

AFFIDAVIT

On the twenty-third day of August 2001, I, Pene Ann LOZA, Manager, of 11 Gleneagle Street TAREE, 2430, in the State of New South Wales make oath and say as follows :

1. I was appointed to the position of Transition Education Coordinator, Department of Technical and Further Education, with effect from 31 January, 1984. My appointment was approved by the then Director-General of that Department, with a copies of the letter of offer (dated 21 December, 1983) and appointment (dated 29 June, 1984) at **Annexure A.** (2 pages)
2. Although I was initially appointed on 12 months probation I did not receive verification of permanent appointment following my first 12 months of service. I followed this up and was finally advised, by letter dated 13 June, 1990 over the signature of Diane Puglisi, Permanent Appointments Clerk, that my appointment had been confirmed and that "verification of this will appear in the TAFE gazette number 22, dated 27 June 1990". A copy of this letter is attached as **Annexure B.** (1 page)
3. My position was a Regional position (North Coast of New South Wales), with my base College being Lismore. A copy of my initial Statement of Duties and Conditions of Employment are appended as **Annexure C.** (2 pages)
4. My previous service with the NSW Departments of Youth and Community Services and Family and Community Services were recognised for the purposes of extended leave. This gave me a commencement date with the NSW Public Service as being 28 July, 1978. The letter confirming this decision is over the signature of Michael F Brinsden, Director-General of the Department of Technical and Further Education and is dated 18 June 1990. It is attached as **Annexure D.** (1 page)
5. A Certificate of Service verifying my employment with TAFE from 31 January 1984 to 19 October, 1992, as the Regional Coordinator, Labour Market Programs at Lismore was Issued over the signature of Denny Flissinger, Human Resource Manager, North Coast Institute of TAFE, dated 15 March, 1993. A copy is appended as **Annexure E.** (1 page)
6. A personal statement (dated 27 July 1994) outlining my areas of responsibility, the various re-titling of my position name during my employment and comments on aspects of my employment is appended at **Annexure F.** (1 page). It is over the signature of Paul Baker who supervised me at a Head Office level from my appointment in 1984 until he left TAFE in 1991.

7. In 1989, a position was created for a second Regional Coordinator, who was to be my equivalent in terms of the Region and required duties. This position was filled, following the normal TAFE open advertisement and selection procedures, by Ms. Stephanie Manion.
8. Not long after Ms. Manion was appointed, Ms Ellen Davidson, who was the Women's Access Coordinator based at Lismore College was informed that her position was to be deleted. As a result, a position was created for a third Regional Coordinator in my area of work. Ms. Davidson was transferred to this position although at the time she did not possess the minimum educational qualifications that had been required in the advertisement of the position.
9. Following Ms Davidson's appointment, I perceived that the workplace had become quite stressful. There was escalating conflict around workplace issues and Ms. Davidson's work performance, as a member of this new three person "management team". The difficulties in the workplace were further reflected in the fact that my clerical assistant, who had been in the position for about five years, resigned and her resignation was followed in quick succession by two or three other newly appointed clerical assistants. All of these persons indicated that Ms. Davidson's behaviour and attitude towards them were major factors in their decisions to resign.
10. Although Ms. Manion shared my concerns and we jointly raised issues with both Head Office Staff and the Regional Director, it appeared that little was being done to resolve the workplace management and performance issues.
11. I recall on one occasion being asked to attend the office of Mr. Tom Dennis, the then Regional Director. At this meeting he told me that I had committed a serious breach of the TAFE Sexual Harassment policies and procedures because I had given Ms Davidson a memo which outlined concerns that had been raised with me in respect of Ms Davidson's behaviour towards other female staff which was perceived, by those staff, to have unwelcome sexual overtones. Mr. Dennis informed me that TAFE protocol demanded that I refer such matters to the Sexual Harassment Officer in the first instance and that I should not have given the memo directly to Ms Davidson. At this point, I reminded Mr Dennis that Ms Davidson **was** the TAFE-appointed Sexual Harassment Officer. Mr Dennis also said to me words to the effect that "if there was a re-structure and only one position remained for a Regional LMP Coordinator, Ms. Davidson would get the position because she had already had her previous position deleted."
12. Around this period (1989-1990), I began having migraines for the first time in my life. The migraines became increasingly frequent and severe, requiring hospitalisation on occasions.
13. After a prolonged period, I concluded that my migraines were a workplace illness caused by the stress of working in an environment characterised by poor management and little accountability. As a result, I sought medical advice and lodged a claim for Worker's Compensation.

14. As a part of the assessment process in respect of my claim, I was interviewed by Officers from the Department and was also assessed by at least two or three psychiatrists, one of whom was Dr Rod Milton, a forensic psychiatrist.
15. The then Human Resources Manager, Ms Kerry Walshaw, subsequently advised me that my Worker's Compensation claim had been approved, but she maintained that the psychiatric finding was that I "was suffering from grief" (owing to the recent deaths of members of my immediate family). Ms Walshaw demanded that I get grief counselling. I told Ms Walshaw that I had already had grief counselling and that I believed that since the mitigating factor in my stress was poor management in the workplace, the situation would not improve until this was addressed.
16. Ms. Walshaw refused me access to the psychiatrist's reports and advised me that I would be placed in a position where I would not have any contact with Ms Davidson.
17. I subsequently sought assistance from a Rehabilitation Provider to assist me in my negotiations with TAFE and to facilitate my return to the workplace, and more particularly, to my previous position, as soon as possible.
18. From about February, 1992, when I returned to the workplace, Ms Walshaw and the then College Principal assigned me to a Position of Special Duties, working at the Library at Lismore College. This involved me being supervised by the Librarian in Charge, who in fact, was junior to me in terms of substantive positions within the Department).
19. With encouragement from my Rehabilitation Provider, I wrote a submission to TAFE indicating that I believed they were contravening legislation in that my alternate duties were not at a level equivalent to my pre-injury position and I was therefore being required to carry out relatively menial tasks.
20. As a result of the submission I made, negotiations were carried out for me to undertake a Rehabilitation Program with the Department of School Education Regional Office located in Lismore. The initial outline for this Rehabilitation Program is attached as **Annexure G**. (1 page).
21. I commenced working on this Rehabilitation Program with the Department of School Education on 1 June, 1992. I was supervised by Mr. Greg Cloak, Assistant Director, Education Programs and Planning. It was agreed that my secondment would, initially, last for three months.
22. **Annexure H** (2 pages) is a report dated 27/8/92 over the signature of Mr Greg Cloak. This report was prepared as part of the 3 month review of my secondment and outlines the duties I

had undertaken in the preceding months. It indicates that I could continue to work on this secondment for a further three months, if approved.

23. On page two of *Annexure H* is a hand-written notation by Ms. Kerry Walshaw, TAFE Regional Human Resources Manager, dated 4/9/92, approving the extension of my secondment to the Department of School Education for a further three months.
24. As I recall, it was during my period of secondment to the Department of School Education that I was informed that I had to attend an assessment at Healthquest, in Sydney. I was informed of this by a TAFE clerical staff member, Ms Kaye Eliasson. She told me in words to the effect that the assessment was needed to "see how I was going". My impression from this statement was that it was to be a simple procedure to assess my progress in terms of my return to work rehabilitation program.
25. I do not recall being given any other information apart from the fact that I had no choice but to attend and that the Healthquest doctor would assess my current physical and psychological capacity to perform my duties. No person entered into any discussions with me in respect of the processes involved in Healthquest assessments, what was involved, my rights to any information or support, either about the assessment process or the reports TAFE had forwarded to Healthquest, or the legislation or Departmental policies on which they were relying to compel my attendance at the assessment.
26. At no time was I told I had any right to refuse to attend the assessment or to refuse any of the medical procedures/processes that were to be performed during the assessment. Similarly, I was never informed of the possible ramifications, dangers or benefits of the process and I was, therefore never able to give consent of any kind ~ informed or otherwise ~ simply because I was clearly led to believe that I had no choice but to attend the assessment, as directed.
27. At around this same time, Ms Eliasson suggested to me that should the Healthquest assessment make a finding that I was unfit to perform my duties, I would be medically retired. It was my impression from this conversation that if this occurred, I would have no choice in the matter. Ms. Eliasson indicated that she would find out from the State Superannuation Fund what financial effect medical retirement would have on me in the event that this was the finding made by Healthquest.
28. At no time did I agree with Ms Eliasson that I believed I was unfit to perform my duties and nor did I indicate that I would be seeking to be medically retired. At the time, I recall that I believed I was performing my duties in my seconded position to a high standard and I had received positive feedback about my performance standards from Mr. Cloak, my supervisor.



29. **Annexure I** (2 pages) is a copy of a letter from the State Superannuation Board (dated 17/9/92) to Ms. Eliasson regarding a "fax dated 15/9/92" from Ms Eliasson to them in respect of Invalidity Retirement benefits that would be payable to me.
30. The fax sent by Ms. Eliasson is dated 15/9/92, which is only 11 days after Ms. Walshaw had approved a three month extension on my secondment to the Department of School Education, as outlined in points 22 and 23 above, which would have kept me employed there at least until December, 1992.
31. I can not recall when Ms Eliasson gave me a copy of this document since its contents were not important to me until after I was told that I had been medically retired.
32. My Healthquest assessment occurred around early October, 1992. The doctor who examined me did not explain the process or the potential outcomes of the process. He did not ask for my informed consent to submit to any of the procedures performed. I also recall that I had a disagreement with the doctor during the appointment as he maintained that the medication prescribed for my migraines was not migraine medication at all and he also claimed "I must have had a 'brain tumour', regardless of what my treating specialists had told me".
33. Following my assessment at Healthquest, I returned to my full time position on secondment to the Department of School Education in the belief that I would continue working there at least until December, 1992, as had been approved by TAFE as part of my return to work plan.
34. On Friday 23 October, 1992, which was about two weeks after my assessment by Healthquest, I was telephoned at home by Ms Kaye Eliasson. Ms. Eliasson said words to the effect "TAFE retired you last Monday and since you got paid yesterday, you owe us some money".
35. Even though I had worked all week and had been paid the previous day (Thursday), TAFE did dock three days pay from my final payout, being the three days for which I had been paid after the TAFE decision to "retire" me, even though I had not been informed. This docking of my pay is evident in perusal of **Annexure J**, (1 page) where a copy of the cheque butt relating to my final payments indicates as the last item a "sal overpayment".
30. Later enquiries made by me in respect of anomalies I perceived between payments received and my group certificate (received in July 1993) again confirmed that TAFE had deducted a "salary overpayment from me (three days ~ \$359.91) because, according to their records, my retirement took effect as of 19/10/92 and I had been paid for the period up to 22/10/93. A letter dated 8 December, 1993 over the signature of Angela Falato is appended as **Annexure K** (1 page) and again verifies the salary deduction for alleged "overpayment".

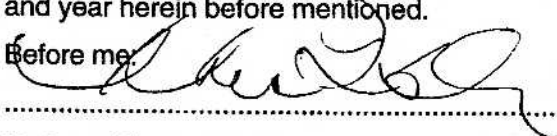
31. The fact that I had actually worked the three days because no one had informed me I had apparently "been retired" was completely disregarded in any contacts I made with Senior TAFE staff to endeavour to sort the situation out. This confirmed for me that the my "retirement" date was final and could not be varied, even though TAFE had neglected to inform me about it until three days after it took effect.
32. Ms. Eliasson told me that the Department of School Education had not been informed of my "retirement" and that I would have to attend that office on the next working day (Monday 26 October, 1992) and inform my supervisor that I no longer worked there.
33. At no time did Ms. Eliasson or anyone else from TAFE or Healthquest inform me that I had any right of appeal in respect of either my apparent "retirement" or the findings of Healthquest.
34. I attended the Department of School Education on 26 October and informed Mr Cloak of the situation where I had apparently been retired, without notice or discussion, the Monday of the previous week.
35. Mr. Cloak was extremely surprised by this, particularly since he understood that my secondment had been officially approved by TAFE until at least until December, 1992.
36. Given the situation, and in the absence of any advice that the matter could be appealed, Mr Cloak chose to write a report in respect of my performance from June to October 1992. This report, dated 4 November 1992 is appended as **Annexure L**. (1 page)
37. **Annexure M** (1 page) is a copy of a letter from Healthquest, dated 16/10/92 that I received in the week after TAFE had informed me I had been "retired". It clearly states "a certificate dated 16/10/92 for your retirement on medical grounds.....has been issued to your employer. It also indicated that if I needed further information, I should contact my employer. The wording of this document clearly led me to believe it was a legal and binding finding with an official "certificate" having been issued. The matter appeared to be clearly serious and binding and I believed it was a legal document.
38. Further contact with my employer failed to provide me with any information other than to further confirm my belief that the medical certificate issued by Healthquest was legal and binding. I was, therefore, now officially medically retired and I was led to believe that no appeal was possible.
39. Despite the fact that I did not put any formal resignation in writing, I received a letter dated 28 October, 1992 over the signature of Margaret Willis, Institute Director, North Coast Institute of

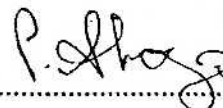
TAFE. Attached as **Annexure N**. (1 page) This letter was written, accepting my "medical retirement from TAFE with your last day of service being 19 October 1992". This letter is further reinforced my belief that the "Retirement" Certificate issued by Healthquest was a final, legal and binding official document that TAFE was abiding by and which I therefore appeared to have no choice but to abide by as well.

40. In hindsight, it is apparent that I was duped into believing that the Healthquest Certificate was an official document and that TAFE was acting legally in terminating my employment and "retiring me on medical grounds".
41. Documentation in respect of my work performance standards, while at TAFE, while on secondment to the Department of School Education, and even as outlined in the short letter from TAFE accepting my medical retirement (which are attached as various Annexures) clearly indicate that I continued to perform to a satisfactory, if not high standard in undertaking my duties both at TAFE and while on a return to work plan at the Department of School Education.
42. The fact that I was medically retired under these conditions, and by the processes used, has clearly been to my detriment both in terms of loss of income, loss of a job which I was good at and committed to, and general loss of reputation.
43. No-one in TAFE was informed that I had been retired and I simply "disappeared" from the TAFE system and the colleagues with whom I had worked closely over a number of years. This was also to my detriment in terms of my social and professional relationships.
44. Similarly, the decisions made, processes used and lack of consultation with me were, I believe, psychologically detrimental to me. Not only was my own self-esteem negatively affected, I was suddenly ousted from a substantive position in TAFE and work situation/environment which I had worked hard to build up over the years. No opportunity was ever given to me to formally gain any closure in terms of my TAFE duties, position or professional relationships. I believe that this has also been harmful to me.

SWORN at Forster on the day
and year herein before mentioned.

Before me:


Kathryn Elizabeth McIntosh
Justice of the Peace,
1999800739
1/4 Montego Place,
Tuncurry



Pene Ann LOZA