

**VICTORIAN INSTITUTE OF TEACHING**

**DECISION AND REASONS OF THE FORMAL HEARING**

**NUMBER:** 019

**REGISTERED TEACHER:** Glynn BROWN

**PANEL MEMBERS**

Peter Ryan	Chairperson
Terry Hayes	Registered Teacher
Marilyn Mooney	Registered Teacher

**ATTENDANCE:** The teacher did not attend the formal hearing  
Counsel Assisting: Ms Anne Sheehan  
Instructing solicitor: Ms Carolyn Pickett (Victorian Institute of Teaching)

**DATE OF HEARING:** Wednesday 27<sup>th</sup> April and Thursday 28<sup>th</sup> April 2005

**DECISION OF THE PANEL:**

On 28 April 2005 the Panel decided to cancel the registration of the teacher from the date of this decision.

**EFFECT OF THE DECISION:**

The effect of the decision is that the teacher can not undertake the duties of a teacher in a school in Victoria from 28 April 2005.

## **BACKGROUND**

On 31 December 2002 the *Victorian Institute of Teaching Act 2001* (the Act) was proclaimed in full. On that date most teachers in Victorian schools were deemed registered as teachers. The teacher was deemed registered pursuant to section 91(3) of the Act because he was a person who was employed as a teacher in a State school in an ongoing position within the period of two years before the commencement of the Act.

The Victorian Institute of Teaching received information from the Employer that provided evidence of the teacher's possible serious incompetence and/or lack of fitness to teach. The Institute considered this information and determined to conduct a formal hearing. By a Notice of Formal Hearing dated 22 March 2005, the teacher was advised that the formal hearing was to be held on 27, 28 and 29 April 2005.

The Notice of Formal Hearing set out the following allegations as evidence of possible serious incompetence and/or lack of fitness to teach:

- That the teacher failed to maintain meaningful assessment and evaluation records and processes that reflect a comprehensive coverage of the VCE Study Design for Design and Technology – Metal
- That the teacher failed to ensure that all students are actively engaged in learning
- That the teacher failed to manage student discipline issues effectively within the classroom to ensure a safe learning environment

The issues to be determined in this matter are:

- Whether there is sufficient evidence to support any, some, or all of the allegations made against the teacher.
- If any, some or all of the allegations were proved, was this sufficient to amount to serious incompetence or lack of fitness to teach?
- If the teacher was guilty of serious incompetence, or if he was unfit to teach, what was the appropriate penalty?

## **THE LAW**

The Disciplinary Proceedings are set out in Part 4 of the Act. Section 27 of that Part provides:

### ***27. Employer to notify Institute of action against teacher***

*(1) The employer of a registered teacher must inform the Institute if the employer has taken any action against the registered teacher in response to allegations of serious incompetence of the registered teacher, serious misconduct of the registered teacher or that the registered teacher is unfit to be a teacher or any other actions that may be relevant to the registered teacher's fitness to teach.*

The term *serious incompetence* is not defined in the Act. There is very little case law that refers to the incompetence of a professional in a regulatory framework.

According to the High Court, the purposes of disciplinary proceedings in relation to a profession are:

- to protect the public;
- to maintain proper standards of conduct for the profession; and
- to protect the reputation of that profession.

If a teacher's practice were such that it would defeat the cause of imparting knowledge to students then the teacher would be seriously incompetent. There is a duty on all teachers to achieve and maintain an appropriate level of competence and care. If the teacher has been guilty of negligence or incompetence in a professional capacity which has been to such a degree or so frequent to reflect on the teacher's fitness to teach then the teacher would be seriously incompetent (see *Raylee Patricia Harley v Robert McDonald & Ors* [1999] NZCA 145).

## **DOCUMENTS CONSIDERED**

***The Panel was presented with documentary evidence as follows:***

- a) Witness statements:
  - Witness statement of the Principal dated 1 September 2004 and attachments
    - EK1 – incident report dated 23 October 2003
    - EK2 – handwritten notes –Student 1 23/10/03
    - EK3 – handwritten notes - the teacher 23/10/03
    - EK4 – letter from The School dated 22 July 2002 to the teacher
    - EK5 – The School report for Student 2 for Semester 1 2002
    - EK6 – handwritten reports from students (6 pages)
    - EK7 – letter from The School dated 16 July 2002 to the teacher
  - Witness statement of Assistant Principal 1 dated 15 August 2004 and attachments
    - MEB1 – incident report dated 22/5
    - MEB2 – handwritten student reports (20 pages)
    - MEB3 – letter from The School dated 12 June 2002 to the teacher
    - MEB4 – letter from The School dated 14 June 2002 to the teacher
    - MEB5 – letter from the teacher dated 19 June 2002
    - MEB6 – handwritten minutes of meeting 20/6/02
    - MEB7 – letter from the teacher dated 20 June 2002
    - MEB8 – handwritten notes of meeting 27 June 2002
    - MEB9 – letter to the teacher dated 16 July 2002
    - MEB10 – incident report 31-8-01
    - MEB11 – not attached – exhibit retained by the Institute
    - MEB12 – incident report dated 12/6
  - Witness statement of Assistant Principal 2 dated 24 August 2004
  - Witness statement of Assistant Principal 3 dated 6 August 24 and attachments
    - Copies of photographs (7 pages)
  - Witness statement of the Daily Organiser dated 15 Jul 2004 and attachments
    - LW1 – video not attached – retained by the Institute
    - LW1 – document headed "Chicken Park"
  - Witness statement of Colleague 1 dated 16 September 2004 and attachment

- GWD1 – support group meetings notes (11 pages)
  - Witness statement of Colleague 2 dated 6 August 2004
  - Witness statement of Colleague 3 dated 6 August 2004
  - Witness statement of Student 1 dated 11 August 2004 and attachment
    - EK2 – handwritten notes of 23/10/03
- b) Documents from the Employer
- Copy letter from the Principal dated 19 December 2003 and attachments
    - Letter 12 June 2002
    - Reply from the teacher dated 20 June 2002
    - Letter 16 July 2002
    - Letter 22 July 2002
    - Support Group report October 2002
    - Letter 20 December 2002
    - Letter 18 March 2003
    - Reply from the teacher dated 21 March 2003
    - Diary note 22 May
    - Diary note 5 August
    - Diary note 12 August
    - Diary note 15 August
    - Diary note 3 September
    - Diary note 7 October
    - Diary note 11 October
    - Incident report 23 October
  - Copy letter to the teacher dated 13 September 2001
  - Copy letter to the teacher dated 19 December 2003
  - Copy email dated 20 January 2004
  - Copy letter from DET to the teacher dated 5/2/04
  - Copy report of accident 30/4/02
- c) Letter from the teacher to the Institute dated 20/02/04
- d) Letter from the teacher to the investigator dated 25/8/04
- e) Curriculum Vitae of the teacher

### **THE EVIDENCE**

On 22 March 2005 the Institute notified the teacher that a formal hearing would take place in order to consider allegations of possible serious incompetence and/or lack of fitness to teach. The teacher elected not to attend the hearing. Counsel assisting the Institute explained that the teacher had informed the Institute that he was too busy to attend but that he would provide a written submission. Such submission was not received. The teacher is teaching in a small NSW rural school and stated that he would not be available by telephone.

The Panel heard evidence under affirmation or sworn oath from the Principal, Assistant Principal 1, Assistant Principal 2, Colleague 1, the Daily Organiser, Colleague 2, Colleague 3.

### **Evidence from the Principal**

The Principal gave evidence that he was Principal at The School from 1988-2001. He resigned in Term 4, 2001 and was reappointed Principal in 2002. Ill health caused him to be absent for most of Term 2, 2002. He again resigned at the end of 2004.

The Principal told the Panel that at the end of 2001 The School advertised for a Metalwork teacher. The teacher was the only applicant. The Panel was told that the teacher's teaching experience involved a short time working in a school in north-western NSW, with the majority of his teaching being in the TAFE sector in NSW, working with adults or young adults. The school was satisfied that the teacher had the qualifications required to teach and he was appointed as a Beginning Teacher.

The Principal informed the Panel that support for the teacher as a Beginning Teacher was provided by the school. This included his being given a reduced workload, receiving the school's policies and procedures documents. Further, he was encouraged to contact 2 local schools whose experienced Metalwork teachers were prepared to assist him. The Principal acknowledged that more probably could have been done. However, the school followed accepted practice for that time.

The Principal stated that in 2001 concern about the teacher's curriculum delivery came to his notice. Co-ordinators took their concerns to him and they directly observed some of the teacher's classes. Concerns included the teacher delivering rudimentary curriculum content as well as practising unacceptable classroom management strategies. The Principal had discussions with the teacher to reiterate professional requirements and responsibilities in terms of lesson content and classroom management. The teacher gave an undertaking to improve in these areas. Specific areas to be addressed included:

- Delivery of curriculum
- Safety issues
- Management of students

The Principal informed the Panel that the teacher was offered an on-going position, with a 6-month probationary period, at the end of 2001 before the Principal again took up the Principal's position in 2002. Normally the probationary period is 12 months. The Principal stated that with the prior knowledge he had of the teacher's curriculum delivery, and in particular his poor and unsafe classroom management practices, had he been involved at the time, he would not have accepted the recommendation for the teacher to be offered the on-going position.

The Panel was told that in Term 2, 2002 Assistant Principal 1, sought advice from the Employer, as well as the Principal who was on sick leave, regarding extending the probation period for another 6 months in addition to putting a support group in place. A period of monitoring in conjunction with an extension of the probationary period for a further 6 months was applied. Sub-school leaders, assistant principal and principal were all involved in this monitoring process. The Principal acknowledged involvement of the principal with direct monitoring was beyond normal practice in a large secondary college.

The Principal stated that some students who take Metalwork can lean towards being disruptive in class. However, he stated that if an engaging and practical learning environment is provided, disruption should be minimised. The teacher did not follow school processes in dealing with disruptive students. It was school practice that teachers made arrangements with each other regarding these students. However, instead of dealing with students in this way, the teacher regularly sent them directly to the Assistant Principal or Principal for attention.

A Support Group was established in Term 2 to monitor and support the teacher. The Principal stated that the teacher's practice showed no evidence of improvement throughout the support group's operation. The Principal felt that the teacher seemed unable to take on ownership or responsibility for his curriculum delivery and class management. An example of this was the teacher's providing a CD with curriculum material for students to follow and complete. Students, however, still did not complete mandated curriculum requirements. The Principal stated that students questioned about the CD said that they had never used it.

The Panel was told by the Principal that the teacher's Assessment and Reporting practices were rudimentary and incomplete. The Principal gave the example of students' VCE reports that demonstrated inconsistencies in the marking relationship between the 3 areas of Behavioural criteria/Learning outcomes/Assessment tasks and that of the final assessment. They did not correlate and had to be redone. The teacher's practices in this area were inconsistent with VCE assessment procedures and guidelines.

The Principal told the Panel that in Term 4 2002 it was the recommendation of the the Employer to extend the teacher's probationary period for another 12 months. The Principal did not agree with this. The Principal wrote to the teacher on 20 December 2002, informing him of a further 12-month probationary period and outlining his concerns regarding the teacher's curriculum delivery. The principle concerns involved the teacher's failing to maintain meaningful assessment and evaluation records and processes, failing to ensure that all students were actively engaged in learning, and failing to manage student discipline issues effectively to provide a safe learning environment. The Principal's letter also notified the teacher that his performance would be monitored throughout Term 1, 2003 and brought to his attention that failure to meet required standard of performance could lead to action by the employer.

In March 2003 the teacher was absent and had left a video *Chicken Park* to be shown by the Casual Relief Teacher (CRT) taking his class. The Principal said that the video was unsuitable in that it was rated PG, had significant swearing, sexual references and nudity and was irrelevant to the curriculum. The Principal stated that this demonstrated a lack of knowledge of curriculum content. He believed that it was entirely inappropriate and left another colleague open to complaints from parents, etc.

The Principal informed the Panel of other occasions in 2003 when complaints were made against the teacher or when the teacher did not follow school procedures. These included the teacher ignoring an instruction not to enter the construction site of the new building. The teacher not only went on to the site he took students with him.

In 2003 the teacher was hit on the head by a student but failed to report the incident to the principal. The Principal regarded this as a serious omission. This incident arose from students wanting to become involved in making things not connected to the curriculum. The Principal said that, on this occasion, the teacher went to the storeroom (out of bounds for students) to get piping and the student followed. A series of events followed resulting in the teacher being hit on the head, with force sufficient to draw blood, with a piece of pipe that the student had picked up in the storeroom.

Another incident on that same day involved the same student helping another student cut a piece of perspex fixed in a vice, resulting in the tool being broken. The same student was found attempting to drill with a broken drill bit. The Principal said that the teacher's concern was the cost of the material and equipment whereas his (The Principal's) concern was the safety of the students. The student involved in these incidents then left the room without permission and the teacher did not make an incident report. The Principal told the Panel that on another occasion during a Metalwork class the same student made a device intended to be used with drugs. This was done with the help of the teacher before he realised what it was. The Principal believed that this was another example of the teacher not following VCE guidelines, which require a design brief for activities before practical work is commenced.

The Principal stated that he was very concerned about the safety of students. He said he "believed they were living on knife edge" - "A time bomb."

#### **Evidence from Colleague 1**

Colleague 1 told the Panel that he is a Leading Teacher responsible for Staff Development and School Charter and Pathways.

The Panel was told that Colleague 1 was requested to lead the teacher's support group because of his experience with support groups and because he was a senior teacher. Other support group members included the Co-ordinator of the faculty and the Daily Organiser, a teacher in that faculty.

Colleague 1 outlined for the Panel the process he used to establish the support group. It involved meeting with the Principal and support group members to work through the role of the group. He met with the teacher alone to discuss the support group processes and to explain that there would be demands but that the support group was there to help him. Colleague 1 stated that the teacher seemed not to have any animosity towards group members but he was defensive, perhaps of the process.

Colleague 1 explained to the Panel that his contact with these students was mainly through senior sporting teams rather than through his commerce classes. He outlined that these students were tough, unengaged students who were disinterested, 'boyo' types. He had observed that the teacher's students were often booked into computer labs rather than involved in practical work. Often the computer work was unrelated to the curriculum. Another observation of Colleague 1's was that the teacher's students had no research and design activity prior to starting a construction.

Colleague 1 stated that although the observation was that the teacher was experiencing difficulties with all of his classes, the support group would focus on the teacher's Year

11 classes due to time constraints of support group members and the fact that all members of the group were themselves involved with teaching Year 11. The Panel was told that it was common that some of the teacher's students were observed out of class playing games. When asked what they were doing they stated that the teacher had given them permission to be outside. Colleague 1 said that the teacher's explanation for students being outside unsupervised was that they did not have the appropriate safety equipment or they were not on track to begin the production task. The teacher seemed not to understand his duty of care responsibilities, or the professional responsibilities of students being engaged in productive learning activities.

The Panel was told that the support group concentrated on getting the teacher to focus on the structure of his curriculum delivery. The group set out an extensive curriculum plan that included dates, content, resources, activities/handouts, completion dates. It also included a requirement for the teacher to bring to the next meeting a student workbook containing timetable, handouts and student work.

Colleague 1 told the Panel that he felt that the teacher had no ability to understand or use curriculum plans in his classes. He saw no evidence of Colleague 1's classes improving in curriculum delivery or of the teacher using curriculum resources that he had been given. The support group was also encouraging and supporting the teacher to become more involved in disciplinary process. He was given strategies and ideas to deal with issues rather than passing the problems on to senior staff. Colleague 1 said that the teacher was using the detention system inappropriately so it was suggested that he try to use the detention class to work through class tasks that the students were not completing. In response to the teacher experiencing problems with students not completing work, the support group suggested he provide more structured and specific tasks to students rather than open-ended tasks.

The Panel was told that the teacher felt that he was improving. However Colleague 1 said that although the teacher was trying to follow suggestions, advice, etc, the support group felt that there was no professional development or improved understanding of or examples of him using his initiative with curriculum or discipline/management of students in all of his classes. The teacher felt that there were no concerns with his junior classes. However, year level coordinators reported that although there was some improvement, there were still on-going issues with attendance and management.

Colleague 1 said that he believed the teacher was unable to professionally and honestly reflect on his curriculum delivery and classroom management. Colleague 1 stated that most students respond positively to teachers who develop professional relationships with them. He felt that the teacher was unable to achieve this.



### **Evidence of Assistant Principal 1**

Assistant Principal 1 told the Panel that she is an Assistant Principal at The School and has been a teacher at the school since 1993. In 2001 she was a member of the Panel that appointed the teacher to the on-going position at The School. She was Acting Principal in Term 2 2002. She said that the only contact she had with the teacher was when she had to deal with disciplinary issues concerning his students.

The Panel was told that in May 2002 Assistant Principal 1 received a report from the senior sub-school co-ordinator concerning several incidents involving the teacher's class. The report alleged that the teacher had allowed students to damage the classroom, that he used coarse language, and that he told an inappropriate joke. The teacher provided Assistant Principal 1 with an incident report concerning the damage done to the classroom by a student.

Assistant Principal 1 told the Panel that she contacted the Employer to seek advice regarding informing the teacher in writing of her concerns. Assistant Principal 1 said that she had previously informed the teacher about her concerns re the reported incidents and that she would be making further investigations. The Employer framed the letter that was sent to the teacher outlining the school's concerns re the incidents that were alleged to have taken place in his classroom. Assistant Principal 1 said that she agreed with the content of the letter, dated 12 June, and signed it.

The Panel heard that towards the end of Term 2 2002, the Employer contacted her to suggest that due to The teacher's probationary period coming to an end and it being the end of Term 2 and then holidays, the teacher's probationary period be extended another for 6 months.

Assistant Principal 1 said that she wrote another letter, dated June 14, to the teacher outlining the on-going concerns regarding student supervision, classroom management, and his teaching program, and to that end a further probationary period of 6 months would be in place. She said that she met with the teacher on 20 June to discuss the 12 June letter and to offer him the chance of responding to it either verbally or in writing. During this meeting there was a discussion re the curriculum contents of a CD provided to the students by the teacher. The teacher contended that he contributed to its development, that he had received verbal permission from Distance Education to rework and use it, and that it was used by other teachers. The teacher further contended that his students used the curriculum material on the CD to help them complete their work requirements. Assistant Principal 1 said that she didn't take the teacher's response seriously. She stated that when she interviewed the students some of them had a vague recollection of the CD, none of them knew what to do with the disc, and there seemed to be no evidence of any students printing anything from it or otherwise using it.

The Panel was told that Assistant Principal 1 had witnessed students outside the classroom frequently, and on at least one occasion, using tools with "sparks flying everywhere". The teacher was inside the classroom and therefore not supervising his students adequately. She said that students were not using the correct safety gear, eg leather footwear or goggles. Assistant Principal 1 said that she suggested to the teacher that he send students to her if they didn't have the correct footwear. More numbers

were sent to her than would normally be expected. She suggested to the teacher that he contact the parents to discuss the importance of students wearing the correct footwear. Assistant Principal 1 told the Panel that canteen workers would ring the office to report students from the teacher's class outside playing without supervision. Assistant Principal 1 said that, on such occasions, she or others would collect the students and return them to the teacher's class.

Assistant Principal 1 stated that she interviewed all the students in the teacher's Year 11 class and took statements from them. She found that only one student had any semblance of work with handouts or notes from classes. Most students had few or no notes in their workbooks. She said that there was evidence that little work had been completed in the previous 5 months.

Assistant Principal 1 told the Panel of serious incidents involving weapons being made in the teacher's classes. In 2001 a student made a tomahawk in class without the knowledge of the teacher. This weapon was given to the police. Assistant Principal 1 showed the Panel a collection of metal weapons that had also been made in the teacher's classes. She said, in her view, this demonstrated a lack of ability to supervise a class appropriately. The Panel was informed that the parent of the student who made the tomahawk blamed the school for allowing her son to make the weapon. Assistant Principal 1 believed that the school had no answer to this because "how does a teacher allow weapons to be made during the lesson?"

Assistant Principal 1 explained to the Panel that when the teacher was absent and other teachers took his classes in the computer room they found that the students had no set work to continue with. She stated that on several occasions when she had visited the teacher's class she discovered students there who were meant to be in other classes. She would take them to their correct classes. In regards to Assessment and Reporting, Assistant Principal 1 said that the students had not done design briefs or appeared to have very much knowledge of what they were supposed to do.

Assistant Principal 1 told the Panel that although her investigations showed that students had little work in their folders, she was angry when she discovered that the teacher had collected the students' folders and put them in his office. The folders now had design briefs and notes and CDs in them. She was annoyed because she felt that the teacher was attempting to cover his tracks when he discovered that Assistant Principal 1 was interviewing students.

Assistant Principal 1 believes that the teacher was disorganised in other classes as well as Year 11s. She said that even though she had serious doubts about his teaching, his contract was renewed and he received an on-going position because the school needed a Metalwork teacher.

### **Evidence from Assistant Principal 3**

Assistant Principal 3 told the Panel that he has been Assistant Principal at The School for 9 years and a teacher there for 22 years. He is responsible for Facilities in the school.

In response to questioning from Counsel about the damage to the teacher's room, Assistant Principal 3 said that the damage happened in a back section of the room

where students should not have been. The area needed direct teacher supervision or a restriction on entry. Assistant Principal 3 stated that, in his view, the teacher's supervision was inadequate.

Assistant Principal 3 told the Panel that he observed some students in the teacher's class being on task whilst others chose to "pursue other things". He believed that the teacher had the best interests of the students at heart but other students took advantage of his kind nature.

The Panel was told that the teacher allowed students to use the angle grinder outside on concrete with no safety goggles, leathers or earmuffs. Assistant Principal 3 said that he constantly had to intervene with students working unsafely.

#### **Evidence from Assistant Principal 2 (via telephone)**

Assistant Principal 2 told the Panel that he was Assistant Principal at The School in Term 2 2001 and in Term 3 2002.

Assistant Principal 2 said that in 2002 he had quite a bit of contact with the Technology area due to construction of the new building as well as delivery of equipment to that area. He said that his contact with the teacher in 2001 was more about assisting or dealing with behaviour management issues with The teacher's class.

In 2001 Assistant Principal 2 said that he dealt with a serious issue concerning star shaped metal weapons being made in the teacher's class. He felt this indicated an inability to supervise a class appropriately.

Assistant Principal 2 stated that on his return to The School in 2002, the biggest change he observed in the teacher's classroom was that previously students were inside being disruptive and destructive and now (2002) some were outside the classroom working without safety gear or participating in other non-related activities unsupervised.

Assistant Principal 2 told the Panel that he wondered if there was something different to say or do to help the teacher - something that wasn't already being done by the support group. He said he couldn't think of any other support that could be offered.

#### **Evidence from the Daily Organiser**

The Daily Organiser stated that she is a teacher at The School and has been there for 7 years. She has been the Daily Organiser for the 3 years that the teacher has been at The School. She said that she is a design technology textiles teacher therefore in the same faculty as the teacher.

She told the Panel that she was a member of the support group for the teacher and that it met for four weeks. Two weeks were missed when the teacher was absent and another week was missed when parent-teacher interviews were taking place. The Daily Organiser explained to the Panel that although she worked with fabric and the teacher with metal, the design brief process is exactly the same for both materials. She observed that the teacher's students did not produce researched design briefs before starting production.

The Daily Organiser said that as a teacher in the same faculty as well as a support group member she provided examples of work and assessments for the teacher and talked to him about structure and curriculum requirements and class management.

The Daily Organiser told the Panel that she prepared an examination and that she asked the teacher to provide details of the design brief for his students. He did not do this. The Daily Organiser stated that she supervised the exam and observed that the teacher's students had real difficulties in completing the exam. The Daily Organiser said that she reported this to the school administration

The Daily Organiser said that her observations of the teacher's class were that the students constantly disrupted other classes that were nearby, eg. Food Technology and Textiles classes which were all near the teacher's rooms.

The Daily Organiser told the Panel that the teacher left a video for a CRT to show his class. The CRT became distressed as students became more disruptive during the screening. The video, "Chicken Park" was observed by the librarian and other teachers who deemed it inappropriate and unsuitable and turned it off. The video showed nudity, swearing, and had sexual undertones. The Daily Organiser told the Panel that she reported this to the Principal and Assistant Principal 1.

The Panel was told that the support group decided to concentrate on Year 11 as this seemed to be the area giving him most trouble. The Daily Organiser said that the teacher was unable to acknowledge that he was not effectively managing other Year levels either. Sub-school leaders in the Year 7-10 classes supported the notion that the teacher was also having trouble with these students.

Under questioning the Daily Organiser disputed the teacher's belief that he followed the School's video policy, as he claimed he was doing. She stated that it is not the school's policy to show PG rated videos or videos with swearing, nudity and sexual undertones.

The Daily Organiser explained to the Panel that the teacher's 'own projects' she mentioned in her statement, concern work the teacher does at school on personal constructions, eg a bed head for his wife. He also showed staff a folder of his work. The Daily Organiser said that the teacher worked on his own projects during lunchtimes, etc using school equipment.

### **Evidence of Colleague 2**

Colleague 2 said that he is a woodwork teacher and has been at The School for 13 years. He worked in the old building in 2001-2002 and in the new building in 2003.

Colleague 2 described the physical set up of the working rooms in the old building as being portables separated by a narrow passageway leading to a glass door. The new building has 2 rooms side by side separated by a large concertina glass wall.

Counsel asked Colleague 2 to comment on the teacher's written defence concerning the use of the "Flashguard Welding Curtains" in his classroom. Colleague 2 explained that the curtains have to be clipped down and in parts this was not done due to rips and tears in them. Colleague 2 suggested these rips and tears were possibly done with

a knife or sharp object. He stated that flashes were reflecting through the gaps into his room, therefore endangering his safety and the safety of his students.

Colleague 2 told the Panel that he had observed some of the teacher's students welding outside the room as well as outside the welding area within the room. Colleague 2 considered that the teacher had unsafe work practices across all areas he taught. He stated that Worksafe demands that leather shoes be worn at all times in Technology classes. This was not always adhered to in the teacher's classroom. He said that it is up to the teacher to demonstrate safety issues and requirements and show examples of unsafe practices. Colleague 2 believes that it is the teacher's responsibility to ensure a safe classroom environment by demanding safe practices are followed.

Colleague 2 stated that in his class if a student came without the correct safety gear they would work in another area on theory activities – they would not be involved in any practical work. He said that although the students were not in the same room as him he could visually supervise them through a window. Colleague 2 told the Panel that the teacher did not use this approach. His students often continued to work in the room unsafely or roamed outside or around the room doing nothing.

The Panel was told that Colleague 2 and the teacher taught the same students in alternative semesters. Colleague 2 said that when he had the teacher's students he found it took him longer to settle the students into acceptable work habits.

Colleague 2 told the Panel that he observed the teacher having trouble following curriculum requirements. He suggested to the teacher that he talk to Colleague 3, to get some help with curriculum understanding and delivery. Colleague 3 gave the teacher all of his VCE work lessons and requirements. Colleague 3 told the Panel that he considered this to be a huge help to the teacher. Colleague 3 later visited the teacher and showed him more work and approaches/ideas.

Colleague 2 told the Panel that, despite this support, he did not observe any change in the teacher's approach to curriculum delivery.

### **Evidence of Colleague 3**

Colleague 3 said that he is a Technology teacher at The School. He has been there since 2004.

Colleague 3 told the Panel that in 2002 and 2003 he was contacted by Colleague 2, who asked him to assist the teacher, a teacher at The School, who was having difficulties with curriculum delivery. Colleague 3 explained, offered and gave copies of all of his curriculum materials to the teacher. He also gave the teacher his contact details for him to use if he needed help. On a visit to The School, Colleague 3 observed one of the teacher's classes and formed the view that it was a "riot zone".

Colleague 3 stated that when he arrived at The School in 2004, after he replaced the teacher as Metalwork teacher, he could find very few student records or materials. He found one student folder with mid-year and final exams being identical. This would mean that students from semester to semester could confer re exam content.

Colleague 3 acknowledged that the teacher attended an annual Technology conference held in Albury, but that it seemed The teacher did not use much from the conference.

Colleague 3 stated that the Flashguard Welding Curtain was in a dilapidated state. He believed that it had been slashed, possibly with a chisel or knife. It was also supposed to touch the floor however it was 600ml from the floor. Colleague 3 said that he was unable to use the welding bays until this equipment was replaced. As the flashes travel quite a distance and travel through glass it was a significant safety issue for it to be used in the state of disrepair.

Colleague 3 explained and described to the Panel the various pieces of equipment that were either inappropriate for school classrooms or were inappropriately located within classrooms. Examples he gave included a milling machine, which Colleague 3 described as the most dangerous machine you can have. It cuts steel, has no safety switches and was situated right near an entry door. Other examples Colleague 3 mentioned included a buffing machine, a vertical drill piece, hand roller, and a pipe bending machine being placed near a door where students had easy, unsupervised access.

Colleague 3 told the Panel that it was the responsibility of the teacher in charge to provide a safe working and learning environment. There are guidelines for machines suitable for classrooms as well as the placement of those machines or pieces of equipment. Colleague 3 said that the teacher should have known where to place equipment and what equipment was appropriate to use with students.

Colleague 3 said that he had no knowledge of the CD that the teacher claims to have helped produce and which he claims to have used with students for curriculum delivery

#### **DISCUSSION OF EVIDENCE**

The Panel noted that, although the teacher was given every opportunity, he chose not to appear, or give evidence, and chose not to put his side of the story.

The Panel accepts that from 2001 the teacher had significant and continuing problems with classroom management, and curriculum planning and delivery. There is evidence that the school put substantial mechanisms in place to deal with the teacher's performance. However the Panel is satisfied that the teacher was unable to use effectively the resources and ideas from the support group or show acceptable improvement in his professional practice. He also received extensive support and teaching materials from Colleague 3, an experienced technology teacher. There is no evidence that the teacher used any of these materials to improve his curriculum delivery.

Evidence presented demonstrated that the teacher did not follow VCE guidelines in terms of delivering a comprehensive program in Design and Technology – Metal. Witnesses stated that his records were incomplete, disorganised and inaccurate. His reports were written from inadequate records and had to be rewritten due to major inconsistencies. Several witnesses gave evidence that the teacher did not require his students to complete design briefs prior to them commencing construction. The Panel accepts that this is a major failure in implementing VCE Guidelines and requirements.

In response to the allegation that he did not provide appropriate curriculum materials to his students, the teacher contends that he gave his students a CD with all of the relevant work requirements, teaching notes, activities and assessment requirements needed. The teacher claimed that he helped develop the CD and that he had gained permission from Distance Education to make some modifications and use it at the school. The teacher also claimed that he had received acknowledgement and thanks from other teachers who used this CD in their teaching practice. None of The teacher's assertions could be substantiated. The Panel accepts the evidence provided at the hearing, which refutes the teacher's proposition. Two witnesses stated that their observations and questioning of students in relation to the CD's use were such that some students only had a vague knowledge of receiving it and no student knew what to use it for. None could produce it. Another witness, experienced in organising Technology conferences and professional development, and who followed the teacher in the position of Metalwork teacher at the school, stated that he had never heard of the CD or seen its use in the wider Technology network.

The Panel is satisfied that the teacher did not engage his students in learning. Evidence was given from all witnesses that students were often found outside the classroom playing games because they had not brought the correct safety gear to school. Students were often observed in class not being on task or being unaware of what they should be doing. Evidence was given that the teacher's students were booked in to the Computer lab too often and with little or no direction for work requirements. Assistant Principal 1 gave evidence that the teacher's students were unable to show that any significant work had been completed in the previous 5 months.

Evidence was given that the teacher failed to manage student discipline issues effectively and failed to ensure a safe learning environment. Despite advice and ideas being given from the support group and other teachers on methods to deal with discipline issues, there is no evidence that the teacher developed skills in these areas. Witnesses stated that they continually had to intervene or deal with incidents and students that should have been handled at the classroom level. The teacher did not acknowledge that it was his professional responsibility to deal with many of the issues. The Panel accepts that the teacher presided over a classroom where many dangerous weapons were made. The Panel was shown a bag containing a collection of steel weapons that had been made in the teacher's classroom. In one instance a student made a tomahawk before the teacher realised what it was. This highlights the problems caused when students are not required to have a design brief prior to construction. He blamed the students rather than accept responsibility for not supervising adequately.

## **FINDINGS OF FACT**

After considering all the evidence the Panel made the following findings of fact:

- The teacher was advised on 22 July 2002 that he was performing below the standards required of a Beginning Teacher and that his professional performance would be monitored for the next 6 months.
- due to their being no observable improvement in his professional performance, the teacher was advised in December 2002 that the probationary period was being extended for a further 6 months
- an extensive support group process was implemented in 2002 and 2003 to assist the teacher in improving his teaching performance, including classroom management
- The teacher was unable to understand and utilise the extensive curriculum material and teaching ideas provided by the support group and other teachers
- several unsafe and dangerous incidents occurred within the classroom under the teacher's responsibility
- students were regularly allowed to use dangerous equipment without proper supervision in unsafe situations
- weapons were constructed in the teacher's classroom
- a classroom and furniture was badly damaged by students under the teacher's supervision
- students were allowed to work without the appropriate and required safety equipment
- when the teacher was absent, he left a video which did not conform to the school's video use policy for the CRT to use with his class
- VCE study guidelines were not followed
- assessment and reporting practices were not based on sound and accurate student records
- The teacher failed to implement an appropriate, well-planned and structured curriculum program
- The teacher could not manage students or discipline students appropriately and effectively
- The teacher failed in his duty of care to his students

## **CONCLUSION**

The first issue the Panel had to consider was whether there was sufficient evidence to support any, some or all of the allegations made against the teacher. The second issue the Panel had to address was whether the allegations, which were proved, amounted to serious incompetence.

Counsel Assisting the Panel submitted that there is little precedent in relation to competence in disciplinary proceedings. Case law exists for misconduct cases but there is no case law covering competence or incompetence. It is different from industrial relations and is not about how the school conducted itself. It is a question of the degree of professionalism shown by the teacher. Counsel submitted that the Panel needed to consider whether the teacher has shown incompetence or serious incompetence. The intention is not to punish the teacher but to protect the public. In its deliberation and



decision the Panel must be satisfied from the evidence given that the teacher is seriously incompetent.

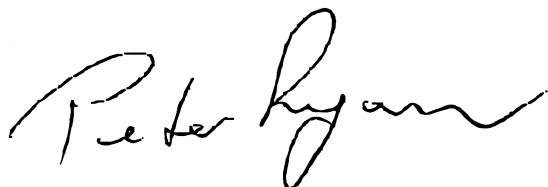
The Panel considered Counsel's submission that, in coming to its decision, the Panel give consideration to the reputation of the profession, delivery on its professional obligations, and how those obligations impact on the students. Counsel submitted that the Panel's decision did not rely on hearsay nor did it rely on little pieces of evidence. The evidence presented is consistent, credible and significant.

It is the Panel's belief that the teacher was given significant assistance and opportunity to improve his professional performance but was unable to profit from such extensive support. The Panel had regard to the fact that the teacher was a Beginning Teacher. It acknowledged that there was no ill will shown towards the teacher from witnesses. Rather the witnesses believed that he was suited to working in an adult environment where his skills and knowledge could be absorbed by older students.


It is the view of the Panel that based on the evidence before it, the teacher's inability to effectively and honestly reflect on his professional practice and to fully accept the responsibilities of the teaching profession indicate serious incompetence. His continued inability to understand and implement accepted study guidelines, classroom management processes, and to ensure a safe learning environment for students, indicate serious incompetence. The Panel believes that the teacher's performance is a serious departure from acceptable professional practice and the Panel finds that the teacher is seriously incompetent in his teaching practice.

#### **DETERMINATION**

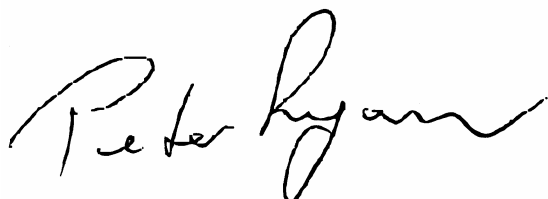
The Panel finds that the teacher is seriously incompetent and has determined to cancel his registration to teach from 28 April 2005.



**PETER RYAN, Chairperson**



**Per: TERRY HAYES, Registered Teacher**



**per: MARILYN MOONEY, Registered Teacher**