

BEFORE THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES
IN COURT SESSION

MATTER: 3124/2000

APPLICANT'S SUBMISSION

Valda June Kerrison
Applicant

Technical and Further Education Commission
Respondent

Date: 1 August 2002

Signed:
Applicant

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GENERAL SUBMISSION

A THE APPLICANT'S EMPLOYMENT HAS NOT BEEN TERMINATED

- 1 In her amended application for declarations filed 3 Jan 2001, the applicant Ms Kerrison, has sought a declaration (1)(a) in the following terms:
"That Valda Kerrison is at all times since 1988 has been employed by the Technical and Further Education Commission of New South Wales and its successors."
- 2 Her entitlement to this declaration is founded firstly upon the ground that she was validly and lawfully appointed to a position as a technical teacher within the TAFE Commission pursuant sec 55(5) of the Education Commission Act 1980. Her appointment became full time as of 2 February 1988 and permanent as of 8 May 1989. The Education Commission Act 1980 was superceded by the Technical and Further Education Act 1990 (TAFE Commission Act). Ms Kerrison's appointment was preserved by the savings and transitional provisions under Part 3 clause 8 of the TAFE Commission Act 1990 (Existing staff of Department) Ms Kerrison's employment came to be governed by the provisions of the TAFE Commission Act 1990. (see amended application Ground & Reason 1 and Particulars 1-5)
- 3 There was no dispute from the respondents in these proceedings that Ms Kerrison was lawfully and validly appointed to a full time permanent teaching position under the Education Commission Act 1980 and TAFE Commission Act 1990.

Ms Kerrison deposed to the fact of her appointment to a full time permanent teaching position in paragraph 1 of her affidavit sworn 3 Jan 2001 and accepted into evidence as Ex 2. Paragraph 1 was not challenged or objected to by counsel for the respondents.

Ms Kerrison also deposed more fully to the facts of her appointment to a permanent full time teaching position in paragraphs 8-22.5 of her affidavit sworn 9 Aug 2000 and accepted into evidence as Ex 16

Paragraphs 8-22.5 of affidavit Ex 16 were neither challenged or objected to by counsel for the respondents
(see t/s 27/4/01 p line 15 "Kenzie..We have no objection to paragraphs 1 to 48.2 on page 8 of the materials.)

- 4 Ms Kerrison's entitlement to declaration 1(a) of her amended application is founded secondly upon the ground that her employment as a full time permanent teacher with the TAFE Commission has never been terminated.
These grounds are set out under paragraphs 7-15 Grounds and Reasons of Ms Kerrison's amended application
- 5 The respondent, the NSW TAFE Commission has purported to have somehow terminated Ms Kerrison's employment pursuant sec 20 of the TAFE Commission Act .

i) See **Ex 44** Affidavit of Crown Solicitor Mr Raoul Salpeter sworn 20 October 2000 Paragraph C iv c) "*As a result of the disallowance the applicant's appeal employment has terminated as from that date. (13 Sept 1996) The termination was made pursuant s 20 of the TAFE Act.*"

ii) See also statement to Court by Mr Kenzie t/s 7/12/00 p 8-9

KENZIE The position of TAFE is that TAFE says the employment of Ms Kerrison was terminated at the conclusion of the appeal process

HER HONOUR So I make sure I am understanding what the TAFE Commission is saying, what date does it say the employment came to an end

KENZIE At the conclusion of the appeal process which is September 1996 the date appears

HER HONOUR I'm not sure if that is 3 or 13 in attachment G..I can't read whether it is 3 or 13

KENZIE We may have to turn up a better copy. That is the process which we say pronounced the end of the relationship

HER HONOUR If I am following correctly there is no correspondence from the TAFE Commission to Ms Kerrison following on the letter of 13 September from the Health Department which indicated that a copy of the letter was forwarded to the North Coast Institute of TAFE for attention.

KENZIE **No** (emphasis added)

Both these would have the purported termination in September 1996

- 6 Then the respondent admitted that HealthQuest and the medical appeals tribunal had no capacity to terminate, that it was TAFE.

See statement to Court by Mr Kenzie T/s 7/12/00 P 12 and 13

" HER HONOUR: Stopping you there, you have said the applicant's case is that HealthQuest and the medical appeals tribunal had no capacity to terminate her employment. It is the respondent's position that Ms Kerrison's employment was not terminated by either HealthQuest or the medical appeals tribunal, but by TAFE.

KENZIE: Yes.

HER HONOUR: Presumably that is in accordance with the statutory scheme, which would include delegations, which I think was mentioned in the opening, who terminated the employment. Do you know?

KENZIE: The notification was from Ms Walshaw, the human resources manager, and the evidence

will establish, we will have to take you to the evidence which is in a confused state at the moment but, if at the end of that evidence. there appears to be a serious suggestion that there was no delegation, we will be in a position to deal with that. We assert that it was done with the authority of the director Dr Willmott and in accordance with relevant delegations.

If this had happened, and it did not, it would have put the purported termination in June 1995, in TAFE.

It is submitted that this could not be true because the respondent has not produced evidence that either Dr Willmott or Ms Walshaw carried out any termination process or decision.

Dr Willmott:

EXH 21 Dr Willmott Affidavit at Paragraph 10 *"I have no recollection of sighting the document which is "B" [HealthQuest document headed "Retirement Certificate"] during 1995 but say that it was my usual practice to have Ms Gallagher forward documents to various sections of the Institute after they had been brought to my attention."*

Ms Walshaw:

EXH 19 Walshaw Affidavit Annexure "E" *"I realise that by now you have received your notification of retirement from Healthquest [sic should be "HealthQuest"] and that it was obviously unexpected. I am sorry that I was unable to discuss it with you beforehand but Healthquest [sic should be "HealthQuest"] notified you at the same time as they sent the letter to our office."*

It is further submitted that the respondent has not put into evidence any delegation that would have authorised either Dr Willmott or Ms Walshaw to terminate Mrs Kerrison.

It is also submitted that TAFE could not delegate the power to terminate its employee to either HealthQuest or Medical Appeals Panel

7 WILSON v DEPT EDUCATION AND TRAINING (2000) 100 IR 1

The Full Bench of this Commission (Walton J, Kavannagh J, Bishop C) in their decision *Wilson v Depart Education and Training (2000) 100 IR 1* stated at p 10 of their decision:

"A defendant is not permitted to substitute procedures for statutory or regulatory provisions. Dunford J held in *Ward v Director General of School Education (1998) 80 IR 175* at 179-180

"When there is a statute governing such employment the employer must comply with the terms of the statute which substitutes a

code and displacing the common law and prerogative rights which would otherwise exist but which are inconsistent with the code prescribed by the statute-otherwise provisions manifestly intended for the protection and benefit of an officer would be rendered superfluous, useless and delusive." (emphasis added)

- 8 Applying the above authorities to the present case any purported termination of employment under sec 20 of the TAFE Commission Act must comply with the terms of that statute.

Technical and Further Education Commission Act 1990:

Incapable officer may be retired:

s20. If:

- (a) a member of the staff of the TAFE Commission is **found** [emphasis added] 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.

- 9 Parliament has conferred the power to cause a member to be retired pursuant sec 20 of the TAFE Commission Act upon the TAFE Commission.

Under sec 14 of the Act, the Managing Director of the TAFE Commission is empowered to act in the name of or on behalf of the TAFE Commission

Sec 14 states:

14(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.

- 10 Further there is an express power of delegation under sec 8 of the TAFE Commission Act which relevantly states:

8 (1) The TAFE Commission may delegate to an authorised person any of the functions of the TAFE Commission other than the 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.

.....

(4) In this section "**authorised person**" means

(a) a member of staff of the TAFE Commission, or

(b) a person of a class prescribed by the regulations or approved by the Minister

- 11 Section 8 of the TAFE Commission Act 1990 must be read also in conjunction with sec 49 of the NSW Interpretation Act 1987 which relevantly states:
- (1) If an Act or instrument confers a power on any person or body to delegate a function, the person or body may, in accordance with the Act or instrument, delegate the function to a person or body by name or to a particular officer or the holder of a particular office concerned.
 - (2) A delegation :
 - (a) may be general or limited
 - (b) shall be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for that purpose...
 - (3) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.

**General Principles:
Delegation of Power**

- 12 Auditor General's Report: "The general rule or presumption is that an authority entrusted with a function is required to perform the function itself and not delegate its performance to another "delegatus non potest delegatus"

"In *Carltona Limited v Commissioner of Works* (1943) 2 All ER 560 it was recognised that in certain circumstances, a power vested in a Minister under a statute may "devolve" to some official in the Minister's Department who may exercise that power on behalf of the Minister. Such an official is not a delegate; he or she is an agent and exercises the power not in their own name but in the name of and on behalf of the Minister...However, this doctrine will not apply in a case where the Act in question indicates otherwise (*LS v Director General of Family and Community Services* (1989) 18 NSWLR 481 at 489) It will also not apply where the decision is one which is of such importance that the Minister should make it (*LS supra* at 490; *Livesidge v Andersen* (1942) AC 206 at 224) " (quoted from Auditor General's Report to Parliament 2000 Vol Six Appendix 1 Legal Opinion Crown Solicitor to Auditor General 29 Nov 2000)

13 LS v Director General of FACS (1989) 18 NSWLR 481

In *LS v Director General of FACS* (1989) 18 NSWLR 481 the NSW Supreme Court held (inter alia)

(3) The Minister's purported vesting in a delegate of authority retrospectively was of no effect with respect to the order under review

(Per Young J) The principle that where a power is given by an Act to a Minister, it is to be expected that some other officer in his department will in fact exercise the power the "alter ego" of the Minister was not applicable in view of the presence in the Act of the specific power to delegate and because the consequences of an order under the Child Welfare Act s 46, were so serious that the alter ego principle could not apply".

- 14 The NSW Supreme Court (per Young J) stated at 486

"In my view with an order that restricts the freedom of the subject if and only if certain pre-conditions are fulfilled, the absence of any statement on the fulfillment of the pre-conditions in the order is significant. In my view the order is not valid unless these are stated in the order itself."

CONCLUSION:

Applying all of the above points to the present case:

- ◆ An exercise of power under sec 20 of the TAFE Commission Act has serious consequences for the officer affected
- ◆ There is an express power of delegation under sec 8 of the TAFE Act
- ◆ Only the Managing Director of the TAFE Commission or another officer within the TAFE Commission exercising a valid delegation from the Managing Director in writing or evidenced in writing could cause an officer to be retired under sec 20 of the TAFE Commission Act
- ◆ An exercise of power under sec 20 of the TAFE Commission Act could not be delegated to some person or body outside of the TAFE Commission
- ◆ At the relevant time only the Managing Director of the TAFE Commission or the Institute Director North Coast Institute of TAFE by written delegation from the Managing Director could exercise power under sec 20 of the TAFE Commission Act see Ex 96 Annexure "A" NCIT Manual of Delegations T 137

At no time did the Managing Director of the TAFE Commission make a decision under sec 20 of the TAFE Commission Act to cause Ms Kerrison to be retired see cross examination of Gregor Ramsey t/s 19/6/02 p500 line 39-p501 in which Dr Ramsey expressed his firm belief that he did not make decisions under s 20 of the TAFE Commission Act

T/s p 501 19/6/02

Q. So your understanding is that HealthQuest retired the person, is that correct?

A. HealthQuest as I recall made the decision and then from that point on it was an administrative matter. It was not an issue that I could take any part in if HealthQuest had made a decision.

- ◆ At no time did the Institute Director NCIT make a decision to cause Ms Kerrison to be retired under s20 of the TAFE Commission Act see Ex 96 Applicant's Notice to admit facts filed 16 Nov 2001; and Ex 97 Respondents Notice disputing facts filed 30 Nov 2001 "The respondent admits that no Institute Director signed a document authorising the termination of the Applicant's employment "(para 8,9, 10, 14)

Medical Appeals Panel

Ex 44 Attachment "G"

14. The respondent has put forward 13 September 1996 as a date upon which Mrs Kerrison's employment was purportedly terminated.

All that in fact happened on 13 September 1996 is that a Dr Harley identifying himself as Chairman of the Medical Appeals Panel for NSW Dept Health issues a letter Ex 44 Annexure "G" (this document has not been relied upon by the respondent).

Self-evidently neither Dr Harley nor the chair of the Medical Appeal Panel were persons authorised under sec 8 of the TAFE Commission Act to terminate Mrs Kerrison's employment pursuant to sec 20 TAFE Commission Act. It should also be noted that no person representing the Medical Appeals Panel was called by the respondent as a witness to give evidence. It is submitted that the rule of Jones v Dunkel could be applied to this failure.

The issue of the MAP (Medical Appeals Panel) was considered by the Commission (Patterson CC) in Robert Hopgood v Department of Corrective Services Matter No IRC 1964 of 1995

Mr Hopgood had been declared unfit by HealthQuest to be appointed to a position in the Department despite his proven ability to capably perform the duties. He appealed to the Medical Appeals Panel and the appeal was disallowed, The Commission commented (p 4)on what subsequently occurred:

"So swift was the Regional Office in actioning Mr Hopgood's "termination" that it overlooked the Department's statutory obligations pursuant to s 29 (1)(b) of the Public Sector Management Act which requires inter alia that such annulment could only result from a recommendation made to the Executive Council. Later realising their error, following the Unions intervention it seems Robert Hopgood was then restored to the payroll-pending orderly processing of the annulment to take place"

Invited by the Commissioner for Corrective Services in correspondence dated 7 August to make a submission as to why his probationary appointment should not be annulled Mr Hopgood did so, hearing nothing further until he was advised on 28 September that the Department would be recommending the annulment be carried out."

On 11 October the Executive Council approved the Department's submission and Mr Hopgood's annulment took effect on that date - almost four month's after he had been removed from the job and his initial "termination" aborted,

It was from the decision of the Executive Council that Mr Hopgood took proceedings under the unfair dismissal provisions of the IR Act and had the decision overturned.

Applying the Hopgood decision to the facts admitted by Mr Kenzie 7 Dec 2000 it can be seen that in Mrs Kerrison's case no termination decision has ever been taken by her employer and accordingly she remains an employee still

Commissioner Patterson observed and commented on other aspects of HealthQuest and MAP processes

CONCLUSION FROM THE ABOVE

No decision has ever been made by any person with authority to do so terminated Ms Kerrison's employment under sec 20 of the TAFE Commission Act.

It therefore follows that Ms Kerrison remains legally and validly appointed to a full time permanent teaching position with the TAFE Commission and is entitled upon this ground to declaration 1 (a) in the terms as set out in her amended application

B THE STATUTORY PRECONDITIONS AUTHORISING A TERMINATION UNDER S 20 OF THE TAFE ACT DID NOT EXIST IN THE CASE OF THE APPLICANT

15 Section 20 of the TAFE Commission Act confers a power upon the TAFE Commission to cause a member to be retired but only if the preconditions set out under paragraphs (a) and (b) are first satisfied.

The first precondition as set out in paragraph (a) is

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.." (emphasis added)

To be found to be unfit to discharge or to be incapable of discharging the member's duties requires findings of fact that the member is actually unable to discharge or is incapable of discharging their duties of office.

In the present case the evidence before the Court establishes that Ms Kerrison was in fact capably and satisfactorily discharging her duties of office as a TAFE teacher.

There was no ground for the TAFE Commission to seek termination of her services under sec 20 of the TAFE Commission Act. The pre condition for such an exercise of power as set out in sec 20 paragraph (a) did not exist.

In this regard the Respondents admitted before the Court and also made formal admissions under the IRCr 154 procedure that there was no issue or complaint about Ms Kerrison's performance of duties as a teacher.

See t/s 26/4/01 p 25 line 5-17 & 32-35

HER HONOUR This evidence concerns the circumstances in which Ms Kerrison came to be a permanent employee. There is no issue between the parties is there?

KENZIE No, and over many years Ms Kerrison worked as a teacher and over many years she did that and carried out her teaching duties in circumstances where certainly, as far as the Commission is concerned, we won't be putting any difficulty that arose in relation to Ms Kerrison's performance of teaching duties going back over the many years. There is a lot of material directed to this

KENZIE There is not a skerrick of evidence in relation to Ms Kerrison's actual teaching duties where she has been singled out for criticism in relation to performance of that teaching duty.."

See also Ex 96 Notice admitting facts filed 22 Aug 2001 and Respondents notice disputing facts filed 4 Sept 2001.

The following relevant facts were admitted by Respondents:

- ◆ Fact 25 neither on nor before 17 January 1995 had any line manager raised concerns to Ms Kerrison about her work performance
- ◆ Fact 82 After Ms Kerrison attended HealthQuest she travelled back to Kempsey and continued capably carrying out her duties as a teacher as required by TAFE
- ◆ In response to Fact 82 the Respondent's replied: "82 The Respondent admits that the Applicant travelled back to Kempsey and carried out her teaching duties. The respondent further admits that there were no complaint about the carrying out of her teaching duties on that day."
- ◆ Fact 88 "On or about 16 June 1995 Ms Kerrison was capably discharging the duties of her office as a TAFE teacher (Fact 88 needs to be read with Fact 83 also admitted by Respondent:
83 On the 16 June 1995 Dr E Mandel with Dr Jagger concurring jointly signed a document titled "Retirement Certificate" in the name of Kerrison Val June."
- ◆ In response the Fact 88 the Respondent stated:
88 The Respondent admits that the Applicant was working on 16 June 1995 and further admits that there were no complaints about her carrying out her teaching duties on that day.
- ◆ Fact 95 "95 On the 22 June 1995 Ms Kerrison was working capably fulfilling her duties of office as TAFE teacher setting and administering TAFE examinations to TAFE students.
- ◆ The Respondents stated in reply to Fact 95
95 The Respondent admits that the Applicant was working on that date and that there was no complaint about her teaching duties on that day

See also Ex 16 Ms Kerrison's affidavit sworn 9 Aug 2001 and admitted into evidence 27 April 2001 In paragraphs 49-62 Ms Kerrison set out evidence in relation to her performance of duties during the First semester period of 1995 up until she was instructed by Elizabeth McGregor not to "come in any more" (para 62.1.2)

This evidence was admitted without objection from Counsel for the Respondents (see T/s 27/4/01 page 59 lines 17-18 KENZIE Neither is there objection to paragraphs 49-62.1.2

In paragraph 55 of her affidavit Ex 16 Ms Kerrison deposed "On 23 May 1995 I was performing my duties at TAFE. As part of my duties I promoted TAFE operations to the wider community" The details of Ms Kerrison's efforts to promote TAFE in the wider community are set out in paragraphs 50 & 55-57.

C GIVEN MS KERRISON'S SATISFACTORY PERFORMANCE OF DUTIES THERE WAS NO LEGAL POWER AVAILABLE TO THE TAFE COMMISSION TO REFER HER TO HEALTHQUEST AND NO LEGAL POWER TO SUSPEND HER FROM DUTIES AND SUSPEND HER FROM PAY AND ENTITLEMENTS

- 1 On 17 Jan 1995 the Managing Director of TAFE Dr Gregor Ramsey authorised that Ms Kerrison be referred to HealthQuest. (see Salpeter affidavit) The power for a manager to refer a staff member for medical assessment arises out of clause 27.9 but the precondition for such action is that a performance concern has first been identified and that there is a reasonable ground for believing that there may be a medical cause for the performance concern. Furthermore consideration would only be given to such action after a formal process had been implemented to deal with the performance concern and no improvement had been shown after two discussions. Without first establishing any performance concern clause 27.9 has no application.

In the present case there was no performance concern and therefore there were never any grounds to apply clause 27.9 of the TAFE Enterprise Agreement against Ms Kerrison.

27.5 of the TAFE Enterprise Agreement "Any assessment of unsatisfactory performance should be based solely on job criteria. Performance is unsatisfactory when a staff member consistently fails to meet set work objectives and where objectives are deemed to be fair and reasonable for that staff member.

27.6 When a line manager has concerns in relation to a staff member's performance a discussion is to be arranged. The staff member shall [emphasis added] be provided with details of the concerns in relation to performance...

27.10 Record of discussion

27.10.2 The staff member is to receive and sign a copy of the performance agreement. This will indicate that he/she has received the document and has had the opportunity to comment.

Submission: The staff member is to be allowed natural justice, and this must be evidenced by his/her signature on the record of discussion.

27.11 Work Improvement/decline

27.11.1 If, after the initial discussion, ...

27.12 The Second Discussion

27.13 Work Improvement/Decline

It is after this stage that if the employee's work had declined or was still unsatisfactory that Clause 27.9 *Medical Assessment* may be considered.

27.13.3 If work does not improve and if there are no alternative indications or arrangements which arise out of Clause 27.9 above a fact finding interview in accordance with Clause 29 Discipline Process is conducted.

28 Ms Kerrison was prevented from performing her duties from 27 June 1995 onwards and effectively suspended without pay (around 30 June 1995), then suspended with pay (September 1995) when her ordinary pay was restored, and suspended without pay a second time (April 1996)

The TAFE Commission had no general power or power at common law to suspend Ms Kerrison from her duties either with or without pay. The only source of such power is the power conferred by clause 28.15.1.5 of the Enterprise Agreement.

The pre condition for the employment of the power of suspension however is that a formal charge of breach of discipline has been made against the staff member in accordance with the disciplinary procedures set out under the Enterprise Agreement.

Ms Kerrison has at no time been charged with any breach of discipline. The suspension actions both with and without pay were unauthorised and without legal effect.

CONCLUSION FROM THE ABOVE

No lawful or valid decision has ever been made to suspend Ms Kerrison from her position as a full time permanent teacher with the TAFE Commission. It follows that Ms Kerrison is entitled to a declaration in terms of 1(b) of the amended application restoring all her lost remuneration and entitlements to date (with interest) since on or about 23 June 1995 when she was unlawfully excluded from performing her teaching duties.

NATURAL JUSTICE

a) *When a statute confers power upon a public official to destroy or prejudice a person's rights, interests or legitimate expectations, the rules of natural justice regulate the exercise of that power unless they are excluded by the plain words of necessary intendment."*

Annetts v McCann (1990 170 CLR 596)Mason CJ Deane and McHugh JJ (at 598)

b) The effect of a failure to observe the rules of procedural fairness natural justice is to render a decision void see for example Dixon v Commonwealth

of Australia (1980) 3 ALD 289 where the Fed Court of Australia (Bowen CJ Deane and Kelly JJ) held, inter alia

(a) Where a statute confers power to make a decision affecting the rights, property or legitimate expectations of a person, the rules of natural justice or the standards of fairness recognised by common law will prima facie be applicable...If the applicable rules or standards are not observed it is not relevant to inquire whether or not the decision was a correct one. If that decision adversely affects the rights, property or legitimate expectations of a person denied natural justice, the decision will at least to that extent be void. "

FURTHER SUBMISSIONS

Ms Kerrison's entitlement to declaratory orders 1(a) and (b) is fully supported by the evidence above going to

- (a) the absence of any decision to terminate her employment under s 20 of the TAFE Commission Act and
- (b) the satisfactory nature of her conduct and services

The series of decisions leading to her unlawful exclusion from employment were also infected by denial of procedural fairness, and bad faith/improper purpose.

GROUND - DENIAL OF NATURAL JUSTICE/PROCEDURAL FAIRNESS

The sections of the amended application for declaratory relief filed 3 Jan 2001 relevant to this ground can be found at E (Grounds and Reasons) paragraphs 1, 3(a), 4, 5,13-15 and at F (Particulars) 21,23,25. 41-42 & 49.

EVIDENCE Ex 96 and 97

Formal Admissions

Facts 2, 25, 29, 91, 23

GROUND - IMPROPER PURPOSE, BAD FAITH

It is submitted that the actions and decisions taken by officers of the TAFE Commission instructed by Dr Ramsey through Dr Willmott were infected by improper purpose and bad faith.

It is submitted that the improper purpose was to get rid of Mrs Kerrison because she had lodged credible and incriminating grievances about misconduct within TAFE.

It is submitted that bad faith involved the said officers of the TAFE Commission instructed by Dr Ramsey through Dr Willmott inflicting harm and injury to Mrs Kerrison by discrediting her and therefore her allegations

MISCONDUCT IN TAFE

1. Misconduct of Ms Rhonda Hayes: Confirmation of this misconduct in Ms McGregor's ?? Ex. Confirmation by Audit ?? Ex
2. Inaction of TAFE Management
- 3.

Information on Experts giving evidence

Makita (Australia) PtyLtd v Sprowles (2002) 52 NSWLR 705

The NSW Supreme Court Court of Appeal (Priestly JA, Powell JA, Heydon) JA held "The prime duty of experts in giving opinion evidence is to furnish the trier of fact with criteria enabling evaluation of the validity of the expert's opinion.

at 731-732 (per Heydon JA)

According to Phipson on Evidence at (37-09)-(37-48):

" It became usual for experts to detail the results of an examination before being asked as to their opinions founded therein..

In general, an expert may give evidence in chief as to the grounds on which he has reached his opinion, and it may be said that, without the grounds, the opinion is valueless".....

"The basal principle is that what an expert gives is an opinion based on facts.

Because of that, the expert must either prove by admissible means the facts on which the opinion is based or state explicitly the assumptions as to fact on which the opinion was based. If other admissible evidence establishes that the matters assumed are "sufficiently like" the matters established "to render the opinion of the expert of any value" even though they may not correspond "with complete precision" the opinion will be admissible and material ...One of the reasons why the facts proved must correlate to some degree with those assumed is that the expert's conclusion must have some rational relationship with the facts proved"

..A classic illustration of one type of case in which the principle applies is Ramsey v Watson (1961) 108 CLR 642 „Ramsey and Watson (at 649) also contains the opinion of Dixon CJ, McTiernan J, Kitto J. Taylor J and Windeyer J that if the history is not supported by admissible evidence, then the opinion "May have little or no value, for part of the basis of it is gone." In fact the evidence in Ramsey v Watson was not merely of "little or no value" but inadmissible.,,, The defendant proved that 21 other employees had worked at the Government Printing Office, and a government medical officer testified that they did not have symptoms of lead poisoning. Counsel for the defendant attempted to elicit further evidence from the medical officer concerning what each employee told him of his past state of health. He made it clear that he did not intend to call the 21 men a witnesses. The questions were disallowed. The High Court held that the ruling was proper " it having been apparent that the men would not be called." Underlying the High Court's conclusion must be the proposition that so massive a disconformity between the facts to be assumed on the basis of the 21 histories and the total failure to seek to prove them justified total rejection of the evidence." (emphasis added)

At Page 733

"In R v Turner (1975) QB 834 at 840, Lawton LJ said:

" Before a court can assess the value of an opinion it must know the facts upon which it is based. If the expert has been misinformed about the facts or taken irrelevant facts into consideration or has omitted to consider relevant ones, the opinion is likely to be valueless. In our judgment, counsel calling an expert should in examination in chief

ask his witness to state the facts upon which his opinion is based. It is wrong to leave the other side to elicit those facts by cross examination." (emphasis added)

- Dr Holmes ..was not called by respondents

T/s 3/12/01 p 280

Kenzie: You maintain your denial that you told Dr Holmes that you were suicidal "

Kerrison: Absolutely

Dr Holmes evidence inadmissible and valueless according to principles above

- Dr Mandel-not called by respondent .. evidence inadmissible and valueless according to principles above
- Dr Jagger "no rational relationship between 'opinion' of Dr Jagger, that Ms Kerrison unable to discharge the duties of her office and the facts accepted and admitted by the respondents that Ms Kerrison was discharging those duties
T/s 18/6/02 p 492
"QSo on 16 June you declared that I was unable to teach?
A Unable to discharge of that full office which meant teaching at TAFE in that particular organisation
Q Yet I was
A Yes that's correct
Q And the following days I was
A Yes that's correct

Dr Jagers opinions are valueless

At 487

"Again in the case before Cohen J there was a statement by someone in the department that the Director General had been satisfied of the matter referred to in the section. In the present case there has never been one whit of evidence to suggest that the delegate was satisfied, he does not even include such a statement in his certificate, nor does he give any evidence of it. Accordingly there is no merit in the submissions that it was for the plaintiff to give some evidence to attack a prima facie position which had been adopted by the department in the case before me."

In present case only the Managing Director of TAFE Commission or a delegate appointed by Managing Director under s 8 of the TAFE Act could exercise power under section 20 of the TAFE Act after being satisfied preconditions had been met. There was however no such exercise of power under sec 20 by Managing Director or any delegate appointed under s 8 of the Act to terminate Ms Kerrison's employment and no evidence that the Managing Director or his delegate were ever satisfied of the matters set out in that section.

T/s p 501 19/6/02 Dr Ramsey cross examined on sec 20 of TAFE Commission Act
Q So your understanding is that HealthQuest retired the person. Is that correct?

"A HealthQuest as I recall made the decision and then from that point on it was an administrative matter. It was not an issue that I could not take any part in if HealthQuest had made this decision."

HealthQuest purported retirement certificate was simply passed down [HealthQuest to Dr Willmott to Ms Gallagher to Ms Walshaw] as if it was genuinely certifying to the truth of retirement status, and unable to discharge the duties of office.

Definition of Certificate Ref: Macquarie Dictionary: Certificate ; n a writing on paper certifying to the truth of something or to status, qualification, privileges etc. 2 a document issued to a person passing a particular examination 3 ... 4 Law a statement written and signed which is by law made evidence of the truth of the facts stated for all or for certain purposes." And "Certify; v to guarantee as certain; a writing on paper certifying to the truth of something or to status, qualification, privilege, position."

It was structured by HealthQuest then TAFE administrative staff filled in forms

T/s 18 June 2002 p 489

Q. Is there anything inaccurate on that page other than retirement certificate is not a retirement certificate?

A. It is a retirement certificate. The wording is fine, the wording is placed there for specific requirements of the Superannuation Act for relevant categories of people where that is required.

TAFE Enterprise Agreement

28.15.1.6

Termination of services can follow as a last resort. It is necessary to give the minimum period of notice of termination consistent with award conditions.

28.16 *Criminal Offences*

28.16.1 Where arising out of the investigations of a disciplinary matter, there is reason to believe that a staff member may have committed a criminal offence, the matter should be referred to the Police. In such cases the Institute Director/Manager ought only to investigate sufficiently to form this view leaving further investigation to the Police. Investigating Police should be asked to forward a Brief of Evidence or report to the Commission sufficient to enable a decision to be made as to action to be taken.

27.3 Managers have a responsibility to ensure that performance concerns are dealt with in a timely, equitable and effective manner.

27.5 Any assessment of unsatisfactory performance should be based solely on job criteria Performance is unsatisfactory when a staff member consistently fails to meet set work objectives and where objectives are deemed to be fair and reasonable for that staff member.

27.6 When a line manager has concerns in relation to a staff member's performance a discussion is to be arranged. The staff member shall

[emphasis added] be provided with details of the concerns in relation to performance...

27.10 Record of discussion

27.10.2 The staff member is to receive and sign a copy of the performance agreement. This will indicate that he/she has received the document and has had the opportunity to comment.

Submission: The staff member is to be allowed natural justice, and this must be evidenced by his/her signature on the record of discussion.

27.11 Work Improvement/decline

27.11.1 If, after the initial discussion, ...

27.12 The Second Discussion

27.13 Work Improvement/Decline

It is after this stage that if the employee's work performance was determined to have declined that or was still unsatisfactory that Clause 27.9 *Medical Assessment or Discipline Process* may be considered as shown in 27.13.3 "If work does not improve and if there are no alternative indications or arrangements which arise out of Clause 27.9 above a fact finding interview in accordance with Clause 29 Discipline Process is conducted."

FURTHER RELEVANT POINTS

Of particular relevance to this case are:

- All of Ex 42, Health Care Complaints Commission letter to Mrs Kerrison (and others) re Dept Health inquiry. It includes on Page 2 *"Whilst the review won't necessarily resolve your particular concerns, as it will focus on systems and processes, it is anticipated that actions arising from the review will benefit people referred to HealthQuest in the future."* So, despite public inquiry this does not provide any remedy for Mrs Kerrison, only benefit for others.
- All of Ex 43, HCCC Annual Report 2000/2001. Despite the Department of Health's report confirming the concerns raised, this also does not provide remedy for Mrs Kerrison.
- Ex 3 Attachment "3" Australians For Reconciliation to NCI TAFE; and Ex 3 Attachment "4" NCI TAFE reply to Australians for Reconciliation These show TAFE spreading the "medically retired" concept that it generated, and all the inherent implications of incapacity to potential employer/s of Mrs Kerrison
- The Applicant, Mrs Kerrison has been severely disadvantaged in that in June 1995 TAFE stopped her pay and she was without any income. Although she was able to access pay again a couple of months later it was suddenly stopped again in April 1996 (See ex 14 and ex 31). Mrs Kerrison testified that she had asked to be allowed to return to her duties but Ms Walshaw refused, and then stopped her pay (See ex 14).

But not only was she was without income, but it was worse than that - TAFE claimed that they had somehow, taken all of her accrued extended leave (See ex34). The extended leave that she had accrued and saved disappeared.

She did not have income sufficient to pay lawyers such as Mr Szekley and Ms Turco.

Then, in 1998 TAFE severed (and backdated) superannuation responsibilities without telling Mrs Kerrison what they were doing See Exs 3(13), 38,35,36. The first that she knew was Ex 37. This was a further unforeseen blow. Which is the crux of this matter -- TAFE did not tell Mrs Kerrison before they made decisions that drastically effected her.

Under the Enterprise Agreement these actions are not supposed to happen, but they did. Mrs Kerrison has paid dearly for TAFE officials' actions while the officials themselves seemingly have not.

- Her home and workplace is in Kempsey, but she is here in Sydney working and trying to address this.
- Mrs Kerrison has endeavoured to obtain assistance throughout these years, in TAFE and outside to the highest levels (See ex 4 Attachments , "3", "4" and "6",

and ex 79, Ex 3 Attachments "11" and "12", ex 15), and when she tried TAFE joked. See ex 4 Attachment "5" with its insertion "The Pope".

It is submitted that the TAFE Enterprise Agreement (the Agreement) by itself does not perform functions, its integrity is shown in its application.

The Agreement, at 6 *Statement of Intent* states "*The parties agree to the implementation of the processes necessary to ensure that mutual benefits are derived from the Agreement.*" .

Dr Ramsey as signatory to the Agreement informed the court that it is binding (T/s 19/6/02 Page 511).

The union is the other signatory (Mr Hennessey of the NSW Teachers Federation) Its lawyers filed this matter in 2000 i.e. 5 years after the HealthQuest action. The union now only appears in the respondent's case (See ex 19 Attachment "L" Ms Walshaw's affidavit).

- It is submitted that TAFE receives public money to perform its statutory functions and apply its policies, and has its own Legal Services Unit to interpret law the Enterprise Agreement and apply it to TAFE actions. It is submitted that TAFE's Legal Officer Mr Peter Cribb, in ex 4 Attachment "3" and Ex 4 Attachment "4" exchanges emails with NCI TAFE about Mrs Kerrison -- not to address issues and apply the Enterprise Agreement but to chat about Mrs Kerrison's continued requests for an inquiry and circulate as 'fact' the false words "Val Kerrison's threat to use a gun" [breach OH&S Act S52A.(1)].
- This leaves the Court having to do TAFE's inquiry. And there has been no question asked in court, or answer given that could not have been asked and given in a proper TAFE inquiry at any time in the past 9 years.
- It is submitted that TAFE and Mrs Kerrison knew when her pay was recommenced (September 1995) and stopped again (April 1996) that she had not been retired. It is submitted that Mrs Kerrison has been in employment limbo, not knowing if an official in TAFE or one of the changing Director/s and Managing Directors would commence action according to the Enterprise Agreement or not.

NOW it has come to court as a mass of documents which were hidden from Mrs Kerrison at the time, and decisions made without her knowledge or input. It is submitted that most of the documents before the court would not have been written if there had been better application of the Enterprise Agreement applied to Mrs Kerrison's work conditions.

CONCLUSION

The evidence shows that the circumstances were such that TAFE should have paid particular attention to its obligations under the Technical and Further Education Commission Act and the Enterprise Agreement and their failure to do so should incline the Commission to granting the declarations.

The TAFE Commission had alternative options other than the HealthQuest option.

At any time it could have offered redundancy or even redeployment if it wished Mrs Kerrison out of TAFE -- but did not. It is submitted that these would have been cheaper than the costs of the last 7 years. On many occasions during these years Mrs Kerrison has been without any income whatsoever, but not knowing what decisions were being made in TAFE and therefore not knowing what her options were.

Submission - Ms Gallagher

Transcript 18 June 2002 Pages 477 - 480

SUBMISSION: Ms Gallagher did not terminate Mrs Kerrison's employment

SUBMISSION - Dr Jagger

Transcript 18 June 2002 Cross-examination of Dr Jagger Page 483 Lines 20-27

SUBMISSION: Dr Jagger admits that she performed a medical process. Dr Jagger admits that she did not obtain informed consent to perform a medical process. It is submitted that Dr Jagger's colleagues in their day-to-day activities did not obtain informed consent to perform any medical process on the subjects. See also Exs 42 and 43

Transcript 18 June 2002 Cross-examination of Dr Jagger Page 486 Lines 26-31

SUBMISSION: Dr Jagger knew she could not have the power to actually retire. It is submitted that Dr Jagger did not retire Mrs Kerrison.

Transcript 18 June 2002 Cross-examination of Dr Jagger Page 487 Lines 20-26

SUBMISSION: It is submitted that Dr Mandel and Dr Jagger breached Privacy Principles See Ex 86

Transcript 18 June 2002 Cross-examination of Dr Jagger Page 487 Lines 41-52

SUBMISSION: Dr Jagger knows that she did not obtain informed consent to collect 'information' or pass on 'information' about Mrs Kerrison.

Transcript 18 June 2002 Cross-examination of Dr Jagger Page 485 Lines 36-54

SUBMISSION:

Dr Jagger admits that she has never met Mrs Kerrison; therefore it is submitted that either she signed what someone (other than Mrs Kerrison) suggested.

Dr Jagger admitted that Mrs Kerrison may have been carrying out her duties while Dr Jagger was writing her words therefore it is submitted HealthQuest do not base their "retirements" on capacity to perform duties.

It is submitted that by purchasing a purported retirement certificate TAFE circumvented the Enterprise Agreement.

It is submitted that Dr Jagger wrote her words without relevant facts (Mrs Kerrison's standard of performing her duties).

It is submitted that Dr Jagger supplied the service which TAFE suggested/requested in Ex 10 and attachments to Ex 79 -- ie that 'retirement' be purportedly applied to Mrs Kerrison (the subject's) name by a medical practitioner.

It is submitted that the Enterprise Agreement could not have applied the psychiatric label to Mrs Kerrison's name and thereby discredit her reputation and her allegations, and jeopardise future work opportunities.

Transcript 18 June 2002 Cross-examination of Dr Jagger Page 491 Lines 46-49

SUBMISSION: HealthQuest operate on a fee-for-service cost recovery basis.

Transcript 18 June 2002 Cross-examination of Dr Jagger Page 490 Lines 40-42

Q. They simply sent another human being to submit to some process, is that correct?

A. Yes that's correct.

SUBMISSION: Dr Jagger admits that employers send another human to submit to a process.

Transcript 18 June 2002 Cross-examination of Dr Jagger Page 483 Lines 29-32

Q. The issues that they were demonstrating about, was that to do with practices that happened in HealthQuest to its employees [sic not "its employees" should be "whistleblowers" (Ref public record)]?

A. Yes.

SUBMISSION: It is submitted that HealthQuest issued/sold so many purported retirement certificates against whistleblowers that public demonstrations occurred.

Transcript 18 June 2002 Cross-examination of Dr Jagger Page 487 Lines 32-39

A. I didn't personally but the usual process was that the examining doctor would go through what documentation was there on the file with the subject so they were aware of what was there and also we very strenuously encouraged employers to fully disclose that before they referred the person to HealthQuest.

SUBMISSION: It is submitted that HealthQuest staff, including Dr Mandel and Dr Jagger did not even attempt to encourage employers to fully disclose because she knew that only she knew what she was writing on Attachment "C" and she, herself, did not disclose what she was writing and applying to Mrs Kerrison. See Exs attached to Dr Jagger's affidavit, including Ex 20 Attachment "C"

"NB Advised to reassure coworkers that threats of self harm and violence to others do not appear based on serious mental illness therefore deal with this in the "normal" manner ie re suicide – "discuss this with your doctor" - re violence "stop or we'll take increasing protective action via police". and Ex 20 Attachment "D" Holmes document.

also;

Ex 10 "...if she's not medically retired..." ,

Ex 11 "...very suicidal"; and of course

Ex 44 Attachment "D" TAFE letter to HealthQuest 1 May 1995.

Submission re Ms McGregor

Transcript 18 June 2002 Respondent's examination of Ms McGregor Page 443 Lines 35-37

Q. In relation to these proceedings, Mrs McGregor, did you depose to an affidavit on 24 April 2001?

A. Yes - I will check that date, yes.

SUBMISSION:

It is submitted that Ms McGregor checked the date of the affidavit on this day, but at other times wrote conflicting statements when she could have checked their accuracy and truth before writing.

In her affidavit of 24 April 2001 [EXH 23]

Paragraph 11 "Sometime in August or September 1994 I believe that an investigation into Ms Kerrison's complaints (of which I was never given a copy) was finalised and a report produced...

SUBMISSION:

In 1993 Ms McGregor was Manager of Kempsey TAFE

During this time Mrs Kerrison and other teachers made complaints to Ms McGregor about TAFE teacher Ms Rhonda Hayes when they occurred.

On Page 6, Paragraph 31 of Ms McGregor's affidavit Ms McGregor swears that "I had asked Ms Kerrison to put her complaints in writing but this was not done."

It is submitted that this statement is false because on 10 May 1994, [EXH 92], Paragraph 5, Line 13, Ms McGregor's Statement in the Matter to GIO Ms McGregor states in part:

"Val submitted a lengthy document outlining examples of this behaviour dating back into the eighties. That was about August 1993."

Report: "Background to Complaints re Rhonda Hayes"

In Ms McGregor's affidavit EXH 23, Attachment "B" is a report entitled "Background to Complaints re Rhonda Hayes" written by Ms McGregor circa early October 1993

In Paragraph 31 of Ms McGregor's affidavit Ms McGregor swears that: "Ms Kerrison in paragraph 14 of her affidavit of 3 January 2001 ... omitted the heading to my notes, which gives them meaning and context.

SUBMISSION: It is submitted that Mrs Kerrison's notes refer in the heading to 'complaints': EXH 2 Paragraph 14 of Mrs Kerrison's affidavit states:

"14 This report, entitled "Background to Complaints re Rhonda Hayes" was written by Ms McGregor around October 1993 in response to TAFE students' complaints to TAFE Managing Director Dr Gregor Ramsey."

It is submitted that with Ms Kerrison's affidavit to refer to, and quoting the paragraph number, Ms McGregor's testimony against Mrs Kerrison to the Court should not be relied upon.

SUBMISSION: It is submitted that Ex 47 Paragraph 4 and Ex 48 Paragraph 4 show that Mrs McGregor could address grievances/issues as and when they occurred and in an open honest way, and within the timeframe as set down in the Enterprise Agreement -- if she wished to.

Transcript 11 September 2001 [Cross-Examination of Applicant] Page 159 Line 33 to Page 160 Line 2

SUBMISSION: It is submitted that Ms McGregor wrote that she can't move on the basis of allegations which are only anecdotal but then states that she has anecdotal evidence from other sources which corroborates what Ms Kerrison charges. The inference which can be drawn from this is that Ms McGregor did at the time have sufficiency of information on which to act but rather she refused to act.

It is submitted that a further inference which can be drawn from this is that Ms McGregor was concealing from Ms Kerrison that she was aware of the extent of the problem, and that the students' and Ms Kerrison's reports were merely showing the "tip of the iceberg", but refused to act, and refused to inform Ms Kerrison that she was aware and understood the problem; choosing instead to require Ms Kerrison to explain and explain again.

In Paragraph 31 of Ms McGregor's affidavit Ms McGregor swears that: "This was a reference to complaints made by Ms Kerrison and by Ms J Hayes... "

It is submitted that in her report "Background to Complaints re Rhonda Hayes", on Page 3 at the top Ms McGregor has written "...these students' complaints..." indicated a number of student complaints having evidently been sent to Dr Gregor Ramsey (then TAFE Managing Director).

In Paragraph 31 of Ms McGregor's affidavit Ms McGregor swears that "...these were written by me ...to enable the preparation of a response to a Ministerial complaint."

It is submitted that Dr Ramsey is not a 'Minister'.

Tape Recorder

In her affidavit [EXH 23] Ms McGregor:

in Paragraphs 9 and 10 swears that: "I [McGregor] recall that on her [Kerrison's] first day back at work she raised an incident with me concerning Ms R Hayes where she [Kerrison] claimed that Ms R Hayes had deliberately removed a tape recorder so that Ms Kerrison would not have access to it.

In Paragraph 19 on Page 4, Ms McGregor swears that "...Ms Kerrison mentioned that Ms R Hayes had taken the recorder..."

EXH 29, Mrs Kerrison's affidavit of 4 September 2001 Paragraph 122-122.4 gives Mrs Kerrison's version.

SUBMISSION: It is submitted that the letter EXH 28, 12 July 1994 Kerrison to McGregor substantiates Mrs Kerrison's evidence.

It is submitted that EXH 28 was an approach by an employee on a work-related issue and therefore a grievance in accordance with TAFE's Grievance Policy [See Enterprise Agreement Section 32.2. Definitions, and Section 32.2.1-32.2.1(e) Grievance. It is submitted that the grievance was not addressed.

Mrs Kerrison's Leave 12-18 April 1995

In her affidavit [EXH 23] Ms McGregor, in Paragraph 22, swears that in March or early April 1995 Mrs Kerrison handed her some paper work for the next 2 weeks.

Mrs Kerrison, in her sworn testimony gives her version, quotes the days relevant and in testimony stated that it was for one week only 12-18 April 1995.

It is submitted that the respondents hold this document and could have even sent someone to fetch it and produce it if it supported their case, but did not.

It is submitted that Ms McGregor is still in TAFE and could have checked and corrected her testimony before swearing it and giving it to the Court but did not do so.

The inference drawn is that Mrs Kerrison's testimony was accurate and the production of the document/s in court would have shown Ms McGregor's testimony to be wrong. It is submitted that Mrs Kerrison's testimony should be preferred to Ms McGregor's.

Ms McGregor's Allegations of 'Concerns' re 'Safety' and 'OH&S'

In her affidavit [EXH 23] Ms McGregor, in Paragraphs 19-21, swears that she believes in "late February or early March [1995]" that she had concerns and felt "unsafe".

Ms McGregor does not produce an OH&S report to substantiate there being a genuine OH&S issue at that time. The inference is that Ms McGregor did not believe or act as if there was any OH&S issue in relation to Mrs Kerrison either at that time (February-March 1995) or afterwards.

It is submitted that the level of ludicrousness of Ms McGregor's, Ms Robison's, Mr Quinn's, Ms Walshaw's claims against Mrs Kerrison is shown in 4 December 1995 [EXH 89] McGregor Statement in Matter of Valda Kerrison, at Page 3 lines 13-14 Mrs McGregor states:

"Nonetheless Val's behaviour did not exhibit any outward signs of aggression." [4.12.95]

Mrs Kerrison gives her version throughout her testimony and affidavits. It is submitted that Mrs Kerrison's testimony should be preferred to Mrs McGregor's.

Sick Leave 1994

In her affidavit [EXH 23] Ms McGregor, in Paragraph 6, swears that "In May, June and part of July 1994, I [McGregor] recall that Ms Kerrison was absent on sick leave ..."

It is submitted that Ms McGregor could have checked her sworn statement for accuracy, but evidently did not choose to do so. The respondents have not produced any request for sick leave by Mrs Kerrison for sick leave applicable to July 1994.

TAFE Grievance Process

In her affidavit [EXH 23] Ms McGregor, in Paragraph , swears that "Ms Kerrison was required to and agreed to utilise the departmental grievance procedures..."

It is submitted that Ms McGregor received grievances from Ms Kerrison but only addressed them if and when she [Mrs McGregor] chose.

In her affidavit [EXH 23] Ms McGregor, in Paragraph 14, swears that she was "aware that Ms Kerrison appeared unhappy about the results of the investigation into her complaints... "

TAFE's Enterprise Agreement, Grievance Policy at 32.3.1 is applicable. Ms McGregor failed to follow the grievance process.

"Memorandum of Understanding"

In EXH 89 4 December 1995 Ms McGregor's "Statement in Matter" for GIO, on Page 2, Line 24, Ms McGregor states "Following these meetings the Director drafted a 'memorandum of understanding' which was signed by both parties [Kerrison and Hayes]. In this memo each agreed to reunite the Section, to work together and to access any grievances appropriately."

In her affidavit [EXH 23] Ms McGregor, in Paragraph 12, Ms McGregor swears that "As a result of these meetings, both teachers signed a memorandum of understanding."

It is submitted that this alleged document has been repeatedly requested under FOI, called for in the court, and summonsed to be produced by the Applicant, but none has been produced - no such document signed by either Mrs Kerrison or Ms Hayes. It is submitted that it is not likely that both (if such ever existed) would have been missing.

Ms McGregor should have made accurate testimony but made vague [evasive?] allegations

Ms McGregor is still in TAFE and could have checked and corrected her affidavit before submitting it but instead made vague unsubstantiated statements:

Medical Assessment

In her affidavit [EXH 23] Ms McGregor, in Paragraph 25, originally swore that "As a result of this and previous incidents and her apparent need for sick leave, I notified the Institute office and recall I suggested that an independent medical assessment of Ms Kerrison should take place."

Ms McGregor then changed her affidavit to read "recurrent need ..." evidently to 'fit'.

Then in the witness box on 18 June 2002 Transcript Page 444 Cross-examination of Ms McGregor, Lines 11-15 changed her story to "appears" again.

"A. I guess no. I was asking for advice about what happens when it appears somebody needs a medical assessment.

SUBMISSION: If Mrs Kerrison had ever "appeared" sick at Kempsey TAFE Ms McGregor could acted as in OH&S; i.e immediately speak to Mrs Kerrison, but did not.

TAFE Enterprise Agreement, at 27.9 "Medical Assessment; and 27.9.1 "If either the manager or staff member believe, on reasonable grounds, that there are medical reasons which might be the cause of the performance concern, a medical assessment may be arranged."

And TAFE Enterprise Agreement, at 27.5 and 27.6 states: "Any assessment of unsatisfactory performance should be based solely on job criteria. Performance is unsatisfactory when a staff member consistently fails to meet set work objectives and where those objectives are deemed to be fair and reasonable for that staff member. When a line manager has concerns in relation to a staff member's performance a discussion is to be arranged. The staff member shall [must] be provided with details of the concerns in relation to performance...

It is submitted that Ex 3 Attachment "4" shows there was not any performance concern, therefore the first criteria/step to medical assessment was not achieved by Ms McGregor.

It is submitted that Ms McGregor, as at 14 May 1995 did not know about the "Fitness to Continue" assessment which the Institute had commissioned on 1 May 1995 because Ms McGregor's affidavit, [EXH 2] in its Attachment "A" is the handwritten note McGregor to Val where Ms McGregor refers to "Workers' Compensation/Rehab" i.e. did not know of 'Fitness to Continue'

It is submitted that Ms McGregor's name was not on 9 September 1994 [EXH 95] between Ms O'Sullivan and Dr Willmott which broached "Option 1: This option may result in stress related leave by Ms Kerrison. However, this in the long term, may better position the Institute to refer Ms Kerrison to the Government Medical Officer for assessment. Such intervention may be invaluable in assisting in the stabilisation and well being of this officer."

It is submitted that Ms McGregor was, at that time, Manager Kempsey TAFE, and not part of the group communicating/proposing/authorisation of the HealthQuest process including that Dr Ramsey had authorised it in January 1995 (See Ex 44), therefore Ms McGregor did not know of the HealthQuest process. As late as 14 May 1995 Ms McGregor did not know of HealthQuest to refer to it in EXH 2 Attachment "A".

It is submitted that consistent with this, on 18 June 2002 Transcript Page 443 Line55 to Page 445 Line 6 Cross-examination of Ms McGregor

SUBMISSION: It is submitted that Ms McGregor, after various vague guesses, failure to remember, then went into a purported OH&S reason i.e. she didn't know what she was supposed to say for the respondent's

case. Also, Ref 4 December 1995 [EXH 89] McGregor Statement in Matter of Valda Kerrison, at Page 3 lines 13-14 Mrs McGregor states:

"Nonetheless Val's behaviour did not exhibit any outward signs of aggression." [4.12.95]

Additionally, Transcript 18 June 2002 Cross-examination of Ms McGregor Page 463 Line 51 to Page 464 Line 12

It is submitted that Ms McGregor's testimony against Mrs Kerrison should not be relied upon.

Transcript 18 June 2002 Cross-examination of Ms McGregor Page 446 Lines 13 to 56

SUBMISSION: It is submitted that in light of this and the above that Ms McGregor's testimony against Mrs Kerrison is not credible and should not be relied upon.

Transcript 18 June 2002 Cross-examination of Ms McGregor Page 451 Line 54-page 452 line10

Q. So during my time in TAFE you did not hold in any of your files any documents which referred to threats to personal safety at Kempsey campus or threats to your personal safety?

A. I can't remember. There were times when I began to keep copies of things because one of the things that was happening between you and I was that you would come and talk to me about various things and then it would be verbal and then come some weeks or some months or whatever later you would come and ask me specifically about it and I was finding that you would have really specific times and dates and so forth whereas I would not and it was difficult for me so I began, you know, perhaps noting dates in my diary, those sorts of things, but my diary doesn't end up on a file.

Transcript 18 June 2002 Cross-examination of Ms McGregor Page 468 Lines 49 to 55

SUBMISSION: Ms McGregor states that she was "perhaps noting dates in my diary". It is submitted that Ms McGregor does not have any dates of her alleged concerns or anyone else's. It is submitted that Ms McGregor cannot produce any record whatsoever of all the claims she has made; the inference is that Mrs McGregor made up her allegations later. It is submitted that Mrs McGregor did not have any dates for any alleged 'concerns' with Mrs Kerrison or her behaviour/demeanor at any time because, consistent with EXH 3 Attachment "4" Mrs Kerrison's behaviour/demeanor/performance of duties was satisfactory at all times.

Transcript 18 June 2002 Cross-examination of Ms McGregor Page 447 Line 4 to Page 448 Line 7

SUBMISSION: Ms McGregor admits that she could have checked the statements she swore to in her affidavit. Other testimony, both oral and including EXH 24 Mr Quinn's affidavit show the leave commenced in March 1994.

It is submitted that Ms McGregor's testimony should not to be relied upon.

Grievance Policy

Transcript 18 June 2002 Cross-examination of Ms McGregor Page 449 Line 1 to Page 450 Line 32

SUBMISSION: It is submitted that Ms McGregor's evidence against Mrs Kerrison should not be relied upon. It is submitted also that Ms McGregor allowed grievances to accumulate when she wished and this caused Mrs Kerrison harm.

Fabrication of allegations/evidence

Transcript 18 June 2002 Cross-examination of Ms McGregor Page 450 Line 33-40

Q. Mrs McGregor, have you ever been part of fabricating allegations or documents against me?

A. Not at all.

Q. Are you aware of anyone else who may have fabricated allegations or documents against me?

A. No.

Transcript 18 June 2002 Cross-examination of Ms McGregor Page 451 Lines 22-52

Q. Ms McGregor, from my understanding you said you have never been part of compiling or fabricating allegations against me?

A. Yes.

Q. Have you ever been part of compiling or filing documents with allegations about me?

A. No. I guess I don't see these as allegations. I am providing background information to people who have delegated duties to me to carry out and/or respond to. People report to me about issues that they have raised.

Q. Ms McGregor, have you ever maintained an unofficial file in TAFE?

A. I guess I see everything that is recorded as part of my job in TAFE as officially belonging to TAFE. Our records management systems are probably not perfect and there are times when there are documents in transit that have not yet been put on relevant files. If information is requested that is perhaps sitting in my office then I make it available but we are working with our files so, yeah, there are often documents in transit I guess.

Q. But documents in transit most of them would be in the official files, is that correct?

A. Generally, yes.

Q. Have you ever maintained a file in TAFE that had allegations against me about threats to personal safety, threats to personal safety, things like that?

A. No, no.

Transcript 18 June 2002 Cross-examination of Ms McGregor Page 452 Line 12 to Page 453 line32

SUBMISSION: Ms McGregor does not recall seeing these documents while Mrs Kerrison was in TAFE [up to late June 1995] yet they bear purported dates of April 1995. It is submitted that these documents were fabricated as 'evidence' for originally the AntiDiscrimination Board, and now used as purported 'evidence' to the Industrial Relations Commission

Possible Collusion between Ms McGregor and Ms Walshaw in fabrication of evidence

Transcript 18 June 2002 Cross-examination of Ms McGregor Page 459 line 54 to page 462 line 51

SUBMISSION: It is submitted that Mrs McGregor knowingly made and received fabricated 'evidence'.

Transcript 17 June 2002 Cross-examination of Ms Walshaw Page 431 Lines 26-35

Q. So you are basing your evidence on what you were told.

A. I'm basing it on an affidavit.

Q. Not from personal experience?

A. I was not involved in the motion, no, and that can be the only personal experience.

Q. You read the affidavit and from that that is evidence to you?

A. Yes.

It is submitted that Ms McGregor fabricated allegations, passed them to Ms Walshaw who attempted to pass it off as her sworn evidence. It is submitted that the testimony against Mrs Kerrison of these two witnesses should not be relied upon.

Purported Retirement

In her affidavit [EXH 23] Ms McGregor, in Paragraph 28, swears that "...it is possible that ... I did say words to the effect of "you are medically retired" and "you do not come back to work"...

In her next paragraph, (Paragraph 29) Ms McGregor then makes conflicting testimony by referring to the alleged [certificated] retirement as being a "recommendation"

It is submitted that it can't be both.

TAFE process to address issues

Transcript 18 June 2002 Cross-examination of Ms McGregor Page 470 Lines 20-27

Q. I put it to you that instead of addressing issues of victimisation and discrimination in TAFE, the managerial process was to cause stress to initiate a worker's compensation claim then use HealthQuest to obtain a purported retirement certificate?

A. That was never, never my intention. I would have loved for all of us to be able to work together, to resolve it.

SUBMISSION: Ms McGregor does not deny the process, simply states it was not her intention.

Mrs Kerrison's Performance of Duties

In her affidavit [EXH 23] Ms McGregor, Page 3, Paragraph 14, swears that "Ms Kerrison continued to perform her duties."

21 October 1999 [EXH 3 Attachment "4"] TAFE to Australians for Reconciliation
"There is no report on Ms Kerrison's personnel file that indicates that their services were other than satisfactory"

Missing information and files

Transcript 11 September 2001 [Cross-examination of Applicant]

Transcript 3 December 2001 [Cross-examination of Applicant] Page 270 Lines 27-52

Transcript 4 December 2001 [Cross-examination of Applicant] Page 302 Lines 8 - 24

SUBMISSION: It is submitted that Ms McGregor did not address some grievances particularly in relation to Ms Hayes. That instead of addressing them with Ms Hayes she required Mrs Kerrison to travel to Wauchope and photocopy their files. It is submitted that Ms McGregor looked after herself and Ms Hayes to Mrs Kerrison's detriment.

Transcript 4 December 2001 Page 353 Line52-Page 354 Line 46
Applicant Re-examination

SUBMISSION: It is submitted that Ms McGregor admitted that Mrs Kerrison had been threatened with danger in TAFE, and this would be likely to be remembered by her because she had been party to it at least 3 times, but only admitted it when she thought that Mrs Kerrison was retired - gone from TAFE and couldn't do anything about it.

Submission - Mr Quinn

Transcript 20 June 2002 Cross-examination of Mr Quinn Page 581 Lines 42-58

SUBMISSION:

Although this document bears the date 11 April 1995 it apparently did not exist in 1995, nor, apparently is it truthful.

- a) Under cross-examination Mrs Kerrison did not see it in April 1995.
- b) However, in late 1995 Mrs Kerrison informed TAFE that she had lodged a complaint of victimisation to the AntiDiscrimination Board Exs 19 Attachment "M" and 19 Attachment "O".
- c) After that, TAFE would be aware that they could need evidence
- d) Under cross-examination (Transcript 20 June 2002 Page 581, Lines 42-58 Mr Quinn did not recall actually telephoning 'a couple of times' on 10 April, nor did he recall phoning Mrs Kerrison at home or on subsequent days either.

It is submitted that Mr Quinn did not telephone at all, that Ms McGregor fabricated this document as 'evidence' to mislead court.

Transcript 20 June 2002 Cross-examination of Mr Quinn Page 576 Line 49 to Page 577 Line 5

SUBMISSION: TAFE, by not contacting Mrs Kerrison for some weeks, did not apply best rehabilitation process or endeavour to quickly return Mrs Kerrison to her job in Kempsey TAFE. Mrs Kerrison had lodged a grievance and TAFE managers in Kempsey, Port Macquarie, and Managing Director in Sydney knew.

Transcript 20 June 2002 Cross-examination of Mr Quinn Page 578 Line 17 to Page 579 Line18

SUBMISSION Mr Quinn as OH&S Officer for the institute did not check his allegations about guns etc before he wrote them about Mrs Kerrison. Nor did he take OH&S action such as speak to Mrs Kerrison and allow her to try to protect herself from false allegations of potential homicide/suicide. Eventually these allegations caused Mrs Kerrison harm, and still do. The implication is that Mr Quinn knew that there was no OH&S issue to address, that leaves the only purpose of his writings was to cause Mrs Kerrison harm.

It is submitted that Mr Quinn's testimony against Mrs Kerrison is not to be relied upon.

Transcript 20 June 2002 Cross-examination of Mr Quinn Page 580 Lines 13-36

SUBMISSION: It is submitted that Mr Quinn did not put Mrs Kerrison's name on these documents because after she had notified TAFE she had lodged a complaint with the AntiDiscrimination board he knew she was going to see them. It is submitted that the statements cause her harm and are not

substantiated; that Mr Quinn was avoiding possible defamation action at the time he wrote them i.e. after 1995 but "dated" April 1995.

It is submitted that Mr Quinn fabricated 'evidence'. and that Mr Quinn's affidavit and testimony against Mrs Kerrison is not to be relied upon.

Transcript 20 June 2002 Cross-examination of Mr Quinn Page 580 Line 49 to Page 581 Line 41

SUBMISSION:

It is submitted that Mr Quinn as OH&S Co-ordinator for the North Coast Institute freely wrote and circulated OH&S allegations about Mrs Kerrison without her knowledge or right of rebuttal.

It is submitted that Mr Quinn did not address any purported OH&S issue but caused Mrs Kerrison harm - the implication is that the purpose was to cause her harm.

It is submitted Mr Quinn and others did not allow procedural fairness before they decided to write their documents and take actions.

It is submitted that they had alternatives such as provide Mrs Kerrison with a safe workplace, and follow the Enterprise Agreement, yet they chose actions that harmed Mrs Kerrison.

It is submitted that the meaning of the words "sensitivity" and "support" as used by TAFE managers including Dr Gregor between each other may be only be known and understood by them.

Transcript 20 June 2002 Cross-examination of Mr Quinn Page 581 Lines 43-58

Q. (Shown Exhibit 88)

SUBMISSION. It is submitted that Mrs McGregor fabricated this document, and as it has been used as 'evidence' of adequate rehabilitation support the implication is that it was fabricated to be used as purported evidence thus showing Mrs McGregor's knowledge that the rehabilitation support to Mrs Kerrison was not adequate.

Transcript 20 June 2002 Cross-examination of Mr Quinn Page 583 Lines 32-51

SUBMISSION:

It is submitted that Mr Quinn as OH&S Co-ordinator for the North Coast Institute freely wrote and circulated OH&S allegations about Mrs Kerrison without her knowledge or right to protection and to cause her harm (See Ex 4

Attachment "4", Ex 18 Attachment "A" and others. It is submitted that the implication is that the purpose was to cause her harm.

Mr Quinn recollects generally the meeting of 10 April 1995 between himself and Ms Robison and Mrs Kerrison, admits there was only one meeting in almost a year, admits the record MFI 6 is reasonably accurate, and regarding any reference to threats of suicide from Kerrison, admits "*not by your transcription there*"

It is submitted that there was no reference to threats of suicide or guns from Mrs Kerrison at any time.

Timing/stage for the HealthQuest process commenced around early April 1995.

It is submitted that the evidence before the Court shows that without any further contact from Mr Quinn to Mrs Kerrison, Mr Quinn, on the next day contacted CRS and made the allegation about "aggressive tendencies".

It is submitted that this was the first time that any record made such OH&S allegations about Mrs Kerrison.

It is submitted that the evidence before the Court shows that TAFE itself, and through CRS and required Mrs Kerrison to submit to psychiatrists (Holmes and Dr Mandel at HealthQuest) because psychiatrists could and did write documents that assisted TAFE to purport retirement against Mrs Kerrison and damage her reputation (including her allegations).

It is submitted that 10 April marked the beginning of the HealthQuest action that Dr Ramsey authorised.

It is submitted that the evidence shows that the OH&S allegations have become worse over the years and that is consistent with Mrs Kerrison's evidence.

It should be particularly noted by the Court that Mr Quinn and Ms Robison's affidavits now 'backdate' OH&S issues to 1994. This is inconsistent with the evidence, and of particular note are:

- a) 20 September 1994 [EXH 57] CRS Program Review Meeting for Valda Kerrison. Contains: " 3. Ms McGregor stated they are awaiting a response from the Institute Director as to how the section should operate...Summary Points 2. Ms Robison stated she could be a resource/support person with TAFE."

SUBMISSION: This contains no allegations that either Ms McGregor or Ms Robison had any OH&S concerns regarding Mrs Kerrison. At this date (20 September 1994) no document shows that any such purported issues existed. If such concerns truly existed Ms Robison would not be seeking to be a resource/support person for Mrs Kerrison.

b) 4 December 1995 [EXH 89] McGregor Statement in Matter of Valda Kerrison. Not only does this show false insinuations and statements such as reference to a non-existent "memorandum of understanding" [shown to be false by Mrs Kerrison's evidence and also TAFE's inability to produce even one of these supposed 2 documents to this court] but Ms McGregor lifts the level of victimisation (false allegations against Mrs Kerrison) to a higher level - on Page 4 line 19 states: "*We decided to install duress alarms also.*"

It is submitted that the level of Ms McGregor's, Ms Robison's, Mr Quinn's, Ms Walshaw's claims against Mrs Kerrison is shown in 4 December 1995 [EXH 89] McGregor Statement in Matter of Valda Kerrison, at Page 3 lines 13-14 Mrs McGregor states:

"Nonetheless Val's behaviour did not exhibit any outward signs of aggression." [4.12.95]

It is submitted that the HealthQuest process was to circumvent the Enterprise Agreement and its processes. It is submitted that the HealthQuest process has allowed TAFE to ignore its obligations towards Mrs Kerrison including those under the Enterprise Agreement.

Submission - Dr Ramsey

Transcript 4 December 2001 [Cross-examination of Applicant] Page338 Lines 18-35

Q. So her Honour understands can we take it that Ms Walshaw has been guilty of bad faith as far as you're concerned?

A. Looks like bad faith to me, yes.

Q. Just tell us what you actually say that Ms Walshaw has done that constitutes bad faith?

A. She wrote or directed the letter signed by Mr Herd claiming all sorts of false things. That is where it starts. She decided to put those things on paper and circulate them about me. So while I was in class and teaching that went to HealthQuest, while I was possibly in class teaching HealthQuest wrote the retirement certificate. Ms Walshaw was ringing up HealthQuest and talking retirement. This document here says: also carries on words like "personality disorder" when I had stopped any permission to pass around any medical information. So Dr Harley who calls himself "the panel" who has never seen or spoken to me writes "personality disorder" and in consequence "unable to discharge the duties of your office". I was at that time [13 September 1996] currently working doing some part-time work earning income and working.

SUBMISSION:

See Ex 3 Attachment "3" Australians For Reconciliation to NCI TAFE
See Ex 3 Attachment "4" NCI TAFE reply to Australians for Reconciliation
See Ex 42, All of Health Care Complaints Commission re Dept Health inquiry
See Ex 43, HCCC Annual Report which reported inter alia the list of pattern of issues raised by the complainants including Mrs Kerrison, and *"The report confirmed the concerns raised by the complainants..."*

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 500 line 41 to Page 501 Line13

SUBMISSION: Dr Ramsey did not retire people under s20 of the TAFE Commission Act - he thought that HealthQuest did it.

Transcript 3 December 2001 Cross-examination of Mrs Kerrison Page 285 Lines 30-34

SUBMISSION: It is submitted that TAFE teacher/s such as Mrs Kerrison were not "invited" to go to HealthQuest, her testimony is that she was ordered. It is submitted that this is not informed consent to a medical process. Informed consent in relation to medical practitioners particularly HealthQuest's and MAP's see all of Ex 42 and all of Ex 43.

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 501 lines 38-44

Q. So your understanding is that HealthQuest retired the person, is that correct?

A. HealthQuest as I recall made the decision and then from that point on it was an administrative matter. It was not an issue that I could take any part in if HealthQuest had made a decision.

SUBMISSION: It is submitted that 1. HealthQuest write an opinion or recommendation, albeit in a purported retirement certificate; 2. The employer, TAFE Commission then passed the purported retirement certificate to administrative staff.

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 502 lines 22-25

Q. Thank you. Looking at some of the issues - and that was a grievance from myself, Val Kerrison, is that correct?

A. Thank you, yes.

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 504 lines 44-50

Q. So would you agree that although sometimes grievances may be raised and people may not like to hear grievances raised but they can be used to change practice and culture for the better sometimes?

A. Indeed. I, in fact, took grievances very seriously provided they were in writing and the person who had the grievance signed the grievance statement.

SUBMISSION:

The Enterprise Agreement
at 32.2.1 Grievance

"A grievance is a statement or approach by a staff member to a supervisor/manager on a work related problem, concern or complaint..."

It is submitted that the Grievance Policy simply formalises the responsibility of good management: that managers (or teachers, or parents) in day-to-day management are approached on work related (or child related) problems, concerns or complaints as and when they occur, and that they address the problem or get someone else to address the problem i.e. they manage. It is submitted that it is likely that Dr Ramsey had addressed many such problems in the past in day-to-day affairs, both on oral and written approaches to him, otherwise it would be unlikely that he would reach the heights of TAFE Managing Director .

Ex 5 Mrs Kerrison's grievance to Dr Ramsey was in writing and she had signed it. Mrs Kerrison's original grievance Ex 45 was in writing and signed, plus the students' letters that formed part of that grievance were in writing and signed. These grievances were not concluded, but the grievant is not in TAFE, so it is submitted that TAFE 'solved' the grievance in this manner.

Mrs Kerrison testified that she had been threatened with danger in relation to her raising grievances (Transcript 3 December 2001 Pages 239, 243, 244

Transcript 4 December 2001 Page 303 line 47, Page 345 Line 42, Page 353
Lines 39-50.

Further, transcript 4 December 2001 Page 354 Lines 1-21

Q. Did you subsequently raise that these threats had been made against you -

A. Oh yes.

Q. - to various people?

A. Yes.

Q. Who were those people?

A. I can't remember them all. But I noticed in the memo that Mr Kenzie called for me to produce this morning that I mentioned it to Miss Walshaw. I know that the document I gave to Mr Quinn and Miss Robison on 10 April 1994 told them that I had been warned about serious repercussions. I have raised it so many times over the years. I raised it also with Elizabeth McGregor in round about early March in 1995 and told her that I took it to be a threat and then after I got the fake retirement certificate I finally contacted Elizabeth McGregor. But first or one of the first things I asked in that very short conversation was, "Was anyone else threatened with danger like I was in TAFE?" and she said, "No."

It is submitted that Mrs Kerrison was singled out.

Transcript 18 June 2002 Cross-examination of Ms McGregor Page 471 Lines 15-37
SUBMISSION:

Ms McGregor admits that Ms O'Sullivan said that the message came from the Managing Director. It is submitted that the Managing Director could have had input into the meeting 8 September 1995.

Ms McGregor admits "*I don't know if they were her exact words*" It is submitted that Ms McGregor agrees with the gist, if not the exact words. It is submitted that the message, as Mrs Kerrison testified, is correct.

Ms McGregor admits that: "... *she [Ms O'Sullivan] said something fairly firm*"
At this time, September 1994 Mrs Kerrison had not written to Dr Ramsey (Ex 42.3.13 of the Enterprise Agreement states: "Victimisation of any staff member as a result of using this policy is totally unacceptable and could lead to formal discipline action."

Re: victimise

The words "victim" and "victimise" are defined in the Shorter Oxford English Dictionary (Vol 2) as:

Victim

1. A living creature killed and offered as a sacrifice to some deity or supernatural power.
2. A person who is put to death or subjected to torture by another; one who suffers severely in body or property through cruel or oppressive treatment.
 - b. One who is reduced or destined to suffer under some oppressive or destructive agency.
 - c. One who perishes or suffers in health, etc from some enterprise or pursuit voluntarily undertaken.
 - d. In weaker sense: one who suffers some injury, hardship, or loss, is badly treated or taken advantage of, or the like.

Victimise

1. To make a victim of; to cause to suffer discomfort, inconvenience, etc; to cheat, swindle, or defraud.
2. To put to death as, or in the manner of, a sacrificial victim; to slaughter;
 - b. To spoil or destroy (plants) completely.

It is submitted that Mrs Kerrison was victimised.

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 505 lines 3-24

SUBMISSION: Dr Ramsey is aware that Mrs Hayes [who evidently awarded herself 100% marks and an exam result] would need to have every opportunity to explain her actions in terms of natural justice.

It is submitted that Dr Ramsey did not give Mrs Kerrison [who reported the possible crime] natural justice.

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 506 line 57 to Page 507 Line 2

APPLICANT: Q. Dr Ramsey, was this letter [EXH 17 Dr Ramsey's affidavit Attachment "A"] an approach to you by a member of staff on a work related situation?

A. Yes, it followed - yes, it was and it followed a very extensive inquiry.

SUBMISSION: Dr Ramsey admits he received a grievance from Mrs Kerrison.

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 510 lines 17-50

SUBMISSION: Dr Ramsey knew of and helped formulate the TAFE Enterprise Agreement [EXH 39] which was filed in the Industrial Relations Commission.

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 511 lines 11-18

SUBMISSION: Dr Ramsey is aware that the Enterprise Agreement is lodged in the Industrial Relations Commission and is binding on all parties

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 506 Line 57 to Page 507 Line 2,

APPLICANT: Q. Dr Ramsey, was this letter [Exh 17 Attachment "A"] an approach to you by a member of staff on a work related situation?

A. Yes, it followed - yes, it was and it followed a very extensive inquiry.

SUBMISSION Dr Ramsey agrees that Kerrison letter of October 1994 was a grievance as set out in the Enterprise Agreement Grievance Policy.

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 515 line 53 to Page 517 Line 4

SUBMISSION:

EXH 39 [TAFE Enterprise Agreement] was partly formulated by Dr Ramsey

On the seventeenth page from the back Dr Ramsey signed the agreement on 31 January 1994 and

Dr Ramsey appointed investigators to action the applicant's complaint/grievance [EXH 45]

EXH 17 Attachment "A" [Kerrison to Dr Ramsey 25 October 1994] was a grievance. It is submitted that the previous grievance was not concluded.

It is submitted that in this grievance Dr Ramsey had noted the applicant's reports of discrepancies in his purported investigation and possibly more victimisation. It is submitted that it was a different grievance to the original.

In EXH 17 Attachment "B" [Dr Ramsey to Kerrison 17 January 1995] on page 2 the first paragraph states: *"I note from your letter you perception that you are experiencing "more uncomfortableness at work" since the outcome of your grievance. The TAFE Commission will not tolerate victimisation within the workplace. If you become aware of any acts of victimisation which may be directed against you **in the future** [emphasis added], you should immediately provide details of such acts to the Institute Human Resources Manager.*

It is submitted that Dr Ramsey, in January 1995 in Paragraph 5, links past "more uncomfortableness at work" with victimisation within the workplace.

It is submitted that Dr Ramsey then not only fails to address this, but specifically only allowed Mrs Kerrison to report "acts of victimisation which may be directed against you in the future...".

It is submitted that this makes it a false assurance that victimisation would not be tolerated. It is submitted that the Managing Director tolerated victimisation against Mrs Kerrison.

It is further submitted that Dr Ramsey's decisions and actions did not serve the best interests of the TAFE Commission, which had invested money in developing Mrs Kerrison as a teacher.

EXH 39 [TAFE Enterprise Agreement] at the back on page 3-13 was again signed on 28 February 1995 by Dr Ramsey in the presence of Graham Devlin and it was stamped by the Industrial Registrar for the Industrial Relation Commission. Therefore the sequence of events was: The Enterprise agreement signed and commenced January 1994, then the grievance, followed by Dr Ramsey's letters to Dr Willmott and Mrs Kerrison, then the Enterprise Agreement was signed again and filed in the Industrial Relations Commission.

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 519 line 50 to Page-520 Line17

SUBMISSION:

Dr Ramsey knew there were options including "take no action, take action". Also, "take action at the institute level..."

Dr Ramsey noted his handwritten "Could I please have a personal briefing..." In fact the handwritten note specifically requests "a personal (oral) briefing". It is submitted that Dr Ramsey did not want a written record generated.

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 520 lines 19-29

SUBMISSION: It is submitted that Dr Ramsey testifies that he would have waited for a briefing back, but significantly did not ask the applicant for more information and admits this. It is submitted that this is not consistent with the Enterprise Agreement Grievance policy which Dr Ramsey signed in January 1994 and was going to sign again when it was submitted to the Industrial Relations in 1995. It is submitted that Dr Ramsey did not apply the Enterprise Agreement to Mrs Kerrison.

It is submitted that Dr Ramsey did not want information from Mrs Kerrison otherwise he would have asked. It is submitted that this could explain the reason for the meeting of 8 September 1994 which occurred well before Mrs Kerrison wrote to Dr Ramsey in October 1994.

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 522 lines 49-51

Q. Dr Ramsey, did you at any time charge me with any failure to perform my duties of office?

A. I can't recall so, no.

SUBMISSION: It is submitted that Dr Ramsey did not fault Ms Kerrison's performance of duties therefore they were satisfactory. This is consistent with EXH 3 Attachment "4".

Transcript 19 June 2002 Cross-examination of Dr Ramsey Page 520 line53 to Page 521 Line 9

SUBMISSION: Dr Ramsey, in his letter, urged Dr Willmott to continue.

Transcript 3 December 2001 Cross-examination of Mrs Kerrison Page 264 Line 47-56

"Q. But don't they suggest to you that, notwithstanding the fact that Dr Ramsey had written to you saying that he didn't propose to take the matter any further, notwithstanding the fact that you had written back saying that you didn't accept all that, that he was still urging Dr Willmott to provide support for you?

A. Does that mean for Dr Willmott to keep threatening me, or what."

SUBMISSION:

Dr Ramsey did not request further information from either Mrs Kerrison or the institute director.

Dr Ramsey repeatedly uses the word "support" but it is submitted did not request support such as set out in the Enterprise Agreement Grievance Policy [EXH 39sections 32 and 33].

In his letter to Dr Willmott, Dr Ramsey wrote in the last paragraph:

"I have enclosed a copy of a further letter I have received from Ms Kerrison, together with my reply. I would urge you to continue to provide support to Ms Kerrison. In this context, it may be appropriate for the North Coast Institute to make arrangements to have Ms Kerrison medically examined by HealthQuest to determine her fitness to continue in employment."

It is submitted that Dr Ramsey acted arbitrarily against Mrs Kerrison, and Dr Willmott and Ms Walshaw went along with it.

It is submitted that they were able to choose to not apply the Enterprise Agreement to Mrs Kerrison.

It is submitted that TAFE had resources available to enable Dr Ramsey, Dr Willmott, and the other TAFE Managers to use their power over Mrs Kerrison to comply with processes and requirements as set out in TAFE Enterprise Agreement and other Acts but chose not to do so.

It is submitted that Dr Ramsey used his power and urged and authorised the North Coast Institute of TAFE to send Mrs Kerrison for a forced medical [psychiatric] examination. It is submitted that Dr Ramsey allowed

1. No Procedural Fairness to the employee

2. No discussion re merits or otherwise of action against the employee
3. No charge of failing to perform duties, therefore not grounded on failure to perform duties satisfactorily

It is submitted that Dr Ramsey singled Mrs Kerrison out for action to be taken against her

It is submitted that in doing so Dr Ramsey deprived the TAFE Commission of its valuable asset in whom the TAFE Commission had invested many thousands of dollars in training.

Mrs Kerrison's letter had included that she was experiencing more uncomfortableness/victimisation since lodging her previous grievance, the inference is that Dr Ramsey is urging that be continued, and as part of that victimisation be sent to submit to HealthQuest's process.

It is submitted that Dr Ramsey could have fully informed Mrs Kerrison but did not. Dr Ramsey specifically requested oral briefing/discussion on options [and no record of that oral briefing has been tendered], and wrote 2 completely different letters regarding the same subject. It is submitted that Dr Ramsey purposely kept Ms Kerrison in the dark, yet put words on paper to her that have been useful enough for the respondents and their representatives to elect to use against her in this Commission.

It is submitted that if the Enterprise Agreement Grievance Policy is not followed it can appear a farce.

It is submitted that threats through 1994 to Mrs Kerrison in relation to using the Grievance Policy establish the Grievance Policy may be a danger for some staff to use (See Exs 42 and 43).

Less than a fortnight after Dr Ramsey wrote those two letters [EXH 17 Attachment "B" and EXH 21 Attachment "A"] on 28 February 1995 Dr Ramsey again signed the TAFE Enterprise Agreement [EXH 39] and it was stamped by the Industrial Registrar of the Industrial Relation Commission.

EXH 39 TAFE Enterprise Agreement Paragraphs 27.3, 27.5 27.6, 27.10, 27.11, 27.12 27.13 set out the steps to establishing whether or not a staff member is failing to perform duties satisfactorily. Paragraph 27.9.1 states "If either the manager or staff member believe, on reasonable grounds, that there are medical reasons which might be the cause of the performance concern, a medical assessment may be arranged."

SUBMISSION: Managers should take steps according to the Enterprise Agreement to make a valid finding that a staff member is failing to perform his/her duties satisfactorily before Paragraph 27.9 (medical assessment) is contemplated.

Transcript 20 June 2002 Cross-examination of Dr Ramsey Page 553 lines 35-48

Q. So when you sent the letter that you did to Dr Willmott on 17 January 1995, what was the performance concern?

A. I don't recall particularly but as the letter suggests, it suggests two things. One is that the person concerned should be given support and the second concern was if the person is not well, of which I had no view whatsoever since, I didn't know the person then, that should be dealt with, that's all.

It seems to me those are the two things which are in question and we had just had a major inquiry of all of the things that had gone on there and I had received that inquiry.

SUBMISSION: It is submitted that the inquiry was selective, and not aimed at workplace improvement for Mrs Kerrison.

Transcript 20 June 2002 Cross-examination of Dr Ramsey Page 552 lines 47-57

Q. That is based on a performance problem which would need to be established first by a meeting and discussion, would you agree?

A. I guess so. I would expect so. That's for the line manager to determine.

Q. The line manager would be basing that decision on discussion with the employee as to a failure or apparent failure to perform their duties?

A. I would expect so but the line manager would need to ask for themselves.

SUBMISSION:

Dr Ramsey agrees that a performance problem in the workplace would need to be established first by a "meeting and discussion", but to suggest that " That's for the line manager to determine" it is submitted that that could circumvent the Enterprise Agreement.

The Enterprise Agreement sets out at 27.5 and 27.6 that it is to be based on consistent failure to meet set work objectives, and the staff member to be provided with details of the concerns in relation to performance. Clause 27.10 and 27.10.1 Requires that a confidential record is to be made. Clause 27.10.2 requires that: "The staff member is to receive and sign a copy of the performance agreement. This will indicate that he/she has received the document and has had the opportunity to comment." [Procedural fairness/natural justice].

SUBMISSION - Investigation

Transcript 3 December 2001 Page 253 Lines 21-23

Applicant: Answer. "No one asked me. I have asked TAFE for years to investigate. They wouldn't. All of those questions could have been asked in investigation over the years."

Transcript 3 December 2001 Page 276 Lines 28-29 Applicant Answer: "Except that I noted that the investigator noted me and my pay claims without my knowledge."

SUBMISSION: It is submitted that Dr Ramsey's investigators investigated Mrs Kerrison's pay claims without her knowledge, but did not contact key witnesses etc. It is submitted that Dr Ramsey (and Dr Willmott and Ms Walshaw) could not have expected/wanted the investigators to contact key witnesses otherwise they would have protested when they read Mrs Kerrison's letter to Dr Ramsey Ex 5

Transcript 3 December 2001 Page 277A Lines 17-18 Applicant Answer: "Yes, she [McGregor] quite often said she wouldn't look at anything in the past."

SUBMISSION: It is submitted that during these proceedings Ms Walshaw agreed that those around her worked to each other's expectations.

See also Exs 4 Attachment "3", and 4 Attachment "5". It is submitted that a suggestion of internal investigation in TAFE was and is treated by TAFE Legal and staffmember/s as a joke.

Submission - Ms Gail Robison

Transcript 20 June 2002 Cross-examination of Ms Robison Page 559 Lines 35-57;
and

Transcript 20 June 2002 Cross-examination of Ms Robison Page 560 Lines 30-41

Q. So they were not a dated record as might have occurred back in 1994?

A. They were not, it is not a time diary I have kept, it is as a result of actions that I have taken, people I have spoken with as outlined in the document and concerns that I have raised with particular people.

SUBMISSION:

Exs 98 and 99 are presented to Ms Robison in T/s 20 June 2002 at Pages 560 and 561 and she admits they "could have" been written in 1996.

It is submitted that these documents did not exist 12 October 1995 when Ms Walshaw wrote EXH 19 Attachment "L" [Walshaw to Kerrison] or Ms Walshaw would have said so in that letter.

It is submitted that this is why Ms Robison (an OH&S Rehabilitation officer) did not insert any date/s whatsoever in these documents but wrote these documents in a format that could lead the reader to believe they were written while Mrs Kerrison was in TAFE. It is submitted that instead of using the past tense for her verbs Ms Robison wrote in a vague way in an attempt to conceal the factual timeframe.

It is submitted that this makes sense when one reads Ms Robison's allegations of potential OH&S matters including suicide. It is submitted that for an OH&S officer to write this long after can be considered ludicrous and also possibly mischief towards Mrs Kerrison. It is submitted that Ms Robison did consider this possibility hence her attempts to conceal the date she wrote them and that by doing so Ms Robison exhibits that they are fabricated allegations. It is submitted that further indication that they are a contrived fabrication is shown in that they are not in her normal style of efficient factual writing (See Ex 100).

It is submitted that fabricated allegations by Ms Robison is consistent with fabricated allegations by other/s including Ms McGregor.

On 4 December 1995 [EXH 89] McGregor Statement in Matter of Valda Kerrison. On Page 4 line 19 Ms McGregor states:
"We decided to install duress alarms also." It is written in a way that a reader might interpret this to mean potential OH&S danger from Mrs Kerrison.

But Ms McGregor at Page 3 lines 13-14 states:

"Nonetheless Val's behaviour did not exhibit any outward signs of aggression." [4.12.95]

It is submitted that these exhibits were not Ms Robison's first actions of fabricating 'evidence'. It is submitted that by 10 April 1995 Ms Robison had

already submitted, without Mrs Kerrison's knowledge, false material and allegations. See 10 April 1995 Ex 101 and submission.

Ms Robison also states that she sent Exs 98 and 99 to Human Resources in Port Macquarie. Ms Walshaw was Director of Human Resources. It is submitted that Ms Walshaw knew that she might need 'evidence' in October 1995 (See above and Ex 19 Attachment "M"). It is submitted that Ms Robison fabricated these after October 1995

It is submitted that Ms Robison's evidence against Mrs Kerrison should not to be relied upon.

It is submitted that these letters also show breaches of privacy and possibly the OH&S Act.

Transcript 20 June 2002 Cross-examination of Ms Robison Page 561 Lines 1-10

SUBMISSION: Ms Robison admits that OH&S issues were addressed immediately. It is submitted that as no OH&S issues were evidently addressed or broached to Mrs Kerrison in relation to her actions or behaviour this is shows that there were no OH&S issues.

Transcript 20 June 2002 Cross-examination of Ms Robison Page 561 Lines24-28

Q. Do you have a document where you informed me of any of these perceptions before you actually wrote these documents?

A. I wouldn't believe so, Val. I'm not sure why I would need to do that.

SUBMISSION:

It is submitted that this shows:

- ◆ No OH&S issue.
- ◆ No Procedural fairness before making the decision to write the allegations.
- ◆ Non application of Privacy Principles.

Transcript 20 June 2002 Cross-examination of Ms Robison Page 562 Lines 37-49

SUBMISSION: Ms Robison cannot recall. Mr Quinn's evidence is that there were no meetings between Robison, Quinn, Kerrison in July to December 1994. This indicates poor or non-existent rehabilitation support for Mrs Kerrison who had lodged grievances according to TAFE Enterprise Agreement.

Transcript 20 June 2002 Cross-examination of Ms Robison Page 562 Line50 to Page 563 Line 25

SUBMISSION: At Page 563 line 2 Mrs Robison remembered **a** [emphasis added] meeting between Mrs McGregor and Mrs Kerrison where she was asked to attend.

It is submitted that this confirms Ex 29 Mrs Kerrison's evidence in Affidavit 4 September 2001, Paragraphs 150-153 concluding with: "*I state on oath that this was the only time that I asked to speak with Ms McGregor and Ms Robison was asked to leave her room and come and be present for the discussion...*"

Re MFI 6 16-page document headed "Meeting with Gail Robison (College OH&S and Rehabilitation Officer) and Val Kerrison at Kempsey TAFE on 10-4-95"

Transcript 20 June 2002 Cross-examination of Ms Robison Page 562 Line50 to Page 563 Line 25

SUBMISSION:

Ms Robison only remembers a meeting and it is submitted that all other day-to-day contacts Ms Kerrison made to Ms Robison or Ms McGregor were alone as and when they occurred as happens in day-to-day running of the relatively small Kempsey College. It is submitted that also the day-to-day approaches by Ms Robison or Ms McGregor to Mrs Kerrison were alone as and when they occurred.

It is submitted that Ms Robison cannot recall one meeting with her, Mr Quinn, and Mrs Kerrison but Mr Quinn's testimony agreed with Mrs Kerrison's in that there was one meeting.

Transcript 20 June 2002 Cross-examination of Ms Robison Page 563 Lines 33-35

APPLICANT: I ask that a 16 page transcript be handed to the witness, it is headed "Meeting with Gail Robison - College OH&S and Rehabilitation Officer".

Transcript 20 June 2002 Cross-examination of Ms Robison Page 563 Line 53 to Page 564 Line 11

APPLICANT: Q. Would you like to take your time and have a read of it.

A. Yes. (Witness complied) It will take quite some time to read this whole document. I can honestly say I don't recall the meeting but if I look at the comment I can only assume that the G is G for Gail, V for Val and M for Mike, down the side.

Q. That's correct.

A. That sounds like me; I mean, that's how I would speak but I honestly don't recall this depth of conversation word for word, I'm sorry, but I don't. I mean, the language it has used that's against my name, yes, it sounds like the language I would use. I certainly don't remember the specifics of this conversation to this extent so I could still say I don't really recall this meeting.

Transcript 20 June 2002 Cross-examination of Ms Robison Page 564 Lines 21-43

Q. Is this the general way Mike, myself and you spoke?

A. You mean, for me personally, yes. As I just said it is my language, it is my language. I could possibly say throughout this, yes, it is pretty much your language and Mike's as well but the specifics of all of this I mean I don't recall that.

Q. Of course, it goes in depth ---?

A. It is very indepth and a good while ago but it is the general way we all spoke. I feel it is, yes.

Q. Are you sure of that enough for us to tender this document?

A. I could say it is our language but I don't know whether this is the exact thing that occurred at this particular meeting so I could not say that.

Q. Well, as a general impression?

A. The only thing I could say is, yes, I believe it is my language of conversation with yourself and Mike but in this context I couldn't honestly say I don't honestly recall this specific meeting.

SUBMISSION: Ms Robison admits 3 times that this document MFI 6 was the general way that she, Mr Quinn, and Mrs Kerrison spoke. Mr Quinn agreed that there were no references to guns etc

Transcript 20 June 2002 Cross-examination of Ms Robison Page 564 Lines 21-43

10 April 1995 [EXH 101] Bundle of documents to Mr John Caldwell GIO.

SUBMISSION:

Documents included bear the signatures of Ms McGregor and Ms Robison.

The documents relate to 31 January 1995 where Mrs Kerrison suffered an injury and did not work on 31 January, but made up the time lost. It is submitted that because this was a non-financial claim, Ms McGregor and Ms Robison did not put it through immediately.

It is submitted that after the meeting on 10 April 1995 Ms McGregor and Ms Robison decided to activate this claim and forwarded the documents to GIO. Both Ms McGregor and Ms Robison attached -- NOT her work schedule for the week of 31 January (non-teaching week) -- but instead her work schedule dated 10 March 1995 (a teaching week); and both claimed that Mrs Kerrison was not scheduled on duty on the relevant day in January.

It is submitted that it is unlikely that both officers would not know the difference between January and March, but it is possible that both officers chose to manufacture inferences/allegations to GIO that Mrs Kerrison was not intellectually capable in order to damage her Workers Compensation claim. GIO, possibly because they were aware of TAFE processes from prior claim/s, accepted liability on behalf of its client TAFE.

Submission: Mr Raoul Salpeter

Mr Salpeter's affidavit Ex 44

Page 1 Para C ii a) "the New South Wales Government Medical Officer (GMO) issued a certificate recommending the retirement...

SUBMISSION: the GMO did not retire or terminate Mrs Kerrison. It was a recommendation. It was a purported certificate.

Page 2 Para e) The Managing Director of the TAFE Commission authorised the medical assessment in a letter dated 17 January 1995 (Annexure "E") sent to the Director of North Coast Institute.

SUBMISSION: It is submitted that this decision by the Managing Director commenced the HealthQuest process and all the other decisions involved against Mrs Kerrison.

SUBMISSION - Ms Scuglia

Transcript 19 June 2002 Cross-examination of Ms Scuglia Page 525 line 38 to Page 526 Line 2

SUBMISSION: Ms Scuglia could have checked for accuracy before she submitted the document to the Commission, but evidently did not do so.

Transcript 19 June 2002 Cross-examination of Ms Scuglia Page 526 lines 11-23

SUBMISSION: The purported retirement certificates structured by HealthQuest is sufficient to pass to clerical staff without anything further addition by Management. This circumvented Industrial Relations instruments such as dismissal proceedings such as in the TAFE Enterprise Agreement and various Acts including Technical as Further Education Act s20 and Public Sector Management Act s 36.

It is submitted that Ms Scuglia did not terminate Mrs Kerrison's employment.

Transcript 19 June 2002 Cross-examination of Ms Scuglia Page 526 lines 30-35

SUBMISSION: The clerical staff then perform final moneys and exit process as in EXH 13 "State Authorities Superannuation Notification of Exit - Invalidity" SASS form dated 27 June 1995.

Transcript 19 June 2002 Cross-examination of Ms Scuglia Page 528 line 9 to Page 529 Line 40

SUBMISSION:

EXH 44 Attachment "F" TAFE Gazette No 42 of 1993 Paragraph 5.2.5 states "the staff member can appeal the outcome [of HealthQuest's recommendation] by completing the Notice of Medical Appeal form. No action is taken until the appeal is heard. If the staff member agrees not to appeal by signing the appropriate form (see Attachment 7), action can take place eg. the staff member returns to work as advised by the medical provider."

It is submitted that Ms Scuglia thought that the "human resources manager or the institute director" makes a decision to stand the down the employee from duties with:

Transcript 19 June 2002 Cross-examination of Ms Scuglia Page 530 lines 19-51

SUBMISSION:

TAFE pay period is shown by EXH 14 [payslips for 4 April and 18 April] to be a fortnightly period.

In EXH 44 Attachment "C" Ms Scuglia for Ms Walshaw in Paragraph 5 states to Mrs Kerrison "*All sick leave is forfeited on retirement and/or resignation. Sick leave is an entitlement of employment.*"

In EXH 94 dated 10 August 1995 Mrs Kerrison applied for sick leave from 22 June to 22 September 1995. It is submitted that this was not granted otherwise there would have been a TAFE Release Pay form during the next pay period and she would have received sick pay for the next pay period around or before 24 August 1995. (see ex 31).

EXH 31 shows TAFE "Release Pay" form dated 5 September 1995. It states "Remaining on paid leave [NOT sick leave because there is no end date. See: "From 30.6.95 To xxx Until Further Notice"] pending outcome of medical appeal.

Significantly, EXH 31 also shows "Amends SP B22112

Despite all FOI and subpoena requests, TAFE have not produced this SP B22112 which is an accountable document. It is submitted that as the purported "retirement" of June 1995 has now been shown to be false, the implication is that TAFE are covering up what was entered on that document.

It is submitted that the implication to be drawn is that it contains material damaging to TAFE's case - knowledge of wrongdoing.

In EXH 44 Attachment "C" Ms Scuglia for Ms Walshaw in Paragraph 5 state *"All sick leave is forfeited on retirement and/or resignation. Sick leave is an entitlement of employment."*

It is submitted that this could mislead Mrs Kerrison - and may induce her to obtain employment elsewhere in order to survive; or induce her through financial hardship to 'accept' retirement.

Transcript 19 June 2002 Cross-examination of Ms Scuglia Page 530 line 52 to Page 533 Line 23

SUBMISSION:

It is submitted that on or around 23 February 1996 In Ex 16 Paragraphs 105 to 107 Mrs Kerrison reports her efforts to return to her job in TAFE, but Ms Walshaw did not allow it. It is submitted that this shows that Mrs Kerrison who was entitled to her job, and also entitled to rehabilitation, was arbitrarily denied both. Mrs Kerrison was still in employment limbo.

Exh 76 shows that on 27 February 1996 Mr Szekley informed the Medical Appeals Panel (MAP) that Mrs Kerrison declined to attend the appointment it had arranged with its chosen psychiatrist Dr Taylor due to flawed material and complaint lodged against the MAP's chosen practitioner.

Exs 33 and 77 show 20 March 1996 Mrs Kerrison to TAFE and other/s cancelling permit for transfer of medical information.

Exh 14 TAFE's to payslips to Mrs Kerrison show in the top payslip (for the fortnight leading to 4 April 1996) that Mrs Kerrison received her full pay.

The 4 April 1996 payslip shows:

- i) that this was ordinary pay - not sick or extended leave.
- ii) base salary to be 43850.00 [See top left side of payslip]
- iii) extended leave had accrued to 57.17 days [See top right side of payslip]

It is submitted that this is partly consistent with EXH 44 Attachment "F" TAFE Gazette No 42 of 1993 Paragraph 5.2.5 "... No action is taken until the appeal is heard..."

This could have been applied in June 1995 as a less damaging option, but was not. June 1995 was working and on full pay but was stood down (purportedly 'retired' and arbitrarily deprived of her work and pay.

It is submitted that it is consistent with TAFE's document EXH 31 "Remaining on paid leave pending the outcome of medical appeal".

Exh 14 TAFE's payslips to Mrs Kerrison show in the bottom payslip (for the fortnight leading to 18 April 1996) Mrs Kerrison received no pay.

The 18 April 1996 payslip shows:

- i) that this was ordinary pay - i.e. this was not sick or extended leave.

ii) base salary reduced to 0.00 [See top left side of payslip]

- iii) extended leave had incremented to 57.59 days [See top right side of payslip]

It is submitted that shows that the nil pay was not based on usage of sick leave or extended leave, or having Sick Leave Without Pay applied, but by altering the computer to "Base Salary \$0.00" for Mrs Kerrison's award wage. Mrs Kerrison's Base Salary was \$43,850. Whether Mrs Kerrison was on ordinary pay, or any other pay including Sick Leave Without Pay, it is submitted that her Base Salary as TAFE teacher remained as awarded. It is submitted that if Mrs Kerrison was on Sick Leave Without Pay, the employer is required to show this.

It is submitted that IF months of extended leave were being taken, TAFE are required to show this on payslips; this would mean that where the description of the type of pay shows "Ordinary" this must show "Extended Leave" or similar.

Furthermore, it is submitted that IF months of extended leave were being taken, the incrementing Extended leave balances at the top would have progressively decreased by 10 days per fortnight until it reached zero.

It is submitted that Exh 93 shows that on some unknown day but applied "effective from" 18 April 1996, the TAFE computer records were changed and some 500 hours

were deducted from Mrs Kerrison's accumulated sick leave and extended leave entitlements.

It is submitted that no-one in TAFE is empowered to take another employee's entitlements. It is submitted that someone made decision/s and did.

Despite FOI requests and court summonses including the Summons to Produce filed in the Industrial Relations Commission on 3 October 2000 and served to the Crown Solicitors the same day, TAFE have not produced the computer archive report applicable to TAFE's computerised salary payments. It is submitted that the archive report when printed out from the computer should show the "log-in" identifier of the person who accessed and changed the computer data, the date the computer data was altered, and the changes he/she made including the change from salary \$43850 per annum to \$0 per annum.

It is submitted that the reason TAFE did not produce the report was because of potential damage

Additionally, it is submitted that Ex 14 and Ex 93 above show that Mrs Kerrison seemingly had a base salary of Nil and her accrued extended leave entitlements were apparently annexed "effective from" 18 April 1996.

It is submitted that this shows that Mrs Kerrison's extended leave was taken some time AFTER 18 April 1996, but backdated "effective from" 18 April 1996.

It is submitted that this is similar to TAFE "back-dating" purported fears in their allegations against Mrs Kerrison including OH&S 'fears' (See affidavits by Ms McGregor, Ms Robison, Ms Walshaw, and Mr Quinn).

It is submitted Mrs Kerrison is entitled to her entitlements. There is no request or permission signed by Mrs Kerrison for anyone to access her extended leave. It is submitted that whoever did, did so without permission and without procedural fairness.

It is submitted that the entries above could be considered TAFE's reaction to Mrs Kerrison's actions in that she:

- she had again asked to be allowed to resume teaching,
- she refused to go to the MAP appointment; and
- had cancelled medical information transfer.

In EXH 34 [correspondence between State Super and Mrs Kerrison] the last Attachment shows a letter dated 22 April 1996 signed by Ms Walshaw and addressed to Department of Social Security.

The letter states in part: *"Mrs Kerrison exhausted all paid sick leave on 14 April 1996 ..."*

It is submitted that this could not be true because if Mrs Kerrison exhausted all paid sick leave on 14 April 1996 Mrs Kerrison would

have received at least 1 week's pay for the fortnight ending 18 April 1996.

The letter goes on to say in part: "*and has been placed on sick leave without pay from 15 April until the outcome of her medical appeal is known.*"

It is submitted that this decision lacked procedural fairness and did not fit Enterprise Agreement.

It is submitted that Mrs Kerrison was quite capable of working; so she worked elsewhere (See EXH 29 at Paragraph 24)

It is submitted that when Ms Walshaw, in EXH 44 Attachment "C" first claimed that Mrs Kerrison's employment had been ended in June 1995, stopped paying her and refused her access to her sick leave claiming that "All sick leave is forfeited on retirement and/or resignation" this could have forced Mrs Kerrison to 'accept' medical retirement in order to obtain money to survive.

It is submitted that this failed, and Mrs Kerrison obtained access to her ordinary pay each fortnight, Mrs Kerrison had money on which to live.

EXH 29 at Paragraph 24 Mrs Kerrison testifies that: "*In 1996, when TAFE, without notice or discussion with me, ceased paying my ordinary pay in 1996, in order to have money to live I worked in part-time casual employment using the skills which TAFE hired me for.*"

It is submitted that because Mrs Kerrison refused to attend the ill-reputed MAP psychiatric appointment, and had also cancelled authorisations which TAFE may have had to obtain and/or distribute her medical information, (stating that she found the information to be "grossly incorrect, misleading and unsubstantiated) that deciding to decrease Mrs Kerrison's salary to \$0 was another attempt by TAFE to force Mrs Kerrison to claim to be too sick to work - thus 'validating' the purported medical retirement. It is submitted that Ms Walshaw letter to Social Security to claim sickness welfare could have induced Mrs Kerrison to do that, but did not.

It is submitted that this is similar to the time that the purported retirement certificate from HealthQuest (16 June 1995) was written while Mrs Kerrison was working See EXH 29 Paragraph 24.

Transcript 19 June 2002 Cross-examination of Ms Scuglia Page 533 Line 24 to Page 539 line45

SUBMISSION: Regarding State Super (SASS)

EXH 13 It is submitted that 30 June 1995 TAFE to State Super (SASS) Notification of Exit is TAFE's first attempt to sever superannuation for its employee Mrs Kerrison; TAFE claimed falsely that "Valda June Kerrison" was "Medically Retired", Exit Date "30.6.95".

It is submitted that this failed and TAFE were required to pay its superannuation contributions for employee Mrs Kerrison

EXH 34 First page 25 November 1996 State Super to Mrs Kerrison. It is submitted that this shows that by November 1996 TAFE had again contacted State Super, and State Super's letter to Mrs Kerrison indicates this.

Page 3 State Super sent another Notification of Exit to Mrs Kerrison.

Page 4 20 December 1996 Mrs Kerrison wrote to State Super stating in part:
"I am disputing the information that I have left work and enclose the letter from TAFE I received regarding this."

Page 5 22 April 1996 Ms Walshaw's notification to Department of Social Security stating in part that Mrs Kerrison : "has been permanently employed with the TAFE Commission since 2 February 1988." And "...has been placed on sick leave without pay..." NOTE: Ms Walshaw admits that Mrs Kerrison is a permanent employee on 22 April 1996]

It is submitted that this attempt by TAFE to sever its superannuation commitments also failed.

EXH 3 Attachment "10" 14 January 1997 Superannuation Administration Authority to Mrs Kerrison. On 17 July 1997 in the lower part this document states:
"Phoned Chris McPherson (065) 80?156 (TAFE) - member [Kerrison] was medically retired, but is still appealing. No decision - nothing has been finalised...17/7/97"

It is submitted that as at 17 July 1997 Mrs Kerrison was still in employment limbo - State Super continued to send bills to TAFE to pay their superannuation payments regarding its employee Mrs Kerrison.

EXH 3 Attachment "13" 26 March 1998 Ms Scuglia to State Super. States in part:
"Details supplied in regard to SASS BILL REPORT 28.2.98" It is submitted that this indicates TAFE received another bill for Mrs Kerrison's superannuation payments.
It also informed State Super that Mrs Kerrison was on Sick Leave Without Pay "from 15 April 1996" "to 13 September 1996" followed by "Medical Retirement from 13 September 1996 Please see attached copy of SASS 10 sent 2.10.96 and SASS 10 sent 13.11.96".

Applying Sick Leave Without Pay in April 1996 did not alter TAFE's obligations to pay superannuation. Therefore they had received another bill from SASS.

It is submitted that around 26 March 1998 Ms Scuglia/management learned that if she applied the category of Leave Without Pay to Mrs Kerrison she could circumvent paying superannuation for TAFE's employee Mrs Kerrison.

EXH 35 TAFE to SASS 26 March 1998 It is submitted that someone made a decision and Ms Scuglia retrospectively altered Mrs Kerrison's employment status to LWOP (Leave Without Pay). It is submitted that this was to avoid paying superannuation.

In Transcript 19 June 2002 Page 535 at lines 32-38

APPLICANT: Q. Miss Scuglia, is it possible that if you had not placed me on leave without pay, TAFE would still be receiving bills from the

Superannuation Board each year for my superannuation?

A. Up to the point we advised that you were no longer an employee, I guess that would have happened.

It is submitted that Ms Scuglia admitted that placing TAFE employee, Mrs Kerrison, on leave without pay the superannuation would stop sending TAFE bills for superannuation.

It is submitted that this merely put Mrs Kerrison's superannuation on hold; it did not sever Mrs Kerrison's TAFE employment.

In Transcript 19 June 2002 Page 539 at lines 37-38 Ms Scuglia testifies "...it looks like we forgot to tell SASS at the time that she was on leave without pay".

EXH 38 State Super record 14 April 1998 shows "retrospective LWOP rec'd"

It is submitted that as the employment status of LWOP was allocated in 1998 retrospective to a period in 1996, Ms Scuglia could not have "forgot[ten] to tell SASS at the time" because it did not exist at that time. Ms Scuglia had just been cross-examined on EXH 35 (See Transcript 19 June 2002 Page 534 commencing at Line 25)

It is submitted that Ms Scuglia made changes to Mrs Kerrison's records without any due process.

It is submitted that there had been no decision by TAFE to terminate her employment and TAFE Managers had known for years that the purported retirement certificate had not had effect, because 17 July 1997 was long after the purported appeal process. It is submitted that EXH 44 Attachment "G" shows the purported appeal document, but neither HealthQuest nor Medical Appeals Panel had authority to retire TAFE teachers - only TAFE MD or delegate under s20 Technical and Further Education Act had that statutory authority or power.

Submission - Ms Kerrie Walshaw

Transcript 4 December 2001 Page 357 Lines 3-27 Respondent's Examination of Ms Walshaw.

SUBMISSION: Ms Walshaw does not definitely say she saw the document 'dated' 20 April 1995 in 1995 nor does she say when she became 'aware' of it. She remembers Mr Quinn discussing it with her, and although Mr Quinn suffered an accident and was injured, he did return to TAFE on a return to work program.

It is submitted that Ms Walshaw is aware of it now. Mr Quinn could have discussed it over the telephone at any time. Neither Annexure 2 nor Annexure 4 of Mr Quinn's affidavit were quoted or referred to in Ex 79 (Turco letter and attachments) when it is likely that they would have been if Mrs Kerrison had them at that time. It is submitted that these documents did not exist 12 July 1996 at the time of Ms Turco's writing that they are fabricated specifically for court action such as this in an attempt to mislead the course of justice. It is submitted they were written after October 1995 as 'evidence' for the respondent to the AntiDiscrimination Board and are now relied on by the respondent for this Court.

Transcript 4 December 2001 Page 357 Lines 51-54 Respondent's Examination of Ms Walshaw.

SUBMISSION: In this Ms Walshaw admits that she signed off a document about Mrs Kerrison as restricted access. Nowhere on the document is Mrs Kerrison's signature to show that she had seen it before it was to be filed. It is submitted that Ms Walshaw breached Privacy Act and also requirements for collecting and storing documents under restricted access.

Transcript 4 December 2001 Page 360 Line 27 to Page 361 Line 6 Applicant's cross-examination of Ms Walshaw:

SUBMISSION: Ms Walshaw remembered the name of Sydney-based, Ms Meerman but claimed to have forgotten that she had read the report.

Transcript 4 December 2001 Page 357 Lines 40 to 44 Walshaw cross-examination.

SUBMISSION: While this may be Ms Walshaw's opinion, given the grievance and report, Ms Walshaw is swearing as fact how Ms Hayes would have treated Mrs Kerrison. It is submitted that Ms Walshaw's testimony against Mrs Kerrison should not be relied upon.

Transcript 4 December 2001 Page 370 Lines 18-30 Walshaw cross-examination.

SUBMISSION: Ms Walshaw states under oath that the comment in the report "couldn't then apply to the existing college manager [Ms McGregor]". It is

submitted that Ms Walshaw's testimony against Mrs Kerrison should not be relied on because Ms McGregor had been the existing college manager since July 1993. It is submitted that Ms McGregor's own document [EXH 23 Attachment "B"] and Mrs Kerrison's testimony confirm that Ms McGregor and her management was part of the issues reported on in EXH 84 in May 1994.

Transcript 17 June 2002 Page 387 Lines 23-40 Walshaw cross-examination.

SUBMISSION: Ms Walshaw claims on 17 June 2002 that she did not have a copy of EXH 84 when cross-examined on it on 4 December 2001, however it is submitted that transcript 4 December 2001 Page 361 Lines 7-49 shows that she did. It is submitted that Ms Walshaw's evidence against Mrs Kerrison should not be relied upon.

TAFE Enterprise Agreement - Grievance Policy

Transcript 17 June 2002 Page 394 Line 12 to page 395 line 42 Walshaw cross-examination

SUBMISSION: Ms Walshaw has knowledge of the Grievance process, however it is submitted that Mrs Kerrison's approaches to Ms Walshaw were not addressed in accordance with TAFE Enterprise Agreement (see Ex 5, Ex 87, Ex 63, and Ex 19 Attachments L, M, N, and O). It is submitted that as the applicant's grievances have not been resolved, that TAFE should be directed to address grievances -- TAFE should not be allowed to simply have a psychiatric label attached to the grievant's name and 'get rid' of the grievant (See Exs 42 and 43).

Privacy Principles [EXH 86]

Transcript 17 June 2002 Page 396 Line 28 to page 397 line 34 Walshaw cross-examination
and

Transcript 17 June 2002 Cross-examination of Ms Walshaw Page 406 Line 46 to Page 408 Line 30

SUBMISSION: Ms Walshaw claims that she looked after the occupational health and safety and a whole range of different legislations including Privacy, however in light of the number of records privately written and circulated referring to Mrs Kerrison, some by Ms Walshaw, it is submitted that Ms Walshaw's testimony against Mrs Kerrison should not be relied upon. See the attachments to Ms Walshaw's affidavit.

Hearsay - "Fact"?

Transcript 17 June 2002 Cross-examination of Ms Walshaw Page 410 Lines 26-35

Transcript 17 June 2002 Cross-examination of Ms Walshaw Page 413 Lines 16-26

SUBMISSION: It is submitted that under oath Ms Walshaw states that hearsay, (i.e. something reported to her), was fact. Ms Walshaw, in answer to "And you know who lies and who does not lie?" admits that "I don't think anybody does." It is submitted that as this was material that Ms Walshaw used to 'justify' sending Mrs Kerrison to HealthQuest, Ms Walshaw did adhere to her obligations over subordinate staffmember Mrs Kerrison.

Transcript 17 June 2002 Cross-examination of Ms Walshaw Page 431 Lines 26-35

SUBMISSION: It is submitted that Ms Walshaw's admits that she based her 'evidence' on what she read in someone else's affidavit. It is submitted that Ms Walshaw's testimony against Mrs Kerrison should not be relied upon.

Transcript 17 June 2002 Cross-examination of Ms Walshaw Page 412 Lines 32-36

SUBMISSION: Ms Walshaw "doesn't think people are stood down like that", but it is submitted that Ms Walshaw was part of the summarily standing down of the applicant in June 1995 - without any discussion or procedural fairness. It is submitted that this standing down has been maintained by the officers of TAFE ever since despite their knowledge that the applicant was still being paid ordinary pay as an employee of TAFE until April 1996.

Fulfilling each other's expectations

Transcript 17 June 2002 Cross-examination of Ms Walshaw Page 422 Line55-425 line 32

Also, on 19 June 2002 transcript Page 514 Dr Ramsey:

Q. Did you know Dr Willmott?

A. Yes, I did.

Q. Did you ever contact Dr Willmott in regards to the grievance?

A. I can't remember but it's likely that I did.

SUBMISSION: Ms Walshaw admits that she led by example, that she and Dr Willmott fulfilled each others' expectations of each other. Dr Ramsey knew Dr Willmott and contacted him. It is submitted that all of this included the HealthQuest action. It is submitted that breaches of the Enterprise Agreement or Privacy that Ms Walshaw may be deemed to have done were fulfilling Dr Willmott's expectations of what should be done and also those of Dr Ramsey.

Dr Ramsey's authorisation of HealthQuesting - Ms Walshaw deciding the stage/timing

Transcript 17 June 2002 Cross-examination of Ms Walshaw Page 426 Lines 13-26

SUBMISSION: It is submitted that regarding the authorisation (See Ex 44) which Dr Ramsey issued to Dr Willmott and then to Ms Walshaw, in this passage Ms Walshaw admits twice that she determined the "stage" (time) for the process.

It is submitted that the reason for deciding the timing is shown in Transcript 17 June 2002 Cross-examination of Ms Walshaw Page 426 Lines 26-46. From this it should be noted that Ms Walshaw was reluctant to admit that up until Christmas 1994 Ms Kennington was based in Kempsey doing the Head Teacher job. Ms Walshaw first claimed that Ms Kennington was in Kempsey "doing a report" as the main thing. When it was put to her again she agreed. This is significant because in EXH 29 the applicant's affidavit 4 September 2001 Mrs Kerrison testified at Paragraph 16 Mrs Kerrison deposed that after she received the letter from HealthQuest, *"on 27 June 1995 I marked, checked and recorded TAFE students' exams in TAFE Roll books which TAFE had allocated to me to perform my duties, I left the Roll books on what I believe to be my desk at TAFE, along with the resources and personal possessions that I used to perform my TAFE duties and TAFE officer, Ms Debbie Kennington, whom I believe to be my Head Teacher at that time, thanked me."*

It is submitted that Ms Walshaw determined the timing of the HealthQuest process - probably in consultation with Dr Willmott, and (either personally or through Dr Willmott) Dr Ramsey.

It is submitted that the authorised HelthQuest process was delayed, because of possible embarrassment (TAFE would have to openly seek a replacement Head Teacher) until TAFE had placed another officer in Kempsey TAFE to run the section as head teacher when Mrs Kerrison was removed overnight.

It is further submitted that this could explain the removed information from Dr Ramsey's letter to Mrs Kerrison (Ex 8 Page 2).

As this information has been withheld from Mrs Kerrison and the Court it can be assumed that it is extremely damaging to the respondent's case. I submit to the Court all of the above.

See Transcripts and affidavits throughout the hearing.

SUBMISSION

It is submitted that Ms Walshaw, Mr Quinn, Ms Robison, knew of Mrs Kerrison's grievances re threats of danger to her and they did not dispute it at the time - nor did they address harm to Mrs Kerrison or her grievance

Transcript 17 June 2002 Cross-examination of Ms Walshaw Page 432 Line 40 to Page 433 Line 34

SUBMISSION: Ms Walshaw admits that the issues which Mrs Kerrison documented to TAFE were not addressed as a grievance. As the Court has seen there are a number of issues that Mrs Kerrison raised. If the respondents do not address them in accordance with the Enterprise Agreement and

Grievance Policy as and when they occur, they can end up in Court. It is submitted that TAFE did not take their obligations under the Enterprise Agreement seriously in Mrs Kerrison's case.

Transcript 18 June 2002 Cross-examination of Ms McGregor Page 459 line 54 to page 462 line 51; and Transcript 17 June 2002 Cross-examination of Ms Walshaw Page 431 Lines 26-35

SUBMISSION: It is submitted from the above that Ms McGregor originally claimed that Ms Rhonda Hayes and Mrs Kerrison had signed a "memorandum of understanding" and that Ms Hayes and Mrs Kerrison agreed to unite the section - and it is submitted that this is not reliable evidence because this was a process which Mrs Hayes and Mrs Kerrison were not senior enough to do - that only senior management determined this. Following that, it is submitted that Ms Walshaw read Ms McGregor's affidavit/Statement in the Matter and copied the unreliable statement almost word-for-word and put it in her sworn statement to the Court. It is submitted that further indications that evidence by Ms McGregor may not be reliable is shown in Ex 58 in Ms McGregor's handwriting on the second page, lower left corner "*All files for this year are in the College somewhere. **If Gary** [emphasis added] decides to reunite the section the files will be reunited and accessible to all staff.*" It is submitted that evidence of Ms McGregor and Ms Walshaw against Mrs Kerrison is not reliable.

Transcript 4 December 2001 Page 371 Lines 10-14 Walshaw cross-examination.

SUBMISSION: Ms Walshaw admits that she did not have first-hand knowledge of what was happening in Kempsey TAFE. Ms Walshaw did not contact Mrs Kerrison to check the accuracy of her actions, or her documents and statements to HealthQuest

Transcript 19 June 2002 Cross-examination of Ms Walshaw Page 541 Lines 8-34

SUBMISSION: It is submitted that the respondent's officers Ms Walshaw, Mr Quinn, Ms Elliassen made telephone calls to at least HealthQuest and CRS spreading their allegations against Mrs Kerrison - but did not tell her either before or afterwards - she could not protect herself.

It is submitted that Ex 85 Attachment 4 Page3 shows Mr Quinn on 11 April 1995 falsely reporting "aggressive tendencies", yet he made admissions in court about the meeting on 10 April 1995.

It is submitted that Kay Elliassen and Ms Walshaw in Ex 10, 11, and 20 Attachment "C" informed HealthQuest what they wanted "...if she's not medically retired...".

Further information on this is in Ex 79 and attachments.

It is submitted that under cross-examination Ms Walshaw admits that she rang HealthQuest, but was not accurate in saying it was part of the "referral". It is submitted that Ex 10 shows that it was about the outcome. Ms Walshaw admits she did not telephone Mrs Kerrison at any time about any issues.

Transcript 19 June 2002 Cross-examination of Ms Walshaw Page 544 Lines 41-43 shows:

"Q. So you were surprised that HealthQuest had medically retired me? A. Yes."

Submission: Ms Walshaw did not retire/terminate Mrs Kerrison

SUBMISSION: Re Ex 10, Ex 20 Attachment "C", Ex 11, and Ex 3 Attachment "9" Macleay Argus.

It is submitted that this chronology is significant:

- Ex 10 occurred 23 May 1995 "*if she (Valda) is not medically retired...*"
- 26 May 1995 Ex 3 Attachment "9", Val Kerrison promoting TAFE, Ms McGregor, Ms Robison and TAFE students in the media.
- 30 May 1995 Ex 20 Attachment "C" what may be deemed an extraordinary conversation between Ms Walshaw and Dr Jagger:
"NB Advised to reassure coworkers that threats of self harm and violence to others do not appear based on serious mental illness therefore deal with this in the "normal" manner ie re suicide – "discuss this with your doctor" - re violence "stop or we'll take increasing protective action via police".
- 31 May 1995 Ms Walshaw telephoning HealthQuest with even more extraordinary allegation claiming Mrs Kerrison was "*very suicidal*".

Regarding the timing that documents were written:

SUBMISSION:

Mrs Kerrison's letters to TAFE late 1995 included the information that she had lodged a claim in the AntiDiscrimination Board against TAFE for alleged victimisation (Ref: attachments to Exhibit 19 Walshaw affidavit).

Through the years she lodged FOI requests.

Ex 85 Attachment 5 shows that on 9 August 1996 Mr Adrian Tuxworth of TAFE to Kerrison stated in part:

" I have consulted with Ms Kerrie Walshaw... and can at this stage identify no documents relating to your current application which have not already been appraised in making the previous determination ...Accordingly, Mr Siro Peroni, Manager Administration, has determined under S28(1)(b) of the FOI Act that the TAFE Commission holds no documents relevant to your request." "Walshaw... continuing to interview

individuals involved in your case. Ms Walshaw will be responding separately and, if any relevant documents are located which may be held privately by these individuals copies will be forwarded to you..."

Ex 85 Attachment "6" TAFE Executive Director Mr John Allsopp, in his covering letter to Mrs Kerrison dated 3 February 1997 stated in part: "You were previously advised on 5 August 1996 that ... you would be notified if any additional relevant documents were located. Some such documents have been located. These papers were held by the former College Manager, Kempsey, and were not previously identified as they were not held on official files..."

Ex 85 Attachment "7" 16 May 1997 Mrs Kerrison's letter to Mr Aquilina Minister for Education and Training, and copied to Ms Jane Diplock TAFE (then) Managing Director stated in part: "...I note that since the ADB's involvement TAFE have supplied over 80 additional pages of 'information' which, despite repeated FOI requests, TAFE claimed did not exist. The 'new' documents supplied and their inconsistency with previous documents and records raises serious questions about the possibility of fabrication of documents by TAFE in an attempt to, retrospectively, support their case..."

It is submitted that some of those documents bear 'dates' of April 1995 and are lodged in the Commission as the respondent's evidence. These include:

16.6.1 Exhibit MFI 5 (Now EXH 88) [Handwritten note by McGregor 'dated' 11 April 1995]

16.6.2 Parts of Exhibit 24 Mr Quinn's affidavit, namely a) Annexure "2" [Quinn to McGregor 'dated' 20 April 1995] and b) Annexure "4" [Quinn to Walshaw 'dated' 19 April 1995]

It is submitted that those 3 documents were written after Mrs Kerrison contacted Ms Walshaw in TAFE late 1995 and told her that she [Mrs Kerrison] had lodged a complaint of victimisation against TAFE in the AntiDiscrimination Board."

See also Ex 16, all of Paragraph 128

It is submitted that a) Ms Walshaw had been contacted re Mrs Kerrison's employment status i.e. Mrs Kerrison was in employment limbo, yet in February 1997 Ms Walshaw did not have a reply that she wished to pass on to Mrs Kerrison.

b) It is submitted that as at 25 August 1996 Ms Walshaw did not find Ex 24 Attachment "4" in any files, including her own because at that time it did not exist - despite being "dated" April 1995. It is submitted that if these documents had existed in August 1996 that Ms Walshaw would have found them in files held by herself (Quinn to Walshaw) and/or others (Quinn's, McGregor's, and Scuglia's; as well as in some purported 'Restricted' file/s.

It is submitted that Privacy Act of 1988 was devised to prevent actions such as this. EXH 86 gives excerpts from the Privacy Act Privacy Principles which were set out in the Personnel Handbook.

Transcript 19 June 2002 Cross-examination of Ms Walshaw Page 541 Lines 8-34

SUBMISSION:

It is submitted that the respondent's officers Ms Walshaw, Mr Quinn, Ms Elliassen made telephone calls to at least HealthQuest and CRS spreading their allegations against Mrs Kerrison - but did not tell her either before or after so she could protect herself.

It is submitted that Ex 85 Attachment 4 Page3 shows Mr Quinn on 11 April 1995 falsely reporting "aggressive tendencies", yet he made admissions in court about the meeting on 10 April 1995.

It is submitted that Kay Eliassen and Ms Walshaw in Ex 10, 11, and 20 Attachment "C" informed HealthQuest what they wanted "...if she's **not** medically retired..." and received this. Further information on this is in Ex 79 and attachments.

It is submitted that under cross-examination Ms Walshaw admits that she rang HealthQuest as part of the "referral". But Ex 10 refers to the outcome. Ms Walshaw admits she did not telephone Mrs Kerrison at any about any of the issues.

Submission - Dr Willmott

Dr Willmott in his affidavit EXH 21 on 21 March 2001 at Paragraph 10 swore that "I have no recollection of sighting the document which is "B" [HealthQuest document headed "Retirement Certificate"] during 1995 but say that it was my usual practice to have Ms Gallagher forward documents to various sections of the Institute after they had been brought to my attention."

Transcript 20 June 2002 Cross-examination of Dr Willmott Page 584 Lines 49-52

Q. Regarding the attachment to your affidavit, attachment B you say that that may be someone else's writing, very urgent, et cetera?

A. That's not my writing, that's correct.

SUBMISSION: Dr Willmott did not retire/terminate Mrs Kerrison with this document and handwritten note.

Transcript 20 June 2002 Cross-examination of Dr Willmott Page 585 Lines 9-21

Q. So, from your recollection what was the probably sequence of events?

A. 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.

SUBMISSION: Dr Willmott refers to HealthQuest notifying Mrs Kerrison of their decision. It is submitted that Dr Willmott did not terminate Mrs Kerrison

Transcript 20 June 2002 Cross-examination of Dr Willmott Page 585 Lines 21-44

Q. Can you remember whether you had any documents in your file while you were in TAFE concerning me of a derogatory nature?

A. I don't recall any specific documents concerning you of a derogatory nature.

Q. If you had had documents of a derogatory nature about staff members, what would be the process that you would use?

A. It would be somewhat dependent upon the nature of the documentation. I guess one of the things that I would normally do, if I received documentation of a derogatory nature against a staff member, would be to discuss that matter with the staff member concerned.

Q. And you would do that as soon as you received it, would you, or as soon after as you could?

A. Normally that would be the case, yes.

Q. And would you obtain their signature to the document before it was filed?

A. I would normally, I guess, obtain some sort of confirmation that they had seen it, yes.

SUBMISSION:

It is submitted that Dr Gary Willmott who was Director of NCI TAFE in 1995 is seemingly aware of Privacy Principles (with their inherent requirement for natural justice).

Dr Willmott did not inform Mrs Kerrison of Dr Ramsey's letter to him of 17 January 1995.

That letter authorised the HealthQuest action [see Ex 44] against Mrs Kerrison without her knowledge and her rights under the Enterprise Agreement.

The HealthQuest action including stopping Mrs Kerrison's pay and the underlying documents.

The HealthQuest process was carried out under Dr Willmott's Directorship.

One of the documents Ex 24 Attachment "3" bears the handwritten note: "Gary to sign out".

It is submitted that Dr Gary Willmott, Assistant Director General of the Department of Technical and Further Education (T/s 20 June 2002), should have paid particular attention to his and his staff's obligations to grievant/s including Mrs Kerrison under the TAFE Enterprise Agreement and to other legislation including TAFE Commission Act and others including OH&S and Privacy.

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