

**VICTORIAN INSTITUTE OF TEACHING**

DECISION AND REASONS OF THE FORMAL HEARING

**NUMBER:** 090

**REGISTERED TEACHER:** Martin John CONTESSOTTO

**PANEL MEMBERS:** Kevin Moloney, Chairperson  
Marilyn Mooney, Registered Teacher  
Kay Bodna, Specialist Member

**ATTENDANCE:** The teacher attended the formal hearing and was self-represented  
Ms A Sheehan Counsel Assisting with Ms K Galanos, instructing

**DATE OF HEARING:** 18 August 2009

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

On 24 August 2009 the Panel decided to cancel the registration of the teacher from 24 August 2009.

# REASONS

## BACKGROUND

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

By letter dated 26 September 2008, the employer notified the Institute of action taken against a registered teacher, the teacher. The teacher was given a letter of warning regarding unprofessional conduct on 2 September 2008, following an investigation into his conduct, and he resigned from the school on 19 September 2008.

The notification was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 8 October 2008 and the Committee decided to refer the matter to an investigation. On 24 June 2009 the Committee considered the investigator's report and decided to refer the matter to a formal hearing.

A Notice of Formal Hearing dated 16 July 2009 was served on the teacher by registered post on 2 July 2009.

## DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. The teacher - Registration Details (1 page) **001**
2. Document entitled Chronology of Relevant Events (2 pages) **002-003**
3. Witness statement of witness 3, dated 9 April 2009 (5 pages) **004-008**
  - Attachment 1- Employer Policy 2.20, September 2007 (11 pages) **009-019**
  - Attachment 1a - Letter from student 1's father, estimated date: 18 August 2008 (3 pages) **020- 022**
  - Attachment 2 - Notes of interviews, dated 18 August 2008 (13 pages) **023-035**
  - Attachment 3 - Letter to the teacher, dated 19 August 2008 (2 pages) **036-037**
  - Attachment 4 - Letter from the teacher, estimated date 19 August 2008 (1 page) **038**
  - Attachment 5 - Notes of Interview, dated 22 August 2008 (6 pages) **039-044**
  - Attachment 6 - Minutes of Meeting, dated 29 August 2008 (3 pages) **045-047**
  - Attachment 7 - Letter to the teacher, dated 2 September 2008 (2 pages) **048-049**
  - Attachment 8 - Email with attached letter from the teacher, dated 14 September 2008 (2 pages) **050-051**
  - Attachment 9 - Letter to Victorian Institute of Teaching, dated 26 September 2008 (1 page) **052**

4. Witness statement of the Acting Principal dated 14 April 2009 (3 pages) **053-055**
  - Attachment 1- Notes of meeting, estimated date 14 August 2008 (1 page) **056**
  - Attachment 2 - File note of conversation with the Assistant Director of the employer, estimated date 15 August 2008 (1 page) **057**
  - Attachment 3 - Letter from student 1's father, estimated date: 18 August 2008 (3 pages) **058-060**
  - Attachment 4 - Letter to the teacher, dated 19 August 2008 (2 pages) **061-062**
  - Attachment 5 - Letter from the teacher, estimated date 19 August 2008 (1 page) **063**
  - Attachment 6 - Notes of meeting, dated 22 August 2008 (6 pages) **064-069**
  - Attachment 7- Notes of meeting, dated 29 August 2008 (3 pages) **070-072**
  - Attachment 8 - Letter to the teacher, dated 2 September 2008 (2 pages) **073-074**
  
5. Witness statement of Deputy Principal 1 dated 2 April 2009 (3 pages) **075-077**
  - Attachment 1- File note of meeting on 29 July 2009, dated 31 July 2008 (1 page) **078**
  - Attachment 2 - Notes of interviews, dated 18 August 2008 (3 pages) **079-081**
  - Attachment 3 - Email from the teacher, dated 21 August 2008 (2 pages) **082-083**
  - Attachment 4 - Letter from the teacher, estimated date 21 August 2008 (1 page) **084**
  - Attachment 5 - Letter of initial resignation from the teacher, undated (1 page) **085**
  - Attachment 6 - Letter to the teacher, dated 12 September 2008 (1 page) **086**
  - Attachment 7- Email from the teacher, dated 14 September 2008 (2 pages) **087-088**
  - Attachment 8 - Email from the teacher, dated 17 September 2008 (1 page) **089**
  - Attachment 9 - Email from the teacher, dated 19 September 2008 (2 pages) **090-091**
  - Attachment QS 10 - Letter of final resignation from the teacher, dated 19 September 2009 (1 page) **092**
  - Attachment 11- Letter to The teacher, dated 19 September 2008 (1 page) **093**
  
6. Witness statement of Deputy Principal 2, dated 22 April 2009 (4 pages) **094-097**
  - Attachment 1 - Notes of Interview, dated 18 August 2008 (1 page) **098**
  
7. Witness statement student 3, dated 23 April 2009 (2 pages) **099-100**

8. Witness statement of student 4, dated 23 April 2009 (1 page) **101**
9. Transcription of interview with the teacher, dated 1 December 2008 (30 pages) **102-131**
10. Transcription of interview with the teacher, dated 20 May 2009 (19 pages) **132-150**

The following exhibits were accepted by the Panel:

- A. Witness statement of Deputy Principal 1 dated 2 April 2009
- B. Witness statement of student 4 dated 23 April 2009
- C. Witness statement of Deputy Principal 2 dated 24 April 2009
- D. Witness statement of student 3, dated 23 April 2009
- E. Witness statement of the Assistant Director, the employer, dated 9 April 2009
- F. Witness statement of the Acting Principal dated 14 April 2009
- G. Phone records from 1 June 2008 to 30 September 2008 pursuant to Summons issued to Hutchinson Telecom Pty Ltd on 23 July 2009

## **THE EVIDENCE**

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

Whilst employed as a registered teacher at the school, the teacher:

1. In 2008, engaged in communication with year 10 student, student 1, without a valid context outside school hours including:
  - a. In or around early – mid June 2008, sent text messages to student 1 via his mobile telephone.
  - b. From around mid June 2008, engaged in inappropriate telephone conversations with student 1 via his mobile telephone including:
    - i initially twice a week
    - ii increasing to 5 times per week
    - iii daily or every second day
    - iv during the evenings and on weekends for up to an hour/an hour and a half.
2. In 2008, engaged in inappropriate conversations and used inappropriate language with student 1:
  - a. Told student 1 “I love you” on two occasions including:

- i during a telephone conversation, after student 1 had scored 7 goals during a sport 1 match.
  - b. Discussed inappropriate topics with student 1 including:
    - i details about his child
    - ii details about his custody issues with his ex-partner
  - c. Made inappropriate personal comments to student 1 by telling her she had a body better suited to sport 2 than sport 1.
  - d. At the end of Term 2 invited student 1 to meet him during the school holidays.
- 3. Touched student 1 without a valid reason:
  - a. On 29 July 2008, at around 8.30am, while in his homeroom with student 1:
    - i placed his hands on either side of student 1's head saying words to the effect of, "well now you've got to really focus and stop being silly at school"
    - ii hugged student 1
    - iii kissed student 1.
  - b. In or around July 2008, while at sport 3 or sport 1, lifted or picked student 1 up.
  - c. During 2008 at around 4.30pm, while student 1 was standing inside a set of goal posts at the school sports stadium, walked past student 1 and touched her on the bottom.
- 4. On 11 September 2008, at a Vocational Education & Training (VET) subject night, held at the school, following a warning about his professional relationships with students, without a valid reason touched student 2, by:
  - a. Bending down and leaning into student 2 in order for her to remove a necklace he was wearing
  - b. Allowing student 2 to remove the necklace from his person.

The Panel heard evidence either under oath or affirmation from the following Institute witnesses:

- Deputy Principal 1
- Deputy Principal 2
- Assistant Director of the employer
- The Acting Principal
- Student 4
- Student 3

Deputy Principal 1 has been a teacher for 18 years, has held leadership positions for approximately 11 years, and has been Deputy Principal (Staff) at the teacher's former school for two and a half years. He described the school as a multi-cultural co-educational school with 1050 students and 135 staff.

Deputy Principal 1 made two minor technical changes to his witness statement of 2 April 2009, exhibit A, before affirming that the remainder of his statement was true and correct. The statement detailed his management of the incident outlined in allegation 3. In the statement the events described included student 4 initially reporting the incident on the day to his homeroom teacher and later confirming what he saw to Deputy Principal 1. Deputy Principal 1, along with Deputy Principal 2, then followed up with the teacher and student 1, who both asserted nothing had happened. Deputy Principal 1's statement indicated that, at that stage, he and Deputy Principal 2 formed the view that student 4 had fabricated the story.

Deputy Principal 1 described the location in the school at which the incident described in allegation 3 took place. The room described as the room is on the ground floor and internally faces into an open locker area. There is a small window in the door only, the other windows being above the lockers and therefore above eye height.

The teacher questioned Deputy Principal 1 in relation to paragraph three of his Statement of 2 April 2009, asking him at what time he had spoken to student 1. Deputy Principal 1 could not recall the precise time, saying it was in the afternoon and prior to the meeting with the teacher. The teacher asked if Deputy Principal 1 realised that she was out at sport on that day, and whether there was concurrence between what he had said about the incident and what student 1 had said. Deputy Principal 1 said that the meeting he had with the teacher was to let him know of the allegation. The teacher asked Deputy Principal 1 if he had asked the other two students who were there if they had seen anything. Deputy Principal 1 said he had not.

In response to a question from the Panel regarding what had made Deputy Principal 1 form the view that student 4 was fabricating the story about seeing the teacher kiss student 1, Deputy Principal 1 said that he did not have much to do with the students in his role, and that he was led to believe that student 4 was not the most "honourable" of students. The Panel also heard that Deputy Principal 1 was sure he had given the teacher the advice not to be alone in the home room with students.

Counsel Assisting asked Deputy Principal 1 when he had typed up his handwritten notes of his meeting with the teacher. Deputy Principal 1 said he began to do so on the same day or the day after, and completed them after 15 August 2008 on the advice of the acting principal.

Student 4 is a year 8 student at the teacher's school. He said that the statement he made on 23 April 2009, tendered as exhibit "B", was true and correct. In response to questions from the teacher, student 4 told the Panel that he had no knowledge of any rumours circulating of a relationship between the teacher and student 1 before he saw the alleged event. He said that when walking past the room he saw the teacher and a female student kissing each other on the lips. This occurred in the far corner of the room, and he described the approximate distances, saying that he had a side-on view of the teacher and student 1. In response to questioning, student 4 provided varying answers on the size of the window in the door although he was clear that he had a "big view". The Panel heard that after student 4 reported the incident he was interviewed by Deputy Principal 1 and Deputy Principal 2 where, after being shown school photos, he identified the student as student 1.

Deputy Principal 2 has been a teacher for 23 years, has held leadership positions for approximately 15 years and is in her 4<sup>th</sup> year at the teacher's former school. Deputy

Principal 2 said that her witness statement of 22 April 2009 was true and correct and it was tendered as exhibit "C". In response to questioning about the size of the window in the door of the room, Deputy Principal 2 said that there was a 20 cm glass panel in the door, near to the door handle. In relation to questions about paragraph 4 in her statement, the witness said that the student, student 1, said she often visited the teacher in his home room to talk to him even though it was not her home room. Deputy Principal 2 said this was of concern because of the regularity of the practice and also because of student 1 saying that the teacher had hugged her. It was noted that Deputy Principal 2 did not make a record at the time of the interview with student 1 that occurred on 29 July 2008.

In relation to paragraph 5 in her Statement, the Panel heard that Deputy Principal 2 was clear when she interviewed the teacher after the alleged event in telling him about what was and was not appropriate professional behaviour. She said that he had nodded and agreed, but that he had initially been surprised that he was being spoken to.

In relation to paragraphs 11 to 15 in her statement, regarding events outlined in Allegation 4, Deputy Principal 2 said that about 200 people had attended the VET subject night, including some teachers, although teachers were not expected to attend. Deputy Principal 2 said that the teacher made very deliberate physical contact with a student through the incident with the necklace as outlined in Allegation 4. She said that any physical contact with a student is inappropriate, and the contact that night was not subtle, it was very obvious. Deputy Principal 2 was asked if she had a heightened perception of what she saw because of the previous event with the teacher. The Panel heard that this was so, that Deputy Principal 2 was alarmed because his contact with a student looked deliberate, despite the previous warning, and that she was flabbergasted by what she saw.

In response to questions from the teacher, Deputy Principal 2 said that she had contact with student 1 in relation to subject selection, and that she was aware that student 1 had missed classes because of her over-commitment to sport. Deputy Principal 2 told student 1 that she was alone when she went to the teacher's home room and that, at one point, there were other students there, but not at all times. Deputy Principal 2 said that student 4 had said that student 1 was the student who came into our room a lot. The teacher asked Deputy Principal 2 if she had discussed with student 4 what a relationship is. Deputy Principal 2 replied that student 4 had said, in relation to student 1, that she was the teacher's girlfriend. After the interview with student 4, Deputy Principal 2 had come to the conclusion that something indeed had occurred. Student 4 was shown a number of photographs of students and he identified student 1 as the person he had seen with the teacher in the room when the alleged kissing incident occurred.

The Panel heard that during the interview with the teacher on 29 July 2008 Deputy Principal 2's colleague, Deputy Principal 1, had referred to the Victorian Institute of Teaching's Code of Conduct, although she was unsure if the teacher had been given a copy of the Code. She said that when new staff came to the school the induction process included reference to appropriate conduct, that the Code of Conduct was mentioned in staff briefings, and that there were posters about it in class rooms. She said that the teacher would have known that her colleague Deputy Principal 1 was available for further discussion.

Student 3 is 17 years old, in Year 11, and is and was a close friend of student 1. Student 3 said that she did everything with student 1, apart from sport, and they visited each other's homes. In response to a question about paragraph 5 in her witness statement, exhibit "D", regarding allegation 3c, she said that the alleged touching that occurred during the sport 3 game was a "quick touch". Student 3 demonstrated this several times with her hand. She said that the teacher gave an upward and decisive flick of his hand, touching student 1's bottom. She said that she did not believe student 1's response to her when she denied that the teacher had touched her during the sport 3 game. Student 3 told the Panel that she was sure of what she had seen. In response to questions from the teacher, student 3 said she had been seated approximately 20 metres from the goal where the alleged touching occurred and that she had a clear view of the incident. The Panel heard that the mobile phone calls between student 1 and the teacher had commenced in May and June 2008.

The Assistant Director of the employer was a classroom teacher for 7 years and a principal in two schools for a total of approximately 12 years. Her witness statement was affirmed as true and correct. In relation to questions about her witness statement, exhibit "E", she said that her principal source of information about the alleged events had been an interview with student 1 and her parents. The Panel heard that during the Assistant Director's subsequent interview with the teacher on 22 August 2008, he responded to direct questions but did not elaborate, and that she believed he did not understand the seriousness of the allegations. He said that he had not read the Code of Conduct although he knew he should have. In relation to paragraph 12, the Assistant Director said that at her subsequent interview with the teacher on 29 August 2008 there was no lack of clarity about the instruction to him that he have no further contact with student 1 and that he was also told that he should advise if she contacted him. In relation to paragraph 16 in her Statement, the Assistant Director said that it was made very clear that the teacher should not have contact with students and that in talking with him about his acceptance of an invitation from a student to attend the school event he had difficulty explaining the specifics of appropriate professional behaviour.

The Assistant Director said that the teacher's attendance at the school event showed that he did not understand the previous requirements. The Panel heard that he had appeared to be under duress when interviewed by the Assistant Director and that he brought up his personal situation. She said that formal monitoring of his behaviour by the school must have occurred because of the school's response to the event at the school function. The Assistant Director said that the counsellor to whom the teacher was referred would have been advised to work with him on issues of professional boundaries. The counsellor provides his services on the basis that he does not provide written reports or appear as a witness.

The Acting Principal has 36 years experience as a teacher including 22 years in Principal positions. The Acting Principal responded to questions about his witness statement of 14 April 2009, exhibit "F". In relation to paragraph 11, the witness reiterated that the teacher's responses to the allegations were general rather than specific. The Acting Principal told the Panel he had raised the VIT Code of Conduct with him that had been handed down a month or so before the alleged events, that every registered teacher had received a copy and that the teacher said he had not read it. The Panel heard that the Acting Principal did not think the teacher had a clear understanding of professional behaviour. It had been made very clear to him that he should not have any further contact with student 1 after the alleged incident in the room, and that the incident should not be discussed with students and staff. In response to a question from the



Panel about monitoring the teacher after the alleged incident, the Acting Principal said that he thought there would be regular meetings and that the two deputy principals could call in to the teacher's classes.

### **Phone Records**

The record of the communication from the teacher's phone to student 1's phone for the period 1 June 2008 and 30 September 2008 was obtained by summons and is summarised in exhibit "G". The records indicate that over this four month period there were 324 voice calls and 81 SMS messages to student 1's phone. The voice calls totalled more than 32 hours. From Friday 6 June to Wednesday 11 June the calls totalled approximately 15 hours with calls extending until almost 4am on the morning of Saturday 7 June and again until after 2am on Sunday morning continuing through that Sunday until almost midnight. The following three days saw calls extending to after 10pm. Other significant periods included: more than an hour of calls on the weekend of Saturday 14 June and Sunday 15 June; three hours of calls on the evening of Saturday 21 June extending until after midnight and then continuing on Saturday 22 June throughout the day; late night calls on Monday 23 June, in the early hours of Tuesday 24 June and later that night and late calls again on Wednesday 25 June.

In Term 3 of 2008 the frequency resumed. Notably, on Friday 25 July there was more than an hour of calls extending until after 11pm, and then almost 3 hours of calls commencing late on Saturday 26 July and continuing until after 1am on Sunday 27 July.

The record shows that the teacher initiated phone contact with student 1 following meetings with school and employer personnel when he had been told to have no further contact with student 1, and that these phone contacts were significant in number. There were almost two hours of calls on Friday 19 September extending until after midnight and then daily in the first week of those school holidays, following the teacher's resignation from the school.

The teacher decided not to give evidence under oath or affirmation.

### **DISCUSSION OF THE EVIDENCE**

The teacher was unrepresented in proceedings and the Panel was mindful of its obligations as a model litigant in assisting him as appropriate. Given the opportunity, the teacher chose not to give evidence under oath or affirmation, which is his right. Therefore, the evidence presented has to speak for itself. The Panel was mindful that care was required in assessing the evidence before deciding whether, on the balance of probabilities, the allegations were true. The Panel wishes to commend the courage of the two student witnesses in attending the hearing and in giving evidence. Without their assistance the matters before us may never have come to light.

### **Allegation 1**

From the telephone records it is clear that there was regular and lengthy contact, often very late into the evening, and occurring on weekends and on holidays. The Panel heard no reasonable explanation for the length and timing of calls. It is inappropriate for a teacher to be calling a student at all hours of the night, setting aside the content. The claim that the calls were in the context of mentoring for Sport is not sustainable. The calls are remarkably intrusive and continued even after the teacher was given a

directive not to do so. It would appear that calls were being made whilst the teacher was receiving counselling in regard to inappropriate relationships with students and developing an understanding of professional boundaries. The Panel did not accept that there was a valid context for the sheer volume and inappropriate timing of the telephone calls, video calls and text messages. The teacher did admit to having contact with student 1 in the course of the school investigating the matter but the phone records indicate that the contact was far in excess of his admissions and casts doubt on any of his claims as to what they might have been about.

### **Allegation 2**

The substance of Allegation 2 was not in dispute and was not explored in great detail in the hearing given that the teacher admitted making these statements or having the conversations as outlined in the records of interviews contained in sworn witness statements. In regard to Allegation 2a, however, while it was claimed by the teacher that the statement “I love you” was in the context of acknowledging the achievement of student 1 in a sport 1 match, the Panel also considered the comment in the context of all the communication that was happening at the time and had difficulty accepting the statement as innocent; for example, it may be one thing as a coach in the heat of the moment during a match saying “I love you” in congratulating a great effort but this was in a telephone conversation at a different time.

### **Allegation 3**

The two student witnesses, student 4 and student 3, were consistent and clear in giving evidence in relation to the allegation of inappropriate touching, firstly in the record of their reporting the matters at the school and then in their sworn statements and in their evidence before the Panel.

In regard to Allegation 3a, the evidence of the two deputy principals differed in that deputy principal, the Deputy Principal responsible for staff and, therefore, having less contact with the students, was initially sceptical about student 4's evidence, whereas Deputy Principal 2, who knew student 4 better, was convinced that something had occurred. When the Panel viewed the alleged incident in the context of the amount of communication going on at the time and following a weekend of extensive telephone contact, it is clear that the teacher and student 1 were in the room together at the particular time and in very close proximity to each other. Student 4 did not appear to have any reason whatsoever to fabricate his version of events.

In relation to Allegation 3c, the evidence of student 3 was clear and consistent. Her version of events was not challenged.

### **Allegation 4**

There is no dispute that the teacher did inappropriately touch a student by moving close and allowing her to remove a necklace from him. Deputy principal 2 directly observed the incident and was astounded that the teacher would do this given the warnings he had already received not only from the school administration but following very specific counselling and instructions from the employer personnel regarding professional boundaries. It was the considered opinion of the Assistant Director of the employer that the teacher did not understand the seriousness of his actions and that he had to be taken step by step through what it meant to maintain professional boundaries.

## **FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT**

The standard of proof that applies in disciplinary proceedings is the balance of probabilities (see *Briginshaw v Briginshaw* (1938) 60 CLR 336). The teacher chose not to give evidence under oath or affirmation and the Panel made its findings based on the evidence presented. The Panel found the witnesses to be credible and the extensive telephone communication and records provided a context in which to place the alleged events.

The Panel finds the Allegations 1a and 1b substantiated.

The Panel finds Allegations 2a, 2b and 2c are substantiated. There is no evidence to support Allegation 2d.

The Panel finds Allegations 3a and 3c substantiated while Allegation 3b is considered to be hearsay and not supported.

The Panel finds Allegations 4a and 4b substantiated.

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).

The teacher conducted extensive regular telephone communication with student 1 over an extended period at all hours of the day and night. The communication continued after a warning was issued that it should not. Setting aside the content of the phone calls, such contact with a student is inappropriate and clearly the teacher does not understand the concept of professional boundaries. After having been warned and counselled, he continued the inappropriate communication. The inappropriate touching of a student as outlined in Allegations 3 and 4 and found to be substantiated by the Panel is totally unacceptable and the Panel was dismayed that the teacher sought to question the integrity of the two student witnesses in the hearing. The behaviour described in Allegations 3 and 4 by a teacher toward a student is a substantial departure from what is acceptable to the profession and to the public. The conduct was neither momentary nor inadvertent. The incident involving the removal of the necklace outlined in Allegation 4 was particularly wilful given all that had occurred and the warnings that the teacher had been given.

The Panel finds the teacher guilty of serious misconduct in relation to Allegations 1a, 1b, 3a, 3c, 4a and 4b. The Panel finds that Allegations 2a and 2b constitute misconduct and that arguably 2c is plausible.

A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate his unfitness to teach. The test set out in case law is conduct: *which would normally be reasonably regarded as disgraceful or dishonourable by his*

*professional brethren of good repute and competency. (Allinson v General Medical Council [1981-4] All ER 768)*

In *Davidson v Victorian Institute of Teaching* [2007] VCAT 920 (30 May 2007) it was observed that in relation to unfitness to teach that:

- *it carries with it a perception that the conduct complained of is of a continuing and persistent nature;*
- *it is conduct which throws doubt on how the teacher will conduct him or herself in future in the classroom; and*
- *it carries with it an assessment that the person should not be in a position of authority and trust with children because his whole approach to teaching and children in his care is profoundly and irretrievably flawed.*

A teacher's fitness to teach is determined at the time of the Panel hearing, not at the time that the alleged incidents occurred. (*A Solicitor v The Council of the Law Society of New South Wales* (2004) 216 CLR at 253)

The Panel did not receive any evidence that the teacher understood the seriousness of the allegations and noted that even after counselling and receiving unequivocal instructions he continued to flout those instructions and to demonstrate that he did not comprehend his professional responsibilities.

The teaching profession and the public must be confident that students placed in the care of the teacher in the future will be safe from any repeated inappropriate behaviour.

The Panel, conscious of its responsibility to protect the public, found that the teacher lacked the insight and understanding necessary to articulate and implement the professional boundaries of a teacher.

The Panel found that the teacher not only breached the professional standards of the teaching profession, he exploited the privileged position of power and trust that a teacher is granted. The Panel finds the teacher guilty of serious misconduct and not fit to teach and has decided to cancel his registration.



**KEVIN MOLONEY, CHAIRPERSON**



**per:**  
**MARILYN MOONEY, REGISTERED TEACHER**

*Kevin Moloney*

**per:  
KAY BODNA, SPECIALIST PANEL MEMBER**