

**VICTORIAN INSTITUTE OF TEACHING**  
DECISION AND REASONS OF THE FORMAL HEARING

**NUMBER:** 005

**REGISTERED TEACHER:** Anthony William **DAVIDSON**

**PANEL MEMBERS**

Susan Halliday	Chairperson
Janet Sherry	Registered Teacher
Graham Hoult	Member

**Teacher Representation:** The teacher was not represented

**Counsel Assisting the Panel:** Ms Anne Sheehan

**DATES OF HEARING:** 25, 28, 29 and 30 June 2004

**DECISION OF THE PANEL:**

On 27 October 2004 the Panel decided to cancel the registration of the teacher from the date of this decision.

**EFFECT OF THE DECISION**

This means that the teacher can not undertake the duties of a teacher in a school in Victoria from 27 October 2004.

## 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 25 July 2003 the Principal of the school reported to the Victorian Institute of Teaching (the Institute) that he had taken action against the teacher from the school because of his serious misconduct. On 19 April 2004 the Disciplinary Proceedings Committee, a committee of the Institute Council referred this matter to a formal hearing. A Notice of Formal Hearing was sent to the teacher on 14 May 2004.

The information the Institute received as evidence of possible serious misconduct or lack of fitness to teach was that:

- On 11 April 2003 the teacher offered money to Student 1, from the school, in return for sex;
- The teacher asked Student 2, from the school, if it would be possible to have a relationship with her now, or at some time in the future;
- In 2002, the teacher took Student 3, from the School, on a fund raising trip interstate. He told Student 3's mother, that the trip would be for the day only and that he and Student 3 would be returning that night. Student 3's mother gained the impression that the trip had been authorised by the School. The trip was paid for by the school but the school denied knowing that Student 3 would accompany the teacher interstate. The teacher and Student 3 stayed overnight interstate. Student 3 rang her mother from her interstate location to tell her that she would be staying overnight at the house of the teacher's brother who lived interstate;
- The teacher agreed to two or three female students staying on the school premises overnight (sleep overs). He was the only chaperone at the sleepovers;
- Despite significant and consistent advice to the contrary and expressions of concern from some colleagues, the teacher persisted with behaviour his colleagues believed to be inappropriate in relation to students.

The issues the Panel must address in this matter are:

- Was there sufficient evidence to support any, some or all of the allegations made against the teacher?
- If any, some or all the allegations were proved, was this sufficient to amount to serious misconduct and/or lack of fitness to teach?
- If the teacher was guilty of serious misconduct, or if he was not fit to teach, what was the appropriate penalty?

## 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.*

Section 27 of the Act states:

### 27. Employer to notify Institute of action against teacher

*(1) The employer of a registered teacher must inform the Institute if the employer has taken any action against the registered teacher in response to allegations of serious incompetence of the registered teacher, serious misconduct of the registered teacher or that the registered teacher is unfit to be a teacher or any other actions that may be relevant to the registered teacher's fitness to teach.*

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.

These procedures are not meant to punish the teacher although this may be an unintended consequence (see *New South Wales Bar Association v Evatt* (1968) 117 CLR 177). The purpose of these proceedings is to protect students in Victorian schools by ensuring that the teacher is not guilty of serious misconduct and is fit to teach. A decision to deregister a teacher is very serious and requires great care (see *Victorian Lawyers RPA Ltd v Vodicka* (2000) VSC 272).

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

The conduct the subject of the inquiry may indicate a character defect incompatible with a self respecting profession. Or the conduct may illustrate that the teacher would not be able to work satisfactorily in a school environment. 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*)

In *Health Care Complaints Commission v Litchfield* [1997] NSWCA the Full Court of the Supreme Court described serious misconduct as not to be measured against the worst cases of misconduct, but by the extent the conduct departed from proper standards. Otherwise, the worst members of the profession will set the standard of professional conduct. If a teacher is to adequately perform their duties and act in the best interests of their students they should be able to command the respect and confidence of the education community. If a teacher loses that respect and confidence because of their conduct they should no longer be able to exercise the privileges, duties and responsibilities that come with being a teacher.

*The public needs to be protected from delinquents and wrong doers within professions. It also needs to be protected from seriously incompetent professional people who are ignorant of basic rules or indifferent as to rudimentary professional requirements. Such people should be removed from the register or from the relevant roll of practitioners, at least until they can demonstrate that their disqualifying imperfections have been removed.*

*Pillaiv Messiter* (No 2) 1989 16 NSWLR 197

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 (see *Cameron v Bar Association of NSW* [2002] NSWSC 191 and *Marten v Disciplinary Committee of the Royal School 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**

- Witness statements by:
  - The Principal from the school
  - Teacher 1 from the school
  - Teacher 2 from the school
  - Teacher 3 from the school
  - Student 1 from the school
  - Student 2 from the school
  - Student 3 from the school
  - Student 4 from the school
  - Mother of Student 2 from the school
  - Mother of Student 3 from the school
- Letters to the teacher from the school dated 29 September 2003, 18 July 2003, 30 April 2003 and 23 April 2003
- Statements by
  - The mother of Student 3 about April 2003
  - Student 3 dated 8 April 2003
  - Student 3 dated 17 April 2003
  - Student 1 dated 16 April 2003
  - Student 2 dated 17 April 2003
  - Student 4 dated 26 April 2003
- Notes from Teacher 2 dated 11 April 2003, undated, undated hand written notes taken by Teacher 2 undated notes commencing March 2002 and an undated note to a further third party.

#### **THE EVIDENCE**

The panel heard evidence under affirmation or oath from the following witnesses:

- The teacher
- The principal from the school
- Teacher 2 from the school
- Student 2 from the school
- Mother of Student 2
- Student 1 from the school
- Student 4 from the school
- Student 3 from the school
- Mother of Student 3
- Teacher 1 from the school
- Teacher 3 from the school
- Teacher 4 from the school

Student 5 from the school  
Parent 1, a volunteer and employee at the school  
Parent 2, a volunteer and employee at the school  
Student 6 from the school  
Student 7 from the school  
Former Student 1 from another school  
Former Student 2 from another school  
Student 8 from the school  
Former Colleague 1

The proceedings were recorded.

As each witness gave evidence they were asked to confirm the accuracy of their written statements. All witnesses agreed that these statements were correct with one exception. Student 2 confirmed that the word 'sexual' before the word 'relationship' in her original statement prepared by the school was incorrect. The word 'sexual' should be removed.

The principal and the teachers at the school (including the teacher) agreed that the school was an 'alternative' school that drew their students from young persons at risk. The school was a community where students called teachers by their first name and did not wear a uniform. The atmosphere at the school encouraged close relationships between teachers and students in which physical contact was more likely. The teacher was a senior member of staff at the school.

#### Allegation One

The teacher taught Student 1 who was a year 11 student at the school in 2003. On the morning of 11 April 2003 the teacher said he spoke to Student 1 in relation to his concern about her welfare and in particular her need to sell some of her possessions because she had no money. Student 1 and the teacher agreed that they had two conversations that morning and there were no other witnesses to these conversations.

Student 1 told the Panel that the first conversation took place in the fireside room. The teacher raised with her the possibility of paying her for sex to assist her with her finances. Student 1 said she was shocked and left the fireside room. She immediately rang Student 4, a friend, in a panic and asked him to come to the school. Student 4 was concerned enough to come to the school immediately. While Student 1 was on the phone the teacher interrupted her. In the second conversation the teacher told Student 1 that he was concerned that she might have misunderstood what he had said to her before and that she might have thought he intended to expel her from school. He asked Student 1 what she thought he had said to her. She said she thought he had offered her money for sex. He said he was just outlining what might happen if she did not change and apply herself to her studies.

The teacher told the Panel he had been concerned about Student 1. He had endeavoured to use shock tactics to confront her continued poor application at school. The teacher said that it was in this context that he raised with her three options – becoming a prostitute, becoming a "check out chick" or staying at school and getting

an education. The teacher said he had been greatly relieved by the response from Student 1 in their second conversation as he thought the matter had been clarified.

Student 1 said that she discussed what the teacher had said to her with other students later that day and they urged her to go to the police. She went to the police with Student 2 on the same day and told the police what had happened. They urged her to take it further. That night Student 1 went to the Eltham Police Station with her father and made a statement. This statement was subsequently withdrawn and no further action was taken by the police. Student 1 told Teacher 5 and Teacher 3 from the school about the conversations with the teacher the next day.

The teacher and students called by the teacher gave evidence that Student 1 was unreliable and had on occasions misunderstood what was said in Maths classes and become upset. According to Student 4 Student 1 was reliable and truthful. Student 1 told the Panel that she may have got some of the details of the conversation confused but that she clearly understood that she had been offered money for sex and been warned not to tell anyone about the conversation.

#### Allegation Two

The teacher taught Student 2 who was a student at the school in year 10 in 2002 and year 11 in 2003. The teacher persuaded Student 2 to return to the school in 2002 after she had left the school at the end of 2001 by providing her with a half scholarship.

Student 2 told the Panel that the teacher had told her that she should attend school during the 2002/2003 summer holidays so that she could catch up with her work. Student 2 said she agreed to attend school during the holidays to ensure that she retained her scholarship. Student 2 described a conversation she had with the teacher during those holidays. Student 2 had fallen asleep in a room at the school and woke up when the teacher came into the room. Student 2 said that during that conversation the teacher asked her if they might have a relationship in the future. Student 2 told the Panel that she understood by this question that the teacher was asking for a relationship that was different from a normal teacher student relationship and she was shocked. Prior to this conversation Student 2 saw the teacher as a father figure who had been very helpful to her in 2002. Initially Student 2 thought she may have misunderstood the conversation but on reflection, following the incident with Student 1, Student 2 became certain that she had understood the conversation correctly.

Student 2's mother told the Panel that after this conversation her daughter's relationship with the teacher changed. Her daughter became quite distant from the teacher. After Student 2 had accompanied Student 1 to the police the teacher rang Student 2's mother and asked about her daughter's changed attitude. Student 2's mother said that she thought it was quite strange that the teacher wanted to speak to her daughter at night. Sometimes he would ask her daughter to come to school as late as 10.30pm to discuss work and she became deeply concerned.

Student 2 said that on a number of occasions the teacher had touched her hair and her thigh, hugged her and made suggestive remarks and this had made her feel uncomfortable. On one occasion the teacher told Student 2 that he would like to take

her away with him to the beach for a few days. Student 2 rejected this offer. This evidence was not disputed by the teacher.

The teacher agreed that he had spoken to Student 2 during the holidays but he said that Student 2 had not understood what he had said. He had simply asked if their relationship could continue after Student 2 left the school. He said that Student 2 and the other two students smoked marijuana and used other mind altering illegal drugs. This allegation was not raised with Student 2 or her mother and so they were not given the opportunity to deny this allegation. The teacher said that all the incidents that were raised by Student 2 were part of his approach to challenging students who had not been working well at school.

### Allegation Three

The teacher taught Student 3 who was in year 11 in 2002. Student 3 and the teacher agreed that they had travelled together interstate in about September 2002 to attend a fund-raising forum on behalf of the school. Student 3 had previously attended fund-raising functions with the teacher in Victoria. Student 3's mother knew she was travelling with the teacher and had agreed to Student 3 travelling interstate for the day. The teacher made the arrangements. He and Student 3 were to fly to another state's capital city early in the morning and return to Melbourne in the evening.

When they arrived interstate the teacher hired a car and they drove to a place where Student 3 went for a swim. They returned to the city in the afternoon and attended the arranged forum. On the way to the Airport the teacher got lost and they missed the plane. According to the teacher there were no seats available on flights back to Melbourne that night so he arranged for them to stay with his brother who lived in the capital city they were visiting. The teacher agreed that he did not ask if there were any seats available on the alternative airline. Student 3 and the teacher met his brother in a hotel or bistro where they had dinner. Student 3 phoned her mother and told her she would not be returning until the next morning because they had missed the plane.

The teacher's brother lived in a flat with only one bedroom. The teacher and Student 3 both slept in the lounge room on separate mattresses. Student 3 said that she was uncomfortable sleeping in the same room and thought this arrangement was inappropriate. She noted the teacher could have slept in the same room as his brother. The teacher said that he had to sleep in the same room as Student 3 because his brother had to get up early to go to work. Student 3 did not allege that the teacher made any improper advances while they were interstate. She did state that the teacher bought her alcohol during dinner.

Teacher 2 from the school gave evidence that the school was not aware that the teacher was taking Student 3 on the trip interstate until a week after it occurred. This was confirmed by the Assistant Principal at the school. The Principal from the school said that there was no staff manual but some information was given to staff on procedures that should be followed at the school. The school did not have any written policy or procedures in relation to interstate travel by students or staff and specifically whether a student should be chaperoned on such travel. It was usual for staff to discuss any arrangements they might make in relation to travel before the travel occurred.

The teacher thought that the school would have known or should have known about the trip interstate. Student 3 had gone on similar trips with the teacher within Victoria. However the teacher did not explain how the school could have known that Student 3 was going on the trip interstate. The teacher admitted that he did not consider any other option for the overnight stay interstate other than to contact his brother and arrange to stay at his flat.

Student 3 described other incidents with the teacher including inquiring into the nature of her relationship with her boyfriend and whether they had sex, sending numerous SMS messages to her including while she was at school, expressing his love for her, and watching videos with her alone at his home with his arm around her. The teacher would discuss personal matters as well as school matters with Student 3 when the two of them went for walks with her around the school. According to Teacher 2, the teacher would often walk around the school with female students and talk to them about personal matters. The teacher stated this was one of the methods he used with students.

#### Allegation Four

The teacher said that some female students had approached the Principal of the school and asked whether they could have a 'sleep over' at the school. The students had wanted to stay at the school, watch videos and eat pizzas. The Principal agreed but told them they would have to find someone to supervise them. The students approached the teacher because he lived on the school premises and asked him if he would supervise them and he agreed. The students intended staying in a room at the school. According to the teacher he discussed the request with Teacher 1 and he said he was not sure whether the teacher should agree to chaperoning a sleep over. Teacher 1 spoke to the Principal and expressed his concern. The teacher believed that the Principal had agreed to the students holding a sleep over at the school with the teacher supervising. Before the second sleep over the Principal told the teacher that he should take care when supervising students on a sleep over. Students slept at the school on two occasions and on both occasions the parents of the students gave their consent.

At the sleep overs the students watched videos. The teacher drove some of the students to the shops to buy food and beer. Some of the students said that the teacher bought their alcohol for them which the teacher denied. The teacher explained that allowing students to drink beer at social functions was part of the culture of the school. He acknowledged that alcohol had been drunk at the sleep overs and some of this alcohol had possibly been supplied by one of the parents. The teacher said he may have given the students some of his bourbon. The students said that they had drunk bourbon. It seems that the teacher stayed at one of the sleep overs but was only there part of the time for the other. Student 3's mother stated that if she had known there would be alcohol at the sleep overs she would not have allowed her daughter to attend. It was agreed that no improper sexual behaviour had occurred on the sleep overs.

Teacher 1 and 2 told the Panel that the school had no policy on holding sleepovers at the school and so there was no formal procedure for the teacher to follow. However there was an opportunity at staff meetings to discuss the possibility of holding a sleep over and what would be the most appropriate procedure. Both Teacher 1 and 2 had

advised the teacher after the first sleep over that having sleep overs at the school of female students with only he teacher as the chaperone was inappropriate.

#### Allegation Five

Teacher 1 was one of the founding Directors of the school and with the teacher shared a leadership/management role. Teacher 2 was a teacher at the school who had also been the Registrar. Both Teacher 1 and 2 regularly spoke to the teacher about his interaction with students. They both expressed their concern that he had breached professional standards. Teacher 2 presented detailed records to the Panel of her discussions with the teacher about her concerns. Teacher 2 explained that after Student 3 had spoken to her about her relationship with the teacher she rang the police and provided the police with a statement. Teacher 2 then provided a copy of the statement to the Principal.

The teacher agreed that the discussions with Teacher 1 and 2 had occurred. He regarded the discussions to be similar to a philosophical debate. The teacher admitted that he had had many long awkward conversations during which Teacher 2 had forcefully put her point of view. Discussions like this were consistent with the culture of the school in the teacher's view. He noted that other teachers disagreed with Teacher 2's point of view. The teacher said that he had raised his own concerns about the management of the school on a number of occasions about a range of inappropriate behaviours, policies and procedures (or lack of these) with the Principal.

Teacher 3 said that she had discussed with the teacher his inappropriate relationship with students, and especially that he regularly isolated female students for discussions and close physical contact. She had regularly observed the teacher walking around the school alone with female students. On one occasion she saw the teacher put his arm around Student 3, holding her close. Teacher 1 told the Panel that he had overheard the teacher telling a student on a school camp that she looked sexy when she was wearing an off the shoulder top. The teacher explained that he did not think the student would have regarded the comment as sexual.

Teacher 1 said that the teacher had agreed that he would seek the opinion of the Principal when issues concerning the boundaries between the teacher and female students arose. The Principal's evidence was supported by detailed records which showed that the teacher had consulted him in the term before the trip interstate and he had given the teacher extensive advice. The teacher said that the discussions were not professional advice but rather consultations. He also gave evidence that others, including the Principal, had given him contrary advice at the time and that his unorthodox approach assisted some students to achieve great success. The teacher said that it was difficult to state definitively what the boundaries were between a teacher and student. However he would know if that boundary was breached.

The teacher provided numerous references from students he had taught and from the parents of students he had taught. All these references attested to the fact that the teacher was an excellent teacher.

## **DISCUSSION OF EVIDENCE**

The Panel carefully considered all the evidence presented at the hearing in relation to each allegation.

### Allegation One

Although the teacher disputed Student 1's claim that he offered her money for sex, the Panel accepts that Student 1 believed that the teacher offered her money for sex. The evidence shows that Student 1 was very upset following her two conversations with the teacher. She spoke to friends and her family about her concerns and on the same day made a statement to the police. Student 1 subsequently withdrew her statement to the police for reasons which were not explained.

The teacher has argued that Student 1 misunderstood what he was saying. He was simply pointing out to her in a confrontational way her options. The Panel could not be satisfied on the balance of probabilities the teacher had in fact offered Student 1 money for sex. The Panel finds that the teacher wanted to confront Student 1 and make her realise the importance of continuing with her studies. The Panel also finds that he used unorthodox means to do so including putting to her that one possible outcome was that she could end up as a prostitute.

### Allegation Two

The teacher denied that he suggested to Student 2 that they have a relationship in the future. Student 2's evidence was consistent and was supported by the evidence of her mother that after the conversation with the teacher took place Student 2 became quite distant from the teacher. Student 2's mother had been concerned about her daughter's relationship with the teacher and she gave the example of the teacher requiring Student 2 to attend school at night and over the holidays. After considering all the evidence the Panel accepts the version of events given by Student 2 and finds that the teacher did ask Student 2 if they could have a relationship in the future.

### Allegation Three

It was agreed that the teacher and Student 3 had travelled interstate together and that they had stayed there overnight. The teacher and student 3 stayed at the flat of the teacher's brother in the same room. The teacher's explanation was that the stay had been accidental and caused by him getting lost on the way to the airport. Student 3 agreed with that explanation. However Student 3 was disturbed by the arrangements the teacher made for their accommodation. She believed that the teacher could have slept in the bedroom with his brother. The Panel finds that although the school authorised the trip it was not aware that Student 3 would be accompanying the teacher on the trip, and that Student 3's mother would not have consented to her daughter staying overnight with the teacher. The teacher did not make further enquiries with the alternative airline to see if there were any seats to Melbourne available that night. The accommodation arranged by the teacher for Student 3 was not appropriate.

The Panel also finds that the teacher cultivated close relationships with a number of female students including Student 3 at the school. The teacher would take Student 3 for walks around the school when he would discuss school matters as well as personal

matters. The teacher asked Student 3 about her boyfriend and whether they were in a sexual relationship. The teacher would touch Student 3 and hug her.

#### Allegation Four

The teacher basically agreed with the evidence given by the students. The Panel finds that alcohol was consumed at the sleep overs and that the teacher drove the students to the shops to buy beer. The teacher also admitted to consuming bourbon at the sleepover. At least one parent would not have consented to her daughter attending the sleep overs if she had known alcohol would be available. Based on all the evidence presented the Panel finds that the teacher consented to supervising two sleep overs at the school where alcohol was present. He was the only adult present and all the students were female.

#### Allegation Five

The evidence shows that the Principal did not initially have any serious concerns about the teacher's behaviour. Teacher 1 and 2 were very concerned about the teacher's conduct.

The Panel found Teacher 2 to be a credible witness and quite considered in her opinions. The Panel finds that Teacher 2 gave the teacher clear advice about his inappropriate conduct and that the teacher did not accept that advice.

Teacher 1 also had many concerns about the teacher's conduct. He discussed his concerns at length with the teacher and offered to be a mentor. The teacher chose to reject Teacher 1's concerns and advice.

### **FINDINGS OF FACT**

Based on the evidence before it, the Panel made the following findings:

1. The context within which the teacher operated was an 'alternative' school, particularly aimed at students 'at risk', which encouraged a community atmosphere in which physical contact was more likely. Written policies were minimal and teachers and the Principal were inconsistent in their decision-making. There were times when students used alcohol and drugs and had sex at school at school functions and at school camps.
2. On 11 April 2003 a conversation took place with Student 1 during which she formed a genuine and honest belief that the teacher offered her money for sex. She made a police report, to this effect later on the same day. Student 1 subsequently withdrew her statement to the police.
3. On 11 April 2003, shortly after the initial conversation, the teacher had a further conversation with Student 1. This was to clarify the context of the previous conversation given his observations of her reaction.
4. The teacher engaged in inappropriate physical touching of Student 2 made suggestive remarks to the same student and proposed that they go away alone on a holiday together.

5. In 2002, the teacher took Student 3 on a fund-raising trip interstate. Her mother, gave consent on the basis that the trip would be for one day only and that the teacher and student would return that evening.
6. The trip was paid for by the school, but it was not until after the event that it was made clear to staff that Student 3 had accompanied the teacher. The initial authorisation by the school was on the understanding that the teacher travelled alone.
7. The teacher and Student 3 remained interstate after missing their flight back to Melbourne. Student 3 contacted her mother to advise her she would be staying overnight at the home of the teacher's brother.
8. Student 3 and the teacher slept in the same room whilst staying overnight interstate. Student 3 felt uncomfortable about this arrangement. There was no impediment to other arrangements being made, but the teacher did not make any.
9. On several occasions the teacher agreed to two or three female students staying on the school premises overnight (sleep overs). The teacher was the only chaperone at the sleepovers.
10. Alcohol was consumed by students at the sleepovers. In at least one instance, this was with neither with the knowledge nor consent of the parent of at least one of the students.
11. The teacher developed close personal relationships with several female students at the school. He would touch and hug the students and discuss personal matters with them.
12. Despite significant and consistent advice to the contrary, and expressions of concern from a number of colleagues, the teacher persisted with behaviour which was inappropriate in relation to students.

## **CONCLUSION**

The teacher argued in his closing submission that the Panel accept that he understood the reasons for the concerns of his colleagues, and that he recognised that some of his conduct was inappropriate. He undertook not to repeat those mistakes, that is he would not allow sleep overs, he would not allow alcohol to be consumed and he would not have allowed his relationship with Student 3 to progress so far again. The Panel noted that the teacher stated when giving evidence, that while he had failed in some cases to set boundaries, he believed that he had not done anything wrong.

Ultimately the Panel was not convinced that the teacher could either identify or articulate the exact or relevant nature of his colleagues' concerns, or his conduct that had caused that concern. Further the Panel was not convinced that the teacher had a clear understanding of why others believed that he had put students at risk.

In addition the teacher could not point to any remedial action he had pursued, any independent professional opinion or advice he had sought, or any training he had undergone to demonstrate that he had come to terms with why his 'unorthodox approach' to dealing with at-risk and troubled students, was deemed unprofessional and inappropriate by others. Rather, the teacher took the view that the problem rested with rigid systems and people who did not understand why and how his approach worked. It is noted that during the hearing the teacher stated that he would rather give up teaching than desist from using his 'proven' methods. Contradicting himself somewhat, the teacher also said that he would refrain from using his methods, if schools were not receptive to them and did not understand his successful alternative approaches.

The Panel considered the teacher lacked the personal insight necessary to understand, and hence make decisions in relation to how teachers should conduct themselves. The teacher's personal high regard for his non-academic abilities (including his unorthodox approach to dealing with at-risk and troubled adolescents) and his flawless view of himself as an unqualified youth worker and unqualified counsellor, who in his view had the automatic right as a teacher to take on the role of 'father figure' when he saw fit, caused the Panel a level of significant concern.

The teacher said that he considered it his right and responsibility to see students outside normal school hours so that he could support them in a range of ways. This support included social activity external to the school curriculum and acting as a self appointed father figure. The teacher justified such activity as behaviour that he was required as a teacher to pursue as in his view it was part of his job to proactively adopt the role of a parent. The teacher referred to the commonly held view that a teacher was 'in loco parentis' to demonstrate his point of view.

The teacher's interpretation and application of 'in loco parentis' however, not only fell short, but conflicted with the Panel's interpretation. It should be noted that the panel deemed 'in loco parentis' in lay terms to mean - *to act as a parent would, doing anything and everything possible to protect a young person, in the place of a parent*. The Panel also notes the observations in a number of High Court judgements that a teacher is not really 'in loco parentis' to a student. The relationship is better defined as a duty of care to that student, a proposition summarised in *Geyer v Downs* (1977) 138 CLR 91.

In his evidence the teacher referred to problematic drug usage and underage drinking. In spite of this he not only allowed students to drink in his presence, but provided them with alcohol. Given this the Panel considered the teacher's argument of operating 'in loco parentis' to be somewhat misguided, if not at times bizarre. Further the teacher was at pains to establish that the students he was keen to help used drugs and drank alcohol, and again he had never progressed or suggested contact or help from drug and/or alcohol counsellors or qualified youth counsellors.

While the teacher noted that he himself was not a father, he did however state that his valued information and positive counsel about how to act, and how to support his at-risk and troubled students had come from his own father and parents at the school,

who as far as the Panel could tell were not qualified teachers, medical practitioners, youth workers, drug and alcohol counsellors, or social workers. That said there is clear evidence the teacher failed to act on the advice of colleagues who were qualified teachers, when they questioned his verbal interactions, social activities, physical contact (that he described as 'fatherly') and unorthodox methods.

There is no doubt that there were others in this alternative school environment who were less concerned about students drinking on the premises including during school hours, students' use of drugs and students having sex while at school functions or on camps. As troubling as this is, the fact that the teacher had a more conservative view on some of these matters does not in any way excuse the teacher for his own behaviour or the decisions he made personally. In his evidence the teacher compared his behaviour to that of others at the school to show how he was a lesser offender, misguided, and less responsible. In reality while complaints can be brought against other teachers at the school, their behaviour and views on what is and is not appropriate can not be used to minimise the impact of the teacher's personal decisions and behaviour, or to reduce his level of responsibility for students as a teacher.

At the time of the hearing, it was evident that the teacher adamantly held to the argument that there were others who were more to blame in a range of ways than himself for the environment and culture which permitted him to behave in the manner that was being scrutinized. It was also clear that when the teacher was a Director of the School's Board, and some time later at the hearing, he had a negligible level of understanding of the duty of care he owed to the students and his obligations as a Director in relation to Occupational Health & Safety, sexual harassment, mandatory reporting and illegal substance usage by students in relation to the students for whom he had responsibility. At the time of the hearing it became evident that the teacher had not sought to rectify this negligible level of understanding despite the fact that such knowledge was vital for a teacher (particularly one seeking to work with at-risk and troubled students) as well as a Director.

The test as to whether a person is a fit and proper person relies on an assessment of whether or not the person has the qualities that would accredit them to the public as a person who could be trusted to carry out all the duties of a teacher. These qualities include sound understanding and application of the duties and responsibilities of a teacher as well as the moral integrity and character to be a teacher. The Panel considers the teacher falls short of possessing these qualities.

Having discussed the teacher's lack of personal insight as well as the insight deemed necessary to fulfil the role of a teacher, the Panel believes the teacher also lacks the foresight a teacher requires. While at the school, and during the hearing, the teacher did not demonstrate that he was aware of the potential risk or the future problems that he posed for individual students. He did not demonstrate an ability or a willingness to envisage or contemplate future problems his behaviour and beliefs posed for the school, his peers, and the school community.

At no time has the teacher's reputation, ability or competence as a teacher been questioned. A good teacher can however simultaneously place students at risk. A

teacher's good character extends to moral standards, attitudes and qualities, not merely reputation. The notion of good character covers the need for appropriate good personal conduct and ethical fitness. If a teacher showed a continued absence of insight and understanding of right and wrong, it is a strong indicator of unfitness. The Panel believes the teacher showed a continued absence of insight. There were many examples including, sleeping in the same room as a female student when there were alternatives he could have initiated, staying with young women overnight at the sleepover, failing to ensure the school knew he was taking a student interstate, becoming emotionally attached to a student, sending SMS messages to students in class, feeling flattered and touched by the attention and invitations of the young women, repeating behaviour and failing to set boundaries despite other people raising their concerns, telling an adolescent she looked sexy in a brief top and deeming it the same as telling his god-daughter that she looked sexy and excusing it as reasonable for him to do so given the country football culture that he had grown up in, providing students with alcohol, having physical contact with students, having discussions of a sexual nature with adolescents that were designed from his perspective to shock them into behaving better.

Given that the teacher considered himself both a father figure and a teacher who had a special way with at-risk and troubled adolescents, the Panel was of the view that the evidence pointed towards the teacher being a middle aged man, who wanted to be 'one of the kids' and who utilized his position to inappropriately immerse himself into their lives. The fact that the teacher worked in an alternative environment that was minus written policies and identified rules, automatically highlighted the need for the teacher as a teacher to not only show consistent good judgement, but a need to personally invoke an appropriate standard of behaviour to be adhered to at all times. This is especially the case given that he had worked in other schools where policies and rules were clear. Because a school fails to formalise policies and rules does not mean that the teacher's duty of care alters, or that the relationship between teacher and student alters. The teacher stated in his evidence that boundaries could not be fixed, rather a teacher knows the boundaries when they see them. Unfortunately the teacher in the view of the Panel either did not see them, or did see them and chose to ignore them. Further the teacher indicated at one stage that he thought he had the skill to work in the way that he did, but maybe now on reflection, he did not. The Panel considered the teacher continued to miss the point that irrespective of how skilled a teacher was, working in the way he did was unprofessional, inappropriate and detrimental for students.

One key issue addressed by the Panel was whether the teacher's conduct represented an isolated or passing departure from proper professional standards. The Panel, based on the evidence available considered the matters complained about did not represent an isolated or passing departure from standards. Rather the matters complained about were the results and fall out of his repertoire of close relationships with students, his intense one on one attention paid to students, his juggling of students' emotional attachment to himself, his involvement in social activity, his assumption that his management of students was beyond reproach and his shock tactics.

The Panel is of the view that if the facts show that the person is guilty of serious misconduct and it was not an isolated incident, then the person is likely to be unfit to teach. Further the teacher's failure to understand that the conduct complained about was serious misconduct goes some way to proving that he is unfit to teach, even if he promises not to repeat certain behaviours.

Serious misconduct is not measured against the worst case scenario, but by the extent of departure from proper standards. If a teacher adequately performs their duties and acts in the best interests of students they should be able to command the respect and confidence of the teaching community. When a teacher loses that respect and confidence because of their conduct they should no longer be able to exercise the privileges, duties and responsibilities that come with being a teacher.

In making its decision the Panel notes that the teacher's position is one of power and influence in relation to a student – a position of trust. The Panel is of the view that the teacher's conduct demonstrated a lack of professional judgement, a much distorted interpretation of care, and improper and unethical conduct. These circumstances are partly to the teacher exploiting his position of power and influence as a teacher, and in a destructive way utilising his position of trust (to the detriment of students and the discredit of the profession) in order to pursue his own interests, priorities and methods.

A person who is fit to teach is a person who can show knowledge of what he or she ought to do, and then does it. A person who does not have such knowledge and/or a person who shows a careless disregard for a teacher's professional obligations and duty of care, is a person who falls short of being designated fit to teach.

The teaching profession must maintain high standards, hence parents must feel confident that the teacher will care for their child appropriately, other teachers must be able to trust the teacher to behave appropriately with all students not matter what their circumstances, and the education community must have confidence that those engaged as teachers are trustworthy in relation to how they care for students (noting in particular those at-risk).

**DETERMINATION**

The Panel acknowledges the teacher's personal view that 'any restriction on my availability to act as a teacher and mentor of young people would in fact reduce public safety'. However the Panel finds the teacher guilty of serious misconduct and considers the teacher unfit to teach. The teacher's registration is cancelled.



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Susan Halliday

A handwritten signature in cursive script that reads "Susan Halliday".

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for Janet Sherry

A handwritten signature in cursive script that reads "Susan Halliday".

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for Graham Houlton