BEFORE THE INDUSTRIAL COMMISSION OF NEW SOUTH WALES

IN COURT SESSION

MATTER NO: IRC 3124 of 2000

VALDA JUNE KERRISON
Applicant

NEW SOUTH WALES TECHNICAL AND FURTHER EDUCATION COMMISSION
Respondent

APPLICANT'S WRITTEN REPLY TO RESPONDENT'S WRITTEN SUBMISSIONS

INDEX

Attachments

A JURISDICTION

3 The application seeks declarations under Section 154.

4 The matters in relation to which declarations are sought include industrial matters, which the Commission has the function of hearing and determining under Subsection 146(1), particularly paragraph (c). They include matters related to the rights, privileges duties and obligations of the Applicant, as an employee, including the right to be treated as an employee and to receive all the associated remuneration and other benefits, and the privilege, right and duty to perform the work for which she has been employed. They include also matters related to the rights, privileges duties and obligations of the Respondent, as an employer, including its duty and obligation to treat the Applicant as an employee and to provide her with all the associated remuneration and other benefits, and recognise her right and duty to perform the work for which she has been employed. All these matters fall within the definition of *"industrial matters"* in Subsection 6(1). They clearly include matters concerning the termination of a person (the Applicant) in an industry which is an example of an industrial matter given in Subsection 6(1) paragraph (e).

5 The second and third declarations relate to matters under which orders may be made by an industrial court under Sections 365, 366, 367 in relation to remuneration, 368 in relation to superannuation and 372 in relation to interest. The industrial instruments involved include the TAFE Enterprise Agreement. The Commission in Court Session which is hearing the present application is defined as an industrial court by Subsection 364(1).

6 The Respondent has not offered any argument to the contrary.

B NON-EXISTENCE OF A DECISION TO RETIRE THE APPLICANT

7 The Respondent's submission contained in paragraphs (114) to (133)

a) incorrectly characterises the argument put by the Applicant, describing it in terms unsupported by the evidence or submissions of the Applicant;
b) fails to account for the evidence of Drs Ramsey and Willmott, the only persons who the Respondent claims could have made a valid decision;
c) asserts that there is clear evidence of a decision but fails to refer to any such piece of evidence;
d) gives contradictory accounts of the nature of the alleged decision;
e) relies on evidence which is vague and speculative, and has no relevance to the present case;
f) relies on evidence which refers only to administrative and clerical procedures and has no relevance to the making of a decision under the relevant section of the Act.

8 The Respondent's submission fundamentally mistakes the Applicant's case wrongly claiming that it is "asserted on the basis that no documents has been produced evidencing such a decision" (115). This claim is repeated in paragraphs (119), (129) and (133) of the Respondent's submission. The Applicant's position can be found in Point 15 of the Grounds and Reasons of the amended application and in paragraphs (6) and (14) of the Applicant's submissions. These do not assert the basis referred to by the Respondent, which appears to be a mere straw man. The fact that there is no documentary support for the claim that a decision was made is only one of many telling points against the claim.

9 Dr Ramsey, who at the relevant time was the Managing Director of TAFE, gave evidence on decisions under Section 20. On page 501 of transcript Dr Ramsey stated that retirement of TAFE staff under Section 20 "*if it was a medical matter then it was a matter for I think HealthQuest as it was described at the time*". When it was put to him that "*as a result of the examination at HealthQuest, HealthQuest would actually retire them*?" he responded "*As I recall*". Again when asked "*So your understanding is that HealthQuest retired the person, is that correct?"* Dr Ramsey replied "*HealthQuest as I recall made the decision and then from that point on it was an administrative matter. It was not an issue that I could take any part in if HealthQuest had made a decision*".

10 The only other candidate for the rôle of decision-maker was Dr Willmott, but neither in his Affidavit (Exhibit 21) nor in his oral evidence did Dr Willmott claim to have made a decision under Section 20. The only "decision" to which he referred was the decision of HealthQuest (p585. 15).

11 The Respondent (118) has misconstrued the Applicant's submission on the question of delegation. The Applicant's submission (13) refers to the fact that only the Managing Director or "the Institute Director North Coast Institute of TAFE by written delegation from the Managing Director" could exercise the relevant power. The Applicant was here limiting the field, having already pointed out in

paragraph (6) that there was no evidence of any relevant delegation. Neither the evidence of the potential delegator, Dr Ramsey, nor of the potential delegate, Dr Willmott, makes that claim. There is in fact no evidence that Dr Willmott had any delegated authority to terminate a staff member's services by dismissing them or causing them to retire. The most that could be inferred from the evidence is that Dr Willmott and his staff had administrative functions in connection with the acceptance and processing of voluntary retirements and resignations. The exercise of such functions cannot be equated with delegated statutory power to cause a staff member's involuntary termination.

12 Dr Willmott acknowledges in his Affidavit that he had no recollection of sighting the "Certificate" from HealthQuest, a point which he reaffirms in his oral evidence. The Respondent's submission at paragraph (121) suggests that this is unsurprising "in light of the considerable period of time that has since elapsed, and the scope of his responsibilities as Institute Director". This matter arose in difficult and controversial circumstances and it was a matter in relation to which the Managing Director had written to Dr Willmott. It has been active throughout the years.

13 There is, moreover, no evidence at all that Dr Willmott saw the document. The document is not addressed to him and the Respondent's submission cannot refer to the evidence of any witness who handed it to him or received it from him. The Commission may therefore find that the obvious explanation is the correct one, namely that Dr Willmott could not recollect the document because he had not seen or read it.

14 Dr Willmott's evidence should be considered in the light of the actual requirements of section 20. There are a number of legislative requirements to be satisfied.

14.1 The member of staff must be found to be unfit or incapable,

14.2 the unfitness or incapacity must appear to be of a permanent nature

14.3 it must not have arisen from actual misconduct by the member and

14.4 it must not have arisen from causes within the member's control

15 The first step in taking such a serious decision must be for the decision-maker to satisfy themself that these conditions have been met, a process requiring at least a careful reading of the HealthQuest document, particularly since it is not in precisely the same terms as section 20. The HealthQuest document did not contain a finding of failure to discharge the duties of office; HealthQuest merely wrote an opinion. It is submitted that an opinion is not a finding. Neither HealthQuest nor TAFE have identified any duty which the Applicant was found incapable to perform. TAFE's own records confirmed that the Applicant was discharging her duties of office.

16 Section 20 empowers, but does not require, the TAFE Commission to cause an employee to be retired in the circumstances referred to therein. There are obviously other options open to the employer including transferring the employee to another type of work, or transferring the employee to similar work in another location.

17 The making of a decision must therefore require consideration of the available options including, whether the option of termination or alternative should be taken and the rights of the employee to be informed and heard. The Commission may feel that this is a process which, if it had been undertaken, would be unlikely to slip the mind of the decision-maker.

18 The Respondent's submission (120) describes the decision as "the one recorded by Ruth Gallagher" on a handwritten note, but the evidence of Dr Willmott does not contain this claim nor is it contained in the note itself.

19 The undated handwritten note reads "Kerry URGENT need to terminate her as at close of business today" (Exhibit 22 Annexure A). The Respondent gives a different account at paragraph (126). Here it is stated that the termination of the Applicant's employment was subject to the Applicant's exercise of a right of appeal which she could do within 30 days. In paragraph (131) the Respondent makes two further attempts to describe the alleged decision. Firstly it is claimed that the decision was subject to a condition re the result of the appeal, then that it had been stayed by the appeal. These attempts exist only in the Respondent's submissions and no evidence is adduced to support them. All the later versions, however, are clearly inconsistent with the view that Ms Gallagher's note is a record of a decision by Dr Willmott.

20 The Respondent's submission (121) refers to Dr Willmott's evidence that it was his "usual practice to have Ms Gallagher forward documents to various sections of the Institute after they had been brought to my attention". This is not a claim that this happened in this case, and as submitted above, there is no evidence that the document was brought to Dr Willmott's attention. Even had it been so, having a document brought to someone's attention is a far cry from that person making a decision with specific statutory requirements.

21 In paragraph (122) the Respondent's submission proceeds to refer "in turn" to the evidence of Ms Gallagher as something which "confirms the normal practice". The practice described is, however, not at all the one described by Dr Willmott. He ascribed to Ms Gallagher the clerical rôle of forwarding material, but she ascribes to herself the rôle of directing the actions of other officers, albeit on Dr Willmott's verbal advice. Once again neither Dr Willmott nor Ms Gallagher claimed that this occurred in this case.

22 In paragraph (123) the respondent's submission refers to the evidence of Ms Gallagher during cross-examination (pages 479-480). It is true that Ms Gallagher surmised that she would have written at the direction of Dr Willmott, but she also stated that she had "no memory" of it. There is nothing here to suggest that there might have been anything other than Dr Willmott's "usual practice" of having Ms Gallagher forward on documents, and certainly nothing to support the view that he had made a decision under section 20. The evidence also shows that the document was addressed to Ms Walshaw, and Ms Gallagher's evidence was that such certificates "would normally have gone straight to the Human Resources Manager". The note was written on a sticker, is undated and does not even bear the name of the applicant or any other person. There is no evidence of the note's provenance or history until it was discovered attached to the HealthQuest certificate when the Applicant obtained it in November 1995 by a Freedom of Information application.

23 When it comes to the rôle of Ms Walshaw the Respondent's submission is equally inconsistent. At (124) it is claimed that Ms Walshaw was given the task by means of Ms Gallagher's direction found in Annexure B to Exhibit 21, and at (125) that Ms Walshaw proceeded on the basis of that "direction to terminate". In (126), however, the Respondent points to the evidence that Ms Walshaw wrote describing the termination as something for the future, not a peremptory termination at Ms Gallagher's direction. Ms Walshaw, in Ex 44 "B" 23 June 1995 wrote: "I realise that by now you have received your notification of retirement from HealthQuest …" She did not refer to any decision under Section 20 by Dr Willmott, Ms Gallagher or any other TAFE employee. The only thing established by the evidence is that Ms Walshaw received a certificate addressed to her and then wrote the aforementioned letter. The Applicant submits that the Respondent's submissions on the possible existence of a decision under Section 20 to cause the Applicant's retirement are pure speculation and inconsistent with the evidence. The Simpler explanation should be preferred, tha the only action taken was administrative processing.

24 In paragraph (129) the Respondent claims that "the Applicant also appears to be asserting that the circumstances demonstrated an invalid attempt to delegate the termination to …HealthQuest". The Respondent's submission goes on to acknowledge that "Obviously Section 20 requires a relevant decision to be made by TAFE". If Dr Ramsey's evidence is to be credited this was not, however, obvious to the Managing Director. The Applicant of course agrees with the Respondent's view in paragraph (132) that there was no delegation to HealthQuest and has clearly submitted that that body had no power to cause the Applicant to be retired or issue a "Retirement Certificate" pre-empting a lawful decision by the employer.

25 The Respondent's submission disputes the relevance of authorities such as *Wilson v Department of Education and Training* (2000) 100 IR 1, but refers with apparent approval to evidence concerning administrative practices such as forwarding on documents and giving verbal advice. These, in the spirit of Dr Ramsey's evidence, appear at best an attempt to substitute procedures for the proper application of the Act, a course of action which the Commission in that case viewed as something not permitted.

26 This is a matter requiring the exercise of a specific statutory power on behalf of a statutory body by one of its officers, of major importance to a member body's staff, in circumstances known to be controversial.

26.1 On one of the views put forward in the Respondent's submission the alleged decision was a complex one, subject to conditions and a time delay.

26.2 The Respondent invites the Commission to accept that a decision was made even though no one has claimed that they made it.

26.3 The Respondent offers no explanation as to why the normal, prudent practice of public service decision-makers of documenting their decisions would not have been followed.

26.4 The Managing Director appointed the applicant to the full-time permanent position and gazetted it. There is no gazettal in evidence of any form of severance of the applicant's employment

26.5 Despite the Respondent's repeated efforts, the applicant, did not accept retirement and is not retired, she is working.

26.6 Significantly, State Super, despite TAFE repeated efforts to initiate a retirement against Mrs Kerrison through the years 1995 to at least 1998, evidently could not retire Mrs Kerrison or accept TAFE's clerical staff's documents as a retirement against the applicant. State Super letter Ex 37 merely shows that in 1998 TAFE initiated a "withdrawal" from superannuation.

27 The Applicant submits that the Respondent's submission lacks credibility and is unsupported by the evidence and that the Commission should conclude that no decision to cause the Applicant's retirement was made.

28 Although there was no decision under section 20 to cause the Applicant to be retired it appears that administrative decisions were made by persons in TAFE which resulted in the Applicant being deprived of work, salary and other entitlements. In Sullivan v The Council of the Municipality of Casino & Anor Judgment 7 December 1973 (and attached for convenience) Sullivan, an officer of Casino Council successfully brought a case against the Council claiming that a decision of the Council to suspend him was invalid because it arose from a resolution which was a nullity and thus failed to be an exercise of the power of the Council to suspend. While the present case is different it is similar in that the Respondent has at various times as set out in the List of Decisions and Related Actions herein, made decisions that are or should be a nullity on the grounds that they denied Procedural Fairness, lacked due process and arbitrarily deprived the Applicant of her job, duties, income, and other entitlements including reputation. It is submitted that the Respondent's decisions against the Applicant from 17 January 1995 and thereafter therefore were not a lawful exercise of the Respondent power and are nullity and that the Applicant is entitled to the Declarations sought in her Amended Application for Declaration.

C INTERPRETATION OF EVENTS AND EVIDENCE

29 A substantial part of the Respondent's submission rests on a selective and contrived use of the evidence, and is contrary to the weight of the evidence.

30 The Applicant made a complaint concerning certain actions which primarily, but not exclusively, involved discrimination against indigenous students. The Respondent's submission omits all reference to the nature of the complaint and is in error characterising that complaint as being merely a matter of "unresolved tensions" between two employees (18).

Original Complaint

31 Respondent's reply including paragraphs 18, 28-31, 41-45 refers to the Applicant's original complaint.

31.1 The evidence and testimony was that the original complaint consisted not only of the Applicant's 1993 letter and a number of letters by TAFE students, but also her additional information in 1994.

31.2 The complaint/grievance included incidents of Ms Hayes refusing Aboriginals students entry to their rightful classroom and tuition in early 1994; and

31.3 The practice of Kempsey TAFE Manager/s including Ms McGregor of sending letters of summary dismissal to Aboriginal (but not other) students if the Aboriginal students missed some classes. This was done "all the time" in the Djigay Centre of Excellence in Aboriginal Education, a section of Kempsey TAFE. In evidence is the Applicant's evidence relating to early 1994. This issue is also referred to in the respondent's May 1994 report Ex 84 Para 4.1. The Respondent did it seek to question Ms McGregor on this nor has the Respondent offered any argument to the contrary of the Applicant's evidence; and

31.4 False entries to public registers, and

31.5 General victimisation by Ms Hayes. Victimisation by Ms Hayes was also identified by the Respondent in its report Attachment "B" of Ex 23 as a "need to victimise/undermine others".

32 Arising from the original complaint was the respondent's investigation. In cross-examination at T/s 276.40 the Applicant testified that the investigators investigated her without her knowledge. The Respondent has not offered any argument to the contrary, or why this should have occurred instead of contacting the witnesses named in the complaint such as Aboriginal student Mr Michael Smith Ex 3 "15", even by phone-call (T/s 241). As there is no evidence to indicate that it is not still the Respondent's practice to privately investigate the grievant instead of the grievance, the Commission may feel that this seriously goes against the Enterprise Agreement Grievance Policy.

33 The complaint was the subject of an internal investigation which did not involve the Applicant. This produced a report which upheld the complaint but that information was not conveyed to the Applicant at that time. The report did not

result in any effective action by TAFE. The Respondent's submission fails to refer to the failure of the investigation to lead to any remedial action and is in error in portraying the Applicant's dissatisfaction with the report as relating solely to procedures.

34 The Respondent's submission assertion at (34) of that only the applicant has been dissatisfied with the result is unsupported by any evidence, unless it merely refers to the unsurprising fact that the witnesses called by the Respondent offered no criticism of the investigation and the lack of action which followed. There is no evidence of the views of other persons affected, such as the ethnic or indigenous students including those of the Djigay Centre of Excellence in Aboriginal Education, Mr Smith Ex 3 "15",and the TAFE teachers named in the complaint. Significantly the Respondent, unlike the Applicant, had the resources and could have called these witnesses but did not.

35 In seeking to deal with the evidence as if issues concerning the Applicant's health were the central, or only issues, and in failing to take into account the evidence on the original complaint the Respondent's submission falls into further error. It characterises various actions and attitudes as "helpful", apparently on the basis that they purported to be directed to the Applicant's health. These actions can properly be characterised as "unhelpful" because they made no contribution to securing a proper response to the original issues, particularly concerning discrimination against indigenous students, and diverted attention from those issues. It is not unreasonable for the Applicant to regard them unfavourably if they could be construed as attempts to induce her to abandon her pursuit of the original issues for the sake of her health. The numerous sections of the Respondent's submission alleging that the Applicant took a "selective" view of various events and actions amount to no more than a recognition that the Applicant assessed various actions and statements on the basis of their helpfulness or otherwise to the rectification of the original issues to improve the workplace. The evidence may be consistent with a view that the Applicant, not knowing that the issues would not be addressed by the Respondent, pursued those issues to the detriment of her health and financial well being, but cannot support the pejorative language of the Respondent's submission.

36 The Respondent's approach in its submissions and previous actions can be seen in its own words (9) to take "a myopic view of events which touch" it, to "filter out of such events aspects which [it] construes as damaging to" it, such as discriminatory, victimising actions by an employee. The Commission would be in a position to determine that, because of the Respondent's narrow focus it has "remained unable to perceive" (13) that it has an unresolved problem in relation to the original issues or with the absence of effective practices for managing staff and resources, observing the rights of staff, complying with the provisions of various Acts and recording the grounds for and intended effect of its actions.

37 The Respondent's submission (56) specifically criticises the Applicant for taking material relevant to the original complaint to a medical appointment for rehabilitation (See Ex 2 "A"). But the evidence supports the view that the original issue and TAFE's actions, or lack of action, were relevant to the health and wellbeing of the Applicant particularly in the workplace. The evidence of Dr Holmes (ex 20 Attachment D) supports the view that the Applicant's sense of

justice was a very relevant issue and justifies the Applicant's belief that the material was relevant.

38 The Respondent's submission eg at (36), (38), (41) and (51) deals with the Applicant's perceptions that she was "in danger" or subjected to threats. The Applicant's submission at page18 details some of the harm suffered by the Applicant. As the evidence shows that the Applicant has by the actions of TAFE been arbitrarily deprived of her work, livelihood and reputation it supports the view that the Applicant's perceptions were well founded. Significantly, the Applicant has claimed to have further tape-recorded evidence regarding the "threats" and "danger" to her and the Respondent still maintains its 9-year stance; it objected to this material and has still not availed itself of this material or attempted to address the issues.

39 The Respondent's submission attributes to the Applicant views which are not to be found in the evidence, in particular that the Applicant had advanced a "conspiracy theory" (47), (83) even though the Respondent admits that there "was little or no suggestion that there was evidence of some agreement" to act in a particular way (84). In an environment where the employing authority was refusing to deal with an original issue and the Managing Director was encouraging a focus of action regarding the Applicant's health it is unnecessary to invoke any "conspiracy theory" to account for the fact that the actions of several people had a common tendency.

40 The Respondent's submission (8) improperly attempts to attribute to the Applicant a view that various decisions have been "presumably calculatedly" designed to damage the Applicant. This gratuitous presumption is unsupported by the evidence. The Applicant has openly criticed actions by TAFE management and asserted their responsibility for their actions in accordance with the observation in Ferguson v Kinnoul at (322) the Lord Chancellor observed "… *it is a well-established maxim that everyone must be taken to intend the necessary consequences of his deliberate acts*". There is no justification for presumptions and speculation on the Applicant's position.

41 The Respondent's submission (11), (47) and (79) denies that Dr Ramsay urged that the Applicant be referred to Healthquest and claims that he only urged that the Applicant be supported. The evidence expressly shows that Dr Ramsay suggested that the referral be made, and a suggestion from such a senior officer can properly be described as "urging". As the suggestion proposed no timescale and did not urge instant action, the fact that some three months elapsed before the reference to Healthquest took place does not show that the suggestion was not adopted. Dr Willmott in fact did exactly what Dr Ramsay had urged. The Applicant's submissions and reasons regarding the delay are on Page 4 of the Applicant's Submission - Ms Walshaw Submitted. The Commission will have noted that Dr Ramsey's letter to the Applicant on 17 January 1995 contained no reference to the course he was proposing to Dr Willmott on the same day. This is not consistent with the view that he was merely being helpful and not urging a course of action potentially detrimental to the Applicant.

42 The Respondent's submission (24) claims that the Applicant's recall was selective, because there was a reference in exhibit 26 to a reference to Healthquest. The evidence does not support the view that at that time the Applicant was provided with any reason to believe that Healthquest was anything

other than what the name suggests – a body dedicated to seeking health – or that she was informed that it was actually the renamed Government Medical Officer and that a purported retirement was on the agenda.

43 The Respondent's submission claims (59) that the finding of HealthQuest is "overwhelmingly" supported by the report from Dr Holmes. Dr Holme's report, however, states that if the Applicant did not succeed in various endeavours "she may eventually need to retire from TAFE on medical grounds". A possible prospect of eventual retirement cannot possibly be equated with an opinion that a person is, at present, incapable of discharging their duties and that the incapacity appears to be of a permanent nature.

D NATURAL JUSTICE

Part A

44 The Respondent's submissions at paragraphs (104 -106) and the references to case in (111) amount to an argument that any denial of natural justice was remedied by the Medical Appeals Panel. This argument is gravely flawed because;

44.1 The Medical Appeals Panel is not a Court, so that the cases cited have no application;

44.2 The Medical Appeals Panel does not observe the procedures of a Court;

44.3 The Appeal was plainly not plenary, there being no capacity in the Panel, or in HealthQuest whose decision was being appealed, to deal with questions of natural justice and procedural fairness in the actions of TAFE;

44.4 The Appeal can have no possible relevance to the events which occurred after the HealthQuest decision and the decision of the Panel, events where there was no pretence of affording the Applicant natural justice.

Part B

45 In reply to the Respondent's Section "E" and paragraphs (73), (74), relating to Procedural Fairness and Natural Justice the Respondent mistakenly refers to a couple of instances, whereas the Applicant's case is that taking into account the cases above especially Kioa v. West (1985) 159 CLR 550 at p.619 the Applicant claims that she was entitled to procedural fairness and natural justice in all decisions and supporting actions and documents underpinning the decisions which were apt to affect her interest regarding her rights to her job, duties, income, reputation, opportunities for professional development, opportunities to progress in her career, opportunities for promotions, safe workplace free of harassment and unfair actions, other.

46 The Applicant's submission that she was denied procedural fairness applies to an accumulating sequence of decisions and their related documents to prop up the decisions.

46.1 In Ainsworth and Anor v Criminal Justice Commission (1992) 175 CLR 564 at 576, the majority of four justices of the High Court said:

"It is now clear that a duty of procedural fairness arises, if at all, because the power involved is one which may "destroy, defeat or prejudice a person's rights, interests or legitimate expectations" (Annetts v McCann).

46.2 In Kioa v. West (1985) 159 CLR 550 at p.619 Brennan J referred to:

"The presumption that the principles of natural justice condition the exercise of a statutory power may apply to any statutory power which is apt to affect any interest possessed by an individual whether or not the interest amounts to a legal right or is a proprietary or financial interest or relates to reputation. It is not the kind of individual interest but the manner

in which it is apt to be affected that is important in determining whether the presumption is attracted.

46.3 In Twist v Randwich Municipal Council (1976) Barwick C J stated: *"The common rule that a statutory authority having power to affect the rights of a person is bound to hear them before exercising the power is both fundamental and universal …*

The effect of a breach of the hearing rule is as follows:

"The decision is invalid (void, rather than voidable) see Ridge v Baldwin (1964)

"Although the decision may ultimately be declared void by the court, the fact that it has been made still gives the court jurisdiction to hear an appeal against it (in the event of there being a statutory right of appeal)

Ref: Essential Administrative Law by Ian Ellis-Jones, lecturer Faculty of Law UTS Sydney.

46.4 In Hubbard Association of Scientologists International v Anderson and Just (No 2) (1972) VR577 579 Adam J delivered the judgement of the court (Adam, Little and Gowans JJ) and said:

If an act is void then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it, aside. It is automatically null and void, without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad."

"You cannot put something on nothing and expect it to stay there. It will collapse."

Denial of procedural fairness and rights by HealthQuest, MAP and department/s such as TAFE was identified in Ex 43 Health Care Complaints Commission report and the report in this Exhibit is applicable to this case particularly as the Applicant's case is amongst those reported on,

47 Underpinning the situation surrounding this case is the simple reality - the Applicant's performance of duties was exemplary and the Respondent admits this [EXH 3 Attachment "4"] and she performed those duties in TAFE classrooms, in TAFE colleges and in the wider community.

48 Against this reality, commencing January 1995 decisions were made and actions surrounding those decisions were carried out to the Applicant's detriment. The decisions and related actions effected the Applicant's:

48.1 Legal right to her job and duties;

48.2 Her rights to her wages, superannuation payments, and accumulated sick and extended leave;

48.3 Her rights to her reputation, both personal and professional

48.4 He rights to continue in her appointed position including the opportunity to apply for promotions and higher income

48.5 Her rights to participate in TAFE's internal staff development program

48.6 Her rights to rehabilitation through TAFE rehabilitation program.

49 The decision makers did not allow the Applicant natural justice before they made decisions that destroyed, defeated or prejudiced her rights, interests and legitimate expectations. The decisions were made and acted upon without giving the Applicant an opportunity to be heard, and to call evidence on such matters as were being considered before the decisions were made.

50 It is submitted that the decisions were commenced from one decision: the Respondent's decision to send the Applicant to HealthQuest and facilitate detriment to her and her removal from TAFE. From that decision the following decisions and actions flowed and were related as one action built on another. When put together the Commission may feel that the accumulated effect at present standing against the Applicant should not be allowed to stand. The Applicant, when she became aware of the decisions and actions standing against her and her rights and reputation did not accept them but vigorously denied them for years but the decision makers have not shifted their position, instead they made more decisions without allowing the Applicant procedural fairness or justice. The Commission may feel that this is an outrage performed by the decision makers for political reasons, not proper purpose and fall within the detrimental actions applied to dissidents as described in Ex 103 The Russell Tribunal Accusation . Consistent with the cases above, it is submitted that the following decisions and actions are void and a nullity.

51 It is submitted that the decision to stand the Applicant down, direct her to HealthQuest and all subsequent detrimental decisions and actions against her were directly related to the original wrong decision, done without any attempt at procedural fairness, or natural justice, often in serious denial of the truth, and are a nullity.

52 The decision makers had the means to communicate their intentions to the Applicant before they acted but did not. The decisions and related actions which were made and performed without procedural fairness and drastically affected the Applicant's rights as set out above are listed in **Attachment 1 . <u>List of Decisions and Related Actions</u>**

53 The Commission may observe that only the original decision by TAFE Managing Director Dr Ramsey around 17 January 1995 shows consultation (with Mr Allsop) and deliberation on options. The Commission may observe that those deliberations did not included procedural fairness. From that decision to authorise the HealthQuest process against the Applicant (grievant) all the rest of the decisions and actions followed apparently without deliberation but simply related to and flowing from the original decision. It is therefore submitted that all these decisions and actions listed on the attached above are clearly shown to be a nullity collapsing with the original extraordinary decision.

E MEDICAL APPEALS PANEL

54 The cases cited by the Respondent (111) in relation to natural justice refer to circumstances where an appeal to a Court had been exercised. They are not relevant to this case because the Medical Appeals Panel (MAP) is not a Court.

55 Additionally, in a Court and relevant to natural justice is that the evidence is open to all parties to see, and must seen by the parties in order to mount a case or defence - the MAP's reference material was and still is hidden from the applicant.

56 Lack of process, transparency, and fairness by the Medical Appeals Panel, HealthQuest and Department/s such as TAFE, and was also found by the Health Care Complaints Committee which reported in Ex 43

57 Regarding the Respondents Paragraph 147 not only did neither HealthQuest or TAFE tell Mrs Kerrison of the documents, telephone calls and allegations they freely gathered, wrote, exchanged; but neither did HealthQuest and MAP tell the Applicant what they gathered and exchanged, they denied the Applicant procedural fairness and this is part of the List herein as a nullity.

58 At (108) the Respondent "*There is absolutely no doubt that, by the time of the finalisation of the appeal, the Applicant was fully appraised of each and every matter that had been considered by Healthquest*" mis-states the evidence. At Transcript T/s 317 and 318 the Applicant testified as to information held (workers comp file/s) but did not know what was in the files.

> *Q. Are you able to identify any documents you did not get?*
> *A. Yes there have been references to workers compensation information. I do not know what.*
>
> *Q. Can you indicate what such document might be?*
> *A. I have no idea. It would be the whole workers compensation file which would be quite thick by this time.*

Therefore it is clear that all that information in the files was hidden from the Applicant, not only for the HealthQuest process but also the MAP process - for instance all doctor's reports in the files were hidden and had no idea what other material might be in them, where the files were obtained from, what year or instances they might be relevant to.

As the Applicant did not know where the files were obtained from this could have been TAFE; it could have been the insurers GIO; it could have been workers compensation files from decades before and the Applicant did not know who the insurers were then or what information was in the files held by her employer at that time, it could be Commonwealth Rehabilitation Services and if so the Applicant did not know what they formulated, or what years it might refer to. The Teachers Federation also compiled workers compensation files relating to the Applicant but if these were obtained by HealthQuest and MAP the Applicant did not know what was in these files. The simple way forward would have been for HealthQuest and MAP to disclose all their information but they did not even under multiple and complex FOI's. They simply passed the files between each other at will.

59 More evidence of material hidden from the Applicant but part of MAP's files pertaining to her is shown by the cover sheet to Ms Walshaw's document to HealthQuest 1 August 1995 (Attachment to Ex 79 Turco letter). This cover sheet indicates that this 3-page document was sent to HealthQuest and also sent to the MAP. Although the Respondent, perhaps understandably in light of its submission, omitted this cover page from the Respondent's Ex 19 "H" the applicant supplied the complete documents/attachments in Court. On this Cover-sheet it can readily be seen Ms Walshaw's *request "I would ask that this be submitted with other relevant documentation to the Medical Appeals* Board [sic Should not be "Board" should be "Pane*l*". Also on that cover-sheet is the handwritten message: "*Noted -> MAP*" and MAP's official receipt stamp.

60 The Commission may observe that Ex 19"1" Attachment to Ms Walshaw's Affidavit, Ms Kerrison's letter to Ms Walshaw 22 September 1995.

60.1 The Commission is asked to observe that at the bottom of the page is identification that it was received through fax, so it was TAFE's copy.

60.2 Up the top right hand corner shows the handwritten "02-391 9053" in what appears to be Ms Walshaw's handwriting.

60.3 "02-391 9053" was MAP's telephone number and is in evidence on MAP's letterhead (Ex 69).

60.4 Ex 69 is MAP's letter to the Applicant, dated 26 September 1995, but glaringly does not inform the Applicant that TAFE and MAP are evidently in contact with each other and may very well be exchanging information such as telephone calls and documents**.**

60.5 In Ex 72 MAP states that the 'appeal', which evidently could include Ms Walshaw's input, had commenced and explicitly refuses to divulge its information to the Applicant's legal representatives.

60.6 From this the Commission may feel that TAFE may have had more knowledge of what was at MAP than the Applicant, and that Ms Walshaw may have influenced MAP and contributed to MAP's files and statements. As the Applicant was in the dark re MAP's files, contacts, information, telephone conversations, and process the Commission may decide that there was no valid appeal process available to the Applicant.

60.7 The Commission may surmise from the evidence indicating that that Ms Walshaw/TAFE were in direct contact with the MAP without the Applicant's knowledge, when one looks at the contact Ms Walshaw had with HealthQuest including the wild allegations and claims including that of "very suicidal" about the applicant (Ex 10, Ex 20 "C", and attachments to Turco Ex 69) it could only be conjecture as to how much input TAFE privately made to the undisclosed MAP "appeal" process in September 1996, and similarly to the HealthQuest statements and opinions. Further information is not in evidence, and as the Respondent did not call anyone from MAP to give evidence when they had the resources to do so the Applicant submits that MAP's evidence would not help the Respondent's case, and that the MAP process was not a proper appeal process.

61 By October 1995 MAP had obtained from Dr Holmes Ex 70. T/s 316.5 is the Applicant's testimony that it was MAP which obtained that document from Dr

Holmes, and not as mis-stated by the Respondent in its Submission (110) the Applicant. The Commission can observe that MAP's letters Exs 72, 74, 78 did not inform the Applicant that it had obtained this document, nor does it inform the Applicant about workers compensation file/s relating to her name, and what was in them, or from where it/HealthQuest had obtained them, nor do they inform the Applicant of contact between Ms Walshaw and MAP.

62 The Commission may observe that MAP's letters Exs 72, 74, 78 did not even inform the Applicant of the possibility that it held documents which she had not seen yet it knew it had obtained document/s including Ex 70.

63 From this the Commission may observe that the MAP was not independent of HealthQuest at all - in fact they were joined at the hip as it were, sharing their secret file/s with each other but not the Applicant.

64 The Commission may observe the comments and messages that Dr Jagger wrote to MAP on the version of the Respondent's Ex 19"H" which the Applicant supplied in the Attachments to the Turco Letter Ex 69 and deem them biased untested statements sent privately to a purported appeal process thus eliminating any view that there was a bono fide appeal process available.

65 From this the Commission may find that the Applicant did not ever know, and still doesn't know what material and allegations MAP actually possessed and that the Applicant could not possibly mount an "appeal" when she did not know:

65.1 what was lodged at HealthQuest and/or the basis (if any) of its "certificate"; and

65.2 what was being passed between HealthQuest/TAFE and subsequently lodged in MAP; and

65.3 what other material was lodged at the MAP already constituting part of the "appeal" against the HealthQuest "certificate"

65.4 what contact and 'information' passed between Ms Walshaw and MAP.

65.5 As further indication of lack of appeal process, The Commission may observe that in evidence there is no copy of any process to be used by MAP and may determine that consistent with The Health Care Complaints Commission report that there was none.

66 As the MAP evidently did not have a written process, the Commission may consider the observable actions which MAP performed. The Applicant testified on MAP's observable process at 321. "*I considered, believed I knew that the Medical Appeal Panel consisted of one person whom no one was allowed to meet who simply sent people to a psychiatric where a psychiatric label was affixed to their name.*" The Respondent has not supplied evidence to the contrary that MAP simply applied psychiatric label to the appellants.

67 It is submitted that this is relevant to the Accusation by the Russell Tribunal Ex 103 paragraph b) which states inter alia "since there are no physical markers to examine, the so-called "diagnosis" cannot be disproved…"

68 The Commission may observe that this indicates MAP could not ever disprove HealthQuest's psychiatric labels to grant that appeal, evidently MAP did not appeal psychiatric labels - it applied psychiatric labels.

69 Significantly, none of TAFE, HealthQuest or MAP reported any duty which the Applicant failed to discharge and her performance of duties is the basis and measurement of her work performance.

69.1 Performance of duties are assessed on observable measurable criteria. TAFE assessed the Applicant's performance of duties by appointing people qualified in the field of expertise to observe and assess the Applicant performing her duties.

69.2 Those assessments used observable measurable criteria to validate the judgement.

69.3 TAFE Managing Director and managers under him had access to all records pertaining to the Applicant, and the Commission may deem that the consideration of Applicant's performance of duties did not form any part of this 'HealthQuesting' process. The Commission may consider that this leaves merely a psychiatric process such as Ex 102 and Ex 103.

70 At T/s 337.50 the Applicant stated: "*This wasn't a medical situation. If they had doubts that I could teach in TAFE they could get someone suitably train[ed] and say [to me] please conduct a class and we will assess your work."*

71 The Commission may deem that across-the-board non-consideration of the Applicant's performance of duties seems somewhat strange if this TAFE/HealthQuest/MAP 'fitness to continue' assessment was to be a bona fide assessment relevant to the Applicant's employment.

72 The Commission may consider that as the Applicant had supplied the Turco letter (EX 69) to MAP detailing what might be considered lack of fairness and process so far, the Applicant informed MAP but MAP kept the Applicant in the dark so there was no valid appeal process available to the Applicant.

73 The Respondent has misstated Dr Holmes role (58) and (59) by referring to Dr Holmes as "her treating psychiatrist in May 1995…". In fact, Dr Holmes's position was similar to Dr Mandel's at HealthQuest in that the Respondent required the Applicant to attend the appointments:

73.1 On 11 April 1995 the respondent's Mr Quinn stipulated (through CRS) that the applicant go to psychiatrist Dr Holmes (See Ex 85 Attachment 4 page 3);

73.2 In May 1995 TAFE ordered the applicant to HealthQuest. The Applicant was met at HealthQuest by a psychiatrist. (See also Ex 103 for further information on this process).

74 In 1995 seemingly Dr Holmes, Dr Mandel, Dr Jagger, and TAFE all knew or presumed that the process was purported retirement because all these people used the word "retirement" or derivative even though all knew that at that time the applicant was working i.e. probably in the classroom teaching.

75 Significantly none of them informed the Applicant that they were discussing "retirement" in relation to her. As they would be aware that they had not told the Applicant that retirement was on their agenda it follows that they knew they were not allowing the Applicant procedural fairness.

76 At 147. The Respondent refers to the Applicant's testimony T/s 321.35 *"Because by this stage I had met other people who had been down this same path, who had*

opened their mouth at the wrong place, both at state and federal level and were sent down at the state level to HealthQuest and at federal level sent to Conquest [sic Not "Conquest" should be "Comcare"], *to be got rid of.*" The Commission may observe that the Respondent used HealthQuest and MAP and at least temporarily got rid of the Applicant. Further information on this process is in Ex 103

77 The Applicant submits that the MAP (who do not meet with or speak to the subjects) formulated a document/decision which flowed from, repeated, and relied on HealthQuest decision. The HealthQuest decision arose from TAFE's decision to send the Applicant to the HealthQuest psychiatrist. The HealthQuest psychiatrist performed actions similar to those described in Ex 103 Accusation. TAFE's HealthQuest's MAP's actions were performed without procedural fairness or due process. From this it is submitted that all of this should collapse as a nullity and that should include the MAP document.

78 Further evidence to support the Applicant's claim that documents and decisions including the HealthQuest "Certificate" are a nullity and that the HealthQuest document should not be applied to the Applicant's name are the following evidence of HealthQuest's errors:

78.1 the HealthQuest "Retirement Certificate" refers to an appointment "nineteenth day of May in the year 1994" (Ex 18 "C") but the Applicant was no-where near HealthQuest in 1994; and

78.2 the HealthQuest "Retirement Certificate" is based on a "Referring letter 1.1.95" (Ex 20 "A") but the Applicant was not referred to HealthQuest in January 1995.

79 Seemingly HealthQuest has cobbled together any old records or facts pertaining to an unknown number of referrals or "subjects", referring to 1994 and 1995 and applied this mess to the Applicant's good name. As HealthQuest operated without procedural fairness/natural justice, (or consent) it is submitted that the purported "Retirement Certificate" (as with the referral) is a nullity.

80 Additionally and crucially, the MAP document does not contain the word "retirement" or any derivative

81 The Commission may find that the latter part of Respondent's Para 68 is misleading: "...`The validity of the decision taken to medically retire the Applicant in a manner consistent with her right of appeal to the Medical Appeal Panel is dealt with in Part F of these submissions below`"

82 The Commission may consider this to be misleading because if, as the respondent has recently attempted to claim, TAFE made a decision, the respondent is implying that the MAP would appeal that TAFE decision.

83 It is submitted that this is clearly not so, the MAP does not appeal TAFE decisions and surely the respondent is aware of that - MAP do not even hold TAFE management's files to appeal.

84 . From this the Commission may note that at this time, September 1996, the Respondent still claimed the Applicant as its employee, albeit on purported Sick

Leave Without Pay. As there is not in evidence a decision around this time a decision by TAFE to retire the Applicant, the Applicant is still a TAFE employee.

F TAFE ACTION AFTER HEALTHQUEST

85 The Respondent now claims, (131) that the role of HealthQuest was merely to provide advice and that TAFE subsequently made a decision. There is, however, no claim that Dr Willmott the supposed decision maker, or for that matter Ms Gallagher, made any attempt to afford the Applicant any opportunity to respond to the report or make submissions on which of the options open to TAFE, if any , should be taken. Of course that is not surprising given that no decision under section 20 was ever made, and no evidence that either Ms Gallagher or Dr Willmott saw the HealthQuest document. There were however, other administrative decisions and actions which certainly affected the rights of the Applicant and she was never afforded natural justice or procedural fairness in relation to those administrative decisions and actions.

G IMPROPER PURPOSE - BAD FAITH

86 In reply to the Respondent's Section D Allegations of Improper Purpose Bad Faith, the Applicant refers to the List of Decisions and Related Actions herein and draws the Commission's attention to the decisions and actions taken against the Applicant without allowing her procedural fairness/ natural justice. The list is long. The decisions many.

87 The sheer number of them is apparent, and the detriment caused to the Applicant huge, yet the sequence of decisions and events was not sparked or fuelled by any wrongdoing by the Applicant [EXH 3 Attachment "4"]. Conversely the process was commenced by her grievances to TAFE's Managing Director Dr Ramsey.

88 As Dr Ramsey knew, or should have known, on 17 January 1995 most TAFE teachers were on holidays, yet Dr Ramsey explored options then singled out the Applicant on that day and suggested/authorised/urged a forced medical/psychiatric "assessment" of the Applicant (Ex 9), and the rest, as recorded in the list, followed.

89 Commencing with the HealthQuest appointment, the Applicant testified as to her surprise, then shock, and horror as she belatedly and intermittently became aware of some actions performed against her and as she was a TAFE teacher it can be taken that she was encountering actions different to those TAFE required her to teach her students.

90 T/s 232 at 35 Mrs Kerrison: *"The managing director had told us we should do what we were told, the institute, to go to those issues especially when people were being hurt when occupational health and safety issues were happening, we must raise the issues.* "

91 And at 232.45 Mrs Kerrison: " *I did not know what Mr Ramsey had been told but I know what he used to circulate around, and that was, that we must do what we instruct the students to do what we teach the students, what we teach the students had to be the same or better and when what appears to be vilification and people being hurt we were to speak up.*"

92 TAFE's Enterprise Agreement is applicable to the ethos presented to teachers including the Applicant. These are enunciated at Sections 7, 8, 13, and 14. More apparent to the public and presented to the public as information about TAFE and its functions are TAFE's brochures and Internet web site advertising its expertise to teach and assess others and award qualifications accordingly.

93 The Commission has seen the evidence in Court, heard the testimony, and it is submitted that TAFE had the collective knowledge and expertise to manage its own staff and workplace but chose not to do so in this case, it chose "medical assessment of its internal reporter the Applicant. It is submitted that the evidence shows or indicates that as a collective as listed, TAFE officers could and did choose to did not practice what TAFE presents to the public. The evidence does not include the public's opinion of this case or similar cases (Ex 43).

94 It is submitted that the Respondent officer's actions against the Applicant are shown in a clear light of having it both ways: on one hand self-promoting to the

public and teacher level a perception of responsible authority and high expertise, while at management level from the top down privately ignoring Acts and guidelines when it suited them, as if they were above the law.

95 It is submitted that TAFE Management including Dr Willmott who has now risen higher in TAFE, have not investigated and fixed its problems, instead it has substituted court proceedings in place of its own deficient processes - and the applicant is severely disadvantaged in the court process.

96 Although some issues have surfaced in Court, it is submitted that Court proceedings are preferable to the respondent's managers rather than internal review because of two factors:

96.1 One is that the applicant cannot match the power and resources of the respondent, does not know the process, and the Court is selective of material in relation to relevance applied to its jurisdiction, hence many of the respondent's actions do not fit within this jurisdiction and are successfully kept out of the proceedings by the respondent on grounds of relevance.

96.2 The other is that with its resources the Respondent has brought to the Court documents and witnesses who present derogatory statements and allegations against the applicant's reputation and self.

96.2.1. All of these allegations could have been made to the applicant and procedural fairness and Privacy Principles applied at any relevant time particularly if they had been a true belief at any time, but they were not. Instead they were made in secret and are now used publicly against the Applicant in Court.

96.2.2. Although the applicant has denied the respondent's derogatory allegations since 1995 the respondent is seemingly relying on the Court to accept them against the applicant and possibly reflect this in its finding. The Court's finding will be published and open to public reading on the web.

97 An important aspect of the respondent's documents of a derogatory nature against the applicant is the concept that a person may be considered innocent until proven guilty, and in this respect it is submitted that the Privacy Act should have protected the applicant from the respondent's derogatory documents, but the respondent freely breached the Privacy Act and discredited the applicant.

Respondent's Allegations of Potential Homicide Suicide

98 The Respondent's documents in evidence show that the respondent's managers created an agenda of possibly homicide and suicide against the applicant.

99 Mr Quinn's documents regarding this commenced April 1995 seemingly out of thin air; Mr Quinn who was OH&S and Rehabilitation Officer for the North Coast Institute of TAFE operated from somewhere other than Kempsey TAFE where the Applicant worked, and as there is no evidence that Mr Quinn took action as if he believed his own OH&S allegations, the Commission might find that Mr Quinn knew his allegations were untrue. The same argument applies to Ms McGregor, Ms Robison, and other TAFE staff involved in these allegations of possible homicide/suicide.

100Ms McGregor's allegations commenced December 1995, yet the Applicant had not been in TAFE for some 5 months.

101Ms Robison's documents commenced around January 1996, the Applicant had not been in TAFE for more than 6 months.

102A further argument against the respondent is that the applicant sought internal investigation, was willing and applied to have her accusers face her with their accusations, and answer for them. She had the courage of her convictions to face the respondent's managers, TAFE refused. The applicant now stands alone and the respondent's witnesses have, years after they acted against her, come to Court. The Court has had the benefit of viewing the applicant and witnesses and weighing up probabilities. None of the respondent's witnesses expressed remorse for possible harm to the applicant.

103 As all of this goes against what TAFE teaches its students, it is submitted that not only the fact that, from the top down, TAFE allowed its courses and qualifications to be devalued by self-awarding of qualification/s but the managers' and directors' behaviour throughout these years has degraded TAFE education and TAFE staff.

104 It is submitted that the actions and decisions taken against the Applicant and listed herein to the Commission were done, not only in breach of procedural fairness and natural justice, but also committed in bad faith and for the improper purpose of deliberate detriment to the Applicant and covering up mismanagement, discrimination, victimisation in TAFE and for possible intimidation of a potential witness to the crime the Applicant reported. It is submitted that the actions and decisions listed herein consisted of bad faith and improper purpose by variously:

104.1 Respondent and HealthQuest and MAP officer/s acting from self-interest and unconscionability

104.2 Respondent and HealthQuest and MAP officer/s exploiting a position of dominance or power over the Applicant who is vulnerable relative to them

104.3 Respondent and HealthQuest and MAP officer/s acting dishonestly, and conducting themselves contrary to their titles and duties of office

104.4 Respondent and HealthQuest and MAP officer/s fulfilling the requirements/expectations of their superiors and client/s instead of their proper duties of maintaining workplaces free from discrimination, victimisation, harassment, toxic untested allegations

104.5 Respondent and HealthQuest and MAP officer/s taking unilateral actions at the expense of the Applicant

104.6 Respondent and HealthQuest officer/s failure to answer the Applicant's reasonable requests for relevant information and inquiry/remedy

References

105 *Aiton Australia Pty Limited v Transfield Pty Limited* (1999) NSW Supreme Court judgement by Einstein J commencing 114 His Honour discussed good faith continuing at 133

106 [J Stapleton, ‘Good Faith in Private Law’ [1999] *Current Legal Problems* 1 at 5-7]

107*Njamal People* case per Member Sumner applying *R v Director-General of Health for the Commonwealth; Ex parte Thomson* (1976) 51 ALJR 180 at 181-2

108 ; *Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation (Cth)* (1981) 147 CLR 297 at 319-320 per Mason and Wilson JJ.

H THE RESPONDENT'S RELIANCE ON PSYCHIATRIC LABELLING AND THE WORD "MEDICAL"

109 The respondent TAFE relies heavily on the word "medical" in its reply. This follows their reliance on people with medical qualifications to write for them a "Retirement Certificate" and apply a medical/psychiatric label to the applicant.

110 It is submitted that the respondent is relying on the word "medical" to create some substance and authenticity for its actions and shows this in its submission in its oft-repeated phrase "medical retirement" (Paragraphs 2, 8, 11, 53, 104, 105).

111 It is submitted that the actual medical area is that people with medical qualifications wrote the unsubstantiated "Retirement Certificate"; as if the fact that Dr Mandel and Dr Jagger had medical qualifications would somehow blind and impress people enough to accept their "certificate" and forget the facts and evidence that the applicant was and is capably working and not retired.

112 It is submitted that the respondent ordered Mrs Kerrison to HealthQuest psychiatric appointment because it specifically required medical practitioners who were willing to evoke psychiatric words/phrases to:

112.1 Either convince the applicant in June 1995 that she was so sick/mad that she could not work was retired; or cause shock/harm to the extent that she could not work. and

112.2 Convince others that Mrs Kerrison was sick/mad -- and the "Retirement Certificate" must therefore have substance.

112.3 Divert attention from TAFE's shortcomings and the truth of the Applicant's allegations in her grievances - allegations which TAFE Managing Director Dr Ramsey found to be truthful.

113 The evidence shows that these actions are not limited to TAFE (HCCC Report), hence public protest including members of WhistleBlowers Australia in demonstrations outside HealthQuest.

114 The evidence in Ex 103 shows that similar actions have been performed outside Australia and not only the justice system but also the UN go against them.

115 It is submitted that use of psychiatrists can damage or destroy the "relationship of confidence and trust between the contracting parties" as set out in *Bliss v South East Thames Regional Health Authority* [1985]

In Bliss v South East Thames Regional Health Authority [1985] it was held that: "*It was an implied term of the plaintiff's* [employee Bliss's] *contract of employment that the authority would not without reasonable cause conduct itself in a manner calculated, or likely to damage or destroy the relationship of confidence and trust between the contracting parties: that in requiring the*

plaintiff [employee Bliss] *to undergo a psychiatric examination when there was no mental or pathological illness but merely a severe degree of breakdown of personal relationships, and in suspending him when he refused to submit to such an examination, the defendant* [employer South East Thames Regional Health Authority] *was in breach of that implied term; and that the breach, going to the root of the contract, was so fundamental as to constitute a repudiation of the contract of employment.*

116 Not only does the case ***Bliss v South East Thames Regional Health Authority*** [1985] unequivocally go against the Respondent using forced psychiatric appointment against the applicant worker, but the use of psychiatrists against human beings is also denounced by the United Nations High Commissioner for Human Rights Ms Mary Robertson.

117 The UN High Commissioner for Human Rights sent a delegate and message to the Russell Tribunal to support the Tribunal in its calling the World Psychiatric Association to answer charges against it. Those charges form part of the Applicant's submissions in Ex 102 and are summarised in the Accusation to World Psychiatric Association Ex 103.

118 Particularly referring to the Bliss case and the Accusation Ex 103 the Commission is asked to turn the focus of attention onto the Respondent's actions throughout; first the intention and then the actual use of the ready psychiatric tool against the dissident (Applicant) while failing to address issues including identified discrimination and victimisation in TAFE.

119 The Commission may find that the Bliss case, and Ex 102 and Ex 103 may explain the Respondent's actions including its reluctance to allow the Applicant to return to her job in 1994, and its actions in 1995, 1996 and after, particularly as the Applicant was capable and worked.

I MEDICAL RETIREMENT

120 The Commission is asked to consider the Respondent's oft-used phrase "medical retirement".

120.1 On the one hand, an employee can be ill and apply for a medical retirement - that is one's choice and can be freely applied for and used if the employee wishes.

120.2 On the other hand is the Respondent's purported forced medical retirement. This is an entirely different matter.

120.2.1. "Medical retirement" is a phrase somewhat similar to "age retirement'.

120.2.2. Forced retirement due to age is now generally not allowed under the AntiDiscrimination Act.

120.2.3. Similarly forced retirement/dismissal based on disability and presumed disability are subject to AntiDiscrimination considerations.

120.2.4. But whereas the concept of age retirement does not immediately convey the impression that the subject is incapable, the concepts evoked by the phrase 'medical retirement' can convey the message that the subject is sick, ill, incapable, and therefore cannot perform duties.

120.2.5. If the phrase "medically retired" is applied to a subject's curriculum vitae by someone other than the subject, the subject's work options can be affected generally, and particularly if a potential employer does not wish to hire a person who may be sick, ill, incapable.

121 It is therefore submitted that the phrase "medically retired" is offensive and damaging to the Applicant's reputation and curriculum vitae.

122 In October 1999 The Respondent applied the discriminatory phrase "medically retired" to the Applicant's name and forwarded this to a potential employer of the Applicant Ex 3 "3" and Ex 3 "4".

123 The Commission to consider the effect that the phrase "medically retired" can have if applied it to the curriculum vitae of, say, a person responsible for rearing and housing children.

124 The Commission may consider the effect to children and the family unit if HealthQuest/MAP applied a psychiatric label such as "personality disorder" to its parent.

J REPUTATION

125 From at least September 1994 (Ex 96) the Respondent's witnesses and others in the Respondent's pay have freely impugned Mrs Kerrison's reputation. Yet Mrs Kerrison sought tuition and protections against victimisation and discrimination for TAFE students, other staff and herself .

126 The public's perception of Mrs Kerrison is shown in that they have sought her out to hire her and this supports her application to continue teaching in TAFE. The business world's appreciation of Mrs Kerrison's qualities and expertise stands unquestioned at Ex 29 Paragraphs 24 and 25, and Affidavits evidencing MYOB appointing her as trainer.

127 It is submitted that the Respondent's documents through the years, and evidence in this case and submissions consists almost entirely of attacks on the applicant's reputation (16), (2), (8), (11), (53), (104), (105), . Attacks which go against the evidence that at all times her performance of duties - in the college and in the wider community - was satisfactory.

127.1 At T/s 550.15 Dr Ramsey confirmed that the applicant's duties extended both inside and outside TAFE. T/s 550.15

```
Q.  TAFE's teachers duties extended not only in the
College in the classroom but out in the wider
community as well?
A.  Yes, TAFE teachers have a range of duties, yes.
```

128 Funded by public money, the respondent has had it both ways through the years - on the one hand, nothing to hold against the applicant, and on the other hand personnel to make contentious allegations and perform actions against her at will. To the respondent's personnel it is a laughing matter; see submissions.

129 From early 1998, the Crown Solicitors Office had carriage of this matter including access to the boxes of documents presently held by the Court. These are the same documents which are in evidence. They include the applicant's denials, and pleas for responsible action and the Respondent's allegations against the Applicant's reputation.

In *Oldfield v Keogh* (1941) 41 S.R. (NSW) 206 at 211 (C.A.). Jordan C.J. went on to chastise counsel for pressing such a claim and he quoted the words of Lord MacMillan with respect to attacks on reputation:

> *"It is no small responsibility which the state throws upon the lawyer in thus confiding to his discretion the reputation of the citizen. No enthusiasm for his client's case, no specious assurance from his client that the insertion of some strong allegations will coerce a favourable settlement, no desire to fortify the relevance of his client's case, entitles the advocate to trespass, in matters involving reputation, a hair's breadth beyond what the facts as laid before him and duly vouched and*

tested will justify. It will not do to say lightly that it is for the court to decide the matter. It is for counsel to see that no man's good name is wantonly attacked."

130 The Commission may find it particularly noticeable that according to the evidence neither HealthQuest nor the MAP at any time during these many years has advocated either that the Respondent attend to grievances (62), (80), (89), (101) and establish a safe workplace free from discrimination and victimisation, or that the Applicant is entitled to her job. Yet surely that is what should have happened in the first place: For Dr Ramsey to fix the problems re Ms Hayes in 1993 (Ex Ex 2 "G", and Ex 23 "B") and maintain for the Applicant, teachers and students a workplace free from discrimination and victimisation.

131The Commission may perceive that the Respondent's acquired psychiatric stigmatisation of Mrs Kerrison (16) and attacks on her character are shown for what they are - actions such as those denounced by the United Nations-backed Russell Tribunal Ex 103 and in contravention of the UN Declaration of Human Rights (of which Australia is a signatory).

132 The Commission may perceive that this is applicable to the Respondent's reliance on psychiatry vocabulary (16) to discredit Mrs Kerrison. It was not contested that HealthQuest, after seeing the letters from the Aboriginal students, did provide a psychiatric label against the Applicant's name - this was HealthQuest's service for their client (TAFE). The Commission may perceive that the use of psychiatric vocabulary for political reasons is not to be tolerated: and HealthQuest's claim that the Applicant, who stood up for Aboriginals and others, has a "personality disorder" should not stand.

133And regarding the underlying grievances (62), (80), (89), (101), it is submitted that of particular significance is the lack of evidence that Dr Ramsey and TAFE managers reported the alleged crime (identified in Ex 6 and Ex 7 and shown in his letter Ex 9) to police as set out in the EA at paragraph 28.16.1.

134The Commission may consider that Dr Ramsey Managing Director of TAFE, instead of reporting a crime Dr Ramsey "authorised" Dr Willmott to HealthQuest the applicant, a process that could damage her reputation.

135The Commission may consider that summary dismissal of the Applicant might have been less punishing - and staff were in place who were willing to make allegations, but that might not have affected the Applicant as much as this..

K MRS KERRISON WAS AND IS A CAPABLE EMPLOYEE

136 In reply to the Respondent's paragraphs (76) (114-118) (130-131) regarding incapable staff being retired it is submitted that, as further evidence that at no time was Mrs Kerrison retired - she was working, and has continued to do so (Ex 16 Paras 58 and 59; Ex 29 paras 24 and 25, and her oral evidence.

137In addition Mrs Kerrison was and is a capable employee and very significantly she has now attained further qualifications; i.e. the classification "MYOB appointed Trainer" (See first paragraphs of recent Affidavits and oral evidence).

138 As TAFE teach the accounting program MYOB, the Applicant is now highly qualified in this field, possibly higher than many other teachers now teaching MYOB.

139 In addition, it is submitted that the work Mrs Kerrison has undertaken since TAFE ceased paying her in April 1996 has increased her skills (See EX 29 paragraphs 24 and 25), and these are the very skills valued and considered by TAFE when hiring teachers and assessing them for promotions etc.

140 It is submitted that this is further support to returning Mrs Kerrison to her TAFE duties

L HEALTHQUEST'S AND TAFE'S "RETIREMENT CERTIFICATE"

141 HealthQuest wrote a document headed "Retirement Certificate" for TAFE.

142 Re Respondent's Para 67: "The document issued by Healthquest to the Applicant is titled 'retirement certificate'. Such nomenclature does not however, carry with it any legal meaning."

143 As the respondents claim that the words "Retirement Certificate" does not carry legal meaning, this validates the applicant's claim through these years that she was not retired. However it is submitted that it also identifies the serious matter of the respondent's knowledge that a "Certificate" it is using is misleading - it is without legal meaning. Yet, seemingly this is the document that TAFE relied on in 1995 when it told the Applicant she was "medically retired".

144In Paragraph 67 the respondent claims inter alia: "At no time has TAFE ever asserted that Healthquest had the authority to terminate the Applicant's employment." It is submitted that this is not consistent with the evidence because TAFE used the HealthQuest document to imply that the applicant's employment was ended in June 1995: Ex 19 "E" "…you have received your notification of retirement [dated 16 June 1995] from HealthQuest …" This implies that a "retirement" was fact by 16 June 1995 and HealthQuest notified this.

145On 20 October 2000 Mr Raul Salpeter of Crown Solicitor's Office, the respondent's legal team, swore and signed an affidavit (Ex 44). It was duly filed and served on the applicant.

146Mr Salpeter's affidavit Ex 44 Page 1 Para C ii a) "the New South Wales Government Medical Officer (GMO) issued a certificate recommending the retirement…"

147 As the purported Certificate does not contain the word or impression that it is a recommendation it is submitted that it was obtained and used as if it were true.

148It is submitted that by obtaining and using the purported certificate, TAFE benefited by removing the person whose grievances and reports they did not wish to attend to in the manner set out in Ex 95 section 5.

149 Mr Salpeter's affidavit stated that it was a "*certificate recommending*…". it is submitted that this is seriously misleading because nowhere on the "certificate" is the word "recommend" or its derivatives.

149.1 As Mr Salpeter, and people in general, are aware, a certificate may be issued to certify something which has happened in the past or at that time - a recommendation may be issued for something which may (or may not) happen in the future.

149.2 In light of this it is submitted that this explains the CSO back-off from Mr Salpeter's sworn, misleading claim; yet the CSO persevered with the case,

and none of the respondent's witnesses stated that the purported certificate was not a certification. Neither did the CSO put that to its witnesses.

150Consistent with this, the respondent's witness Dr Jagger at 489:

> Q. Is there anything inaccurate on that page other than [the] retirement certificate is not a retirement certificate?
> A. It is a retirement certificate. The wording is fine, the wording is placed there for specific requirements of the Superannuation Act for relevant categories of people where that is required.
>
> Q. I put it to you that retirement was not certified at that time and that could not be a retirement certificate?
> A. Well, my response to that is this is a medical opinion and that's what it is, provided in good faith.

151It is submitted that Dr Jagger maintains that it is a retirement certificate; i.e. she certified that Mrs Kerrison was retired, yet she knew Mrs Kerrison was not retired - Mrs Kerrison was working and continued to do so. It is submitted that it was issued to be taken as a true certificate. It caused Mrs Kerrison damage and continues to do so.

M RE DANGER TO THE APPLICANT GRIEVANT

152 Reply to Respondent's submission generally and specifically Paragraphs 35-38, 41, 51, 87, 97, 101 re danger to Mrs Kerrison

153 Paragraph 11 of the Respondent's reply includes inter alia: " (d) The Applicant was cross-examined about this affidavit at pages 241 -242 and this cross-examination revealed that Ms Kerrison had selectively left out the last sentence of the document which made it quite clear that what Ms O'Sullivan was proposing was intervention that would be helpful in stabilising *Ms* Kerrison. See Exhibit 95 page 4.9.

153.1 Surely the Respondent isn't asking the Court to believe that they would allow a person they truly believed to be unstable to teach? And at this time (September 1994) the applicant was teaching as usual and interacting with her colleagues and students and her teaching and behaviour was exemplary. Notably the respondent has not produced page 2 of that Exhibit 95 and it can be taken that this page confirmed paragraph 2.5 the status quo - Ms O'Sullivan threatened the applicant with danger, and this threat came from the Managing Director Dr Ramsey.

153.2 Notably Ms O'Sullivan who evidently wrote that document to Dr Willmott was not in Kempsey where Mrs Kerrison was, and was not called by the Respondent as a witness. Which leaves the conclusion being that this shows TAFE's intention to HealthQuest its capable teacher (the applicant), and their preferred option to cause her to take stress leave to "better enable" them to do so; underpinned by the threat of danger to her the previous day.

153.3 It is submitted that Ms O'Sullivan probably recorded on the (missing) page 2 an accurate record such as "Yesterday I passed on the threat from Dr Ramsey and succeeded in frightening Mrs Kerrison." TS 471 cross-examination of Ms McGregor:

"Q. So you agree that the message came from the managing director?
A. I agree that that's what she said. I don't know whether she spoke to the managing director.

154 In reply to respondent's Paragraphs 35-38 it is submitted that TAFE manager/s knew that it was their intention to act in a way which they did not want to risk being observed/heard by the general staff at either Kempsey or Port Macquarie TAFEs and that is why it directed the applicant to Ms O'Sullivan's private motel bedroom.

154.1 In Ex 29 P133 the applicant testifies that in Ms O'Sullivan's motel room Ms O'Sullivan threatened her with danger in relation to using the grievance policy. Mrs Kerrison testifies that she was threatened with danger on at least 8th, 9th, and 13th September 1994, and reported it again and again to TAFE both verbally and in document form, and at T/s 354.15-20 on or about 26 June 1995 "... I finally contacted Elizabeth

> McGregor. But first or one of the first things I asked in that very short conversation was, "Was anyone else threatened with danger like I was in TAFE?" and she said, "No."

155 The applicant testified that she became frightened of the danger to her and documents show that she repeatedly reported to TAFE. Ex 87 10 April 1995 - paragraph 4:

156 It is submitted that this is clear evidence of not only victimising a grievant in breach of EA, but even more accountable action of intimidation of a witness, or potential witness regarding the alleged criminal action of Ms Hayes. As Dr Ramsey did not report this to the police it is submitted that this made Dr Ramsey complicit by covering it up.

157 It is submitted that this is further argument as to why the Commission should find for Mrs Kerrison, that the Respondent should be held accountable and not be allowed further benefit from their misuse of their power and public money.

158 The Commission may deem the Respondent's submission Para 87 is misleading. Mrs Kerrison, in sworn testimony and personal reporting to Mr Quinn, Ms Walshaw, Ms McGregor through the years reported how frightened she was because TAFE management had threatened her with danger in regards to using TAFE's grievance process.

159For the respondent to claim at Para 87 that she did not put it to witnesses is shown to be seriously misleading and at odds with T/s pages 471, 472, 514, 515 where Mrs Kerrison repeatedly put it to the witnesses Ms McGregor and Dr Ramsey. Notably Ms McGregor admitted that the message re the alleged danger was made to Mrs Kerrison on 8 September 1994 as having come from the Managing Director Dr Ramsey.

160The Commission is asked to consider 3 areas that particularly give credit to Mrs Kerrison's testimony:

160.1 Mrs Kerrison reported the threats of danger to her repeatedly to TAFE management Quinn, Walshaw, McGregor and Robison. None apparently were surprised; and none addressed the issue. None denied that she was threatened. , because they accepted Mrs Kerrison's reports and did not deny them.

160.2 The second is that at all times TAFE had the resources to investigate Mrs Kerrison's allegations of danger to her if they wished, and fix wrongs but they did not. Instead they performed more unilateral decisions and made more gross clandestine false allegations and the damage accumulated exponentially. The managers were in a position to observe TAFE managements' processes, and communicated with each other while Mrs Kerrison was in the dark about their actual managerial acts. She was teaching students work processes as set out in TAFE curriculum.

160.3 The third area is the one observable to all around her. When Mrs Kerrison lodged her grievance dated 25 October 1994 Ex 5, Dr Ramsey

singled Mrs Kerrison out and invalidly from his position of power over her authorised that the HealthQuest process be used against Mrs Kerrison. His staff chose the time and the means to do so … and performed the acts or obtained from HealthQuest the means to do so. They damaged and harmed her and she collapsed and an electrocardiograph was administered. The financial devastation personally and professionally is huge. Mrs Kerrison's testimony that they forced her to temporarily flee Kempsey, her home and husband, is the consequences of their deliberate actions, and the absence of accountability. Their false allegations of guns, shooting and suicide and their complete failure to act as if they believed themselves show their deliberate acts. It is submitted that this is further reason that the Court find for Mrs Kerrison and require that TAFE's wrong-doing be actioned and remedied.

N RESPONDENT'S SUBMISSION PARAS 70, 71, 72 - "GENUINE ADMINISTRATIVE ERROR"

161 This is not a case where an employee has become ill and applied for a medical discharge/retirement, and if granted, the employer discharges the employee and the employment terminated. This is a case where the Respondent, knowing that Mrs Kerrison was capably working, suddenly claimed that Mrs Kerrison was retired. Then on 5 September 1995 (see Ex 16 paragraphs 79-85) Ms Walshaw suddenly back-tracked in response to public intervention and paid the Applicant her ordinary pay for more than 6 months (See Ex 14).

162 It is submitted that administrative staff such as Ms Scuglia, and other signatories to TAFE's efforts to sever superannuation responsibilities to SASS and other unilateral decisions to make changes and alterations through the years, act on instructions from TAFE management.

163Due, no doubt to the seriousness of the actions the respondent's vague terminology create the impression that the clerical staff's changes and alterations materialised out of thin air, as if there was no management staff such as the Director Dr Willmott and HR Manager Ms Walshaw in place directing TAFE's decisions regarding its employees.

164It is submitted that TAFE clerical staff do not, of their own accord, make decisions such as those shown in the exhibits and altered computer records. Ms Scuglia admitted that she acted on her line manager Mr Lockwood's authorisation to annex all of Mrs Kerrison's accrued sick leave and extended leave entitlements (TS 531 50-55) Mr Lockwood worked under Ms Walshaw and/or Dr Willmott. It is submitted that the Applicant's accrued entitlements should be returned to her in the Declarations sought.

O RE "FABRICATED EVIDENCE" RESPONDENT SUBMISSION PARAGRAPH 87

165 In addition to the applicant's submissions about this, Ex 85 Attachment 7 applicant's letter to TAFE Managing Director and the Minister Mr Aquilina refers throughout to the issues. As those issues remained unaddressed they now form part of this hearing. Regarding paragraphs 2 and 3: *"…TAFE have supplied over 80 additional pages of "information" which, despite repeated FOI requests, TAFE claimed did not exist. The 'new' documents supplied and their inconsistency with previous documents and records raises serious questions about the possibility of fabrication of documents by TAFE in an attempt to, retrospectively, support their case*."

166 This shows that for more than 5 years the respondent could have denied or investigated but did not even attempt to do so. It had the publicly funded resources to address matters, instead it has used public funds to come to court with, it is submitted, fabrications. By comparison, the applicant has been consistent throughout all these years and has used her own funds and resources to come to court as a last resort; see Ex 4 Attachment "5", handwritten TAFE note 24-12-97 where the applicant had (again futilely) appealed to the Minister, Elizabeth Kirkby, Ombudsman etc.

167Re Para 53. TAFE knew that the applicant repeatedly reported that these documents were fabricated (See Ex 85 Attachment 2, first report 30 January 1997) and did not deny it when they could have at any time during 1997, 1998, 1999 etc.

167.1 Further submissions that the respondent fabricated documents and some are now in this Court are in the applicant's submissions.

167.2 Further, for the respondent to claim that Mr Quinn "*had no opportunity to produce false documentation owing to the injuries he suffered in a car accident on 1 May 1994, resulting in a lengthy absence from work; his relocation to the Grafton campus on restricted duties and ultimately, his own medical retirement in [October] 1997*" is seriously misleading and goes against the evidence:

167.3 Mr Quinn could have written those documents at any time or place as already evidenced in his document to Ms Scuglia 19 April 1995 - Mr Quinn had not recently seen or spoken to the applicant yet he wrote this document from wherever he was; perhaps Grafton or wherever, but Mr Quinn was not in Kempsey to put any semblance of validity to his false allegations and was not a member of Kempsey TAFE staff..

167.4 Mr Quinn should have checked the truth of his statements but did not. He could have asked the applicant if he had wanted truth, but did not either in 1995 or 1997 or to the present day.

167.5 Mr Quinn wrote the Scuglia letter in 1995 and the applicant obtained it under FOI in 1995. Mr Quinn had used the applicant's name on that document possibly thinking that there was a good chance that the applicant would not ever seen that document.

167.6 After the ADB involvement it is submitted that Mr Quinn wrote the further 2 letters and did not put the applicant's name on them, instead used many words to imply they referred to the applicant ("…a staff member who has been on leave…." And "…the person in question…") when he/TAFE could have simply used her name. False defamatory statements implying the applicant could have brought a defamation case against Mr Quinn in 1997 and in 1997 TAFE gathered "evidence" to mount its defence to the AntiDiscrimination Board.

P OH&S - RESPONDENT'S "CONCERNS"

168 In reply to the Respondent's submission (112) regarding *"… to Healthquest for a report based on Occupational Health and Safety concerns* " The Commission may observe that Respondent has claimed to have had "concerns" about the Applicant, and has written and intimated OH&S factors (possibilities re guns, potential homicide/suicide) and inserted its "concerns not only documents in evidence dated 1995 (Ex 19 "C", Ex 18 "A") but also through its submission (Paragraphs 49, 50, 52, 54, 64, 65, 90, 103, 112). It might therefore appear strange that such "concerns" were not actioned as OH&S.

169 Occupational Health and Safety Act 1983 No 20states in part:

"**15 (1)** Every employer shall ensure the health, safety and welfare at work of all his employees.

170 All TAFE staff are responsible for ensuring that any perceived OH&S risks are prevented or addressed immediately they occur. All TAFE staff had this duty and this duty is non-delegable.

171 In TAFE the applicant reported serious OH&S issues. The Occupational Health and Safety Act 1983 at 26sets out Unlawful dismissal etc of employee by reason that she had made a complaint re OH&S

172 It is submitted that TAFE documents and affidavits show that TAFE consistently failed to address the OH&S issues which Mrs Kerrison reported in 1993-95 and altered her employment position to her detriment because of her reports.

173 The OH&S Act at s52A prohibits the making of false OH&S allegations:

52A Offence: disruption of workplace by creating health or safety fears

(1) A person must not deliberately create a risk (or the appearance of a risk) to the health or safety of persons at a place of work with the intention of causing a disruption of work at that place.
Maximum penalty: 50 penalty units.

(2) It is a defence to any proceeding for an offence against this section if the person who contravened the section had a reasonable excuse or lawful authority for creating the risk or the appearance of the risk.

174 It is submitted that at no time did TAFE officers Quinn, Robison, Walshaw, McGregor act as if they believed their OH&S claims about the applicant - claims which commenced on 11 April 1995 by Mr Quinn to CRS (Ex 85 Attachment 4), yet those false claims formed part of the actions and decision to stand the Applicant down from duties and send her to HealthQuest, and it is unknown how many people who did not know the Applicant might have believed the accusations and become frightened (Ex 4 "4" Mr Cribb email 23 April 1998).

175 Mr Quinn as OH&S and Rehabilitation Officer for the Institute did not work for Kempsey TAFE, so it is submitted that Mr Quinn could not possibly see any OH&S issue to attribute to Mrs Kerrison who may have been teaching (or shopping) at the time. For anyone, let alone the OH&S head for the Institute to make accusations of OH&S danger from NCIT Lismore (a distance of some hundreds of kms from Kempsey) or NCIT Port Macquarie (50 kms from Kempsey) shows this to be breaches of s52A of OH&S Act. The same reasoning applies to Ms Walshaw and HealthQuest's Dr Jagger.

176 By putting the extracts from the OH&S Act together it is submitted that TAFE cannot have it both ways, that either the collective group of Mr Quinn, Ms Robinson, Ms McGregor, Ms Walshaw, Dr Jagger, (and Dr Mandel who was the writer of Ex 20 "A" and co-signer of purported Retirement Certificate) genuinely believed the OH&S claims they made, wrote, and exchanged and all collectively failed to act to protect anyone, or collectively they made, wrote and exchanged knowingly false allegations. It is submitted that it is the latter.

177 This leads to a further section of OH&S Act: **Aiding and abetting etc. S51. (1)**

178 It is submitted that the collective group of Mr Quinn, Ms Robinson, Ms McGregor, Ms Walshaw, Dr Jagger, and Dr Mandel aided and abetted each other and the Respondent by making/recording/exchanging knowingly false OH&S allegations against the Applicant .

179 It is submitted that the Commission may feel they should be held accountable.

Q REPORT ON WOOD ROYAL COMMISSION - PROCEDURAL FAIRNESS ADVICE GIVEN WITHIN DEPARTMENT BY CROWN SOLICITORS

180 Procedural Fairness was accorded to Department of Community Services' (DOCS') Paedophile (D.Z.)

181 In Case Study 8 in Chapter 8 Vol IV of the Wood Royal Commission Final Report concerns the employment history of DOCS District Officer D.Z.

181.1 D.Z. was the subject of a series of complaints between 1983 and 1989 alleging improper conduct of a sexual nature with clients.

181.2 Paragraph 8.2.1.2 In 1988 an allegation was made *"…by a 13 year old female client that D.Z. had taken her to his home and offered her $50 to sleep with him. Arising out of this allegation a charge for a breach of discipline was preferred. It was found proved and an order was made that D.Z.'s salary be reduced. D.Z. then appealed to G.R.E.A.T. In November 1989 the Department formed the view, **on advice**, that the disciplinary action had been flawed, in that D.Z. had been inappropriately interviewed and had not been given the opportunity to be heard, either on the finding of breach or on penalty. By agreement, the finding and penalty were set aside* [1706]." [emphasis added]

181.3 Footnote 1706 at the bottom of Page 887 reveals that the advice given to DOCS leading to the setting aside of the disciplinary action against D.Z. came from the Crown Solicitors' Office (advice regarding D.Z. and D.C.S, 28/10/89, Industrial Relations File of D.Z., R.C.P.S. Exhibit 3091 C/2, at Doc 24091413-19)

182 Yet Procedural Fairness has been denied to the Applicant, a Public Sector employee who reported serious misconduct/crime within her Department TAFE.

183 This case is representative of a larger pattern of conduct within the NSW Public Service

184 At the beginning of Chapter 8 Vol IV of their Final Report, the Wood Royal Commission observed that Departments generally entertained "A readiness to penalise an officer or employee who reported possible misconduct by fellow worker" (p837).

185 This is exactly what happened after the applicant had reported, and in response to that reporting the Managing Director considered his options, 'authorised' HealthQuesting her, and the penalties listed elsewhere in this submission commenced -- with devastating consequences to her.

186 The applicant was summarily removed from duties and denied her rightful employment for these past many years.

187 Yet the respondent Department admits that her performance of duties was satisfactory at all times.

188 The detrimental actions included adverse claims secretly made against her and actions taken against her. If the respondent had believed even one shred of its allegations it had the public funds to act. It did not. It has put them before the

Court … The details of this cases have been known to the Crown Solicitors' Office since early 1998.

R HEALTH CARE COMPLAINTS COMMISSION EXHIBIT 43

189 The Department of Health, Health Care Complaints Commission (HCCC) has identified as a central issue the HealthQuesting process: Denial of Procedural Fairness.

190 At page 72 of their 1999/2000 Annual Report, the HCCC stated that a report commissioned by the Department of Health had confirmed concerns raised by complainants including lack of transparency and fairness in the procedures used to remove them from employment.

191 The applicant has been treated as having less rights than D.Z. 1989. They treated a paedophile better than they treated her, seemingly a paedophile has rights.

S REPLY TO RESPONDENT RE: REHABILITATION

192 On 11 March 1994 the applicant went on stress leave. TAFE OH&S Rehabilitation officers Mr Quinn and Ms Robison did not contact her.

193 At 156.55 Mr Quinn testified that rehabilitation could/should commence on day one, perhaps with a telephone call. It did not

194 At 201 the applicant testified on the impact of isolation, and at 198 the applicant testified she was trying to get back to work.

195 Months later, June/July 1994 the applicant succeeded in being allowed to resume her job. At 211.50 the applicant testified that " *A. If I can clarify that. Mr Wal Brown said that legally they couldn't keep me out and that was the only reason that I was being allowed back.*

196, Yet TAFE could attempt rehabilitation when its managers wished. Mr Quinn testified that he worked in TAFE on a return to work program after he was injured.

197 To date TAFE has not allowed the applicant rehabilitation but has consistently denied her her right to return to work through these past 7 years. Instead she has had to seek alternative work to earn money to survive.

198 It is submitted that this puts TAFE purported rehabilitation in a poor light, especially considering it teaches others how to act and the respondent's claims or inferences of credible rehabilitation actions seriously misleading.

199 It is further submitted that purported rehabilitation action such as actions performed by Ms Walshaw, Ms McGregor, Mr Quinn, Ms Robison, Drs Mandell and Jagger, and possibly Dr Ramsey and Dr Willmott in writing and distributing their documents are more likely to initiate injure than otherwise. This is substantiated in that their documents and actions have caused the applicant to collapse unconscious.

T TAFE USE COURT PROCEEDINGS INSTEAD OF GRIEVANCE POLICY

200 Reply to Respondent's submission generally throughout re complaints/grievances, 'investigation' and allegations and actions against the applicant. The respondent has substituted court proceedings for its EA Grievance Policy. It is submitted that this is further reason for the Court to find against the respondent.

U REPLY TO RESPONDENT - SPECIFIC PARAGRAPHS

201 Re Para 15, this is misleading:

201.1 The Applicant was not "employed by the Respondent from 2 February 1988 until 13 September 1996" she was employed by the respondent from February 1983.

201.2 Also it is misleading for the respondent to claim that "The Applicant's last day of attendance at work was 23 June 1995" when she testified that after that she performed work in TAFE: marked students exams entered them in the rolls and her head teacher thanked her (See Ex 29 Para 16) this was not denied by the respondent including the Manager Mrs McGregor and therefore stands.

201.3 This is not only further evidence regarding the respondent's acceptance of applicant's continued employment, but is also further reason for the Court to find for the applicant and not discredit the students' qualifications. The students worked for their exams and marks, the respondent used the Applicant's teaching and examinations in awarding the students' exam results. To go against these facts would be to discredit the exam results which the students earned.

201.4 Also in this paragraph the respondent puts passively that the purported termination "became effective on the dismissal of her appeal to the Medical Appeal Panel on 13 September 1996." This is seriously misleading because MAP is not authorised to dismiss applicant or to "appeal" any TAFE action/inaction. No TAFE document or witness indicates that any TAFE manager terminated her employment. Other than having the word "Appeals" in its title there has been no evidence of any appeal process, and due to secrecy regarding the files that MAP and HealthQuest manufactured/exchanged between each other, it is submitted that neither the applicant nor TAFE knew what Dr Harley (the "Panel") was to appeal.

202 Re Para 16: "The Applicant's employment was terminated when medical advice provided to the Respondent by HealthQuest stipulated that she was medically unfit to continue in her employment and was suffering from a medical condition -- "personality disorder". This is misleading and has been addressed elsewhere in the applicant's submissions and this reply including Dr Jagger's admissions she had never met the applicant, her knowledge that the applicant was working before, during, and after the purported "Retirement Certificate", TAFE's admissions her work was satisfactory at all times, and particularly the Russell Tribunal on the use of psychiatric labeling for political reasons.

203 Re Para 18 "The Applicant had, until late 1993 enjoyed good health and had few notable absences from the workplace due to illness." Misleading because the Applicant had no absences for illness from commencement 1983 through to 1993, i.e. 10 years of exemplary attendance and work record and approx 100 days of accrued sick leave untouched.

204 Re Paras 18-22 regarding the applicant reported OH&S issues. TAFE ignored them, committed more, and actively breached OH&S as detailed elsewhere in this reply.

205 Re Paras 23-6 and 28-34: The respondent has mistakenly lumped 3 different events together as if it was one incident. This was not so, the incidents were

separate and different: a) a telephone call, b) then weeks later a meeting, and c) then a week or so later a letter.

205.1 The applicant testified that in her telephone call, when TAFE managers were "too busy" to contact her and rehabilitate, she asked for options and received "resign or retire".

205.2 Weeks later at the meeting with Quinn and Lockwood, when the applicant sought quick return to work at TAFE they mooted "resign or retire" … or train to work outside TAFE (resign).

205.3 In Mr Quinn's later letter his first/favoured suggestions were resignation and retirement and glaringly did not seek to return the applicant to her TAFE position. Mr Quinn also mentioned HealthQuest, but who or what HealthQuest was and its function TAFE used it for Mr Quinn chose not to divulge. The applicant, who was seeking quick return to work, did not know about HealthQuest.

205.4 When TAFE refused rehabilitation the applicant, entirely through her own efforts, got herself back to work. TAFE's attitude was that it : "We could not legally keep you out".

205.5 The respondent diverts attention from the fact that both TAFE and HealthQuest are required to act within the law and support the employees to stay at work - instead we have the present court case including, from March 1994, no effective rehabilitation action by the respondent, instead its repeated refusal to allow the applicant her work. The applicant testified in Ex 3, 10.6 that she presented for work on 3 consecutive days and TAFE publicly turned her away.

205.6 For the respondent to claim to support the applicant in the workplace is misleading because from the time that the issues TAFE first identified in "Background to Complaints re Rhonda Hayes" were not addressed they accumulated yet TAFE required the applicant report apparent misconduct and maladministration.

205.7 The issues continue to accumulate and not only the original false entries to public registers is now in the open but also the changes TAFE staff made to computer records as set out in the applicant's Submissions - Ms Scuglia commencing Page 3 shows the respondent changed the applicant's base salary to NIL, and annexed all her accumulated sick and extended leave. The issues are still accumulating in breach of Acts and the Enterprise Agreement.

205.8 Regarding "words on paper", as the Privacy Act requires that documents be compiled for proper purpose, it should be noted that many documents were formulated by TAFE but hidden. Evidently their purpose was not to assist in addressing and rectifying issues because that has not happened and TAFE refused to investigate (see ex 4 Attachment page 3). The documents are used by the respondent to mount this case.

206 Re para 27. Although the respondent knows the applicant was working fully and competently it still pushes "medical" to divert attention from its own failure to address issues.

207 Re Paras 28 through to 36 re "investigation. It is submitted that the respondent seeks to divert the Court's attention from the fact that TAFE still ignores its own Enterprise Agreement where steps for investigating grievances are set down, leading to TAFE's commitment to the Industrial Relations Commission to make good the damage underpinning the grievance. All of the issues and questions asked in Court should have been performed by the respondent within the grievance timeframe (5 working days) many years ago and could have been done even now - instead it is using its public funds against the grievant.

208Re Paras 39,40, October 1994. Ms Hayes moved into Ms Walshaw's previous job and had more power; CRS ceased contact with the applicant in September 1994, and the respondent had repeatedly threatened danger to the applicant.

209 Re Para 44. The respondent's reply is seriously misleading. It speaks of "the stresses real and otherwise" to impugn the applicant, a claim not supported by the evidence.

209.1 Further, to now make derogatory claims against the applicant 7 years later as to what was "apparent" to Ms McGregor and Ms Walshaw is seriously misleading to the Court:

209.2 See pictorial evidence Ex 3 (9) Ms McGregor was smiling and participating in College promotions which were arranged by the applicant in addition to her duties looking after the whole Section, students and part-time teachers;

209.3 Ms Walshaw at T/s 409 testified in the witness box that she did not even know where the applicant was. Nevertheless the respondent's misleading reply diverts attention from the respondent's failure to comply with the Grievance Policy, and breaches of OH&S and Privacy Act 1988 which could have avoided this case if the respondent had acted as these required.

210 Re Para 45. The respondent's reply is quite misleading. The incidents of Ms Hayes turning Aboriginals students away from their class, and the practice of Kempsey TAFE Manager Ms McGregor sending letters of summary dismissal to Aboriginal students occurred early 1994.

211 Re Para 51 The respondent has ignored the irrefutable evidence: the applicant, an exemplary employee, lodged a grievance with the Managing Director who 'authorised' his staff to HealthQuest her - see such actions described in Russell Tribunal Accusation, and backed up by United Nations

212Re Para 52 - this is negated and dealt with in the applicant's submissions. Real OH&S issues in TAFE were acted upon immediately. Mr Quinn was OH&S Rehabilitation officer for the Institute.

213 Re Para 54 TAFE managers had been 'authorised' by the MD in January 1995 to HealthQuest the applicant. April 1995 the applicant was looking after the Section at Kempsey TAFE and performing the Head Teacher duties. Around April 1995 Ms Debbie Kennington agreed to take up the Head Teacher position at Kempsey and TAFE commenced the HealthQuesting process and Mr Quinn and Ms Robison met with the applicant. This had not happened at any time during the past 10-11 months. Ms Kennington was in place when HealthQuest performed its

'service' to its client (TAFE) - purported Retirement Certificate against the applicant.

214 Para 55. The respondent is seriously misleading to the court. To make up a story that the applicant went willingly to HealthQuest goes against the evidence that she protested and Ms Elliassen informed her that she must go. It is submitted that the respondent seeks to not only mislead the court, but also to manufacture something to replace the fact that HealthQuest did not have any form of informed consent from the applicant, and that by law were not entitled to even speak medically with the applicant without her consent.

215 Paras 56 and 57. The respondent is misleading in claiming that the applicant stated that a doctor sent her to HealthQuest. The applicant stated truthfully that it was a document (see Ex 2 "A") which sent her to HealthQuest coupled with Ms Elliassen's instruction that she MUST attend, At no time did the applicant state that it was a doctor, in the transcript this was a transcript error. Further, the applicant's testimony that the documents she took to HealthQuest were records which showed what was happening in TAFE instead of rehabilitation fits within the area of knowledge that the applicant had at that time i.e. the false statement from TAFE that this was a mere rehabilitation/workers compensation appointment (and not as was the reality known only to TAFE and HealthQuest) that this was to be a purported retirement.

216 Re Paragraph 58-67.

216.1 This is misleading and solely the Respondent's agenda. None of the respondent's psychiatrists were the applicant's "treating psychiatrist". The applicant was not attending any psychiatrist of her own free will.

216.2 On 11 April 1995 the respondent's Mr Quinn stipulated (through CRS) that the applicant must go to a psychiatrist Ex 85 Attachment 4 page 3. On May 1995 TAFE ordered the applicant to HealthQuest (psychiatrist Dr Mandel).

216.3 Neither Dr Holmes nor Dr Mandel nor Dr Jagger had any form of informed consent from the applicant for any medical process. Seemingly Dr Holmes, Dr Mandel, Dr Jagger, and TAFE all knew the process was purported retirement because all these people used the word "retirement" even though all knew that at that time the applicant was probably in the classroom teaching unaware.

216.4 Managers were in a position to know the system TAFE operated on, the applicant was not. General indications of the system are shown in a) Wood Royal Commission report; b) Demonstrations against HealthQuest process; c) Russell Tribunal Accusation re use of psychiatric labelling for political use d) Ex 43 HCCC

216.5 For the respondent to claim that HealthQuest made a "finding" is seriously misleading on the evidence, as HealthQuest did no such thing.

216.6 The applicant's performance of duties was exemplary. For the respondent too suggest that the applicant should undergo psychotherapy is offensive and consistent with avoiding the issue and Ex 103. The respondent stoops to impugning the applicant's reputation knowing no psychiatrist addressed TAFE's internal maladministration: TAFE were racially

discriminating by summarily terminating Aboriginal students out of TAFE. This evidence stands uncontested.

217Re Paras 67- 72. This is addressed in the applicant's submissions and in this reply. There was no retirement. Neither HealthQuest nor TAFE retired or terminated the applicant's employment. There was no decision, simply a document out of thin air. There was no competent appeal process for a decision and there was no decision. TAFE simply made up processes at will and applied them without procedural fairness or any observable process. TAFE did not use the EA.

218 Re paras 73-100 covered in applicant's submissions and this reply. In addition, contrary to the Respondent's misleading statements, the applicant in submissions did not rely on "*the contents of MFI 5*", the Applicant referred only to the oral testimony of Mr Quinn and Ms Robison where, with the benefit of lengthy perusal of MFI 5 they both gave evidence. Their evidence supported the applicant's case and confirmed it as set out in the applicant's submissions.

219 Re Para 101 covered in applicant's submissions and this reply. In addition Dr Ramsey to Kerrison 17 January 1995 Page 2, Attachment to Ex 19 shows on page two that there were at least two further items added after its inception. The two markers point to material which TAFE removed from this letter. It was after 17 January 1995 that Admin Services in Kempsey was suddenly without a Head Teacher (and Mrs Kerrison performed that duty), then Ms Kennington agreed to be appointed as Head Teacher. Two events. At T/s 268.10 Mr Kenzie refers to a document generated in a period around 22 March 1995 and the applicant replied about part-time teachers asking about the directed transfer. Unsurprisingly, Mr Kenzie did not put that document into evidence, but the applicant's evidence was:

219.1 A. The part-time teachers had made inquiries to me about the dictated transfer and I had passed those inquiries to Elizabeth McGregor.

Q. This is Ms McGregor's response to you?
A. Yes.

220 The respondent repeatedly uses the word "conspiracy". The applicant did not use that word in her affidavits, or oral testimony, or submissions.

221 In para 110 refers to Exh 70 Dr Holmes to MAP 8 October 1995, the respondent is misleading The applicant did not know of its existence until discovered under FOI from MAP. At T/s 316.5

KENZIE: Q. The document I have shown you [Ex 70], you cannot explain how it ended up at the Medical Appeals Panel, it is a document you obtained under the Freedom of Information Act from the Medical Appeals Panel?
A. Yes.

222 The applicant still does not know what constitutes MAP's files exchanged between it and HealthQuest. At the time, only MAP, TAFE and HealthQuest knew of Ex 19 "H".

223 Reply to respondent's paragraphs 140 -143.

223.1 The applicant commenced proceedings in the District Court but did not go on with them. Although in that jurisdiction the claim used the word

"terminated" the applicant testified that the claim was written by a person other than the applicant. The claim was written by an amateur attempting to assist the Applicant and the reference to termination was based on the fact that the respondent was not currently giving the applicant duties or paying her wages at that time - nothing more.

223.2 The Applicant has not obtained relief anywhere.

223.3 The only money to live is the money the Applicant has earned herself. (Ex 102 Paragraph 46)

223.4 This is the only Hearing that has taken place.

223.5 Without a termination the Applicant pursued what assistance might be available including: EX 69 to Department of Health, MAP, The Minister Mr Aquilina, Ex 85 "2" to TAFE Managing Director and the Minister Mr Aquilina, Ex 85 "7" to the Minister Mr Aquilina, and Ex 4 "5" includes the Ombudsman Another source of possible assistance to the Applicant is the union NSW Teachers Federation but, after lodging this case in 2000 it dropped it. Initiated by the Crown Solicitor's representative, the AntiDiscrimination action in the Administrative Decisions Tribunal (ADT) EEO is stayed pending this Declaration. The ADT EEO only determines discrimination matters it does not decide or award on the matters requested under this Declaration, nor has it been asked to.

223.6 It is submitted that the Applicant should not be penalised for

a) the Respondent's apparent failure to her from the highest level; or

b) other's possible failure such as the union.

223.7 It is submitted that the Commission may observe the extent of the period that this case encompasses, consider the resources and expertise available to the Respondent throughout this period particularly considering the magnitude this case had accumulated by the time the Applicant got her first indication that someone somehow had damaged her right to work - that was on the evening of 22 June 1995 when she arrived home from her usual teaching at TAFE to find in the mail the letter from HealthQuest EX 29 "F".

223.8 The Commission is asked to consider those 3 lines which was all the information she had at that time, and with no inkling of what was to come. The Commission may consider that the issues now before the Commission could have been avoided by the Respondent if it wished.

224 The respondent, in its reply makes no reference to the Privacy Act nor the Principles. It is submitted that the applicant's submissions on this stand, and as the Privacy Principles include the concept of procedural fairness, natural justice, and proper purpose to be applied before documents are written this reinforces the applicant's claim that these form part of the decision to send the Applicant to HealthQuest and, similar to that decision, the surrounding documents form part of that nullity.

V DISCRETION

225 The Respondent raises complaints about delay (140), (144 to 146). The Applicant, however, has been consistently seeking an avenue to have the original issues dealt with and her own position rectified. The Respondent acknowledges that this is the case (140), (141). The Respondent has been fully aware that this was not a dead issue. This is not a case where the Applicant has appeared to have accepted the situation and then launched a belated challenge.

226 The Respondent has referred to proceedings by the Applicant in other jurisdictions (140) to (143) and argues that the Applicant should not be "granted a declaration inconsistent with remedies sought in another forum". The Applicant has not, however, been granted relief in this or any other jurisdiction based on grounds inconsistent with those advanced in this matter. In would be inequitable to refuse a meritorious application because of alleged flaws in other proceedings which are not before this Commission. If the Commission accepts that no valid decision was made to terminate the Applicant then it is submitted that the declarations should be granted.

227 The Respondent alleges that the Applicant is seeking to "attack or avoid the decision of the Medical Appeals Panel" (147). The Applicant has attacked, in the sense of criticised, the operations of the Panel. On the Respondent's own submission the rôle of the Panel is merely advisory. HealthQuest and the Panel do not act to terminate the applicant's employment, as the Respondent states Section 20 of the TAFE Act places the decision-making responsibility on TAFE which has and had other options besides termination. Regarding HealthQuest and the NSW Health Department Medical Appeals Panel documents, it is submitted that as it is fundamental that observing their legal obligations and respecting the principles of natural justice, including the Applicant's right to reputation, this collapses these documents to a nullity. As neither HealthQuest nor NSW Health Department Medical Appeals Panel make decisions under s 20 this does not interfere with the Declarations sought.

228 The amount which would be due to the Applicant if the orders sought are granted can be readily determined by the Respondent. The Applicant's entitlements are determined by industrial instruments and legislation and there are no grounds to anticipate any uncertainty. The relevant instruments in their current form are available to the Respondent but not necessarily to the Applicant.

229 The Applicant has submitted that TAFE failed to consider or observe the requirements of its governing Act, a failure which seems to have applied from the highest level down. The Applicant has further submitted that she has been denied natural justice and procedural fairness. The Applicant submits that the Commission in considering whether to exercise its discretion should take into account the public interest under section 146, and should have regard to the public interest in Statutory bodies and their officers scrupulously observing their statutory obligations and respecting the principles of natural justice. The Commission should also consider the merits of discouraging attitudes and practices which are not conducive to the "equitable, innovative and productive workplace relations" referred to in Section 3(h) and the public interest in avoiding

unfair treatment of employees who raise justified complaints on matters of public importance.

230 The Applicant has produced evidence of the grave disadvantages which she has suffered in consequence of the actions of TAFE. The Applicant testified that she was therefore forced to temporarily leave Kempsey, her home and husband so has not been living at home, with all the financial and emotional costs that has caused not only to her but also her husband. The Applicant looks to the Commission to provide such remedy as is possible for these serious detriments and hopes that the granting of the declarations may help to prevent others from suffering in the same manner.

231 The Applicant submits that the Respondent's arguments on discretion should be rejected and submits that, acting "according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms" the Commission should, if satisfied of the substantial merits of the Applicant's case, grant the declarations sought.

CONCLUSION

The Application should be awarded with costs.

VALDA KERRISON
Applicant

ATTACHMENT 1

LIST OF DECISIONS AND RELATED ACTIONS

232 THE ORIGINAL DECISION On or around 17 December TAFE Managing Director Dr Ramsey referred to a grievance the Applicant had made on 25 October 1994 and Ex 3 Paras 2.1.3 - 2.6 lists the underpinning documents and content including that the Applicant was

- "taking the matters outside TAFE seeking resolution".

Dr Ramsey explored options with Mr John Allsopp TAFE Group General Manager Resources and wrote.

- Could I please have a personal (oral) briefing on this. What action can we take?

Following his deliberations, Dr Ramsey wrote a response to 25 October 1994 letter. Dr Ramsey forwarded his letter dated 17 January 1994 to the Applicant just prior to his writing on the same day his letter (Respondent's Annexure E) to Dr Willmott.

- TAFE's Managing Director on 17 January 1995 authorised the HealthQuesting of the Applicant.

The Commission may notice that this is the only decision out of all in this list that has any paperwork on deliberations and discussions in relation to the decision. The Commission may notice that Procedural Fairness does not appear to be a consideration and the Applicant is certainly not included in the discussions - the discussion was on the action to be taken against her. From this all the following flowed apparently without deliberations or due process - but just as actions to prop up this original decision. The Managing Director, perhaps with the assistance of Mr Allsopp, and made the decision to authorise TAFE Managers to send the Applicant to HealthQuest to be "medically assessed", and this was carried out in due course.

The grounds for that decision are itemised in Ex 3 Paras 2.1.3 - 2.6 and the Commission may find that the TAFE Managing Director selected forced psychiatric 'assessment' of the grievant as his preferred action instead of addressing the grievance and establishing a workplace free from discrimination, victimisation, crime.

The Commission may perceived this to be an attempt to cover up mismanagement and cause the grievant the forseeable damage which followed.

The decision to HealthQuest the Applicant grievant was made without natural justice or good reason and the decisions and actions which followed were similarly grounded on not only treating the Applicant as if she was not a fit and proper person (hence sending her for a "fitness to continue" appointment) but also actively creating the impression that she was not a fit and proper person by making contentious, offensive allegations about her re guns, suicide, 'personality disorder', and treating her as if she was not an employee entitled to duties and wages etc.

232.1 That decision was authorised by Dr Ramsey to Dr Willmott on 17 January 1995 (Ex 3 "7" and Ex 44)

232.2 Dr Ramsey's decision to personally, out of all the thousands of TAFE teachers, single out the Applicant for special treatment via HealthQuest was a serious matter effecting the Applicant's right to work, her right to reputation, and her right to personal freedom of choice of how to spend her time outside her TAFE duties hours and her right to a safe environment free of victimisation and harassment.

232.3 The decision involved publicly suspending the Applicant from her TAFE duties for the duration required to prepare for and travel to and from Sydney, and a forced attendance at HealthQuest.

232.4 The decision involved the formulation of purported reasons to medically assess the Applicant, and TAFE officers did write private accusations and insinuations referring to gun and possible homicide/suicide about the Applicant and send them to HealthQuest (but not the Applicant) and thereby wilfully damaged her reputation.

232.5 The Commission may determine that if they had believed even one part of their private accusations they would have/should have addressed it in the workplace immediately as actual or potential OH&S issues - the accusers did not, and nor did HealthQuest. No-one acted as if they believed the accusations were true. No-one! The Applicant was quite unaware. The Applicant was trusting (T/*s* 293.45 *"I trusted people*").

233 In April 1995 the Respondent commenced the HealthQuest process by formulating documents with contentious allegations against the Applicant (Ex 101, Ex 85 Attachment 4 Page 3, Ex 24 "3")

At some time, possibly after October 1995, but bearing the purported dates of April 1995 further documents with even more offensive, damaging contentious allegations which intimated the Applicant were formulated (Ex 24 "4", and 24 "2").

234On or around 1 May 1995 the Respondent acted on the decision to send the Applicant to HealthQuest, wrote further contentious allegations against the Applicant forwarded them to HealthQuest (Ex 18 "A" page 1 and Ex 18 "A" Page 2).

235 On day/s surrounding 19 May 1995 the Respondent suspended the Applicant from duties pending the HealthQuest appointment.

235.1 The Respondent's decision to suspend the Applicant from duties, no matter how long or short that suspension was to be, is a penalty option that may be made under the Enterprise Agreement at Section 28.15 Disciplinary Options.

235.2 That disciplinary option may (or may not) be evoked under Section 28.15.1.5. "A staff member may be suspended from duty pending full investigation of a disciplinary matter or completion of court action against a staff member charged for a serious criminal offence…" and 28.15.1.5.2 "<u>The suspension option with or without pay would only be exercised following the laying of a charge and consultation with the Manager Industrial Relations or the Manager Legal Services."</u> [emphasis added]

235.3 The Respondent's arbitrary decision to suspend the Applicant from her TAFE duties pending the HealthQuest appointment was not only not made under due process as set out as a authorised by the Enterprise Agreement, without due process, but damaging to the Applicant's reputation and observable by others. At 285.35 the Applicant testified that a member of TAFE staff " *said, 'Val', real quietly, as if I had done something wrong or whatever, 'you have got to go for a medical examination in Sydney'*."

235.4 This placed the Applicant in a difficult, embarrassing position; she could not truthfully explain to others (including other teachers, students, business contacts, friends and family) why she was stood down, summarily removed from duties and out of Kempsey TAFE. She could not speak about it in a way that did not imply a slur on herself. She was not aware that the MD had "authorised" HealthQuesting her.

235.5 The Commission may observe that at no time did the Respondent ever lay any charge (or have reason to lay any charge) against the Applicant and therefore to apply the public detriment of suspension/standing down from duties against the applicant was a decision such that should only have been made with procedural fairness and due process, under circumstances as set out in the Enterprise Agreement.

236 The Respondent and HealthQuest privately formulated, gathered, stored, and exchanged more documents with contentious untested allegations against the Applicant, her reputation, her family members and their reputations, allegations of sexual matters, allegations of personal nature, allegations of guns, suicide (Ex 20 A", Ex 10, Ex 20 "C", Ex 11, Ex 20 "D", Ex 44 "A", Ex 20 "F"). As this was a purported "fitness to continue in employment" appointment the Commission should note that these topics are not topics used to select staff for employment.

237In June/July 1995 the Respondent, as part of the ongoing action and decisions against the Applicant, by telephone message arbitrarily suspended her from duties and conversely told her that she was no longer an employee, that she was "medically retired", denied her sick leave, stopped her pay, and attempted to sever superannuation (Ex 19 "E", 44 "C", Ex 13) From this point on the Respondent did not accord the Applicant internal staff development opportunities

238In August 1995 and in the preceding period the Respondent and HealthQuest (and apparently MAP) formulated, gathered, stored, and exchanged more documents with contentious allegations against the Applicant (Ex 19 "H", 20 "G", and attachments to Ex 79 Turco letter)

239In September 1995 the Respondent resumed paying the Applicant her wages and in doing so acknowledged that, contrary to their claim in June 95 that she was retired, conceded that the Applicant was still an employee.

But the Respondent did not return her to duties. It did not apply Rehabilitation. By excluding the Applicant from duties and workplace this curtailed the Applicant's TAFE career and denied her access to TAFE staff development and promotion opportunities.

240In October 1995 to January 1996 the Respondent formulated further documents with contentious contents against the Applicant (Ex 19 "L", and 19 "N", Ex 39, Ex 98, Ex 99)

241During October 1995 to May 1996, the Respondent asked again to be allowed to return to her job but Ms Walshaw refused the Applicant her right to return to duties. Someone decided to reduce the Applicant's salary to $0, annexed her accumulated sick and extended leave accruals, placed her on Sick Leave Without Pay, (Ex 14, Ex 93, last page of Ex 34) so the Applicant obtained alternative work in Sydney.

242On or around September 1996 the MAP disallowed an "appeal" (based on unknown material and allegations) wrote a notice of that disallowance, incorporated HealthQuest's offensive untested (and evidently unprovable) allegations, and distributed that notice (Ex 44 "G).

243At various times in 1996 - 1998 the Respondent again attempted to sever superannuation responsibilities in relation to the Applicant, made and circulated contentious allegations about her (Ex 34, Ex 3 "13", Ex 38, Ex 35, Ex 36, Ex 37, Ex 4 "4")

244Applicant's affidavit Ex 16 Paragraphs 140-144 indicates TAFE could have induced its new Human Resource Manager Ms Williamson to accept the purported retirement and "put it through" by possibly changing its computer records. While this is a serious matter, simply changing employment records on the computer or wherever Ms Williamson "put it through" does not force an employee to enter retirement. It is submitted that substantiation for this is shown in Ex 85 Attachment 3 shows TAFE still attempting to manufacture a retirement/termination.

245In November 1997 the Respondent again attempted to imply that the Applicant was no longer an employee (Ex 85 "3")

246Ion 23 April 1998 the Applicant's Legal officer Mr Peter Cribb and Ms Stephanie Cole exchanged an email referring to "Val Kerrison's threat to use a gun". Ex 4 "4".

247In October 1999 The Respondent applied the discriminatory phrase "medically retired" to the Applicant's name and forwarded this to a potential employer of the Applicant Ex 3 "3" and Ex 3 "4".