfully enabled TAFE to apply discriminatory

labels to Mrs Kerrison's good name "medical retirement" and the psychiatric label.

62. HealthQuest's fee for that service to TAFE was around \$800. The public purse funded MAP and its psychiatric process.

63. The HealthQuest and MAP documents unlawfully aided and abetted TAFE to discriminate on the grounds of presumed disability, and victimise Mrs Kerrison forced permanent removal from her job.

64. 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.*

65. **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...

66. MS WALSHAW MAKES FURTHER FALSE CLAIMS TO HEALTHQUEST 23/5/95 and thence to MAP

67. On 23/5/95 Ms Walshaw phoned HealthQuest stating 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.

68 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.

69 Those unlawful claims were forwarded to MAP.

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

70 On 31/5/95 Ms Walshaw phoned HealthQuest a second time asking to speak to Dr Jagger re “*Val Kerrison saying she is very suicidal*”

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 unlawfully and without Mrs Kerrison’s consent or right to rebut, forwarded this record to MAP

71 HealthQuest aided and abetted Ms Walshaw's unlawful actions on 31/5/95 by accepting this communication and entering it into their unlawfully created file on Ms Kerrison without informing Ms Kerrison or gaining her consent., then forwarding them to MAP to unlawfully assist TAFE

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

72 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:

- Ms Kerrison was satisfactorily performing her duties on 16/6/95 when Dr Jagger and Dr Mandell signed the certificate
- Dr Jagger and Dr Mandell were aware of this fact
- Dr Mandell falsely and fraudulently labeled 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
- 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
- This information had been entered on HealthQuest's unlawfully created files
- Ms Kerrison was subjected to procedural unfairness in that she was given no opportunity to hear and answer the claims made against her before Dr Mandell and Dr Jagger issued their fraudulent certificate.

73 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 Mandell 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 Walshaws 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."

74 Despite Mrs Kerrison in early 1996 withdrawing any permission to transfer Mrs Kerrison's records, HealthQuest and MAP aid and abet TAFE by refusing to comply, leading towards dismissing Mrs Kerrison's purported "appeal" in TAFE's favour (retirement).

11 June 1996 HealthQuest See Note

"Val Kerrison F No 49972

Spoke to Anna at MAP she will forward file urgently.

75

Under sec 49 D(2) of the NSW AD Act 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.

76

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.

77

Despite Mrs Kerrison withdrawing any permission to transfer Mrs Kerrison's records, HealthQuest and MAP aid and abet TAFE by refusing to comply, leading towards dismissing Mrs Kerrison's purported "appeal" in TAFE's favour (retirement).

11 June 1996 HealthQuest See Note

"Val Kerrison F No 49972

Spoke to Anna at MAP she will forward file urgently. See 11.6.96

78 HEALTHQUEST AIDS & ABETS TAFE COMMISSION'S UNLAWFUL DISCRIMINATION ON 16/6/95 BY ISSUING FRAUDULENT CERTIFICATE intention TO CAUSE MS KERRISON'S SUMMARY AND PERMANENT LOSS OF EMPLOYMENT AND MAP AIDS AND ABETS TAFE BY DENYING MRS KERRISON A PROPER APPEAL PROCESS

79 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:

- Ms Kerrison was satisfactorily performing her duties on 16/6/95 when Dr Jagger

and Dr Mandell signed the certificate

- Dr Jagger and Dr Mandell were aware of this fact
- Dr Mandell falsely and fraudulently labeled 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
- 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
- This information had been entered on HealthQuest's unlawfully created files
- Ms Kerrison was subjected to procedural unfairness in that she was given no opportunity to hear and answer the claims made against her before Dr Mandell and Dr Jagger issued their fraudulent certificate.
- MAP turned a blind eye to maladministration by TAFE/HealthQuest and aided and abetted TAFE to permanently remove Mrs Kerrison from her employment.

80 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 Mandell and Dr Jagger of the information which Ms Walshaw had volunteered inb her various phone calls. None of this information was checked with Ms Kerrison who was kept entirely ignorant of Ms Walshaws 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.”

81 MS WALSHAW, MS MCGREGOR, DR WILLMOTT -TAFE COMMISSION UNLAWFULLY DISCRIMINATE AGAINST MS KERRISON 23/6/95 BY EXCLUDING HER FROM EMPLOYMENT ON THE GROUND OF PRESUMED DISABILITY AND CONTINUED AGAIN/STILL ON MAP’S LETTER 13 SEPTEMBER 1996

82 On 23/6/95, NCI TAFE Managers took action to summarily remove and exclude Ms Kerrison from her employment and maintained it 13 September 1996 . They took this action on the basis of the fraudulent certificate issued by HealthQuest 16/6/95 and the unlawful decision by MAP 13 September 1996. These actions were unlawful under sec 49D of the NSW AD Act because

- Ms Kerrison was satisfactorily performing her duties on 23/6/95
- TAFE Management were fully aware of this fact
- TAFE Management took this action on the basis of the contents of the HealthQuest certificate and the unlawful MAP letter “disallowing” appeal.
- TAFE Management took this action without informing Ms Kerrison of the serious allegations previously made against her to HealthQuest or providing her

with any opportunity to answer and defend herself or enable a proper appeal, but use the words concocted by HealthQuest and MAP “personality disorder” and without foundation “unable to carry out the duties of officer.”

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

83 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).

84

➤ **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.

85

➤ **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.

86

- 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 persons thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

----- 87

- **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.

88

THE NSW Ombudsmans Good Conduct and Administrative Practice Guidelines (2nd Ed) state

“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

89

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.

90 **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.

91 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

20.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' defense 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
4. **Interim orders**
 - (1) The Tribunal may, on the application of the President after a complaint is made and before the complaint is declined, terminated or otherwise resolved by the President, or referred to the Tribunal, or on the application of a complainant or respondent at any time, make an interim order:
 - (a) to preserve the status quo between the parties to the complaint, or
 - (b) to preserve the rights of the parties to the complaint, or
 - (c) to return the parties to the complaint to the circumstances they were in before the contravention of this Act or the regulations alleged in the complaint occurred,pending determination of the matter the subject of the complaint.
 - (2) Section 89 of the *Administrative Decisions Tribunal Act 1997* applies to an interim order of the Tribunal in the same way as it applies to an original decision of the Tribunal.