

# Industrial Relations Commission of New South Wales

**CITATION :Kerrison v New South Wales Technical and Further Education  
Commission [2003] NSWIRComm 76**

**PARTIES :**

**APPLICANT:** Valda June Kerrison

**RESPONDENT:** New South Wales Technical and Further Education Commission

**FILE NUMBER:**IRC 3124 of 2000

**CORAM:**Schmidt **JCATCHWORDS :**Declaratory Relief - Application under s154 of the Industrial Relations Act 1996 - TAFE teacher - whether applicant was medically retired - whether employment came to an end pursuant to provisions of Technical and Further Education Act 1990 - no written record of TAFE decision - leave sought by applicant to reopen case and bring further evidence declined - no termination of employment - declaratory relief granted

**LEGISLATION CITED :**Freedom of Information Act 1989 (NSW) Industrial Relations Act 1996 Technical and Further Education Commission Act 1990

**CASES CITED :**

Atlantis Relocations (NSW) Pty Ltd v Department of Industrial Relations (Inspector O'Regan) (1997) 99 IR 125

Frost v The Speaker of the Legislative Assembly of New South Wales (2000) 97 IR 461

Ward v Director-General of School Education (1998) 80 IR 175 Western Sydney Area

Health Service v Gibson [2001] NSWIRComm 290

Wilson v Department of Education and Training (2000) 100 IR 1

**HEARING DATES:**07/12/2000; 26/04/2001; 27/04/2001; 10/09/2001; 11/09/2001;  
03/12/2001; 04/12/2001; 05/12/2001; 17/06/2002; 18/06/2002; 19/06/2002; 14/11/2002

**DATE OF JUDGMENT:**21/03/2003

**LEGAL REPRESENTATIVES:** APPLICANT: Mr Crewdson (as agent) then applicant in person RESPONDENT: Mr RC Kenzie QC with Ms E Brus of counsel SOLICITORS: IV Knight Crown Solicitor

**JUDGMENT:**

**77 - INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES**

**CORAM:** Schmidt J

**DATE:** 21 March 2003

**MATTER NUMBER IRC 3124 OF 2000**

**VALDA JUNE KERRISON v NEW SOUTH WALES TECHNICAL AND  
FURTHER EDUCATION COMMISSION**

**Application for declaratory relief under s154 of the Industrial Relations Act 1996**

**JUDGMENT**

1 In these proceedings Ms Kerrison seeks declaratory relief under s154 of the *Industrial Relations Act 1996* ('the Act').

The declarations sought in the amended application were:

- a) That Valda Kerrison is and at all times since 1988 has been employed by the Technical and Further Education Commission of New South Wales and its successors.
- b) That Valda Kerrison be entitled to be paid all emoluments pertaining to her position as a Full Time Teacher of the Technical and Further Education Commission together with interest thereon and to retain all seniority, long service leave, superannuation and other entitlements together with interest thereon.
- c) That with respect to any moneys otherwise earned by the Applicant since 22 June 1995, allowance be made for that sum.

2 Ms Kerrison represented herself at various stages throughout the proceedings and at other times was represented by an agent, Mr *Crewdson*. Mr *Kenzie* QC appeared for the respondent, Technical and Further Education Commission ('TAFE') with Ms *Brus* of counsel.

3 Numerous documents were tendered and evidence was given by Ms Kerrison, who also called evidence in her case from Mr Raoul Salpeter, Crown solicitor. The respondent had filed an affidavit sworn by Mr Salpeter, but he was not called. Ms Kerrison tendered the affidavit without objection. The respondent called evidence from Ms Kerry Walshaw, Manager, Performance Improvement, Randwick City Council; Ms Elizabeth McGregor, Teacher and previously Cluster Director and Assistant Director North Coast Institute of the Technical and Further Education Commission and Campus Manager at Kempsey; Dr Helen Jagger, Director of Medical Services at Canterbury Hospital; Dr Gregor Ramsey, Managing Director of NSW TAFE Commission; Ms Sharon Scuglia, Employee Services Officer at North Coast Institute of TAFE; Ms Gail Robison, Team Leader Payables for the Finance Unit at North Coast Institute of TAFE Commission of NSW; Michael Quinn,

retired; Mr Gary Willmott, Deputy Director General Department of Education and Training.

### **The applicable legislative scheme**

4 The *Technical and Further Education Commission Act 1990* ('TAFE Act') applied to the employment at the time of the events in question. The relevant provisions provided:

#### **8. Delegation of functions**

(1) The TAFE Commission may delegate to an authorised person any of the functions of the TAFE Commission, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any function delegated by the TAFE Commission if the delegate is authorised in writing to do so by the TAFE Commission.

(3) Any of the following functions may not be delegated or sub-delegated to an authorised person unless that person is a member of the staff of the TAFE Commission or a public servant employed in the Department of Education and Training:

- (a) a function under this Act, or any other law, of entering into agreements relating to an industrial matter,
- (b) a function under section 15 or 16,
- (c) a function in proceedings concerning industrial awards.

(4) In this section, "authorised person" means:

- (a) a member of the staff of the TAFE Commission, or (a1) a public servant employed in the Department of Education and Training, or
- (b) a person of a class prescribed by the regulations or approved by the Minister.

**13. Managing Director** (1) The Governor may appoint a Managing Director of the TAFE Commission. (2) The employment of the Managing Director is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act. (3) The Minister may, from time to time, appoint a person to act in the office of the Managing Director during the illness or absence of the Managing Director (or during a vacancy in the office of Managing Director) and the person, while so acting, has all the functions of the Managing Director and is taken to be the Managing Director. (4) The Minister may, at any time, remove a person from office as acting Managing Director. (5) An acting Managing Director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

**14. Managing Director to manage and control affairs of the TAFE Commission** (1) The affairs of the TAFE Commission are to be managed and controlled by the Managing Director, subject to any direction of the Minister under this Act. (2) Any act, matter or thing done in the name of, or on behalf of, the TAFE Commission by the Managing Director is taken to have been done by the TAFE Commission.

**15. Employment of staff** The TAFE Commission may employ such staff as it requires to exercise its functions.

**16. Salary, conditions etc of staff** (1) The TAFE Commission may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other Act or law. (2) Members of the staff of the TAFE Commission are

employees of the Crown for the purposes of the *Industrial Relations Act* 1996 or any other Act.

**17. Regulations relating to staff** (1) The regulations may make provision for or with respect to the employment of the staff of the TAFE Commission, including the conditions of employment and the discipline of any such staff. (2) Any such regulations relating to the conditions of employment or the discipline of staff: (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement to which the TAFE Commission is a party, and (b) have effect despite any determination of the TAFE Commission under section 16, and (c) are subject to Part 2A of the *Public Sector Management Act* 1988. **20. Incapable officer may be retired** If: (a) a member of the staff of the TAFE Commission is found to be unfit to discharge or incapable of discharging the member's duties, and (b) the member's unfitness or incapacity appears to be of a permanent nature and has not arisen from actual misconduct on the part of the member (or from causes within the member's control), the TAFE Commission may cause the member to be retired.

### **The evidence**

5 Ms Kerrison was appointed as a permanent full-time teacher of TAFE in March 1989. She had been a part-time employee since 1983. 6 She worked in Kempsey, at a campus which was a part of TAFE's North Coast Institute, as a teacher of business studies and other subjects. There was no issue that her work performance as a teacher was anything other than satisfactory, throughout her employment. 7 Ms Kerrison made complaints to her superiors about various matters, including the conduct of another teacher employed with her, over a considerable period of time. Various concerns were raised, including allegations that certain students, **particularly certain women and students of an aboriginal background, had been discriminated against or victimised in various ways and that she and other teachers at Kempsey had also been victimised by the other teacher.** Ms Kerrison's view was that those responsible for dealing with these complaints had failed to act upon them. 8 Ms McGregor corroborated this view. In October 1993 she had written a note concerning matters which Ms Kerrison had then raised with her. The purpose for which the note was written was not entirely clear, but Ms Kerrison obtained a copy of it, as the result of a request under the *Freedom of Information Act* 1989 (NSW) ('FOI'), which she made years later. The note confirmed evidence given by Ms Kerrison in these proceedings, that she had raised her concerns with Ms McGregor, following Ms McGregor's appointment to Kempsey as College Manager. It also noted that Ms McGregor had offered to investigate, but that Ms Kerrison was fearful of making her complaints further known. Ms Kerrison had told Ms McGregor that she and others had experienced harassment and victimisation and she expected retribution, if she advanced her complaints. The note referred to some steps nevertheless taken by Ms McGregor to investigate these concerns, which suggested to her that Ms Kerrison's complaints and concerns had some foundation. This included letters of complaint emanating from students about the teacher concerned.

9 Ms McGregor made a similar statement in May 1994, to which Ms Kerrison much later also obtained access after an FOI request and which was tendered in these proceedings.

In it, Ms McGregor recorded that when she became College Manager in 1993, she became aware that Ms Kerrison was very distressed about "a colleague in her section ... had been systematically victimising students and staff including herself for a number of years" and that no principal of the college had ever effectively dealt with this. Ms Kerrison's attitude initially was that "she did not want to be involved in any action that required her to make an official complaint or grievance as she believed that it would only make things worse for her."

10 While there was much common ground which emerged from the evidence, there were also very significant diversions between the evidence given by the various witnesses as to certain of the events as they unfolded. It is unnecessary for me to refer to all of them. Ms Kerrison was extensively cross examined about these matters. There was no doubt that in late 1993, Ms Kerrison produced a 16 page document about her concerns which she showed to Ms McGregor. It was common ground that at the time this document was produced, Ms Kerrison was concerned about the confidentiality of the matters she was raising and that as a result, Ms McGregor did not keep a copy of the document, but returned it to Ms Kerrison.

11 Ms Kerrison complained in these proceedings that the concerns which she had so raised with Ms McGregor were not acted upon. Ms McGregor's evidence was that she felt constrained from acting, because of her understanding of Ms Kerrison's wishes. On Ms McGregor's evidence she acted to investigate at least some of the matters raised. This led to some students confirming Ms Kerrison's concerns in relation to certain teaching practices of the other teacher in question. Other students advised that Ms Kerrison's understanding that they had left their TAFE courses because of this teacher's conduct was incorrect - they had left for other reasons. In her May 1994 statement, Ms McGregor also said that she had spoken to the other teacher concerned and that other teachers at the College later confirmed that the teacher "began displaying more appropriate behaviour."

12 Ms Kerrison was also in contact with her union representative at the time, about her difficulties. No evidence was, however, called from any Union official. Ms Kerrison's evidence was that the Union referred her to the TAFE counselling services. In late 1993 she also made a confidential written complaint about her concerns to TAFE, outside the Kempsey campus. She was informed a few days later by Ms McGregor, that she had been made aware of the making of this complaint, by Ms Meerman, one of the investigators appointed to deal with the complaint. One of the matters raised in the complaint concerned how aboriginal students were treated and the procedures adopted by the College for dealing with them. Ms McGregor was involved in this aspect of the complaint. Ms Kerrison's fear that she would be further harassed or victimised, as the result of this disclosure, plainly became heightened as a result.

13 The managing director of TAFE, Dr Ramsey appointed two Sydney based employees, Ms Meerman and Ms Hartigan, to investigate Ms Kerrison's complaints. She spoke to Ms Meerman and asked her to pursue the complaint, despite her concerns. Neither Ms Meerman nor Ms Hartigan were called in these proceedings.

14 In cross examination, Ms Kerrison explained that she soon learnt that the teacher against whom her complaint had been made, had been told about her complaint, as were others at Port Macquarie. She had no problem either about confidentiality not being maintained by TAFE, or other people being told about her complaint, but expected that she would be protected, having been the complainant.

15 Ms Kerrison agreed in cross examination that she became distressed at that time, crying and having problems sleeping. She then felt that as fast as she was putting aboriginal students into class, the other teacher was getting them out and that Ms McGregor was doing nothing about it.

16 At the end of 1993, Ms Kerrison was appointed the acting head teacher of her section. Ms Kerrison's difficulties with the teacher concerned in her complaint continued. Ms Kerrison approached Ms Meerman, to be informed that no action had yet been taken in relation to the matters she had raised.

17 In 1994, Ms Kerrison's difficulties with the other teacher continued, as far as she understood, unaddressed by TAFE. Ms Kerrison gave detailed evidence about the nature of her complaints, which I do not here detail. On any view, they raised a number of serious matters, including the way in which various aboriginal students were being dealt with. Ms Kerrison raised some of these difficulties with Ms McGregor, but did not believe that they were adequately responded to. Ms Kerrison repeated her request to Ms Meerman that her complaint be dealt with.

18 To this point, Ms Kerrison had not taken any sick leave since her appointment in 1989 and had accumulated over 100 hours of sick leave entitlements. She was concerned at the lack of action into her complaints, began to feel unwell and again approached her union representative, who advised her to see her doctor and assured her, that if she went on stress leave, TAFE would act. Ms Kerrison's medical advice was to take leave for 'agitated depression - work induced' from 11 March to 1 April 1994. When she provided the medical certificate to TAFE, Ms McGregor advised her that the Institute rehabilitation officer, Mr Quinn and the human resource officer, Mr Lockwood would be in contact with her.

19 In cross examination, Ms Kerrison's evidence was that she felt better immediately, confident that TAFE was going to be in contact with her and that her problems would be addressed. She was further distressed when that contact did not eventuate and herself began making enquiries about assistance and a return to work. Mr Quinn's evidence was that the applicable policy involved an early intervention strategy to facilitate an early return to work, when significant periods of sick leave were taken. Ms Meerman advised Ms Kerrison to await the outcome of the investigation, which was then being conducted on a confidential basis. Ms Kerrison was interviewed in Kempsey at the end of March, in the presence of her union representative. She then outlined the nature of her continuing problems. Ms Kerrison formed a very negative impression of the process and was advised by the union representative that she should consider resigning. She felt that she

was not being supported by her union, particularly when Ms Meerman shouted at her during the interview.

20 Contrary to Ms McGregor's advice, Ms Kerrison was not contacted by either Mr Lockwood or Mr Quinn during this period. On 30 March, Ms Robison, the Kempsey TAFE registrar and rehabilitation officer, visited Ms Kerrison at her home and remained while she completed various worker's compensation claim forms. She, too, promised to have Mr Quinn or Mr Lockwood call her.

21 Ms Kerrison felt depressed and isolated and was advised by her doctor not to return to work. Another medical certificate, to the same effect as the first, was issued by her doctor advising that her sick leave should continue to 30 April. Ms Kerrison was referred by her doctor to a psychiatrist, Dr Holmes. On her evidence "after I had been isolated for a good while, the doctor suggested that I talk to a psychiatrist as someone to talk to, because I was left isolated waiting by the telephone for week after week, and he suggested I speak to a Dr Holmes because I took it because (sic) of isolation". She was not prescribed any medication by Dr Holmes and saw him on a number of occasions, before her return to work. This decreased as her contact with Ms Robison, Mr Lockwood, Mr Quinn and the Commonwealth Rehabilitation Service ('CRS') increased.

22 Ms Kerrison was cross examined as to what she told Dr Holmes about problems she was then experiencing, such as difficulty sleeping, depression, anxiety attacks and feelings of suicide. She denied having raised some of these matters with him and said she could not be responsible for his interpretation of what she had told him. His record, that 'sometimes she felt that life was not worthwhile and had thought about suicide without any intention of doing it', reflected his interpretation or opinion. She could not recall the word suicide being used at all in their discussions.

23 Ms Kerrison eventually telephoned Mr Lockwood herself. He advised her to resign. On 21 April he visited her with Mr Quinn. On this occasion Mr Lockwood also advised her that she could not be rehabilitated and should resign. Mr Quinn suggested that she pursue rehabilitation with the CRS, or retraining. Mr Lockwood was not called to give evidence. On Mr Quinn's evidence, at this time Ms Kerrison was agitated and angry, laughing and in tears at different points of their discussion. In cross examination, Ms Kerrison explained that she thought it was unreasonable for Mr Lockwood to have thought she only had options outside TAFE.

24 On 27 April, Mr Quinn wrote to Ms Kerrison, advising her about her options, which in his view were for her to retire, to resign or to continue taking sick leave. She could also seek work related workers compensation rehabilitation', for a planned return to full time work over 12 months. This did not have to be with her current employer. It was explained that such rehabilitation would involve Ms Kerrison, any treating doctors, the CRS as TAFE's rehabilitation provider and TAFE. Medical retirement was also raised, after recommendation from treating doctors and a reference to HealthQuest. Mr Quinn also promised to look into retraining, although Ms Kerrison had advised that she did not regard teaching outside Kempsey as an option she was interested in.

25 In cross examination, Ms Kerrison explained her response to this letter. She was so shocked at it being suggested to her in writing that she should retire or resign, that she did not focus at all on the other matters there raised. Rather, she relied on the discussions she was having with Mr Quinn and Ms Robison, which led her to go to the CRS. She could not recollect having read the letter in its entirety and if she had, would not have regarded the possibility of medical retirement as relevant to her, because she was not seeking to retire. Ms Kerrison signed an accompanying form agreeing to seek rehabilitation at CRS, after taking some advice from the Teacher's Federation.

26 In May, Ms Robison again visited Ms Kerrison, after several telephone discussions. It was Mr Quinn's evidence that the rehabilitation plan which had been developed, provided for that contact, reducing over time. Ms Robison's evidence about these visits was that she found Ms Kerrison's approach during her visits disappointing, because she believed that Ms McGregor, Mr Quinn and she had provided her with significant support on campus and at home. Ms Kerrison, however, complained to her that 'nobody cares about me' and 'you don't seem able to make decisions'. Ms Kerrison appeared to Ms Robison to be very depressed at the time. She recollected Ms Kerrison telling her that she felt suicidal. She recollected that at one point, Ms Kerrison had said that 'If I had a gun I would shoot myself'. Ms Kerrison denied this. On her evidence they discussed her concerns about the treatment of aboriginal students at the college. Ms Robison also asked her how she would feel if nothing changed as the result of the investigation.

27 In cross examination, Ms Kerrison denied feeling suicidal at this time, or having told Ms Robison so. On her evidence her problems at TAFE were but part of her life, other parts were proceeding normally, with her family and friends. Ms Kerrison also said that she enjoyed speaking to Ms Robison, but found that she did nothing to help her.

28 Ms Robison's evidence was that she had enrolled in counselling courses in order to be able to help Ms Kerrison. She told Mr Quinn at the time "I don't feel comfortable visiting Val's home on my own. She is always so agitated and emotional." In cross examination it was put to her that Ms Kerrison had not said she felt suicidal and Ms Robison insisted that she had. Ms Robison found herself out of her depth in trying to deal with this situation. Her evidence was that she discussed this with Mr Quinn and there was correspondence between them about it, but could not explain why no such document had ever been produced by TAFE in response to Ms Kerrison's FOI requests.

29 Ms Robison had also made some written statements about Ms Kerrison. She was cross examined as to when she had written these statements, dated 1996. She was uncertain, but thought that they were reports which she had provided to TAFE Human Resources.

30 Mr Quinn's evidence was that Ms Robison had told him in March 1994, that Ms Kerrison had made threats involving physical harm with a firearm directed towards the teacher about whom Ms Kerrison had made her complaint and others. Ms Robison herself gave no such evidence. Nor was reference to such threats made in the 1996 notes made by Ms Robison. There she recorded that Ms Kerrison was feeling depressed, had

difficulty sleeping and "openly discusses her feelings of anger and frustration about the issues and concerns that she has raised and in particular the big TAFE picture. I have felt a little insecure at times (being and (sic) employee of TAFE) that sometimes I am in the firing line when these frustrations are being demonstrated. Because of Val's depressive state of mind, I have also expressed my concern with Mike Quinn about visiting Val on my own."

31 Mr Quinn's evidence was that as early as March 1994, before he even went to see Ms Kerrison with Mr Lockwood, because of Ms Kerrison's numerous references to her complaints not being properly investigated; he 'saw the potential of harm to Ms Kerrison and other TAFE staff.' Mr Quinn did not explain how, or why, he came to this conclusion.

32 His evidence was that he had had numerous meetings with other TAFE staff to consider Ms Kerrison's perceived instability. There was, however, no evidence that Mr Quinn had any knowledge of the complaints Ms Kerrison had made to Dr Ramsey; how they were being investigated by TAFE; what later resulted from the investigation; or whether her concerns as to the inadequacy of the investigation had any foundation in fact.

33 In Ms McGregor's May 1994 statement, by way of contrast, she said that 'Val's reputation as a teacher is solid and no member of her staff raised any issues with me about Val acting as Head Teacher. **During a phone call with Val last week it became clear to me that Val's major grievance is with the TAFE Commission's lack of action concerning behaviour. She indicated that if there was a teacher who was victimising students and disadvantaging other teachers how could we as an organisation allow that behaviour to continue for so long.'**

34 Ms Robison's evidence was that she stopped going to Ms Kerrison's home in 1994, because she was uncomfortable in dealing with her emotional state, after Ms Kerrison had said that she was feeling suicidal. She had been advised in writing not to do so by Mr Quinn. That document was not in evidence however.

**35 I observe at this point that Mr Quinn's evidence was given long after these events and after he had been involved in a serious car accident. Nevertheless, his evidence that on the one hand, Ms Kerrison was perceived to be unstable, was making threats of self harm and serious harm to others sat most oddly with his approach at a meeting with Ms Kerrison on 21 April, under the applicable rehabilitation policy. Had a concern then existed in reality that such threats were being made by an unstable teacher, particularly against other staff members, some action to deal with them, such as a referral to HealthQuest, expressly referred to in his letter to Ms Kerrison on 27 April [1994] as a possibility, would surely have resulted. Mr Quinn's evidence was not consistent with that of Ms Robison. While her discomfort at going to Ms Kerrison's home when she was depressed to the point that Ms Robison understood her to be suicidal, is understandable. That does not provide a basis for the view that Ms Kerrison was threatening other TAFE staff. I am not satisfied, on**

**the evidence, that Ms Kerrison made threats against other staff members, during her absence on sick leave.**

36 On 25 May, Ms Kerrison approached her local member of Parliament for assistance. He spoke to Ms McGregor, who advised Ms Kerrison to go to the CRS. The next day, Ms Kerrison was approached by CRS and later attended a meeting there, where the prospect of retraining was discussed with her. She, however, could not be guaranteed that she would obtain employment as a result of such retraining and thus did not pursue it. In cross examination she explained that she was looking for solutions to her problem and when one was presented, she acted, by going to the CRS. She was at that point, actively looking at alternatives.

37 In May 1994, the investigators produced a report about the investigation into Ms Kerrison's grievance. A copy of the report was not provided by TAFE to Ms Kerrison. She eventually obtained one, much later, and then only in response to requests she lodged under the *Freedom of Information Act*. Dr Ramsey met with one of the investigators in July and following that discussion, accepted the recommendations made in the report. As a result, he referred to the Manager of the TAFE Comprehensive Audit section, one allegation, that the teacher against whom Ms Kerrison had made complaints, had enrolled herself in a course at the College without the knowledge of the head teacher of that subject and had given herself 100% exam results. It had been alleged that the then Registrar and principal of the College were also involved. This allegation was later found proven against the teacher concerned.

38 Ms Kerrison had a further medical certificate expiring on 22 June. On 17 June, she advised Ms McGregor and CRS that she intended to return to work on 22 June. Ms McGregor informed Ms Kerrison that she understood Ms Kerrison would be going elsewhere. Mr Quinn did not return her calls. She was advised by CRS and by a union representative that she would not be permitted to return to teaching in the administrative services section at the College. Ms Kerrison insisted that she wanted to return to work in her former role. On 7 July, she attended a meeting with Ms Robison, Ms McGregor and Ms Cook. She confirmed that she wished to return to her duties. She was advised that all teaching in her section had been allocated to the teacher against whom her complaints had been made and to other part time staff. Minutes of the meeting showed that Ms McGregor raised her expectations of Ms Kerrison, which included that grievances should be dealt with when they arose, that if they could not be dealt with immediately, they were to be brought to her and that Ms Kerrison should not discuss the other teacher's behaviour with other members of staff. For her part, Ms Kerrison wanted problems which she raised to be dealt with promptly. Arrangements were finally made for a return to work, which occurred on 11 July.

39 Ms McGregor's evidence was that she was never made aware of the details of the complaints Ms Kerrison had made to Dr Ramsey. She understood that at the time Ms Kerrison sought to return to work, they were still the subject of investigation. In her view, it was then untenable for Ms Kerrison to work together with the teacher against whom she had made complaints and so arrangements were made for both teachers to occupy

'teacher in charge' positions, so that neither had to supervise or report to the other. As part of the return to work rehabilitation process, Ms Kerrison was to utilise the departmental grievance process, if she had any further complaints to make.

40 On 15 July, Ms Kerrison was advised by GIO that liability for her workers' compensation claim for 'Reactive depression. Work related', had been accepted. In cross examination, Ms Kerrison explained that it was the unaddressed issues at TAFE which she believed caused GIO to accept liability for her work related stress, which had been caused by victimisation.

41 In cross examination, Ms Kerrison also explained that what she had been expecting during her sick leave from Mr Lockwood and Mr Quinn was to be told "Ok Val back to work tomorrow. How do you feel about that? We will make sure no one is victimising anyone" and it would have been great'. Upon her return to work Ms Kerrison, however, found herself 'sent to Coventry' by the teacher concerned in her complaint. She believed that Ms McGregor was aware of this, but did not act to deal with it. She explained that on more than one occasion when she found Ms McGregor and the other teacher against whom she had made complaints sitting together, she greeted them, but there was no reply. That teacher had been acting in the head teacher position during Ms Kerrison's absence. Ms Kerrison also returned to another head teacher position, as arranged, but found documents and a tape recorder she required to perform that work had been removed. Various other problems arose. She raised her problems with Ms McGregor and Ms Robison, but was not satisfied with their response, even though in cross examination she agreed that Ms McGregor had asked the other teacher as to the whereabouts of the recorder and Ms McGregor had suggested that Ms Kerrison should drive to the TAFE College at Wauchope to find and copy the missing documents, which she later did. Her attitude was that Ms McGregor could have been more helpful than she was.

42 In evidence was another statement which Ms McGregor later made, in December 1995, to which Ms Kerrison gained access after an FOI request. The purpose for which the statement was made was not entirely clear. It might have been in connection with proceedings brought by Ms Kerrison before the Anti-Discrimination Board. In this statement Ms McGregor recounted Ms Kerrison's distress, when on the first day she returned to work, a tape recorder which she required had been removed, Ms Kerrison believed deliberately by the other teacher and that this teacher's behaviour had not altered. Ms McGregor viewed the matter as relatively trivial. She told Ms Kerrison to carefully consider whether she should lodge a grievance. Ms Kerrison did not, but the matter, and her view as to Ms McGregor's lack of support, was something which Ms Kerrison harked back to in conversations with Ms McGregor and others, over the following months.

43 On 12 July, Ms Kerrison wrote to Ms McGregor telling her that she did not believe that she was being given 'a fair go' and was being targeted in her return to work. She complained in her letter that when she had sought to return to work, the problems she had created for the other teacher by the making of her complaint were raised with her, as needing to be addressed by her. Ms Kerrison, however, felt that they needed to be

addressed with the other teacher. A mediation session with the other teacher had also been proposed, with which Ms Kerrison agreed, but the other teacher refused to participate. In cross examination, Ms McGregor confirmed that the other teacher refused to participate in any mediation, while the complaint was still being investigated. In Ms Kerrison's view, the problems which had led to her complaints being made continued, after her return to work. As a result, Ms Kerrison had to move offices. Ms Kerrison asked Ms McGregor whether these matters constituted harassment and said they were causing her distress. She sought to discuss her problems with Ms McGregor.

44 On Ms McGregor's evidence, she told Ms Kerrison '...to consider carefully whether or not you feel there are grounds for grievance and if so, lodge one.' On 26 July, Ms Kerrison told Ms McGregor that she was dissatisfied with the delays and conduct of the investigation into her original complaint and proposed to approach the Human Rights and Equal Opportunity Commission.

45 Ms Kerrison, at that point, took the view that her requests for support at Kempsey were futile. She had also lost confidence in the ability of Ms Robison and Mr Quinn to give her any assistance. She did not lodge another grievance.

46 In another note, seemingly made by Ms Robison in 1996, again for purposes which were not clear, Ms Robison detailed what had occurred upon Ms Kerrison's return to work. She confirmed that Ms Kerrison remained frustrated that there had still been no outcome to the investigation into the complaints she had raised. The note again referred to threats of suicide, which Ms Kerrison denied having made. The note said in part that Ms Kerrison: '... at times has demonstrated signs of frustration and anger that none of the issues that she had raised in the "document" that was under investigation were being addressed. I have made several contacts with Michael Quinn and Chris Lockwood to see if they can assist Val with answers to her questions. These staff have been supportive and have indicated to me that they would make contact with Val to assist her wherever possible. On several of her visits to me, Val has been quite emotional (has mentioned her feelings of suicide). After discussions with Val, I have felt extremely concerned and contacted Mike Quinn to ensure that he is aware of how she is feeling. Mike has at all times been very understanding and I believe made contact with Val to discuss her feelings. At times, Val would sit in my office for a considerable amount of time and openly discuss her feelings. As the weeks/months have gone by, I feel Val has distanced herself. She has openly said to me "that as a rehabilitation officer I am powerless to help her with her problems, and really only relay messages (I admit that I agree, but also believe that this is how it should be from this level). I have discussed this with Michael Quinn, and suggested that more contact from his level may be really supportive. On some occasions, I have again felt insecure being alone with Val in her current state of mind, I have discussed this with Elizabeth McGregor and Mike Quinn and we have agreed that we would not meet with Val on her own.'

47 Some time after her return to work Ms Kerrison learnt of the existence of the Investigator's report from another member of staff, who told her that a copy of the report had been provided to the teacher against who the complaint had been made. Ms Kerrison

later received a letter from Dr Ramsey, dated 5 August 1994, advising her that the matters raised in her letter of 15 November 1993 had been investigated, he had received a report and that he did not intend to take further action in relation to the matters she had raised, as he 'expected that implementation of the report's recommendations will resolve these issues'. A copy of the recommendations were enclosed.

48 Ms Kerrison was, however, not given any advice as to the scope of the investigation which had been conducted into her complaint, who had been interviewed, or what it had revealed. She was provided only with a copy of the recommendations made in the report, but not the report itself. Those recommendations were in the most general terms and did not, in reality, of themselves, provide any information as to which of Ms Kerrison's complaints had been investigated or made out, or what steps were being taken to resolve them. Ms Kerrison was already aware that the investigators had not contacted people to whom she had directed them, as having information relevant to the matters she had raised and who she regarded as 'key witnesses'. **Even the aboriginal institute had not been contacted.** She regarded the investigation to have been defective. Despite having been told that it would lead to changes at the workplace, Ms Kerrison could see no improvement.

49 As far as Ms Kerrison could tell, the teacher against whom her complaint had been made had suffered no consequences as a result of the investigation conducted. This impression was later proven to have been correct. Dr Ramsey later wrote to Dr Willmott on 17 January 1995, advising that he had written to the other teacher informing her "that I was satisfied that the allegations were true but that in all the circumstances, no further action would be taken with respect to the allegations."

50 In cross examination, Dr Ramsey explained that TAFE's general view was that if complaints **about victimisation were received, which were not anonymous, they should be dealt with. He, himself took grievances very seriously, provided that they were in writing and that the person who had the grievance signed the grievance statement. As to a teacher enrolling herself in a course and giving herself 100% marks, his view was that it was a very serious offence, serious enough to consider whether the teacher should be continued as an employee. He agreed that Ms Kerrison's grievance was serious enough for him "to instigate a very, very thorough and serious enquiry."**

51 The report itself dealt with various matters, including that the nature of the complaints presented difficulties for the investigators on a number of grounds, including the period of time to which they related; the "significant interpersonal difficulties", which existed between Ms Kerrison and the other teacher concerned and that complaints from students appeared in part to be connected to those difficulties. Nevertheless, the report uncovered a number of serious problems in the leadership of the College, a failure to deal with staff grievances; poor management and enrolment systems; inefficient use of resources and poor communication systems. How students had been disadvantaged as a result, was dealt with. Questions were raised as to whether teacher eligibility lists were established or used at the College, when hours were allocated to part-time teachers, with the result

that part-time teachers received poor treatment. Evidence had been found that teachers were denied access to, or were overlooked, in relation to critical staff development. This had left ongoing resentment amongst staff. There was inaction in relation to known interpersonal conflicts and staff complaints at section levels, creating or exacerbating student complaints and impacting other teachers. Problems in guidelines and standards for students being properly communicated had led to different expectations amongst staff and students, resulting in various problems, including interpersonal power games, regarded as unethical and unprofessional on the part of those involved. Various specific matters involving particular teachers were also dealt with.

52 The upshot of the investigation was an acceptance that various serious problems had been identified as the result of the grievance and that the longstanding interpersonal conflict at the College had, in part, been contributed to by Ms Kerrison. It had not, however, involved only her and the other teacher, but also other staff, including members of College management. Various recommendations were made in the report, in addition to those conveyed to Ms Kerrison. They included: 'That the following future work options, or a combination of same, be discussed with the complainant. We suggest that communication from the Institute Director, North Coast, might be appropriate with follow-up management by the North Coast Institute Human Resources Manager: 1. That with the complainant's agreement, discussion and mediation sessions, through a highly skilled mediator be held, with key staff including complainant involved in this review. 2. The complainant transfer to an appropriate position in a College in the Institute cluster of which Kempsey College is a part. 3. The complainant be offered re-training for alternative but related employment or redeployment.'

53 In re-examination, Ms Kerrison explained that it was only when she obtained a copy of the report after her FOI requests, that she first realised that there in fact had been an investigation into a situation to which she had drawn attention, **where a business man had been threatened that he would be unable to make further sales to TAFE, if certain information which he had was not kept confidential by him.**

54 In cross examination, Dr Ramsey confirmed that the investigation had uncovered a number of serious problems at the College, which needed to be addressed. Ms Walshaw had a different view. In cross examination Ms Walshaw explained that she did not totally accept all of the comments made in the report. At the time there were big changes which had taken place in the northern region, with various amalgamations and "at any time like this sometimes some staff have a sense that it is leaderless". Things were difficult at the time for a lot of staff and the report reflected "the perception by people coming in from Sydney". It was a very complex time for TAFE teachers and managers. She accepted that this did not justify the problems identified, but in her view explained them. A lot of grievances were dealt with at the time and 'there was a continually improving level of leadership'.

55 In September 1994, Ms Kerrison was directed to attend a meeting at a motel in Port Macquarie with Ms McGregor and Ms O'Sullivan, Acting College Director. They also apparently had a separate meeting with the other teacher. There was no evidence as to

what was discussed at that meeting. Ms Kerrison was not invited to have anyone present with her and attended her meeting alone.

56 Ms Kerrison was informed that neither Ms McGregor nor Ms O'Sullivan knew what Ms Kerrison had raised in her original complaint, which had been the subject of the investigation. She was also told that her complaints were confidential and must not be discussed by her with others. The meeting went for over two hours, with Ms O'Sullivan going through a copy of the recommendations made to Dr Ramsey, which Ms Kerrison already had. Whether Ms O'Sullivan had seen a copy of the report itself at that time was unclear. Ms Kerrison understood that she had not seen it, nor had Ms McGregor. Ms Kerrison found the exercise a futile one, given the vagueness of the recommendations which they were discussing and which Ms O'Sullivan read out slowly to her. At some points Ms O'Sullivan asked whether Ms Kerrison knew what a recommendation meant and she would hazard a guess.

57 The course which the investigation took has to be contrasted with the process which applied to the grievance Ms Kerrison had raised, which appeared in the then applicable Enterprise Agreement grievance procedure provisions. This required, amongst other things, that a copy of a written report be provided to the person raising a grievance and that investigations, at various levels, be dealt with in 5 days, with agreed methods and timeframes for proceedings being negotiated. Ms Kerrison complained in these proceedings that this process had not been observed by TAFE.

58 Ms Kerrison's evidence was that it was suggested to her at the meeting, that she should resign. On Ms Kerrison's evidence, Ms O'Sullivan also said to her "[t]he Managing Director will not allow it to happen again." "If you lodge another complaint and it is found to be baseless and without foundation it will be very dangerous for you." Ms Kerrison was then asked to sign a statement that TAFE had investigated her complaint and had ethically addressed all aspects of it. She refused, on her evidence, because she believed it to be untrue.

59 In cross examination, Ms Kerrison explained that she was in shock at the meeting, because she was threatened with danger, if further complaints were lodged. She found Ms O'Sullivan threatening and understood her to mean that TAFE had found her complaint baseless and without foundation, because Ms O'Sullivan was warning her against lodging another grievance. She concluded that the real purpose of the meeting had been to give her that message.

60 Ms O'Sullivan was not called to give evidence, but it was put to Ms Kerrison that Ms O'Sullivan had not given her such a warning. She was adamant that Ms O'Sullivan had. Ms McGregor confirmed in cross examination that Ms O'Sullivan had spoken 'very firmly' to Ms Kerrison, warning her that it was dangerous to misuse the grievance process. Ms O'Sullivan also said to Ms Kerrison that the managing director had allowed this investigation, but was not going to allow another investigation going over the same ground. Ms O'Sullivan firmly indicated to Ms Kerrison that from this point, the preceding incidents were closed and that TAFE's aim was to move on.

61 Ms McGregor denied having threatened Ms Kerrison with danger, or having been privy to such threats being made against her. She agreed, however, that later she had told Ms Kerrison that the grievance process should not be used vexatiously.

62 Ms Walshaw gave evidence in cross examination that she was aware that Ms Kerrison believed that she had been threatened with repercussions if she raised further ill founded grievances. She however "didn't think they were true" and "I don't think you would have been given that warning." The evidence showed that Ms Walshaw was wrong in that understanding. Ms McGregor's evidence as to Ms O'Sullivan's warning to Ms Kerrison was entirely consistent with Ms Kerrison's understanding.

63 In cross-examination, Dr Ramsey denied that he gave any instructions to Dr Willmott that Ms Kerrison should be threatened with danger, if she lodged another grievance, or to have staff under him do so. He explained that it was not dangerous for staff to lodge grievances at TAFE and all the actions he had taken were quite the opposite. He had instructed the investigators to examine all of the issues that Ms Kerrison had put in writing.

64 He also accepted that Ms Kerrison had raised very serious allegations in her complaint to him, which, in his view, warranted the independent external investigation which he had instituted, at considerable cost to TAFE. He agreed that the investigation had revealed a substantial basis for the complaints Ms Kerrison had made and that the investigation had led to the implementation of a number of recommendations, designed to achieve an alteration in various unsatisfactory practices revealed to have existed at Kempsey. Dr Ramsey denied that he wished to suppress further complaints from Ms Kerrison. His evidence as to his practice in relation to complaints was that he encouraged grievances being brought forward, so that problems could be properly identified and addressed.

65 This apparent inconsistency between Dr Ramsey's approach and that of Ms O'Sullivan, might have been explicable, if Dr Ramsey was aware of the complaints made by Ms Kerrison and what the investigation had revealed, but Ms O'Sullivan was not. Ms McGregor was plainly unaware of the contents of the report. She, like Ms Kerrison, was only given access to the recommendations made in the report.

66 At Kempsey, Ms McGregor and Ms Kerrison met again to discuss what had been said at the meeting with Ms O'Sullivan. **Ms McGregor emphasised the warning Ms Kerrison had been given.** In cross examination, Ms Kerrison denied that she only heard at these meetings what she wanted to hear and rejected the rest.

67 Ms Kerrison's evidence was that she was left with the impression that her complaints had been regarded by TAFE as being baseless. She was upset and believed that her professional reputation had been damaged within TAFE. She was also afraid for her future, given Ms O'Sullivan's warnings about raising other grievances.

68 Despite Ms Kerrison's refusal to give the acknowledgments sought of her at their earlier meeting, Ms O'Sullivan wrote to Dr Willmott on 9 September, reporting amongst other things, that she had met with Ms Kerrison and the other teacher and that the strategies proposed 'were accepted and endorsed' by both of them and that 'both are satisfied that the Institute is addressing ethics and accountability matters'.

69 Ms O'Sullivan also expressed the view that Ms Kerrison had a personal vendetta against the other teacher and that she should be referred to the Government Medical Officer for assessment. Her assessment of the other teacher, by way of contrast, was given in quite different terms. **Her view was that Ms Kerrison was holding the Institute "to ransom" and recommended that Ms Kerrison should be obliged to work with the other teacher; that this might be stressful for her, but that further stress leave on her part 'may better position the Institute to refer Ms Kerrison to the Government Medical Officer for an assessment. Such intervention may be invaluable in assisting in the stabilisation and well being of this officer'.**

70 Ms Kerrison later made reference to some parts of this document in one of her affidavits, having obtained a copy as a result of an FOI request. She had not quoted the document in its entirety, omitting the last quoted sentence above. In cross examination, Ms Kerrison agreed that her case was that people at TAFE had **been acting in bad faith against her**, including Ms O'Sullivan and that this was how she read her 9 September note to Dr Willmott.

71 Ms Kerrison continued working. Her state of mind was reflected in notes of a meeting of 20 September made by Ms Cook of the CRS. Attending were Ms McGregor, Ms Robison and Ms Kerrison. Amongst other things, Ms Kerrison's position was recorded as being that 'she has received little information and that she is now left with little resolved.'

72 Ms Kerrison's health was further affected. She was subsequently treated by another doctor, Dr Schofield, who prescribed Prozac. She had been told of this doctor by a friend, who had also received treatment with Prozac. She found that the drug did not help her deal with her fears **about the threats which had been made against her** and she ceased taking it.

73 At the hearing, it was quite apparent that Ms McGregor still had no appreciation of the outcome of the investigation into Ms Kerrison's complaints. There can be no doubt that both this and the approach adopted by Ms O'Sullivan, affected her own approach to Ms Kerrison and the teacher against whom her complaints had been made. Other TAFE employees, such as Mr Quinn, and Ms Robison, for example, were in no different position.

74 In September 1994, Ms Walshaw took on responsibility for human resources matters and became aware of the investigation conducted into Ms Kerrison's complaints. In late October, Ms Kerrison learnt that the teacher about whom she had complained had been appointed to the position of Acting Manager - Training and Development in Lismore, a promotion. Ms Kerrison understood that in that position, the teacher had been given

power over her own future access to training and development. Her fears were later confirmed, when she began experiencing problems in having her phone calls returned and when material she requested was not supplied to her from that office.

75 Ms Walshaw's evidence was that this appointment resulted from a competitive selection process and that it was a 6-month appointment, after which the teacher concerned accepted a directed transfer to a teaching position in Lismore. She explained in oral evidence that "while she was running the unit, Ms Kerrison would have been treated as any other staff member in terms of applications coming through." Ms Walshaw was the supervisor of that position. In cross examination she explained that it was a temporary promotion, or an opportunity to act in a higher position.

76 While Ms Walshaw's evidence **initially was that she had not read the report of the investigation, in cross examination she accepted that she had**, given the terms of a letter she wrote to Ms Kerrison in November. She was, however, not aware **that the teacher against whom Ms Kerrison had complained had also been found to have enrolled herself in a course and given herself 100% marks. She agreed that this was a serious allegation within TAFE.**

77 On 1 November, Ms Kerrison wrote to Dr Ramsey advising him of her dissatisfaction with the investigation of her complaint; advising him that practices about which she had complained still appeared to be condoned at Kempsey; that there had been no improvement in her difficulties at work and complaining that TAFE's approach to confidentiality appeared to be depriving her of information and allowing others to deny knowledge of her complaints, amongst other matters. Ms Kerrison advised that having first raised her concerns in 1989, she intended now to take them outside TAFE for assistance. In cross examination, she explained that she took this step in light of her treatment after her return to work and the threats she had received from Ms O'Sullivan. Dr Ramsey did not reply to Ms Kerrison until the following January.

78 In cross examination, Ms Kerrison explained that "I couldn't see that anyone was protecting the Aboriginal students" and "believed that there were issues that hadn't been addressed." Ms McGregor was not allowed to know the outcome of what she had raised in her complaint. While she had received "words on paper" from Ms McGregor, about matters she had raised with her, she wanted some action taken to address the problems she remained concerned about, **which included victimisation. What Ms McGregor wrote did not translate into any concrete action.** When she spoke to Ms McGregor, things seemed to get twisted. **She explained that in her view, her pursuit of her ongoing concerns was consistent with the managing director's instructions to teaching staff, that it was their responsibility to look after the students and that issues such as vilification and people being hurt, should be addressed by staff and not ignored.**

79 Ms McGregor's evidence was that Mr Quinn told her in late October or early November, that Ms Kerrison had made a complaint to him about her treatment by TAFE and had suggested "that an unnamed official was useless and should be shot". Ms

McGregor was obviously not much concerned about this report. She took no action in response to it and could recollect very little about her conversation with Mr Quinn at the time. Mr Quinn **gave no evidence of having made such a report to Ms McGregor.**

80 In her November letter Ms Walshaw said she had read the investigator's report and wrote to Ms Kerrison, telling her that "I can now understand your frustration more fully than I did previously" and that she now realised "that many more of your complaints were investigated than perhaps you are aware of." Ms Walshaw acknowledged the problems which obligations of confidentiality raised, so far as a grievant at TAFE was concerned and encouraged Ms Kerrison to move on, as she and her skills were valued.

81 In cross examination Ms Walshaw explained that she did not regard the matters which Ms Kerrison was then raising with her and Dr Ramsey as constituting another grievance, but rather informing them that she was unhappy with the way her earlier grievance had been dealt with. Ms Walshaw was also aware that Ms McGregor was telling Ms Kerrison that she had to raise a grievance directly with her, if she wanted matters addressed. Ms Walshaw agreed that she was responding to reports she received from others and that she was relying upon their truth and accuracy. Her position was that if Ms Kerrison had raised additional grievances, they were never sent to her.

82 In December 1994, Ms Kerrison discussed her concerns about the repercussions of raising a further grievance with Ms Walshaw. Ms Kerrison's evidence was that she was told that Ms Walshaw could not advise her, because Ms Kerrison had taken her complaints outside the TAFE system. Ms Walshaw could not recollect the details of the discussion, but remembered that Ms Kerrison was still upset about her treatment and dissatisfied with the way in which the investigation of her complaint had been conducted.

83 Ms McGregor's evidence was that Ms Kerrison's continuing concerns were also the subject of ongoing discussion with her at that time. Ms McGregor reminded Ms Kerrison that if she had concerns, she should raise them as a grievance. Ms McGregor plainly required Ms Kerrison to provide a further written document, if she wanted a grievance dealt with. This was what Ms Kerrison was fearful of doing.

84 In cross examination as to whether there had ever been any failure by Ms Kerrison to perform her duties, Ms McGregor explained that she had the view that Ms Kerrison's conduct had been unprofessional in relation to talking to her colleagues about the problems she had had with the other teacher and that she had "certainly requested many times that you use the appropriate processes and channels rather than taking up colleagues' time and all of the things that go with, I guess, making accusations about another staff member but I didn't ever put in place discipline procedures."

85 Ms McGregor also explained that other members of staff had complained to her that Ms Kerrison made them feel uncomfortable and that one of the major issues which she had with Ms Kerrison, was her refusal to put things in writing and follow the grievance procedure. Ms McGregor also referred to an agreement which she understood she had reached with Ms Kerrison, that any grievance she had be put into writing. This flowed

from their discussion about the outcome of the investigation into the matters raised by Ms Kerrison with Dr Ramsey. She agreed, however, that no grievances had ever been lodged by any other member of staff, as to any concerns about Ms Kerrison. She described as their "sticking point" Ms Kerrison's refusal to allow her to raise her conflict with the other teacher, so that she would have an opportunity to respond. While Ms Kerrison continued complaining about those circumstances she would not make a complaint, identifying the problems and allowing them to be dealt with. Her experience was that Ms Kerrison would often come back to her to ask what she had done about a matter she had raised in discussion, but Ms McGregor had not appreciated that Ms Kerrison had expected her to do anything.

86 In January, a reply was sent by Dr Ramsey to Ms Kerrison's letter, referring to the investigations conducted into the original complaint and the action taken. The need for confidentiality was explained and Ms Kerrison was assured that TAFE would not tolerate victimisation. She was invited to provide details of her ongoing concerns to the Institute Human Resources Manager, Ms Walshaw. Otherwise, Dr Ramsey took the view that the matters she had raised were finalised. This approach resulted from the view taken by TAFE as to the right of the teacher against whom complaints had been made to have the matter dealt with confidentially and because Ms Kerrison had made no new allegations and had not provided details to substantiate her general claim, that there had been 'an increase in her "uncomfortableness at work"'.

**87 In cross examination, Dr Ramsey did not agree that Ms Kerrison's November letter to him had constituted another grievance.** He was aware of the Enterprise Agreement grievance procedure, having been involved in negotiating the agreement, which was binding upon TAFE, having been certified by the Commission. He had sought a briefing in response to Ms Kerrison's letter, but had not sought further information from her about the matters she had raised.

88 Dr Ramsey then also wrote to Dr Willmott, providing a copy of the letter he had sent to Ms Kerrison. It concluded: 'I would urge you to continue to provide support to Ms Kerrison. In this context, it may be appropriate for North Coast Institute to make arrangements to have Ms Kerrison medically examined by HealthQuest to determine her fitness to continue in employment.'

89 This suggestion was not made to Ms Kerrison herself. In cross examination Dr Ramsey agreed that he had not conveyed this suggestion to Ms Kerrison. At that time TAFE had been restructured into ten institutes with directors given increased levels of responsibility. That was why he wrote to Dr Willmott.

90 Dr Willmott referred this letter to Ms Walshaw. Her evidence was that she did not act on this suggestion, because she did not regard an examination by HealthQuest as appropriate at the time, given the support then being provided to Ms Kerrison in the workplace. In cross examination she explained that she was in contact with Ms McGregor at the time and that this decision was a matter of her professional judgment.

She agreed that it was not TAFE policy to send someone to HealthQuest when they raised a grievance. She also explained that she saw Dr Ramsey as regarding Ms Kerrison as a person who "was not accepting the resolutions and going around in circles, even within the grievance policy."

91 Ms Walshaw wrote to Ms Kerrison in February, encouraging her to obtain further counselling and inviting her to approach if she suffered any further victimisation in the workplace. She received no response. Ms Walshaw next became involved in April. 92 Ms Kerrison's evidence in cross examination was that the position to which the teacher against whom her complaint was made was appointed, was in staff development. Her career depended on access to staff development. The teacher still refused to speak to her and also continued to refuse to provide information which she sought from her.

93 That teacher eventually did not return to Kempsey. By then, however, Ms Kerrison was in a position where she had been given no real understanding of the upshot of her grievance and felt that the matters she had raised had not been properly investigated or dealt with; she had been warned by Ms O'Sullivan not to lodge any further grievances; Ms McGregor refused to deal with the problems she was raising with her, unless she lodged a written grievance and other members of staff at Kempsey were discussing the upshot of her grievance. Ms Kerrison felt that she had lost her credibility within TAFE, as the result of the way her grievance had been handled. In cross examination, Ms Kerrison said that Mr Whitehead, the College grievance officer also told her that her previous complaint had been baseless. She had been threatened and felt frightened. Ms Walshaw had been sympathetic, but was also counselling her just to move on, rather than taking any action to deal with her concerns. She also told Ms Kerrison that she could not listen to her complaints about Ms McGregor, without Ms McGregor being present. Ms Kerrison again became distressed and eventually sought further medical attention.

94 In cross examination Ms Kerrison agreed that she was feeling frustrated and again began having trouble sleeping at night. She investigated taking some relaxation courses. Her evidence was also, however, that she was still teaching without difficulty and getting on with other aspects of her life successfully.

95 Ms McGregor's evidence was that in February or March 1994, Ms Kerrison shouted at her in her office, that "[y]ou are the worst manager I have ever had and you have no regard for the truth." Ms Kerrison's tone of voice was aggressive and her volume was loud. The matter of the tape recorder was raised again. Ms McGregor's evidence was that she was so alarmed by this outburst, that she felt unsafe. Ms Kerrison spoke so loudly that another member of staff came from outside and closed the door. In cross examination, Ms McGregor explained that Ms Kerrison had shouted and yelled and screamed and that she had informed Ms Kerrison that: 'I didn't feel like I could investigate the truth of every little incident that was happening which was why I needed to know what was the major grievance and what was not. So I remember that incident quite well because it seemed in your mind to be a very major issue, the tape recorder issue.' 96 Ms McGregor, agreed that she couldn't recollect precisely when the conversation occurred, but that it was in February or March.

97 Ms Kerrison denied much about this conversation, but agreed in cross examination that she told Ms McGregor that she was not impressed with her management and that she had spoken loudly. She denied having shouted at her or that the door had been closed. The conversation was undoubtedly a heated one. Ms Kerrison's evidence was, however, that Ms McGregor had not been alarmed. She had acted as if she were thoroughly bored with the matters she was raising with her.

98 Ms McGregor's evidence was consistent with the statement she had made in December 1995. There Ms McGregor also recounted that she was conscious that other staff were discussing her position with Ms Kerrison and that she was then aware that Ms Kerrison felt that Ms McGregor regarded her to be a nuisance. As a result, Ms McGregor tried to go out of her way to say hello cheerfully when she saw Ms Kerrison.

99 To that time there had also been a deal of written communication between Ms Kerrison and Ms McGregor, in which Ms Kerrison attempted to explain her concerns about how her credibility in TAFE had been undermined by the way in which her grievance had been dealt with and how she was concerned at the personal ramifications of lodging further grievances, even when experiencing continuing problems in her interactions with the teacher she had complained about. This discussion, in writing at Ms McGregor's insistence, demonstrated how strained their relationship had grown. Ms McGregor did not regard any of this correspondence as raising a further grievance which needed to be dealt with.

100 It was the above confrontation which Ms McGregor said caused her to raise her concerns as to her own safety with Mr Quinn and which led to their decision that it was necessary to install a duress alarm at the College. Ms McGregor told him that "neither of us should speak to Val without someone else present". She also informed Ms Walshaw's office of her concerns as to her safety. In her December 1995 statement Ms McGregor also explained how, to that point, Ms Kerrison had not exhibited any signs of aggression, even though towards the end of 1994, she had heard from the former rehab officer, (who I take to be Mr Quinn), that Ms Kerrison had complained to him about her treatment and had said about the harassment officer "that he was useless and should be shot". Mr Quinn himself gave no such evidence. Ms McGregor then first had some safety concerns and began thinking about how others safety could be assured. It appears that no practical steps to deal with the 'threat' or the risks which it might have presented, were taken prior to the following April.

101 On 10 April, Ms Kerrison met with Mr Quinn and Ms Robison. In cross examination, Mr Quinn agreed that this was the only meeting the three of them attended together in 1995. (Mr Quinn was located in Grafton.) Ms Kerrison's concern that the investigation into her complaint to Dr Ramsey, had not been properly conducted, was again the subject of discussion. A further reference to CRS was discussed, on Ms Kerrison's evidence for esteem/confidence building. In cross examination, **Mr Quinn agreed that he had no recollection of any reference being made to suicide or guns by**

**Ms Kerrison at the meeting.** Ms Kerrison did not speak to Mr Quinn again after this meeting. He, however, produced a number of documents thereafter.

102 Mr Quinn wrote to Ms Kerrison advising her that he had raised her concerns with Ms Walshaw and had again contacted CRS, with a view to it providing her with further support through a programme of rehabilitation, to give her coping strategies. She was directed to take sick leave when there attending, until liability was accepted for workers compensation, by the TAFE insurer GIO.

103 At that time Ms Kerrison had only had one day's sick leave since her return to work the preceding July. Her evidence was that she was contacted by Ms Cooke of CRS and was advised that CRS would not be involved in providing her with confidence building sessions, unless she first attended a psychiatrist. She later learned that Mr Quinn had informed CRS that she had depressive tendencies and tendencies to violence.

**104 In cross examination Ms Kerrison was asked how she then felt. She explained that she felt frustrated that she was being victimised and TAFE's response was either to send her to counselling or to a psychiatrist, rather than dealing with the victimisation. She believed that counselling and a psychiatrist were of no assistance. They had not helped her resolve any of her problems at TAFE.**

105 Ms McGregor's evidence was that Ms Kerrison then sought some sick leave, for a period, most of which was holidays in any event. Ms McGregor was concerned about Ms Kerrison's emotional state and asked her to go to her office, where Ms Robison joined them. Ms Kerrison's ongoing concerns were discussed and again Ms McGregor told her to pursue them under the grievance process. Ms Kerrison said 'I have no faith in such processes' and 'there is no point in continuing this discussion'. She was in tears and so Ms McGregor offered her a hug. Ms Kerrison said 'I'd die for hugs like that'. Ms Kerrison denied this in cross examination.

106 It was this meeting, previous incidents and Ms Kerrison's 'recurrent need for sick leave', which led Ms McGregor to recommend a medical assessment of Ms Kerrison. In her December 1995 statement Ms McGregor expressed similar views and also mentioned Ms Kerrison's 'lack of lucidity' at this time. This was because she was asking for leave at a time when, for the most part, she would not be required to be on duty. She had done this once previously.

107 Ms McGregor, however, made no reference, either in her affidavit evidence or in her December 1995 statement, to then having concerns about Ms Kerrison being suicidal, or making threats against other staff, or using a gun to solve her problems, as motivating that reference. In cross examination, she explained that she had concerns about staff safety and an obligation to address them, but agreed that while she had discussed many things with Ms Kerrison, she had never discussed with her "guns or shooting or potential homicide or suicide". She explained that she had had a sense of accumulating worry over a number of months, but agreed that when her safety concerns arose, Ms Kerrison was

teaching and that she took no steps to deal with her concerns, other than to refer Ms Kerrison for medical assessment.

108 Ms McGregor did not inform Ms Kerrison of her view that she was not lucid, that she posed any threat or that she required medical assessment. Nor did she inform Ms Kerrison of the steps she had taken to institute such an assessment. Indeed, she took steps to conceal her views and the steps she had taken from Ms Kerrison.

109 At this point, Ms Kerrison was still performing the work of head teacher of the Admin Services section at Kempsey. Ms McGregor's December 1995 statement confirmed that "Val's teaching was satisfactory and the one occasion I received student complaints she was very open to addressing their issues immediately."

110 Ms Kerrison's evidence was that she had then been involved in arranging a function at TAFE, which was later reported in the local press. She had met with Ms Robison and Ms McGregor to discuss their attendance at this function. On her evidence, otherwise she had not met together with them. In cross examination, she explained that she had been upset when told by Ms Cook of the CRS to see a psychiatrist. She saw her doctor and told him that she didn't know what was going on, or why people were insisting that she see a psychiatrist, when she was being victimised by people with power within TAFE. It was then two days before the holidays were due to commence. She wanted to take these days off, but the doctor wrote a certificate for seven. The certificate was not in evidence. When she gave the certificate to Ms McGregor, Ms Kerrison agreed that she might have said "I am out of here" but denied that she was in tears.

111 Ms Walshaw's evidence was that she was aware that after the meeting on 10 April attended by Ms Kerrison, Ms McGregor, Mr Quinn and Ms Robison, a support programme for further rehabilitation involving the CRS was put in place. Ms Walshaw then received a memo from Mr Quinn dated 19 April. She also received a copy of his memo to Ms McGregor, of 20 April, raising his concerns about Ms McGregor's personal safety and making recommendations about safety strategies for Ms McGregor to follow. The latter note included the statement "[i]t is always very disturbing when anyone talks about guns to solve their problems, even though there has been no personal threats directed to those above." **The evidence in these proceedings left entirely unclear as to how Mr Quinn came to make this comment or to have this understanding.** Ms Kerrison vehemently denied having ever made such threats.

112 In cross examination, Mr Quinn, who had been involved in a serious car accident shortly after these events, could not recollect what he had been told at the time by Ms McGregor or Ms Robison. He had no further involvement in these matters.

113 In his memo to Ms Walshaw, Mr Quinn informed her that Ms McGregor and Ms Robison had made him aware of their concerns that Ms Kerrison would use a gun to solve her problems. In these proceedings, however, neither Ms McGregor nor Ms Robison gave evidence that they had heard such threats being made by Ms Kerrison. In his affidavit Mr Quinn's evidence was that Ms Robison had reported to him in March

1994 that Ms Kerrison had made "verbal threats" involving "physical harm with a firearm" directed towards the teacher against whom she had complained and others. There were further events relating to Ms Kerrison in 1995 which caused him to have concerns for the safety of TAFE personnel. He did not however, remember precisely what then occurred. In cross examination he agreed that in 1995 he did not otherwise deal what he had been told about Ms Kerrison, other than write the various memos attached to his affidavit. He also said that he took Ms Robison's word. He chose not to raise his concerns with Ms Kerrison, because of the sensitivity of the situation and gave Ms Kerrison no opportunity to "correct this" because he had no reason to doubt the source.

114 As I noted earlier, Ms McGregor's affidavit evidence was that in late October or early November 1994, she received information from Mr Quinn that Ms Kerrison had suggested to him that "an unnamed official was useless and should be shot." Ms McGregor agreed in cross examination that it was possible that she had never discussed with Ms Kerrison "guns or shooting or potential homicide or suicide." She later agreed that this was a serious allegation, not raised with Ms Kerrison. She also agreed that she had never put her concerns about such matters in writing to anyone else at TAFE and had taken no steps to deal with her concerns about Ms Kerrison, other than to make a telephone call, in April 1995, probably to Ms Walshaw, or perhaps to Mr Quinn, seeking a medical assessment of Ms Kerrison.

115 Ms McGregor also explained in cross examination that she had started keeping a file on Ms Kerrison, where she had kept copies of various documents and had also kept notes of conversations with Ms Kerrison in her diary. The file was kept at her home. It was explained that documents kept in this file were later provided to TAFE when Ms Kerrison pursued various FOI applications. Ms McGregor denied that the documents kept in the file had been fabricated and was not aware of the reason why the documents were not provided by TAFE in response to Ms Kerrison's original request, because she had kept copies of documents in the file, not originals. She also agreed that in 1997 she was involved in conciliation proceedings before the Anti-Discrimination Board about Ms Kerrison, but was not aware of which documents were relied upon by TAFE in these proceedings. Ms McGregor denied that documents such as Mr Quinn's April memos had been fabricated as part of TAFE's response to the Anti-Discrimination proceedings. She could not explain why they were not provided by TAFE in answer to Ms Kerrison's original FOI requests.

116 In cross examination, Ms McGregor said it was never her intention that the reference to HealthQuest was to achieve Ms Kerrison's retirement. She also agreed that she had never seen another teacher referred to HealthQuest in this way, while successfully teaching in class.

117 Ms Walshaw's evidence was that she was then concerned for the safety of Ms Kerrison and of other staff with whom she was working. These reports triggered her decision to refer Ms Kerrison to HealthQuest. In cross examination she explained, however, that her major concern was Ms Kerrison. She had no real concern that she posed any threat to other staff. She also explained in cross examination to Ms Kerrison

that at that time there was "more staff spending more time trying to support you than probably anybody else in that area at that time."

118 Ms Walshaw later explained to Ms Kerrison, in correspondence sent to her in October 1995, that she then had information from Mr Quinn and Teachers' Federation representatives, that on a number of occasions she had said the only way to solve the situation was with a gun. No evidence was called from such persons. Ms Walshaw confirmed that there had been no investigations of these threats, because "my major concern was that I felt such statements were more likely indicative of your fragility and this added to the urgent need for a medical assessment."

119 In cross examination Ms Walshaw explained that she had made the reference to HealthQuest, given her obligations to have regard to occupational health and safety concern. Her concerns had arisen because there had been a third worker's compensation claim; she had received a report from Mr Quinn and she had earlier had discussions with Ms Kerrison, on the telephone, when she had been crying. She did not regard Ms Kerrison's behaviour as appropriate for the workplace. Mr Quinn's comments "regarding the gun", raised particular concerns and so she took what she regarded to be "the necessary precautions".

120 Ms Walshaw denied that she was then acting on gossip or that she had breached applicable privacy principles, in making a referral to HealthQuest, which conducted TAFE's medical assessments. She said that it would not have been appropriate for her then to contact Ms Kerrison herself, because she was not skilled in making the necessary assessments. Ms Walshaw agreed that she was not aware whether Ms Kerrison was teaching at the time that the reference was made and that she had not checked the accuracy of Mr Quinn's reports. She had no reason to doubt them and referred to a letter which Ms Kerrison later sent her in October 1995, as confirming that she had made such comments to Mr Quinn. Whether or not Ms Kerrison was teaching, was not relevant to her concerns. She made the reference because she wanted to be reassured that Ms Kerrison did not pose a danger to herself or anyone else. She agreed, however, that it took her some time to act between Mr Quinn's report on 19 April and her reference to HealthQuest on 1 May.

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

122 Mr Quinn had also sent a memo to Ms Scuglia on 19 April, under cover of a heading "Subject: Medical Assessment Background Information on Val Kerrison". Ms Scuglia, then the Institute's Acting Staff Officer, prepared the "request for services" document, which had accompanied Ms Walshaw's covering letter to HealthQuest. None of these documents were provided to Ms Kerrison. The form incorrectly indicated that Ms

Kerrison was not at work at that time. The implication was that she was on paid leave - having had 88 day's sick leave and having successfully made a worker's compensation claim. In cross examination Ms Scuglia explained that this was her understanding at the time, normally she would check, but couldn't recollect having done so in this case. Relevant information as to that claim was to be attached to the form. That material was not tendered, although some reference was made to it in notes later made by Dr Mandel, the doctor at HealthQuest who later examined Ms Kerrison. Whether the fact that liability for the worker's compensation claim in relation to the only leave Ms Kerrison had taken, in the preceding year, had been accepted, was conveyed to HealthQuest, was not clear on the evidence.

123 Ms Walshaw's accompanying letter to HealthQuest was not provided to Ms Kerrison. It stated: 'I am seeking your support in arranging a medical assessment for Val Kerrison as soon as possible. Val has been suffering from a work related stress-anxiety state for a period greater than 6 months and during this period she has had 3-4 months off work. She has been absent from work again due to anxiety state from the (sic) 10 April. Val is under the control of CRS on a return to work plan and is being case managed by Di Cook, at Port Macquarie CRS. Val has not previously been assessed by HealthQuest for this injury/illness. Part of Val's problems arise from what she sees as unresolved grievances on her part that the Commission failed to deal with. These were in fact investigated at the highest level and Val has refused to accept and/or acknowledge the outcomes. At present Val is very fragile and is exhibiting symptoms of sleep disorders, crying with little provocation and in her words despair. What is of greatest concern though is the fact that on a number of occasions recently she has said that the only way to solve the situation is with a gun. This has been both in relation to her herself and another staff member. In the light of these comments and the concerns that they raise I would ask that Val Kerrison be psychiatrically assessed by HealthQuest as soon as possible. Please ring me if you require additional information.'

124 In cross examination Ms Kerrison's evidence was that she first became aware of these suggestions much later, after obtaining copies of documents from TAFE under FOI requests. Her evidence was that these documents were incorrect in a number of respects and distorted in others. She complained about TAFE "making allegations like that behind another human's back, sending it where it is going to cause damage and where I couldn't protect myself". She also complained that Ms Walshaw's concerns were never raised with her. She much later wrote to Ms Walshaw about this document, but could not obtain any satisfactory response.

125 Ms Kerrison attended HealthQuest on 19 May, under the impression that the examination had to do with her worker's compensation claim. This was directly contrary to the approach which HealthQuest "very strenuously" encouraged employers to follow. Dr Jagger's evidence was that HealthQuest proceeded on examinations of employees referred to it, on the basis of an understanding that the referring employer had made clear to the employee what the referral was about and that the examining doctor usually also showed to the employee the documents referred by the employer. Dr Jagger expected that this was something which Dr Mandel would have confirmed with Ms Kerrison. Ms

Kerrison denied this to have been the case. Dr Mandel was not called to give evidence. There is no reason for Ms Kerrison's evidence to be doubted.

126 In cross examination Ms Kerrison detailed the documents which she took with her, which she showed to Dr Mandel. They included material in relation to rehabilitation, complaints she had made about the inadequacy of the TAFE investigations and letters of complaint from aboriginal students as to their treatment at the Kempsey College. She left copies of some of these documents with Dr Mandel, but not the student's letters.

127 Dr Mandel's notes were tendered. They referred to Ms Kerrison's 17 weeks' leave the preceding year; her GP's referral of her to psychiatrists at different times; her medication history; her grievances with TAFE's investigations of her complaints; that she was, in fact, working and not on leave and other matters. Dr Mandel's comment was: 'Presents as one angry, frustrated woman who feels she has been unfairly persecuted and has been unable to obtain an unbiased hearing of her grievances. There is no evidence to-day (sic) of any major psychiatric disability and in my view she appears F.T.C. Suggest report from Dr Holmes (who saw her several times in May '94 and again 1/12 ago). Gave permission quite readily. If final opinion is that she is F.T.C. we should strongly recommend an outside independent person to attempt resolving her interpersonal conflicts at work before she returns to her substantive position.'

128 Dr Mandel then issued an 'Interim advice' to Ms Walshaw, that Ms Kerrison should 'remain at work or on s.l. if so advised by her own doctor', as additional information was to be sought and the assessment could not be completed.

129 On 23 May, Dr Mandel recorded on the HealthQuest file that Ms Walshaw had telephoned, asking to speak to her regarding the "final outcome" before the decision was made and that "she would like to arrange to have someone talk to staff about Valda's condition so that they are all prepared for when she comes back to the workforce", if she was not medically retired.

130 Another note from the file recorded another telephone message from Ms Walshaw on 31 May, seeking to speak to Dr Jagger re 'Val Kerrison saying she is very suicidal'. Ms Walshaw had not spoken to Ms Kerrison at that time. Her evidence was that she had received a report from a Teachers' Federation representative, that '*Val has been talking to Federation Welfare officers who are concerned that she sounds suicidal*'. Ms Kerrison denied making such comments. No evidence was called from any Teachers Federation representative. Ms Kerrison remained at work teaching, apparently without difficulty. It appears that the only steps taken by Ms Walshaw to deal with this seemingly serious situation, if it existed in reality, was to draw it to Dr Jagger's attention.

131 Ms Walshaw's evidence was that she spoke to Dr Jagger who told her that they were waiting on a report from Ms Kerrison's psychiatrist and that she did not think Ms Kerrison presented a danger to herself or others and that she would probably be recommending a return to work. Ms Kerrison was in fact at work.

132 In cross examination Ms Walshaw's evidence was that the result of her conversation with Dr Jagger was that she expected to hear from HealthQuest that Ms Kerrison was fit to continue working. On her evidence, Ms Walshaw was surprised when she later saw the HealthQuest retirement certificate, because she was not expecting that outcome, she was expecting "fit for duties". At that time Ms Kerrison had taken legal advice and representations on her behalf were being pressed with the Minister of Education. Ms Walshaw was obliged to provide notes to TAFE, so that the Minister could respond to the approach which he had received. **This was at a time when Ms Walshaw could not recollect having ever met Ms Kerrison.**

133 Dr Jagger confirmed that she had spoken to Ms Walshaw, who had telephoned her. The notes of that conversation were in evidence. Ms Walshaw raised her concerns about Ms Kerrison's lack of co-operation, complaints being taken outside TAFE; her continuing complaints about a teacher who had been transferred elsewhere; her need to accept counselling and to participate in grievance resolution procedures, in a constructive manner. The notes also suggest that Dr Jagger advised Ms Walshaw that 'threats of self harm and violence to others do not appear based on serious mental illness' and gave her advice as to how Ms Kerrison's co-workers should be reassured. 134 HealthQuest received a report from Dr Holmes on 13 June, recounting Ms Kerrison's grievance at TAFE and her medical history, including in 1994, chest pains, depression and anxiety attacks. Ms Kerrison's evidence was that she had been reluctant to give Dr Mandel permission to contact Dr Holmes, but had been prevailed upon to do so, understanding that HealthQuest was concerned with worker's compensation and rehabilitation matters. 135 In cross examination Ms Kerrison expressed the view that she had not given informed consent, either to being assessed by HealthQuest, or to HealthQuest contacting Dr Holmes. She had been led to believe the assessment was concerned with worker's compensation rehabilitation and not to consider her being forcibly retired. 136 In his report Dr Holmes detailed Ms Kerrison's family history and her medical position in 1995. He described her as having had a major depressive illness in 1994 and that she then had had a recurrence, but to a moderate degree. He also expressed a view as to her prognosis, which in his view depended on whether she perceived herself as receiving justice and her accepting "psychotherapy to make her self esteem or independent achievement or approval. If she does not succeed in this she may eventually need to retire from TAFE on medical grounds." 137 On 16 June, Dr Mandel signed a 'retirement certificate', declaring that Dr Mandel had examined Ms Kerrison, finding that she suffered from a 'personality disorder' and that she was of the opinion that "she is in consequence unable to discharge the duties of her office. I am further of the opinion that her disability will in all likelihood prove permanent." Dr Jagger also signed the certificate, concurring in those views. This conclusion was starkly at odds with Dr Mandel's diagnosis, following her examination of Ms Kerrison. HealthQuest did not send this certificate to Ms Kerrison, it wrote to her, a standard form letter, advising that: 'I wish to inform you that a certificate dated 16/6/95 for your retirement on medical grounds of personality disorder has been issued to your employer.'

138 In cross examination Dr Jagger explained her role in discussing with Dr Mandel her assessment of persons referred to HealthQuest, including Ms Kerrison. Dr Jagger had no

particular recollection of reviewing Ms Kerrison's case. She had never met Ms Kerrison. She did not regard herself as requiring Ms Kerrison's consent, before she provided her medical opinion on a retirement certificate. She also said that attendance at a medical examination was widely accepted as evidencing consent. On her evidence, a person being directed to attend HealthQuest would not indicate consent to an examination, but actually undertaking the examination would. She was also aware, she explained, that Ms Kerrison may have been in the classroom at that time performing her duties. She explained that the duties of "teaching at TAFE are not merely face to face teaching in the classroom but being a member of an organisation that is providing a teaching service. It also requires interaction with the organisation, with various other people and it was that area that at that time Dr Mandel and myself believed Ms Kerrison was unable to effectively undertake."

139 In cross-examination Dr Jagger also explained the purpose of the retirement certificate. Her evidence was that it was not a matter for her, or HealthQuest, to make a decision to dismiss Ms Kerrison and that they had not done so. She also vigorously defended her diagnosis. Her evidence was that "there was recurring difficulty in interacting effectively with the organisation, so the environment in which you taught. That was the area of difficulty in performing in discharging the duties of office." She believed that there were "recurring episodes, recurring illness, consistently interfering with ongoing capacity to fulfil the duties of that office of which teaching was the core component." The certificate was designed to link in with superannuation schemes applying to some public sector employers. The certificate was regarded as confusing for employees, so HealthQuest sent them a simple standard letter "referring the employee to their employer, to get advice as to what the issue of the certificate meant for them in their circumstances". Dr Jagger explained that the process of retirement differed from employer to employer. How one employer acted on a medical opinion depended on the legislation which applied and their personal policies and procedures.

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

141 In cross examination Ms Kerrison explained that in her view, Ms Walshaw's letters and phone calls to HealthQuest showed that she was acting in bad faith. She was in class teaching at TAFE when Ms Walshaw was communicating inaccurate information about her to HealthQuest, with the result that a false diagnosis of 'personality disorder' and 'unable to discharge the duties of your office' was arrived at. This treatment had only resulted from TAFE's failures to properly address the concerns she had raised about victimisation within TAFE. She also complained about Dr Mandel and Dr Jagger signing a retirement certificate to that effect.

142 TAFE received the HealthQuest certificate. Ms Gallagher, Acting Manager Executive services of TAFE at the time, made a handwritten note on the retirement certificate, when it was received in Dr Willmott's office, 'Kerry URGENT need to terminate her as at close of business today.' Ms Gallagher's evidence was that she had no authority to terminate Ms Kerrison's employment. It was her practice to make notes of instructions which Dr Willmott gave her. She could not, however, recollect seeing the certificate or anything which Dr Willmott had said to her at the time about the certificate. It was Dr Willmott's practice to give her instructions about what was to be done with mail. She had noted the certificate as being urgent, and so imagined that she would have dealt with it straight away.

143 Dr Ramsey's evidence in cross examination was that under s20 of the TAFE Act "if it was a medical matter then it was a matter for I think HealthQuest as it was described at the time." After examination by HealthQuest, it was HealthQuest which retired employees. He did not do so. HealthQuest made the decision and thereafter it was an administrative matter. "It was not an issue that I could take any part in if HealthQuest had made a decision." After termination, there was a gazettal by the Human Resources section. There was no evidence of this having occurred in Ms Kerrison's case.

144 Dr Willmott's evidence was to similar effect. He could not recollect having seen the certificate. He sought guidance from Ms Walshaw on staffing matters. He thought it likely that he had spoken to Ms Walshaw about the letter she sent to Ms Kerrison, but did not recall doing so. In cross examination he explained that he had never seen the letter sent to Ms Kerrison by Ms Walshaw and that: "This matter, when it arose earlier, was referred by me to Kerry Walshaw as the manager of human resources in North Coast Institute, and when the notification from the HealthQuest would have come through that would have been referred on to Kerry Walshaw as well for attention. Judging from this particular correspondence that you have shown me dated 23 June 1995, it's clear that Kerry Walshaw prepared and sent this presumably shortly after being aware that HealthQuest had notified yourself, Ms Kerrison, of their decision."

145 Ms Walshaw's evidence was that she was surprised when she received the certificate, but moved to deal with it. She unsuccessfully telephoned Ms Kerrison and then spoke to Ms McGregor. Ms Walshaw also wrote to Ms Kerrison advising that: 'I realise that by now you have received your notification of retirement from HealthQuest and that it was obviously unexpected. I am sorry that I was unable to discuss it with you beforehand but HealthQuest notified you at the same time as they sent the letter to our office. You have provided valuable years of service to TAFE and I would like to acknowledge and thank you for your contribution. I hope that I can provide whatever support is required during the coming weeks and if you would like the opportunity to be briefed on your rights and entitlements could you please ring me on 829 130.'

146 Ms McGregor's affidavit evidence was that she was asked by Ms Walshaw to make contact with Ms Kerrison to discuss her options and confirm to her that she had been medically retired and thus did not return to work. Ms McGregor did so. She also informed Ms Kerrison that she had a right of appeal, but had no information to give her

about that. In cross examination she explained that she understood the HealthQuest recommendation had been accepted; that was how she understood the message she had received.

147 Ms Walshaw spoke to Ms Kerrison on 27 June and on 30 June wrote to her, advising her of her rights of appeal and that "[i]f you appeal and the decision to medically retire you is overturned you will resume duties at Kempsey campus." The evidence demonstrated that Ms Walshaw, like Dr Ramsey and Dr Willmott were proceeding on the understanding that the decision to medically retire Ms Kerrison had been made by HealthQuest and that as a result, TAFE implemented the administrative steps which followed.

148 Consistently with this understanding, on 27 June, Giang Duone, a TAFE employee in the payroll section, completed the employer section of a State Authorities Superannuation Board ('SASS') 'Notification of exit - invalidity for contributing and non-contributing members'. SASS was advised that Ms Kerrison would be medically retired, with an exit date of 30 June 1995. Ms Kerrison was also then taken off the TAFE payroll.

149 Ms Kerrison's evidence in cross examination was that she had been at work marking student assessments and upon her return home found in the mail the letter from HealthQuest. She in fact did not see the HealthQuest Certificate until after a later FOI request. She telephoned Ms Cook at CRS and Ms McGregor, who did not return her call. She rang Ms McGregor again the following Monday. When she received Ms Walshaw's letter, she did not understand that her employment was being terminated. She was confused, because she had not sought retirement and sought to understand what appeal rights Ms Walshaw was raising with her. When she understood that her employment was being terminated, the advice came like a 'bolt from the blue'. She agreed in cross examination that she was upset, but not hysterical, because TAFE had been acting against her for quite a time, by then.

150 Ms Scuglia's evidence was that taking Ms Kerrison off the payroll in June, was not the correct procedure. In cross examination Ms Scuglia explained that the HealthQuest certificate came to her from Human Resources. There were a number of procedures in place to deal with such a certificate. Ms Scuglia agreed that the TAFE Medical Assessment Policy, Guidelines and Procedures then applied to Ms Kerrison, but explained that it was a new process dealt with by another officer. She explained that Ms Kerrison should have remained on the payroll, during the appeal period, but should have been placed upon sick leave, or special sick leave, if her sick leave had been exhausted. This did not however occur. Ms Scuglia agreed that the applicable policy required in clause 5.2.5 that "No action is taken until the appeal is heard", but explained that this did not occur in practice. Ms Scuglia referred to some other applicable policy from which TAFE's actual practice resulted. Such a policy, if it existed, was not in evidence. Nor did the Enterprise Agreement make provision for such treatment. 151 After Ms Kerrison approached TAFE she was reinstated to the payroll in September and was paid back-pay and returned to normal payments. This appears to have been in accordance with clause 5.2.5 of the TAFE Medical Assessment Policy, but Ms Scuglia's evidence was that this

too, was an error. The basis for that view was not established. 152 Later, Ms Scuglia "...became aware that Ms Kerrison had been overpaid I calculated her leave entitlements and used those to offset her overpayment. I then sent her a letter confirming what I had done and advised her when her leave entitlements had run out. I sent her a letter for her to take to the Department of Social Security to obtain sickness benefits." 153 Ms Kerrison telephoned Ms Scuglia to ask why her consent to these steps had not been sought. They appear to have been inconsistent with clause 5.2.5 of the Medical Assessment Policy. Ms Scuglia could not recollect the detail of the conversation, but she agreed that TAFE had acted without either prior notice to, or the agreement of, Ms Kerrison. The payment of Ms Kerrison's salary then ceased. The changes were authorised by Ms Scuglia's line manager. 154 Ms Kerrison also lodged an appeal to the Medical Appeals Panel. In cross examination she explained that at the time she was not entirely certain as to what she was appealing against. She was unaware as to what the HealthQuest assessment was based on and had not been provided with a copy of the relevant certificate or any documentary material to which regard had been had by HealthQuest. She later took steps to seek access to such material, including a number of FOI requests. HealthQuest, however, insisted that it would not supply such documents to her, but required that she appoint a doctor to whom the material could be sent. She did so, at considerable cost. It was then that she first gained access to what Ms Walshaw had written about her. 155 On 1 August, Ms Walshaw again wrote to HealthQuest about Ms Kerrison. This letter was attached to Dr Jagger's affidavit. Dr Jagger had recorded comments on the letter, but could not recollect if the letter had been referred to the Appeal Panel. Importantly, while Ms Walshaw referred in the letter to two investigations conducted by TAFE into the concerns raised by Ms Kerrison, the reports, which would have demonstrated the validity of the concerns raised by Ms Kerrison and revealed her ignorance of what had been investigated and the outcome of the investigation, were not provided to HealthQuest. The letter detailed the investigations conducted by TAFE into Ms Kerrison's complaints and the advice given to her as to their outcome. Ms Walshaw described the 'current position' as: § Ms Kerrison is not entitled to be advised of actions taken in relation to other staff. It would appear that she has not accepted that confidentiality must be adhered to in this regard. This was discussed a number of times on the telephone and in a letter from me on 17 November 1994. § Ms Kerrison has had intensive support from the Institute's rehabilitation staff and the Commonwealth Rehabilitation Services. § Ms Kerrison has had considerably (sic) support from her College Manager and has also been supported by the Institute's Human Resource Staff. § Ms Kerrison was encouraged by both the Managing Director and myself to contact me if she wished to discuss further grievances and/or issues of victimisation. § The Institute directed the transfer of the other officer with whom there was considerably interpersonal difficulties to another location in Term 4, 1994.' 156 Dr Jagger's handwritten comments were: "Noted, the employer has made extensive, repeated efforts to resolve 'grievances' throughout the 7 years of employment! Ms Kerrison remains angry about perceived "injustice" - which is clear evidence of a continuous personality disorder with disruption of occupational and social functioning - 3 paranoid features - 2 episodes of decompensation into major depression (see Dr Holmes report)." 157 Dr Jagger's comments were consistent with the views which, on her evidence, earlier had led to the issue of the retirement certificate. Dr Jagger could not recollect whether this document had been referred to the Medical Appeals Panel.

158 Ms Kerrison later commenced legal proceedings of various kinds against Dr Mandel, Dr Jagger and Dr Holmes, which were eventually struck out. In those proceedings it was alleged that her employment had been terminated by TAFE. Ms Kerrison explained that the initiating documents in these proceedings, were not drafted by her. She never understood that TAFE had terminated her employment.

159 Ms Kerrison's appeal to the Medical Appeals Panel was unsuccessful. She, in fact, eventually refused to continue participating in it, after experiencing various difficulties, including problems of access to information held by the Medical Appeals Panel, which it declined to release to Ms Kerrison. She also refused, eventually, to be assessed by another psychiatrist to whom the Appeal Panel had referred her at the time. The point made at the time by her legal representative, was that Ms Kerrison's belief was that her referral to HealthQuest had resulted from 'victimisation suffered because she lodged a complaint of mismanagement and maltreatment against Kempsey TAFE.' By that time she had obtained some documents from HealthQuest by FOI applications. Her solicitor informed the panel that these documents had been supplied to HealthQuest by TAFE without Ms Kerrison's authority and that they contained "untrue, uninvestigated and unsubstantiated statements written by TAFE personnel which "would obviously have heavily coloured the accuracy of any assessment report that might be written about my client." The point was that any assessment based on such material would inevitably be flawed.

160 In cross examination Ms Kerrison was of the view that the HealthQuest retirement certificate was fake. She had never sought retirement and in her view, neither HealthQuest nor the Appeal Panel had any business enquiring into her psychiatric health. She had no confidence that in attending another psychiatrist to whom the Appeal Panel referred her to, she would not be subjected to further unwarranted labelling. She had also become aware that a number of other people were complaining about their treatment by HealthQuest and by doctors to whom they had been referred as part of the appeal process. She had no confidence that she would be appropriately dealt with by such medical practitioners. She was also aware that complaints had been lodged by others with the AMA against the doctor to whom the Appeal Panel had originally referred her. Ms Kerrison was then referred to another doctor by the Appeal Panel, but took the view that it was not appropriate for her to subject herself to an assessment by a doctor selected and paid for by the Panel.

161 On 15 August 1996, the Medical Appeals Panel informed Ms Kerrison's solicitor that the appeal would be determined 'on a review of the HealthQuest files, including any medical assessments thereon, medical reports from practitioners nominated by the appellant, and any reports further requested by the Panel.' Given Ms Kerrison's unwillingness to visit a consultant nominated by the Panel, 'a decision will be made on the medical assessment by HealthQuest based on the information available'.

162 Ms Kerrison had, however, earlier approached Dr Holmes, who had written to the Panel in October 1995, advising that he did not consider Ms Kerrison unfit for work and

was surprised to hear that she had been retired. He said "I wonder whether my report was misinterpreted?" He favoured a return to work. Ms Kerrison had hoped that approaching Dr Holmes would cure the damage she regarded his first report to have caused her. Ms Kerrison was, however, not aware how his report had reached the Panel. Dr Holmes had sent her a report which she had not herself passed on to the Panel, because she was not satisfied that it would assist her. However the report came to reach the Panel, it did not persuade the Panel, which determined that her appeal would be disallowed.

163 The evidence showed that neither HealthQuest, nor the Medical Appeal Panel, had access to the information revealed in these proceedings, which demonstrated that many of the complaints Ms Kerrison was advancing about TAFE's investigation of her grievance, its treatment of her and the HealthQuest process, had a proper foundation.

164 TAFE was notified of the failure of the appeal. There was, however, no evidence that any decision to require Ms Kerrison to retire was either thereafter made, or advised to her. TAFE simply acted as if the dismissal of the appeal had the result of bringing her employment to an end.

165 Indeed, TAFE appears not to have taken steps which would logically have followed on from the making of a decision about Ms Kerrison's continued employment. For example, on 26 March 1998, Ms Scuglia sent a fax message to SASS advising that forms dated in October and November 1996 had not been actioned and asking that they be processed 'ASAP'. The purpose was to advise SASS that Ms Kerrison had been on sick leave without pay from 15 April 1996 until the termination of her employment in September 1996. In cross examination Ms Scuglia said that it appeared that these earlier documents had never been sent. On 16 April 1998, SASS issued a 'Statement of Benefit Preservation' noting Ms Kerrison's 'exit date as 13/09/96 and the 'exit reason' as 'withdrawal'. Ms Scuglia's evidence was that until notified of the termination of her employment, TAFE would have continued being billed by SASS for her superannuation entitlements.

166 The proper inference from this evidence was that it was not until 1998, that TAFE took steps to notify SASS that Ms Kerrison's employment had come to an end in 1996. There was, however, no evidence that Ms Kerrison had ever been directed or caused to retire by TAFE.

167 As I have noted, Ms Kerrison obtained many of the documents tendered in these proceedings under requests made under the *Freedom of Information Act*. Ms Kerrison experienced a deal of difficulty in obtaining some of this information, hence her repeated requests which it is unnecessary to outline further. I merely note, at this point, the complaints which she advanced in the proceedings about those problems, which included allegations that some of the documents, including some of those to which I have earlier referred, had been created after the event. I find it unnecessary to come to any views about these complaints.

168 There was also evidence that Ms Kerrison has pursued her complaints about her treatment by TAFE and HealthQuest in a variety of ways, including for example, by reference to the Health Care Complaint Commission. That Commission established a working group to review issues identified by Ms Kerrison and other complainants and a copy of her complaint was referred to the Department of Health. A later report confirmed the concerns raised by the complainants and noted that the Commission proposed to work with the Department of Health, to remedy the concerns raised.

### **The parties' respective cases**

169 The parties each filed detailed written submissions. Ms Kerrison's case rested on the fundamental premise, that no person with authority to do so had ever made a decision that her employment should be terminated, as required by the relevant provisions of the TAFE Act. Further, that those persons who were involved in actions which detrimentally affected her, had been motivated to do her harm in her employment; that she was entitled to natural justice in any consideration of her continued employment at TAFE and that this she had been denied.

170 The case advanced for TAFE was that the decision to dismiss Ms Kerrison had been made by Dr Willmott; that he had authority to do so under the legislation and that it had taken effect when Ms Kerrison's appeal against the HealthQuest assessment had failed. It was also argued that the submissions as to mala fides and the like had not been made out on the evidence; that the Court did not have jurisdiction to make the declarations sought and even if it did, would decline to do so in all of the circumstances.

### **Consideration**

171 Ms Kerrison appeared for herself in the proceedings, apart from times when she was represented by an agent, Mr Crewdson, who also had relatively little familiarity with the litigation process. Despite the resulting difficulties encountered in the litigation, the evidence and cases advanced were sufficient to enable the fundamental question raised by this application to be determined. Namely, was Ms Kerrison's employment brought to an end by TAFE, pursuant to the provisions of the TAFE Commission Act?

172 Before dealing with that question, however, I note that the Court was invited by TAFE to come to a number of adverse conclusions as to Ms Kerrison's conduct and characteristics, which it was submitted caused her to distort or deal selectively with her experiences and with documents she was provided. I make it plain that while I can appreciate that others at TAFE might have found Ms Kerrison's pursuit of her complaints difficult or uncomfortable, the evidence and the conduct of these proceedings, did not properly leave available the conclusions which I was invited to draw.

173 I particularly reject the notion that "because of the Applicant's narrow focus on events concerning her, she is and has remained unable to perceive either that she has a medical problem that other persons have been attempting to attend to or that it has played any role in relation to the events that have overtaken her." **To the contrary, selectivity**

**was not as much a feature of the case advanced by Ms Kerrison, as that advanced in evidence by TAFE and the witnesses it called.**

174 In fact, the case advanced by Ms Kerrison went much further than it needed to do, in one sense, in order for the question which here arises to be determined. Indeed, given the arguments advanced that other TAFE employees had acted to harm Ms Kerrison in her employment, the application was pursued, in one sense, as if it was a claim brought under s84 of the Act, as to the fairness of what had occurred in relation to the purported dismissal. Ms Kerrison's position in the proceedings was always, that she had never been properly dismissed from her employment. An application brought under s84 of the Act would thus, from her point of view, have not been available to her. Nevertheless, she took the opportunity in these proceedings, to make very clear her complaints about her treatment by TAFE.

175 The case so brought by Ms Kerrison was comprehensively met by TAFE. As a result, I have gone to some length to outline the evidence which emerged.

176 I observe, having in mind that evidence, that had these proceedings been brought under s84 of the Act, it is impossible to see how a finding of the relevant unfairness, would not have been forthcoming. It is, however, unnecessary to consider this any further.

177 Returning to the fundamental question, on the evidence, it was Dr Ramsey who, as TAFE's managing director, had the management and control of the affairs of TAFE (s14). It was common ground that he had the power to cause Ms Kerrison to retire, if, in accordance with s20 of the Act, she was found to be unfit to discharge, or incapable of discharging her duties. It was also common ground that this function had been delegated to Dr Willmott, pursuant to s8 of the Act. Dr Willmott gave no evidence that he had ever exercised that function.

178 His understanding of the HealthQuest process, like that of Dr Ramsey, was plainly erroneous. Their view was that a decision to medically retire a TAFE employee was made by HealthQuest and was not a matter for them to consider, other than to ensure that the HealthQuest decision was implemented. Dr Jagger's evidence was to the contrary. That was not HealthQuest's function and it had made no such decision in relation to Ms Kerrison.

179 It was the position of TAFE in these proceedings, that Ms Kerrison's employment came to an end in September 1996, after the dismissal of her appeal against the retirement certificate issued by HealthQuest. There was no evidence of any decision to that effect having been made at that time. On the evidence, it follows that the exercise of the power provided by s20 of the TAFE Act, could only have proceeded on the basis that the relevant decision, that Ms Kerrison was unfit or capable of discharging her duties and that she should be caused to retire, was made after the receipt of the HealthQuest certificate and before Ms Kerrison had appealed its assessment of her. The decision must

also have comprehended the possibility of such an appeal being lodged and that the decision would be implemented, if the appeal was unsuccessful.

180 There was no evidence of any written record of such a decision having ever been made by anyone. The evidence suggested that TAFE did not maintain any system by which such an exercise of the s20 power was recorded, even for example, in the personnel files maintained in respect of Ms Kerrison.

181 The TAFE case was entirely inferential. TAFE maintained that it was the handwritten note made on the HealthQuest certificate by Ms Gallagher, which evidenced Dr Willmott's decision in relation to Ms Kerrison's retirement. There was no correspondence sent to Ms Kerrison informing her of Dr Willmott having so exercised the powers granted by s20. This was entirely consistent with oral evidence given by Dr Willmott at the hearing, which demonstrated that he had not made such a decision. Dr Willmott's evidence was that he did not make any decision. He did not understand that it was his function to do so, that was a matter for HealthQuest. This understanding was consistent with the evidence of Dr Ramsey and Ms Walshaw.

182 The case advanced by TAFE was plainly necessary, given that Dr Ramsey was not involved at all in these matters and neither Ms Walshaw nor Ms McGregor understood that it was their role to give consideration as to whether Ms Kerrison should continue in employment. There was no evidence that they had been delegated any authority to exercise that function. Their evidence plainly showed that they understood the effect of the retirement certificate issued by HealthQuest to have been that Ms Kerrison's employment had come to an end. Indeed, Ms Walshaw wrote to Ms Kerrison "I realise that by now you have received your notification of retirement from HealthQuest and that it was obviously unexpected. I am sorry that I was unable to discuss it with you beforehand but HealthQuest notified you at the same time as they sent the letter to our office."

183 All the evidence, including Ms Walshaw's letter to Ms Kerrison, pursuant to the instructions presumably conveyed to her by Ms Gallagher, pointed to TAFE having proceeded on the basis that Ms Kerrison's employment was to come to an end, as the result of decisions already made and communicated to Ms Kerrison by HealthQuest.

184 Given the evidence, it must be concluded that how TAFE dealt with the question of Ms Kerrison's employment and its termination was not only quite inappropriate, but also entirely inconsistent with the statutory scheme. What the evidence plainly pointed to, was a fundamental misunderstanding by TAFE of the role of HealthQuest in any determination made under s20 of the Act.

185 There appears to have been a real misunderstanding at TAFE as to what HealthQuest's role was, when an employee was referred to it and what was necessary to be done by TAFE, in the event that it wished to rely on the advice given to it by HealthQuest, so that the employment of an employee like Ms Kerrison could be brought to an end in accordance with the provisions of s20 by TAFE. The import of HealthQuest

issuing a 'retirement certificate' to such an employee and the effect of an appeal from such a document, was also not properly appreciated.

186 These conclusions flowed inevitably from the evidence. Dr Ramsey's evidence was that he did not make a decision requiring Ms Kerrison to retire. To the contrary, he understood that in such a case it was HealthQuest which made that decision.

187 While s8 of the Act contemplated that the TAFE Commission could delegate certain of its functions, including those provided by s20, to 'authorised persons', there was no suggestion that such a delegation had ever been made in favour of anyone employed at HealthQuest. Nor did the parties address the question of whether such a delegation would have been possible, given the definition of 'authorised person' in s8(4).

188 Ms Gallagher could not recollect making the handwritten note, which appeared on the certificate, but explained that Dr Willmott's practice had been to give her verbal advice, to direct the actions of other officers, in this case, Ms Walshaw. She explained that Dr Willmott was often out of the office. She assumed that she had advised Dr Willmott of the arrival of the certificate, from HealthQuest, had given him any advice received from the Head Office Unit and then forwarded his directions to Ms Walshaw.

189 There was no evidence that Head Office had provided any advice. If it had, presumably it would have been consistent with Dr Ramsey's understanding. In any event, Dr Willmott explained in cross examination that he made not decision, but understood that Ms Walshaw had written to Ms Kerrison to inform her of HealthQuest's decision.

190 The conclusion that Dr Willmott ever exercised the delegated authority he had to require Ms Kerrison to retire in accordance with the provisions of s20 of the Act, can only flow from Ms Gallagher's handwritten note. The decision made, as it was submitted for TAFE, was that Ms Kerrison was to retire, if any appeal made against the HealthQuest certificate failed. Given the evidence to which I have referred, the inference that such a decision had been made, was simply not available. Indeed, to the contrary, the proper inference was that it was understood by Dr Willmott that HealthQuest had determined that Ms Kerrison was to retire and that it was TAFE's role to implement the decision by attending to the practicalities of the termination of Ms Kerrison's employment. That was Ms Walshaw's role. He directed her to attend to those matters. She did so, but it seems TAFE still acted inconsistently with the applicable TAFE policies.

191 Ms Walshaw plainly understood that Ms Kerrison's retirement followed a notification by HealthQuest to both TAFE and Ms Kerrison. In cross examination Ms Walshaw explained that at that time she had never met Ms Kerrison and that she was surprised the certificate was issued. She had not expected retirement to have been the outcome of her referral of Ms Kerrison to HealthQuest. She was expecting a return to work. The retirement certificate had, however, been issued by HealthQuest. There appears to have been no appreciation that Ms Kerrison's employment was not to come to an end if a right of appeal was exercised.

192 TAFE then acted accordingly. Ms Scuglia's evidence was that it was usual for employees to have rights of appeal from HealthQuest. Despite this, Ms Kerrison was immediately removed from the payroll. There was no evidence as to who made that decision. While Ms Scuglia's evidence was that this was not the correct procedure, it, in fact, accorded with Dr Willmott's direction to Ms Walshaw. TAFE ceased making any payments to Ms Kerrison and advised her superannuation fund of the termination of her employment. These steps further underscored the misunderstanding of HealthQuest's functions. Despite Ms Walshaw's surprise at the receipt of the certificate in the circumstances known to her, no account was taken by TAFE of Ms Kerrison's rights of appeal against the view which had been formed by HealthQuest, as to her fitness to teach. She was treated as if her employment had come to an end, as the result of the issue of the certificate.

193 After Ms Kerrison made representations to TAFE about her situation, she was reinstated to the payroll. Ms Scuglia's evidence was that payments made to Ms Kerrison should then have been debited to her sick leave entitlements. They were not. She was paid normal salary. This was entirely consistent with the applicable policy. Nevertheless, when Ms Scuglia became aware of this, she took the view that Ms Kerrison had been overpaid, calculated her sick leave entitlements, set off the payments made to Ms Kerrison against those entitlements and then informed Ms Kerrison of what she had done. Ms Kerrison did not consent to these steps, but was, nevertheless, put on leave without pay. This decision was apparently made by Ms Scuglia's line manager. There was no evidence that this employee had any authority to deal with Ms Kerrison's continued employment, or the payments to be made to her.

194 The basis for TAFE's right to act as it did in relation to the question of these payments, was entirely unclear on the case advanced. The applicable Enterprise Agreement, for example, does not appear to make provision for such steps to be taken.

195 Undoubtedly to her ultimate detriment, Ms Kerrison did not finally pursue her appeal. The evidence led here was such that there must have been a real prospect that had she put material of that kind before the Appeal Panel, her appeal would have been upheld. As it was, the appeal was dismissed and TAFE seems to have done nothing more until 1998, when it became apparent that necessary steps following upon the termination of her employment had not been taken. The termination of her employment had not been gazetted in the usual way and the superannuation fund had not been advised of the termination. This evidence, too, pointed to the absence of the necessary decision under s20.

196 There was certainly no evidence that either Dr Ramsey or Dr Willmott considered the outcome of the appeal, or then made any decision that Ms Kerrison was to be to be retired, in accordance with the provisions of s20. Nor was there evidence that they had ever earlier considered what should happen to Ms Kerrison's employment, in the event that her appeal was dismissed. As I have found, there was no evidence on which it could be concluded that there had been any earlier decision made, by either of them, that she would be retired in the event that her appeal failed. There was no correspondence to her

from TAFE to that effect and indeed, only advice given by the Appeal Panel that her appeal had failed. Taking Ms Kerrison off the payroll for the third time, appears to have been merely another administrative decision by TAFE, once the appeal was dismissed, not one made in accordance with s20, by anyone delegated the function to make it, or as the result of any consideration by those with authority to retire Ms Kerrison, as to the consequence of the dismissal of her appeal.

197 Having come to this conclusion, I do not propose to deal in great detail with the evidence as to the process followed by TAFE, in referring Ms Kerrison to HealthQuest. In summary, it is sufficient to note that the evidence showed that: -

Ms Kerrison was deliberately deceived as to the **reason** why she was being sent to HealthQuest. She was told that the reference had to do with **her worker's compensation claim and rehabilitation**. That Ms Kerrison had been sent to HealthQuest, **so that her continued employment could be considered was actively concealed from her**. This was inconsistent with HealthQuest's advice to referring employers. HealthQuest was **provided with inaccurate information** regarding Ms Kerrison, in a number of respects, including that Ms Kerrison was **not on duty in May 1995, when referred**.

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

It cannot be doubted that Ms Kerrison was entitled to be informed that she was being sent by her employer to HealthQuest, for consideration to be given as to whether she was fit to continue her work. Ms Kerrison plainly consented to the examination conducted by Dr Mandel under a false impression. Her consent to contact being made with her own treating doctors was similarly tainted, by a lack of understanding as to what Dr Mandel had been asked by TAFE to consider. -

After Dr Mandel had examined Ms Kerrison on 19 May, she approved her continuing to work and Ms Kerrison did so, without difficulty. Despite this, on 16 June a remarkably different view was formed by Dr Mandel and Dr Jagger that Ms Kerrison was suffering from a personality disorder, sufficient to warrant the conclusion that she was not fit to continue in her employment. This view was formed after Dr Mandel and Dr Jagger had had several telephone discussions with Ms Walshaw about matters which were not raised with Ms Kerrison and after a report was received from Dr Holmes. -

Dr Holmes' report indicated that Ms Kerrison had suffered from a depressive illness in 1994, during the period in respect of which worker's compensation

liability had been accepted; that she had had a recent recurrence, but required support at work.

At the time of the referral, Ms Walshaw had reason to be concerned that Ms Kerrison was suicidal and had discussed solving her problems with a gun. This flowed from reports Ms Walshaw had received from other officers, particularly Mr Quinn. The evidence as to the basis for these concerns having been raised with Ms Walshaw, showed that Ms Walshaw had been given quite a false impression. Mr Quinn's memos referred to threats made by Ms Kerrison to 'use a gun to solve their problems', of which he had recently been made aware, although no individual person had been directly threatened. Mr Quinn did not ask for any steps to be taken in relation to Ms Kerrison, but sought counselling for the other staff members, involved, to help them deal with the situation.

Mr Quinn's evidence that he had become aware in March 1994 of Ms Kerrison's concerns with the other teacher about whom she had complained; her numerous complaints that her grievance had not been properly investigated; her then perceived instability and threats then reported by Ms Robison of threats of 'physical harm with a firearm directed towards that teacher and others', had caused steps to be taken to implement a rehabilitation programme involving the Commonwealth Rehabilitation Service. Mr Quinn's evidence was that in April 1995, there were further events which caused him to send his various memos. Mr Quinn could not recollect what had precisely then occurred, which led him to send these memos.

While Ms Kerrison denied having ever threatened suicide, both Ms Robison and Dr Holmes were concerned about that possibility. There was, however, no evidence at all that Ms Kerrison had made threats of using a gun or firearms to solve her problems. Neither Ms Robison nor Ms McGregor gave evidence that such threats had ever been made against them or to them, in respect of others. Ms Kerrison denied ever having made them, although at one point conceded saying words to the effect that someone 'should be shot'. That such a commonplace, colloquial expression could have formed the basis of Mr Quinn's reports is scandalous. At best, the evidence was that Ms Kerrison had made such comments in 1994, while being treated for a depressive illness.

Dr Jagger's evidence confirmed how Ms Kerrison's diagnosis was influenced by what Ms Walshaw told her and Dr Mandel. The information provided by Ms Walshaw about the support Ms Kerrison had received at TAFE, in relation to the grievances she had raised, was quite inconsistent with the evidence in these proceedings as to the treatment Ms Kerrison had received. This information Dr Jagger regarded as clearly evidencing Ms Kerrison's personality disorder. It is undoubted, in my view, that if Dr Mandel and Dr Jagger were in possession of the facts revealed in these proceedings that their diagnosis, would have been affected. Dr Holmes' opinion, later expressed to the Appeal Panel in 1995, quite contrary to

that of Dr Mandel and Dr Jagger, more accurately, in my view, reflected Ms Kerrison's medical position and prognosis.

198 The evidence as to the way in which Ms Kerrison's grievance had been dealt with by TAFE showed that Ms Kerrison's working relationship with Ms McGregor, Ms Robison and Mr Quinn, had been damaged as a result. Her complaints when referred to Dr Ramsey, understandably, were handled by TAFE on a confidential basis. Regrettably, this confidentiality was maintained to the point that Ms Kerrison was never given any fair appreciation of what had been investigated by TAFE, or how and what the outcome had been. She was also warned by the investigators that she was not free to discuss her complaints, or the investigation, even with people such as Ms McGregor and Ms Walshaw. That Ms McGregor, the College Manager, was similarly ill informed, seems extraordinary.

199 The end result of the approach adopted was that the fact that Ms Kerrison had successfully brought to light very serious complaints against the other teacher concerned, was never revealed to her, or to Ms McGregor. Even Ms Walshaw was not informed as to the entire picture revealed by the investigation. Nor was Ms McGregor made aware of the serious deficiencies in the management and operation of the College, which Ms Kerrison's complaints had revealed. Ms Walshaw's later reading of the report, but not Ms Kerrison's complaint, led her to tell Ms Kerrison, that 'many of your complaints were investigated than perhaps you are aware of.' Ms Walshaw there also explained that questions of confidentiality precluded more details of the report being provided to her.

200 Ms Walshaw explained in cross examination that while she acknowledged the comments appearing in the report, she did not totally accept the comments which were critical of the management of the campus, because at that time, an amalgamation of campuses and colleges was underway in the region. Ms Walshaw also explained that it was a difficult time for managers and teachers at TAFE, which had generated a lot of grievances from other teachers, in which she had been involved.

201 Ms Walshaw was not located in Kempsey, but was plainly defensive of what the report had revealed. Ms O'Sullivan was highly critical of Ms Kerrison in her September 1994 report to Dr Willmott; had forcefully warned her against making further complaints and had suggested to Dr Willmott that Ms Kerrison should be forced to work with the teacher against whom she had made her complaints, so as to increase the prospect that Ms Kerrison could be referred to HealthQuest.

202 This, in fact, ultimately occurred. By way of contrast, the other teacher concerned not only continued her former treatment of Ms Kerrison, after she returned from sick leave, despite Ms Kerrison's repeated complaints - she was then promoted to a position where she was able to create other difficulties for her. While Ms Kerrison raised her concerns about this treatment, it was, in reality, not dealt with at all by TAFE. Ms McGregor instructed that she had to raise a formal grievance if the matter was to be dealt with, as did Dr Ramsey and Ms Walshaw. This was precisely what Ms O'Sullivan had warned her not to do. Ms Kerrison was fearful of the consequences and did not lodge

such a grievance. The resulting situation was undoubtedly difficult from Ms Kerrison's point of view, as well as that of Ms McGregor, Ms Robison and Mr Quinn. Ms Walshaw was made aware of the situation and why Ms Kerrison did not wish to pursue another grievance. She did not believe that Ms Kerrison had been warned against doing so. She plainly had. Ms Kerrison's complaint about the difference between TAFE's actions and 'words on paper' were entirely understandable, in the circumstances.

203 Ms Kerrison's health was ultimately affected again in 1995 and then her employment came to be terminated, in what can only be described as the most extraordinary circumstances.

204 It was not difficult at all to understand Ms Kerrison's frustration by the process adopted by TAFE to deal with the matters she had raised. She was not even informed as to which of her concerns had been investigated and whether they had been found to have had any basis. **A more pointless grievance procedure is difficult to imagine,** particularly given the serious problems which the investigation revealed in fact existed. Considerations of privacy cannot explain TAFE's departure from the Enterprise Agreement grievance procedure. That the other teacher involved in the grievance was then successfully promoted to a position where, for a period of 6 months, she had some influence on Ms Kerrison's access to development and training, can only have come about as the result of a most flawed process. This conclusion was reinforced by Dr Ramsey's explanation of the serious nature of the complaints which TAFE's investigators showed had been made out against that teacher.

205 In fact, the report concluded that while there were serious interpersonal difficulties between Ms Kerrison and the other teacher, the investigation had revealed ineffective leadership at the College, non adherence to operational and management systems, abuse of rules and unethical and unprofessional conduct. General criticisms were directed at the principal of the campus, a head teacher in the section, problems in relation to poor and disorganised enrolment procedures, which were open to abuse and disadvantaged students; problems with processing exam results; problems with staff appointments and treatment of staff, including in relation to access to information and staff development; an unwillingness and failure by senior staff to address problems raised with them; inappropriate monitoring and treatment of students and a failure to provide educational resources.

206 The report also dealt with three specific allegations made against the other teacher and recommended that various steps be taken, including counselling of the teacher, discussions involving Ms Kerrison and in one case, a further investigation by the comprehensive audit unit. The report also concluded that Ms Kerrison was a party to the interpersonal conflict dealt with in the report and had herself contributed to a number of problems identified. It recommended that mediation sessions be conducted involving Ms Kerrison, that she be transferred to another College and that she be offered retraining for "alternative but related employment or redeployment." This part of the report was not provided to Ms Kerrison. She was only given access to the summary of recommendations, which summarised the complaints made under a number of general

headings and made general recommendations as to those topics. The result was that Ms Kerrison was never given any fair appreciation of the outcome of the investigation into her grievance. Ms O'Sullivan's approach appeared quite extraordinary, in the context of what the report had revealed. As I have found, this led to consequences of the most regrettable kind for Ms Kerrison.

207 The TAFE investigators were not called to give evidence in these proceedings. Ms Kerrison was highly critical of the approach which they had taken in their investigation. On her understanding, persons to whom she had referred the investigators as being able to provide information to support or corroborate her complaints had not been approached. Whether or not the investigation was fairly or properly conducted was, however, not the subject of investigation in these proceedings.

208 The evidence, nevertheless, made very evident the depth of Ms Kerrison's distress and frustration at the way in which her serious complaints were treated by TAFE, to the point that her health was seriously affected. The warnings given to Ms Kerrison about raising further grievances, without foundation, at a meeting where, seemingly neither Ms O'Sullivan or Ms McGregor had ever been given access to the matters raised by Ms Kerrison and where Ms McGregor, the College Manager, was not given access to the report as to the outcome of the investigation, was bizarre. That Ms Kerrison was upset and concerned at the impact which her complaints had had on her future at TAFE, in my view, was entirely understandable.

209 These observations are not to be understood as downplaying the difficulty which Ms Kerrison's position placed other TAFE employees in. Given that an external investigation had been conducted, her views about the investigation into the concerns which she had raised were plainly difficult for others to comprehend. The reasons for her distress were not apparent to them. To people like Ms McGregor, Mr Quinn and Ms Robison, Ms Kerrison had made complaints which had been investigated, had been not found to have raised serious matters and to have in some cases raised complaints which had no real foundation. These impressions were false ones and undoubtedly coloured the approach which they took to Ms Kerrison.

210 And so it was that a most regrettable cycle appears to have been established. Their reactions to Ms Kerrison's continuing concerns, gave Ms Kerrison the impression that she was being unfairly persecuted, for having raised a grievance. This caused her to view Ms McGregor as a hopeless manager and the others as not having any real sympathy for her position, or concerns for her. Her health deteriorated as a result. Ms Kerrison also pursued various complaints outside TAFE, an approach which only cemented the opinions others had formed, as to her inability to accept that her complaints had been properly investigated. The pursuit of those matters involved various FOI requests. TAFE's responses to these requests, and those of HealthQuest and the Medical Appeals Panel, were rather odd, to put it neutrally.

211 All this led to the HealthQuest assessment. Dr Jagger's explanations as to the basis of her diagnosis of Ms Kerrison's personality disorder plainly showed the serious

consequences which resulted for Ms Kerrison, from TAFE's approach to her grievance. It is difficult to see that legitimately holding views about the work performance or abilities of one's supervisors and other employees and pursuing rights which an employee has under an Enterprise Agreement, to complain about treatment received at work can readily form the proper basis for a diagnosis that the person making the complaints is suffering from a personality disorder. **Here, the evidence showed that the diagnosis rested upon an inaccurate and one-sided account of Ms Kerrison's conduct at work, from a person who herself, in fact, was not in possession of all of the relevant facts. When they were revealed in these proceedings, these facts vindicated Ms Kerrison's concerns and complaints about her treatment by TAFE, so as to remove the foundation for Dr Jagger's opinions.**

212 Precisely what it was that Ms Walshaw told Dr Jagger and Dr Mandel could not entirely be established on the evidence. There seems no doubt, however, that it was Ms Walshaw's concerns that Ms Kerrison could not accept that her complaints had been properly and fairly investigated and her continuing threats of self harm and harm to work colleagues by use of a gun, which were taken into account by Dr Mandel and Dr Jagger. This, coupled with Dr Holmes' reports as to Ms Kerrison's medical difficulties the preceding year, which were on any fair view were plainly more serious in 1994 than any problems which she was suffering from in 1995, when referred to HealthQuest, led to the diagnosis made.

213 As I have noted, there was not any real review of that diagnosis in the appeal proceedings, given Ms Kerrison's refusal to continue participating in it. Nor, however, was there then any consideration of the outcome of the appeal or any decision made by those at TAFE with the relevant authority, that Ms Kerrison's employment should come to an end. There had, at that point, never been any decision that Ms Kerrison's employment should come to an end. TAFE simply acted as if there had been.

214 I am quite satisfied, on the basis of the evidence in these proceedings, that it cannot be inferred that any person with authority to do so, ever made a decision that the authority to cause Ms Kerrison to retire should be exercised. TAFE acted as if that had occurred, merely by the issuing of a 'retirement certificate' by HealthQuest and the failure of the appeal lodged against that certificate. That is not a basis provided in the legislation for the termination of the employment of a TAFE employee. It follows that there has never been any valid, or effective, termination of Ms Kerrison's employment.

215 This conclusion accords with binding authority. See *Wilson v Department of Education and Training* (2000) 100 IR 1, where reference is made at p10 to *Ward v Director-General of School Education* (1998) 80 IR 175 at 179-80: "Whether the relationship of a Crown servant and the Crown be regarded as contractual or not, it is now clear that where there is a statute governing such employment, the employment must comply with the terms of the statute which constitutes a code and displaces or overrides any common law or prerogative rights which would otherwise exist but which are inconsistent with the code prescribed by the statute: *Director General of Education v Sutting* (1987) 62 CLR 427 at 437-38; *Hunkin v Siebert* (1934) 51 CLR 538 at 542;

otherwise provisions, manifestly intended for the protection and benefit of the officer, would be rendered superfluous, useless and delusive: *Gould v Stuart* [1896] AC 575 at 578. See also *Bennett v Commonwealth of Australia* [1980] 1 NSWLR 581."

216 It is finally necessary to say something shortly about TAFE's submission that the Court has no jurisdiction to make the declarations here sought by Ms Kerrison. The submission cannot be accepted, given various binding Full Bench authorities. In *Western Sydney Area Health Service v Gibson* (2001) 109 IR 359, reference was made to various earlier decisions, including that in *Atlantis Relocations (NSW) Pty Ltd v Department of Industrial Relations (Inspector O'Regan)* (1997) 99 IR 125 at 127, where it was held: 'The declaratory jurisdiction arises "in relation to a matter" in which the Commission has jurisdiction whether or not any consequential relief is or could be claimed: s.154(1). The declaratory power is therefore not contingent upon the existence of proceedings which are otherwise within jurisdiction as the power arises in relation to a matter as opposed to proceedings.'

217 Questions of whether or not employment has come to an end and how, may arise in proceedings brought before the Commission, including s84, s106 s365 and s368 of the Act, as well as in proceedings brought in relation to claims for annual leave and long service leave. Claims for sums due under an industrial instrument may be brought under s365 of the Act. It follows that the Court has power to grant declaratory relief of the nature sought in these proceedings.

218 I also note the submission that, as a matter of discretion, the Court should decline to make the orders sought, given the relief sought elsewhere and the failure to bring these proceedings for a number of years, cannot be accepted. Given the nature of the question to be determined, whether or not Ms Kerrison's employment was ever brought to an end in accordance with the applicable statutory scheme, it seems to me that the complaints as to laches, can have no proper foundation. The discussion of that concept in the context of s106 of the Act, in *Frost v The Speaker of the Legislative Assembly of New South Wales* (2000) 97 IR 461, cannot avail the respondent in these proceedings.

219 I also note that Ms Kerrison made a late application, seeking leave to re-open her case, to bring further evidence. I declined leave, concluding that I would give reasons for the decision in the judgment. I do so briefly. Given the nature of this application, the cases which the parties had advanced and the point at which the application came forward, after TAFE had filed its written submissions, I was satisfied that justice could not be achieved, were the leave to be granted. This view was confirmed by Ms Kerrison's financial position. A costs order could not have assisted the resolution of the question which then arose.

220 The consequences of these conclusions for the orders here properly to be made, require consideration. Calculations as to the payments due to Ms Kerrison must be made. I direct TAFE to formulate the orders giving effect to this judgment within 14 days of the date of the judgment. Adjustments will have to be made to reflect payments of long service leave and other payments made to Ms Kerrison. The orders should be provided to

and discussed with Ms Kerrison at least 7 days prior to the further listing of this matter on 9 April at 9:30am, when consideration will be given to the final orders to be made. ---

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