

**VICTORIAN INSTITUTE OF TEACHING**

DECISION AND REASONS OF THE FORMAL HEARING

**NUMBER:** 0036

**REGISTERED TEACHER:** **Gregory Ronald HENDERSON**

**PANEL MEMBERS:** **Marilyn Mooney** Chairperson

**Stewart Cheal** Registered Teacher

**Loula Rodopoulos** Panel Member

**ATTENDANCE:** MR HENDERSON did not attend the formal hearing

MS ANNE SHEEHAN Counsel Assisting, with Ms Carolyn Pickett instructing

**DATE OF HEARING:** 18 and 19 July 2006

**DETERMINATION UNDER SECTION 42(2):**

On 19 July 2006 the Panel decided to cancel the registration as a teacher of Gregory Ronald Henderson from the date of this decision.

**EFFECT OF THE DECISION:**

The effect of the decision is that Gregory Ronald Henderson cannot undertake the duties of a teacher in a school in Victoria from 19 July 2006.

## REASONS

### BACKGROUND

On 31 December 2002 the Teacher was deemed registered pursuant to section 91(3) of the *Victorian Institute of Teaching Act 2001* (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.

By letter dated 6 September 2003, Employer 1 notified the Institute of action taken against the Teacher.

By letter dated 30 March 2004, Employer 2 notified the Institute of action taken against the Teacher during his employment at School 2 as a Casual Relief Teacher (CRT) for 3 days in December 2003.

On 14 July 2004, the Victorian Institute of Teaching's (the Institute's) Disciplinary Proceedings Committee (the Committee) determined that a formal hearing should be held into the allegations against the Teacher.

The inquiry was referred to the Institute's Investigator for investigation on 11 May 2005. Following the investigation, further allegations were identified and the matter was referred back to the Institute's Investigator to interview the Teacher as to the new allegations on 28 November 2005. The matter was again referred to the Committee and at its meeting on 29 March 2006 the Committee confirmed its decision to hold a formal hearing into the allegations against the Teacher.

The Teacher was sent a Notice of Formal Hearing dated 28 June 2006, with all relevant documents attached, advising him that the formal hearing would be held on 18, 19 and 20 July 2006.

The Notice of Formal Hearing set out the following allegations:

The information the Institute has received as evidence of possible serious misconduct and/or lack of fitness to teach is as follows:

1. That at School 3, in or about September 2001, the Teacher gave incorrect information to the Headmaster of School 3, in his application for a position at School 3, incorrectly stating that he had a PhD.
2. That at School 3, in semester 1 2002, during Religion and Values Education class, the Teacher made inappropriate comments to year 8 students including:
  - i. In a discussion to the class about circumcision, stating to a student 'stay behind after class and I will show you'
  - ii. In a discussion about monastic life stating 'I've got a seventh knot' which a student understood to mean that he couldn't have sex

- iii. Stating to a student who was leaning back on his chair 'I'm going to come and sit on your lap if you don't sit properly'.
- 3. That at School 1 in or about November 2002, the Teacher gave incorrect information to the Principal of School 1, about his qualifications and referees as follows;
  - a. In a curriculum vitae incorrectly describing one of his referees as Chairman of the School Board.
  - b. In a curriculum vitae incorrectly stating a qualification of a Diploma of Teaching rather than a Diploma of Education (Early Childhood).
  - c. Incorrectly advising that he was qualified to administer the WISC test.
- 4. That at School 1 in 2003 during English and Christian Studies in second semester the Teacher made inappropriate comments to year 7 students including:
  - a. 'being gay is not a problem unless it involved gay sex'
  - b. how difficult it was not to have a sex life/how he missed having sex
  - c. in a discussion about homosexuality stating to a student 'if I ever decide to become one I'll know who to come to first' while stroking the student on the back and rubbing his hand
  - d. when a student was having difficulties asking, 'is this School 1?'
- 5. That at School 2 in December 2003, whilst working as a casual relief teacher, the Teacher acted inappropriately with a year 6 student including:
  - a. Putting his hand on the student's shoulder while the class was watching a video with the lights out
  - b. Telling the student about him taking children on a camp including
    - i. an activity of swimming without clothes
    - ii. sleeping in the back of his car which would be cramped and that the student may wake to find the Teacher's arm around him
  - c. Including the student's name on a list of reasons for him to stay in Melbourne and asking the student if he wished to be friends outside school
  - d. Pulling the hairs on the student's leg
  - e. Lifting up the student's hand, holding his thumb and asking if the student knew that a boy's penis was the same size as his thumb.
  - f. In a conversation with the student in the storeroom, telling the student that he was mature enough to talk about sex and telling the student that he knew that the students talked about 'who can wank the fastest' and 'who has the biggest penis'

## **THE LAW**

Section 27 of the Act states:

### **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 terms *serious misconduct* and *unfit to be a teacher* are not defined in the Act. The Panel was referred to case law regarding disciplinary proceedings in other jurisdictions.

According to the High Court in *Ziems v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279 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 the profession.

These procedures are not meant to punish, although this may be an unintended consequence (see *New South Wales Bar Association v Evatt* (1968) 117 CLR 177). The purpose of these proceedings is to protect students in Victorian schools. A decision to deregister a teacher is very serious and requires great care (see *Victorian Lawyers RPA Ltd v Vodicka* (2000) VSC 272).

The standard of proof that applies in disciplinary proceedings is the *balance of probabilities*. The appropriate standard of proof that applies in civil matters was considered in *Briginshaw v Briginshaw* (1938) 60 CLR 336 where the High Court said that the ordinary standard of proof applied *subject only to the rule of prudence that any tribunal should act with much care and caution before finding that a serious allegation ... is established*.

And later:-

*The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.*

Whether misconduct is serious will depend upon the facts of each case. Conduct would not be serious if it was trivial or of momentary effect at the time. To be serious, conduct must be a substantial departure from the accepted standards for the teaching profession, and the departure must be the fault of the teacher (see *Parr v Nurses Board of Victoria* decided VCAT 2 December 1998)

The **test** set out in the case law is conduct:

*which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency. Allinson v General Medical Council [1891-4] All ER 768*

A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate 's unfitness to teach (see *Cameron v Bar Association of NSW* [2002] NSWSC 191 and *Marten v Disciplinary Committee of the Royal College of Veterinary Surgeons* [1965] 1 All ER 949). Persistent failure to meet a teacher's

obligations to the education community shows a disregard for these obligations and not just carelessness, incompetence or lack of organisation.

A continuing lack of moral responsibility and an absence of insight and understanding of right and wrong in the context of ethical fitness would be a strong indication of unfitness (see *New South Wales Bar Association v Cummins* (2001) NSWCA 284 and *Siguenza v Secretary, Department of Infrastructure* [2002] VSC 46 ).

## **DOCUMENTS CONSIDERED**

The Panel was presented with the following documentary evidence:

- Witness statement Principal 2 dated 28 September 2005 (3 pages) and attachments **001**
  - 1 – Letter of application 4 September 2001 (2 pages)
  - 2 – curriculum vitae (7 pages)
  - 3 – Letter 27 September 2001 (5 pages)
  - 4 – Letter 9 November 2001
  - 5 – Letter 23 November 2001
  - 6 - Letter 6 December 2001
  - 7 – Notes 27/2/02
  - 8 – Notes 28.02.02
  - 9 – Notes Friday 1 March
  - 10 – Letter 12 July 2002
  - 11 – Notes of discussion 17 July 2002
  - 12 – Letter 18 July 2002 (2 pages)
  - 13 – Email 17 July 2002
  - 14 – emails 17 July 2002
  - 15 – Letter 18 July 2002
  - 16 – Email 19 July 2002
- Witness statement Witness 1 dated 21 September 2005 (2 pages) and attachments **032**
  - 9 – Notes Friday 1 March
  - 1 – Email 18 April 2002 (2 pages)
  - 2 – Notes meeting 1 May 2002
- Witness statement Student 1 dated 21 September 2005 **038**
- Witness statement Student 2 dated 20 October 2005 **039**
- Witness statement Student 3 dated 24 October 2005 **040**
- Witness statement Principal 1 dated 24 January 2006 (5 pages) and attachments **041**
  - 1 – curriculum vitae (5 pages)
  - 2 – Letter 18 August 2003 (6 pages)
  - 2B – Fax dated 14 August 2003
  - 2C – Email dated 23 March 2003 (2 pages)
  - 2D – Email dated 11 March 2003
  - 3 – webpage
  - 4 – Copy Diploma of Teaching (Early Childhood)

- 5 – Letter 3 September 2003 (2 pages)
- 6 – timeline (2 pages)
- 7 – timeline (2 pages)
- Witness statement Witness 2 dated 21 September 2005 (3 pages) **069**
- Witness statement Student 4 dated 26 October 2005 (2 pages) **072**
- Witness statement Witness 3 dated 26 October 2005 (2 pages) and attachments **074**
  - 1 – Letter 18 August 2003 (6 pages)
- Witness statement Witness 4 dated 20 October 2005 (3 pages) and attachments **082**
  - 1 – letter 22 October 2003 (9 pages)
  - 2 – Report (5 pages)
  - 3- Report –Feedback (3 pages)
- Witness statement Witness 5 dated 8 June 2005 (2 pages) **102**
- Witness statement Student 5 dated 16 June 2005 (2 pages) **104**
- Letter from School 2 to the Teacher dated 11 December 2003 (2 pages) **106**
- Letter from the Teacher dated 7 January 2004 (4 pages) **108**
- Letter from School 2 to the Teacher dated 23 February 2004 (3 pages) **112**
- Witness statement the Teacher dated 16 June 2005 (6 pages) and attachment **115**
  - 1 – Academic Record (2 pages), Certificate of Registration
- Witness statement from the Teacher dated 30 January 2006 (3 pages) **124**
- Submission from the Teacher dated 3 February 2006 (2 pages) **127**
- Australia Post – Confirmation of delivery to the Teacher of Registered Post No. RL37530183
- School 3 – Year 8 Religious and Values Education Course Description
- Registered Schools Board – Copies of the Teacher’s academic qualifications

## **CLOSURE OF HEARING**

The Teacher did not attend the hearing. He was served by registered post with the appropriate Notice of Hearing dated 28 June 2006. According to the advice from Australia Post the Teacher received the Notice on 29 June 2006.

Following submission from Counsel Assisting, the Panel determined that because of the intimate and sensitive evidence being given the proceedings would be closed in accordance with sections 41(d) and 41(e) of the Act, while Witness 5 and Student 5 gave their evidence and that their names should not be published or broadcast. Further, as the identification of the school involved could lead to the names of the students and their parent becoming known, the name of the students’ school should not be published or broadcast.

## **THE EVIDENCE**

### **Principal 2**

Principal 2 gave evidence under oath and confirmed that his written statement was an accurate and true account. Principal 2 told the Panel that since 1997 he has been Headmaster of School 3, a co-educational Christian school that is underpinned by Christian ethics and values.

The Panel heard that in early September 2001 the Teacher sent a letter of application and his curriculum vitae to School 3 for the position of College Chaplain. Following interview, Principal 2 told the Panel that the Teacher was offered the position of a teacher at School 3 to begin in 2002. Principal 2 said that during November and December 2001 he made a number of enquiries on the Teacher's behalf to enable him to be licensed in the Diocese of Melbourne. These enquiries initially involved requesting advice and direction as to the standing of the Teacher. Principal 2 told the Panel that the response indicated that there was no apparent reason not to license the Teacher in Melbourne. However, on 17 July 2002, Principal 2 met with a representative of the Diocese of Melbourne to discuss irregularities with the Teacher's claimed qualifications.

Principal 2 told the Panel that prior to this meeting he checked the Teacher's personnel file and discovered that the Teacher had still not provided certified copies of his qualifications. Principal 2 said that the Teacher was then, via email, requested to provide such evidence. The Teacher, who was on sick leave, responded seeking an appointment with Principal 2 as he "had made a dreadful mistake" and needed to talk about it. The Panel heard that on 18 July the Teacher tendered his resignation citing deception as the reason. In an email sent by the Teacher on 19 July to Principal 2, the Teacher acknowledged that "The first CV I sent you was an accident but I have also tried to deceive you claiming that I have a PHD. I don't."

Principal 2 told the Panel that one of the Teacher's responsibilities was to teach the 'Religion and Value Education' curriculum to Year 8 students. The Panel heard that there were very few discipline problems at School 3 and that most families were very supportive whenever behavioural issues arose. Principal 2 said that the students were generally well-mannered and positive kids.

The Panel heard from Principal 2 that at the end of February 2002 a mother of a Year 8 male student contacted him to complain about the presentation of class material by the Teacher. In his written statement, Principal 2 said that when he interviewed the student, Student 3, he reported that the Teacher had discussed circumcision with the class and that he said, in response to a question from a student, "if anyone who is not circumcised and doesn't know how to clean yourself then see me afterwards." In the Teacher's unsworn and untested written evidence he states "I have no recollection of any actual incidents which could have been twisted to read as alleged." He said that within the context of biblical studies the topic of circumcision was covered briefly and, "rather than discuss a student's personal concern in front of the whole class, I invited them to speak with me after class. It is a Chaplain's job to address questions of students' personal relationships with God and to counsel students individually."

Principal 2 told the Panel that to his knowledge no other teacher would have discussed the topic of circumcision with students.

### **Witness 1**

Witness 1 gave evidence under oath and confirmed that her written statement was an accurate and true account. Witness 1 told the Panel that she is Head of Campus at School 3, a position she has held for 5 years. She said that prior to this position she was Head of Pastoral Care.

Witness 1 told the Panel that students at School 3 were easy to control and, although not the most academically motivated, they were very pleasant to teach. She said that part of her role in 2002 involved responsibility for and liaison between students, teachers, and parents.

The Panel heard that at almost the same time as Principal 2 informed her of the complaint by a parent against the Teacher's comments on circumcision, several members of staff also indicated to her that a number of students had concerns regarding the Teacher. Their concerns included the Teacher:

- saying to a student who asked him if he was circumcised, "if you stay around after class, I'll show you";
- discussing foreskin and male cleanliness, and including the comment "if you don't know how to, stay after class and I will show you how".

Witness 1 told the Panel that although the information she had was 'third hand' she interviewed the students concerned and found their stories were consistent. She said that there was a shared concern about the Teacher "dwelling on and labouring the point of circumcision". The Panel heard that the girls in class were very disturbed and 'quite sickened' by the constant labouring of the circumcision topic.

The Panel heard that the class discussions on sexual issues had more focus on male sexuality than on female sexuality. Witness 1 told the Panel that the Teacher had become angry at his limited role at the school and that he had wanted to be "a roving chaplain – more of a free spirit". In response to a question from the Panel, Witness 1 agreed that the Teacher might have wanted a more one-on-one involvement with the students.

### **Student 1**

Student 1 gave evidence under oath and confirmed that her written statement was an accurate and true account. Student 1 told the Panel that she is a Year 12 student at School 3 and that in 2002 she was in Year 8 at the same school.

The Panel heard that Student 1 still remembered the events of 2002 as they had 'stuck in my mind because what I heard was very inappropriate and strange.' In her written statement Student 1 stated that during one lesson in the first month of school the Teacher raised the issue of circumcision and when asked by one of the boys if he was circumcised, the Teacher responded, "stay behind after class and I will show you". She said that she and her classmates were shocked and she decided to report the matter to her home-room tutor whom she felt comfortable talking to.



Student 1 told the Panel that some issues that the Teacher discussed were inappropriate, irrelevant and that she was “not sure where he was going to go next”. She said that he “was always talking about his personal life” which included where he lived; jobs he had in schools in Queensland; his foster children; and taking students on camps.

### **Student 2**

Student 2 gave evidence under oath and confirmed that his written statement was an accurate and true account. He told the Panel that in 2002 he was a Year 8 student at School 3 and that he is now a tertiary student studying Personal Training.

Student 2 told the Panel that the Teacher’s classes were casual, and in his written statement, said they were ‘a bit kooky and different’. Also in his written statement, Student 2 said that during class they were discussing monastic life and the Teacher talked about a monk’s belt having six knots. Student 2 stated that the Teacher said, “I’ve got a seventh knot”, which Student 2 took to mean that he could not have sex. In the Teacher’s unsworn and untested written statement he states that he was explaining that monastic orders such as the Franciscans, make vows of poverty, chastity and obedience and that each vow is represented by a knot in the belt. He said, “these vows (knots) mean no money, no sex, and no choice.” He further states, “I believe in this instance a simple statement of fact has been twisted by someone with a dirty mind.”

The Panel heard that during one lesson Student 2 was leaning back on his chair when the Teacher said to him “I’m going to come and sit on your lap if you don’t sit properly”. Student 2 told the Panel that this comment made him feel quite uncomfortable. The Teacher explains this incident as his humorous attempt to stop students swinging on their chairs. He also said “Again, I believe it would take a dirty mind to read something inappropriate into this.”

### **Student 3**

Student 3 gave evidence under oath and confirmed that his written statement was an accurate and true account. He told the Panel that in 2002 he was a Year 8 student at School 3 and he was now an apprentice Panel Beater.

In Student 3’s written statement he states, “during one lesson in the first month of school the Teacher raised the issue of circumcision and spoke at length about it. The matter did not appear to me to have a context and the class and I found it quite disgusting. The Teacher again talked about the issue of circumcision in the next two lessons despite being told by the class, during the second lesson, that we did not want to pursue the discussion and felt quite disgusted by it. At one point he invited anyone who was not circumcised ‘to stay behind after class and he would show them how to clean themselves’. I felt quite scared about going to the next class.”

Student 3 told the Panel that he felt that the Teacher’s comments and actions were not the behaviour expected of a teacher. He thought the comments were irresponsible and inappropriate. He said that a lot of the boys felt very uncomfortable and worried.

## **Principal 1**

Principal 1 gave evidence under oath and confirmed that his written statement was an accurate and true account. Principal 1 told the Panel that he is Principal of School 1 and that he has held the position since May 2002. The Panel heard that the school is a K–12 school where education is firmly based on the Christian faith with adherence to traditional Christian values.

During the application process Principal 1 interviewed the Teacher both formally and informally and whilst accepting his qualifications ‘as read’ he did make particular reference to the WISC test because the school wanted to identify students with special needs. Principal 1 told the Panel that the Teacher’s capacity to carry out psychological testing was valuable to the school. In December 2002 Principal 1 contacted one of the Teacher’s referees who the Teacher had stated was “Chairman of the School Board” at College 1. Principal 1 said that he did not check his referee’s credentials or status with him – he had assumed that what was written by the Teacher was accurate.

Principal 1 said that through the Chairman of his School Board, he spoke with the Principal of College 1 where the Teacher had previously worked. The Principal of College 1 raised concerns over the inappropriate nature of the Teacher’s behaviour and teaching. The Panel heard that it was through this conversation that Principal 1 became aware that the referee was not the Chairman of the School Board at College 1 as claimed by the Teacher in his curriculum vitae.

The Teacher, in an unsworn written statement of 16 June 2005, stated that in his curriculum vitae he “mistakenly listed his referee as Chairman of the Board of College 1”. He said that as he had senior roles within the church “I believe he was a member or ex-officio member of the Board”.

Principal 1 told the Panel that following complaints from students and parents, he discussed with the Teacher his past employment particularly in relation to his immediate past school, School 3. The Panel heard that the Teacher indicated to Principal 1 that he had philosophical differences with Principal 2 and that he disagreed with the Christian education that School 3 offered.

Principal 1 said that in August 2003 he had concerns over the credibility of the Teacher’s CV and referee statement. In discussions with Principal 2, he was told that there were ‘obvious problems’ with the Teacher’s CV in relation to disparities regarding his claimed qualifications. After further checking it was revealed that the reference to College 2 in the Teacher’s CV had been misrepresented. Principal 1 said that he then began to look at the possibility of ‘summary dismissal’.

Principal 1 told the Panel that he had no issue with the Teacher’s teaching qualifications or skills as a teacher. However, he said that he had concerns with the Teacher’s moral and ethical management of some students and staff. Principal 1 had received numerous complaints from parents, students and staff from both campuses. These complaints concerned: inappropriate sexual comments; an alleged homosexual advance to a student; and using an inappropriate manner and language with students. In Principal 1’s written statement he refers to one specific complaint where the Teacher, in response

to the question from a male student “Are you a gay priest?” replied whilst stroking the boy’s hand, “I’m not, but if I change my mind, you will be the first to know”.

The Teacher, in his unsworn written statement of 30 January 2006, explains this incident as his attempt at diffusing a situation with humour. He said that during a class discussion about gay bishops in the Anglican Church “many students erupted into very nasty statements condemning homosexuals”. The Teacher said that he quietened the class down and then a student asked him if he was becoming gay. He stated, “As a throwaway humorous line trying to end the discussion and get back on task, I said, ‘If I ever do, you will be the first to know.’” The Teacher said that he made this comment as he was walking around the room and that as he passed the student he patted his shoulder. “This was done as a calming move to settle him down”.

Principal 1 said that he interviewed some of the students involved and formed the opinion that they were ‘probably right’ in their allegations about inappropriate material and references to it. Parents also made contact expressing strong disapproval of the Teacher’s classroom discussions and comments. The Panel heard that when Principal 1 discussed these complaints with the Teacher he reacted angrily and rejected them saying that Principal 1 was too narrow-minded and too quick to believe the vilifying comments about him.

Complaints by this stage had become quite numerous from one campus of the school, mostly in relation to sexual innuendos and inappropriate comments of a sexual nature by the Teacher.

In August and September 2003 Principal 1 made further checks on the Teacher and found he was not qualified to administer the WISC test and that there were serious questions over his Masters Degree which was not awarded by a registered university. He told the Panel that he also discovered that three other schools had significant concerns about the Teacher’s relationships with students and staff including inappropriate sexual references, and preoccupation with sexual matters with boys.

In the Teacher’s written and unsworn statement of 16 June 2005 he states that he had mentioned to Principal 1 that he “was able to administer a range of educational and psychological type tests and included the WISC in a list of examples. It was my belief that I was not required to be a registered psychologist to administer the WISC”. In September Principal 1 prepared a letter of dismissal for the Teacher.

### **Witness 3**

Witness 3 gave evidence under oath and confirmed that her written statement was an accurate and true account. Witness 3, the mother of Student 4, a Year 7 student at the time, gave evidence that she became aware of a variety of incidents involving the Teacher but did not take note, considering them isolated incidents. It was not until Student 4 indicated a wish to tape record the Teacher that Witness 3 became concerned. In discussions with Student 4 she was informed of a range of incidents which happened in the Teacher’s classes. She told the Panel that inappropriate discussions of a sexual nature were the essence of the incidents.

Witness 3 arranged interviews with Principal 1 and then the Teacher to raise the issues. She told the Panel that she became most concerned with the way the Teacher responded to her concerns. Witness 3 maintained that the Teacher exhibited little concern for the welfare of either the class or Student 4. She said that he denied the accusations over inappropriate comments on homosexuality and just seemed to want to minimize his behaviours. In her written evidence, Witness 3 described the Teacher's response to a student asking if he was a gay priest as he "... stroked Student 6 on his back and patted his hand and said 'if ever, and I probably won't, decide to live that way, I know who to come to first.'" She told the Panel that other comments the Teacher shared with students involved his personal abstinence from sex.

Witness 3 was quite worried about Student 4's reaction to topics covered in class and the Teacher's comments. She told the Panel that Student 4 was troubled about other students because the teacher's behaviour was making them 'very uncomfortable'. Witness 3 chose to keep Student 4 home until she could transfer to another class.

#### **Student 4**

Student 4 gave evidence under affirmation and confirmed that her written statement was an accurate and true account. Student 4 told the Panel that she was studying Year 10 in a home schooling situation, and that she was in Year 7 at School 1 at the time of the reported incidents. She said that the Teacher was her form teacher and taught English and Christian Studies in 2003.

Student 4 gave evidence of how the Teacher immediately engaged in a number of personal discussions and told the class a great deal about himself. In her written statement Student 4 said this information included "where he came from; that his wife had died; how difficult it was not to have a sex life and how he missed having sex". He also regularly raised issues of homosexuality and sexuality in general. Student 4 stated it was more information than the students were comfortable with, and some did communicate this to the Teacher. Student 4 told the Panel that others in the class were uncomfortable but were too scared to tell anyone. She discussed it with friends in other classes and one girl said to her that "she blocks her ears" so she does not hear what the Teacher is saying.

Student 4's written evidence included concerns about repeated discussions about gay relationships, which the Teacher raised in the context of newspaper reports about 'gay priests'. Student 4 stated that the Teacher told the students "being gay was not a problem unless it involved gay sex". She said that she expressed an alternative view to which the Teacher responded that she was being 'old-fashioned'.

Student 4 gave evidence that she was 'shocked, disturbed and felt sick' and wanted to leave the room, over a comment made to Student 6. In response to a question about homosexuality and the Teacher's answer, Student 4 said that he 'walked to the back of the room and stroked Student 6 on the back, rubbed his hand and said "if I ever decide to become one, I'll know who to come to first"'.

Student 4 said that she wanted to record the conversations the Teacher conducted in class so as people would believe her. She said that she had discussed this incident with

Student 6 after she had left the school and he asked her to raise the issue with her parents to let them know what was happening. The Panel heard that Student 6 had not told his parents because he thought they would be angry with him for not telling them earlier.

When Counsel for the Panel described the Teacher's account of this incident to Student 4 'as a humorous throwaway line trying to end the discussion' she had no recollection of such an explanation and went on to say she thought it 'entirely inappropriate'.

In evidence Student 4 made clear she was worried about demeaning comments about the school and students and their impact on the 'well being of others in the class'. She stated she was scared by some of the things he was saying and thought some comments 'very wrong'.

#### **Witness 4**

Witness 4 gave evidence under oath and confirmed that her written statement was an accurate and true account. She told the Panel that since 2000 she has been the Deputy– Principal of School 2 where the alleged incidents between the Teacher and Student 5 occurred. Witness 4 told the Panel that her responsibilities included Casual Relief Teacher (CRT) placement, staff and pupil welfare, and curriculum issues.

Witness 4 responded to questions put to her by Counsel Assisting the Panel on the Teacher's version of events set out in his letter to School 2 dated 23/02/04.

Witness 4 told the Panel that the typical behaviour of a Year 6 class towards a casual relief teacher would involve some fairly low-level back-chatting, and challenging of decisions. This behaviour was not out of the ordinary for a CRT. She said that at School 2 it was made clear to all replacement teachers that they were to keep her informed of any class management issues requiring attention.

Witness 4 said that her records show that the Teacher carried out relief duties on 15 and 22 October; 10 and 27 November and 2, 3, 4, 5 and 8 December 2003. It was on 8<sup>th</sup> December that she received a telephone call from Witness 5, mother of Student 5, who expressed concerns to her about the behaviour of the Teacher reported by Student 5 the previous week. Witness 4 said that she then sought advice from the staffing organisation and indicated to them that she did not want the Teacher back in the school until things were sorted out.

Subsequently, Witness 4 interviewed Student 5 on 10 December and prepared a report which was submitted to School 2. She formed the view that Student 5 "was genuine and honest and that his story was credible". In her first report to School 2 Witness 4 set out the concerns expressed by Student 5 including an alleged question put by the Teacher to Student 5 as to whether he would like to be friends outside of school. The Panel heard that the Teacher also allegedly claimed that he was a sex education teacher. To satisfy herself that Student 5 was telling the truth Witness 4 said that she asked him if he was telling the truth and his response was: *"Yes, I wouldn't make stuff like this up, it's serious. He could go to gaol if I said the word that I think he is - I can't say that because he might not be."*

Witness 4 told the Panel that she was satisfied that Student 5 understood the issues and consequences of his not telling the truth about the alleged interactions. Asked generally about his behavioural problems Witness 4 said that Student 5's behaviour did not raise a high level of concern. He could be disrespectful in his comments and was on occasions a "pain in the neck" but he was never dishonest. Nor was his misbehaviour sexual in character.

Witness 4 was closely questioned on her written responses to the Teacher's written (unsworn and untested) letter addressed to an officer of the Employer dated 7 January 2004.

The Teacher's written evidence is that he had previously got on well with Student 5 whom he knew had "quite a reputation for misbehaviour in the School". He had been told by Witness 4 on a couple of occasions that Student 5 thought he (the Teacher) was "cool or nice". He claimed that Student 5 and another boy, Student 7, were behavioural problems and described an alleged sexual prank initiated by Student 7. The Teacher also claimed that Student 5 "made several loud and personal comments in class referring to his own physical development and how it was in advance of everyone in the class." Given the class disruption that ensued the Teacher thought it necessary to take him aside and talk to him privately "to drive home that point about what was appropriate and inappropriate." The Teacher said that he gave him examples too of what inappropriate meant and according to the Teacher, Student 5 "obviously misunderstood the examples given." This discussion took place in the doorway of the storeroom, behind the Teacher's desk, to give Student 5 some privacy. He agrees that he told Student 5 that he was trained as a Sex Education Teacher and that "I knew that boys talked about the things he had been talking about in class where other people could hear and that it was inappropriate. I said he was old enough to understand the difference between "appropriate" and "inappropriate" times and places". The Teacher said that he did tell Student 5 that "...he knew boys often talk about penis size etc."

In response to the Teacher's evidence, Witness 4 agreed that she told the Teacher that there were a couple of students who could be disruptive in class and did enquire how Student 5 was coping. However she told the Panel that the storeroom doorway was not a suitable area for any type of discussion. She described the layout of the classroom highlighting that there was a shared, glassed teacher's office, where teachers could talk privately with students and keep an eye on the class. Witness 4 told the Panel that in her view there was no need nor was it appropriate for the Teacher to say to a student that he was a Sex Education Teacher. Any concerns regarding sexually inappropriate behaviours should be dealt with immediately and elsewhere. Witness 4 believes that the Teacher had other options open to him, such as removing both male students from the classroom, using the telephones available to call for assistance, or sending another student to the office for assistance. Witness 4 took exception to the Teacher talking with Student 5 about penis size, etc as such discussion should not have occurred. She said that the Teacher's explanation that he participated in this discussion in an attempt to humour Student 5 and get him back on task is an inappropriate way to handle that situation.

Witness 4 told the Panel that she could not recall the details of the alleged physical interaction that took place between the Teacher and Student 5 when they attended her office on one occasion after school. As the Teacher records she was distracted by a telephone call. Witness 4 says that Student 5 regularly “touched base” with her. She is of the view that if a physical interaction had transpired she would have noticed as both people were sitting in front of her desk. The Teacher claims that he went to the office to sign his time sheet and Student 5 spoke to him about problems he had with some older teenagers hanging around the school waiting to bash him. The Teacher says that he offered to help him chase them away at which point he claims that Student 5 threw a “light playful punch into my side and when I moved to return the compliment, he moved sideways a bit lifting his leg up a little so I touched his lower leg with my fist instead. It is quite possible that this pulled a couple of hairs on his leg.”

Referring to the allegation of a class room discussion about an alleged loud conversation between Student 5 and another boy, Student 8, about “being hairy”, “hair down below” and “having a larger penis saying something about you could tell from the size of a boy’s feet” the Teacher claims that he was endeavouring to calm Student 5 down with a “down/suppressing motion with my hand” in a humorous manner and then called Student 5 for the discussion in the storeroom doorway about what was appropriate/inappropriate as described above. Witness 4 found unacceptable his decision to manage the class in such an intimate manner in terms of the content of the conversations and physical touch described. She said that it was not appropriate for a teacher to continue an inappropriate conversation. Similarly she did not think it acceptable that the Teacher used personal descriptions of a personal nature in an effort, as he claims, to explain to Student 5 what constituted “appropriate and inappropriate” discussion.

In his letter to School 2, the Teacher admitted that he talked to Student 5 about taking his two sons camping and often skinny dipping together (appropriate); skinny dipping at camp with school students (not appropriate); sleeping in the tent and station wagon with his sons (appropriate) and “if I took someone else, and slept in the car, you could wake up too close to each other or with arms over the other and that would be inappropriate.” The Teacher also states that within this context of explanation to Student 5 he talked about taking boys away on camp where he knew the “parents very well and indeed became long term friends” and where they were “family friends”. Witness 4 told the Panel that in her view a Year 6 student would have been taken aback with such conversation. This was not the type of discussion any teacher should have with a student. Witness 4 said that Student 5 became unsettled and uneasy about this conversation and went away and thought about it.

Student 5 alleged that the Teacher put his name down on a list as being one reason for seeking employment and remaining in Melbourne. The Teacher claimed that in a “...throwaway line, I joked that since he kept telling everyone that I was cool and that I was his friend, I wrote his name on the list.” The Teacher explained this interaction as settling Student 5 back at his desk after Student 5 saw his private and personal list of pros and cons about several new jobs he had been offered for 2004. Witness 4 described this interaction as “bizarre” pointing out that many of the teachers lived in

the local community but did not exchange personal details with their students. In her view this was “a very unusual activity for the teacher to be undertaking.”

Witness 4 commented on the very brief period of time the Teacher had spent at the school. She observed him as being “very chatty” with the other teachers and keen to secure permanent employment there.

In the closing paragraphs of his letter to School 2, the Teacher says that he did train as a Sex Education teacher with the Catholic Education Office and that he was about to commence his PhD in the area of Puberty Education for Boys. A topic he states, “some people consider that I am one of the foremost ‘experts’....”

### **Witness 5**

Witness 5, parent of Student 5, confirmed her written statement under oath. Witness 5 was a Year 6 student in December 2003 at School 2 where the alleged interactions occurred between Student 5 and the Teacher. Witness 5 states that in December 2003 Student 5 came home and told her and her husband “in a joking kind of way, that he thought he had a paedophile for a teacher.” Witness 5’s written statement includes Student 5’s allegations that the Teacher:

- put his hand on Student 5’s thumb saying you could judge a boy’s penis size by his thumb;
- told Student 5 he could take him on camp, that he could sleep in the back of the car and that he might wake up with his arm around him and there would be nothing wrong with that;
- told him quite bit about his personal life;
- pulled the hairs on Student 5’s legs and touched his shoulders

Witness 5 indicated to the Panel that she had no reason to doubt Student 5’s account as she and her husband had a good relationship with him.

On hearing his concerns, and ignoring his pleadings not to get the teacher into trouble, they decided to inform the school. Witness 5 considers that the Teacher’s alleged remark to Student 5 to the effect that “I’ve heard about you, you’re a really cool kid”, had initially endeared him to the Teacher as he had been in considerable trouble at school. Family discussions over the weekend that included Student 5’s father, convinced her that she should report the matter to the school. She delayed making the report in the following week as Student 5 had asked her not to. She also weighed up whether he would be believed “because he had been in trouble at school around a number of behavioural issues.” She changed her mind about speaking to Witness 4 as she “decided that I would not be able to live with myself if this happened to another child and it went further. I explained to Student 5 what I had done and why and he was comfortable with my decision.” Witness 4 subsequently contacted her indicating that she had followed up on the matter and informed the appropriate people.

In her oral evidence Witness 5 reiterated that at the time Student 5 was on edge as he did not want to get the teacher into trouble. He just knew that it was not right. Otherwise the interactions did not affect him and if he wanted to talk about them he could approach either parent. There has been no further contact with the teacher.



### **Student 5**

Student 5, under affirmation, confirmed his written statement as a true and accurate record. He told the Panel that in December 2003 he was a Year 6 student at School 2 where the Teacher was a substitute teacher.

Student 5 said that on the first day that the Teacher took his class he thought he was “good, relaxed and funny” and enjoyed the class. His view changed the next day when “some things happened” that he thought “a bit strange”. Student 5 recollected being in class with the lights out watching a video when the Teacher came up to him and put his hand on his shoulder and asked whether he would like to go camping. He talked about gaining the trust of his parents before they went on camp and described how “kids went swimming without their clothes on and sometimes slept in the back of his car with him. He said that I might wake up with his arm around me because we would all have to sleep close to each other”. Another interaction involved the Teacher writing down that Student 5 was a reason why he would stay in Melbourne and not seek jobs elsewhere and revealing personal information about himself as a priest in Queensland and his family. A further interaction involved the Teacher pointing out to the class that he (Student 5) was the only boy with hairy legs. Following Student 5’s joking response at which the class laughed, the Teacher asked him to “go to the storeroom with him and he said that my behaviour was inappropriate. He used some long word that I can’t remember and said that he thought I was mature enough to talk about sex. He said that he knew that we talked about who could wank the fastest and who has the biggest penis.” Student 5 told the Panel that the storeroom was located behind the teacher’s desk and when this interchange took place the storeroom door was “shut over” - touching the wall but not completely closed. He said that this was not normal practice for teachers to speak to students in the storeroom as they normally were asked to “sit by my desk.”

Student 5 recalled that when he was working the Teacher came over to his table and pulled hairs on his leg. He said that he then lifted up his hand and held his thumb and asked him if he knew that a boy’s penis was the same size as his thumb. Student 5 told the Panel that he did not exactly remember what he said but that he made some comment like ‘well you’ve got some problems’ “. Student 5 said that he had a good relationship with his mother and even though he did not want to get the Teacher into trouble he felt that his comments were inappropriate and “things should not have been like that”. He reported the interactions to his mother and after discussions with her and his father, his mother telephoned Witness 4. The next day at school he avoided contact with the Teacher. Responding to a question from the Panel, Student 5 recalled classmates referring to the Teacher as a ‘weird guy’ and that he had called a female student dressed in a red Chinese costume a prostitute.

### **DISCUSSION OF EVIDENCE**

Allegation 1 is not contested by the Teacher as he admitted to deceiving School 3 by incorrectly stating in his curriculum vitae that he held a PhD.

In relation to Allegation 2 (i), the Panel heard consistent evidence from Principal 2 and Witness 1. Both witnesses had interviewed students after complaints had been received,

from a parent, students, and other teachers, about the Teacher using inappropriate course material and examples in his teaching. Principal 2 and in particular, Witness 1, found the students' evidence of the Teacher "dwelling on and labouring the point of circumcision" to be consistent and believable.

The Panel considered the evidence of Student 1 and Student 3 and found them to be reliable and credible witnesses who gave consistent accounts of the Teacher's discussions. They clearly described that they and other students felt very uncomfortable with the discussions, and shocked with the Teacher's comment to a student to 'stay behind after class and I will show you' in reference to a question as to whether he was Jewish or circumcised or not. The Panel accepts Student 3's evidence that the Teacher, despite the students demonstrating their disgust and reluctance to engage in discussions about circumcision, continued to raise the topic in two more lessons.

The Teacher claims that he discussed circumcision only in the context of biblical studies and that it is the Chaplain's responsibility to counsel students individually. The Panel does not accept his untested explanation, but rather accepts the consistent and clear evidence of the witnesses and finds it particularly damning that the Principal of the school believes that "no other teacher would have discussed the topic of circumcision with students". The allegation is substantiated.

In regards to Allegation 2(ii) the evidence is conflicting. Student 2's evidence is that the Teacher told the class that he had a seventh knot which Student 2 took to mean that he could not have sex. Although the Panel finds the Teacher's explanation (the knots on monks' belts representing their three vows) is plausible, it also finds that Student 2's interpretation is reasonable considering that the Teacher's classes were being conducted, certainly in some of the students' minds, with an undertone of sexual innuendo. However, in weighing up the evidence as presented, the Panel accepts the Teacher's explanation as to the content and context of the lesson and finds the allegation unsubstantiated.

Allegation 2(iii) it is not contested that the Teacher told Student 2 that if he did not sit properly he would "come and sit on his lap". The Panel finds that it was an unprofessional and inappropriate comment that embarrassed the student and made him feel uncomfortable, and therefore finds the allegation substantiated.

In reviewing the evidence relating to Allegations 3 (a), (b) and (c) the Panel finds that the Teacher did give incorrect information to School 1. However the Panel finds that the Teacher was not deliberately deceptive. The Teacher's explanation that he thought his referee was Chairman of the Board or at least an ex-officio Board member, is accepted as reasonable by the Panel. Applying *Briginshaw*, on the balance of probabilities the Teacher made an error of judgement and should probably have been more diligent in ensuring the veracity of the information he provided in his CV. The Panel accepts that the Teacher's qualifications to teach are in order and finds that there was a misunderstanding about the Teacher's formal qualifications. On the evidence presented to the Panel it is clear that the Teacher has a "Diploma of Teaching (Early Childhood)". However the Panel does not accept the Teacher's unsworn evidence that he was not aware that he was unqualified to administer the WISC test. The Panel considers that as a

professional, and particularly one who claims to be highly experienced and educated, he would have, or should have, known that he did not have the necessary qualifications. Allegation 3(c) is substantiated.

In considering Allegation 4 (a), (b), and (c) the Panel accepts that there were numerous complaints from parents and students about the curriculum content and language used in class discussions by the Teacher. Student 4's evidence was credible with clear recollection of the Teacher's comments and the effect that they had on her and her classmates. Evidence presented by Principal 1, Witness 3 and Student 4 leave the Panel in no doubt that the Teacher conducted classes where the discussions and examples used by him invariably and unnecessarily had a sexual undertone. Student 4's evidence that she was shocked and wanted to leave the room, that one student "blocked her ears" so she would not hear what the Teacher was saying, and that Student 6 was still affected by the experience is particularly disturbing. The Panel finds allegation 4 substantiated.

The Panel considered Allegation 5 (a), (b), (c), (d), (e) and (f). In giving his evidence Student 5 confirmed he was a student who misbehaved in class. It was difficult, because of the time that had elapsed, to recall exactly the details but at the time he knew that the Teacher's conduct was inappropriate and since then he has thought about what happened a lot. The Panel found Student 5 a credible witness whose account of follow-up with concerns were substantiated by his mother and the Deputy Principal of School 2, Witness 4, who had a long-term professional contact with him. Notwithstanding Witness 4' confirming evidence that Student 5 was a student who misbehaved, she was adamant that he was neither dishonest nor involved in behaviours of a sexual nature. The Panel was impressed that, at the time, Student 5 a Year 6 student, immediately reported and discussed his discomfort about the Teacher's conversations, with his parents and was prepared to substantiate his claims some years later. Against a scenario of the Teacher being a substitute teacher who literally spent only nine days at this school it is difficult to understand how he became so familiar with one student and thought it possible to gain the trust of Student 5's parents to take him on camp! This observation aside, no matter what the circumstances the content of all these conversations and interactions were totally inappropriate and manipulative and could be interpreted as a teacher propositioning a Year 6 student. The Panel agreed with Counsel Assisting the Panel that these are the most serious allegations against the Teacher. It finds that the Teacher's letter to School 2 seeks to cast a different interpretation on all the conversations and interactions that are the subject of these allegations. He does not deny the conversations and interactions. The Panel, therefore, find all the allegations to be substantiated.

## **FINDINGS UNDER SECTION 42(2)**

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 Panel has found many of the allegations to be proven and these were the most serious matters raised.

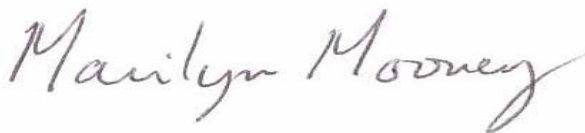
The second issue the Panel had to determine was whether the allegations that were proven, amounted to serious misconduct and/or unfitness to teach. After careful examination of the evidence, the Panel found the conduct of the Teacher to be most unsatisfactory, and lacking in personal and professional insight. The Teacher has indicated no remorse and has shown no understanding that his actions and comments have had an adverse affect on the students in his care. On the contrary he blames their 'dirty minds' for misinterpreting his behaviour. The purpose of disciplinary proceedings is to protect the public. With this in mind, the Panel finds that the Teacher demonstrates a palpable lack of understanding of the professional standards expected of a teacher.

It was of grave concern to the Panel that there had been similar complaints from three schools about the Teacher's use of inappropriate course material, and yet at no stage did he change his approach. In the Panel's view this demonstrated, at best, a lack of professional judgement and at worst a deliberate act of ignoring professional standards and of overstepping professional boundaries. It is the Panel's view that he neither understands these obligations nor accepts that he is bound by them.

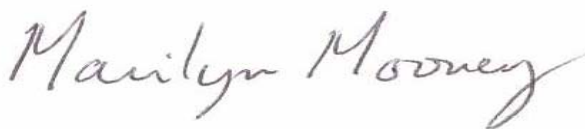
The Panel is satisfied that the Teacher is guilty of serious misconduct and is not fit to teach. His behaviour was sustained, serious, and in the Panel's view, escalating in nature.

The Panel, on behalf of the public and the profession, expresses its gratitude to and respect for the students who take the very brave step to report inappropriate and unprofessional behaviour of teachers. The Panel acknowledges that Parliament's legislation would not succeed without the courage demonstrated by these students, their parents and supporters through what can be a difficult and demanding process.

Based on the above findings of fact and the application of the law the Panel finds that the teacher is guilty of serious misconduct and is not fit to teach.



**MARILYN MOONEY, CHAIRPERSON**



**Per:  
STEWART CHEAL, REGISTERED TEACHER**

*Marilyn Mooney*

**Per:  
LOULA RODOPOULOS, PANEL MEMBER**