

## VICTORIAN INSTITUTE OF TEACHING

### DECISION AND REASONS OF THE FORMAL HEARING

**NUMBER:** 33

**REGISTERED TEACHER:** PAUL BUHAGIAR

**PANEL MEMBERS**

**Marilyn Mooney**, Chairperson

**Norm Fary**, Registered Teacher

**Rhonda Cumberland**, Panel member

**ATTENDANCE:** Mr Buhagiar was represented by Ms Cassie Serpell, barrister

Counsel Assisting: Ms Anne Sheehan with Ms C Pickett instructing solicitor

**DATE OF HEARING:** 30, 31 March and 20, 21 April 2006

#### **DETERMINATION UNDER SECTION 42(2) OF THE ACT**

On the 24 May 2006 the Panel decided:

- (a) to suspend Mr Buhagiar's registration as a teacher until at least 1 January 2007
- (b) to place a condition on the suspension of Mr Buhagiar's registration that he must attend a psychologist for at least six sessions of counseling concerning:
  - knowledge and maintenance of professional standards when working with students
  - understanding power relationships between teachers and students
  - insight and understanding of the professional boundaries between students and teachers
  - familiarisation of the Code of Conduct and Code of Ethics for the Victorian teaching profession
- (c) that Mr Buhagiar's registration will remain suspended until he completes counseling sessions to the satisfaction of the Panel.

# REASONS

## BACKGROUND

On 31 December 2002 the *Victorian Institute of Teaching Act 2001* (the Act) was proclaimed in full. On that date most teachers in Victorian schools were deemed registered as teachers. The teacher was deemed registered pursuant to section 91(1) of the Act because he was registered with the Registered Schools Board under section 37 of the *Education Act 1958* immediately before the Act was proclaimed.

By letter dated 20 September 2004, the Principal of the School notified the Institute that the School had taken action against the teacher in relation to serious misconduct. The notification was made in accordance with section 27 of the Act.

On 2 February 2005 the Disciplinary Proceedings Committee (the Committee) of the Victorian Institute of Teaching (the Institute), considered the notification and decided that this matter should be referred for a formal hearing. An investigation was conducted on behalf of the Institute into the allegations against the teacher. Following the investigation the matter was again referred to the Committee and at its meeting on 5 December 2005 the Committee confirmed its decision to hold a formal hearing into the allegations against the teacher.

The teacher was sent a Notice of Formal Hearing dated 2 March 2006 with all relevant documents attached advising him that the formal hearing would be held on 30 and 31 March 2006. The Notice of Formal Hearing set out the following allegations:

That at the School:

1. As witnessed by the Principal, Deputy Principal 1 and Deputy Principal 2, the teacher had inappropriately familiar physical contact with students:
  - Putting his hand on a student's back and shoulders while on yard duty.
  - Touching a student on the bottom while getting in place for the whole school photo.
  - Playing with female students' hair in the classroom.
  - Putting his arm around a student in a type of cuddle.
  - Patting and rubbing students' shoulders.
  - Rubbing a student's cheek and touching her nose.
  
2. In 2004, the teacher had inappropriate physical contact with year 10 students during English class:
  - a) Touching Student 1's waist, moving his hands up and down around her stomach when she went up to his desk.
  - b) Coming up behind Student 1 when she was leaning over and placing his hand on her left breast by inserting his hand between her arm and body.
  - c) Playing with Student 1's hair and stroking her face.

- d) Leaning over Student 2 when she was working at her desk, so that his chest was touching her back.
  - e) Putting his arm around Student 2.
  - f) Massaging Student 2's shoulders, arms and neck.
  - g) Brushing over Student 2's hair.
  - h) Hugging Student 2.
  - i) Rubbing Student 2's hands when she was writing.
  - j) Hugging Student 3 as she was standing up, touching her on the side at the bottom of her right breast.
  - k) Patting Student 3 on the head.
  - l) Stroking Student 3's hand.
3. In 2004, the teacher had inappropriate physical contact with year 10 students:
- a) Outside the office, wrapping Student 1 in his coat while he was wearing it.
  - b) Outside the year 10 classroom, wrapping Student 2 in his coat on at least two occasions.
4. In 2004, the teacher made inappropriate comments to year 10 students:
- a) Asking Student 1 if she was seeing anyone and stating to her 'well you know there is only one man for you'.
  - b) Telling Student 1 in front of the class that he was going to marry her 12 year old sister, that they would have a spring wedding and that Student 1 would call him 'bil' and he would call her 'sil' (as brother in law and sister in law).
  - c) When discussing the text 'Maestro', commenting to students that some men become more aroused by women in their underwear than naked.
  - d) Calling Student 2 'honey' and 'darling'.
  - e) Stating in class when picking up a pen from the floor 'I can see what you had for breakfast'.
  - f) Asking Student 2 about her relationship with her boyfriend, including did they fight, did he stay at her house and had she had sex with her boyfriend.
  - g) In response to Student 2 asking 'Come again?' replying 'Only if you make me'.
  - h) Telling Student 3 when she told him that she needed help with her homework and that it was at home in her bedroom, that he was starting to imagine her bedroom, 'I am walking down into your bedroom. I'm now in your bedroom. I can see dirty underwear on the ground'.
  - i) Asking Student 3 about her personal life, what she did on the weekend, if she saw her boyfriend.

## THE LAW

The Disciplinary Proceedings are set out in Part 4 of the Act. Section 26 provides:

### 26. **Powers of inquiry**

(1) *The Institute may in accordance with this Part inquire into any information it receives under section 27 or 28 or any complaint that provides evidence of the serious incompetence of a registered teacher, serious misconduct of a registered teacher or that a registered teacher is unfit to be a teacher.*

(2) *The Institute must in writing notify--*

(a) *the registered teacher; and*

(b) *the employer of the registered teacher; and*

(c) *the person who made the complaint--*

*of its determination to inquire or not to inquire into the registered teacher's competence or fitness to teach or the conduct of the registered teacher.*

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

According to the High Court in *Ziems v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279 the purposes of disciplinary proceedings in relation to a profession are:

to protect the public

to maintain proper standards of conduct for the profession, and

to protect the reputation of the profession.

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

And later:-

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

The observations of the High Court have been followed in numerous cases and in particular in relation to disciplinary proceedings (see *Barwick v Law Society of New South Wales* [2000] HCA 2, and *Murphy v The Bar Association of NSW* [2001] NSWSC 1191).

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

If the act or omission that constitutes the misconduct is within the will, power or control of the teacher it is more likely to be serious misconduct. If the act was done wilfully or recklessly without regard for the consequences, then it is more likely to be serious misconduct (see *Re: Christine Trigger and The Australian Telecommunications Commission* (1984) 4 FCR 242).

A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate the teacher's unfitness to teach.

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

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

Whether conduct amounts to serious misconduct will depend on the minimum standards demanded by the teaching profession. Conduct that deserves disapproval may not be serious misconduct (see *Ziems*).

The degree of remoteness of the conduct in question from professional practice must also be considered according to *A Solicitor v The Council of the Law Society of New South Wales* (2004) HCA 1 in which it is stated at paragraph 34:

*...the nature of the trust, and the circumstances of the breach, were so remote from anything to do with professional practice that the characterisation of the appellant's personal misconduct as professional misconduct was erroneous.*

A teacher's position is one of power and influence in relation to the student - a position of trust. The misconduct must reflect in a significant way on the suitability of the person to work as a teacher. It must illustrate attitudes or characteristics inconsistent with the moral qualities required of a teacher (see *Yelds v Nurses Tribunal & Ors* (2000) NSWSC 755; *New South Wales Bar association v Cummins* (2001) NSWCA 284).

The term *fit and proper person* is intended to cover conduct other than dishonesty and include significant impropriety, lack of integrity or bad faith. Persistent failure to meet a teacher's obligations to the education community shows a disregard for these obligations and not just carelessness, incompetence or lack of organisation. A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate the teacher's unfitness to teach (see *Cameron v Bar Association of NSW* [2002] NSWSC 191 and *Marten v Disciplinary Committee of the Royal College of Veterinary Surgeons* [1965] 1 All ER 949).

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

## **DOCUMENTS CONSIDERED**

The Panel had available to it the following documents:

- Witness statement of the Principal dated 12 October 2005 (3 pages) and attachment
- Anonymous letter
- Witness statement of Deputy Principal 1 dated 12 October 2005 (2 pages)
- Witness statement of Deputy Principal 2 dated 12 October 2005 (2 pages) and attachment
- Summary of meetings
- Handwritten comments from 4 students – Student 4, Student 5, Student 6, Student 7
- Witness statement of Student 1 dated 24 October 2004 (3 pages)
- Witness statement of Student 2 dated 24 October 2004 (2 pages)
- Witness statement of Student 3 dated 24 October 2004 (3 pages)
- Witness statement of the teacher dated 2 November 2005 (5 pages)
- Notes of investigation of missing keys Deputy Principal 1 dated 6 August 2004
- Notes the Principal 9 August '04
- Notes Deputy Principal 2 9 August '04 (2 pages)
- Notes Deputy Principal 2 13 August '04
- Letter the teacher 9 August 2004
- Notes 2 September '04 (2 pages)
- Notes Thursday 2 September (3 pages)
- Year 10 English Class enrolment document
- Term 3, 2004 calendar

The following documents were provided on behalf of the teacher:

- Witness statement of Teacher 1
- Witness statement of Teacher 2
- Witness statement of Teacher 3
- Supplementary Witness statement of the teacher
- Witness statement of Witness 1
- Witness statement of Teacher 4
- Witness statement of Teacher 5
- Witness statement of Teacher 6
- Witness statement of Teacher 7
- Witness statement of Witness 2

## **THE EVIDENCE**

The Panel heard evidence from:

- The Principal
- Deputy Principal 1
- Deputy Principal 2

- Student 1
- Student 2
- Student 3
- Teacher 1
- Teacher 2
- Teacher 3
- The teacher
- Witness 1
- Teacher 4
- Teacher 5
- Teacher 6
- Teacher 7
- Witness 2

### **Student 1**

Student 1 confirmed under oath that her written statement was true and correct. She told the Panel that she was a Year 12 student at the school. Student 1 described herself as studious and said that she enjoyed English.

She told the Panel that she had noticed the teacher's touchy, feely behaviour towards female students. She said that she was wary of him and did not want to put herself in that situation with him. The Panel heard that the teacher would direct derogatory comments or jokes towards students, and as she was embarrassed once by the teacher in this way, Student 1 chose not to say anything to anyone, in an attempt to stay on his good side.

The Panel heard that her relationship changed with the teacher when he taught her younger sister, in Year 6. Student 1 said that around Term 2 the teacher paid more attention to her. She said that he would touch her neck and shoulders and that it was 'not the behaviour expected of a teacher – teachers aren't supposed to touch students'. Student 1 told the Panel that during a sports coaching elective she learnt that under no circumstances are you to touch students. She said that she had never seen other teachers behave towards students as the teacher did.

Student 1 told the Panel that during an English lesson where the students were working in small groups, the teacher placed his hand between her arm and side, letting his hand touch her breast for a few seconds. She said she was 'really, really shocked. I did not know what to do.' She told the Panel that she was definitely not mistaken with what had happened. Student 1 said that on another occasion when she was with a friend, Student 8, the teacher came up to her wearing his large coat and wrapped his arm around her back as they stood side by side. She said that it made her feel very uncomfortable. Student 1 said that she did not tell anyone because everyone thought of him as a friend and it could become awkward for her.

The Panel heard that the teacher fiddled with female students' hair including Student 1's hair. She said that while she was working in class the teacher would touch strands of her hair. She said that it happened 2 or 3 times and probably happened in Term 2 when his behaviour changed towards her. She said that he also placed the palm of his hand

on the side of her face. Student 1 said that she did not say anything to him because he was a teacher and well liked by students and well respected in the community. She said because of that she felt she would be walking a fine line.

Student 1 told the Panel that the teacher would often cuddle and hold female students close. He would stand beside them and put his arm around their shoulders. Student 1 said that he never touched the boys but he did touch most girls in the class. The Panel heard from Student 1 that she felt that the teacher stared at her legs during a double English period. She said that she gave him a stern look and he looked away. She told the Panel that she felt annoyed and a bit angry and was getting a bit sick of it all by this time.

The Panel heard that the teacher engaged Student 1 in conversations regarding her relationships and asked her if she was seeing anyone. She said that she laughed it off because she did not know what to do. It was during one of these conversations she said that the teacher made the comment 'Well you know there is only one man for you.' A comment that she interpreted to mean, him. Student 1 explained that the pastoral care support program involved mixed groups of Years 7-12 with each student having a Pastoral Care mentor. They had weekly meetings covering their welfare at school and any other issues that might be of concern.

Student 1 told the Panel of the incident where the teacher told her in front of the class that he was marrying her younger sister, and that they could call each other 'bil' and 'sil'. She said she thought it was inappropriate, distasteful and unprofessional. Student 1's sister told her mother who was concerned enough to ask Student 1 to 'keep an eye on her sister.' Student 1 explained the incident in class involving the novel *Maestro* as 'over the top and out of line'. She said that the analogy the teacher used of men becoming more aroused by women in their underwear than if they were naked, was unnecessary. She could not recall the response from the rest of the class.

Under cross-examination Student 1 agreed with Counsel for the teacher that she had not reported any of her concerns until approached by the Principal and Deputy Principal 1. Student 1 agreed that she was one of the more responsible students in the school and in response to the proposition that therefore she should have raised these issues, Student 1 said that it was hard to stand up and say what is wrong when it involves a teacher. She said that she did not have the strength to do that at that age. Student 1 said that there was a sexual innuendo behind some of his comments. She stated that his behaviour was 'touch feely' but not 'gropey'. Student 1 agreed with Counsel for the teacher that the point would have come when she would have reported it but that it had not got to that point.

Student 1 told the Panel that she left a note regarding the missing keys for the teacher as she thought it important to do something about it. She said that she did not remember seeing Student 2 with the keys but Student 8 had, so Student 1 felt that they should tell the teacher because everyone was looking for them. She said that at that stage she did not know how Student 2 felt about the teacher's behaviour and she thought her action in taking the keys was a 'fairly immature thing to do.'



Student 1 said that the teacher was regarded as a friendly teacher who kids could talk to but that he was not so much a friend to her. She said that she did not talk to him about her concerns. She did not know what his intentions were but she knew his behaviour was not unacceptable. Student 1 agreed with Counsel for the teacher that the teacher's actions of putting his arms around or on students was not secretive but occurred in front of other people. She said that the teacher would put his hand on your arm or shoulder when he came up to you. She explained the one incident of the teacher putting his hand on her waist when she came up to his desk to get work checked as making her feel uncomfortable. She said that no other students said anything about this to the teacher or to Student 1.

Student 1 explained that in the class there were about 4-5 students sitting around a desk. She said he came up behind her and put his hand on her left breast. She said there was no groping, just his hand on her left breast for a few seconds then he moved it away. Student 1 agreed that she said nothing and gave no indication to the teacher that anything was wrong. She said 'I was shocked ... I did not know what to do.' She agreed with Counsel for the teacher that it was possible that the teacher was not aware of what he was doing although unlikely.

Regarding the allegation of the teacher playing with Student 1's hair she told the Panel that she was definite that he played with her hair. Student 1 stated that when the teacher put his arm around her with his coat on he was side on not face to face. In terms of the teacher putting his palm on her face she agreed with Counsel for the teacher that it was not stroking but rather him putting his palm on her face. She said that she felt it was still unacceptable for a teacher to put his hand on a student's face. Student 1 told the Panel that it was a possibility that the teacher was not staring intentionally at her legs. Because he was talking to the class he might not have realised what he was doing. However, she felt he was distinctly staring at her legs. She said that she thought this was a later incident and perhaps she was becoming more conscious of his behaviour.

Student 1 told the Panel that she could not recall conversations or laughing with the teacher about the incident where he mentioned that he and Student 1's sister were getting married. She acknowledged that the teacher mentioned to her that they would have to call each other 'bil' and 'sil' but disputed the teacher's recollection that it was just with Student 1. Student 1 told the Panel that her memory was that it was directed to her across the classroom.

In discussing the *Maestro* incident and the teacher's analogy of a person being attracted to someone in underwear more so than if they were naked, Student 1 confirmed to the Panel that she still thought that he went too far. She said that she could not recall him using another analogy of sunglasses. Student 1 told the Panel that the teacher would talk to students about their weekends and that he asked her if she was seeing anyone. She denied that this was part of a relationships program. She stated that the teacher definitely made the statement 'Well you know there's only one man for you.' Student 1 could not recall the teacher saying to Student 9 and Student 10 that they made a lovely couple.

In relation to discussions (after the teacher was made aware of the complaints) that Student 1 had discussed with Deputy Principal 1 the teacher's behaviour, Student 1 said that she told Deputy Principal 1 that it was better than before. She said that students were working with less distraction and the teacher was teaching more professionally. Student 1 told the Panel that the teacher did not touch her after this and that she did not hear any other comments from students that he was behaving inappropriately.

## **Student 2**

Student 2 confirmed under affirmation that her written statement was correct. She told the Panel that she was a Year 12 student at the school.

Student 2 told the Panel that she was not a very academic person, that she is a dyslexic student and was probably a more athletic person. She said that she got into a bit of trouble at school. The Panel heard that there was a strict no smoking rule at school and that she had been suspended for breaching that rule. One of these occasions occurred on a Year 11 Outdoor Education camp at Phillip Island. She said that in Year 10 she was reported by 2 boys for smoking behind the gymnasium. This was investigated and at first she denied it, then owned up, then denied it. The two boys reported it to a teacher whose name she can not remember. At the end of the process there were no consequences.

Student 2 said that in Year 9 the teacher was her English teacher. She said that he was not touchy, feely in Year 9, only in Year 10. She said that in Year 10 the teacher would put his arm around her shoulder and talk to her about outside school activities such as asking her about her relationship with her boyfriend.

Student 2 explained the school's Pastoral Care system to the Panel as, each student having a mentor who talks to the students about any concerns they might have or assists them if they are in trouble. There are also self-motivation exercises. Student 2 said that she really did not have confidence that she could approach her mentor in Year 10.

Student 2 told the Panel that she sat at her desk leaning forward working. The teacher would come up behind her, lean over her and his chest would touch her back with his head next to her shoulder. This probably happened a few times 'not every week but not a rare occasion either.' She said that when it happened she did not respond as she did not know how to respond. Student 2 said that the teacher would put his arm around her. She said that if standing he would stand next to her and put his arm around her back and on either her hip or her stomach. Student 2 said that in the classroom during Year 10 English the teacher would massage her neck for around 20 seconds. She said that the teacher would invite himself into the students' conversations where he would join in their discussions about anything from their weekend activities to boyfriends and friends.

In relation to the hugging Student 2 said that the teacher would hug her front on, that is, they would be facing each other and he would put his arms around her. She said that this occurred near the two Year 10 classrooms when there was a small group of about 2-3 students, never in front of a larger group. She told the Panel that this behaviour started slowly in about Term 2 of Year 10. Student 2 said that a few things would

happen and she would put them to the back of her mind and then more things, like hugging would happen more regularly. The Panel heard that the teacher wrapped her in his large overcoat whilst he was wearing it. She said that they were either facing each other either front on or with her back to his front and that it would last for about 10 seconds. Student 2 said that she would laugh and break free.

Student 2 told the Panel that she did not hear the conversation about the teacher marrying Student 1's sister. Student 2 said that the context of the teacher's 'honey', 'darling', 'sweetheart', 'pumpkin' comments was when he would come into the room and say 'Good morning honey' or 'see you tomorrow darling'. The Panel heard that Student 2 was sitting in front of Student 9 and observed the teacher bending down under the desk to pick up a pen. She said when he stood up he said 'Oh Student 9 I just saw what you had for breakfast.' Student 2 said that she had a very good recall of the incident because she did not agree with the comment and it made her quite angry. She said that she did not say anything to the teacher or anybody else about it at the time. The Panel heard that a lot of the students were talking about it and were angry.

Student 2 said that during classes, the teacher would ask her about her relationship with her boyfriend all the time. She stated that at first she did not think much of it but later he went further and would ask if her boyfriend stayed over and if she had sex with him. The Panel heard that Student 2 and Student 3 were sitting in class when the teacher asked for Student 3's homework. She said that she had left it home in her bedroom. The teacher then said words to the effect 'I'm walking in your bedroom now and I'm looking on the floor and I can see dirty underwear on the floor, it's Tuesday and there's more dirty underwear...' Student 2 said she was taken back a bit by his comments. Student 2 told the Panel that the teacher made another comment on that day when she did not hear something that he had asked, so she said 'Come again' to which he replied 'Only if you make me'. She said it stuck in her mind because it was the 'breaking point' and she wanted to do something about it. Student 2 said that she then decided to steal his keys to get him fired. She said that she and Student 3 became scared after being interviewed by the Principal so they put the keys back and then decided to tell The Principal about the teacher's behaviour.

Under cross-examination Student 2 agreed that there was a core group of students in Year 10 although she could not recall if Student 4 was part of that nor could she recall him being suspended for swearing at the teacher. In relation to the smoking incident in Year 10, she was not sure who followed the incident up with the Principal, although she conceded that it could have been Teacher 6. She agreed that she changed her position on the smoking issue from denying to admitting to denying and that she was never punished. She told the Panel that she was worried because her parents were very much against her smoking and she was nervous about their reaction. She denied talking to the teacher about the smoking incident. She said that until today she believed that two boys had reported her for smoking not the teacher. Student 2 told the Panel that she has no recollection of telling the teacher that he had betrayed her when he reported her for smoking.

Student 2 told the Panel that at first she denied stealing the keys and then admitted to it. She was unaware until today that the police came to the school over the issue. She

said she lied to the Management team because she did not want to tell them what was actually going on. She denied the reason for lying was because she did not want to get into trouble. Student 2 told the Panel that the issues were serious and emotional and it was hard to come out and say it. Student 2 said that she could not recall Student 8 seeing her showing off with the keys in the playground – she said that she did not see it that way.

Student 2 denied that she had put the teacher's coat on in the classroom and that he asked her to take it off. She said that there were 3 or 4 times that he wrapped her in his coat when he had it on. She stated that the teacher rested his chest against her back when checking her work in class. She said that it lasted for about 15 seconds if not longer. She said that she did not move or say anything about it because she was scared and did not know what to do. Student 2 agreed that the teacher was a tactile person however she said that if you are a touchy feely person you are that way with everyone not just the girls. She said that she had never seen him touch the boys. Student 2 said that in one respect she wanted him punished for what he was doing but as a human being who makes mistakes she did not. 'I just wanted it to stop.' In response to Counsel for the teacher, Student 2 said that, although she is never a scared person, it was difficult to tell the teacher that she did not like what he was doing. She maintained that in English classes the teacher massaged her shoulders and neck. She said that he also flicked her hair on more than one occasion.

Student 2 confirmed to the Panel that the teacher hugged her face to face and said that she had also seen him hug Student 3 face to face. In response to Counsel for the teacher she stated that she would not describe Student 3 as volatile or fiery.

Student 2 described the incident when she needed help with spelling and the teacher put his hand on her hand to help her write. She said 'I know how to write – I just needed to know how to spell.'

Student 2 maintained her evidence of the teacher's use of the words 'honey', 'darling', etc. She disagreed with the contention that those words were used in a drama context. She also maintained that the teacher directed the words to the effect 'I can see what you have had for breakfast' to Student 9. Student 2 denied that the context in which the teacher asked her about her relationship with her boyfriend was due to her being late for school. The teacher claimed it was because of pastoral care concerns, but Student 2 denied this. She said that some of these conversations were during English classes.

### **Student 3**

Student 3 confirmed under oath that her written statement was correct. She said that she has been at the school since 2004 and is now in Year 12.

Student 3 told the Panel that she had never forgotten the teacher's comment to the effect 'I am now in your bedroom. I can see dirty underwear on the floor ..etc' made to her when she asked for help with her homework. She thought it disgusting. She said that she overheard the teacher talk to Student 1 in the classroom about marrying her younger sister. The Panel heard that on the same day the teacher had made the comment to Student 3 about being in her bedroom he also commented to Student 9

about 'seeing what she had for breakfast' after he bent down in front of her desk to pick up a pencil. She said that other students did not really take much notice. When asked if she had ever been in trouble for smoking, Student 3 said that in Year 10 she and Student 2 were reported for smoking behind the gym. She said that she was pretty sure that two boys reported them to the teacher who spoke to them and then told Teacher 6. Teacher 6 then sent both Student 3 and Student 2 to the Principal. Student 3 told the Panel that she has never been a smoker.

Student 3 stated that her relationship did not change with the teacher after this. She said that up to this point he was very friendly and a touchy feely kind of guy. She described the way he hugged as an arm around and on the shoulder.

She told the Panel that she was involved in stealing the teacher's keys. She said that from memory she and Student 2 decided to take them to be funny. Then when everyone started panicking and talking about the keys and then realised that they had taken them, they owned up. In the subsequent interview with the Principal Student 2 divulged information about the teacher's behaviour. Student 3 said that she was present at the time also being interviewed by the Principal. She told the Panel that she had not made a complaint to anyone prior to this and it was when Student 2 started to tell her story that she realised that she was also upset with and at the teacher's behaviour. Student 3 said that no other teacher at the school behaved in the same way towards her as the teacher did. She said that she had never seen Deputy Principal 1 put any student in a headlock or the Principal hug a student.

Under cross-examination Student 3 thought that she may have admitted to the teacher and Teacher 6 that Student 2 was smoking but she was not sure whether she had or not. She was not sure whether Student 2 said anything about being 'betrayed' to the teacher. Student 3 agreed that she and Student 2 had the keys for a few days and thought that eventually they gave them to a teacher. In response to Counsel for the teacher suggesting that the teacher had never hugged her or touched her breast, Student 3 said 'well that's a lie straight away.' Student 3 denied being fiery or aggressive and said that she had never behaved that way towards the teacher. She said that she had no recollection of any outburst in class or of screaming at Student 4 because he had said something provocative to her. Student 3 confirmed that the teacher has walked around the room and patted her on the head. She said that at the time she did not feel anything negative towards him. She thought he was just being a friendly guy. She acknowledged that the teacher did not 'grope' any students. Student 3 told the Panel that she saw the teacher touch Student 2. 'I was there - I know what he did.'

In relation to the incident with Student 3's homework she confirmed her statement that she was asking the teacher for help with her homework when he made the comments about to being in her bedroom. Student 3 disagreed with the teacher's comments that she was a trouble maker and a poor student. In response to Counsel for the teacher's proposition that Student 3 could not have seen the teacher touch Student 11 on the stomach in class because they were not in the same class, Student 3 told the Panel her recall was accurate. She said that she sat next to Student 11 in Year 10 English.

## **The Principal**

The Principal confirmed under oath that her written statement was correct. She told the Panel that she was the Foundation principal of the school and has continued in that role for 13 years.

The Panel heard that the Pastoral Care mentoring program was an integral part of the school's philosophy. The Principal said that full-time teachers were Pastoral Care Mentors to students in Year 7-12 vertical streamed groups. The particular mentor was the primary person responsible for relationships between students-parents-teachers. The Panel heard that students would know they were to go to their Pastoral Care Mentor for support and guidance. The Principal told the Panel that teachers would observe behaviour and activities in the playground and report to Pastoral Care Mentors. She said that the primary staff would meet once a week to discuss any issues that specialists might need to know and secondary staff would meet to discuss any behavioural, emotional and/or learning issues that might have arisen. The Principal told the Panel that the Pastoral Care role was not expected to delve into personal life issues – they would be referred to the Pastoral Care Coordinator, School Counselor or Principal. She said that the Pastoral Care Coordinator's role was taken on by Deputy Principal 1, a trained teacher and Assistant Principal. The Principal explained to the Panel that the School Counselor was an educational psychologist and attended the School 1 days per week although she could attend more frequently if required. She said that students could possibly seek private consultations.

The Principal told the Panel that if a student was emotionally distressed she would touch them or give them a hug. She said that this was done in a limited context where professional judgment determined it appropriate. The Principal said that in late July staff and students were all outside organizing for a whole school photo to be taken when she observed the teacher touch a student on the backside. She said it was a 'twisting' action in touching the bottom. She said that at the time she registered the action as totally inappropriate and too friendly and familiar but as she was dealing with several serious issues with other staff members she determined to follow it up with the teacher at a later date.

In reference to smoking the Principal said that if caught smoking anywhere whilst in the school's care there are consequences for students. The consequences include suspension with a form of reflection to complete at home. Also parents, school mentor, and staff meet to discuss in a group situation. She said that she would need a teacher or a reliable student to have witnessed the act to suspend a student. The Principal told the Panel that in Year 11 on the Outdoor Education Camp Student 2 was caught smoking. She said that she recalled in a meeting with the teacher that he raised the issued of Student 2 smoking. This was when she was in Year 10, probably about late June of that year. The Principal told the Panel that Student 2 was not suspended at the time probably because it was not verified. She said that she did not keep a record when there is no suspension but particular teachers would have their own notes and the student's mentor would have a record.

The Principal told the Panel that she knew Student 2 better than most other students because, for a period of time, Student 2 was quite unhappy. She said that she was

being difficult and wanted to leave school to start work. The Principal told the Panel that she spoke to Student 2's parents reasonably often. The Principal said that Student 2 was not dangerous in any way. The Panel heard that the Principal knew Student 3 less well. She said that she came to the school in the mid secondary years and that she had some dealings with her because of some unacceptable behaviour. She said that she was not potentially dangerous. She felt that Student 3 was not aggressive but rather her short fuse got her into trouble. The Principal said that she had less contact with Student 1 than with Student 2 and Student 3 as she is regarded as a model student who behaves appropriately and therefore does not come to her attention. The Principal said that the smoking issue concerning Student 2 and Student 3 was raised at the August 4 meeting when the anonymous letter was discussed. She confirmed that this was the only time the incident that occurred during the school photo was raised with the teacher.

The Principal said that at that meeting she gave clear instructions to the teacher that, whilst the allegations in the anonymous letter were being investigated, he was not to touch any students. She said that she mentioned to the teacher that Deputy Principal 1 and Deputy Principal 2 had spoken to him about unprofessional behaviour and that she had seen him touch a student's bottom.

Under cross-examination the Principal disputed Counsel for the teacher's proposition that Deputy Principal 2 and Deputy Principal 1 had not said anything to the teacher about unprofessional behaviour. The Principal agreed, that at the time of the bottom touching incident during the school photo, she did not follow up with the teacher immediately but said that it was raised with him later.

The Principal said that she would have to check her notes to confirm whether or not she had told the teacher that she had hugged students. She said that her notes were typed up from her handwritten notes. She denied mentioning the Gavin Hopper case as well as saying that the letter was written as a 'tasteless' joke.

She said that the management team felt that a parent had written the letter although the poor spelling questioned that assumption. She said that the teacher felt that it might be Student 2 and Student 3 getting back at him because he had reported them for smoking.

The Principal acknowledged that the anonymous letter confirmed that the students thought the teacher a good and friendly teacher. She added that the letter also suggested that the students thought he was going too far. She told the Panel that the teacher, in the meeting, accepted that he touched their hands and hair but he denied touching breasts.

The Principal said that the teacher told the August 4 meeting that he had reported Student 2 and Student 3 to Teacher 6 for smoking behind the gym and because of this he thought they might have written the letter. The Principal told the Panel that she has no recollection of Teacher 6 sending Student 2 and Student 3 to her regarding this smoking issue. In response to Counsel for the teacher's proposition that Student 2 had denied, admitted, denied the smoking, the Principal said that if students did indeed

change their mind and make retractions then she would have concerns about, not so much their honesty, but the reasons behind why they had changed their mind. The Principal stated that she had no recollection of the teacher telling her at the August 4 meeting that Student 2 had said to him that she felt betrayed by him for reporting her for smoking.

The Principal also told the Panel that the teacher did not tell her on that day that the school keys were missing. She said that it was not until the next day that she found that out. She recalled that a student had reported seeing Student 2 with the keys and Deputy Principal 2 and the Principal then went to see Student 2 to investigate further. The Principal then told the Panel that Student 3 at a later meeting insisted that teachers should look further which they did and then found the keys some 5 days after they had gone missing. In response to Counsel for the teacher's proposition that this was a dangerous situation, the Principal stated that she thought it irresponsible not dangerous. The Principal said that it seemed strange that they were in that position for all of that time. She said that Student 2 and Student 3 denied taking the keys and always maintained the same story that the teacher had given them the keys. In response to Counsel for the teacher saying that both Student 2 and Student 3 said that they had stolen the keys the Principal responded 'that's news to me.' She stated that if both students' evidence to the Panel was that they had stolen the keys then obviously they had lied to her. The Principal said that the students were not punished, as she had no evidence that they had stolen the keys.

The Principal told the Panel that Student 2 was an unsettled student and had difficulties with some teachers. She stated that she had no knowledge of Student 2 stealing. The Principal, in response to the proposition of Student 3 having a 'short fuse', said 'she lets it all out' and that she was aware that Student 3 had had an outburst in a classroom and had walked out of a classroom.

The Principal told the Panel that the teacher returned to the school to resume teaching and was under clear instructions not to touch students. She stated that there were no further complaints about his behaviour. She said that Deputy Principal 2, in monitoring the teacher's behaviour, questioned some students and all said his behaviour was appropriate. The Principal stated that after seeking advice from the Association of Independent Schools Victoria and the school solicitor she was comfortable with the teacher continuing teaching. She agreed with Counsel for the teacher that if she had concerns or lacked trust in the teacher's behaviour she would not have allowed him back to teach.

The Principal told the Panel that at the August 4 meeting she found out from Deputy Principal 1 that he had spoken to the teacher previously about his behaviour towards students. She stated that it was his professional judgement, as Pastoral Care Co-ordinator, not to mention it to her. She said that she had not raised the issue of him touching the bottom of a student prior to meeting with the teacher and that she now regrets not doing that. The Principal told the Panel that it was during the time of interviewing Student 2 and challenging her story of a teacher giving school keys to a student, that Student 2 said words to the effect 'You don't know the half of what he does that he shouldn't.'



In response to when the students were interviewed the Principal said that she and Deputy Principal 2 interviewed the girls and Deputy Principal 1 interviewed the boys. Students were interviewed separately and then kept from class. Student 2 suggested names of students to be interviewed.

The Principal stated that, upon hearing the definition of 'I can see what you had for breakfast' to mean that you can see up someone's dress, that it was possible she passed that on to the teacher. She also told the Panel that the teacher denied that he made that comment. She stated that she told the teacher that although the students were embarrassed and uncomfortable, they liked him but they wanted his inappropriate behaviour to stop.

The Principal confirmed to the Panel that she was the author of the document at page 24 and that the handwriting is Deputy Principal 2's. The documents at pages 25-27 are Deputy Principal 2's notes. Documents at pages 29-33 are The Principal's notes.

### **Deputy Principal 1**

Deputy Principal 1 confirmed under oath that his written statement was correct. He told the Panel that he has been a teacher and Deputy Principal at the school since January 2000. He stated that his role included being Pastoral Care Coordinator.

Deputy Principal 1 explained to the Panel that once a week the pastoral care mentor would meet with students to discuss discipline and welfare issues, to check diaries and to conduct activities such as group building. He stated that he would meet with these mentors once a week about discipline issues and to see if there were any concerns or issues to be followed up. He said that the Principal would have a section of this meeting. Deputy Principal 1 told the Panel that if there was a discipline issue there was a 'chain of command' in the College to be followed. He said that his role of Pastoral Care Coordinator was known in the school as he would speak at assembly and visit classes.

Deputy Principal 1 told the Panel that the 2004 Year 10 English class was 'not an easy class'. They were a difficult class to deal with as they came through the school and took more time than other classes. The Panel heard that the questionnaire he gave the boys was broad so as not to lead them in their answers. The responses he got from the boys included their concerns about the teacher's behaviour of patting and hugging the girls. He said that the boys felt that he was too friendly with them. Deputy Principal 1 told the Panel that he saw the teacher twiddling Student 1's hair in the classroom. He said that her body language indicated to him that she was not happy about it and that she may have said 'stop it' but he was not sure. Deputy Principal 1 stated that he would be called in to the Year 7-10 classrooms a number of times a week to monitor classes. Deputy Principal 1 told the Panel that he observed that the teacher was not focused on the students working. He said that the teacher's familiar, casual approach did not allow him to manage the class appropriately. The Panel heard that he had informal chats with the teacher about the need for him to have a firmer approach when disciplining students and that they needed more direction with work requirements. He said that he would have had at least a dozen chats with the teacher about these issues. Deputy Principal 1 stated that prior to these current matters coming to light, teacher 8, a Senior

English teacher had told the teacher that he should not be too familiar with students. He said that conversations about student management would be in a collegial context of what would work better with students and the teacher would agree to be firmer with them.

Deputy Principal 1 told the Panel that he has observed the teacher during recess and lunch breaks being very tactile with students but not in an offensive way. He said that he has seen him put his arm around a student in a type of cuddle and pat and rub students' shoulders. His written statement said that he has seen him rub a student's cheek and touch their nose.

Deputy Principal 1 stated that he has physical contact with students when he 'bonks them on the head' with a 'how you going mate?' He said that he is very aware of how a teacher should behave towards students. He said that it is a sacred area of trust and that he would not want to arouse any concerns with students. Deputy Principal 1 told the Panel that the teacher's behaviour warranted noting and reporting because it was 'more casual, more familiar than I would be comfortable to do myself.' He described to the Panel that when the teacher rubbed a student's cheek it was with the back of his index finger on the cheek and his forefinger touching the nose.

In relation to the Parents and Friends meeting in February 2004 where the teacher described touching a young boy's nose as part of a joke, Deputy Principal 1 said that he could recall the general situation of the interaction but not the specifics as described by the teacher.

Deputy Principal 1 told the Panel that there are some students who will talk to teachers other than their Pastoral Care Mentor. He said that at weekly pastoral care meetings students would talk about general life matters not just their school life. He said that if they talked about a private matter, eg a student being late for school because they had stayed at their boyfriend's house the night before it would not be a matter, at the meeting, for further discussion. Deputy Principal 1 agreed that the teacher, along with other teachers, had raised concerns about Student 2 at weekly meetings of the pastoral care mentors. He said that issues raised included her academic performance and her behaviour regarding authority issues. He said that other students were discussed in the same manner and that there was nothing outlandish that they were concerned about in relation to her. Deputy Principal 1 agreed that stealing keys would be regarded as a serious matter.

Deputy Principal 1 told the Panel that he acted as a referee for the teacher when he left the College. He agreed that he wrote that the teacher cared about students and that he had motives of the highest order. He stated that he has since changed his view from this, as at the time of the reference, he was not party to the allegations or interviews with the girls who had issue with the teacher. Deputy Principal 1 agreed that prior to August 2004 he had not spoken to the teacher about any inappropriate conduct.

In relation to the missing keys matter, Deputy Principal 1 told the Panel that the teacher had reported to him that his keys were missing. He stated that he was concerned because they had been missing from the day before. Deputy Principal 1 said that he then

interviewed Student 2 and Student 3 to find out what they knew about the missing keys. Deputy Principal 1 acknowledged that the report from the responsible students that they had seen Student 2 with the keys is inconsistent with Student 2's account that the teacher gave her the keys so that she and Student 3 could complete work. He told the Panel that both Student 2 and Student 3 both wrote something down in explanation but he could not recall what Student 3 had to say. Deputy Principal 1 told the Panel that he was suspicious of Student 2's and Student 3's explanation regarding the missing keys, but that he could not describe Student 2 as dishonest, in fact, she is often painfully honest. The Panel heard that Deputy Principal 1 had a sneaking suspicion that the girls knew more about the missing keys than they were letting on.

Deputy Principal 1 acknowledged that there was a small group of Year 11 girls who supported the teacher and wanted their views passed on to the Administrative Management Team.

Deputy Principal 1 stated that he did not raise the matters of twiddling students' hair, touching a student's nose, or putting his index finger on a student's cheek, with the teacher. He said that he regarded himself as a tactile person who has play wrestled with a male student who was having difficulties relating positively. He said that this was after a long process of supporting this boy. He told the Panel that he had behaved like this before and that it was in a context of professionalism. He believed that the boys were entirely comfortable with the wrestling.

Deputy Principal 1 said that the manner in which the teacher behaved towards the students was intrusive but that he would not describe it as having sexual or suggestive elements. In response to Counsel for the teacher's question regarding whether or not any students were reluctant to be part of the teacher's class, Deputy Principal 1 said that the daughter of the parent who wrote the anonymous letter had those feelings. Deputy Principal 2 agreed that the teacher's classes continued without incident until he left the school. When asked if the teacher was a dedicated teacher, Deputy Principal 2 said that he had reservations about that as students thought they were being hard done by.

In response to a question from Counsel Assisting regarding the weighting of comments about the teacher's behaviour from Student 1 as compared to Student 2 and Student 3, Deputy Principal 1 told the Panel that the Principal and Deputy Principal 2 handled those interviews and issues so he could not make a judgement.

### **Deputy Principal 2**

Deputy Principal 2 confirmed under oath that her written statement was correct. She said that she has been Deputy Principal at the school since 2002 and has been at the school since it opened in 1994.

Deputy Principal 2 told the Panel that the handwritten notes on document numbered 24 is her handwriting. She also said that she was the author of documents numbered 25 and 26. She said that Document 27 were notes from monitoring that were typed up by her. Deputy Principal 2 confirmed that Student 11 was a student in the teacher's 2004 Year 10 English class, the same class as Student 3 and Student 2.

Deputy Principal 2 acknowledged that she was seen in the lift with the Principal but that they did not discuss her evidence. She said that the Principal suffers 'lift phobia' and needed her to accompany her down.

In her written statement Deputy Principal 2 stated that she had observed that the teacher was very friendly with students and spoke with them in a way that she thought was far too familiar. The students described him as 'touchy feely' and he was. She stated that students would call him 'Mr B' whereas there was an expectation that teachers would be called by their full name. Deputy Principal 2 told the Panel that before the August 4 meeting she did not raise with the teacher any concerns she may have had with his inappropriate behaviour. She said that she could not recall another teacher being called 'Ms G'. The Panel heard that Deputy Principal 2 had not spoken to the teacher about being 'touchy feely' but she said that she thought that Deputy Principal 1 had spoken to him about it as Deputy Principal 1 had mentioned it to Deputy Principal 2. Deputy Principal 2 told the Panel that she saw the teacher touch students whilst on yard duty.

Deputy Principal 2 said that her recollection of discussions regarding whether a parent or student wrote the anonymous letter, were that the Principal acknowledged that it was possible it had been written by a student. Deputy Principal 2 thought so as well.

Deputy Principal 2 said that she was unaware of the missing keys until the August 4 meeting. She said that the teacher suggested that Student 2 and Student 3 might have had reason to take them because he had reported them for smoking. Deputy Principal 2 told the Panel that she had no role in investigating the missing keys other than when asked by the Principal to accompany her to look into the bags and lockers of Student 2 and Student 3. She said that Student 3 came to her later and suggested that the keys were in the classroom and that they should go to have another look. Deputy Principal 2 said that they found the keys and that she probably did not believe Student 3's version. Deputy Principal 2 told the Panel that she was not aware that Student 3 and Student 2 said that they took the keys for a bit of fun.

Deputy Principal 2 stated that she did not have a close knowledge of Student 2 so she could not comment on her character but that she had no reason to believe the allegations were untrue. Deputy Principal 2 said that the only direct contact she had with Student 2 was regarding the smoking issue on an Outdoor Education camp. The Panel heard that Deputy Principal 2 regarded Student 1 highly and had no problems accepting what she had to say. She said that she did not have the same regard for Student 2 in terms of the way she approaches her school work but added that she had never heard a bad report about her.

Deputy Principal 2 told the Panel that her role in interviewing the students was mainly to take notes whilst the Principal asked the questions. She said that document number 24 was the Principal's notes, and documents 25 and 26 and 27 were her notes. Deputy Principal 2 explained to the Panel that she was not sure of how students came to the interview, as Deputy Principal 1 was responsible for that. She said that the students were selected for interview as Student 2 had suggested female students who would have cause for complaint and it was possible that they selected students as well. The

Panel heard that there was not a list of questions as such but that fairly similar questions were asked of all the students.

Deputy Principal 2, in her written statement, stated that the girls said that they had had enough. She said that their discomfort was combined with not being challenged in class but that they were also at pains to avoid getting him into trouble.

Deputy Principal 2 told the Panel that after the August 9 meeting, the teacher undertook normal classes with the undertaking not to touch students and to implement the curriculum appropriately. She acknowledged to the Panel that up to this point there had been no complaints about the teacher and that mothers of students had said that their daughters should deal with it on their own. She said that one mother was concerned enough to say 'Don't be on your own with Mr B.'

Deputy Principal 2 stated that she had seen the teacher put his hand on the back of the shoulder and on the bottom of students. In response to a question from Counsel for the teacher, Deputy Principal 2 could not recall exactly when these incidents occurred and acknowledged that the incidents were not raised with the teacher until one of the August meetings, and that no action was taken.

Deputy Principal 2 told the Panel that in the monitoring interviews the students were happy that the teacher had backed off and they were working well in class. She acknowledged that after August 4 meeting there was no trouble in the teacher's classes.

### **The teacher**

The teacher confirmed under oath that his written statement was correct. At the time of the allegations the teacher was a teacher at The school. He told the Panel that he is presently employed at the Child Support Agency.

The teacher explained to the Panel that at the end of a class he realized that his work keys were missing. Later that day he reported the lost keys to reception. He said that he was approached by a student, Student 8, who told him that that she knew that Student 2 had taken his keys. Later he found a note on his desk, apparently from Student 1 and Student 8 to say that Student 2 had been seen with his keys. The teacher said that he immediately related these events to Deputy Principal 1 who later told him that he had interviewed Student 2 and Student 3 who suggested he check the teacher's desk. Deputy Principal 1 did this but did not find the keys. When police were called in the keys were found on the floor next to the teacher's desk.

The teacher informed the Panel that on August 4 he was involved in a sports day and when he returned he found a note from the Principal asking him to attend a meeting in her office. At this meeting he was informed of the anonymous letter. He said that he did not know who could have written it but mentioned that he had reported Student 2 and Student 3 for smoking to Teacher 6 who in turn took the girls to the Principal. The teacher said that he later saw Student 2 and she told him that he had betrayed her by reporting her. The teacher suspected that because of this the girls might have been responsible for stealing his keys.

The teacher told the Panel that prior to this meeting there had been no discussion between school management and him regarding his behaviour towards students. He said that he had a less formal way of acting towards students than other teachers. He admitted that he has placed his hands on students' hands, forearms and shoulders but that he had never touched students inappropriately. The teacher said that after this meeting he withdrew from students. He said he felt that he distanced himself from them. He told Deputy Principal 2 that he did not want the name of the letter's author pursued any further because he did not want it to affect his teaching. He told the Panel that after August 4 there were no further complaints about his behaviour.

The teacher told the Panel that at a meeting on August 9 he was advised that some students from Year 10R had been interviewed and more serious matters had been raised. The teacher said that he was advised of the allegation that he had made a comment to a student to the effect "I can see what you had for breakfast". He said he was shocked and did not know what the comment meant.

He strongly denied ever having done such a thing. He said that he was trying to make sure that his teaching was on a professional level and that any contact was done for a pastoral, caring reason. There was no malice or sexual intent. The jovial perspective is purely his nature. The Panel heard that at this meeting the Principal told the teacher that he was to conduct his classes professionally and that he was to have no physical contact with students. The teacher agreed to this.

The teacher said that he was approached by three Year 11 students who told him that some Year 10 students were responsible for the letter and were 'out to get him'. He said that he told them to see Teacher 7 who was the union representative at the school. The teacher said that he continued to teach at the school until the 23 August when he was stood down. The teacher prepared work for the students so that his students would continue to receive the correct work requirements.

The teacher told the Panel that the school encouraged physical contact with students in a pastoral sense. The teacher said that his contact was to greet, to congratulate, or to comfort. He said that teachers generally made contact with students in the school but there was no sexual or malicious intent. He said that he had observed Deputy Principal 1 hold students in a headlock and wrestle with them.

The teacher said that he had withdrawn and isolated himself from the local community. He said that on reflection he could see why it is wrong to put a hand on a student and how a student might feel uncomfortable. 'I will not do that again.' He said that there was never any intent to make students feel uncomfortable and that he had no knowledge that students were feeling uncomfortable.

The teacher said that he had never put a hand on a student's back but that he has put his hand on a shoulder or across the shoulder. He said that it is possible that his hand may have slipped down from the shoulder to the back. He said that he has tugged on a student's shirt to tell him to tuck it in.

The Pastoral Care approach of the school was explained to the Panel as a monitoring program of students by a mentor. There was a weekly meeting with the same group of students to monitor. This was different to the Pastoral Care program at the school where they had students do activities to address issues such as bullying and self esteem. Also older and younger students worked in a buddy program.

The teacher told the Panel that he has never touched a student on the bottom. He said that he may have tugged on a student's shirt while preparing for the school photo but he has no real recollection of this. The teacher said that he has played with a student's hair in the context of a drama class. He said that he has ruffled a student's hair in an English class, and has ruffled hair as a greeting. This was with both male and female students. The teacher explained to the Panel that he played with Student 12's hair in an English class and manipulated it into a bun as in the *Maestro* novel. He said that he has never touched hair in a sexual or untoward manner and that no student has ever suggested to him that they were uncomfortable in this regard. In response to Deputy Principal 1's assertion that he had seen the teacher laugh off a student's discomfort, the teacher denied that he has ever done this.

The teacher told the Panel that the only conversation he has had with Deputy Principal 1 regarding classroom management or his behaviour was when Deputy Principal 1 asked him not to raise his voice because he could hear him in his classroom. He said that Deputy Principal 1 did not mention inappropriate behaviour. The teacher said that he has never placed his arm around a student in a type of cuddle and he denied ever drawing in a student as in a cuddle. He told the Panel that he denied ever drawing Student 2 into his coat while facing her.

The teacher said that he has never rubbed a student's shoulder. He said that he has put his hand on a shoulder but that it was not sexual. He told the Panel that he has never rubbed a student's cheek or touched their nose. He said that he has no recollection of ever intentionally putting his hand on Student 1's stomach or of touching her waist. He added that he might have put his hand up to stop her and in so doing could have touched her waist with his hand.

The teacher denied ever intentionally placing his hand on Student 1's breast. He said that he might have touched her on her side but that he has no recollection of touching her breast. He said that if he had his hand on her shoulder his hand might have slipped down to her side. The teacher told the Panel that he has never stroked Student 1's face or played with her hair. He did say that if he had his arm on her shoulder this might have felt like he was touching her hair. The teacher denied ever intentionally staring at a student's legs and denied staring at Student 1's legs. He said that he might have been staring down in a blank fashion that may have been misconstrued as him staring at her legs.

In relation to leaning over Student 2 and touching her on her back with his chest, the teacher said that it was possible this happened whilst he was checking her work. If it happened it was momentary and not intentional. The teacher told the Panel that he might have put his arm around Student 2 but that he has no recollection of doing so. He said that she had disclosed to him the year before that she was sexually active. He

was wary of her street sense and was wary of not making physical contact that could be misconstrued. The teacher said that he has never massaged Student 2 or any other student. He said that he might have touched her hair if he touched her shoulder. The teacher said that he has never taken Student 2's hair and placed it around her ear. He said that he has never rubbed her hands or touched her hands to encourage her to write. He said that he verbally encouraged her to write.

The teacher told the Panel that he has never touched Student 3 on the breast or on her arm. He said that she was a new student to the school and was a highly-strung and volatile student. He said that he approached her with caution. He told the Panel that he had seen Student 3 erupt in class when a boy said that he had had sex with her. She stormed out of the room. He said that Student 3 manipulated situations with meek or mild students in the class. She bullied quieter members of the class. He said that he has never patted Student 3 on the head or stroked her hand.

The teacher told the Panel that he has never wrapped a student in his coat. He said that he has put his arm around a student whilst wearing the coat with the coat open which could give the impression that they were wrapped in it.

The teacher said that he never wrapped Student 2 in his coat. He said that in one instance, he took his coat off in the classroom and put it near his desk. He later saw Student 2 wearing it and asked her to take it off. He said that she has never worn his coat outside the classroom.

The teacher told the Panel that he has never said to a student 'You know there is only one man for you.' He said that he did ask Student 1 if she was in a relationship but that the conversation was brief and the question was asked in a pastoral care context.

In relation to telling Student 1 that he was going to marry her sister, the teacher explained to the Panel that during a school activity, staff sang with the Police Band. He was one of those who sang with the band to the students. He said that through this activity other students joked to him that he was going to marry Student 1's sister. The teacher said that he responded to the effect 'We'll see if it is a spring or Easter wedding.' He said that in his next class the teacher told Student 1 about this incident. He said that he could not recall saying it in front of the whole class. After school he made a similar joking comment to Student 1. He said that he could not recall saying to Student 1 that they would have to call each other 'bil and sil'.

The teacher denied saying to the class when discussing the novel *Maestro* 'Some men become more aroused by women in their underwear than naked.' He said he used the analogy that if you had a magazine and there was a person in underwear and a naked person you would be more attracted to the person in underwear. The person in underwear leaves something to the imagination. The teacher told the Panel that in hindsight, he should have used another analogy as he now acknowledges that the analogy he used could make someone feel awkward.

The teacher told the Panel that he has never called Student 2 'pumpkin' or 'honey' or any of these kinds of names. He said that whilst performing role plays and showing how



you can talk to someone without using their names, situations required him using these names but they were in the context of a drama lesson.

The teacher stated that he never said to a student 'I can see what you had for breakfast.' He said that he had never heard of the phrase until The Principal mentioned it to him and provided a definition.

The Panel heard from the teacher that he never asked Student 2 about her relationship with her boyfriend. He said that she volunteered information whilst talking with him on yard duty. He said that some of that information, including a discussion at home with her boyfriend and father about oral sex, caused him to decide to treat her warily. He said that as Student 2 had a history of coming late to school, he would, in a pastoral care context, enquire as to where she had stayed the night before so as to pursue the best option for her routine to be maintained. The teacher said that he never asked Student 2 if she had sex with her boyfriend. He said he was never told not to have personal discussions with Student 2.

The teacher told the Panel that he had never made any comments that were of a sexual manner to a student. He said that he did not say 'Only if you make me' in response to Student 2's 'Come again' comment.

The teacher stated that he did not say to Student 3 that he was in her bedroom and could see dirty underwear in her bedroom. He explained that in response to homework not being completed he acted out a scenario of the students giving him a migraine. The teacher told the Panel that Student 3 never asked him for help with her homework. He said that she was lacking in confidence and was a disruptive student. She worked in groups so that the group could carry her through. He said that in a pastoral care context he did ask her about her personal life but did not ask her if she had a boyfriend. He stated that he asked about her relationship with her mother to check patterns of behaviour. He said that he asked all students about their weekends.

The teacher told the Panel that since leaving the school he has sought assistance from his GP. He had little information of the allegations or students involved it was stressful for him.

He said that on reflection he could see how a student might feel discomfort with a teacher's hand on their arm or shoulder. He said he is now more wary of involvement with people. He said that he now plans his day so that he has minimal physical contact with people so that his actions cannot be misconstrued. The teacher told the Panel that he is remorseful primarily for making students feel discomfort. He said that it is not in his nature to be angry or sinister. He said that he needs to take a backward step. He told the Panel that he is a lively, caring, Christian person who likes to become involved in school and community activities. The teacher stated that he has exercised poor judgment but that he never intended any malice or sexual suggestiveness.

The teacher told the Panel that he now makes minimal physical contact with people. He said that he has a concern for friends but does not ask prying questions. He said that his circle of friends has diminished to people who know about this.

The teacher told the Panel that he wants to teach again and with this in mind he has enrolled to in various professional development courses, covering discipline and welfare; and teaching students as individuals. He stated that these courses would help him in teaching so that his actions are not misconstrued. He said that he would abide by any decision made by the Panel regarding further training.

Under cross-examination the teacher told the Panel that the 'wake up call' for him was hearing information that students were feeling uncomfortable in his classroom. He said that the August 4 meeting was not specifically the trigger but that was when he started to distance himself physically from students. He said that he behaved the same way towards Year 10 classes as in other classes. He said that once he became aware of the allegations his behaviour changed in all of his classes. He said that he was more aware at looking for scenarios that may have taken place. In terms of the allegations that he has admitted to, the teacher told the Panel that he physically removed himself from students. He said that he would say hello but would not touch students. He told the Panel that after the anonymous letter his behaviour changed in his Year 10 English class, and in other classes it changed after August 9. He said that he thought the letter had come from the Year 10 class not from a parent. He said that he was unaware that he made the girls feel uncomfortable. The teacher said that as a consequence of the letter, he made sure that he would not make anyone feel uncomfortable. He told the Panel that at the time of the letter he was still unclear of what the complaint was about. He said that he was focused on the issue regarding the hand on the breast. In response to a question from Counsel Assisting regarding his insight into the complaint, the teacher said that at that time he could not see that placing a hand on a shoulder or a forearm would make a lot of people feel uncomfortable. He said that at that time he did not see that he was making the girls feel uncomfortable.

The teacher told the Panel that he started to gain some insight into how a person would feel uncomfortable after the interview with the complaint investigator and after his dismissal and visits to his GP. He said that he started to gain more insight into his own actions and behaviour probably in late 2004. He said that he did not discuss any of these realizations with colleagues or friends because he did not know the specifics of the allegations. He said that he was aware of a general problem only. He told the Panel that he was advised not to discuss with anyone so that nothing could be taken out of context. The teacher told the Panel that his GP has not provided a report for the Panel. He stopped seeing the GP around November 2004. The Panel heard that the teacher discussed the issues of touching students with his GP.

In response to Counsel Assisting's assertion that in Doctor 1's letter dated 12 October 2004, there is no indication of any insight shown by the teacher into his behaviour or the effect of his behaviour on students, the teacher stated that he was still not aware of details of complaints or names of complainants. He said that the focus of his multiple stress related symptoms related to the process of inquiry at the school. He agreed that the doctor's report was correct in stating that the process was the cause of his multiple stress symptoms. And that to that point in time there had been no insight into the way things had happened.

As the teacher had mentioned many times in his evidence that he did not intend to cause any discomfort, he was asked if he thought that the hearing's purpose was to look at his intent. The teacher told the Panel that he believed the purpose of the inquiry was to see if he was fit to remain a teacher.

In response to what the professional obligations of a teacher are in dealing with issues of sexual harassment with teenage students, the teacher told the Panel that he was not versed with it but through mandatory reporting the teacher would report it to the Principal or school authorities. Pastoral Care processes would be used at the school. The Panel heard the teacher's definition of sexual harassment as any harassment that was unwanted, untoward or misconstrued to be an innocent mistake that is not warranted. The teacher said that a teacher's professional responsibility in terms of them making unwelcome advances to students would be to stop it immediately. He said that body language and perhaps comments would let him know that his actions were unwelcome. He told the Panel that the body language of the girls was never obvious to him.

The teacher said that the girls' discomfort was never obvious to him but it is now. He said that he just never read the signs. He told the Panel that he doesn't put himself in those situations now. In response to Counsel Assisting's question regarding him now living 'in a bubble' and simply removing himself from any interaction with people, the teacher said that now that he has more information of the process and the allegations he feels that he can get on with his life.

Counsel Assisting asked the teacher if the constraints of his industrial dispute with the school restricted him discussing his insight into his behaviour with his colleagues. The teacher said that he could not discuss it with anybody. The teacher told the Panel that his understanding now of a teacher's professional obligation to a student in terms of discussing their personal lives involves taking the opportunity to chat with students but not continuing on with their jokes. He would show a general concern and have some general communication with them. He told the Panel that he would know where to draw the line from being concerned to intrusive by being aware of when students raise personal issues.

Counsel Assisting questioned the teacher's knowledge of students' personal lives as written in his statement and whether or not it is appropriate for a teacher to hear or have that information. He said that it was not and that is why he reported it to the Pastoral Care process. The teacher told the Panel that he did not pick up on any reactions from Student 1's mother re the marriage issue.

The teacher denied the evidence given about the event related to the school photograph. He said that he recollects Deputy Principal 1 coming into his classroom but not to see him about inappropriate behaviour. He said that from his perspective the evidence given by his colleagues did not take place.

The Panel heard the teacher deny that he stroked Student 1's hair or face. He said that his general demeanour in class was light-hearted and that he communicated verbally and made sure work was done. He said he might sit on a desk in the front. The teacher

stated that he made verbal contact with all students. He said that initially he might have made physical contact with students when they came to his desk. He told the Panel that he was a person who generally touched people by putting an arm on the shoulder, upper arm, or arm on either side of shoulder. He said that he is absolutely more aware of this now than at that time and makes sure that there is physical distance between people.

The teacher explained and demonstrated how he may have inadvertently touched Student 1's breast. He said perhaps his hand accidentally went below the shoulder to the shoulder blade to under the armpit. Counsel Assisting put to the teacher that his explanation of his action and Student 1's description are incompatible, to which he agreed. The teacher also denied that he touched her face. The teacher said that he recollected the single incident of asking Student 1 about her personal relationships as it was in a context of the novel *Maestro* which involved relationships. He said that it was also part of the Pastoral Care Program at the time. He said that he also asked other students not just Student 1.

The teacher told the Panel that Student 9 came to see him to tell him that some of the girls were concerned with his behaviour towards them. He stated that she said they were concerned that he was being too friendly. He said he thanked her and walked away. He said that he felt upset and shocked but did not recall whom he spoke to. He said he was sure that this occurred after the August 9 meeting because by then he had made a conscious effort to pull back physically from students.

The teacher said that Student 2 could hold a grudge as he had seen her do this with other teachers. He said that he was extremely wary of her because of this. He explained his extensive conversations with her as being part of a larger group of students in the yard not one on one conversations. He said that information regarding Student 2's welfare was passed on to Pastoral Care and that any conversation involving her relationship with her boyfriend was in the context of how that effected her school requirements, eg. being late for school.

The teacher explained his touching of Student 2's back as being whilst checking her work. He said the issue of touching her arm was probably because of his personality.

In his evidence the teacher was emphatic that he had never touched Student 3. He said the difference between touching Student 3 and Student 2 was that he was still in the process of building a relationship with her. He said that Student 3 was a volatile student who he did not know very well as she was new to the school. In response to a question from Counsel Assisting that therefore there were some students who he never touched, the teacher said that that was not the case. He said he did not touch Student 3 and he was not sure why. The teacher explained that although he had warning bells with Student 2 from Year 9 he still touched her because she was the type of person you needed some sort of affirmation with.

The teacher told the Panel that Student 3 did not do a lot of homework. He said that he recalled the occasion relating to homework when he described to the students that they were giving him a headache over their homework. He denies that Student 3 asked him

for help with her homework. The teacher explained his after class discussions with Student 3 as being about general weekend plans and how things were going in her life. To Counsel Assisting's assertion that the conversations included more specific information about her and her family and that it was not just general information, the teacher agreed that the conversation did include that. He said that it was through these conversations and classroom behaviour that he came to experience her volatile nature hence his wariness of her. He said that these conversations, as well as her classroom behaviour towards meeker students, made him think that she was potentially dangerous. He acknowledged that his recollection of events in his Year 10 English class is at odds with what three students have indicated.

The teacher told the Panel that the courses he is undertaking involved classroom management. In response to Counsel Assisting's question as to whether he had thought of enrolling in a course on gender issues, he stated that he would be open to that although he did not think it purely a female issue but rather related to both boys and girls. The teacher denied some of the boys' written evidence which said that the teacher behaved inappropriately towards the girls. He said that the boys were friends of the girls making the complaints. He acknowledged that Student 1 was not involved with Student 2 or Student 3.

The teacher said that he did talk to the pastoral care person at the Church in a general fashion but with no specifics. In response to Counsel Assisting's question regarding whether he discussed his insight into his behaviour with her, he said that he told her he had touched students and that if he went back into a classroom it would never happen again.

The teacher explained to the Panel he has changed his behaviour when working with people. He is more aware of not being physically close. He plans ahead.

### **Teacher 1**

Teacher 1 confirmed under oath that his written statement was correct. Teacher 1 is a teacher at School 1, where he has been since 1987.

Teacher 1 stated that he commenced teaching at School 1 in 1983 and has had a number of positions of responsibility. He stated that he first met the teacher when he was appointed to a teaching position at the school in 1998.

In response to a question, Teacher 1 said that he had observed the teacher's teaching and that he felt that the teacher was a highly regarded Drama teacher. He stated that the students enjoyed going to his classes and that he "lifted the profile of the subject in the school"

Teacher 1 stated that the teacher had been appointed a Pastoral Care Coordinator at the school. He knew the teacher very well for three years and since then has learned more about him. He stated that the teacher is a loyal, reliable and trustworthy person.

## **Teacher 2**

Teacher 2 affirmed on oath that her written statement was correct. Teacher 2 is a teacher at School 2.

Teacher 2 stated that she first met the teacher when they were both studying at University 1. She later took a position as an English and Drama teacher at School 1, where the teacher was teaching. She shared a house with the teacher and they were both involved in school, social and community activities.

Teacher 2 told the Panel that she had never team taught with the teacher and she had never directly observed him teach. She said that they shared a producing and directing role with a school drama production. Teacher 2 stated that the teacher had a quirky sense of humour. She said he had 'an ability to play on words and talk to students in a way which makes them relax.' She further stated that 'I have rarely seen the teacher touch a student under any circumstances...I have seen him pat a student after a school production.'

Teacher 2 told the Panel that the teacher discussed with her the need for him to be more vigilant with his contact with students. She said that they discussed the expectations of a professional teacher. "The teacher appreciated boundaries."

Under cross-examination, Teacher 2 said that the teacher had mentioned two of the allegations against him - the *Maestro* and the touching of the breast incidents. She said that he discussed no other allegations with her. Teacher 2 confirmed to the Panel that she had seen the teacher touch a student after a drama performance but that she had never seen him touch students in any other circumstances.

## **Teacher 3**

Teacher 3 affirmed under oath that her written statement was correct. Teacher 3 gave evidence via telephone link-up. Teacher 3 is a classroom music teacher with 25 years experience. She stated that she had taught part-time at School 3 and the school and then full-time. She is no longer at the school.

Teacher 3 stated that she was at the school when the teacher was appointed to the school. She said that he had a relaxed manner with students and could harness their energy and bring about enthusiasm. Teacher 3 told the Panel 'He was an inspiration to me and my colleagues. He was always optimistic and always worked towards making things happen.' When the Performing Arts Building was completed and the Drama and Music staff were combined, the teacher shared the room with two others.

Teacher 3 stated that the teacher interacted well with students, although she only fleetingly observed him once or twice in a teaching situation. She did not observe him have any physical contact with students.

When asked if she had any interaction with the teacher outside school, she stated that there had been some interaction. Teacher 3 stated that 'the teacher is funny and very open to people...he makes friends very easily'. She considered the allegations against the teacher as 'surprising'.

Under cross-examination, Teacher 3 told the Panel that she had not discussed the allegations with the teacher.

### **Witness 1**

Witness 1 confirmed under oath that her written statement was correct. Witness 1 stated that she was a Team Leader with a Child Support Agency in Melbourne.

Witness 1 stated that her task was to develop products which would be of benefit to customers. Her task as a team leader covered many things including controlling work flow and ensuring that the staff are working appropriately through performance management and ensuring that the team environment is positive for staff.

In response to a question as to whether she had any concerns about the teacher, she replied 'No - Not at all'. Witness 1 referred to her written statement, pointing out that the teacher dealt with corporate matters. Also there was a code of conduct and many standards where 'The teacher is exceeding expectations'.

Witness 1 told the Panel that the teacher 'operates with a high degree of integrity; he has a concern for other'. Referring to the teacher's contact with overseas visitors, Witness 1 stated that it was unusual for a person relatively new to be asked to meet overseas visitors, but she had every confidence in his ability to do this appropriately.

The Panel heard that the Australian Public Service Code of Conduct requires all employees to behave appropriately at all times including social occasions where alcohol is consumed. Witness 1 stated 'I have not witnessed anything but appropriate behaviour by the teacher at a social occasion'.

Under cross-examination Witness 1 was asked if she could support the statement that the teacher is withdrawn. She replied 'No. I can not comment. I can not comment on his socializing.' Witness 1 indicated that she did not know the teacher before he commenced work at the Child Support Agency.

### **Teacher 3**

Teacher 4 is on maternity leave and was not present at the hearing. She spoke via a telephone link up. She affirmed under oath that her written statement was correct. Teacher 4 is a teacher at School 4.

She indicated that she has had four years teaching in a government school and that her fifth year of teaching was at School 4. She told the Panel that she first met the teacher when he came to School 4 for an orientation day for new staff.

Teacher 4 stated that at School 4, the teacher had a rowdy class but the kids liked him and he liked the kids. She did not consider that there were any issues regarding the teacher's work as a teacher. She stated that her other contacts with the teacher were at recess and lunch time and at squash.

Teacher 4 stated that she only worked with the teacher for one year before he moved to the school where her husband was employed as a teacher. In response to a question,

Teacher 4 stated that the teacher was good at joking and was a friendly person. She worked with him at School 4 where they had both been part of a humanities team teaching project.

Teacher 4 stated that she never had any reason to question the teacher's actions. She also stated that the teacher would often touch her shoulder or put his arm around her. This was quite acceptable. Teacher 4 further stated that she had never witnessed the teacher doing this to a student in the classroom.

Under cross-examination Teacher 4 stated that she did some yard duty, however, School 4 is a quiet school and yard duty is very casual. She also stated that she had not seen the teacher putting his arms around students as he had done to her.

When asked if the teacher told her about allegations made about him at the school, Teacher 4 stated that 'he told me about students being caught smoking. Nothing else.'

Counsel for the teacher asked where Teacher 4 was teaching when these matters were discussed with her. She stated that she was still at School 4.

### **Teacher 5**

Teacher 5 affirmed under oath that his written statement was correct. Teacher 5 is the Junior School Music Coordinator at School 5. Teacher 5 stated that he had worked at the school from 1998 to 2000 for one day a week and then as a fulltime classroom teacher from 2001 to 2005.

Counsel for the teacher asked him to describe the teacher's reactions with students. Teacher 5 stated that he would see him giving students feedback on essays. 'The teacher seemed to have a relaxed manner with students. They seemed to respect him. He was quick to make jokes with students.' Teacher 5 stated that he only observed the teacher in a classroom for a few minutes at a time. He saw the teacher when on yard duty and when preparing for concerts.

Teacher 5 stated that in the Primary Section of the school the teacher's room was next to his. 'Students seemed to really enjoy Drama.' Teacher 5 stated that he was a classroom teacher for a Year 10 class. 'I would often be in the room with him marking the roll. I would see him starting his lesson.'

Teacher 5 stated that he did not get to know the students very well as a homeroom teacher, but was a mentor for Student 2. 'She (Student 2) did not seem very happy – not sure if it was school or home. Her attitude was often negative. I rarely saw her smile.' Teacher 5 further stated 'As a pastoral care teacher, I had to deal with the uniform, hair, make-up etc. It was an on-going battle. I think that I failed with Student 2. I dealt with the matter by calling home and talking with her mother who had a very defeatist attitude.'

Teacher 5 told the Panel that he saw the teacher as a 'hard working teacher who got involved in many things.' He further told the Panel that a significant number of students were unwilling to do the work in class and that other teachers found them difficult. 'At



roll call in the morning I had to raise my voice but I observed that a significant number were working with the teacher.’ Teacher 5 said that students were always quick to complain about teachers but he had never really heard any complaints about the teacher. Teacher 5 told the Panel that the teacher cared about teachers and students. ‘The teacher seemed to be a person who would make contact with most of the staff.’

When asked what changes he observed in the teacher after he left the school, Teacher 5 replied that it ‘was not long before he found a job.’

In cross-examination Counsel Assisting referred to the pastoral care system at the school and asked, ‘When dealing with a family issue, how do you distinguish between family issues and gossip?’ Teacher 5 replied: ‘I can not recall any situation where this was an issue – (one) always treads a fine line.’ He further stated that he took each case as it was and trod carefully when talking with parents and that he ‘did not remember receiving guidance about the difference between issues and gossip.’

When asked by Counsel Assisting ‘How do you form that professional judgment?’ Teacher 5 replied that it was ‘part of getting to know the student without knowing all the detail.’

In response to the question ‘Did you ever see the teacher touching (a student)?’ Teacher 5 replied ‘No, not that I can recall.’ To the question ‘Did he (the teacher) handle students differently?’ Teacher 5 replied, ‘There were some students he got on well with – nothing extreme.’

Teacher 5 told the Panel that the teacher had not talked to him about Student 3 having outbursts in class and he could not recall the teacher mentioning Student 9 and her concerns. He said that the teacher had not talked to him about some students feeling uncomfortable in his classes. Teacher 5 said that he could not recall any specific conversation with the teacher regarding any insights gained since the allegations were made. He said that the teacher had talked about being disillusioned with teaching but not that he would do things differently.

Teacher 5 stated that he had been made aware of the allegations about the teacher when he spoke to the teacher’s representative and when he saw the allegations.

Counsel for the teacher asked Teacher 5: ‘You said that you got on better with some students than others. Was this usual?’ Teacher 5 replied, ‘Yes. Common.’

The Panel sought clarification on the role of the Home Room Teacher (daily registration) and the Pastoral Care Teacher (15 or so students from different age groups, seen once a week). The Panel asked how easy it was for students to talk to their teacher. Could they go to someone else? Teacher 5 replied that there was a psychologist at the school for one and a half days a week. He said that the psychologist was used to capacity. Teacher 5 stated that he felt that many students would have benefited from having someone to speak to.

### **Teacher 6**

Teacher 6 confirmed under oath that his written statement was correct. Teacher 6 is a teacher at School 6, where he is the Sports Coordinator and a physical education teacher.

Teacher 6 stated that he was a teacher at the school in 2002 when he taught Physical Education and Health. He was also the VCE coordinator. Teacher 6 stated that he had spent 12 years in industry before returning to teaching at the school in 2002.

Confirming the statement in paragraph 3, Teacher 6 stated that he was the Year 10 coordinator and that the teacher had reported two students, Student 2 and Student 3, for smoking after school behind the school gymnasium. He stated that Student 2 had admitted to smoking to the Principal, but later changed her story. He further stated that it was well known that Student 2 was a smoker. Teacher 6 told the Panel that there was no punishment for Student 2 of which he was aware, although it was usual for a student to be suspended.

Teacher 6 stated that the teacher may have touched or hugged students, but it was not thought to be inappropriate. Teacher 6 stated that Deputy Principal 1 was 'touchy-feely' with students and that he had seen The Principal 'hug a few kids'.

Teacher 6 stated that Student 2 and Student 3 were known to make up stories.

When asked about the teacher, Teacher 6 stated that he thought that the teacher was liked by staff and students. 'I thought that he had a great relationship.' When asked about the staff at the school, Teacher 6 stated that staff were seen as "meek and mild" and although they all joined the union, they were not militant. Teacher 6 further stated that the staff at the College was not happy with the way that the teacher was treated. After the teacher's dismissal there was a 50% staff turnover.

In cross-examination Counsel Assisting asked, 'What do you mean by a *hug*?' A demonstration of a gentle hug was then given indicating that it was not a close embrace. An arm around the shoulder was also demonstrated.

Teacher 6 told the Panel that all teachers have a pastoral role. 'You do have a relationship with every student.' He said that experience helps a teacher pick up on the cues from students as to whether or not the teacher's behaviour towards the student is appropriate. He said, '...you learn to read people and back off.'

### **Teacher 7**

Teacher 7 confirmed under oath that his written statement was true and correct. Teacher 7 is currently a teacher at School 7. He was a teacher at the School from 1999 to August 2005.

Teacher 7 told the Panel that discipline policies at the School were being developed and that there was not much written down. He said that he put suggestions forward, but these were not always accepted.

When asked about the teacher, Teacher 7 stated that he was exuberant; an extremely good Drama teacher; a willing participant; generally loved by the kids; and that students were very willing to greet him wherever they met him.

The Panel heard that at a staff meeting the Principal spoke about the need to be professional in the way staff dealt with students. Teacher 7 stated that he felt this was a response to the Hopper case (at Wesley College).

Teacher 7 stated that three Year 11 students approached him to discuss conversations they heard about the teacher from Year 10 students. Teacher 7 said that the students told him that the Year 10 girls talked, and maybe gloated, about having got the teacher into trouble. The Year 11 students wanted it to be known that the teacher was a supportive teacher and they did not believe that he would do anything wrong. Teacher 7 said they wanted to know why he got into trouble. He further stated that the girls wanted him to speak to the Principal. The Principal was out of the school and Teacher 7 said that he left a message on the desk of the Deputy Principal but received no response.

Teacher 7 told the Panel that he had observed the teacher placing his hand on a student's shoulder but that he did not believe it to be inappropriate. 'In saying that, I could see that he was that sort of a person. It was apart of his personality - but not something that I would do.'

Teacher 7 further stated that as the union representative he asked to see the specific allegations made against the teacher. 'But allegations were vague...It was a most unsatisfactory situation. He (the teacher) had no real notice of the allegations despite being promised that they would be given to him.'

Teacher 7 described a meeting of the staff where there was 'much anger and dismay. As a leader of the staff I wanted to call a meeting to provide an outlet.' About 30 staff attended. 'The names of Student 2 and Student 3 were raised... Staff were aware of the issue of smoking.' Teacher 7 stated that at the union meeting a motion relating to the procedures used in regard to the teacher's situation was passed.

Teacher 7 described the teacher as 'jovial, supportive, and concerned about students ... always joking ... seen as a sincere person ... He took on the role of English Coordinator.'

Under cross-examination Teacher 7 said that the teacher was concerned about the anonymous letter being given credence (by the Principal). 'He was devastated about what the letter said about him. He was crestfallen and did not know what to do. There was a feeling that teachers were not taken as being as important as the complainant.'

In response to whether the teacher thought that any part of the anonymous letter might be true, Teacher 7 stated that the teacher indicated to him that he could not handle some students. Teacher 7 stated that because no one knew who was making the allegations some staff suggested that the teacher had been set up. Teacher 7 told the Panel that the teacher made no mention of Student 9's concerns to him.

In response to a question from Counsel for the teacher regarding a student's reaction to a teacher placing a hand on them, Teacher 7 stated that female students were more likely than male students to approach a teacher if they had a concern.

In response to a question from the Panel regarding how he reacted to students, Teacher 7 stated, 'I have learned not to touch students. One has to take into account different backgrounds. I felt freer to talk about personal issues.' Teacher 7 indicated that he had no personal experience with Student 2.

## **Witness 2**

Witness 2 confirmed under oath that her written statement was correct.

Witness 2 is a Pastoral Assistant at the Catholic Parish 1.

Witness 2 outlined her career indicating that she had been a teacher in an aboriginal community and she had also taught at School 8.

Witness 2 stated that she first met the teacher when he played in the same basketball team as her son and became a friend of her family. She also indicated that the teacher worked for the annual fete at Catholic Parish 1. He also took part in a program for people joining the Church in a Rite of Christian Initiation.

Witness 2 stated, 'the teacher was a very good member of the team. The teacher has the ability to be friendly; to respect confidentiality; to be discrete...He related well to young people – friendly, outgoing.'

Counsel Assisting in cross-examination pointed out that Witness 2 had seen a lot of the teacher in 2004 – for six months through the activities of the Rite of Christian Initiation. She then asked how much she saw of him prior to October 2004. Witness 2 stated that she had seen him around the church and at the church fete. Counsel Assisting then asked if, over that period of time, she had noticed any change in the teacher. Witness 2 replied that the teacher was possibly quieter and more withdrawn.

Witness 2 stated that the teacher had told her about leaving his job because of allegations. 'At first he did not know what the allegations were...He told me about the allegations the girls had made about him and the smoking and keys issue. Some things he thought that he may have done, or said something in jest.'

When asked if she had noticed any difference in his behaviour in relation to children, she replied 'Not particularly.' She continued 'I can imagine that these accusations would make you very cautious.'

Counsel for the teacher asked 'Have you seen anything inappropriate in his work with children?' Witness 2 replied 'No.'

## **DISCUSSION OF EVIDENCE**

### **Allegations made by the senior management team**

Deputy Principal 1 under oath and in his written statement, alleged that the teacher put his hand on a student's back and shoulders while on yard duty. The teacher said in his statement and under oath that he touched students, on the arm, on the hand, and that he often put his arm around students' shoulders. The Panel finds Deputy Principal 1's allegation to be true, on the basis that there was not a strong distinction between the evidence of Deputy Principal 1 and others and what the teacher admitted to.

The Principal said, under oath and in her written statement, that she saw the teacher touch a student on the bottom while students were getting into place for the whole school photo. Deputy Principal 2 said under oath that she could not be sure if the unidentified student was actually touched, but she did recall the teacher making an action that fitted with this allegation. The teacher denied that he touched a student on the bottom. The Principal did not take any immediate action against the teacher. The Panel noted that no action was taken against the teacher and it was unable to make a finding in relation to this allegation.

Deputy Principal 1, in his sworn statement and under oath, said that he saw the teacher play with a female student's hair in the classroom. He noted the discomfort of the student involved. No immediate action was taken against the teacher by Deputy Principal 1 or the school. Student 1 and Student 2, under oath, said that the teacher played with their hair and made them feel uncomfortable. Similar statements were made by other students. The teacher said he touched students' hair only in the context of the drama or English class, for the purpose of acting out stories in literature or performance. The evidence that the teacher touched students' hair was credibly given and it was repeated by several witnesses. The teacher's admission that he had a 'touchy feely' approach with students and three witnesses stating they were touched or saw the teacher touching hair, led the Panel to find this allegation was proved.

Deputy Principal 1 said in his written statement that he saw the teacher putting his arm around a student in a type of cuddle, patting and rubbing students' shoulders, and rubbing a student's cheek and touching her nose. Under oath, Student 1 and Student 2 and Student 3 gave evidence of being touched by the teacher in the manner described by Deputy Principal 1. Similar descriptions of the teacher's behaviour were reported by other witnesses. The teacher admitted to being a 'touchy feely' teacher, but said he did not cuddle students, he did not rub students' shoulders and that he did not remember touching any student's cheek. Further, the teacher said Deputy Principal 1 and the Principal often touched students and that touching students was normal at the school.

The Panel did not accept the teacher's view that his touching of students was the same as Deputy Principal 1 or The Principal. The Panel strongly holds the view that tactile contact between teachers and students can be classified as appropriate and inappropriate. The teacher's touching was repeated, intense, targeted mainly at girls, and it made the affected students anxious and uncomfortable in the normal course of

attending class. The Panel finds that the teacher touched students in the manner described by Deputy Principal 1.

### **Allegation made by Year 10 Students about the teacher's behaviour in the classroom**

Student 1 alleged that the teacher touched her on the stomach and moved his hands up and down her waist when she went up to his desk. The teacher said he might have touched Student 1 and other students on the stomach, but this was done in an action of halting students as they came up to him at his desk. The Panel did not accept that this description of the action was the same action as described by Student 1. The Panel finds Student 1 to be a reliable witness and finds that she was touched in the way she described.

Student 1 alleged that the teacher came up from behind her when she was leaning over and placed his hand on her left breast by inserting his hand between her arm and body. The teacher said he could not recall this. He said he might have touched a student on the breast inadvertently, when he had an arm around a student's shoulder. It may have inadvertently slipped down the back and grazed the breast. The Panel considered this serious allegation at length and found Student 1's evidence credible, clear and reasonable. Her description of how she was touched was particular and detailed. She described the incident with confidence and certainty. The Panel concluded that her strong and balanced recollection was based on the incident's affect on her. One other student, Student 3, made a similar allegation under oath and similar behaviour was described by other witnesses. The teacher's evidence, that he might have inadvertently touched Student 1's breast, concerned the Panel. Touching of the kind alleged by the students is not normal, and is distinguishable from other contact with students. After due consideration of Student 1's evidence, the teacher's response, and other relevant evidence, the Panel finds this allegation to be substantiated.

Student 1 alleged that the teacher played with her hair and stroked her face. The teacher denied this and said he touched students' hair only in the context of the literature or drama syllabus. He said he might have inadvertently touched a student's face. Deputy Principal 1 gave evidence that he had seen the teacher touch a student's hair and face on another occasion. The teacher was reported by other witnesses to have touched students' hair. Of concern to the Panel was the teacher's credibility in relation to discussing his touching of students. He admitted touching students, but he could not recall the touching incidents that were specifically alleged to be inappropriate. The students' allegations were of behaviour that was repeated, intense, targeted and initiated by the teacher. Such behaviour was not, in the Panel's, view 'touchy feely' as described by the teacher. The behaviour was inappropriate. The Panel found Student 1's statement to be substantiated.

Student 2 alleged that the teacher leant over her while she was at her desk and touched her back. The Panel found this to be true as the teacher said it might have happened. However, the Panel views this behaviour as normal in the course of teaching students.

The Panel found that the teacher did put his arm around Student 2. He said that he touched students as a matter of course, but he did not touch Student 2. The teacher

thought she was a troublemaker and said he was wary of her. The teacher knew Student 2 well and often had contact with her. This occurred both in the classroom and in the schoolyard. This was not consistent with a wary attitude in the Panel's view. The teacher's conscious decision not to touch Student 2, suggested his touching of students was calculated. The teacher's admission that he did not touch students on grounds of 'trouble making' seriously detracted from his credibility.

Student 2 alleged that the teacher massaged her shoulders, arms and neck. The teacher denied ever touching students in a way that could be described as massaging. Deputy Principal 1 said he saw the teacher massage students. Other witnesses described him massaging students. In The teacher's evidence he said that Student 2 had a grudge against him, and he thought her allegations against him were linked to past incidents. The Panel concluded that Student 2 was a student often in trouble. She admitted to stealing the teacher's keys and she had been caught smoking. However, the Panel did not find that these incidents motivated Student 2's allegations. The Panel found on the matters of the teacher's inappropriate behaviour, Student 2 gave credible evidence and spoke reasonably and honestly. Other teachers from the school discussed her character in evidence. The Panel found her to have a difficult background but not a malicious character and nor was she motivated by a grudge to get back at the teacher. The Panel finds that the teacher did massage Student 2.

Student 2 alleged that the teacher hugged her. He denied this. However, the Panel found it probable that the teacher hugged Student 2. Her evidence was definite and described in detail. The Panel finds the teacher's evidence, that he did touch other students, but not Student 2, unconvincing.

It is probable that the teacher touched Student 2's hair, as she described. While he denied this, the Panel, as explained above, found his account unconvincing. He admitted to touching students, but not troublesome students; he admitted to touching girls' hair but only in the classroom context; he was seen by Deputy Principal 1 touching a student's hair and Student 1 and Student 2 gave evidence that the teacher played with their hair.

Student 2 alleged that the teacher rubbed her hands. She said he did this when he helped her write. Student 2 is dyslexic. She experienced the hand touching as inappropriate and unnecessary. Student 2's evidence included the statement 'I know how to write I just needed help with the spelling!' The teacher denied rubbing Student 2's hand. In the Panel's view, Student 2's account was convincing. She spoke personally about her struggle with her learning disability. The Panel found he teacher did rub Student 2's hand.

Student 3 alleged that the teacher touched her on the side at the bottom of her right breast. The teacher denied this allegation. Student 3 was a student, along with Student 2, of whom he was wary. She had come to the school from another school under a cloud of trouble according to the teacher. Other teachers in the school commented on the character of Student 3 and had a similar view to the teacher, and described Student 2 and Student 3 as trouble makers and difficult students. Student 3 was described by the teacher as highly strung and stressed. He said he approached Student 3 with

caution. There is no doubt in the Panel's view that Student 3, according to many witnesses, including the teacher, was a troublesome student. Yet, in her evidence on the specific allegations made against the teacher, the Panel found her credible and honest. She accepted her part in stealing the teacher's keys and other poor behaviour. On the allegation of being touched on the breast by the teacher, Student 3 was firm. She rejected, under cross examination, opportunities to make more serious claims. For example when asked if the teacher groped the girls, Student 3 said it was not like groping. There were claims made about the teacher touching girls' breasts by other witnesses. In light of all the evidence and Student 3's credible account, the Panel finds her allegation that the teacher touched her breast substantiated.

On the allegation that the teacher patted Student 3 on the head, the Panel finds this to be substantiated. Student 3 said that the teacher would stand behind her and pat her on the head from this position, where she could not see him. The teacher's account that he did not touch certain students, especially those who were difficult, discredited him in the Panel's view.

On the allegation that the teacher stroked Student 3's hand, the teacher told the Panel that he did not. The Panel was not able to conclude decisively whether he stroked or touched Student 3's hand and therefore does not make a finding on this allegation.

### **Allegations made by Year 10 students against the teacher in relation to inappropriate physical contact.**

Student 1 alleged that the teacher wrapped her in his coat while he was wearing it. This occurred outside the office. The teacher said this might have happened. He admitted to touching students, and in this case demonstrated the placing of his arm around a student's shoulder. He said he might have done this while wearing his coat. The Panel finds this allegation substantiated.

Student 2 alleged that the teacher wrapped her in his coat on at least two occasions. The teacher denied this. He said Student 2 put on his coat and he told her to take it off. The Panel found Student 2's allegation substantiated. As the teacher admitted to touching students in ways that made them uncomfortable, the Panel finds it probable that this occurred when he had his coat on.

### **Allegations made against the teacher in relation to inappropriate comments.**

Student 1 alleged that the teacher made inappropriate comments to her including 'well you know there is only one man for you'. The teacher denied the allegation. On the grounds that the Panel found Student 1 a credible witness, certain in her recollection of events and holding strong values and opinions of appropriate comments and language, the Panel finds this allegation substantiated.

Student 1 alleged that the teacher made a comment in relation to her sister that he was going to marry her sister, they would have a spring wedding and that Student 1 would call him 'bil' and he would call her 'sil'. The teacher said this happened and that it



occurred in the course of a drama class. The Panel found his account to be true, but that his comments were not inappropriate.

The teacher's comments when discussing the text 'Maestro' were alleged to be inappropriate. The teacher made his comments in the context of the novel and in the Panel's view, his comments were in context and appropriate.

It was alleged that the teacher called Student 2 'honey' and 'darling'. The teacher said he used these words only in the context of drama classes. The Panel found the teacher's statements credible and not inappropriate.

Student 2 and Student 3 both alleged that the teacher said to Student 9 that he could see what she had for breakfast, after picking up a pen, leaning down and seeing up her dress. The teacher denied the allegation and said he did not know the meaning of the statement. The Panel considered this matter at length. Two students reported the comment in a consistent manner. The statement was equally offensive to them and they both reacted to it. The Panel regarded the emotion in the girls' responses as evidence of the serious impact the teacher's statement had on them. The students' evidence was credible and sincere. The Panel finds this allegation to be substantiated.

Student 2 alleged that the teacher asked her about her relationship with her boyfriend and whether she had sex with her boyfriend. The teacher said he might have talked to Student 2 about her relationship but it was in the context of his pastoral care role. He said Student 2 volunteered most of the information about her personal relationship. The Panel concluded that the teacher probably did ask Student 2 about her personal relationships. However, the Panel did not believe this discussion to be inappropriate. Of concern to the Panel was not that such information was exchanged between the students and the teacher, but that the pastoral care program had no apparent structure or framework to show how such information was used to benefit the students' welfare.

Student 2 alleged the teacher said 'Only if you make me' in response to her question 'Come again'? The teacher denied making this comment. The Panel did not find this allegation proved given the lack of evidence.

Student 3 alleged that when she told the teacher she needed help with her homework but that she had left it in her bedroom, he said in reply 'I am walking down into your bedroom. I'm now in your bedroom. I can see dirty underwear on the ground'. The teacher said he did not say these words but that he put his hands to his head and said that Student 3 was giving him a migraine. These two accounts are very different. The Panel found it probable that the teacher made the alleged comments to Student 3. The Panel heard that informal and personal stories were usual discourse in the teacher's English class. The Panel was of the view that the teacher's classes were often not a structured and positive learning environment. He admitted to conducting the class on this informal level. It was, in the Panel's view, an environment where inappropriate comments could be made by students and the teacher. Student 3 gave evidence on this incident credibly. She did not hesitate when using her memory and retold the event in a considered and deliberate manner. The teacher's account did not adequately address

the details of the incident and his migraine response was not credibly presented. The Panel finds this allegation substantiated.

Student 3 alleged the teacher asked her about her personal life and relationships with her mother. The Panel found this allegation true but restates its view that this was not necessarily inappropriate. The Panel was concerned that the personal information about students was not part of an effective pastoral care program.

## **FINDINGS UNDER SECTION 42(2) OF THE ACT**

The teacher is a registered teacher. In 2004, several female students in year 10 at the school were uncomfortable, anxious and embarrassed when they went to their English class. The teacher was their English teacher and his behaviour and comments caused them discomfort and anxiety. The teacher admitted to being a 'touchy feely' teacher, but rejected the more serious allegations made against him. The teacher was primarily concerned about the behaviour of a few students whom he thought had a grudge against him.

The teacher's inappropriate behaviour was not trivial or momentary. His students felt the need to avoid conversations with him and avoid being the subject of his inappropriate actions. The teacher showed that his inappropriate behaviour was in his control as he said he did not touch difficult female students. The teacher's behaviour diminished the reputation of the teaching profession and it took from some students a safe and positive learning environment.

The purpose of disciplinary proceedings is to protect the public. Analysis of all the evidence has found the behaviour of the teacher to be most unsatisfactory, and lacking in personal and professional insight. The proven behaviour of the teacher demonstrates poor professional judgment and a serious lack of professional action to seek guidance and support to deal with the situation. His inability to discuss the issues with valued colleagues and the discontinuance of professional discussions with his GP, does not demonstrate an understanding of his responsibilities in this matter.

The teacher's rehabilitation will benefit from focusing on his past actions and not the actions of some students who complained about him. The teacher was known to many of his colleagues as a good teacher and a dedicated professional. With appropriate and relevant training and his commitment to teaching, the teacher has the potential to be fit to teach in the future. The Panel finds that it would not be appropriate for the teacher to return to teaching until he meets all conditions as laid down in its Determination.

After considering all the evidence and based on the above findings of fact the Panel finds that the teacher is guilty of serious misconduct.

*Marilyn Mooney*

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**MARILYN MOONEY, CHAIRPERSON**

*Marilyn Mooney*

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**Per:**  
**NORM FARY, REGISTERED TEACHER**

*Marilyn Mooney*

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**Per:**  
**RHONDA CUMBERLAND, SPECIALIST MEMBER**