

**BEFORE THE ADMINISTRATIVE DECISIONS TRIBUNAL
EQUAL OPPORTUNITY DIVISION**

FURTHER CLAIM

NO 40 OF 1998

ISSUED BY

COMPLAINANT

VALDA JUNE KERRISON

RESPONDENTS TO NO 40 OF 1998 – s.49 DISCRIMINATION

KERRIE WALSHAW

CHRIS LOCKWOOD

RUTH GALLAGHER

HELEN JAGGER

SHARYN SCUGLIA

ELIZABETH MCGREGOR

DR GARY WILLMOTT

DR GREGOR RAMSEY

PETER CRIBB

MICHAEL QUINN

GAIL ROBISON

DEPARTMENT EDUCATION & TRAINING/TAFE

Filed by:

VALDA JUNE KERRISON

Date: 17 August 2007

Address for Service: C/- 12 Alverton St, Kempsey NSW 2440

Telephone: Message 6562 6767

Claim: Discrimination on grounds of presumed disability

“ On 15 November 1993 Ms Kerrison made allegations that, if proven, arguably would amount to contraventions by employees of TAFE NSW, on the grounds of racial and gender discrimination. ...Loss of employment obviously is a detriment. Ms Kerrison, however, must prove that TAFE NSW subjected her to that detriment because she had made the allegations previously mentioned.” [TAFE lawyer Peter Cribb](#)

K WALSHAW COMMENCES HEALTHQUEST PROCESS 1/5/95

1. On 1/5/97, an officer of the TAFE Commission Kerrie Walshaw HR Manager NCIT referred to a letter written by Mr Michael Quinn in April 1995, and wrote a letter to Dr H Gapper then Director HealthQuest stating:

“I am seeking your support in arranging a medical assessment for Val Kerrison as soon as possible.

Val has been suffering a work related stress anxiety state for a period greater than 6 months and during this period she has had 3-4 months off work

She has been absent from work again due to anxiety state from the (sic) 10 April. Val is under the control of CRS on a return to work plan and is being case managed by Di Cook at Port Macquarie CRS. Val has not previously been assessed by HealthQuest for this injury/illness.

Part of Val’s problems arise from what she sees as unresolved grievances on her part that the Commission failed to deal with. These were in fact investigated at the highest level and Val has refused to accept/and or acknowledge the outcomes

At present Val is very fragile and is exhibiting symptoms of sleep disorders , crying with little provocation and in her words despair. What is of greatest concern though is the fact that on a number of occasions recently she has said that the only way to solve the situation is with a gun. This has been both in relation to herself and another staff member.

In the light of these comments and the concerns that they raise I would ask that Val Kerrison be psychiatrically assessed by HealthQuest as soon as possible.

Please ring if you require additional information.

2. Ms Walshaw by using Mr Quinn’s letter without checking its validity, and writing this letter to HealthQuest to initiate a HealthQuest referral process unlawfully

discriminated against Mrs Kerrison on the ground of a presumed psychiatric disability in breach of sec 49 D of the NSW AD Act.

3. In her letter 1/5/95 Ms Walshaw states a “belief” that Mrs Kerrison :
 - 3.1. “has been suffering a work related stress anxiety state”
 - 3.2. “has not previously been assessed...for this injury/illness.”
 - 3.3. “is very fragile and is exhibiting symptoms of sleep disorders, crying with little provocation and in her words despair.”
 - 3.4. has said that the only way to solve the situation is with a gun.

4. Disability under [sec 49 A of the AD Act](#) includes a disability (b) that a person is thought to have (whether or not the person in fact has the disability)

5. MRS KERRISON’S PERFORMANCE OF DUTIES WAS SATISFACTORY

6. Mrs Kerrison as of 1/5/95 was satisfactorily performed her duties in TAFE. This fact has been repeatedly acknowledged by Ms Kerrison’s employer and was part of the undisputed evidence in Ms Kerrison’s s154 proceedings in the NSW Industrial Relations Commission

6.1. See Kerrison v TAFE Commission (2003) NSW IRComm 79 (6) (*Ms Kerrison worked in Kempsey, at a campus which was a part of TAFE’s North Coast Institute, as a teacher of business studies and other subjects. There was no issue that her work performance as a teacher was anything other than satisfactory throughout her employment.*)

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

7. Under [sec 49 D\(2\) of the NSW AD Act](#) it is unlawful for an employer to discriminate against an employee on the ground of disability:

- (a) in the terms or conditions of employment which the employer affords the employee, or
- (b) by denying the employee access, or limiting the employee s access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or
- (c) by dismissing the employee, or
- (d) by subjecting the employee to any other detriment.

8. Ms Walshaw on 1/5/95 unlawfully discriminated against Ms Kerrison on the ground of presumed disability by subjecting her to the following detriments:

- 8.1. arranging to have Ms Kerrison psychiatrically examined at HealthQuest for her fitness to continue in employment when there was no lawful basis or ground to do so given that she was satisfactorily performing her duties as a teacher
- 8.2. arranging to have Ms Kerrison psychiatrically examined at HealthQuest on the basis of false and highly prejudicial claims that Ms Kerrison was psychiatrically ill and making threats with guns
- 8.3. failing to observe the rules of procedural fairness to Ms Kerrison by not informing her of these claims and allowing Ms Kerrison any chance to respond to them and correct them before the HealthQuest decision was made
- 8.4. forwarding false and prejudicial claims to HealthQuest in breach of Ms Kerrison's privacy
- 8.5. by these false and prejudicial claims inducing HealthQuest to make an appointment for Ms Kerrison to be examined against her will by a psychiatrist

9. Ms Walshaw on 1/5/95 also unlawfully discriminated against Ms Kerrison on the ground of presumed disability by denying her access to a benefit associated with employment namely the grievance procedures as set out in the TAFE Enterprise Agreement 1994.

“Part of Val’s problems arise from what she sees as unresolved grievances on her part that the Commission failed to deal with. These were in fact investigated at the highest level and Val has refused to accept/and or acknowledge the outcomes

K Walshaw to HealthQuest 1/5/95

10. The TAFE Enterprise Agreement 1994 states:

4.2.9 A grievance is considered concluded, although not necessarily resolved, when a person with a grievance chooses to withdraw. The grievant should advise the person handling the grievance either in writing or verbally.

4.2.10 Wherever possible grievances should be resolved in a way that is satisfactory to all those involved. Grievances are usually only considered resolved when the cause of the grievance has been removed or dealt with, and when arrangements have been made to repair and make good any damage and distress suffered by the grievant and/or respondent.

11. Ms Kerrison's grievances about serious problems at Kempsey College TAFE had been substantiated in a report arising out of the high level investigation referred to by Ms Walshaw in her letter 1/5/95. This report “uncovered a number of serious

problems with the leadership of the College including “a failure to deal with staff grievances.” (Kerrison v TAFE (2003) NSWIRComm 79)

12. Under sec 53 of the NSW AD Act Ms Walshaw and the TAFE Commission are jointly and severally liable for the damage caused to Ms Kerrison by Ms Walshaw’s act of unlawful discrimination on 1/5/95. Sec 53 states:

53 Liability of principals and employers

(1) An act done by a person as the agent or employee of the person’s principal or employer which if done by the principal or employer would be a contravention of this Act is taken to have been done by the principal or employer also unless the principal or employer did not, either before or after the doing of the act, authorise the agent or employee, either expressly or by implication, to do the act.

(2) If both the principal or employer and the agent or employee who did the act are subject to any liability arising under this Act in respect of the doing of the act, they are jointly and severally subject to that liability.

(3) Despite subsection (1), a principal or an employer is not liable under that subsection if the principal or employer took all reasonable steps to prevent the agent or employee from contravening the Act.

MS WALSHAW, MS MCGREGOR, DR WILLMOTT RUTH GALLAGHER- TAFE COMMISSION UNLAWFULLY DISCRIMINATE AGAINST MS KERRISON 23/6/95 BY EXCLUDING HER FROM EMPLOYMENT ON THE GROUND OF PRESUMED DISABILITY

13. On 23/6/95, NCI TAFE Managers took action to summarily remove and exclude Ms Kerrison from her employment. They took this action on the basis of the discriminatory HealthQuest assessment urged by Dr Gregor Ramsey 17/1/95 setting up potential discrimination ”determine her fitness to continue”, and the certificate issued by HealthQuest 16/6/95. This action was unlawful under sec 49D of the NSW AD Act because

13.1. Ms Kerrison was satisfactorily performing her duties on 23/6/95

13.2. TAFE Management were fully aware of this fact

13.3. TAFE Management Gary Willmott, Ruth Gallagher, Kerrie Walshaw took this action on the basis of the contents of the HealthQuest certificate,

13.4. TAFE manager Elizabeth McGregor phoned Mrs Kerrison “you are medically retired” and “you don’t come in any more”. Ms McGregor took that action on the basis of the contents of the HealthQuest certificate.

14. TAFE Management including Dr Gary Willmott, Ruth Gallagher, Kerrie Walshaw,

Elizabeth McGregor took this action without informing Ms Kerrison of the serious allegations previously made against her to HealthQuest or providing her with any opportunity to answer and defend herself.

15. HealthQuest aided and abetted the unlawful action of TAFE Management on 23/6/95 by causing/ inducing/ enabling TAFE Managers to commit these unlawful acts.

16. Under sec 53 of the NSW AD Act Ms Walshaw. Ruth Gallagher, Elizabeth McGregor and Dr Gary Willmott, other staff and the TAFE Commission are jointly and severally liable for the damage caused to Ms Kerrison by all of their acts of unlawful discrimination

17. TAFE STAFF MS SHARON SCUGLIA AND/OR CHRIS LOCKWOOD, PETER CRIBB AND/OR OTHER/S DISCRIMINATED AGAINST MS KERRISON 1995 BY AUTHORISING AND MAKING CLERICAL AND COMPUTER ENTRIES ON GROUNDS OF PRESUMED DISABILITY

18. On or around June/July TAFE Ms Scuglia and/or other staff unlawfully altered the computer records for Mrs Kerrison's employment and stopped her pay.

19. Ms Scuglia did that on the basis that TAFE management gave her an unlawful HealthQuest "Retirement Certificate" for a presumed disability; a disability which Mrs Kerrison did not have.

20. HealthQuest forwarded its fraudulent HealthQuest retirement certificate to TAFE Willmott/Gallagher/McGregor and Walshaw who used it to instruct their staff to discriminate on the inbuilt presumed disability.

20.1. HealthQuest's Dr Mandel falsely and fraudulently labeled Ms Kerrison with a psychiatric disorder and falsely and fraudulently stated in the certificate that Ms Kerrison was unable to discharge the duties of her office as a consequence of this purported disorder

20.2. The psychiatric label inflicted on Ms Kerrison was based upon false and prejudicial information secretly supplied to HealthQuest by TAFE Manager Ms Walshaw and psychiatrist Dr Holmes without Ms Kerrison's knowledge or consent

20.3. This information had been entered on HealthQuest's unlawfully created files

20.4. Ms Kerrison was subjected to procedural unfairness in that she was given no opportunity to hear and answer the claims made against her before Dr Mandell and Dr Jagger issued their fraudulent certificate.

20.5. For confirmation see factual findings of Schmidt J in Kerrison v TAFE (2003) NSWIRComm 79 at (140) not challenged or overturned on appeal:

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

21. Under sec 53 of the NSW AD Act Ms Scuglia and/or Chris Lockwood and/or other/s and the TAFE Commission are jointly and severally liable for the damage caused to Ms Kerrison by all of Ms Scuglia’s and other/s unlawful discrimination

TAFE STAFF MEMBER CHRISTOPHER LOCKWOOD, ADVISED BY TAFE LEGAL STAFF PETER CRIBB, DISCRIMINATED AGAINST MRS KERRISON ON GROUNDS OF PRESUMED DISABILITY BY UNLAWFULLY ACCESSING AND TAKING ALL OF MRS KERRISON’S EXTENDED LEAVE AND SICK LEAVE ENTITLEMENTS

22. Under sec 49 D(2) of the NSW AD Act it is unlawful for an employer to discriminate against an employee on the ground of disability:

- (a) in the terms or conditions of employment which the employer affords the employee, or
- (b) by denying the employee access, or limiting the employee s access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or
- (c) by dismissing the employee, or
- (d) by subjecting the employee to any other detriment.

23. Mr Lockwood swears in his Affidavit 18 July 2000

23.1. Paragraph 4 “On 16 June 1995 Health Quest issued a retirement certificate in relation to the Complainant to the Respondent on medical grounds of a personality disorder.

23.2. Paragraph 6 “On 13 September 1996 the Medical Appeals Panel disallowed the Complainant’s appeal against the decision by Health Quest dated 16 June 1995...”

23.3. Paragraph 7 “From 16 June 1995 until all of her leave entitlements were exhausted the Complainant was paid by the Respondent from her accrued leave entitlements...”

24. Mr Lockwood acts are detrimental to Mrs Kerrison and unlawfully deprive her of her rights.

24.1. Mr Lockwood acting on “medical grounds” of a presumed disability

either unlawfully took, or defrauded, or unlawfully authorised/condoned another to take all of Mrs Kerrison's extended leave and sick leave accruals.

- 24.2. Mr Lockwood treated Mrs Kerrison differently to other TAFE employees who were entitled (as was Mrs Kerrison) to elect when they wished to access their accrued entitlements and are in fact required to sign their application.
- 24.3. Mr Lockwood did this on the grounds of presumed disability fraudulently stated in the HealthQuest certificate
25. Mr Lockwood does not hold any request to access her entitlements signed by Mrs Kerrison.
 - 25.1. Mr Lockwood would be aware, or should be aware that Mrs Kerrison's payslips state specifically that through the dates Mr Lockwood swears that he/TAFE were paying her sick leave and extended leave, the official payslips refute this.
 - 25.2. The payslips clearly show "Ordinary Pay",
 - 25.3. Payslip for the fortnight 4/4/96 shows Mrs Kerrison's Salary \$43850 per annum, it pay Ordinary Pay \$1680.77 for the fortnight. The accrued extended leave is 57.14 days
 - 25.4. The next fortnight's TAFE official payslip shows that apparently an unlawful decision was made by, perhaps by Mr Lockwood, Willmott, Walshaw, Cribb or some other; this was the last pay received by Mrs Kerrison and it is dated 18/4/96. It shows that the Salary rate was changed to \$0.0 per annum, resulting in Ordinary Pay of \$0.00. And the accrued extended leave has accrued to 57.59.
 - 25.5. Mr Lockwood swears that Mrs Kerrison's discontinued pay is because of "medical grounds" as above i.e. discrimination on the grounds of a presumed disability.

RUTH GALLAGHER, DR GARY WILLMOTT, MS KERRIE WALSHAW , MS GAIL ROBISON DISCRIMINATED ON GROUND OF PRESUMED DISABILITY – "MEDICAL RETIREMENT"

26. Mrs Kerrison was currently working, was not on sick leave.
27. Ms Gallagher testifies as in her Affidavit 27 August 2001,
 - 27.1. "...it was the practice that verbal advice would be given to me by the Institute Director Dr G Willmott to direct the actions of other officer, in this case Kerrie Walshaw...I would have advised Dr Willmott of the arrival of the Retirement Certificate [stating inter alia "unable to carry out the duties of office" due to a presumed disability], given him any advice...and then forwarded his

directions to Kerrie Walshaw”

27.2. “The handwritten note on the [HealthQuest Retirement] certificate reading “Kerrey URGENT need to terminate her [Mrs Kerrison] as at close of business today” is I believe in my handwriting.

28. Under sec 49 D(2) of the NSW AD Act it is unlawful for an employer to discriminate against an employee on the ground of disability:

(a) in the terms or conditions of employment which the employer affords the employee, or

(b) by denying the employee access, or limiting the employee s access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or

(c) by dismissing the employee, or

(d) by subjecting the employee to any other detriment.

29. Ms Gallagher, Ms Robison, Ms McGregor, Dr Willmott and/or Ms Kerrey Walshaw authorised and/or carried out discrimination on the grounds of that presumed disability and committed all of the above, with devastating arbitrary detriments meted out without procedural fairness or her right to defend herself and her property.

TAFE STAFF MS SHARON SCUGLIA AND/OR OTHER/S INCLUDING MS GAIL ROBISON DISCRIMINATED AGAINST MS KERRISON 1995-98 BY MAKING OR AUTHORISING CLERICAL AND COMPUTER ENTRIES ON GROUNDS OF PRESUMED DISABILITY

30. Dept of Health MAP’s letter dated 13 September referred to HealthQuest’s unlawful actions on 16 June 1995 applying psychiatric labeling and on that presumed disability its further fraudulent statement that Mrs Kerrison was “ in consequence unable to discharge the duties of your office”. MAP unlawfully sent that letter to TAFE.

31. TAFE used that letter, as with the HealthQuest fraudulent certificate, to discriminate against Mrs Kerrison on grounds of presumed disability.

32. In October 1996 TAFE attempted to sever their responsibilities to pay superannuation for Mrs Kerrison, giving the reason to be presumed disability “medical retirement”.

33. Ms Scuglia, using the fraudulent HealthQuest retirement certificate explained and described above, together with the MAP letter 13 September 1996 which mirrored HealthQuest’s discriminatory phrases including presumed disability, in 1998 altered and backdated Mrs Kerrison’s employment status to “Sick Leave Without Pay” and

“Leave Without Pay” both times giving the particulars to be “medical retirement”

34. Ms Scuglia did not hold a signed request from Mrs Kerrison for changes to her employment, and Ms Scuglia denied Mrs Kerrison the right to object, lodge a defense, or defend herself

35. Due to Ms Scuglia unlawfully making those changes to Mrs Kerrison’s employment status

35.1. TAFE unlawfully did not pay its superannuation responsibilities for this employee from April 1996 onwards, and

35.2. persuaded State Super to unlawfully enable TAFE to lodge a “Withdrawn” status on Mrs Kerrison’s superannuation account.

36. TAFE AND ITS STAFF REPEATEDLY TREATED MRS KERRISON DIFFERENTLY AND LESS FAVOURABLY TO OTHER STAFF ON THE GROUNDS OF PRESUMED DISABILITY

37. TAFE unlawfully repeatedly treated Mrs Kerrison differently to other staff on the grounds of presumed disability.

37.1. Other TAFE teachers such as Gearen, Kennington, Rouse, Stucke, Wykes, Hayes held similar positions in TAFE and

37.1.1. were permitted to keep their jobs, and progress their careers in TAFE

37.1.2. kept their entitlements until they chose to use them: extended leave, accumulated sick leave etc

37.1.3. On the grounds of presumed disability TAFE staff maintained that Mrs Kerrison was retired and denied her her rights to procedural fairness,

38. By comparison, Mrs Kerrison suffered great unlawful detriment with TAFE giving its reason to apply the detriments being a disability it assumed or presumed.

Detriments

39. Mrs Kerrison was working to high standards, her work was completely satisfactory, but following her complaints , overnight and without warning TAFE personnel named and charged in various combinations of personnel and deeds, did the following on grounds that she had a presumed disability and/or was somehow forcibly “medically retired:

39.1. June 1995 unlawfully took her employment claiming she was “medically retired”

- 39.2. Unlawfully inserted “medically retired” onto her employment records and employment references
- 39.3. unlawfully denied her the right to staff development and employment opportunities from June 1995
- 39.4. unlawfully overnight deprived her of salary in July 1995, and again in April 1996
- 39.5. unlawfully refused to allow her to return to work, harassed her telling her to apply for sickness welfare, and still refused to allow her to return to work when she was both working elsewhere, and had provided her doctor’s confirmation that she was fit and well to work.
- 39.6. attempted to sever superannuation unlawfully in mid-1995, again in 1996, and yet again in 1998
- 39.7. unlawfully changed her employment status from “teacher” to “medically retired” in 1995, and 1996,
- 39.8. unlawfully changed her employments status to “Sick Leave Without Pay” in 1996
- 39.9. In 1998 unlawfully changed her employment status to “Sick Leave Without Pay” and backdated it to 1996
- 39.10. In 1998 unlawfully changed her employment status to “Leave Without Pay” and backdated it to 1996
- 39.11. unlawfully induced State Super to accept that Mrs Kerrison’s superannuation entitlements were “withdrawn” status in 1998
- 39.12. unlawfully deprived her of her right to proper grievance process in accordance with TAFE guidelines.
- 39.13. unlawfully denied her the basic right of procedural fairness and natural justice in their decision making, simply made arbitrary decisions against her
- 39.14. unlawfully denied her the right to be informed and allowed to refute allegations before they were either acted upon or sent elsewhere to be acted upon.
- 39.15. unlawfully encouraged staff to harass her and discriminate against her on grounds of presumed disability
- 39.16. Unlawfully forced her to submit to psychiatric interrogation against her will, knowing that she was not ill; she was working.

- 39.17. Unlawfully denied her the right to attend TAFE, to attend meetings and other staff functions and professional activities since June 1995
- 39.18. Unlawfully attempting to induce her to believe that she was incapable of carrying out the duties of office, and that this purported “condition” was permanent.
- 39.19. Unlawfully attempting to induce others to believe that she was incapable of carrying out the duties of office, and that this purported “condition” was permanent
- 39.20. Unlawfully refusing to make null and void the decisions and actions carried out against her in breach of her unfettered rights to procedural fairness/natural justice.
- 39.21. Unlawfully summarily standing her down from her teaching duties causing her to be isolated, and publicly embarrassed and humiliated.
- 39.22. unlawfully duping her into thinking that her employment was terminated without any process or rights by HealthQuest
- 39.23. unlawfully denied her the right to a workplace free of name-calling and harassment
- 39.24. unlawfully withheld her right to rehabilitation and return to work
- 39.25. unlawfully caused isolation from TAFE staff-support contact and assistance
- 39.26. unlawfully withheld her right to truthful communication.
- 39.27. Unlawfully acted as if she was not entitled to continue working in the position to which she was appointed: as a TAFE teacher
- 39.28. Unlawfully defamed Mrs Kerrison, personally and professionally with psychiatric labeling, and implications of disability “medical retirement”

40. Consequently the perpetrator/s have been free to unlawfully discriminate others similarly unlawfully labeled by TAFE’s service provider, HealthQuest. By comparison Mrs Kerrison suffered greatly for more that 12 years and although gaining some employment, due to TAFE’s discrimination against her she has lost practically everything.

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

41. On 14/5/95 Ms Kerrison was directed to attend an appointment at HealthQuest by Ms McGregor Kempsey TAFE Manager but deceived about the true purpose of the appointment.

41.1. “Ms McGregor informed Ms Kerrison that an appointment had been made for her at HealthQuest. Ms McGregor’s note of 14 May records that she had advised Ms Kerrison that the appointment was for “Workers compensation/rehab” She sent a copy of this note to Ms Kerrison. **The advice was plainly untrue.** In fact, arrangements had been made by Ms Walshaw for Ms Kerrison to be assessed by the Government Medical Officer at HealthQuest for her fitness to continue in employment.” Kerrison v TAFE Commission (2003) NSWIRComm 79 at (121)

41.2. “Ms Kerrison was deliberately deceived as to the reason why she was being sent to HealthQuest.” Kerrison v TAFE Commission (2003) NSWIRComm 79 at (197)

42. Ms Kerrison was, prior to and on 14/5/95 and for more than a month later when TAFE used HealthQuest’s documents to exclude her from her lawful position teaching, satisfactorily performing her duties as a TAFE teacher and there was no lawful basis to direct her to attend HealthQuest. Ms McGregor on 1/5/95 unlawfully discriminated against Ms Kerrison on the ground of a presumed disability and/or victimised her for reporting racial discrimination by

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

42.2. directing her to attend HealthQuest when she was satisfactorily performing her duties as a TAFE teacher.

43. MS KERRISON SUBJECTED TO UNLAWFUL INVOLUNTARY PSYCHIATRIC INTERROGATION AT HEALTHQUEST

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

45. Dr Mandel aided and abetted the unlawful actions of the TAFE Commission on 19/5/95 in breach of sec 49 D of the NSW AD Act:

45.1. Ms Kerrison had continued to satisfactorily perform her duties as a teacher

45.2. There was no lawful ground for Dr Mandell to commence a psychiatric examination against Ms Kerrison

45.3. Ms Kerrison’s attendance at HealthQuest had been obtained by deliberate consent perpetrated by Kempsey College Manager Ms McGregor

45.4. Dr Mandell became aware during her examination that Ms Kerrison was working contrary to false information supplied by K Walshaw on 1/5/95 but continued to subject Ms Kerrison to an unlawful examination

45.5. Dr Mandell made further entries on the unlawful file created by HealthQuest on or about 1/5/95 about Ms Kerrison without her knowledge or consent

MS WALSHAW MAKES FURTHER FALSE CLAIMS TO HEALTHQUEST 23/5/95

46. On 23/5/95 Ms Walshaw phoned HealthQuest stating that “she would like to arrange to have someone talk to staff about Valda’s condition so that they are all prepared for when she comes back to the workforce.” if she were not permanently removed from the workplace.

46.1. Ms Walshaw unlawfully discriminated against Ms Kerrison in breach of sec 49 D of the AD Act in that she:

46.2. Breached Ms Kerrison’s privacy by communicating false and misleading information to HealthQuest without her knowledge or consent

46.3. Breached Ms Kerrison’s privacy and contacted HealthQuest when Ms Kerrison continued to satisfactorily perform her duties as a teacher

46.4. Took this action on the ground of presumed disability by referring to “Valda’s condition”

46.5. Took this action to persuade and influence HealthQuest to make a decision to have Ms Kerrison permanently removed from the workplace.

47. HealthQuest aided and abetted Ms Walshaw’s unlawful actions on 23/5/95 by accepting this communication and entering it into file on Ms Kerrison without informing Ms Kerrison or gaining her consent.

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

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

49.1. Ms Walshaw unlawfully discriminated against Ms Kerrison in breach of sec 49 D of the AD Act in that she:

49.2. Breached Ms Kerrison’s privacy by communicating false and misleading information to HealthQuest without her knowledge or consent

49.3. Breached Ms Kerrison’s privacy and contacted HealthQuest when Ms Kerrison continued to satisfactorily perform her duties as a teacher

49.4. Took this action on the ground of presumed disability by referring to “Valda’s condition”

49.5. Took this action to persuade and influence HealthQuest to make a decision to have Ms Kerrison permanently removed from the workplace.

50. HealthQuest aided and abetted Ms Walshaw’s unlawful actions on 31/5/95 by accepting this communication and entering it into their unlawfully created file on Ms Kerrison without informing Ms Kerrison or gaining her consent.

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

52. On 16/6/95 Dr Mandel and Dr Jagger signed a document titled “retirement certificate” that by its wording induced, caused, permitted Ms Kerrison’s employer TAFE Commission to summarily and permanently remove her from her duties solely on the ground of a presumed disability:

52.1. Ms Kerrison was satisfactorily performing her duties on 16/6/95 when Dr Jagger and Dr Mandel signed the certificate

52.2. Dr Jagger and Dr Mandel were aware of this fact

52.3. Dr Mandel falsely and fraudulently labeled Ms Kerrison with a psychiatric disorder and falsely and fraudulently stated in the certificate that Ms Kerrison was unable to discharge the duties of her office as a consequence of this disorder

52.4. The psychiatric label arbitrarily and falsely applied to Ms Kerrison’s good name was based upon false and prejudicial information secretly supplied to HealthQuest by TAFE Manager Ms Walshaw and psychiatrist Dr Holmes without Ms Kerrisons’ knowledge or consent

52.5. This information had been entered on HealthQuest’s unlawfully created files

52.6. Ms Kerrison was subjected to procedural unfairness in that she was given no opportunity to hear and answer the claims made against her before Dr Mandel and Dr Jagger issued their fraudulent certificate.

53. For confirmation see factual findings of Schmidt J in Kerrison v TAFE (2003) NSW IR Comm 79 at (140) not challenged or overturned on appeal: *“It was obvious from Dr Jagger’s explanations that in coming to their diagnosis of Ms Kerrison , account had been taken by Dr Mandel and Dr Jagger of the information which Ms Walshaw had volunteered inb her various phone calls. None of this information was checked with Ms Kerrison who was kept entirely ignorant of Ms*

Walshaws approaches to HealthQuest or the purpose of her reference there. The information provided was plainly inaccurate in a number of important respects , and the evidence in these proceedings has shown.”

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

49A Disability includes past, future and presumed disability

A reference in this Part to a person s disability is a reference to a disability:

- (a) that a person has, or
- (b) that a person is thought to have (whether or not the person in fact has the disability), or
- (c) that a person had in the past, or is thought to have had in the past (whether or not the person in fact had the disability), or
- (d) that a person will have in the future, or that it is thought a person will have in the future (whether or not the person in fact will have the disability).

55. **49B What constitutes discrimination on the ground of disability**

(1) A person ("**the perpetrator**") discriminates against another person ("**the aggrieved person**") on the ground of disability if, on the ground of the aggrieved person s disability or the disability of a relative or associate of the aggrieved person, the perpetrator:

(a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who does not have that disability or who does not have such a relative or associate who has that disability, or

(b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have that disability, or who do not have such a relative or associate who has that disability, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

(2) For the purposes of subsection (1) (a), something is done on the ground of a person s disability if it is done on the ground of the person s disability, a characteristic that appertains generally to persons who have that disability or a characteristic that is generally imputed to persons who have that disability.

56. 49C What constitutes unjustifiable hardship

In determining what constitutes unjustifiable hardship for the purposes of this Part, all relevant circumstances of the particular case are to be taken into account including:

- (a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned, and
 - (b) the effect of the disability of a person concerned, and
 - (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.
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57. 49D Discrimination against applicants and employees

(2) It is unlawful for an employer to discriminate against an employee on the ground of disability:

- (a) in the terms or conditions of employment which the employer affords the employee, or
 - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or
 - (c) by dismissing the employee, or
 - (d) by subjecting the employee to any other detriment.
-

58. Sec 4 of the NSW AD Act states

4 Definitions

(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

"disability" means (inter alia):

- (e) a disorder, illness or disease that affects a persons thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.
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59. 4A Act done because of unlawful discrimination and for other reasons

If: (a) an act is done for 2 or more reasons, and

(b) one of the reasons consists of unlawful discrimination under this Act against a person (whether or not it is the dominant or a substantial reason for doing the act),

then, for the purposes of this Act, the act is taken to be done for that reason.

60. 52 Aiding and abetting etc

61. It is unlawful for a person to cause, instruct, induce, aid or permit another person to do an act that is unlawful by reason of a provision of this Act.

62. NSW Ombudsman Good Conduct and Administrative Practice Guidelines (2nd Edition) applies to TAFE, HealthQuest MAP and states:

1. Compliance

1.1 Complying with the law

1.1.1 The principle A fundamental principle of good public administration is that public officials comply with **both the letter and spirit** of applicable law (be it statutory or common law). No public official has an unfettered power or discretion.

63. TAFE's Obligations

63.1. "4.8.1 Any person detrimentally affected by maladministration should , wherever practicable , be put back in the position that they would have been in had the maladministration not occurred.

63.2. 4.8.2 Agencies have a duty to provide appropriate redress where members of the public have been detrimentally affected by maladministration. This duty is owed to all persons affected by maladministration whether or not they have complained to the agency, to the Ombudsman, or other relevant watchdog agency, or have any legal entitlement to redress.

64. Maladministration under the Ombudsman's Act and the NSW Protected Disclosures Act 1994 is defined to include action or inaction of a serious nature that is:

64.1. Contrary to law

64.2. Improperly discriminatory

65. TAFE Commission, HEALTHQUEST and the MAP have a duty to provide full redress for their maladministration against Ms Kerrison by returning her as much as

possible to the position she would have been in prior to the maladministration as if it had not occurred.

Other unlawful acts

66. SECRET FILES –

PRIVACY ACT EXCERPT - PRIVACY PRINCIPLES

Principle 1 - Manner and purpose of collection of personal information

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:

(a) the information is collected for a **purpose** that is a lawful purpose directly related to a function or activity of the collector; and

(b) the collection of the information is necessary for or directly related to that purpose.

2. Personal information shall not be collected by a collector by unlawful or unfair means.

Principle 3 - Solicitation of personal information generally

Where:

(a) a collector collects personal information for inclusion in a record or in a generally available publication; and

(b) the information is solicited by the collector:

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected:

(c) the information collected is relevant to that purpose and is up to date and complete; and

(d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Principle 8 - Record-keeper to check accuracy etc of personal information before use

A record-keeper who has possession or control of a record that contains personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date and complete.

Principle 9 - Personal information to be used only for relevant purposes

A record-keeper who has possession or control of a record that contains personal information shall not use the information except for a purpose to which the information is relevant.

Principle 10 - Limits on use of personal information

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:

- (a) the individual concerned has consented to use of the information for that other purpose;
- (b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
- (c) use of the information for that other purpose is required or authorised by or under law;
- (d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or
- (e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.

Principle 11 - Limits on disclosure of personal information

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:

- (a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;
- (b) the individual concerned has consented to the disclosure;
- (c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
- (d) the disclosure is required or authorised by or under law; or
- (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.

2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.

3. A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

67. CONCLUSION:

TAFE, HealthQuest, and MAP personnel were given public funds to administer their agencies within the law, efficiently and effectively. At any time in the past decades they could have corrected themselves and, with the stroke of a pen or phone call addressed everything in Mrs Kerrison's grievances and complaints – if they had done so using an efficient ethical process such as that written in the TAFE Grievance Policy these issues would have been addressed cheaply and in a timely

manner. Instead TAFE and their lawyers and service providers (HealthQuest, MAP) apply to the ADT to uphold their behaviour and find and award against Mrs Kerrison.

Public comment on this is now published world-wide on the web, and has been forwarded to the United Nations under their treaty United Nations Convention Against Corruption.

TAFE Commission, HEALTHQUEST and the MAP have a duty to provide full redress for their maladministration against Ms Kerrison by returning her as much as possible to the position she would have been in prior to the maladministration as if it had not occurred.

ORDERS

The Applicant seeks the following orders:

1. That the Respondents' defence be dismissed
2. That the Respondent abide by Ombudsman's Office guidelines and perform their duty to provide full redress for their maladministration against Ms Kerrison by returning her as much as possible to the position she would have been in prior to the maladministration as if it had not occurred.
3. Costs
4. **Interim orders**
 - (1) The Tribunal may, on the application of the President after a complaint is made and before the complaint is declined, terminated or otherwise resolved by the President, or referred to the Tribunal, or on the application of a complainant or respondent at any time, make an interim order:
 - (a) to preserve the status quo between the parties to the complaint, or
 - (b) to preserve the rights of the parties to the complaint, or
 - (c) to return the parties to the complaint to the circumstances they were in before the contravention of this Act or the regulations alleged in the complaint occurred,

pending determination of the matter the subject of the complaint.

(2) Section 89 of the *Administrative Decisions Tribunal Act 1997* applies to an interim order of the Tribunal in the same way as it applies to an original decision of the Tribunal.