

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

REFERENCE NUMBER: 408105 **HEARING** 131048

RESPONDENT: MDR (the **Teacher**)

PANEL MEMBERS: Garry Salisbury, Chairperson
Rowena Archer, Registered Teacher
Anthony Sheumack, Registered Teacher

ATTENDANCE: The Respondent attended the Formal Hearing and was represented by Mr Conor Breheny.

Ms Michelle Wilson, Counsel Assisting, with Mr Jake Spiteri of the Victorian Institute of Teaching instructing.

DATE OF HEARING: 19 February 2024

DATE OF DECISION: 25 February 2024

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

On 25 February 2024, the Panel determined that the registration of the teacher be suspended from the date of this decision for a period of two years. At the end of that period the teacher would need to have completed the following conditions to the satisfaction of the VIT before the suspension would be lifted.

Ongoing treatment as required by health professionals.

- a. The teacher will continue to engage with the following health professionals for the treatment of any health impairments which the teacher has been diagnosed with at the relevant time.
 - i. Ainsley Hudgson or another suitable qualified and registered clinical psychologist
 - ii. Dr. Holly Harman or another suitable qualified and registered medical practitioner
- b. The teacher will provide the health professionals with a copy of this decision.
- c. The teacher will adhere to any treatment plan and comply with any referral or advice made by treating health professionals.
- d. The teacher will provide the Institute with reports from the treating health professionals every six months with a final report as near as practicable to the end of the period of suspension. These reports must include the following information.
 - i. the number of appointments the teacher has attended and the date of each of these appointments.
 - ii. whether the teacher has been receiving treatment and if they have complied with the treatment plan.
 - iii. If the teacher is suffering from an impairment or symptoms of an impairment which might affect their ability to practise as a teacher.
 - iv. Whether the teacher poses any risks to the safety and wellbeing of children
 - v. Whether there are any ongoing treatment, additional conditions, limitations or restrictions that should be imposed by VIT on the teacher's registration to manage any symptoms, impairments or risks.
- e. If the teacher wishes to change the treating health professionals or is unable to maintain the relationship with the health professionals, they should contact the Institute immediately with the names of the new health professionals

Professional Development

- a. The teacher will identify a facilitator to be approved by the institute who will provide a professional development program to be completed during the suspension period. The approved facilitator will be provided with a copy of this decision. The program to be approved by the Institute will explore and address the following:
 - i. The Victorian Teaching Profession's Code of Conduct and in particular, the following principles
 - Teachers maintain a safe and challenging learning environment (Principle 1.1)
 - Teachers model and engage in respectful and impartial language and behaviour (Principle 1.2)
 - Teachers display an understanding of a learner's individual context and specific vulnerabilities when they interact with them (Principle 1.2)
 - Teachers work to ensure they have the physical, mental and emotional capacity to carry out their professional responsibilities (Principle 1.3)
 - In their professional role, teachers do not behave as a friend or parent/guardian (Principle 1.4)
 - Teachers make decision in learner's best interests (Principle 1.4)
 - Teachers hold a unique position of influence and trust that should not be violated or compromised. They exercise their responsibilities in ways that recognise there are limits or boundaries to their relationships with learners. (Principle 1.5)
 - Teachers should consider how their decisions and actions may be perceived by others. Teachers should be aware of the specific vulnerabilities of learners when determining appropriate professional boundaries. Principle 1.5 provides specific examples applicable to this case. A professional relationship will be violated if a teacher:
 - socialises with learners (including online and via social media) outside of a professional context.
 - invites learners back to their home.
 - has a sexualised relationship with a former learner within two years of the learner completing their senior secondary schooling or equivalent. In all circumstances, the former learner must be at least 18 before a relationship commences.

- The personal conduct of a teacher has an impact on the professional standing of that teacher and on the profession as a whole (Principle 2.1)
 - Teachers are aware of, and comply with, the legal requirements that pertain to their profession. Teachers must be aware of and comply with the requirements of child safe standards, reportable conduct, United Nations Convention on the Rights of the Child and any other relevant legislation, policies or regulations that pertain to the role of a teacher in child safety and wellbeing.
- ii. The Australian Professional Standards for Teachers and in particular the following standards
- Create and maintain supportive and safe learning environments.
 - Engage professionally with colleagues, parents/carers and the community.
 - Meet codes of ethics and conduct established by regulatory authorities, systems and school (including the Victorian teaching profession Code of Conduct and Code of Ethics) (Focus area 7.1)
 - Understand the implications of and comply with relevant legislative, administrative, organisational and professional requirements, policies and processes (Focus are 7.2)
- b. The program must consist of no less than four sessions.
- c. Once the Institute approves the facilitator, the teacher will engage in an initial meeting with the facilitator and provide the facilitator with a copy of this decision.
- d. The teacher will request the facilitator prepare an outline of the program and provide this to the teacher.
- e. The teacher will provide a copy of this program outline to the Institute for review and approval. The following process will apply to the
- i. Within a reasonable time, the Institute will notify the teacher as to whether the program is approved.
 - ii. If the Institute does not approve the program, it will provide the teacher with reasons why the program is not approved.
 - iii. If the Institute does not approve the program the teacher will request the facilitator provide an amended program outline which addresses the reasons for the previous program not being approved.
 - iv. The Parties agree that the teacher will not commence the program until the program has been approved.

- f. The teacher will be responsible for all of the costs that may be associated with complying with the professional development conditions imposed on the registration.

Reflective Statement

- a. At the end of the professional development program, the teacher will prepare a written reflective statement that demonstrates:
 - i. The teacher's understanding and comprehension of all the material covered in the professional development program.
 - ii. The teacher's learnings as a result of undertaking the professional development program in relation to the serious misconduct.
 - iii. How the teacher plans to use the knowledge, strategies and tools in future teaching practice.
 - iv. The teacher's understanding of professional relationships and maintaining professional boundaries with learners in relation to the allegations against
 - v. The teacher's understanding. Of the Child Safe Standards with reference to the allegations against them.
 - vi. The teacher's understanding of the Victorian Teaching Professions Code of Conduct and the Australian Professional Standards for teachers with reference to the allegations made against them.

Report from Facilitator

- a. At the end of the professional development program the teacher will arrange for the facilitator to provide the institute with a written report addressing:
 - i. Whether the teacher has successfully completed the program and their level of understanding of the Australian Professional Standards for Teachers
 - ii. The teacher's level of attendance and participation.

REASONS

BACKGROUND

The Victorian Institute of Teaching (the Institute) is the independent statutory regulator of the Victorian teaching profession, operating under Part 2.6 of the *Education and Training Reform Act 2006 (Vic)* (the Act).

On 7 June 2023, the Council of the Institute's Professional Conduct and Registration Suitability Committee (the Committee) determined that the respondent, hereafter referred to as 'the Teacher' be referred to a formal hearing under Subdivision 4 of Division 12 of Part 2. 6 of the Act.

On 15 December 2023, the Committee determined to:

- a. Fix the time, date and place for the formal hearing as 10:00am on Monday 19 February 2024 (to run over two (2) consecutive days with a third consecutive day reserved) to be held at the Victorian Institute of Teaching's Hearing Room at 717 Bourke St, Docklands.
- b. Appoint Mr Garry Salisbury, former member of the Council of the Institute, as Chairperson of the Formal Hearing Panel as required by s 2.6.43(1)(a) of the Act.
- c. Appoint Mr Anthony Sheumack and Ms Rowena Archer, registered teachers, to the Formal Hearing Panel as required by s 2.6.43(1)(b) of the Act.

THE ALLEGATIONS

Allegation 1– It is alleged that the teacher is guilty of serious misconduct by maintaining an inappropriate relationship with a year 12 student:

- i. The teacher held a position of responsibility as leader of the Diversity program at the College in 2021, where they encountered the student who participated in the program; and

- ii. The teacher was aware that the student was vulnerable, having disclosed to them that they were transgender and were attending sessions with the School's Wellbeing Team to support their mental health; and
- iii. The teacher frequently communicated with the student in a manner that was overly personal and familiar; and
- iv. The teacher overstepped in the role as a teacher by attempting to provide support to the student which they were not qualified to provide, breaching the boundaries of a teacher-student relationship; and
- v. prior to the end of the school year, the teacher provided the student with their personal contact information and asked the student that they do not contact them until after they had graduated; and
- vi. The teacher engaged in the above conduct, despite concerns being raised with them by other staff at the school; and
- vii. The teacher intended for, or was reckless to, the relationship with the student escalating to a romantic relationship.

Allegation 2– It is alleged that the teacher is guilty of serious misconduct by maintaining a sexual relationship with a former student within two (2) years of the student completing their senior secondary schooling:

- i. in December 2021, the teacher regularly met in-person with the former student, including at their home; and
- ii. on 31 December 2021, the teacher engaged in an 'intimate kiss' with the former student at their home where they had consumed alcohol, and invited them to stay the night; and
- iii. on 1 January 2022, the teacher engaged in sexual intercourse with the former student at their home and did so on at least four (4) further occasions between then and 17 January 2022; and
- iv. The teacher engaged in the above conduct, despite being made aware that the former student was suffering from poor mental health and was taking medication at the time, which may have impacted their judgement.

Allegation 3 – It is alleged that the teacher’s conduct as detailed in allegations 1 and 2 constitute a pattern of conduct demonstrating that they are not fit to teach.

DOCUMENTS RELIED UPON

The Panel considered the following documents:

1. Formal Hearing Book VIT and the teacher. 19 February 2024
2. Submissions on behalf of the Victorian institute of teaching M Wilson 6 February 2024
3. Written submissions of the teacher. C Breheny 12 February 2024
4. VIT Disciplinary Hearing Decision
 - Carly Marie Hook. 29,30 April, 2 June 2008
 - Bradley McGrath 2 December 2008
 - Jamie Lee Mitchell. 18 December 2019
5. Supplementary Submissions- Determination and Conditions C Breheny 20 February 2024 Sent by Email
6. Supplementary Submission J Spiteri VIT 20 February 2024

PRELIMINARY ORDERS

Prior to the commencement of the proceedings the Panel made the following order:

Under section 2.6.45(e) of the *Education and Training Reform Act 2006* (Vic), the Panel has determined that any information that arises out of the formal hearing that might enable the witness to be identified, is **not** to be published or broadcast. This determination extends to prohibit any information which leads to the identification of the teacher, the character witnesses or the school.

THE EVIDENCE

AGREED STATEMENT OF FACTS

The parties to this matter agreed to the following Statement of Facts contained in the Hearing Book pp.28-37. The teacher accepted part of the allegations but contested other parts of allegations. These are discussed in their Counsel's submissions and the Institute's responses to these submissions in **Documents Relied On** section of this decision.

DISCUSSION OF THE EVIDENCE

The teacher was the only witness called to give evidence at the hearing. In relation to allegation one they agreed that they had been the team leader and were aware that the student was vulnerable. The teacher disagreed that they were overly familiar and personal or that they had overstepped their role in attempting to provide support to the student for which they were not qualified. The teacher said that they had provided the student with their personal details to be used after the school year finished so they could support the student. The teacher disagreed that concerns had been raised with them by other staff during 2021 about their relationship with the student. This only occurred in January 2022 after they had revealed their inappropriate behaviour to a colleague. The teacher disagreed that they had an intention or was reckless to the possibility of a relationship with the students escalating to a romantic relationship. The teacher did not accept the totality of Allegation one.

In relation to allegation two the teacher accepted that the allegation was true however they argued that they were only broadly aware of the student's parlous mental health. The teacher did not know which medications the student was on and seemed to consider that this lack of knowledge reduced their culpability.

In relation to allegation three the teacher argued they had been encouraged to keep in touch with the student considering the effects the Covid epidemic and remote learning had on the student's mental health. The teacher considered the possibility of suicide was a very real one. The teacher was troubled by the events of the first two weeks of January and when they were provided with a copy of the Victorian Teaching Professions Code of Conduct, the teacher realised the enormity of their errors and made full and frank disclosures to the principal. The Panel considered that in reflecting on her behaviour under cross examination, the teacher agreed with a suggestion from Counsel for the VIT, that the "penny had dropped". The teacher said they had thought of nothing else but the impact they had had on the student and the loss of a career they were so passionate about.

The teacher had told their doctor and psychologist about what they had done and self-reported to the Victorian Institute of Teaching.

The teacher said that they had been on a journey of reflection about their behaviour ever since and the dismissal from the school and suspension of their registration had affected them deeply. The teacher submitted that allegation three was not true and

their behaviour over the past two years indicated they were remorseful, had gained insight into their behaviour and continued to become a better person. The period of time they had spent away from teaching had only strengthened their resolve to return to a profession they loved. The teacher said they understood that they could not develop relationships with students where they became their main contact. Others need to be involved in every step. The teacher would no longer provide personal details to a student.

The Panel gained knowledge of the unusual context in 2021 at the school from various witnesses. The Covid epidemic had resulted in the school being shut for periods of time and remote learning taking place. Student disengagement became an issue and teachers were maintaining contact with students using a variety of methods in addition to remote learning with all the opportunities and challenges it created. There had been several student suicides and various witnesses described an environment in which there was a heightened anxiety about student welfare. The loss of a student in this context was devastating for the school. Teacher 2 described fears about the student taking his own life as “quite substantial”¹. The Panel found that during the Covid epidemic teachers, not only the teacher, were using a variety of communication methods to keep students engaged and check on their welfare. Teacher 3 said that they had no concerns that the teacher’s relationship with the student in 2021 had become inappropriate but that they were concerned that the teacher might feel pressured to support a student’s mental health rather than use professional health experts.

There was clear and accepted evidence that the teacher was the leader of the team, and they described in detail the various needs of that group of students. It was alleged that the teacher was overly personal and familiar with the student. The school's psychologist thought that the teacher was “overly familiar” with the student. The psychologist felt that some of the topics that the student discussed with the teacher were unusual and a bit inappropriate. In the matter of *Davidson* the tribunal decided that overfamiliarity with students is a difficult concept to define. While a good relationship with students is important, a relationship which is too close or overfamiliar may endanger the student/teacher relationship and cause real harm to the student.²

¹ **Hearing Book** page 75

² **Davidson v Victorian Institute of Teaching (Occupational and Business regulation) 2007 VCAT 920 (30 May 2007)** paragraph 152

The teacher's other colleagues did not have concerns with their level of familiarity with students during 2021. There appeared to be a disparity between the expectations of a psychologist who saw students on an individual basis and practising teachers.

The Panel concluded that the request from the student to attend school during the lockdown when other students were absent was not particularly unusual. In Covid times, teachers had to make many accommodations in the best interests of children's welfare. No evidence was provided that teachers were uncomfortable (apart from the school's psychologist) with the student spending time in their office or that them laying on the floor was in any way sinister. The allegation 2(d) that the teacher had overstepped their role as a teacher by providing support which they were not qualified to give was not supported by the evidence. While the teacher regularly contacted the student and their mother about their anxiety, attendance and general mental health there was no evidence that they had strayed beyond acceptable teacher behaviour.

The student commented that they trusted the teacher, that the teacher was able to give helpful advice on their specific subject area of VCE English but also the general structure and processes of the VCE.

Several witnesses commented that the teacher was a teacher who students trusted. The school leadership team spoke highly of the teacher's skills and empathy in dealing with students. Teacher 2 noted that the student was very isolated from their year level and that the school worked on building very close relationships with students.

In the matter of *Davidson* it is stated:

*"In contrast to other professions, where the professional task is very distinct from the relationship, the relationship which is formed with a student is central to the teacher's exercise of professional skill. Without a good relationship, it will be impossible to inspire the child to learn."*³

The Panel found evidence that other staff had raised concerns with the teacher hingeing on the amount of time and intensity they devoted to students and a concern about their physical and mental health. They were concerned that the teacher was not assisting the student's transition to post-school life by reducing their

³ **Davidson v Victorian Institute of Teaching (Occupational and Business regulation) 2007 VCAT 920 (30 May 2007)** paragraph 154

reliance on them. Teacher 2 described this as a gradual release of responsibility which was not occurring in the teacher's case. (p.76 HB) Colleagues did not appear to be concerned that the teacher's relationship with the student had become inappropriate during 2021.

Medical evidence was provided that the teacher's personal isolation, distance from family in Western Australia, relationship breakdown and mental health issues were exacerbated by Covid. These were accepted as mitigating factors in the teacher's serious misconduct.

Counsel for the Institute argued that the high frequency of messaging between the teacher and the student was intended to create a friendship and were inappropriate. These messages on Teams were not provided in evidence so the Panel could make no inference on their intent.

Allegations of grooming were made in interviews with the teacher's colleagues, but they unanimously agreed they had not observed this behaviour.

The Panel concluded that:

- The student trusted the teacher.
- The teacher had gained the trust of the student's mother.
- The student's perceptions had been altered whether by the teacher, mental illnesses or medication or alcohol so that they had become confused about what was acceptable. In their interview they note that their judgement might have been affected by alcohol or that it was a mistake in judgement on their part.

It was a matter of concern for the Panel that the student appeared to blame themselves for the episode when it was properly the responsibility of the teacher.

On the other hand, the Panel could not find evidence that the teacher

- Showed favouritism to the student
- Tried to isolate the student from their teachers, family or friends.
- Used secrecy or intimidation.
- Gradually violated boundaries leading to sexual activities when they were in a teacher/learner relationship with the student.

The Panel came to the view that the evidence showed that the teacher's behaviour for most of 2021 reflected that of a genuine caring teacher similar to how other teachers operated.

The Panel formed the view that until early December 2021 the teacher genuinely tried to help all their students. The teacher monitored the student's concerns and shared these with the wellbeing team.

This approach appeared to change substantively in December 2021 when the teacher admitted taking the student for coffee. The student also accompanied the teacher while they had a tattoo and then invited the student to their house.

The teacher appeared to believe that once a student had left school and having turned eighteen, there were no limitations on any possible involvement with the student.

In the matter of *Davidson* the tribunal said:

*"It cannot be the case that a teacher must never involve him or herself in the private pain of students. In part, this is what the profession of teaching requires. However, in interacting with children, a professional distance must always be maintained"*⁴

In *Davidson* the tribunal further warned that a teacher cannot be the "best friend" of adolescent girls or boys.

The teacher failed to recognise that they were crossing a boundary that no member of the teaching profession would find acceptable and was inconsistent with community expectations.

The Panel found that the teacher had become increasingly familiar and over-involved with the student from approximately Mid-December 2021. It appeared to the Panel that the teacher was reckless, ignorant or indifferent to the risky path they had adopted, from early December and they had clearly crossed a boundary at that time.

The Panel accepted the teacher's counsel's submission that there was a degree of hindsight in the Institute's proposition that the teacher had been intending in early 2021 to develop a romantic relationship with the student. Up until a certain point in December the teacher's behaviour had been similar to any other caring committed

⁴ **Davidson v Victorian Institute of Teaching (Occupational and Business regulation) 2007 VCAT 920 (30 May 2007)** paragraph 155

teacher. The teacher seemed unaware at this time of the VIT Code of Conduct banning a teacher forming a relationship with a former learner for 2 years.

On balance, the Panel found Allegation one not proved.

In relation to allegation two the teacher changed their position during the hearing to accept that they were guilty of serious misconduct. The Panel considered the written submissions in the light of this this concession.

An intimate relationship with a student is expressly forbidden by the Code of Conduct. The intention of the **Education & Training Reform Act 2006** is to ensure consideration for the wellbeing and safety of children and the maintenance of public trust in the teaching profession.

The teacher's serious misconduct clearly grew out of a connection with the practice of teaching at the school and their role. Their relationship moved from that of a teacher/learner to an Intimate relationship over a very short period of time. The teacher's conduct was unacceptable, improper and blameworthy that warrants admonition and disapproval.

In the Panel's opinion the teacher clearly failed to understand that there was a power imbalance in their relationship with the student. The teacher failed to consider how the student was reacting to what was occurring. This was because the teacher had lost judgement and perspective; their conscience should have been warning them.

The teacher was an adult with power and training to guide their actions and it was their professional responsibility to do so.

The very reason professional boundaries are in place is to protect young people as they develop, and the teacher's behaviour is an abuse of the power they were entrusted with. The teacher should have been more aware, to say the least, that they were dealing with a vulnerable young person. The teacher clearly did not foresee the potential damage they could cause.

The teacher should have re-set the relationship with the student to a strictly professional one and severed the personal relationship with the student much earlier.

The teacher's serious misconduct undermines the position of trust and authority the teaching profession has in the community. Their inability at the time to see the

imbalance of power in the relationship with the student was a dereliction of their professional responsibilities. It was their professional responsibility to be aware of all of the provisions of the Victorian Teaching Profession's Code of Conduct including the 2021 amendments.

In relation to Allegation 2 (d) the teacher denied that they were guilty of serious misconduct because although the teacher knew the student was suffering from poor mental health the teacher was not aware which of any medications the student was taking. The teacher was aware however that the student was hospitalised.

The Panel rejected Counsel's submission that the teacher was blameless because they didn't know what medication the student was taking or how it affected them or that they could see any appreciable difference in the student's behaviour.

The student's period in hospital at the time they were socialising with the teacher could and should have heightened what should have been the teacher's concerns for the student's welfare. By inviting the student to their house on New Year's Eve of 2021, allowing the student to consume alcohol and then exchanging an intimate kiss, the teacher had stepped into unethical and improper behaviour. The possible consequences should have been foreseeable and showed a lack of professionalism and insight.

The teacher created a scenario where they had lost their moral compass. For a teacher in this position, knowing what they did, the serious misconduct is even more reprehensible.

The Panel considered the unusual circumstances existing at the school at the time and the personal mental health issues and circumstances but could see nothing in these circumstances to justify their behaviour in forming a relationship with the student.

Other professional teachers were battling with the challenges of Covid, isolation and remote learning but this did not mean that they crossed appropriate boundaries.

The teacher's behaviour undermined the trust the public should rightly have in the teaching profession and the protection of children, students and young people in their care.

The Panel found Allegation two proved.

In relation to Allegation three, that the conduct detailed in allegations 1 and 2 constitute a pattern of conduct demonstrating that the teacher is not fit to teach, the Panel found that the teacher admitted to their serious misconduct and showed remorse and insight into their behaviour.

In assessing the teacher's behaviour, the Panel applied the principles developed in *Davidson*:

169 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.⁵

In assessing the character of the teacher, the Panel could not support the view that the conduct complained of was of a continuing and persistent nature. The intimacy commenced on New Year's Eve 2021 and continued for the first two weeks of January 2022, but the Panel has already found that there was no evidence of blameworthy incidents up until late 2021.

The teacher had been employed in teaching since 2007 without any blemishes on their character. The teacher's character witnesses, and their doctor and psychologist reports supported the view that their behaviour was out of character and perhaps brought on by separation from family, breakdown of a long-term relationship, their mental health issues including anxiety for which they had been treated for some time. The restrictions caused by Covid seemed to exacerbate existing problems.

⁵ **Davidson v Victorian Institute of Teaching (Occupational and Business regulation) 2007 VCAT 920 (30 May 2007)** paragraph 169

After listening to the teacher in the witness box and reading their various witness statements the Panel came to the view that it was unlikely they would commit similar errors in the future.

It follows that the Panel thought that the teacher, at some point in the future, with guidance and assistance, could be in a position of authority and trust with children. We did not find that the teacher's whole approach to teaching and to the children in their care was fundamentally flawed.

The Panel found Allegation three not proven.

FINDINGS

Allegation 1 was not substantiated.

Allegation 2 was substantiated.

Allegation 3 was not substantiated.

Penalty

Counsel for the Institute submitted three previous VIT disciplinary cases for the Panel to consider in their decision (all decisions are available on the VIT website).

- **Carly Marie Hook** where a female teacher had a sexual relationship with a year 12 student after a significant period of grooming. The Panel found the teacher guilty of serious misconduct and unfit to teach because she showed a superficial and limited understanding of the bigger picture. The teacher's registration was suspended for four months and a set of conditions including working with a registered psychologist and a written reflective statement had to be completed before her suspension would be lifted.
- **Bradley John McGrath** engaged in inappropriate communications with a year 10 female student and that he was not honest with the Principal or the girl's mother about his interactions. He was found guilty of serious misconduct and found fit to teach on balance because he showed remorse and insight into his previous actions. Conditions were placed on his registration, but he was allowed to continue teaching.
- **Jamie Lee Mitchell** engaged in inappropriate communication including sexual innuendo and nude pictures leading up to sexual intercourse with a year 12 student in year she graduated. The teacher was found guilty of serious misconduct and their registration cancelled and imposed a period of disqualification for three years from the date of the Panel's decision. The Panel could not impose conditions in such circumstances but made several recommendations to the Institute should the teacher re-apply for registration. This decision was made before the inclusion of amendments to **The Victorian Teaching Profession's Code of Conduct** in May 2021 which warned against a sexualised relationship with a former learner within two years of the learner completing their senior secondary schooling. No allegations were made regarding the teacher's fitness to teach.

The Panel acknowledge that Counsel for the teacher sought to distinguish these three matters from the teacher's matter, however the Panel found these decisions instructive and considered the similarities and differences with this case. The Panel noted the community's attitudes had changed in the period between the three cases (2008-2019) and this was reflected in the Act.

The Panel noted that there was a period of grooming involved in each of these cases and a degree of secretiveness not apparent in the teacher's case.

The Panel noted that although conditions were imposed in each case the penalties varied from:

- Allowed to continue teaching but with conditions on the teacher's registration.
- Suspension of registration for a minimum of four months with conditions including regular counselling sessions with a psychologist and a report to the Institute by the teacher reflecting on what they had learnt.
- Cancellation of registration and a period of disqualification for a period of three years. The Panel also recommended that the Institute might impose a list of suggested conditions should the teacher re-apply for registration in the future.

The Panel was of the view that a sexual relationship between a teacher and a student could only be viewed by the public as a betrayal and resulting in that teacher not being trusted with students.

Counsel for the teacher submitted that the panel make the following determinations:

- (a) with respect to the respondent's admitted serious misconduct in January 2022, the panel determines that the respondent's registration be suspended for six months, backdated to 28 June 2022;
- (b) the respondent's registration shall continue to be suspended from the date of the determination until:
 - (i) the respondent complies with the conditions deemed necessary by the panel which, at the panel's discretion, may include such conditions as those listed at cl 4.3 of the Institute's draft agreement on pages 323-327 of the Hearing Book.
 - (ii) the respondent requests in writing that the Institute revoke the suspension, with support for meeting each of the relevant conditions; and

(iii) the Institute has confirmed in writing that it is satisfied that the respondent has met the relevant conditions.

Counsel for the Institute submitted that if the teacher had engaged in serious misconduct and/or was unfit to teach the appropriate determination would be cancellation of their registration with a disqualification period of three years.

The Panel took into account that the teacher had been suspended by the Department of Education and Training from January 2022 and had not taught (apart from adult language students) since that time. The VIT had also suspended their registration for the period leading up to the hearing.

The Panel concluded that general deterrence was an important factor in this case, it being a very serious lapse, with a potential of serious harm to a child's wellbeing and safety including by taking into account community expectations.

The sanction should be a substantial one indicating and the Panel's condemnation of their behaviour and the disrepute they have brought upon the profession.

The Formal Hearing Panel concluded that the teacher's period of suspension should be for two years from the date of this decision and that significant conditions should be imposed to facilitate a thorough understanding of the obligations on a teacher.

As has been noted above Counsel for the teacher indicated on their behalf that if conditions were considered by the Panel to be appropriate in this matter, then those conditions set out in the agreement provided to the VIT by the teacher in 2023, would be acceptable.

DETERMINATION

On 25 February 2024, the Panel determined that the registration of the teacher be suspended from the date of this decision for a period of two years.

At the end of that period the teacher would need to have completed the conditions set out above before their suspension would be lifted.



GARRY SALISBURY, CHAIRPERSON



per:
TONY SHEUMACK, REGISTERED TEACHER



per:
ROWENA ARCHER, REGISTERED TEACHER