

Minutes of Meeting held 2 April 2003

Location: Level 7 Conference Room, CSO

Commenced: 4.35 p.m.

Present: Ms Kerrison, Mr Gruber, Mr Cribb, Ms Brus, Ms Lye, Ms Ackeman (note taker)

At the commencement of the meeting all parties were advised that minutes of the meeting would be taken by Ms Ackerman. Ms Kerrison requested a copy of the minutes. It was agreed that these would be supplied once they were prepared.

Ms Brus opened the discussion. She explained the effect of her Honour's decision was that Ms Kerrison would receive a substantial payment and that the parties were present at this meeting to discuss such things as were necessary to determine the correct amount. She mentioned that it would be necessary to obtain certain tax records of Ms Kerrison to help determine the correct amount as the correct tax must be deducted and calculate superannuation.

Ms Kerrison said she had been in contact with the A TO about these records and that they had not been able to help immediately and that it would be necessary for her to call them again. It would take 4 days for the ATO to supply the documents once they could access them.

Ms Brus stated that the assessments were integral to the determination of the final payment. She suggested that when the parties were next due to appear before her Honour the parties would not be in a position to provide her with a final figure. However, this would not stop the parties seeking an order that Ms Kerrison receive her salary entitlements less earnings in the period from 1995 to date. If there was any subsequent dispute between the parties as to the precise amount these could be worked through together.

Ms Kerrison stated that she felt she was in limbo being without duties and income. There was some urgency to sorting out the matter.

Ms Brus proposed reinstating Ms Kerrison on the payroll of TAFE from tomorrow (Thursday) back dated to the date of her Honour's judgment decision. She stated that for this to happen TAPE' would need her bank details or an address for payment of a cheque.

Ms Kerrison said that TAFE had record of a bank account that payment could be made into. Ms Kerrison provided her credit union account details to Ms Lye.

Ms Brus stated that this should alleviate any financial hardship Ms Kerrison was currently experiencing and that it would give the parties more time to resolve the back payment. .

Ms Kerrison agreed to this and said that it was much appreciated.

Mr Cribb stated that he had received superannuation documents Ms Kerrison had supplied and sought to check the level of her contributions. Ms Kerrison confirmed that she had contributed 9% and that she wished this to continue.

Ms Brus asked about other deductions that had been coming out of Ms Kerrison's pay. Ms Kerrison consulted with Mr Gruber. She said she could not think of any. Ms Kerrison raised union payments. This was a matter for her to follow up.

Ms Brus stated that preliminary work had given a rough figure of \$390,000 to be paid to Ms Kerrison. This is a gross figure. There will have to be an adjustment for superannuation, tax etc.

Mr Gruber asked if this took into account interest on earnings and superannuation.

Ms Brus said that it did not. This figure only represented salary. Ms Kerrison's superannuation contributions would have to be taken out. It would also be necessary to calculate the employer's contribution.

Mr Gruber asked about growth and interest given that the funds had not been available for use.

Ms Brus stated that it would be necessary to find out how the superannuation fund would deal this. Superannuation growth in this period was probably minimal. Inquiries would be needed to be made of State Super. This will take some time.

Ms Kerrison referred to the documents that she obtained from the Super fund. She stated that she had a figure that represented the total if contributions had not been disrupted. Ms ~ms corrected her and said that it represented her contributions.

Ms Kerrison said that she had asked for the figure to include TAFE contributions. She said that TAFE stopped contributing in 1996 and would need to contribute growth. Mr Cribb and Ms Lye stated that it should be possible to calculate the growth amount. Ms Brus said that it would be necessary to obtain a calculation of the figure as if there was no disruption and applying the growth it would have attracted. Both parties would have to rely on State Super to do this and Ms Kerrison's superannuation would be topped up. Mr Cribb confirmed that TAFE will make an additional payment to the superannuation so that it would be as if nothing had happened. It would take time to get the figure from State Super. Ms Brus said while we want to keep to a tight frame it is important that it is done correctly.

Ms Brus then raised the question as to whether Ms Kerrison wished to continue as an employee of TAFE or whether given her improved financial position she may want to consider not working. Ms Kerrison noted that it would be necessary for her to consider the advantages and disadvantages of the alternatives.

Ms Brus noted that she would be put on the payroll immediately to alleviate her current financial position. Ms Kerrison noted that it was normal to perform duties for income. Ms Brus suggested it was possible to put her on an approved absence.

Ms Brus emphasised it was critical that Ms Kerrison come to a decision about her future employment although she was not being pressured to come to a decision at the meeting. This decision would have an impact on the payments due to Ms Kerrison. In the event of her retiring she would be due further payment including accrued leave. In the event of Ms Kerrison deciding to continue her employment then it would be necessary to find her a job in business studies. As Ms Kerrison had previously indicated a desire to return to Kempsey, TAFE had looked at the feasibility of this option. Ms Brus noted that it did pose a logistical difficulty as there had been a change in the teaching of business studies and that if Ms Kerrison were to return to Kempsey it was only fair, given her concern for the welfare of others, that she be advised that it would necessitate the cessation of some casuals' employment. In addition, TAFE did not want Ms Kerrison to be put unknowingly in a position where she might be resented by others.

Ms Kerrison raised the issue that since 1995 she had missed out on inservice training. Ms Brus agreed that this would be addressed. She stated that TAFE was aware that she had been working as a MYOB trainer and that these skills may be readily transferrable to business studies as taught currently. There may be a need for assessment of Ms Kerrison's skills. This was dependent on Ms Kerrison's decision regarding her future. Ms Brus wondered whether Ms Kerrison would consider working in another locality? What would be acceptable in terms of proximity?

Ms Brus also raised the issue that a medical clearance would be required for Ms Kerrison to return to work since the HealthQuest report had deemed her unfit to continue employment. Ms Kerrison disputed the validity of the HealthQuest report and its applicability to her. Ms Brus said that regardless of Ms Kerrison's view of the medical report a clearance would be needed. If Ms Kerrison were to return to work without such a clearance TAFE would be breaching its duty to Ms Kerrison in terms of its OH&S responsibilities. Ms Brus suggested that Ms Kerrison might be able to go to somewhere other than HealthQuest. Ms Kerrison stated that she did have a certificate saying she was fit to work. Ms Brus stated that this was not acceptable and that she would have to be declared fit by a provider determined by TAFE. Ms Kerrison asked what kind of an examination? Ms Brus stated that this had not been determined. She said it would be conducted by an occupational medical practitioner. Mr Gruber suggested the possibility of a list being provided to Ms Kerrison of providers for her to pick.

Ms Brus stated that all information provided to the practitioner would be sent to Ms Kerrison. Mr Gruber questioned whether it would be necessary for the HealthQuest documents to be provided. Ms Brus said this would give valuable background and that it was usual practice for this to occur. Ms Kerrison again raised her concerns about the medical information. Mr Gruber questioned whether the HealthQuest documentation might cause an automatic bias. He asked if the provider could be asked whether he needed the reports. Ms Brus said that this was possible) she was assuming that the usual practice of a practitioner would be to examine past medical history. Mr Gruber stated his belief that it should be possible to make an assessment without past history. Ms Lye suggested that the parties could come to an agreement

as to what documents were regarded as balanced and these could be supplied. Mr Gruber suggested the best approach was to send nothing. Ms Lye suggested that an assessment conducted in a vacuum would be fairly meaningless. Ms Kerrison suggested that only a physical and not a psychological examination was conducted when persons are appointed to clerical type positions. Ms Brus suggested that the situation is different in her case as this was not a new appointment but a certification of someone previously declared unfit. Ms Lye reiterated that TAFE owed Ms Kerrison a duty of care having been alerted to a potential problem - rightly or wrongly.

Mr Gruber then raised the issue of what would be the implications of Ms Kerrison being deemed unfit by an examination. Ms Brus suggested that this would impact upon Ms Kerrison's superannuation although she could not exactly specify how. It was possible that Ms Kerrison would commence to receive a pension. Mr Gruber asked if there would be any payout. Ms Brus replied that Ms Kerrison would only receive accrued entitlements. If eligible for medical retirement it is possible that she could receive a lump sum payment.

Mr Gruber raised the issue of Ms Kerrison's tax liability and pointed out that there would be different consequences depending upon whether or not she was deemed fit to continue employment. Her tax liability would be substantial in the case that she received back pay and was then subsequently deemed unfit to work. He described the approach of the ATO in relation to such payments.

Ms Brus stated that the only order that could be made by the Judge was that employment was never terminated. The payments to Ms Kerrison must be made by way of salary and that if this attracts a high rate of taxation then it was beyond TAFE's control. If Mr Gruber was suggesting TAFE could relieve Ms Kerrison of some of this tax burden by seeking different orders the Judge was unlikely to agree to this.

Mr Cribb wondered whether the parties could settle before the court made any orders, Mr Gruber pointed out that Ms Kerrison's desire to return to work was a problem. Ms Lye and Ms Brus said that this had to be clarified. Mr Gruber pointed out that this was why it was important for the parties to resolve any disagreement concerning the medical issue. Ms Kerrison stated that she did not want to resign today. Mr Cribb and Ms Brus again stated that there was no necessity for Ms Kerrison to make her decision at the meeting and that she should take her time to consider her options. Ms Brus noted that however until such decision is made it was not possible to advance the matter.

Mr Gruber was of the view that the medical was the greatest hurdle at the present time. Ms Kerrison again raised her objections to the results of the previous medical. Mr Gruber again noted that to make an informed decision it was necessary to resolve the issue of the medical.

The discussion returned to the options available to Ms Kerrison. Firstly, returning to Kempsey to work. Secondly, working in another location. Mr Cribb said that in this

regard the options available included Port Macquarie and Wauchope. Ms Kerrison noted that these options would require a 100 km round trip. She preferred the option of returning to work at Kempsey. She wondered if this would cause a degree of embarrassment to TAFE if she were to return. Ms Brus stated that she should not be concerned by any potential discomfort on the part of others and most of the primary players in the proceedings had subsequently moved on. Ms Kerrison said that she had no problem in that regard. Ms Kerrison raised the impact of any lingering suspicions about her that she felt had been caused by a certain e-mail.

Ms Brus returned to the issues of Ms Kerrison's options. These were that she could return to work at Kempsey or elsewhere or that she might decide not to return to work.

Mr Gruber's concerns about the medical had not been resolved. Ms Brus agreed that there was a risk that if Ms Kerrison was found unfit for a reason unrelated to earlier medical opinion this could have a detrimental impact upon Ms Kerrison's financial position. Ms Kerrison said that she needed to look at the figures. Ms Brus encouraged Ms Kerrison to take advice from others once the figures were available and that once Ms Kerrison came to a decision she was comfortable with then TAPE would put things in place.

Mr Gruber questioned whether there would be interest on back pay. Ms Brus stated that although this was not mentioned in the judgment the Judge may be inclined to order it.

Mr Gruber asked whether the total figure given factored in progression of salary. Ms Brus said that it did. It incorporated increases in salary under the award. Mr Cribb stated that figures that had become available since calculating the superannuation would have an impact.

Mr Gruber mentioned various types of leave. Ms Brus replied that treatment of leave would depend on Ms Kerrison's decision to continue employment or not. They would only be paid out if Ms Kerrison ceased her employment with TAFE. Mr Cribb said a value could be calculated but this could not be supplied within 7 days.

Mr Gruber asked what was to be done in 7 days. Ms Brus said this depended on the outcome of the meeting. She suggested the parties could by consent seek an adjournment for a month. Another meeting would be required.

Mr Gruber asked if a medical examination could be arranged in this time. Ms Brus and Ms Lye did not know and said inquiries would be made. Mr Cribb said he would do this.

Ms Kerrison asked in relation to accrued long service leave whether TAFE was taking into account that she had not taken any long service leave since joining TAPE.

Ms Brus stated that some had been paid to Ms Kerrison. In reply Ms Kerrison said that she had never agreed to such payment. Ms Brus said that the leave would be recredited to Ms Kerrison. In response to a question from Ms Kerrison Ms Brus

stated that the figure for her LSL would be calculated from the commencement of her employment as if no interruption had occurred. There was some discussion about the total figure.

Mr Cribb asked whether TAFE should hold off putting Ms Kerrison back on the payroll until she had had a medical examination. Mr Gruber and Ms Kerrison had a private conversation.

On their return to the room Ms Brus asked if they were okay. Mr Gruber replied they were. Ms Brus asked if they wished to expedite the medical. Mr Gruber replied yes. He also indicated that Ms Kerrison wanted to delay being put back on the payroll at this stage.

Mr Gruber then asked about interest on the back pay. Mr Cribb stated that interest would be paid based on Supreme Court rates. It was not compound interest. However it was pointed out that the rates are very generous. Mr Gruber stated that this was satisfactory. He then suggested that Ms Kerrison's only responsibility was to follow up the tax information. Ms Lye pointed out that TAFE was still awaiting for further information concerning Ms Kerrison's superannuation. Ms Kerrison suggested that if TAFE also made inquiries perhaps State Super would respond more promptly. Ms Brus stated that for this to be done TAFE would need her written authority. Ms Lye suggested this could be done at the meeting and Ms Kerrison signed an Authority which was given to Ms Lye. Mr Gruber wondered if a hypothetical case could be used to get the required figures. Ms Brus suggested that Ms Kerrison's specific details would be required.

Ms Brus asked Ms Kerrison had any further issues. Mr Gruber said no. Ms Kerrison raised the issue of her costs in Sydney, the cost of finding alternative employment. Ms Kerrison stated that these costs had been considerable.

Ms Brus replied that Ms Kerrison needed to give greater detail. Ms Kerrison pointed out that her rent in Sydney had amounted to \$30,000 to \$40,000. In addition there were telephone calls between herself and her husband while they have been separated and costs of travel between to Kempsey and Sydney. Ms Brus said that TAFE would require proof of these costs and payment would be considered although no guarantee could be made.

The issue of rectification arose. Ms Brus asked what Ms Kerrison meant by this. Ms Kerrison said that she would like to see her name and other personal details removed from any documents that she had not signed and which had been compiled without consultation with her. Ms Brus raised that this would include taking her name from the court judgment. Specifically, Ms Kerrison wanted her name removed from HealthQuest documents. Ms Brus stated that the documents were now public documents. The Judge based her decision on these. This was different to the case of TAFE documents, produced for TAFE's purposes. Ms Kerrison expressed concern about documents that were offensive and manufactured about her and could lead to someone taking out an AVO against her. Mr Gruber wondered whether a letter of apology or announcement could be issued to satisfy her. Ms Lye pointed out that the

judgment was publicly available on the internet. This was not seen as sufficient by Ms Kerrison or Mr Gruber. Ms Brus stated that their views were taken on notice but it was unlikely that T APE would agree to her request. Ms Kerrison thought it would benefit both parties. She thought it would alleviate any fears that people in her area may have of her. Mr Gruber also suggested it would help her transition back to work. Ms Brus reiterated that their views were taken on notice.

Ms Brus asked if there was anything else that needed to be discussed. Ms Kerrison noted that she needed to be advised about the time of a medical assessment once this was arranged. Ms Brus stated that Mr Cribb would get on to this tomorrow and Ms Lye would notify Ms Kerrison of the details.

Ms Brus discussed that in regards to next Wednesday's mention it might be better to advise the Judge that further discussions were needed. She noted that the Judge may not be inclined to agree to the request. The associate should be contacted and Ms Kerrison may be required to put something in writing. Given the Easter holidays were approaching if the date of 30 April 2003 was acceptable that would give the parties further time to gather the information required, to meet again and for Ms Kerrison to consider her options. Ms Kerrison indicated that the date suited her although she was concerned about her current financial situation. Ms Brus noted that once the medical was done Ms Kerrison could be put back on the pay roll quickly. Ms Brus stated that Ms Lye should contact the Judge's associate tomorrow and see what is required to avoid an unnecessary appearance although this would be dependent on the Judge agreeing to vacate the hearing date. Before determining the date for a further meeting the parties should wait and see how their information gathering proceeds. Ms Kerrison said parties should exchange the information. Ms Brus and Mr Cribb agreed. Ms Brus said that as soon as a clear picture of the finances are available these would be provided so Ms Kerrison could make her decision.

Parties agreed that the minutes should be produced as soon as possible and be distributed to Ms Kerrison.

The meeting concluded at 6.10 p.m.