

VICTORIAN INSTITUTE OF TEACHING
DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 324787

REGISTERED TEACHER: Hoa Tam TRINH

PANEL MEMBERS: Heather Schnagl, Chairperson
Christopher Chant, Registered Teacher
Jessica Adams, Registered Teacher

ATTENDANCE: Mr Trinh did not attend the Formal Hearing.

Jake Spiteri (VIT SOLICITOR), Instructing Solicitor on behalf of
the Victorian Institute of Teaching.

DATE OF HEARING: 5 August 2024

DATE OF DECISION: 16 August 2024

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

On 16 August 2024 the Panel decided to cancel the registration of Mr Trinh and impose a minimum period of disqualification of one year from the date of this decision, before Mr Trinh may make application to the Institute for registration.

REASONS

BACKGROUND

The teacher has been registered with the Victorian Institute of Teaching (the Institute) since 14 December 2005.

On 16 September 2019, the Institute received a notification from the Department that the teacher had been stood down from his teaching position at the College and an employment limitation had been placed on him, excluding him from undertaking employment in any Victorian Government School.

On 8 May 2024, the Professional Conduct and Registration Suitability Committee of the Institute (the **Committee**) considered the available information in relation to this matter and determined to refer the matter to a formal hearing, pursuant to section 2.6.34 of the Act.

THE ALLEGATIONS

The allegations of serious misconduct as set out in the Notice of Formal Hearing are:

1. It is alleged that:

Allegation 1

You are guilty of serious misconduct by failing to comply with conditions imposed on your registration:

- (a) on 14 December 2021, the Institute issued you with a notice of intention to impose conditions on your teacher registration following a notification from the Department of Education and Training which raised concerns about your performance as a teacher; and
- (b) on 12 January 2022, you accepted the Institute's proposal to impose conditions on your registration; and
- (c) on 17 January 2022, conditions were imposed on your registration which required you to:
 - i. complete an approved facilitated professional development program within twelve (12) months and at the conclusion of the program, provide the Institute with written material from you and the program's facilitator; and
 - ii. arrange for the production of written reports to the Institute from any employer who employs you as a teacher for more than four (4) consecutive weeks, each school term for a minimum period of eighteen (18) months; and
- (d) you have failed to comply with the conditions imposed on your registration by continuing to hold teacher registration and failing to:
 - i. complete an approved facilitated professional development program; and

- ii. provide the Institute with written material from you and a facilitator upon completion of an approved facilitated professional development program; and
- iii. notify the Institute of your employment status as a teacher for the purposes of monitoring your compliance with the employer reporting condition imposed on your registration.

2. Your alleged conduct is contrary to the following elements of the *Victorian Teaching Profession's Code of Conduct* (**Appendix 1**):

a. **Principle 3.1 – Teachers value their professionalism, and set and maintain high standards of competence.**

Teachers:

- i. are committed to pursuing their own professional learning; and
- ii. engage in reflective practice and identify professional learning needs.

b. **Principle 3.2 – Teachers are aware of, and comply with, the legal requirements that pertain to their profession.**

Teachers must comply with the requirements of:

- i. Teacher registration.

3. Your alleged conduct is contrary to the following element of the *Victorian Teaching Profession's Code of Ethics* (**Appendix 2**):

a. We demonstrate our **integrity** by:

- i. behaving in ways that respect and advance the profession.

b. We demonstrate our **responsibility** by:

- i. maintaining and developing our professional practice.

4. Your alleged conduct is contrary to the following focus areas of the *Australian Professional Standards for Teachers* (**Appendix 3**):

a. **Focus Area 6.2:** Teachers are required to participate in learning to update knowledge and practice, targeted to professional needs and priorities of the education setting or system.

b. **Focus Area 6.4:** Teachers are required to undertake professional learning programs designed to address identified needs of learners.

c. **Focus Area 7.1:** Teachers are required to meet professional ethics and responsibilities by meeting the codes of ethics and conduct established by regulatory authorities, systems and education settings.

d. **Focus Area 7.2:** Teachers are required to comply with legislative, administrative and organisational requirements by understanding the implications of, and complying with, relevant legislative, administrative, organisational and professional requirements, policies and processes.

Appendix 1 – Victorian Teaching Profession’s Code of Conduct

Appendix 2 – Victorian Teaching Profession’s Code of Ethics

Appendix 3 – Australian Professional Standards for Teachers

ORDER MADE BY THE HEARING PANEL

Pursuant to section 2.6.45 (e) and (g) of the Act, the Panel ordered that, in respect to the hearing relating to the teacher, any information that might enable the teacher and his former school to be identified, must not be published or broadcast until the publication of the decision.

THE EVIDENCE

In response to the allegations against the teacher, the Panel was presented with a Draft Statement of Facts by the Institute on pp 26-38 of the Hearing book. The teacher did not provide any evidence to the contrary, nor any evidence which scrutinised the reliability of the Institute’s witnesses and their sworn statements. In addition, the teacher neither responded to the draft statement of facts prior to the hearing, nor attended the hearing. Consequently, the Panel accepted the Institute’s draft as evidence.

The evidence showed the following:

- a) In 2018, whilst employed at the school, the teacher was subject to various inquiries directed by the Principal of the school, following complaints about his competence as a teacher. The inquiries resulted in two periods of support in which the teacher’s adherence to specific standards of the *Australian Professional Standards for Teachers* were monitored by a panel of teachers. The Panel wished to commend the school on the thorough support offered to the teacher and the exemplary procedures they followed together with the detailed paperwork provided to the Institute. The inquiries ultimately resulted in the teacher losing his employment at the school and being subject to an employment limitation by the Department of Education from January 2019.
- b) From June 2021, the Institute considered the information from the school and the action taken by the Department of Education when assessing the teacher’s application for renewal of registration for 2020-2021. The teacher was provided with multiple opportunities to provide submissions or otherwise engage with the Institute in its assessment of his application. The teacher opted not to provide any meaningful information pertaining to the assessment and eventually accepted the imposition of conditions on his registration.
- c) On 17 January 2022, the Institute determined to renew the teacher’s registration and imposed the conditions which required him to complete a professional development program within 12 months, provide written material from him and the facilitator of that

- program upon completing that program, and to arrange for the production of regular written reports from his employer (if employed as a teacher) for a period of 18 months.
- d) From January 2022, the Institute monitored the teacher's compliance with the conditions imposed on his registration. In June 2022 (approximately four months later than the conditions stipulated), the teacher engaged the services of an approved facilitator and sent the Institute a proposed professional development plan to complete in compliance with the conditions. The Institute accepted the proposed plan and allowed time for the teacher to undertake the program, before attempting to contact him again in January 2023, by which time the program was required to have been completed.
 - e) From July 2022, the facilitator made several attempts to engage with the teacher for the purposes of completing the program. The teacher's communication was limited and the facilitator was unable to consistently and meaningfully engage with him for the purposes of completing the program.
 - f) Between January and August 2023, the Institute continued to monitor the teacher's compliance with the conditions. The Institute made several attempts to contact the teacher for information but he did not meaningfully engage with the Institute during this period.
 - g) From August 2023, the Institute conducted an investigation into the teacher after forming a reasonable belief that he had failed to comply with the conditions imposed on his registration. During this time, the Institute made several attempts to contact the teacher for an explanation, in which he again failed to meaningfully engage with the Institute.

The Institute also provided detailed evidence that the teacher's email, telephone number and address to which documents were served, were as nominated by the teacher in his various applications to renew his teacher registration and were thus correct, active and operational. In the case of email and mail correspondence from the Institute to the teacher, receipts that these had been received were documented. There was no evidence provided to the Panel to explain the teacher's extremely limited engagement with the Institute from 2021, nor his failure to engage with the Formal Hearing.

DISCUSSION OF THE EVIDENCE

In the absence of any contradictory information from the teacher, the draft statement of facts and the detailed documentation and affidavits supplied by the Institute, was accepted as evidence by the Panel.

It was not the role of the Panel to consider the appropriateness of the conditions imposed on the teacher's registration on 17 January 2022. Rather the Panel's role was to determine whether by act or omission he failed to comply with these conditions, including any mitigating circumstances. This is consistent with the matter of *Victorian Institute of Teaching v Moran* (Decision 84) in that:

- a. In both cases the conditions imposed on the teacher's registration were done pursuant to section 2.6.9(3) of the Act; and
- b. in the teacher's case, he opted to accept the conditions the Institute intended to impose on his registration, rather than making a written submission of a request to set aside or vary the conditions; and

- c. over the significant period of time that the teacher has been subject to the conditions, he has not provided any evidence to show that he does not understand the nature of the conditions, nor that the conditions were overly onerous or other circumstances which might reasonably limit or prevent the teacher from complying with the conditions.

The evidence of the approved facilitator showed that after the professional development plan was approved by the Institute, except for potentially undertaking some preliminary tasks, the teacher did not commence the professional development program. Consequently, no written material from either the teacher or the approved facilitator on completion of the program could have been supplied to the Institute. Although there is no evidence that the teacher has been employed as a teacher for a period of four or more weeks (in which case the conditions require the teacher to arrange for his employer to report to the Institute) a failure to inform the institute of his employment status, would also appear to the Panel to be a possible breach of this condition, in that it prevented the Institute from monitoring the teacher's compliance with this condition.

Throughout the entire period from the imposition of the conditions on the teacher's registration, the Institute has made innumerable numerous attempts to communicate with him to almost no avail. It was clearly evident to the Panel that the teacher did not communicate with the Institute in the professional manner that would be expected of a registered teacher. The Panel commends the Institute for the level of effort by which they have attempted to communicate and engage with the teacher as evidenced by the documentation provided.

Therefore, the Panel finds that Allegation 1 was substantiated. The teacher has by act or omission failed to comply with the conditions imposed on his registration on 17 January 2022. In failing to do so, the teacher's conduct was also contrary to:

- a. Principles 3.1 and 3.2 of the *Victorian Teaching Profession's Code of Conduct*;
- b. The *Victorian Teaching Profession's Code of Ethics* in that he failed to demonstrate the principles of *Integrity* and *Responsibility*; and
- c. Focus areas 6.2, 6.4. 7.1 and 7.2 of the *Australian Professional Standards for Teachers*.

No mitigating circumstances were provided to the Panel. Based on the evidence presented to the Panel, the teacher accepted these conditions and even made preliminary contact with an approved facilitator but there is no evidence that he intended to fulfil these conditions.

FINDINGS

Whilst misconduct is defined in section 2.6.1 (a) of the Act as

conduct of the teacher...occurring in connection with the practice of teaching that is a lesser standard than a member of the public or members of the profession are entitled to expect from a reasonably proficient teacher

serious misconduct is not defined but must represent a serious departure from the expected conduct of a teacher. In the matter of *Victorian Institute of Teaching v MDR* (Hearing 131048), after having regard to various aggravating factors, the panel found conduct, which “*clearly grew out of a connection with the practice of teaching*” to be *serious misconduct*.

In *Parr v Nurses Board of Victoria VCAT* (2 December 1998) (*Parr*), the Tribunal considered the definition of *serious misconduct* in the *Nurses Act 1993* (Vic). Applying the considerations in *Parr* to the context of teaching:

- a. the question of whether or not a teacher has engaged in unprofessional conduct of a serious nature must depend on the facts of each case;
- b. such conduct would not be serious if it was trivial, or of momentary effect only at the time of the commission or omission by which the conduct was so defined;
- c. it must be a departure, in a substantial manner, from the standards which might be reasonably expected of a registered teacher; and
- d. the departure from such standards must be blameworthy and deserving of more than passing censure.

In *Re: Christine Trigger and The Australian Telecommunications Commission* (1984) 4 FCR 242 (*Trigger*), the Federal Court of Australia considered the definition of *misconduct* in the *Telecommunications Act 1975* (Cth) (now repealed) and referred to misconduct being serious in circumstances where the misconduct:

- a. was within the will, power or control of the person; and
- b. was done wilfully or recklessly without regard for the consequences.

The meanings of serious misconduct as outlined in the *Parr* and *Trigger* decisions, which have been previously accepted by formal hearing panels convened by the Institute in relation to the teaching profession, form the basis of the Panel's decision. As in *Parr* and *Trigger*, the teacher's conduct was neither accidental nor due to factors beyond his control. Rather, having consented to the conditions imposed on his registration, and despite numerous communications from the Institute, the teacher chose to wilfully ignore these conditions whilst seeking to maintain his registration. Despite initially engaging the services of an approved facilitator, albeit much later than required by the conditions, at no stage did the teacher commence the program. In addition, the teacher made no attempt to explain his failure to comply with the conditions or outline any hardships or challenges beyond his control which would have limited his ability to comply with the conditions.

The teacher's failure to comply with the conditions was not an isolated incident but it was consistent over more than two and a half years. This was despite the teacher seeking to maintain his registration, making annual applications to renew his registration, whilst knowingly and deliberately ignoring the conditions imposed on his registration. Consequently, the teacher may have undertaken work as a teacher without addressing the issues which gave rise to the imposition of the conditions on his registration to the detriment of the learning of any students he may have taught. This is contrary to section 2.6.3 (1A) of the Act, which requires the Institute to consider the safety and wellbeing of children taking into account community expectations. The community rightly has an expectation that all registered teachers are competent and will not jeopardise the learning of their children.

That the teacher sought to maintain his registration during this period without complying with the conditions demonstrated his lack of insight into his own teaching practice. Consequently, there has been a risk of the teacher using his teacher registration to undertake the role and duties of a teacher to the detriment of the profession's integrity and especially to learning of his students. This is a substantial departure from what might be reasonably expected of a registered teacher and has the potential to erode community confidence in the teaching profession. The community would rightly expect a registered teacher to comply with the *Victorian Teaching profession's Code of Conduct and Ethics* (the Code) and the *Australian Professional Standards for Teaching* (APST). It was the teacher's failure to comply with these which led to the imposition of conditions on his registration

in the first place. His subsequent failure to comply with these conditions also breaches both the Code and the APST.

The teacher's deliberate disregard of the Institute's attempts to ensure his teaching practice is compliant with the minimum standards ultimately threatened the Institute's functions in regulating the profession, maintaining acceptable standards and thereby eroding public confidence in the Institute. In *Victorian Institute of Teaching v Crawley* (Hearing 088) in finding that a failure to comply with conditions amounted to serious misconduct, the panel noted the following:

"Ignoring conditions imposed by a registration authority is serious. If the Victorian Institute of Teaching did not act to enforce the conditions it imposes then it would risk losing the trust of the public for whom the Institute is set up to protect and it would have difficulty upholding standards."

Finally, a finding of serious misconduct for a deliberate and prolonged breach of conditions is consistent with findings in other regulated professions. In *Council of the Law Society of New South Wales v Lewis* [2019] NSWCATOD 100, the Tribunal considered a matter in which a legal practitioner failed to comply with a condition that he complete a professional development course as soon as practicable. The legal practitioner failed to comply with the condition for three years. The Tribunal found that this failure to comply with conditions amounted to 'professional misconduct', as opposed to the less serious finding of 'unsatisfactory professional conduct', noting that it eroded public trust and confidence in the profession.

The teacher's failure to comply with the conditions imposed on his registration was deliberate, wilful and of a sustained nature. Consequently, the Panel finds the teacher guilty of serious misconduct.

DETERMINATION

In determining the most appropriate penalty for the teacher, the Panel was mindful of both the Institute's role in the protection of children and the community, together with the maintenance of proper standards of the professional conduct of a teacher as opposed to punishment.

In *Laragy v Victorian Institute of Teaching* [2009] VCAT 2651, the Tribunal outlined the relevant factors to consider when determining disposition. The Tribunal said:

"Although often termed a 'penalty', when considering what determination is appropriate in a professional disciplinary proceeding, the Tribunal should not consider its determination as punishment. As has been indicated in many other cases, the objectives of the determination are primarily the protection of the public and the maintenance of professional standards in the eyes of the public, although the general role of deterrence in protecting the public is a factor to be taken into account in this consideration. Indeed, the available sanctions are by their nature punitive, and the objectives of specific and general deterrence (which serve the protection of the public) depend upon the sanctions having some punitive effect. This principle of deterrence must also, however, be balanced with principles supportive of rehabilitation."

"It is therefore to be expected that we should choose a sanction with protection of the public as a primary focus, reflecting the specific misconduct of this teacher, but attempting at the same time to establish guidance for the teaching profession as a whole."

Maxwell P in *Quinn v Law Institute of Victoria* [2004] VSCA 122 further noted that, while the objective is primarily protective, the available sanctions are by their nature, punitive, and the objective of general and specific deterrence – which serve the protection of the public – depend upon the sanctions having punitive effect.

In considering the appropriate penalty for the teacher, the Panel is mindful of the following three factors:

- a. Specific deterrence to protect the public and more particularly students, by deterring the teacher from engaging in similar conduct in the future;
- b. General deterrence to maintain the high standards in the teaching profession by denouncing the conduct and deterring other members of the teaching profession from engaging in similar conduct; and
- c. The determination should balance punishment and rehabilitation. It should be sufficiently punitive to be commensurate with the seriousness of the conduct but also support the teacher's rehabilitation.

Whilst the Panel considered imposing further conditions on the teacher's registration, this would be futile. There is no evidence that he has any insight into the seriousness of his conduct nor whether he would be willing to fulfil any such conditions, given his continuing disregard for the conditions imposed and his utter failure to fulfil previous conditions and to engage with the Institute.

The teacher has not demonstrated any insight into the seriousness of his conduct specifically, nor to the importance of conditions in regulating the teaching profession more generally. In the matter of *Victorian Institute of Teaching v Neville* (Decision 95) the panel considered that it would be 'unworkable and futile' to suspend and impose conditions on the registration of a teacher who has previously failed to comply with those conditions and is subsequently silent and not contactable.

In *Health Care Complaints Commission v Edwards* [2014] NSWCATOD 90, the Tribunal considered a matter in which a health practitioner failed to comply with conditions requiring him to complete professional development courses. The Tribunal found that cancellation of their registration and a disqualification period of one year was more suitable than suspension. The Tribunal referred to the seriousness of breaching conditions and also had specific regard to the fact that the health practitioner did not offer an explanation or demonstrate contrition and a preparedness to rectify the failure to comply with the conditions. In the present case, where the teacher appeared to have no intention of complying with the conditions imposed on his registration and without explanation of his willingness to do so in the future, there would be no utility in reimposing these conditions on him, whether it be on a current or suspended registration. These decisions also reinforce the importance of conditions in regulating professions and the seriousness of breaching those conditions and the effect it has on the maintenance of high standards in the profession and the potential erosion of public confidence in the regulator.

Consequently, the Panel formed the view that cancellation of the teacher's registration is necessary to maintaining high standards in the teaching profession by denouncing the conduct and deterring other members of the teaching profession from engaging in similar conduct. The Panel acknowledges the gravity of cancelling a person's registration and that the teacher's failure to comply with conditions is perhaps on the less serious end of matters which might be brought before a formal hearing panel. However, given that the panel may disqualify a person from applying for teacher registration for up to five years, disqualification for one year both denounces the conduct

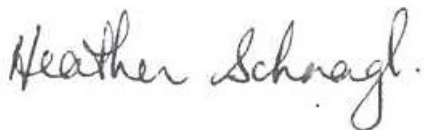
engaged in and demonstrates to the public that a person is not precluded from re-entering the profession, if and when those standards are later adhered to.

The Panel finds that the cancellation of the teacher's registration and disqualifying him from applying for registration for one year, whilst punitive, is commensurate with the seriousness of his conduct. The cancellation of a person's registration is not necessarily a permanent end to their teaching career, nor does it prevent them from making a new application for registration in the future, after any imposed disqualification period has ceased. In addition, disqualification for a period of not less than one year supports the teacher's rehabilitation, in that it gives him time to address the issues with his teaching practice that led to the initial imposition of conditions. If he was to make a new application for registration in the future, the Panel recommends that the Institute require professional learning which is at least as rigorous as that required by the conditions imposed on 17 January 2022 to address the issues with his practice which led to the imposition of the initial conditions in its assessment of his suitability to teach. In addition, the panel recommends to the Institute that any grant of registration be provisional registration, thereby requiring the teacher to undergo the VIT process required to move to full registration.

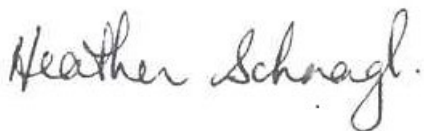
On 16 August 2024 the Panel found the teacher guilty of serious misconduct and determined to cancel the registration of the teacher and impose a minimum period of disqualification of one year from the date of this decision, before he may make application to the Institute for registration.



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HEATHER SCHNAGL, CHAIRPERSON



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per:
CHRISTOPHER CHANT, REGISTERED TEACHER



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per:

JESSICA ADAMS, REGISTERED TEACHER