

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 061

REGISTERED TEACHER: Warwick John NOLAN

PANEL MEMBERS: Marilyn Mooney, Chairperson
Terry Hayes, Registered Teacher
Anne Farrelly, Panel Member

ATTENDANCE: The teacher was not present and was not represented
Mr Eugene White, Counsel Assisting with Ms C Sherman
instructing

DATE OF HEARING: 17 April 2008

DETERMINATION UNDER SECTION 2.6.46(2) OF THE *EDUCATION TRAINING AND REFORM ACT 2006*:

On 20 May 2008 the panel determined to cancel the registration of the teacher.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 31 December 2002.

By letter dated 6 October 2005, the employer notified the Institute that it had taken action regarding the alleged serious misconduct of the teacher. The teacher's employment was terminated by the employer with effect 30 September 2005.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) on 14 March 2007 and the Committee decided that the matter should proceed to formal hearing.

The Institute arranged for an investigation of the allegations and on 13 February 2008, the Committee considered the investigation report and recommendation and decided to refer the matter to a formal hearing.

A Notice of Formal Hearing dated 7 March 2008 was served upon the teacher by registered post on 17 March 2008.

The teacher did not renew his registration with the Institute and on 31 March 2008, the teacher's registration expired.

On 11 April 2008, the Committee decided that the teacher should be treated as if he is a registered teacher pursuant to section 2.6.47 of the *Education and Training Reform Act* (the Act) 2006.

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. Notice of Formal Hearing dated 7 March 2008
2. Letter, the employer to the Institute dated 6 December 2005 (2 pages)
001 – 002
3. The teacher - Registration Details (4 pages) **003 - 006**
4. Document entitled 'Chronology' (2 pages) **007 – 008**
5. Letter, Institute Legal Officer 1 to the teacher dated 16 October 2007 (3 pages)
009 - 011
6. Witness statement of witness 1 dated November 2007 (2 pages) **012 - 013**

7. Witness statement of witness 2 dated 28 February 2008 (2 pages) **014 – 015**
- 01a. – Document entitled ‘2004 – 16 the teacher’ (240 pages) **016 - 255**
 - 01b. – Document entitled ‘2004- 16 the teacher – Movies’ (28 pages) **256 - 283**
 - 02 – The employer policy - Incident Report dated 27 August 2004 (1 page) **284**
 - 03 – Document entitled ‘EnCase Computer Analysis Report’ (35 pages) **285 - 319**
 - 04 – Email witness 2 to witness 3 dated 7 September 2004 (1 page) **320**
 - 05 – ‘EnCase Computer Analysis Report’ (attaching images found on the school curriculum server) (14 pages) **321 - 334**
 - 06 – Unsigned Witness Statement of witness 2 dated 25 May 2005 (5 pages) **335 - 339**
8. Witness statement of the Acting Principal dated 5 February 2008 (2 pages) **340 - 341**
- 01 – Investigator’s Report dated 23 June 2005 (61 pages) **342 - 402**
 - Appendix A – Letter, Acting Principal to the teacher dated 10 September 2004.
 - Appendix B – Letter, the teacher to the Acting Principal (with section deleted) dated 16 September 2004.
 - Appendix C – Letter, Acting Principal to the teacher (with sections deleted) dated 6 October 2004.
 - Appendix D – Letter, Acting Principal to the employer dated 6 October 2004, attaching copy of letter found at Appendix A, Report dated 27 August 2004 (see 02) and EnCase Computer Analysis Report (see 03)
 - Appendix E – Letter, Acting Principal to the teacher dated 11 October 2004, attaching EnCase Computer Analysis Report (attaching images found on school curriculum server) (see 05).
 - Appendix F – Letter, the teacher to the Acting Principal dated 14 October 2004.
 - Appendix G – Letter, Acting Principal to the employer dated 2 February 2004.
 - Appendix H – Letter, employer to the Acting Principal dated 4 February 2005.
 - Appendix I – Letter, Acting Principal to the teacher dated 11 February 2005.
 - Appendix J – Letter, the teacher to the Acting Principal marked as received 17 February 2005.
 - Appendix K – Letter, Acting Principal to the teacher (Notice of Allegations) dated 7 March 2005.
 - Appendix L – Affidavit of Delivery dated 13 March 2005 (attaching certificate identifying exhibit A).
 - Appendix Q – Letter, Acting Principal to the teacher’s lawyer dated 16 June 2005.
9. Witness statement of witness 3 dated 5 March 2008 (2 pages) **403 - 404**
- 01 – Employer Acceptance of Terms & Conditions document (5 pages) **405 - 409**

- 02 – Employer Internet, Email and other Electronic communications document (9 pages) **410 - 418**
 - 03 – DVD containing image, movie and text document files from the teacher laptop computer (1 page) **419**
 - 04 – List of files deleted from DVD found at attachment 03 (4 pages) **420 - 423**
- 10.** Witness statement of Institute Legal Officer 1 dated 7 March 2008 (1 page) **424**
- 01 – Material received from Victoria Police pursuant to FOI request:
 - Brief of Evidence, Victoria Police Officer 1 dated 12 September 2005 (2 pages) **425 – 426**
 - Brief of Evidence, Victoria Police Officer 2 dated 8 August 2005 (3 pages) **427 – 429**
 - Memo, Victoria Police Officer 3 to Victoria Police Officer 2 dated 13 July 2005 (2 pages) **430 – 431**
 - Brief of Evidence dated 21 June 2005, attaching Brief of Evidence, Victoria Police Officer 2 dated 28 April 2005 (5 pages) **432 – 436**
 - Brief Cover Sheet (1 page) **437**
 - Brief Head (2 page) **438 – 439**
 - Charge and Summons (2 pages) **440 – 441**
 - Summary of Charges (2 pages) **442 – 443**
 - Witness List (3 pages) **444 – 446**
 - Exhibit List (1 page) **447**
 - List entitled ‘Details of Downloads’ (1 page) **448**
 - Charge and Summons (1 page) **449**
 - Statement of witness 1 dated 21 October 2004 (4 pages) **450 – 453**
 - Statement of witness 2 dated 25 May 2005 (see 7.06)
 - Statement of teacher 1 dated 28 October 2004 (4 pages) **454 – 457**
 - Statement of witness 4 dated 12 October 2004 (3 pages) **458 – 460**
 - Statement of ‘T’ dated 30 August 2004 (3 pages) **461 – 463**
 - Statement of teacher 2 dated 21 October 2004 (2 pages) **464 – 465**
 - Statement of witness 5 dated 21 October 2004 (2 pages) **466 – 467**
 - Statement of teacher 3 dated 21 October 2004 (2 pages) **468 – 469**
 - Statement of teacher 4 dated 21 October 2004 (2 pages) **470 – 471**
 - Statement of witness 6 dated 21 October 2004 (2 pages) **472 – 473**
 - Statement of teacher 5 dated 21 October 2004 (2 pages) **474 – 475**
 - Statement of teacher 6 dated 21 October 2004 (2 pages) **476 – 477**
 - Statement of witness 7 dated 21 October 2004 (2 pages) **478 – 479**
 - Statement of teacher 7 dated 12 October 2004 (2 pages) **480 – 481**
 - Statement of teacher 8 dated 12 October 2004 (2 pages) **482 – 483**
 - Statement of teacher 9 dated 12 October 2004 (2 pages) **484 – 485**
 - Statement of teacher 10 dated 12 October 2004 (2 pages) **486 – 487**
 - Statement of teacher 11 dated 12 October 2004 (2 pages) **488 – 489**
 - Statement of teacher 12 dated 21 October 2004 (2 pages) **490 – 491**
 - Statement of teacher 13 dated 12 October 2004 (2 pages) **492 – 493**
 - Statement of teacher 14 dated 12 October 2004 (2 pages) **494 – 495**
 - Statement of teacher 15 dated 12 October 2004 (2 pages) **496 – 497**
 - Statement of teacher 16 dated 12 October 2004 (2 pages) **498 – 499**

- Statement of teacher 17 dated 12 October 2004 (2 pages) **500 – 501**
 - Statements of Victoria Police Officer 4 dated 10 February and 8 August 2005 (5 pages) **502 – 506**
 - Statement of Victoria Police Officer 2 dated 27 April 2005 (4 pages) **507 – 510**
 - Transcript of Interview between Victoria Police Officer 2 and the teacher dated 30 August 2004 (69 pages) **511 – 579**
- 11.** Documents provided by the employer
- Letter, the Acting Principal to the teacher dated 10 September 2004, attaching the employer policy - Incident Report dated 27 August 2004 (see 7.02) and 'EnCase Computer Analysis Report' (see 7.03) (2 pages) **580 – 581**
 - Letter, the teacher to the Acting Principal dated 16 September 2004 (2 pages) **582 – 583**
 - Letter, Acting Principal to the employer dated 6 October 2004 attaching employer policy - Incident Report dated 27 August 2004 (see 7.02) and 'EnCase Computer Analysis Report' (see 7.03) (1 page) **584**
 - Letter, Acting Principal to the teacher dated 6 October 2004 (4 pages) **585 – 588**
 - Letter, Acting Principal to the employer dated 23 June 2005 attaching Investigation Report (see 8.01) (1 page) **589**
 - Letter, the employer to the teacher dated 19 August 2005 (22 pages) **590 – 611**
 - Letter, the employer to the teacher dated 27 September 2005 (2 pages) **612 – 613**

The following exhibits were presented at the hearing:

- A.** Document outlining the Institute's Submissions (attaching Code of Ethics, Code of Conduct and Standards of Professional Practice for Full Registration).
- B.** Affidavit of Institute Legal Officer 2 dated 17 April 2008
- C.** Witness statement of witness 1 dated November 2007
- D.** Victoria Police statement of witness 1 dated 21 October 2004
- E.** Witness statement of the Acting Principal dated 5 February 2008
- F.** Witness statement of witness 2 dated 28 February 2008
- G.** Document entitled 'Acquiring Evidence with EnCase'
- H.** Document entitled 'Conducting forensic investigations of computer using EnCase'
- I.** Witness statement of witness 3 dated 5 March 2008

(A full list of those movie files is appended to witness 2's witness statement at 7.01b. A DVD containing the files, other than those identified as constituting child pornography is appended to the witness 3's witness statement at 9.03).

c. Approximately 95 text document files saved in the directory, My Documents\My Porn\My Stories including those entitled:

- i. [REDACTED].doc'
- ii. [REDACTED].doc'
- iii. [REDACTED].doc'
- iv. [REDACTED].doc'
- v. [REDACTED].doc'

(A full list of those text document files is appended to witness 2's witness statement at 7.01a. A DVD containing the files, other than those identified as constituting child pornography is appended to witness 3's witness statement at 9.03).

2. Knew, or ought to have known, of the presence of approximately 700 image files of child pornography on his laptop computer (leased from the employer) which was from time to time taken to the workplace and accessible to others. Those image files were saved in the directory, My Documents\My Porn\T Set and included files entitled:

- i. [REDACTED].jpg'
- ii. [REDACTED].jpg'
- iii. [REDACTED].jpg'
- iv. [REDACTED].jpg'
- v. [REDACTED].jpg'
- vi. [REDACTED].jpg'
- vii. [REDACTED].jpg'
- viii. [REDACTED].jpg'
- ix. [REDACTED].jpg'
- x. [REDACTED].jpg'
- xi. [REDACTED].jpg'

(A list of those images is appended to witness 2's witness statement at 7.06. A censored sample of those images is appended to witness 2's witness statement at 7.03).

3. Stored inappropriate material on the school curriculum server via his school desktop computer, which was accessible by staff and students. This material included naked images of himself, images portraying naked or partially clothed women and/or transgender people, and sexually explicit images consisting of cake decorations depicting female genitalia and dolls in sexual poses, all saved in the directory:

- 'User/Staff Share/ Ass Prin/ Thoughts of the Day.'

(A sample of those images is appended to witness 2's witness statement at 7.05).

Witness 1

The Panel heard evidence under affirmation from witness 1 who told the Panel he was a contracted Information Technology technician employed by the employer. Witness 1 attested to the accuracy of his signed written statement dated November 2007 (pp 12-13) and his police statement dated 21 October 2004 (with one small alteration on page 450) (pp 450-453). Witness 1 told the Panel that part of his role was to maintain the computer network and repair and service school hardware and software including the notebook computers leased by teachers from the employer. The school where the teacher was employed was one of the schools that witness 1 serviced.

Witness 1 told the Panel that on 25 August 2004 the teacher asked him to check his leased laptop computer as he believed that it was infected with "Spyware". Witness 1 said that he used a program called "Spybot" that identifies and removes "Spyware" but he noticed that the computer froze on a particular file. The Panel heard that when he opened this file, which was called "T Set", he observed a pornographic photograph of a naked adult male with a naked female child (8-9 years old) on top of him. He said that he saw various file names that all appeared to be sex related. Witness 1 immediately reported his findings to witness 2.

Witness 1 explained to the Panel that files are items of information such as electronic documents or photographic images which may then be named and saved to the computer hard drive and stored in folders created to manage the documents in an orderly way much like a filing cabinet. Documents, photos, graphics or videos may also be downloaded from the internet and named and saved as files onto the computer's hard drive. Files created this way can be accessed at a later time if needed.

Witness 1 said that in early October 2004 whilst he was carrying out routine work on the school computer curriculum server, he observed images of a naked woman and a naked man, who he recognised as the teacher. The images were in a directory called "Assistant Principal" and saved on the server. The Panel heard that the curriculum server is the heart of the IT network for teachers and students who need a username and password to access it. Directories are available to use – some only teachers could access. Students' access was by their log into the home directory and then to their own directory. Teachers too would need to log in if they were using a classroom computer or if they had connected their laptop to the server.

The computer the teacher used in his office was hard wired to the administrative network which was not available to other teachers. The curriculum server could be accessed via the administrative network, but the administrative network could not be accessed via the curriculum server.

Witness 1 told the Panel that the pornographic images he found on the teacher's office computer – the one connected to the school server – had to have been copied from one computer to another. He said that they would have had to have come from an external source. Witness 1 said that he checked every other computer in the school and found nothing relevant to this matter. The Panel heard that witness 1 reported his discoveries to the Acting Principal and to witness 2.

The Acting Principal

The Acting Principal gave evidence under affirmation and affirmed as true and accurate her statement dated 5 March 2008 and also her letter to the teacher's lawyers dated 16 June 2005. The Acting Principal told the Panel that she is currently the Acting Principal at school 2. She said that in Terms 3 and 4 she was Acting Principal of the school and that the teacher was Assistant Principal. The Panel heard that after witness 1 had reported his findings to her and to witness 2, she was asked by the employer to conduct a formal investigation.

The Acting Principal's evidence was that the Information Communication and Technology (ICT) Security Incident Report, which followed inspection of the teacher's leased notebook computer, identified in excess of 8000 pornographic images, movies and/or text documents. The Report also identified inappropriate pornographic internet sites visited by the teacher. The ICT Security Incident Report that followed inspection of the school's curriculum server identified 16 pornographic images and 4 sexually explicit images. The Acting Principal's investigation found the teacher had "sought and downloaded many images that were explicit and depicted objectionable and abhorrent behaviour including rape, sadomasochistic bondage and other degrading activities that offend against standards of morality, decency or propriety generally accepted by adults". The Acting Principal said that as students and teachers had access to the school curriculum server it is possible for them to have accessed the pornographic images saved on the school curriculum server in the teacher's personal directory. She has no knowledge that this has in fact occurred.

On the grounds of ill health, the teacher declined to participate in the Acting Principal's investigation. He did however, write in response on 16 September 2004, "I have inappropriate material stored on my laptop" and "I am not retreating from my responsibility and admission that I have inappropriate material on my laptop."

Witness 2

Witness 2 gave evidence under oath and affirmed her statement dated 28 February 2008 as true and correct. She said that she is the Manager, Risk Management at the employer. Witness 2 said that in 2004 she was Manager, Information Communication and Technology (ICT) Security. This role required her to investigate instances where inappropriate material was discovered on computers leased by the employer or belonging to employees.

The Panel heard that in late August 2004 she received a call from witness 1, IT technician employed by the employer, notifying her that he had discovered images of child pornography while undertaking a virus check on the teacher's leased notebook laptop computer.

Witness 2 carried out an audit of the teacher's laptop computer hard drive using a system called EnCase. This sophisticated program enabled her to run a script to display as thumbnails every movie, text or image file saved onto the laptop. The Panel heard that EnCase is a forensic tool used worldwide by police forces. It preserves evidence by

locking the hard drive and therefore preserves the integrity of the hard drive. Witness 2 explained to the Panel that at that time she was qualified to use EnCase and had the permission of the Police Commissioner to do so. The situation now is that only one area of the employer has permission.

Witness 2 told the Panel that there were over 8000 movies, texts or images on the teacher's laptop computer. As the Panel had censored images of what witness 2 said was child pornography (pp293-319), witness 2 went through each image and described in detail what she knew to be the complete image and told the Panel why she believed they were child pornography. Examples she gave included "top, nude photo – young, underdeveloped breasts, absence of pubic hair, suggests 10-15 years"; "soft, cuddly toys in bed, explicit pose"; "man on chair, girl on his lap - thank you grandpa"; "man, oral sex, young girl".

The Panel heard that around 6 October 2004 witness 2 received another phone call from witness 1 advising her that he had found images of a naked man and woman on the school curriculum server saved under the teacher's personal directory. Witness 2 said that she arranged for a specialist technician to attend the school and to conduct an audit of the school curriculum server using the EnCase software. The Panel saw 20 images that had been saved in the pathway "Data/Users/Staff Share/Ass Prin/Thoughts of the Day/".

Witness 2 explained to the Panel the teacher's laptop directory structure, that is, the directories and subdirectories he used to store the image, movie and text files. She said that the title "My Porn" would have to be typed in, as would all the file titles. She said that there was nothing accidental about the file names. The Panel saw files and categories such as "My Porn; Anal; Bondage; Gang Bang; Kitty Kat; Rape; Tied and Raped; Tied and Tortured; Forced; My Stories; T Set". The child pornography was located in the "T Set" of the "My Stories" sub folder of the "My Porn" folder. The images that witness 2 described in greater detail to the Panel were contained in this "T Set". Witness 2's evidence is that 152 images saved to the hard drive between 16 November 2003 and 4 December 2003 constitutes child pornography within the definition contained in section 67A of the *Crimes Act 1958* (Vic).

Witness 3

Witness 3 gave evidence under affirmation and affirmed that his statement dated 5 March 2008 is true and accurate. Witness 3 is an employee of the employer.

Witness 3 told the Panel that during 2004 and 2005 he was involved in the employer's investigation into the conduct of the teacher, specifically that inappropriate material had been found on the school curriculum server and saved under the teacher's personal directory, even though this directory was accessible to all staff.

The Panel heard that it was witness 3's role to analyse information provided to him of the teacher's computers by witness 2 and then provide advice to the employer. Witness 3 said that the images which were considered to be child pornography were referred to Victoria Police. In particular the images found in the directory "My Documents/My

Porn/T Set". The Panel heard that, due to insufficient evidence to meet the standard of proof of beyond a reasonable doubt, Victoria Police did not lay charges in relation to the teacher knowingly possessing child pornography. Witness 3 stated that the fact that "T Set" was situated within the My Porn directory, containing adult pornography that the teacher admitted to storing, suggested he created the "T Set" subdirectory. Furthermore, the police have reported that child pornography was accessed using the teacher's log on.

Witness 3 described to the Panel some of the images and movies that he considered to be pornography and child pornography. These included nude children engaging in oral and vaginal sex acts and other sexually explicit acts. These images involved children with children and/or adults with children. He said some children appeared to be 4 –5 years of age; some older, some in their teens.

DISCUSSION OF THE EVIDENCE

The Panel received written statements from four witnesses and heard oral evidence affirming the written statements. The Panel found all witnesses to be credible and the evidence of witness 1 and witness 2, in particular, invaluable in explaining the processes involved in identifying the teacher's ownership and responsibility for the materials and their locations on his laptop, his desktop and the school server. It also had before it the file compiled by the Victoria Police in its investigation of the allegations against the teacher.

The teacher did not attend the hearing, nor was he represented. The Panel was at all times mindful of the application of the rules of natural justice given that the teacher was not present or represented. A statement from Institute Legal Officer 2, Exhibit 'B', attested to the serving of Notice of Formal Hearing on the teacher. Based on the available evidence, including a confirmation of service receipt from Australia Post, the Panel was of the view that the teacher had received all of the material relevant to the hearing in an adequate time frame.

Witness 1 described how he discovered the pornographic material contained on the teacher's laptop after being requested by the teacher to run a virus check. Witness 1, upon locating the material, acted promptly in retaining the teacher's laptop, reporting the matter to witness 2 and transporting the laptop computer to her offices.

In his statement to the Victoria Police, and in a written statement to his then Principal, the Acting Principal, the teacher admitted to the existence of pornographic material on his laptop. The Panel viewed the material contained on Exhibit K and was unanimous that it was of a pornographic nature. This admission placed the teacher in contravention of s.4.1(a)(i) and (ii) of the lease agreement with the employer.

The Panel noted, however, that the possession of adult pornography does not of itself amount to serious misconduct and/or a lack of fitness to teach. Having it on a laptop that was brought to school from time to time - potentially exposing others at the school to the material – and allowing that material to find its way onto the school server goes

beyond activity confined to the privacy of one's home. (The Panel accepted the evidence of witness 1 that the computer was at school at the time of the maintenance and the statement to Police by teacher 1, that he had performed maintenance on the teacher's laptop computer at the school.) The Panel was of the view that the teacher knowingly stored pornography on his leased work laptop. Further, by bringing the work laptop to school with pornographic material contained on it, he potentially, and actually, exposed members of his school community to material that had no place within the professional environment of a teacher or a school.

The Panel heard evidence from witness 2. She spoke to the statement made by the teacher in his interview with the Police that the pornographic material containing children had been placed there, not by himself, but by 'T'. A forensic examination by witness 2, who outlined to the Panel her extensive experience in such investigations using the EnCase system that locks down the hard drive, thereby preserving the integrity of the evidence, showed the pattern in the storage of files by the teacher. Each of the files contained on the teacher's laptop were stored systematically in sets under the titles, 'My Stories', 'My Porn' and 'T Set'. The Panel accepted witness 2's view that the organisation of the pornographic images, films and texts was "deliberate and planned, not accidental or incidental", and that the teacher did not just stumble upon these images, but searched them out and placed them into his system.

Witness 2 guided the Panel through the edited images on pages 293-319 of the case file. The Panel accepted witness 2 and witness 3's evidence that the material contained children as young as eight engaged in sexual activity.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

The Panel found the Allegations proved and the teacher guilty of serious misconduct and unfitness to teach.

In relation to Allegation 1, the teacher himself admitted in a statement to the Victoria Police and to the Acting Principal on 16 September 2004, "I have inappropriate material stored on my laptop", and "I am not retreating from my responsibility and admission that I have inappropriate material on my laptop."

In deciding that Allegation 2 was proved, the Panel was mindful of the standard of proof regarding the balance of probabilities that applies in civil matters, that of *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*. The teacher contested one aspect of Allegation 2, claiming that the child pornography materials were not his, but those of 'T'. While it may be that 'T' provided the images, it strains credulity to believe that the teacher was not aware of them. The pattern of collation and categorisation of these particular images follows that of the other collections of images gathered and organised by the teacher. This was reinforced by the fact that the teacher, in his interview with Police, stated that 'T' had access to his password and laptop and he knew that 'T' had viewed and downloaded pornographic

files containing children in the past. That file was stored among the teacher's other files containing pornographic material and would have been clearly visible when accessing those files.

In relation to Allegation 3, while the Panel is mindful that the transferring of the pornographic material from the teacher's desktop computer to the school curriculum server may have occurred without his knowledge (as part of the accepted technical procedures involving backup of materials when a school desktop computer is being repaired or serviced) the responsibility for what was transferred remains his. The Panel accepts witness 1's clear evidence that the material had to have been transferred from an external source, that is, the teacher's laptop computer, to his desktop computer from which it made its way to the school server. At the very least it was an act of professional irresponsibility to have such materials at school and one of gross negligence to allow them to be stored on a server accessible to other members of the school community.

The Panel was unanimous in its view that its findings were based on logically probative material and that the work of the Institute in preparing for the hearing, and that the proceedings themselves, pursued to the fullest extent possible the requirements of natural justice.

The Panel's role is not to pass moral judgment, nor to punish the party against which allegations are raised, (*see New South Wales Bar Association v Evatt (1968) 117 CLR 177*) but rather to protect the integrity and standing of the teaching profession. For misconduct to be of a serious nature it must not be trivial or momentary, but rather it must constitute a serious departure from the accepted standards of the profession (*see Parr v Nurses Board of Victoria* decided VCAT 2 December 1998.) The Panel was of the firm view that the deliberate and organised storage of pornographic images of a graphic and violent nature on an employer leased laptop computer that was designated for professional use and was taken to the teacher's workplace, was a serious departure from what is considered acceptable practice for a member of the teaching profession. As such, it constitutes serious misconduct.

Further, in a profession centred around providing a safe and nurturing learning environment for children, for a member of that profession to have stored on his laptop computer images of young children and adolescents engaged in sexual activity and poses, is departure so far from acceptable standards as to be considered reprehensible in the extreme. The potential capability of such behaviour to bring the standing of teachers and the status of the profession into disrepute cannot be underestimated.

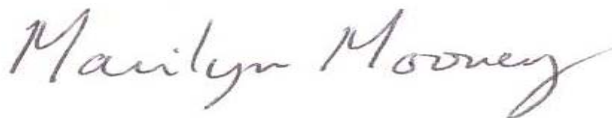
In considering the teacher's fitness to teach, the Panel reflected on the words of Justice Harbison, Vice President & Mr Eccles, Member at [169] when addressing issues in relation to *Anthony Davidson v Victorian Institute of Teaching (Occupation and Business Regulation)* [2007] VCAT 920. The Panel noted -
'We take the view that a finding that a teacher is unfit to teach must carry with it a perception that the conduct complained of is of a continuing and persistent nature. It is conduct which throws doubt on how he would conduct himself in the future in the classroom. A teacher may commit a single act of serious misconduct, or a series of such

acts, but those acts may be explicable in context and unlikely to recur. A determination that a teacher is unfit to teach appears to us to be a more severe penalty. It carries with it an assessment that that person should not be in a position of authority and trust with children, because his whole approach to teaching and to the children in his care is profoundly and irretrievably flawed. It would often involve consideration of criminal conduct.'

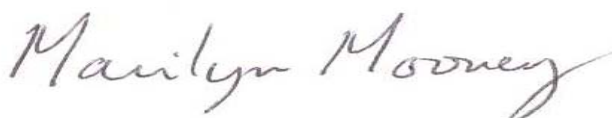
The Panel was unanimous in its view that the teacher knew or ought to have known his laptop computer contained images of child pornography. As such, it is the Panel's belief that the teacher's "whole approach to teaching and to the children in his care is profoundly and irretrievably flawed" and he is, therefore, unfit to teach.

The teacher did not renew his registration with the Institute and on 31 March 2008 his registration expired. Section 2.6.47 of the Act allows the Institute to extend its jurisdiction in disciplinary matters to cover teachers who are no longer registered if the conduct, the subject of the notification by the employer, occurred when the teacher was registered. The conduct, the subject of the notification in the teacher's case, occurred from 2000-2004 and from 31 December 2002 the teacher was registered as a teacher. Therefore the Institute decided to extend its jurisdiction in this matter. The Panel's jurisdiction in a matter such as this extends to the Panel having the ability to make findings in relation to the teacher's conduct and to impose a determination where appropriate. The determinations under the Act enable the Panel to impose conditions on a teacher's registration, suspend a teacher with or without conditions or cancel a teacher's registration. Cancellation of registration has a number of repercussions in relation to the person seeking to be registered in the future in Victoria or elsewhere. Suspension prevents the person applying to be registered for a period. In this matter it is appropriate for the Panel to cancel the teacher's registration because of the seriousness of the allegations and the finding that the teacher is not fit to teach. This means that the appropriate authorities in Victoria, the other States and Territories will be notified that the teacher's registration has been cancelled. The cancellation will be recorded on the Register of Teachers and if the teacher were to apply to be registered as a teacher in Victoria at any time in the future, he will have to meet the strict criteria set out in the case law before being granted registration.

The Panel determined to cancel the teacher's registration.



MARILYN MOONEY, CHAIRPERSON



**per:
TERRY HAYES, REGISTERED TEACHER**

Marilyn Mooney

**per:
ANNE FARRELLY, PANEL MEMBER**