

VICTORIAN INSTITUTE OF TEACHING
DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 330548

Hearing Number 3751 & 3933

REGISTERED TEACHER: Chris Nicholas ADAMS

PANEL MEMBERS: Janet Sherry, Chairperson
Rowland Richardson, Registered Teacher
Sean Baker, Legal Practitioner

ATTENDANCE: Mr Adams attended the Formal Hearing and was represented by Nicholas Green QC (BARRISTER) and Julia Lucas (BARRISTER), with Peter Hull (SOLICITOR), Instructing Solicitor on behalf of the teacher.

Peter Matthews (BARRISTER), Counsel Assisting with Tracy Were (SOLICITOR), Instructing Solicitor on behalf of the Victorian Institute of Teaching.

DATE OF HEARING: 18 May 2022 (via Immediation Video Conferencing platform)

DATE OF DECISION: 16 July 2022

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

Under Section 2.6.46(2)(h) of the *Education and Training Reform Act 2006* the Panel has determined to impose the following conditions on the teacher's registration:

A. Professional Development

1. The teacher will identify a facilitator to deliver a professional development program (the Program) to him. The facilitator will be subject to the approval of the Institute.
2. During the Program, the teacher and the facilitator will explore and address:
 - a. The requirements of the Victorian Teaching Code of Conduct, with particular emphasis on Principles 1.1(b) and (f), 1.2(a) and (c), 1.5(b) and (c) and 3.1(b);
 - b. The factors which led to the teacher's conduct and the impact on the learners affected by it;
 - c. The impact of a teacher as an authority figure for students, including consideration of the risks associated with communication to learners that has the potential to compromise learners' relationships with parents, carers and adults;

- d. How to engage with learners in a respectful manner in classroom activities while observing appropriate boundaries and interactions in a teacher/learner relationship, including:
 - i. Recognition that students have different characters and sensitivities; and
 - ii. Consideration of the perspectives of parents and carers.
3. The Program must include a minimum of six sessions over a duration of no less than three months.
4. The teacher will be responsible for any and all costs associated with the Program.
5. Once the Institute has identified the facilitator, the teacher will engage in an initial meeting with the facilitator and provide the facilitator with a copy of the decision of the Panel.
6. The teacher will request that the facilitator prepare an outline of the Program (the Program Outline) and provide this to the Institute for review and approval.
7. Within a reasonable time, the Institute will notify the teacher as to whether the Program Outline has been approved.
8. If the Institute does not approve the Program Outline, the Institute will provide the teacher with reasons as to why the Program Outline was not approved. The teacher will discuss these reasons with the facilitator and request that the facilitator prepare an amended Program Outline which addresses the reasons why the Program Outline was not approved.
9. The teacher will not commence the Program until the facilitator and Program Outline are approved by the Institute.
10. At the conclusion of the Program the teacher will prepare a written reflection demonstrating:
 - a. His understanding and comprehension of the course material delivered as part of the Program
 - b. His learnings as a result of undertaking the Program
 - c. How he plans to use the strategies and tools developed as part of the Program in his future teaching practice and
 - d. His understanding of the Victorian Teaching Profession Code of Conduct and Ethics with reference to the principles laid out in paragraph 2 above.
11. At the conclusion of the Program the facilitator will provide a written report to the institute addressing
 - a. Whether the teacher has successfully completed the Program
 - b. The teacher's level of attendance and participation
 - c. The content covered in each session of the Program
 - d. The teacher's level of insight into the conduct
 - e. The teacher's learnings as a result of undertaking the Program, and
 - f. The teacher's understanding of the Victorian Teaching Profession Code of Conduct and Ethics with reference to his conduct

B. Mentoring

12. The teacher will identify a mentor, subject to approval by the Institute.
13. The mentor will be a registered teacher no less than five years of experience as a classroom teacher.

14. The teacher will participate in regular sessions with the mentor for a period of no less than 12 months, commencing from the date at which the Institute has approved the mentor and the mentoring goals.
15. The teacher will provide his mentor with a copy of the Panel's decision.
16. Within one month of the mentor being appointed, the mentor and the teacher will meet, and the mentor will record mentoring goals and send them to the Institute for approval. Once the Institute has approved the mentoring goals and the mentor, the mentoring sessions may commence.
17. In the mentoring sessions, the mentor and the teacher will discuss his teaching practice and any challenges he is facing in relation to his interactions with students, with reference to the matters outlined in paragraph 2.
18. The teacher will provide reports to the Institute every three months, prepared by his mentor, addressing: the matters outlined in paragraph 2; his level of attendance and participation; his learnings as part of the mentoring; any concerns raised by the teacher, his mentor, and, his students or his colleagues with respect to his teaching practice.
19. At the conclusion of the mentoring period, the teacher will provide, within a month, a written reflection to the Institute addressing how he has applied the learnings from the mentoring to his teaching practice.

REASONS

The teacher, the respondent in this formal hearing was born on 23 May 1985. He graduated as a teacher in 2006 and began teaching in 2007 working in various primary schools. He commenced teaching at the school in mid-2010 teaching Years 3 and 4 students for the last half of 2010 then again in 2011, 2012 and 2013 before teaching solely Year 4 students in 2014 and 2015.

The program at the school was to offer students a week with an English-speaking teacher and then a week with a French-speaking teacher who would conduct classes in French. The teacher had the responsibility for teaching the students English and mathematics.

The case concerns the teacher's teaching methods and behaviour when teaching at the school in the period 2014 – 2015.

Background¹

On 20 November 2015, the Victorian Institute of Teaching (the Institute) received a notification from a doctor who was treating one of the teacher's students about the teacher's classroom behaviour and then subsequently further complaints from certain parents of students in the teacher's class (the complainants). Inquiries revealed that the Department of Education and Training (the Department) was already aware of the matter and had also received complaints from the complainants. On 24 November 2015, the Institute commenced an inquiry into the information received.

It emerged that in November 2015 the Principal of the school had conducted an investigation into the teacher's teaching, also triggered by the concerns of the complainants. The Principal interviewed the teacher about these concerns and provided a detailed written response to them. On 12 November 2015 she gave her written decision to the teacher. On 17 November 2015, she wrote to the complainants advising of her decision. That decision was that the teacher must cease his problematic storytelling, acknowledge his mistakes, and make changes to the 'Earn and Learn' program.

The complainants referred the matter to both the Department and the Institute, as outlined above. The Principal placed the teacher on paid leave and arranged for him to attend a health assessment on 7 December 2015.

The teacher was then assessed both by a psychiatrist and psychologist. The psychologist concluded that the teacher did not have any diagnosable conditions that had contributed to his classroom behaviours (for instance Autism Spectrum disorder or sexual psychopathology) and had crossed boundaries as a result of "bad judgment and over-enthusiasm" rather than any "insidious reasons". The psychologist's opinion was the teacher was not a risk to the community and was fit to return to his teaching duties. She opined that the teacher had learned lessons from his experience, and recommended mentoring sessions regarding his conduct with students.

The psychiatrist concluded that the teacher was not experiencing any identifiable mental disorder, paraphilic disorder, paraphilic behaviours, inappropriate sexual behaviour pattern, or any personality disorder. Rather, the teacher's behaviours were reflective of his limited insight and associated poor judgment and naivety. He deemed the teacher to be medically fit for teaching. He recommended that

¹ Hearing Book pp 10 - 19

the teacher continue to attend his general practitioner for ongoing monitoring of his mental state and supportive counselling, that there be an ongoing clinical risk assessment by his treating doctor and that the teacher be provided with ongoing regular mentoring and coaching in respect of his professional skills to ensure that he maintained appropriate conduct with his students and to reinforce his understanding of appropriate boundaries between teachers and students.

Consequent on these assessments, the Principal advised the Institute that the teacher had been found fit to teach but had been suspended on full pay by the Department as of 1 February 2016 pending the conclusion of its investigation. The Institute then deferred its investigation at the request of the Department.

Meanwhile, Victoria Police had conducted its own investigation into the teacher's classroom conduct consequent on a report made on 16 November 2015 by another doctor based on disclosures made to her by student 1. The investigation included interviews with student 1 and another student. It also included a discussion with the teacher. Victoria police advised the Institute on 26 November 2015 that it would be closing the case as no criminal offending had been detected.

The Department's investigation into the teacher's teaching included a detailed written response, to the allegations which had been made against him, followed by a detailed interview. On 25 January 2017, the Department notified the Institute that it had terminated the teacher's employment with the Department consequent on the report of an external investigator and some findings by the Department based on that report about the teacher's conduct with his Year 4 students at the school.

The teacher then pursued an application for an unfair dismissal remedy in the Fair Work Commission (FWC) against the Department. The teacher gave evidence during the hearing of this application, along with four current and former staff members of the school. On 5 June 2017, Deputy President of the FWC decided that she was unable to conclude that the teacher's dismissal was harsh, and therefore dismissed the teacher's application.

Following the conclusion of the Department's investigation, the Institute recommenced investigating the teacher's conduct. On 5 May 2017, the teacher was interviewed by the Institute. On 16 June 2017, the teacher's solicitor informed Institute that the teacher was agreeable to conditions being imposed on his registration and provided the Institute with a written explanation, prepared by the teacher, with respect to his conduct. On 28 June 2017, the Institute entered into an agreement with the teacher for the imposition of conditions on his registration. The conditions required the teacher to enter a professional development program approved by the Institute, with a facilitator approved by the Institute, at the conclusion of which the teacher was prepare a personal code of conduct and reflective piece demonstrating what he had learned. On 5 July 2017, the Institute advised the Department of the completion of its investigation upon the teacher entering into this agreement.

The complainants then wrote to the Institute objecting to its decision to impose conditions on the teacher's registration, believing it to be too lenient an outcome. Following consideration of this objection, the Institute determined on 26 July 2017 to rescind the agreement, whereupon the conditions imposed on the teacher's registration were revoked and the Institute's investigation recommenced.

The Institute then delegated its power to conduct a further investigation to an external investigator. That investigation included interviews in 2018, with a number of students, parents, and past staff

at the school and an interview with the teacher on 27 August 2018.

Following this further investigation, the Institute referred the matter for formal hearing.

A Notice of Formal Hearing dated 9 April 2021 and containing, inter alia, 12 allegations was sent to the teacher via Mr Peter Hull, Lawyer & Advisor of Peter Hull & Associates.

THE ALLEGATIONS

The allegations of misconduct, serious misconduct and/or lack of fitness to teach as set out in the Notice of Formal Hearing are:

Allegation 1:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you told stories to your class of Year 4 students, in which characters bore the names of your students, that included inappropriate topics.

Allegation 2:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you told your class of Year 4 students that they should not tell others about the stories you were telling them.

Allegation 3:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you provided examples of written pieces to the students to assist in their written work that included inappropriate material.

Allegation 4:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you allowed Year 4 students to massage you during class.

Allegation 5:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you touched a student inappropriately whilst dancing with her.

Allegation 6:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you touched a student inappropriately during class.

Allegation 7:

In 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that, as part of an exercise involving a mock job interview, you asked a student out on a date with yourself.

Allegation 8:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you behaved inappropriately whilst classes were in progress, by eating food, and/or using your mobile phone or iPad to play games whilst the students were working.

Allegation 9:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you showed your Year 4 students violent passages from a film featuring the actor Jean-Claude Van Damme.

Allegation 10:

In 2014, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you gave some of your students inappropriate nicknames.

Allegation 11:

In 2014, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you showed a video to the class where one of your female students was performing a cartwheel and, in the process, exposing her upper chest, and you remarked to the class upon the clothing she was wearing to cover that area of her body with words similar to “nice sports bra”.

Allegation 12:

The conduct detailed in allegations 1 to 11 constituted a pattern of conduct demonstrating that you are not fit to teach, given that:

- a. the conduct was serious;
- b. the conduct breached the principles set out in The Victorian Teaching Profession Code of Conduct in a number of ways;
- c. there were multiple instances of the conduct over a two-year period;
- d. the conduct had an adverse impact upon some of the students, students’ families and the school community; and
- e. you had been warned prior to 2014 of the need to maintain appropriate boundaries with your students.

Background – continued

The Panel, which has the responsibility to hear and determine the matters contained in the Notice of Formal Hearing, was appointed by the Institute in accordance with section 2.6.42 of the Education Training and Reform Act 2006 (Vic) (the Act). The members, appointed from a pool of persons approved by the Governor in Council, are independent and not employees of the Institute.

The Formal Hearing was listed for 13 December until 17 December 2021.

At the request of the parties a Directions Hearing was listed for 8 September 2021. On 7 September, the respondent requested that this be postponed for a period of approximately four weeks. The applicant agreed to this request and referred the matter to the Panel for confirmation.

The Panel agreed to the postponement with conditions, namely: Counsel for the teacher provide in writing, at least seven days in advance of the agreed date for the Directions Hearing, a submission as to the matters for which direction is required, and an agreed statement of facts. An agreed date of 14 October 2021 was scheduled.

On 11 October 2021, the Respondent made an application for a permanent stay of proceedings in this matter. On 12 October 2021, the respondent provided amended written submissions to support this application. The Panel was advised that the applicant wished to file written submissions in response and that the parties had entered into consent orders, which outlined a proposed timeline for the parties to make submissions and for the application to be heard by the Panel.

On 13 October 2021, the Panel ordered by consent that:

- i. the directions hearing set down for 14 October 2021 is vacated;
- ii. on or before 12 November 2021, the applicant must serve and file any submissions on which he proposes to rely in response to the respondent's amended submissions dated 12 October 2021 in support of a permanent stay;
- iii. on or before 26 November 2021, the respondent must serve and file any submissions in reply on which he proposes to rely;
- iv. the directions hearing on the question of a permanent stay be set down for 13 December 2021;
- v. the proposed hearing date concerning the allegations previously set down for 13 to 17 December is vacated.

The hearing was held on 13 December 2021. On 10 March 2022, the Panel determined to deny the respondent's application for a permanent stay.

The Panel determined, pursuant to sub-section 2.6.34(2) of the Act, that the formal hearing with respect to the allegations would proceed into this matter, with the Panel constituted to hold that formal hearing pursuant to section 2.6.43 of the Act.

THE EVIDENCE

Documents relied upon:

Submissions	
Institute's Outline of Submissions on Findings and Determinations, dated 13 May 2022 and supplemented by Appendix 1 (Determinations Sought by the Institute)	
CNA – 1	Victorian Institute of Teaching v the teacher – Response to Summary of Material Facts, dated 30 March 2022
CNA-15	Outline of Respondent's Submission on Sanction – Factors in Mitigation against the Respondent's Deregistration, dated, 13 April 2022
CNA-17	Outline of Respondent's Submissions in Reply on Sanction, dated 16 May 2022
Correspondence from colleagues in support of the teacher	
CNA-2	Colleague 1 & Colleague 2, dated 14/09/2016, addressed to 'Whom it may Concern'
CNA-3	Colleague 3, dated 20/09/2016, addressed to 'Whom it may Concern'
CNA-11	'Appraisal of the teacher, undated, Colleague 4
CNA-13	Colleague 5, undated, addressed to Regional Director, South-East Victorian region
Correspondence from a former student	
CNA-10	Former student, dated 22/11/2016
Correspondence from parents in support of the teacher	
CNA-4	Parent 1 & parent 2, dated 20/09/2016
CNA-5	Parent 3 & parent 4, dated 20/09/2016, addressed to the teacher
CNA-7	Parent 5 & parent 6, dated 22/09/2016, addressed to 'Whom it may Concern'
CNA-8	Parent 7, dated 22/09/2016, addressed to 'Whom it may Concern'
CNA-9	Parent 8 & parent 9, dated 23/09/2016, addressed to 'Whom it may Concern'
CNA-12	Parent 10, undated
CAN-16	Parent 11, dated 02/05/2016
Respondent's supplementary material in mitigation (dated or date received if not dated²)	
CNA-18*	Respondent 1, dated 09/05/2022, addressed to 'Whom it may Concern'
CNA-19*	Respondent 2, dated 9/05/2022, addressed to Mr Hull
CNA-20*	Respondent 3 & Respondent 4, dated 10/05/2022, addressed to 'Whom it may Concern'
CNA-21*	Respondent 5, dated 10/05/2022, addressed to 'Whom it may Concern'
CNA-22*	Respondent 6, dated 10/05/2022, addressed to Formal Hearing Panel
CNA-23	Respondent 7 & Respondent 8, dated 10 May 2022, addressed to Mr Hull

² Sent by VIT to Peter Hull and Associates

CNA-24*	Respondent 9 & Respondent 10, dated 11/05/2022, addressed to 'Whom it may Concern'
CNA-25*	Respondent 11, dated 11/05/2022, addressed to the Victorian Institute of Teaching
CNA-26*	Respondent 12, dated 11/05/2022, addressed to the Victorian Institute of Teaching
CNA-28*	Respondent 13, 12/05/2022, addressed to 'Whom it may Concern'
CNA-29*	Respondent 14, 13/05/2022, addressed to the Victorian Institute of Teaching
CNA-31*	Respondent 15, dated 16/05/2022, addressed to Mr Hull/'Whom it may Concern'
CNA-32*	Respondent 16 & Respondent 17, dated 16/05/2022, addressed to 'Whom it may Concern'
CNA-33*	Respondent 18, dated 15/05/2022, addressed to 'Whom it may Concern'
Correspondence from former employers of the teacher	
CNA-14	Former employer 1 (Centre Manager), undated, addressed to 'Whom it may Concern'
CNA-30	Former employer 2 (Director), dated 14 May 2022
Hearing Book: Materials variously listed from pages 1 - 2632	

* Parent correspondence in support of the teacher

By letter, on 30 March 2022, the respondent issued the following instructions via his legal representative:

"The purpose of this letter is to file the respondent's written response to the allegations of fact that are set out in the Summary of Material Facts and Allegations for Formal Hearing, dated 7 April 2021³. The Summary is at Tab 2 of the Formal Hearing Panel Book provided by the Institute.

Importantly, I also wish to inform the Panel that, notwithstanding the content of "CNA-1", for the purposes of hearing and determining this matter at the formal hearing, the respondent will invite the Hearing Panel to proceed on the assumption that the allegations of fact set out in the Summary are true.

In this invitation, the expression "allegations of fact" does not include conclusions of fact such as "misconduct" or "serious misconduct".

The respondent is adopting this course to ensure that the children who might otherwise have to give evidence in this matter are relieved of the burden of having to do so."

The Panel understands this to mean that the teacher, through his legal advisors, does not intend to contest the Summary prepared by the Institute, but to make submissions about the conclusions which can be drawn from those facts. In particular, he wished to contest the findings of misconduct and serious misconduct. The Panel considered how the Summary of Material Facts (the Summary) bore on each of the allegations.

³ CNA 1

The Summary of Material Facts and Allegations for Formal Hearing, dated 7 April 2021

Allegation 1:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you told stories to your class of Year 4 students, in which characters bore the names of your students, which included inappropriate topics.

In 2014 and 2015 the teacher regularly told his Year 4 class stories. The stories were fictional, and the students understood them to be so. The stories were made up at the time they were told. The teacher gave characters in the stories names of students in his class. These stories were part of the Earn and Learn program, in that students could use their tokens earned during the program (for instance for good behaviour) to request a story and could also request which students would be characters in the story. It would seem that a student could refuse to be in a story even if nominated, but as students observed, it could be difficult to refuse.

It is alleged that the content of these stories was frequently inappropriate for children at Year 4 level, particularly where students' names were given to characters in the stories. According to students, the stories included the following subject matter:

- a. Romantic relationships between the characters, including characters marrying or getting a divorce, or having multiple relationships, or kissing, or one character "cheating" on another. One student said that in one story, another student liked him but whenever she came near him she vomited. He said in another story he was the "hot boy" and another student was the "nerdy boy", and that the girls liked him but said "no" when he asked them out. Another student said that the stories included a brother and sister kissing.
- b. Characters having a baby together. Students described one character giving birth whilst another told the character to "push".
- c. A priest accidentally urinating on a character who had startled him in the toilet. Two students gave broadly similar accounts of this story soon after it was allegedly told. In both accounts, the story included that students married, that there was a priest at the wedding trying but being unable to urinate in the male toilet, that a student went accidentally into the male toilet, saw the priest and offered to help him, that she hugged him and his urine splashed over her dress, that they both went back to their house and she strangled him because she didn't want to be with him, that his father then strangled her, and that the priest got married and lived happily ever after in the toilet. Two students said that the story included that after they had married, she realised she had fallen in love with the father and that she had said she liked "creep[y] old men" or "creepy old grandfathers".
- d. Characters dying or being injured or killing one another. In one a character's arm was ripped off. In another a character died in a fire. In another, one character strangled another. In one a character's head exploded.

Many of the students found the stories funny and enjoyable, but some found them uncomfortable and embarrassing. One of the students said that at the time he was still young and "didn't really need to know about couples and kissing". One parent described how her daughter was uncomfortable in recounting the story to her parents about the priest urinating, and as a friend, was upset for her because everyone laughed at the story. Another student said that in one story, she was a chicken and another boy was a human and he fell in love with her.

She said "Yeah, and we both really didn't like it. We kind of just looked at each other, like, yeah". In another story she said that a student was interested in her, and wanted to kiss her, because she hadn't

said hello to him, and that she didn't like being in this story. Another student had told her mother that she did not like the teacher's stories. The student said that the stories ridiculed students in them, and that "some people found it pretty embarrassing at times, because, like, they'd be put in a position where they're doing something in the story that they wouldn't want to do in real life." She said that the teacher, in telling the stories, would "find something to talk about and then he'd just go on and on about it and like, yeah, it was awful", and that she "didn't really like that."

Some of the parents of students in the teacher's classes have expressed their concern about the content of stories written by their students whilst in his class. For instance, one of the mothers of a student, has written of the negative content of his written stories including murder, boys versus girls, dating and marriage. Another parent has written of a consistent pattern amongst students' writing of marriage, divorce, violence, and characters being derogatory of each other. It is reasonable to infer that the students had been influenced in their writings by the stories the teacher had told, as well as the written examples the teacher had provided to the students (see allegation 3 below).

Allegation 2:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you told your class of Year 4 students that they should not tell others about the stories you were telling them.

It is alleged that the teacher told students not to tell anyone else outside the classroom of the stories or they would stop. A number of students say that the teacher specifically told them not to tell their parents.

This conduct was of sufficient concern for the school to engage a psychologist to address the teacher's class about being not able to tell things to their parents.

Allegation 3:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you provided examples of written pieces to the students to assist in their written work that included inappropriate material.

Edmodo was an online collection of learning resources provided by the teachers at the school to the students. In 2014 and 2015 the teacher made available on Edmodo to his students written pieces he had prepared to serve as examples to the students for their own written work. These pieces contained inappropriate content for Year 4 students.

One piece, entitled "How to control a bunch of ungrateful, odorous children" included an extended description of picking "the smallest, weakest, squeakiest sounding girl in the class" and subjecting her to various actions including making her feel "nervous and panicked", insulting her in front of the class, forcing a bar of soap down her throat, spraying two cans of deodorant in her face, and tipping icy water over her. Another was titled "Girls, nature's greatest disappointment!". It said that "girls can fall to pieces over nothing. They are mentally weak, fragile and get upset over nothing". It concluded "People of the world, we need to be strong and try to eliminate all girls and if we can't eliminate them, at least let's try and change them, to be more like boys".

Another piece was titled “boys, the reason why parents don’t want to get up in the morning”. It spoke of “an unshowered, unclean, monstrosity otherwise known as a boy” and said that “boys are destructive animals who should either be eliminated or reprogrammed”. Another piece was entitled “The Mysterious life of Jean Claude Van Damme”. It included, speaking of the titular character, “With one ferocious punch, he crippled Fred and with one powerful kick, Bob could no longer walk”. It also said, again of the titular character, that “Jean Claude was very popular with the ladies. He always had many partners, while others had never even spoken to a girl”.

Allegation 4:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you allowed Year 4 students to massage you during class.

It is alleged that, in the context of the Earn and Learn Program, the teacher purchased massages from students. Students massaged his shoulders, back and hands.

A student said that “I felt because he was my teacher I kind of had to do it and, yeah, yeah, I felt a bit weird about it”.

Allegation 5:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you touched a student inappropriately whilst dancing with her.

It is alleged that in 2014, the teacher touched a student whilst dancing with her in a ballroom style, with one hand around her waist, perhaps touching her buttock, and one around her shoulder.

It is also alleged that in 2015, the teacher touched another student whilst dancing with her in a ballroom style during a mock job interview with her. The student described this as “slow dancing” and said that it involved the teacher putting a hand on her lower back whilst holding her other hand. She said this made her feel “uncomfortable”. Another student also alleges that the teacher danced with her, again with one hand on her back whilst holding her other hand.

Allegation 6:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you touched a student inappropriately during class.

It is alleged that in 2014, the teacher touched a student inappropriately whilst she was sitting next to him on a couch in the classroom, in that he put his arm around her whilst he was looking at some work she had done. She said this made her feel very uncomfortable. She also alleged that he did this on a second occasion whilst he was telling a story where two characters were on a date, and he used her as though she was a mannequin to demonstrate, putting his arm around her shoulder. She said he did this to “a couple of girls in her class in 2014 “and like maybe five” in the other class that he taught that year. She agreed with her interviewer’s assertion that she and the others appeared to be the teacher’s “favourite girls”.

Another student also alleges that in 2014, the teacher would give the girls “free massages”.

He would come behind the girls and massage their shoulders.

It is further alleged that in 2015, the teacher touched a female student's hand whilst she was sitting next to him on the couch. Specifically, he kissed the student's hand.

Allegation 7:

In 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that, as part of an exercise involving a mock job interview, you asked a student out on a date with yourself.

One of the exercises the teacher conducted with his class in 2015 was mock job interviews. One involved a student applying for a job at a bank. It is alleged that in 2015, whilst conducting this interview, and as part of the fictitious process, the teacher invited the student on a date with himself to the cinema, which she accepted, and then gave her his phone number for this purpose. She then became upset, so the teacher asked her some questions about being the best candidate for the bank position. She responded that she was very good at maths thanks to her teacher. The teacher asked about the teacher and the student responded that her Grade 4 teacher liked maths so she was good at maths and that he was handsome and had beautiful blue eyes.

Allegation 8:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you behaved inappropriately whilst classes were in progress, by eating food, and/or using your mobile phone or iPad to play games whilst the students were working.

It is alleged that in 2014 and 2015, the teacher ate food during class in front of the students (such as chips and pizza), sometimes offering his food to certain of the students. One student said that this made some students jealous.

It is further alleged that in 2014 and 2015 the teacher played games on his mobile phone or iPad during class whilst the students were working, including whilst lying on the couch in the classroom.

Allegation 9:

In 2014 and 2015, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you showed your Year 4 students violent passages from a film featuring the actor Jean-Claude Van Damme.

It is alleged that in both 2014 and 2015, the teacher showed his students one or more violent passages from an adult film featuring the actor Jean-Claude Van Damme. It would appear that this was because in both years, the teacher had a student with a similar name in his class.

Allegation 10:

In 2014, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you gave some of your students inappropriate nicknames.

It is alleged that in 2014, the teacher gave students inappropriate nicknames. He named a student, who had a high-pitched voice, “squeak squeak”, or “squeaky” which upset her. He named another student “midget”, whereupon the students also started calling him this until the student asked for it to stop. He named another student “stink stink” He named another student “blondie”. He called another student “Jean Claude”.

Allegation 11:

In 2014, whilst employed as a registered teacher at the school, you engaged in serious misconduct or alternatively, misconduct, in that you showed a video to the class where one of your female students was performing a cartwheel and, in the process, exposing her upper chest, and you remarked to the class upon the clothing she was wearing to cover that area of her body with words similar to “nice sports bra”.

In 2014, the teacher, as part of the Earn and Learn program, made a video for the class of students involved in various activities, including a student performing a cartwheel. He showed the students of both classes the video, freezing it at various points. The teacher has said about this that “We’d go through, you know, the freeze shots of what was going on and make, you know, make comments, kids would have a laugh, whatever”.

It is alleged that he froze the film of the student performing the cartwheel at a point where she was upside down and her clothing was over her head and remarked on what she was wearing to cover her chest with words similar to “nice sports bra”. It is unclear whether the student was in the class at that time or heard about it from her friends at a later point. The student has said that the incident made her feel “really embarrassed”.

On the basis of the teacher’s invitation to the Panel to proceed on the assumption that the allegations of fact set out in the Summary are true, the Panel concludes that the allegations are each made out save for the issues as to:

- a. whether the allegations of fact in each of the allegations 1 to 11, constitute serious misconduct, misconduct or neither;
- b. whether the respondent is currently unfit to teach; and
- c. what determination(s) should be made pursuant to s2.6.46(2)(h) to (k) of the Education and Training Reform Act 2006 (Vic) (the Act).

DISCUSSION OF THE EVIDENCE

Whilst the teacher's legal representative conceded the factual elements of the Summary, the Panel was provided with submissions on the context in which the events took place and interpretation of those facts. The Panel also considered contextual evidence documented in the Hearing Book.

The teacher commenced teaching at the school in mid-2010 teaching Years 3 and 4 students for the last half of 2010, then again in 2011, 2012 and 2013, before teaching solely Year 4 students in 2014 and 2015.

In each of the years 2014 and 2015 the teacher taught two Year 4 classes; these classes contained approximately 20 students who were engaged in a bilingual program. Students alternated classes on a weekly basis. The teacher would take them for English and mathematics one week and then they would attend classes, in other disciplines, conducted in French the following week.

The allegations against the teacher had their genesis on 5 November 2015 when one set of parents complained to the Principal about certain aspects of the teachers' classroom behaviours and the content of his teaching. These complaints were followed up by various investigations by the Department, Victoria Police, and the Institute. As part of the Institute's investigations 15 students were interviewed. In the initial phase of the investigation some were interviewed in mid-2018. Further interviews took place in mid-2020. Most interviews were undated.⁴

During his employment at the school, the teacher was well known as a teacher who was animated and well liked amongst the children with a reputation for fun. The majority of students, when asked by the external investigator appointed by the Institute (the investigator) at interview about the year in his class, reported that they enjoyed the year. For example, one student at interview said of the 2015 year "that was probably the – my favourite year I had" and in answer to the question "Yes and you enjoyed the way he talked and things like that?" responded "Yeah, cause in terms of education wise, he actually did teach us quite well".⁵

Another, from a 2015 class, said he was "one of the best teachers I had" singling out his skills as a mathematics teacher and crediting him from taking her from not being the best at mathematics to where she is now doing well in secondary school.⁶ Other students also affirmed him, particularly around his mathematics teaching saying they enjoyed him as a teacher "because some of the things he did were, like other teachers didn't do, and it was fun cause he had like multiplications like a championship that was fun and we did other things with him that was fun" and affirmed the interviewer's assertion that he really was a good teacher⁷.

There has been significant criticism of the teachers conduct by parents from within the school and it has received substantial adverse comment in the media. The Panel noted in its history of the matter outlined above that some members of the school community were strongly of the view that the Institute's initial response was inadequate. These critical views are well documented.

⁴ Hearing Book, 1572, 1603, 1621, 1644, 1700, 1752, 1798, 1841, 1865 (all numerical references hereafter are to the Hearing Book pages unless otherwise specified)

⁵ 1698

⁶ 1546

⁷ 1750

There have however been opinions more supportive of the teacher. In the interests of balance and natural justice, the Panel considered these views of parents, former students, colleagues and employers who provided submissions at various stages of the investigative process.

In September 2016 and May 2022, numbers of parents provided written testimonials in support of the teacher.⁸ Not all of them are referred to below but they do reflect much the same sentiments. They included comments such as:

- “a real passion for teaching and his ability to transform is truly a gift. We have witnessed him over the years”.

This comment was backed up in May 2022 with the following “we are still 100% comfortable with our original commendation. It’s clear that the teacher made some errors of judgement, but he would have acted very differently had he been given appropriate supervision and support”⁹

- “As parents, we would like you to know that your dynamism and inspiring ideas have had a positive impact on our son. His writing in particular has significantly improved last year as he clearly enjoyed what he was asked to write about”
- “Our daughter was happy, engaged and clearly learning a lot during that year so we were very happy to have him as her teacher”
- “He is a very rare kind of teacher, one that is truly committed to teaching kids and someone who had the ability to run his classroom in a way that the kids who have not responded as well to other teachers really got a chance to develop a love of learning”

This comment was later backed up, prior to the hearing, with the following statement: “My son... has never forgotten him – the positive impact he had on his learning and self-esteem in the all too brief time he was in his class”¹⁰

- “Outstanding teacher, to our son ... year 3 /4 ... had a very productive year with him ... helped him increase his literacy and numeracy skills to a good standard ... very approachable ... gave us a detailed report on our son’s achievements and weaknesses”
- “Both girls found him engaging and fun and enjoyed his teaching style ... able to tap into their learning style and greatly improved their math skills ... nothing but praise for his commitment to the students and their wellbeing”

(This comment was backed up in May 2022 with the following: “I have read through the transcript and the accusations brought against him and I admit I was shocked. This was certainly not the experience we had as a family. The earn and learn program was a forward thinking program that exposed children to the workings of all levels of a community. It covered areas of learning that I have not seen presented before and at the time I thought it was very progressive. He had a unique teaching style but at no stage did either of my daughters find him inappropriate or untoward”¹¹

- “He helped my son to be less shy as well as to speak in public and dare new things.”¹²

In 2016, one student wrote, “Although I have had many remarkable teachers, he will always be remembered as the teacher that changed my course in school. He did this by motivating me enough to

⁸ CNA 4, 5, 7, 8, 9

⁹ CNA 32

¹⁰ CNA 27

¹¹ CNA 31

¹² 178

achieve three different scholarships on separate occasions, and transforming the average, disinterested (sic) student I was into the opposite”¹³

Colleagues also expressed their views as follows:¹⁴

- Our “overriding opinion of him and his relationship with children was that he loved to provide programs which enthused and excited the students ... saw no inappropriate behaviour”
- He “demonstrated outstanding qualities as a colleague and a teacher”
- “Whenever one would walk into his classroom, there was always a positive atmosphere ... support the students’ creativity by creating interdisciplinary activities ... Students felt proud to be in his class because no other teacher did these particularly creative and fun activities”
- “He establishes in-depth knowledge, values each student and develops effective student-teacher relationships. This relationship was formed through the use of strategies that promote students’ self-confidence and willingness to take risks with their learning. One example of this was the productive collaboration of students’ work in the 'Earn and Learn' program, designed by Vingerhoets. This program allowed the class to approach learning in a real world context ... he is an effective teacher who incorporates multiple strategies consistent with PoLT (*Principles of Teaching and Learning*) to motivate and encourage students to think, create and inquire in an educational context and setting”.

During the period 2017 – 2019, the teacher tutored primary school age students with an educational centre. The Centre Manager stated inter alia that: she found him to be a “very responsible and committed teacher” whose “sense of humour and happy disposition makes it easy for students to approach him”; and a trustworthy person who takes teaching seriously and always makes tutoring a pleasant experience for all students”.¹⁵

The Director who employed the teacher as a Casual Relief Teacher between 18 April 2019 and 7 May 2021, provided a letter of support for the teacher; he was aware at the time of the allegations against the teacher and his responses. He stated “He is an exceptional teacher who has a genuine love for teaching. He engages students and prioritises student learning and welfare. He is a hardworking, flexible teacher who has been a great asset to our team. He is also a genuinely kind and caring person who treats others with respect”¹⁶.

Based on the experience of the Panel members, no teacher is perfect; some are better than others. In their professional life, they make hundreds of decisions in a day – not always the most appropriate ones. They constantly face the challenge of appealing to, and engaging with, a diverse range of learners in a varied range of settings. They are scrutinised on a day-to-day basis and accountable to the learners in their care, as well as parents/carers and carry the responsibility of meeting community expectations. The Panel considered the allegations in this light.

Allegation 1

The allegations in this matter arose from an initial parent complaint to the Principal of the school, on 5 November 2015, with respect to the particular story outlined in Allegation 1 and Summary (c). The story

¹³ CNA 10

¹⁴ CNA 2,3,11,13

¹⁵ CNA 14

¹⁶ CNA 30

was told on 4 November 2015, to students in Year 4. The Panel was of the opinion that the story was told once and to one class, given their alternating nature and that some students in their interview with the investigator had no memory of it occurring.¹⁷ There is no evidence that the story was told in 2014.

The story was related by two sets of students to their parents on that same date. One set viewed it as inappropriate and sexual in nature, the other, whose child was a character in the story, regarded it as containing no sexual themes in the story, “nothing sinister or mal-intentioned...other than a lack of judgment and “the children thought it extremely funny and it sounded... not dissimilar to the Andy Griffiths books they read at home which are very popular with their age group”¹⁸.

The teacher told stories to his students varying from one to three times a week; he saw his classes on a fortnightly basis. The stories were short, ad lib and fictional and were told before a recess or lunch break. One student stated, in response to the investigator asking ‘what type of teacher he was, good fun, boring , or strict?’, answered “It’s like serious and fun at the same time sort of. Like sometimes he would be fun, sometimes he would be, like serious and, like, stuff like that... like during work times... he tends to be between, like – so there’s recess and then like two bits near the recess, like, five minutes after recess and five minutes before recess, that’s like, he used to be less serious in those times, but then between those time periods he would be serious”¹⁹.

A student in her interview with the investigator agreed that the stories just filled in the gap before the bell went, if he (the teacher) “was in a good mood. But if he wasn’t, then we would just have to stay in writing”.²⁰

The students ‘paid’ for the stories using tokens (fake money) as part of a rewards system which the teacher first initiated in 2011²¹. In a letter, dated 8 November 2015, to the Principal and parents the teacher stated, inter alia: “the reward that is clearly the most popular is the story telling; they are meant to be silly, humorous and nonsensical stories that are purely for the entertainment of the children; the stories are made up off the top of my head and are not at all thought through or pre-planned”²².

In interview with the Principal on 15 November 2015, the teacher confirmed that he had been telling stories since the beginning of his teacher career and in answer to the question ‘what made him think he could include that kind of content in his stories?’ he explained that it was gradual and unintentional, and it was the thing that the children enjoyed the most²³.

In interview with the investigator the teacher stated that 95% of the stories told did not contain inappropriate material; this has not been challenged²⁴. He has claimed that the majority of the stories had themes of resilience and positivity and has stated “that the stories were ‘harmless fun, but sometimes went off on a path that was inappropriate”.

¹⁷ 1616, 1806, 1851

¹⁸ 185

¹⁹ 1723

²⁰ 1848

²¹ 1395

²² 211

²³ 1927

²⁴ 1399

Two students only were interviewed by Victoria Police, on 17 and 18 November 2015 respectively, as part of their investigation into the teacher's behaviour.

A student, in her interview with Victoria Police, stated that the stories had been going on "since the start of the year" and they got a bit inappropriate "towards the end of the year"²⁵. Another student, in her interview with Victoria Police stated in response to the question "does he ever talk to you about private stuff?" responded by saying "not much other than that business thing" and "he's really only started talking about the most inappropriate stuff"²⁶.

Students could choose to be a character, often an adult, in a story and could also choose other students to be characters. If a student did not want to be in a story, then someone else had to be picked. On 8 June 2018, a 2015 student in her interview with the investigator, stated that "if someone didn't want to be in it, the teacher is like no, she doesn't want to"²⁷.

The students knew the stories were fictional. One student stated "He told stories out of his imagination. They could be anything from, like, fairies to monsters or something like that"²⁸. Another stated that the stories were a mix of craziness and included a bit of fairy tales, sci-fi and artistic kind of stuff²⁹. In her interview with the investigator on 8 June 2018, one student recalled a story she was in where she was thrashed to the ground and died. When questioned as to whether anyone got upset, she answered "no it was just like – I just like and everyone was laughing and I'm like, oh no I'm dead and I'm like now I'm not in the story anymore. I was annoyed because I wanted to be in the story so much"³⁰.

Many of the parents found the stories enthused and encouraged their children. One stated, "He was viewed at the time as the best teacher in the school by most parents. His approach was to engage students using nonsensical stories in which characters bore the names of his students and this was clearly a very successful teaching approach. The progress our two boys made under his stewardship was indeed stunning. These stories were invented in the excitement and the enthusiasm of the moment during the class period. Some of the stories were certainly of bad taste and over the top and in my view closer to Andy Griffiths stories ('The Day my Butt went Psycho' and 'Disgusting') or to Captain Underpants stories by David Pikey than anything sinister"³¹

Allegation 2

The school Principal, after investigating Allegation 2, substantiated that "the teacher told children not to tell their parents about the stories' and "did so one occasion at the start of the year".³² In a witness statement, dated 17 May 2017, to the Fair Work Commission she attested "Initially he did not understand the position he placed himself in and I had to explain it to him".³³

It was clear to the Panel that there were differing interpretations among the students as to whether they chose to share the stories with their parents. It is also feasible that some students did not tell some of the stories to their parents because they thought they would not understand them.

²⁵ 1098

²⁶ 1131

²⁷ 1551

²⁸ 2621

²⁹ 1687

³⁰ 1558

³¹ CNA 29

³² 38

³³ 1918

On 18 November 2015, in her interview with Victoria Police, a student “thinks she told the parents about two weeks after it started” and explained that she did so because she didn’t think it was appropriate”.³⁴ This comment relates back to the initial story in Allegation 1(c).

In the same interview in response to the question “are you allowed to tell people about the stories?”, she responded “well he said if I heard, if I hear any complaints from parents then the stories will stop, so technically it's saying don't tell your parents” and when further questioned as to that’s how she took it, she responded “no I didn't, I didn't take it like that but I kind of knew that something was up so I told my parents anyway 'cause they deserve to know”³⁵.

Other students made statements such as “he's never actually said don't tell your parents or anyone else”³⁶ and in response to the question ‘did he ever say don’t tell your mum or dad stated “No, he never, like said any of that. It was our choice we could talk freely about it”³⁷ and no he just said don't tell anyone just keep it between you two or between the whole class”.³⁸

Some students clearly had no problem in relating the stories to their parents. The parents of the ‘priest’ and the ‘groom’ in Allegation 1(c) said, respectively: “my children loved these stories and consider them to be a key point of difference and interest in his class. They have relayed these stories to me at various points in the year which in turn indicates that they did not consider there was any restriction on them talking to me freely about them”³⁹; and “my second child...loved telling me about these stories. And yes, they were farfetched at times, but my kids never had a problem in interpreting them for what they were since he clearly explained that to them, they were purely fictional”⁴⁰.

Allegation 3

Teaching students different types of writing, for example narrative, persuasive, informative, explanatory, is essential to their understanding of literature. Many teachers provide models to assist their students in their writing. Some will use the work of students; others will provide their own.

The teacher explained in his interview with the VIT investigator that in modelling a persuasive writing topic he sometimes used examples such as "boys versus girls"⁴¹ because these topics were more engaging for students than, for example, ‘should we have a school uniform’. This topic gave rise to the examples titled, ‘Girls, nature’s greatest disappointment’ and “Boys, the reason why parents don’t want to get up in the morning”.

In terms of creative writing one student remembered writing on the topic “how to make the worst hamburger ever”.⁴² Another recalled a prompt “the plane just crashed”⁴³

³⁴ 1092

³⁵ 21

³⁶ 1693

³⁷ 2622

³⁸ 1849

³⁹ 185

⁴⁰ CNA 21

⁴¹ 1502

⁴² 1756

⁴³ 1883

The examples were made available to students on Edmodo; the teacher was quite transparent in what he was doing. They were within the context of teaching the various genres of writing and the students knew the content was not serious.

The Panel was not surprised that what some students wrote was influenced by the teacher's examples. This is what one might expect of students at this level. At a higher level, a more sophisticated or mature approach of the boys versus girls topic might have evoked arguments around perhaps the achievements of women in various fields versus those of men.

Allegation 4

The Earn and Learn program is an established mathematics program in many Victorian primary schools. The author of the program, Rob Vingerhoets, describes it as follows: "The focus is on setting up a community in your classroom where the kids essentially sink or swim on how well they run their businesses (unless they work for you – the public service) while dealing with tax, rent, insurance and day-to-day bills. Earn & Learn really does represent the ultimate open-ended problem solving situation. It is a heap of work, it's a heap of fun and it's a goldmine for worthwhile, challenging and in context mathematics AND you get to be Prime Minister (because most kids don't know the word dictator!)."⁴⁴

In 2015 the program was run in Term 4. The 2015 cohort did not get the opportunity to complete the program. It was also run in 2014, presumably in the same term.

The students in each of the teacher's Year 4 classes in 2014 and 2015, had either a public service position, such as Deputy Prime Minister, police officer, etc., or set up a business. There were various kinds of businesses, such as beauty salons which did nails and massages, jewellery, origami and cup-cakes. The teacher was in the habit of going around each of those student businesses and buying what they had to sell.⁴⁵ A 2015 student described it as follows – "he just bought off everybody"⁴⁶.

In both 2014 and 2015 some students ran a business which included massages.

In her interview with the investigator a student identified herself and her friend as running the massage business in 2014. In response to questions by the investigator as to how many times she massaged the teacher and where she replied "once" and "on the back". In response to the question did you think this was unusual she said "I felt because he was my teacher I kind of had to do it and, yeah, yeah, I felt a bit weird about it."⁴⁷

Another student confirmed in interview with the investigator, on 25 June 2020⁴⁸, that in 2014 he massaged the teacher and he was paid for his services and added he enjoyed Earn and Learn and it was good fun.

On 18 November 2015, in her interview with Victoria Police, another student stated that in 2015 she ran a nails and massage business along with other students who got to massage the teacher in class and acting together, on his back and his hands and approximated this at about three weeks prior to the

⁴⁴ <http://robvingerhoets.com.au/maths/project/earn-and-learn/>

⁴⁵ 1455

⁴⁶ 1856

⁴⁷ 1611-2

⁴⁸ 1749

interview. On her undated interview with the investigator⁴⁹, she stated that she did not give the teacher a massage and he did not ask her for one⁵⁰.

On 18 November 2015, in her interview with Victoria Police, 2015 a student stated that she had a beauty salon job, which entailed doing nails and hair. She was quite clear, in this situation she could not do nails, hair in the case of the teacher.⁵¹ She further stated, in answer to the question 'does he massage students', "no they just massage him".⁵² In an undated interview with the investigator, 2015 a student only recalled some girls massaged the teacher on the shoulders and could not recall any massages on the hands or legs.⁵³

The Panel could not find any contemporaneous evidence of complaints with respect to the 'massage business in 2014'.

Allegation 5

The teacher ran twice weekly dance sessions at lunchtime known as "Just Dance" where he acted as DJ. The sessions were an extra-curricular activity and were very popular with students. The act of dancing seems to be something which featured prominently in the teacher's school life and that of many of the students.

The teacher has admitted that in 2014 he touched a student whilst dancing with her in a ballroom style, with one hand around her waist, perhaps touching her buttock, and one around her shoulder'. The evidence in this matter was provided by a student in interview with the investigator⁵⁴, dated 26 June (the Panel believes this took place in 2018). The student stated that this particular incident happened when they were meant to be cleaning the classroom and she was sitting on the couch. When questioned as to why the teacher decided to dance with the student and how long it went on for she responded saying "I don't know.....he kind of bought on like a dancing thing and like he was showing us how to do the robot and everything" and "well, I think she kind of jumped a little bit and then it was really uncomfortable and then I think he stopped, yeah".⁵⁵

The Panel noted that the student was not interviewed in the investigative process.

In her interview with Victoria Police on 17 November 2015⁵⁶, a student stated that the teacher had touched her during a job interview for the position of Deputy Prime Minister. She explained that she "had dance experience so I was confident on stage and stuff". She further stated that "the teacher said he saw in my job application that he noticed that I wrote down that I had dance experience. So he put a song on and started dancing and then, after, he held me in a tango position". When questioned as to how long he did that for she responded, "about five seconds". When asked how that made you feel she replied "uncomfortable". This incident occurred in or about the third week of Term 4.

⁴⁹ The interview took place when the student was in Year 7, this places it in 2018.

⁵⁰ 1888

⁵¹ 1119

⁵² 1132

⁵³ 1709-10

⁵⁴ 1572

⁵⁵ 1595

⁵⁶ 1089-90

In her interview with the investigator, in or about mid-2018, a student stated that during her interview for the job the teacher “asked me to get up and kind of, like, started slow dancing almost with me”⁵⁷. She then described how the teacher subsequently touched her by placing his hand in the middle of her back and holding her hand, which she thought she had made into a closed fist; she stated this occurred for a period of two seconds. She further stated there was no music.⁵⁸

Other students were present when this occurred one stating “this was the occasion when the student was presenting a little speech and stuff.... she was like I really want to have a dance party – maybe we could have a dance party because she used to do dancing or something then he, in a way, like danced with her and we were all like laughing”. She further stated that the teacher did not have his arm around her waist or on her shoulder, just palm to palm.⁵⁹

In a letter to Principal/Parents, dated 8 November 2015, the teacher stated the following in respect to dancing with the student: “When interviewing one of the students, I asked her ‘what ideas do you have for the country?’. In her response she said something to do with a dance/disco (I don't remember exactly) so I asked her can she teach someone to dance who has no idea how to. There was a quick 10 second twirl and I said something like ‘you're a genius, you're an amazing teacher!’ that's all there was to it. It was just not a well thought out reaction to her response to the question in the interview. It was in front of the other students, so it wasn't a pre-planned, secretive, behind closed doors activity”⁶⁰.

Allegation 6

There were two couches in the Year 4 classroom. Students could use tokens to sit on the couch which one student commented, it was a treat “just to be somewhere more comfortable”.⁶¹

It was clear to the Panel that students quite regularly sat on the couches with and without the teacher. On one occasion in 2014, a student sat next to the teacher whilst he looked at her work. On 26 June 2018, in her interview with the investigator, a student stated that the teacher’s arm was “resting on her shoulder”⁶².

On 10 November 2015, in a telephone discussion with the Principal, a parent of a student alleged that the teacher had kissed a student on the hand; she named the student.

In a witness statement, dated 17 May 2017, to the Fair Work Commission the Principal attested that, on 10 November 2015, the teacher acknowledged that he “had kissed a student on the hand” and this occurred during a mock job interview in Term 4 2015.⁶³ The teacher in making this admission, said he would have only kissed his hand not hers. On 27 August 2020, in his interview with the investigator the teacher stated “I didn’t kiss the hand...I didn’t physically kiss the hand...I kissed my own hand...utter stupidity”⁶⁴

⁵⁷ 1889

⁵⁸ 1890-1891

⁵⁹ 1567-68

⁶⁰ 212

⁶¹ 1765

⁶² 1586

⁶³ 1926

⁶⁴ 1521

Another student was interviewed by the investigator on 25 June 2020. She was not asked, nor did she proffer any information on this matter.

Allegation 7

The teacher met with the Principal on 6 November 2015. In her witness statement, dated 17 May 2017, to the Fair Work Commission she attested that, on 6 November 2015, she asked him some questions about his interviewing process within the Earn and Learn program. He stated “he would mix the interview up with serious and joke questions to relax the students. He said he would sometimes ask questions like ‘how old are you?’ and ‘do you want to go on a date?’”⁶⁵

This was a mock interview involving a student. On 9 December 2015, in an email forwarded, her mother summarised what her daughter had told her about the interview as follows: during the fake interview she had to pick a character and play on it; when she told the teacher she was 29 years old he said it was nice because he was 30 years old; he asked her to go on a date (cinema) and she accepted then he asked or gave her his phone number for the date, but she was upset so the teacher asked some questions about her being the best candidate for the bank position”⁶⁶

This is the only evidence of a specific incident of this question being asked of a student.

The student was interviewed by the investigator on 25 June 2020. She was not asked, nor did she proffer any information on this matter.

Allegation 8

On 27 August 2020, in his interview with the investigator the teacher made a number of observations as to the context of his eating in class.⁶⁷

He explained that he was part of a club called ‘The Lunch Club’ with the other teachers at the school. He described the situation where if a teacher was on yard duty that they would take their coffee back into the classroom. He stated that he didn’t drink coffee, that he liked food and he would take food and finish it off in the classroom. He also stated that if there had been a special morning tea, and he was on duty, he would take the leftovers back to the classroom.

A student elaborated on this explanation saying, “yeah I’m pretty sure he has done that for like, if he was like on yard duty, so he was in charge during the recess ... when we go back to class he would eat or sometimes he’s just hungry and he has a small snack”.⁶⁸

Another student also had a similar explanation in response to the investigators question ‘what did he eat in class’, stating: “chips, like honestly any food like pizza. He would bring it out from the staff room like at the end of recess and he’d just be sitting there with a giant bowl of food or he’d just leave it kind of around in the classroom”. In response to the questions ‘did he ever share that food with anybody’ she said “yes” and initially identified the girls as the more likely recipients but qualified this by saying “Oh no, I kind of can remember it being like the end of the period and him saying come get some of it, like I can’t remember 100%”.⁶⁹

⁶⁵ 1923

⁶⁶ 477

⁶⁷ 1477

⁶⁸ 1766

⁶⁹ 1588

The evidence around the teacher playing games on his mobile phone or iPad is mixed. For example, one student did not recall seeing the teacher on his mobile phone in the classroom or playing games on his iPad.⁷⁰ Another said she could not see what he was doing⁷¹ and another remembered him using an iPad and a mobile phone but didn't remember what he was doing⁷². The Panel could not accurately determine the frequency with which this happened nor the duration.

Allegation 9

The teacher showed a scene from an adult film featuring the actor Jean-Claude Van Damme. It was shown in 2014 and 2015.

A member of the 2014 cohort, recalled watching the scene because there was a student in the class with the same surname and he (the student) "just brang it up".⁷³

The scene was also shown in one of the 2015 classes, where a sibling of the student also bore a similar surname.

One student stated that it was the sibling "who wanted to show us the scene of Jean-Claude Van Damme" and that he "proposed a movie and then the teacher was like, okay, yeah, I'll show it I'll show one of the fight scenes".⁷⁴

The teacher was quite clear in his interview with the investigator that he should not have shown the scenes to the students.

Neither of the students was interviewed.

Allegation 10

This allegation is confined to 2014. The student was not in that cohort although his brother was.

Neither of the brothers was interviewed and there is no evidence as to whether they objected to the name or the impact, if any, it may have had on them.

Four other students were given nicknames. Three students identified as 'squeaky' or 'squeak squeak, as she had a high pitched voice. One student observed she thought it "was kind of intended as a joke, but I can remember her getting a little upset about it".⁷⁵ The other two were not sure of the impact on the student. It would appear that her family moved interstate during the year, and she was not interviewed.

Another student was called midget. The teacher recalls calling this student 'Little Guy' but has also stated that he may have called him midget.⁷⁶ Regardless of the veracity of what the teacher claims, the student was called midget by the students. One student stated "he (the teacher) did start this whole thing where there was this guy and he was quite short. I didn't think so. I can't remember his last name and then everyone else started calling him midget and then I think like he said don't call me that anymore and we all got into trouble for calling him midget".⁷⁷

⁷⁰ 1747

⁷¹ 1632

⁷² 1708

⁷³ 1747

⁷⁴ 1737

⁷⁵ 1580

⁷⁶ 1490

⁷⁷ 1610

The student who was called 'stink, stink' was not interviewed. She was identified by one of her friends in an undated interview with the investigator but which the Panel has approximated as on or about July 2018. When questioned as to why she was called 'stink, stink' and, did she mind, the student replied, "I'm not sure" and "I don't know"⁷⁸.

The student was not interviewed.

A student in the 2014 cohort recalled being called Blondie; he stated that he didn't mind being called Blondie.⁷⁹

Some students did not recall students having nicknames⁸⁰ others did not remember any rude nicknames, just shortened ones⁸¹.

Allegation 11

In the course of their studies the students made videos. The teacher took various screen shots from these videos and put them together for the amusement of his students.

A student was in the teacher's 2014 class. In her interview with the investigator⁸², circa mid-2018, she stated that the students were filming a class music video on the oval and that she was wearing a top under her upper garment. In the same interview, she stated that "my top came up and he (the teacher) screenshotted that and showed it to the class when I wasn't there. She stated that she felt really embarrassed.

On 26 June 2018, in her interview with the investigator⁸³, a fellow student confirmed that the student's chest was covered. In response to the question, 'what did she say about the 'nice sports bra, the student stated, "I was sitting on the floor I can remember we all looked at her and then I just quickly looked away because I didn't want her to get any more embarrassed than she probably already was".

The student did not report this matter to anyone at the time and her father stated that he only found out about it in August 2016 when one of the student's friends told him about it.

The Panel was not made aware of any other instances of this nature with respect to this student or others.

⁷⁸ 1609

⁷⁹ 1654

⁸⁰ 1625

⁸¹ 1734

⁸² 1619

⁸³ 1593

FINDINGS

Findings as to the Allegations

At the invitation of the Respondent, the Panel proceeded on the assumption that the allegations of fact 1 – 11 set out in the Summary are true.

Findings as to ‘Misconduct’ and/or ‘Serious Misconduct’

Pursuant to s 2.6.46(1)(a) of the Act, the Panel then turned its mind to determining whether the teacher has, by act or omission, engaged in misconduct or serious misconduct.

The term “misconduct” is defined in section 2.6.1 as ‘conduct occurring in connection with the practice of teaching that is of a lesser standard than a member of the public or members of the teaching profession are entitled to expect from a reasonably proficient teacher’.

There are examples of current standards, expected of the teaching profession, as to what constitutes a reasonably proficient teacher. The Australian Professional Standards for Teachers (APST) is one such example.⁸⁴ These standards have been designed to help teachers understand and develop their teaching practice and expertise across four career stages – Graduate, Proficient, Highly Accomplished and Lead – and are grouped under three areas: professional knowledge; professional practice; and professional engagement.

With respect to the standards for a proficient teacher, which the Panel believes the teacher would have met at the time of the allegations, professional knowledge requires teachers to know their learners and how they learn and to know the content and how to teach it. The standards do not require perfection. The evidence points to the teacher being proficient in this area.

The area of professional practice requires a teacher to: plan for and implement effective teaching and learning; create and maintain supportive and safe learning environments; and, assess, provide feedback and report on learning.

The area of professional engagement requires a teacher to engage in professional learning and to engage professionally with colleagues, parents/carers and the community. As part of these standards a teacher is expected to meet codes of ethics and conduct established by regulatory authorities, systems and education settings. It also requires a teacher to establish and maintain respectful collaborative relationships with parents/carers regarding their children's learning and wellbeing and to participate in professional and community networks and forums to broaden knowledge and improve practice.

Although the term is used in section 2.6.46 of the Act, ‘serious misconduct’ is not expressly defined in the Act, its nature has been considered in previous disciplinary decisions under the Act, and under its predecessor, the Victorian Institute of Teaching Act 2001(Vic) (the 2001 Act). In *Davidson v VIT*⁸⁵ Victorian Civil and Administrative Tribunal (the VCAT) said, with respect to the term’s meaning in the 2001 Act, the following⁸⁶:

⁸⁴ <https://www.aitsl.edu.au/standards>

⁸⁵ [2007] VCAT 920.

⁸⁶ At [165].

So what is serious misconduct? We must look to the way this phrase is defined in relation to other professions, as there is no definition in the Act. In our view the words must be given their ordinary dictionary meaning, informed by the practice of the teaching profession, and considered in light of all the circumstances surrounding each of the allegations found proved. In *Parr v Nurses Board of Victoria VCAT* (2 December 1998) Kellam J observed:

“In my view the question of whether or not a nurse has engaged in unprofessional conduct of a serious nature must depend on the facts of each case. Clearly 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. It must be a departure, in a substantial manner, from the standards which might reasonably be expected of a registered nurse. The departure must be blameworthy and deserving of more than passing censure.”

The VCAT in *Hickey v VIT*⁸⁷, a case under the Act, the Tribunal referred with approval to what had been said in *Davidson* and applied it in that case⁸⁸.

The Panel took the view that serious misconduct is conduct that constitutes a substantial departure from the standard that a member of the public or members of the teaching profession are entitled to expect from a reasonably proficient teacher, and that is blameworthy and deserving of more than passing censure.

The Panel also considered the evidence in this matter against the backdrop of the Victorian Teaching Profession Code of Conduct (the Code) as was in place at the time the allegations against the teacher were made.

The Code acknowledges that teachers are in a position of trust and influence that should not be violated or compromised⁸⁹. Within this framework it is incumbent on teachers to:

- maintain a safe and challenging learning environment⁹⁰
- communicate well and appropriately with their students⁹¹
- work to create an environment which promotes mutual respect⁹²
- protect students from intimidation, embarrassment, humiliation or harm⁹³
- exercise their responsibilities in ways that recognise that there are limits or boundaries to their relationships with students – for example, using inappropriate language and/or material with students or touching a student without a valid reason⁹⁴.

Allegation 1:

The teacher’s story telling at the school spanned his whole teaching career which began in 2007. Over the period 2014 – 2015 the teacher had approximately 80 children in his care in four classes at the Year 4 level. The stories were brief and varied in content.

⁸⁷ [2017] VCAT 1622.

⁸⁸ See [217] – [221]

⁸⁹ Principle 1.5 of the Code.

⁹⁰ Principle 1.1b.

⁹¹ Principle 1.1f.

⁹² Principle 1.2a.

⁹³ Principle 1.2c.

⁹⁴ Principles 1.5b, 1.5c.

The particular stories which appeared in the Summary, and cited as inappropriate, were in the minority, only arose as a wider issue in Term 4 2015. There is no evidence to suggest that these stories had an ongoing negative effect on any of the teacher's students.

The Panel found it unsurprising that the general consensus amongst the students, at the time of the story telling, was that the stories were funny and engaging and they enjoyed them a lot, but for various reasons, including peer pressure, some were unable to express their feelings. Perhaps predictably some parents were at odds as to the appropriateness of the nature of the stories with views ranging from totally inappropriate to lacking in taste, largely hinging on the impact the stories had on their particular child. Parents life experiences vary, and their values are formed by their upbringing, culture, spirituality, peers and other societal influences and this, inevitably, transfers to their own children.

A reasonably proficient teacher is expected to meet professional and ethical standards which, in this instance, the teacher did not do. There were students, although arguably in the minority, who felt uncomfortable and embarrassed by the nature of the story and/or having their name used as a character in a story.

It is incumbent on teachers to provide a safe and inclusive learning environment for each and every student in their care, where each student is treated with courtesy and dignity and protected from intimidation, embarrassment, humiliation, or harm.

In this instance, the Panel viewed the teacher's behaviour as a departure, in a substantial manner, from the standard that a member of the public or members of the teaching profession might expect of a registered teacher and that it is blameworthy and deserving of more than passing censure, leading to a conclusion of serious misconduct.

Allegation 2:

It is established that the teacher, at the beginning of the 2015 year, told his students not to tell their parents the stories.

The evidence shows that some students had no problem in relating the stories to their parents others were unwilling to do so. The reasons why they were unwilling are not clear to the Panel from the material. For example, some did have the impression, created by the teacher, that they should not tell their parents, others that their parents would not understand the context or that the parents were not particularly interested.

The Panel noted that the teacher did not, initially, understand the position this placed him in and the need to have the Principal explain it to him. Although this displays a significant degree of naivety, it is not an excuse; as a reasonably proficient teacher he ought to have known better. Making a reckless or careless statement or statements that could be construed in this way is significant because it has the potential to undermine the ability of children to know that they can tell parents, carers or other trusted adults anything that is of concern to the child and as such constituted serious misconduct.

Allegation 3:

Some of the content provided in the examples of written pieces the teacher provided was clearly inappropriate. Overall, the Panel concluded that the teacher, in his efforts to engage students and to

make their writing more interesting and passionate, there were times where he chose to model examples which in poor taste and demonstrated a lack of judgment. This does not rise to the level of serious misconduct but rather misconduct.

Allegation 4:

The context for the massages was within the Earn and Learn program. It ran in 2014 without parental or student complaint. This does not mean it should be condoned. Students may in some circumstances touch a teacher, for example very young students may spontaneously do so, but they should not be encouraged to do so. Teachers are neither a parent nor a friend – they are a professional teacher and should always bear that in mind and act accordingly.

The teacher, as a reasonably proficient teacher, should have had the common sense not to condone or encourage the massaging of himself, whether inside or outside a legitimate 'Earn and Learn' program. In the Panel's view it represents a serious lapse of judgment, a substantial departure from standards which might be reasonably expected, blameworthy and worthy of more than passing censure. Accordingly, it found it to be serious misconduct.

Allegation 5:

This allegation is confined to two students, one in 2014 the other in 2015. The Code, to which Victorian teachers are expected to adhere, makes it clear that teachers should not touch student unless it is within a valid context. In the case of teaching, for example dance, drama, woodwork, gymnastics or music there would be many examples of a valid context. This is not one of them. However, the behaviour in both instances appears to be fleeting and a spur of the moment decision on the part of the teacher and was not repeated or of a continuing pattern in either case and accordingly the Panel found misconduct.

Allegation 6:

The 2014 incidents described in the Summary indicate that the teacher did not have a valid context for touching the students concerned. There are a number of elements contained in this allegation; the Panel determined to deal with them separately.

It is understandable that the teacher might unthinkingly place his arm across a student's shoulder while sitting on a couch looking at her work or using her as a demonstration mannequin, but they do not represent a valid context. The conduct was thoughtless, of a fleeting nature, not repeated and as such represents misconduct.

The student identified as having been kissed on the hand was interviewed by the investigator, but this matter was not broached. The Panel did not find any evidence of repetition of this behaviour. It was fleeting, thoughtless, demonstrative of a lack of insight and not what one would expect from a reasonably proficient teacher and as such represents misconduct.

Massaging students on the shoulders, even within the context of a legitimate program such as 'Earn and Learn' does not represent a valid context. In the Panel's view it represents a serious lapse of judgment, a substantial departure from standards which might be reasonably expected, blameworthy and worthy of more than passing censure. Accordingly, it found it to be serious misconduct.

Allegation 7:

There is nothing in the materials to suggest that the teacher was actually intending to go on a date with a Year 4 student and the Panel does not interpret it in this way. He was role playing.

The Code requires teachers to maintain a professional relationship with their students. This will be violated where a teacher engages in misconduct which may be considered inappropriate conduct, such as this, by speech or other communication.

The Panel formed the view that in the mock interview scenario, where the student was taking on a chosen role, reality and fiction could become quite blurred and was of the opinion that the teacher's behaviour in this matter was reflective of limited insight into the consequences, albeit in a fictitious situation, of asking a student out on a date. It is not the behaviour expected of a reasonably proficient teacher and the Panel concluded this amounted to misconduct.

Allegation 8:

Teachers who go straight from teaching to yard duty and then back to teaching may well understand the teacher taking food to the classroom. This would appear to be what the teacher did. Sharing food with students, particularly given the incidence of food allergies is not a sensible idea. There are occasions where parents will provide the class with birthday cupcakes, or the like, in a primary setting. The policies of the school should be adhered to in these instances.

Teachers do legitimately sit down in class on occasions but not lying on a couch but rather sitting if that were the only option. One would not expect teachers to be using a mobile phone or an iPad in class unless it was within their professional remit, such as roll marking. The Panel could not, on the basis of the material available, determine the frequency or duration of these behaviours.

Taken as a whole these matters are unprofessional and do not accord with what one might expect from a reasonably proficient teacher. The Panel formed the view that this constituted misconduct.

Allegation 9:

The Panel concluded that the teacher was persuaded by the students to show the passages from the film; not all students watched them. Parents may decide what their children do or do not read, watch, or see but a professional teacher should have the common sense to consider the potential harm it may have caused and the need to comply with community expectations which would not include showing children passages from a movie classified above their age group.

The context of this allegation does not excuse the teacher's behaviour. The Panel viewed the teacher's behaviour as a departure, in a substantial manner, from the standard that a member of the public or members of the teaching profession might expect of a registered teacher and that it is blameworthy and deserving of more than passing censure, leading to a conclusion of serious misconduct.

Allegation 10:

Students and teachers sometimes willingly identify or accept the use of a nickname. Shortened or lengthened versions of a surname are often used in Australian society. A nickname is something which persists and stays with a person. The use of the term 'midget' was attributed to a particular student and used by other students until a stop was put to it.

The context in which 'squeak, squeak' and 'stink, stink' arose was not clear to the Panel. There was no evidence to suggest that these terms fell into the category of a nickname or that they were regularly used by the teacher or picked up and used by the students; however, use of such terms does not meet the expectation set down in the Code that teachers treat their students with courtesy and dignity. The students who were identified as associated with these names were not interviewed.

The Panel was of the view that giving students nicknames does not appear to be something the teacher regularly practised or repeated perhaps, one might surmise, having learned his lesson from calling a student 'midget'. In this instance the Panel determined that it did not constitute a substantial departure from the standard that a member of the public or members of the teaching profession are entitled to expect from a reasonably proficient teacher, and that is blameworthy and deserving of more than passing censure and accordingly found misconduct.

Allegation 11:

This particular allegation relates to a 'one off' incident. The student concerned has stated that she was not present when the particular screenshot was shown. Her reaction, when questioned by the investigator in 2018, was that she was felt really embarrassed when she heard the screenshot had been shown and the teacher's comment.

The Panel viewed the teacher's comment as spontaneous, thoughtless and unnecessary and certainly capable of generating embarrassment. However, without evidence of any lasting impact, the Panel were of the view that this was matter was of momentary effect and found misconduct.

Findings as to Fitness to Teach

The definition of fitness to teach is contained in section 2.6.1 of the Act. In considering fitness to teach the question is “whether the character, reputation and conduct of a person are such that the person should be allowed to teach in a school.” This is consistent with *Siguenza v Secretary to the Department of Infrastructure* (2002) VSC 46 [33] – [34] where it was stated that ‘a person has to have the qualities which would permit him or her to be safely accredited to the public, without further inquiry, as a person to be trusted with the work of a teacher.’

In making its assessment of fitness to teach, the Panel took guidance from *Davidson v Victorian Institute of Teaching* (2007) VCAT 920, in which the Victorian Civil and Administrative Tribunal (VCAT) considered the factors relevant to whether the proved conduct demonstrates a lack of fitness to teach. Namely:

- a. there must be a perception that the conduct complained of is of a continuing and persistent nature;
- b. a finding that a person is unfit to teach carries with it an assessment that that person should not be in a position of authority and trust with children, because his or her whole approach to teaching and to the children in his or her care is profoundly and irretrievably flawed; and
- c. conduct which throws doubt on how the person would behave in future in the classroom will indicate a lack of fitness;
- d. an act or a series of acts of serious misconduct that is explicable in context and unlikely to recur does not of itself demonstrate lack of fitness;
- e. the whole of the teacher’s conduct as found is relevant to a decision as to whether the teacher is fit to teach. Any behaviour found to be inappropriate for a teacher is relevant to the ultimate question of fitness to be a teacher.

In forming its opinion, the Panel made the following observations.

The teacher’s behaviour, as described in the Summary, was not of a continuing or persistent nature. That is not to say that aspects of it did not amount to misconduct or serious misconduct, but it could not be construed to be continual or unrelenting.

The evidence does not suggest that during the period 2014 - 2015 the teacher should not have been placed in a position of authority or trust with children because his whole approach to teaching and to the children in his care was profoundly and irretrievably flawed; indeed, his approach to teaching has been commended by many of the parents and students he has taught and also by colleagues.

This observation is supported by the opinion of:

- the Principal who stated: “the teacher would like you to know the children are safe in his care and I also support this view. As a result of my investigation, I have formed the view that the teacher acted in a misguided and naïve manner, however I do not believe his actions were wilful. I am satisfied that he has students’ welfare and best interests at heart and students continue to

be safe in his class. It is apparent to me that he has engaged in significant critical reflection as a result of Parents' concerns raised with him and the issues of concern will not be repeated"⁹⁵

- the treating psychologist and psychiatrist who respectively stated:
 - "the teacher crossed boundaries as a result of bad judgment and over enthusiasm rather than any insidious reasons, and "he was not a risk to the community and fit to return to his teaching duties". She further stated that "had learned lessons from his experience" and recommended mentoring sessions regarding his conduct with students.
 - "the teacher's behaviours were reflective of his limited insight and associated poor judgment and naivety". He recommended the teacher be provided with ongoing regular mentoring and coaching in respect of his professional skills to ensure he maintained appropriate conduct with his students and to reinforce his understanding of appropriate boundaries between teacher and students.

The context in which the teacher's conduct took place is clear. He placed himself in a position where he became carried away by his reputation with the students as a fun and engaging teacher. The allegations reflect that at times, in his endeavours to be funny and engaging he crossed boundaries which one would expect a teacher to observe. He has acknowledged this since the start of the investigative processes.

Since November 2015, the teacher has had a great deal of time to reflect on his behaviour, recognised the seriousness of the matters raised against him and has accepted that he is responsible for the position in which he finds himself. There is no doubt that he is acutely aware of the personal and professional responsibilities which have been placed on him if he wishes to pursue his chosen profession as a teacher.

The evidence available as to the teacher's teaching history since 25 January 2017, the supportive references made available to the Panel and the effluxion of time all support the Panel's assessment of the teacher as presently fit to teach.

⁹⁵ 38-39

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

"In considering the appropriate course of action, the Panel observes that section 2.6.3(1A) states that "When performing any regulatory function under subsection (1), the Institute must consider the wellbeing and safety of children, including by taking into account community expectations."

One of those regulatory functions is to "investigate the conduct, competence and fitness to teach of registered teachers and whether a registered teacher's ability to practise as a teacher or an early childhood teacher is seriously detrimentally affected or likely to be seriously detrimentally affected because of an impairment and impose sanctions where appropriate".

Section 2.6.49(2) states that "A determination of a hearing panel has effect as if it were a determination of the Institute."

The Panel is aware therefore that in making its determination it must consider child safety and wellbeing in the context of community expectations. The Panel is also aware that there are different views in the community about this matter and the Panel has referred to those differences in its reasons. The Panel acknowledges that some members of the school community have strong views about the teacher's suitability to teach and the Panel respects those views.

The Panel also considers that the law is clear; that the Panel's role is protective and not punitive.

The Panel must balance these various considerations in forming its view as to the appropriate action to be taken.

The Institute in its 'Outline of Submissions on Findings and Determinations' proposed a period of suspension on the teacher's registration of not less than three months, citing:

- the need for both specific and general deterrence;
- the need for professional development and mentoring as necessary to ensure that it is clear to the teacher that he fully appreciates the importance of the principles that he disregarded, the impact of his breaches of those principles upon his students, and that he has fully reformed his practices such that there be confidence that he will not engage in such conduct again.

In considering the need for specific and general deterrence the Panel considered the following factors:

1. The Panel is of the view that the teacher is in a position where he has shown insight and remorse into his conduct. As previously noted, since 2015 he has had a great deal of time to reflect on his behaviour, recognised the seriousness of the matters raised against him and has accepted that he is responsible for the position in which he finds himself. He has acknowledged that his previous behaviour has had an adverse impact on students, their families and the school community, cooperated with the various investigations into the allegations against him, giving responses to them and making admissions. He

has also taken the course of accepting the facts alleged by the Institute, with the result that the students did not need to give evidence before the Panel which, in the opinion of the Panel, can be taken to reflect a concern as to the welfare of the students;

2. At the time of the allegations the teacher was faced with significant media reports and a palpable divide within the school parent community;
3. The teacher has experienced a delay of seven years before this matter has come before the Panel and it is apparent that this has seriously curtailed his capacity to find and sustain employment. He has nevertheless worked at various times since 25 January 2017 as a tutor, a casual relief teacher and, from April 2021 until April 2022 as a full time teacher when he was stood down on full pay upon disclosure of these proceedings to his employer. During this time no further complaints have been made about his conduct, and there is a deal of evidence to support the contention that he has learned from his previous experiences;
4. Parents, students and representatives of recent employers have provided supportive references for the teacher and have spoken of his positive influence.

Given these factors, the Panel concluded that the imposition of a period of suspension of not less than three months would not serve any greater specific or general deterrence than has already been effected.

The Panel considered that the most effective way in which the public could be assured of the teacher meeting standards is through conditions focussing on professional development and mentoring aimed at reinforcing the standards and behaviour required of a registered teacher.

With regard to the necessity for professional development and mentoring the Panel is in full agreement with the Institute's submission that this is required for the reasons cited. However, the Panel has concluded that this would be best delivered as a concurrent set of requirements rather than discrete elements, based on the following:

1. From an educative point of view, working in a professional environment, under the combined guidance of a facilitator, a mentor and colleagues will provide the teacher with the opportunity to demonstrate his learnings from these experiences, as well as his ability to develop student-centred relationships in which students value the process of learning and their beliefs in their own capacity.
2. Suspending the teacher's registration places an extra degree of difficulty on his capacity to meet the conditions the Panel has determined to place on his registration with respect to mentoring. The imposition of a period of not less than three months does not entertain the possibility, where deemed necessary by the facilitator or the Institute, of this continuing over a lengthier period of time and deprives the teacher of the opportunity to demonstrate on a continuing basis that he has fully reformed his practices and provide the necessary level of confidence that he will not engage in such conduct again.

Under Section 2.6.46(2)(h) of the Education and Training Reform Act 2006 the Panel has determined to impose the following conditions on the teacher's registration:

Professional Development

1. The teacher will identify a facilitator to deliver a professional development program (the Program) to him. The facilitator will be subject to the approval of the Institute.
2. During the Program, the teacher and the facilitator will explore and address:
 - a. The requirements of the Victorian Teaching Code of Conduct, with particular emphasis on Principles 1.1(b) and (f), 1.2(a) and (c), 1.5(b) and (c) and 3.1(b);
 - b. The factors which led to the teacher's conduct and the impact on the learners affected by it;
 - c. The impact of a teacher as an authority figure for students, including consideration of the risks associated with communication to learners that has the potential to compromise learners' relationships with parents, carers and adults;
 - d. How to engage with learners in a respectful manner in classroom activities while observing appropriate boundaries and interactions in a teacher/learner relationship, including:
 - iii. Recognition that students have different characters and sensitivities; and
 - iv. Consideration of the perspectives of parents and carers.
3. The Program must include a minimum of six sessions over a duration of no less than three months.
4. The teacher will be responsible for any and all costs associated with the Program
5. Once the Institute has identified the facilitator, the teacher will engage in an initial meeting with the facilitator and provide the facilitator with a copy of the decision of the Panel.
6. The teacher will request that the facilitator prepare an outline of the Program (the Program Outline) and provide this to the Institute for review and approval.
7. Within a reasonable time, the Institute will notify the teacher as to whether the Program Outline has been approved.
8. If the Institute does not approve the Program Outline, the Institute will provide the teacher with reasons as to why the Program Outline was not approved. The teacher will discuss these reasons with the facilitator and request that the facilitator prepare an amended Program Outline which addresses the reasons why the Program Outline was not approved.
9. The teacher will not commence the Program until the facilitator and Program Outline are approved by the Institute.
10. At the conclusion of the Program the teacher will prepare a written reflection demonstrating:
 - a. His understanding and comprehension of the course material delivered as part of the Program
 - b. His learnings as a result of undertaking the Program

- c. How he plans to use the strategies and tools developed as part of the Program in his future teaching practice and
 - d. His understanding of the Victorian Teaching Profession Code of Conduct and Ethics with reference to the principles laid out in paragraph 2 above.
11. At the conclusion of the Program the facilitator will provide a written report to the institute addressing
- a. Whether the teacher has successfully completed the Program
 - b. The teacher's level of attendance and participation
 - c. The content covered in each session of the Program
 - d. The teacher's level of insight into the conduct
 - e. The teacher's learnings as a result of undertaking the Program, and
 - f. The teacher's understanding of the Victorian Teaching Profession Code of Conduct and Ethics with reference to his conduct

Mentoring

- 12. The teacher will identify a mentor, subject to approval by the Institute.
- 13. The mentor will be a registered teacher no less than five years of experience as a classroom teacher.
- 14. The teacher will participate in regular sessions with the mentor (at least monthly) for a period of no less than 12 months, commencing from the date at which the Institute has approved the mentor and the mentoring goals.
- 15. The teacher will provide his mentor with a copy of the Panel's decision.
- 16. Within one month of the mentor being appointed, the mentor and the teacher will meet, and the mentor will record mentoring goals and send them to the Institute for approval. Once the Institute has approved the mentoring goals and the mentor, the mentoring sessions may commence.
- 17. In the mentoring sessions, the mentor and the teacher will discuss his teaching practice and any challenges he is facing in relation to his interactions with students, with reference to the matters outlined in paragraph 2.
- 18. The teacher will provide reports to the Institute every three months, prepared by his mentor, addressing: the matters outlined in paragraph 2; his level of attendance and participation; his learnings as part of the mentoring; any concerns raised by the teacher, his mentor, and, his students or his colleagues with respect to his teaching practice.
- 19. At the conclusion of the mentoring period, the teacher will provide, within a month, a written reflection to the Institute addressing how he has applied the learnings from the mentoring to his teaching practice.



JANET SHERRY, CHAIRPERSON

Janet McK Sherry
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per:

ROWLAND RICHARDSON, REGISTERED TEACHER

Janet McK Sherry
.....

per:

SEAN BAKER, PANEL MEMBER