

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

**NUMBER:** 001

**REGISTERED TEACHER:** James Patrick **WALSH**

**PANEL MEMBERS:** Ms Susan Halliday, Chairperson  
Mr Garry Salisbury, Registered Teacher  
Ms Sophia Panagiotidis, Panel Member

**ATTENDANCE:** The teacher  
Ms Janine Garner – Counsel Assisting

**DATE OF HEARING:** Friday 30 January 2004 & Tuesday 17 February 2004

**DECISION OF THE PANEL:**

On 17 February 2004 the panel decided to cancel the registration of the teacher as of 17 February 2004.

**EFFECT OF THE DECISION:**

The effect of the decision is that the registration of the teacher has been cancelled and he cannot be employed as a teacher in any state, independent or Catholic primary, secondary or special school in Victoria.

## **BACKGROUND**

The teacher was deemed registered as a teacher under the *Victorian Institute of Teaching* 2001 (the Act) on 31 December 2002 because he had been registered as a teacher with the Registered Schools Board under section 37 of the *Education Act* 1958 immediately before the Act commenced.

On 31 July 2003 the Principal of the school advised the Victorian Institute of Teaching (the Institute) that the teacher had resigned as a result of an allegation being made by a student of possible misconduct. On 8 August 2003 the Institute received a letter from the Principal and copies of a number of documents relating to the allegation. At its meeting on 10 September 2003 the Disciplinary Proceedings Committee, a subcommittee of the Institute Council, decided that this matter should be referred to a formal hearing. By the Notice of Formal Hearing dated 19 January 2004 the teacher was advised that the formal hearing was to be held on 30 January 2004.

The Notice of Formal Hearing set out the following allegations as evidence of possible serious misconduct or lack of fitness to teach:

- that on or about the Thursday night of the second week of the term two holidays 2003, the teacher rang a Year 12 student and asked her to stay at his house
- on the same evening the teacher met the student at a park and drove her to a hotel
- at the hotel the teacher bought the student some alcoholic drinks
- the teacher took the student back to his house where he supplied her with more alcoholic drinks
- at his house the teacher touched the student in inappropriate ways including putting his hand on her leg
- the teacher asked the student if he could kiss her on the lips
- the teacher smoked marijuana with the student
- the teacher asked the student if he could sleep in the same bed with her
- the next day the teacher tried to convince the student that she had given him a 'blow job', and later said that he was only joking
- in the months prior to this incident the teacher rang the student on a number of occasions on her mobile usually late at night
- that on previous occasions the teacher had asked the student to go to the hotel with him.

The issues to be determined in this matter are:

- whether the teacher asked the student to stay at his house
- whether the teacher took the student to the hotel and bought her alcohol
- whether the teacher provided the student with alcohol at his house
- whether the teacher allowed the student to gamble
- whether the teacher took the student back to his house where she stayed for the night and touched and spoke to her in an inappropriate way
- whether the teacher's conduct amounted serious misconduct and/or lack of fitness to teach.

## **THE LAW**

The Disciplinary Proceedings are found in Part 4 of the Act. Section 27 provides:

***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 of teachers in other jurisdictions and in other professions.

According to the High Court 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 teaching 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* and not the criminal standard of *beyond reasonable doubt*. The standard was referred to 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 including in later High Court decisions (see *Hobart v Medical Board of Victoria* (1966) VR 292; *Basser v Medical Board of Victoria* (1981) VR 953 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. If the teacher's conduct was caused by their inability to cope with the

work situation, this may be incompetence but may also be lack of appropriate support. If the conduct was caused by ill health then it will not be misconduct (see *Re: Christine Trigger and: The Australian Telecommunications Commission* (decided by AAT 17 December 1984))

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** drawn from 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 the duties and responsibilities of a teacher. Or the conduct may illustrate that the teacher would not be able to work satisfactorily in a school environment. Whether the 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 v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279)

Misconduct may be personal misconduct. That is, the conduct is not necessarily connected to the teacher's professional practice. This is because the teacher's conduct brings disgrace upon the teaching profession (see *NSW Bar Association v Cummins* [2001] NSWCA 284).

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 of the departure 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.

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. A sexual relationship with a student may only be improper or unethical because of the teacher/student relationship. It would be improper because it arose out of the teacher's professional relationship with the student; it was destructive of that relationship and the teacher's position of authority and respect. (See *Yelds v Nurses Tribunal & Ors* (2000) NSWSC 755 (2 August 2000); *New South Wales Bar association v Cummins* (2001) NSWCA 284 (31 August 2001) The Institute wishes to maintain the high standard of conduct of members of the teaching profession.

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 *Hughes and Vale Pty Ltd v The State of New South Wales (No 2)* (1955) 93 CLR 127).

The teaching profession must maintain the highest standards of integrity. This involves four basic duties

1. Parents must feel confident the teacher will care for their child appropriately
2. Other teachers must be able to trust the teacher to behave appropriately with students
3. The education community must have confidence that those persons engaged as teachers are trustworthy and will act with integrity
4. The education system must be confident that teachers are capable of fulfilling their fundamental obligation of imparting knowledge to students.

A person who has a complete disregard for their legal and civic obligations brings the teaching profession as a whole into disrepute and would be unfit to teach. 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 *Marten v Disciplinary Committee of the Royal College of Veterinary Surgeons* [1965] 1 All ER 949 and *New South Wales Bar Association v Cummins* (2001) NSWCA 284 ).

#### **DOCUMENTS CONSIDERED**

- Witness statements by:
  - the student
  - the Secretary to the Principal
  - the Deputy Principal
  - teacher colleague 1
- Two e-mails from the student dated 29 July 2003 11.29 am and 6.03pm
- Transcript of interview with the student dated 29 July 2003
- Hand written notes of interview with the teacher dated 29 July 2003
- Letters to the teacher from the Principal dated 29 July and 30 July 2003
- Hand written letter from the teacher to the Principal dated 30 July 2003
- Order of events completed by the Principal on 29 July 2003
- Letter to the Institute dated 7 August 2003 from the Principal
- File note dated 31 July 2003 of contact between Principal and C. Heazlewood.
- Statement by teacher colleague 2
- Statement by the teacher's daughter

#### **THE EVIDENCE**

##### **Witnesses called by the Institute:**

The Institute called the following witnesses to give evidence at the hearing

1. the student
2. the Secretary to the Principal
3. the Deputy Principal

**Witnesses called by the teacher:**

4. teacher colleague 1 (via conference telephone)
5. teacher colleague 2
6. the teacher's daughter

The teacher also gave evidence.

The documentary evidence provided and the oral evidence given at the hearing is attached to these reasons.

**DISCUSSION OF EVIDENCE**

The following facts are not in dispute and supported by the evidence:

- The school has policies and procedures in relation to drugs and alcohol and these are made available to teachers employed by the school.
- The teacher contacted the student by phone on the Thursday night and suggested they meet and talk.
- the student's mother did not know that the student was meeting the teacher.
- The teacher met the student at the park at 10.40 pm and drove with her to his home via another suburb.
- The teacher took the student to the hotel.
- At the hotel, the teacher played the poker machines in the company of the student.
- The teacher offered the student tobacco which she accepted.
- The teacher touched the student on the knee.
- The teacher took the student back to his home and allowed her to remain in his house overnight.
- The teacher did not contact the student's mother and advise her that he was meeting the student or his concern for her welfare.
- The teacher did not inform the school of these events until asked to do so.
- The teacher did not inform the school of his concern for the student's welfare.
- The teacher and the student regularly exchanged phone calls and text messages in 2003.

The Panel finds that the incident took place on the Thursday night of the second week of the mid year school holidays in July. The teacher had been away for the first week of the school holidays and in his evidence he was certain that the student had stayed at his house on the Thursday night of the second week of the holidays. The student thought it was the in the first week but admitted she was not sure.

On two matters the Panel did not find it necessary to make any findings. These were the allegations made by the student in relation to the teacher purchasing alcohol at the hotel for her, and the teacher offering her marijuana at his house. The evidence in relation to these matters was not clear and in conflict.

The Panel accepted the submission of Ms Garner that the student was a credible witness and bore no malice towards the teacher. The Panel also accepted as established by the evidence the non contentious facts referred to by Ms Garner.

In relation to whether the student gambled in the company of the teacher, her evidence was that she and the teacher went to the hotel for about half an hour and while they were there they played the pokies for about 10 minutes. While the student does not state specifically that she played a separate poker machine, an inference can be drawn that she also participated while the teacher played, noting that she said she believed she had pressed the buttons. In his evidence the teacher said that he took the student to the section of the hotel where there were poker machines and he played the poker machines. In his evidence in chief he denies that the student actually played the pokies. In his second written statement to the Panel the teacher says that he borrowed money from the student to pay for drinks and used the change to play the poker machines. In response to a panel question the teacher said that the student probably did play the poker machines. The Panel concludes that the teacher took the student to a restricted area of the hotel when she was under the legal age to enter that area, and allowed her to gamble.

In relation to whether the student was told by the teacher not to say anything about what had happened, her evidence was that the teacher told her that what had happened between them on that night was to be a secret. She felt that she had betrayed him when she told the school what had happened because she had agreed not to tell anyone. The teacher agreed that he told the student not to 'blab' about what had happened because he could be in terrible trouble. He did not want a whole lot of students asking him for help and wanting to stay at his house over night. However the teacher also stated that he had told the student that she should talk to the school councillor. The Panel concluded that the teacher had told the student not to tell anybody what had occurred. He may have told the student that she should talk to 'everybody' about her problems. However, he made it clear that she should not talk about what happened on the Thursday night to anybody and the student certainly felt that when she told the school councillor she had betrayed the teacher.

In his evidence the teacher was adamant that he did not give the student alcohol. The student's evidence was that the teacher bought alcoholic drinks for her at the hotel and that she drank beer at the teacher's house. The teacher admitted that there was probably some light beer in his refrigerator. He had told the student to help herself to a drink. He had thought she got a soft drink and he could not tell it was beer because the bottle was in a stubby holder. However in his first written statement the teacher agreed that the student drank light beer at his house. The student was very clear in her evidence that she and the teacher drank beer together when they returned to his house. According to the teacher and his daughter he never drank beer. In this matter the Panel prefers the evidence of the student. Her evidence was quite clear on this point. Whether or not the teacher drank beer is beside the point. The teacher invited the student to get a drink from his refrigerator where he knew there was beer. After first admitting the student had drunk light beer he later denied knowing that the student was drinking beer. The Panel finds this argument implausible for two reasons. Firstly, beer has a distinctive odour that the teacher must have been able to smell on the student and secondly, there would have been empty beer bottles around the house. The student said that she had more than one stubby.

The teacher admitted that he had picked the student up in Frankston after she rang him to tell him she was at the station. The student clearly recalled going to Hastings with the teacher to have coffee. Significantly teacher colleague 1 remembered meeting the teacher and the student in Hastings although he does not recall having coffee. The Panel concluded that the teacher had taken the student to Hastings after he had picked her up at Frankston station.

### **FINDINGS OF FACT**

After considering all the evidence the Panel made the following findings:

1. That on or about the second Thursday of the mid year school break in July 2003, the teacher met the student at the park around 10.40pm without the knowledge of her mother, the school authorities, or any other relevant support authorities.
2. The teacher took the student to the hotel and allowed her to enter a restricted area and gamble.
3. The teacher took the student to his house and allowed her to stay overnight.
4. The teacher requested that the student not tell anyone of the events that had occurred.
5. The teacher did not report the events to the school authorities in spite of his concern for the student's welfare.
6. The teacher touched the student on the knee while she was at his house
7. The teacher allowed the student to consume alcohol from his fridge during the evening.
8. The teacher offered the student tobacco which she accepted.
9. The teacher had taken the student on a previous occasion to Hastings as a social outing.
10. The student and the teacher on a reasonably regular basis had exchanged phone calls and SMS messages.

### **Conclusion**

The Panel had to consider whether the teacher had engaged in serious misconduct and/or was unfit to teach. The allegations that would form the basis for a finding that the teacher was guilty of serious misconduct and/or was unfit to teach were that he:

- arranged to meet a student without the knowledge of her parent or the school authorities or other support authorities
- took the student to the hotel
- allowed the under age student to gamble
- allowed the student to stay at his private residence overnight
- had touched the student inappropriately
- allowed the student to consume alcohol at his house
- urged the student to remain silent about these events.

The Panel found on the balance of probabilities that all of the above events had occurred and concluded that the teacher was guilty of serious misconduct and was unfit to teach.

A number of other serious allegations were made. However the Panel found there was insufficient evidence to establish whether these events occurred.

The teacher's account of what occurred differed markedly from the student's account. The teacher emphasised a number of times that his actions were primarily motivated by his concern over the student's mental state. The Panel considered that whilst this may have been the case, the teacher repeatedly demonstrated a severe lack of judgement and insight into the appropriate boundaries between a student and teacher, appropriate crisis intervention and accountability to both the student's parents and to his employer.

The Panel notes that there is a history which preceded the events of the night in question. It is not in dispute that the student had made repeated phone calls and sent a number of SMS messages to the teacher. What is evident to the Panel is that the teacher continually demonstrated a lack of understanding in relation to boundaries and the appropriate relationship between student and teacher. Teacher colleague 2 told the Panel that she had made the teacher aware of the student's 'obsessive' behaviour. Despite this, the teacher allowed the contact between himself and the student to continue. There was a prior incident when the teacher took the student in his car to Hastings. This was confirmed by teacher colleague 1 and the student. The teacher said that he met the student in Frankston.

The Panel concluded on the basis of the evidence before it, that the teacher had been deliberately secretive. The Panel determined this from the secretive nature of the meetings between himself and the student as well as his request to her not to tell anyone about what occurred at his house on the Thursday night and his failure to tell the student's mother and the school authorities about the events or his concerns. The incident came to the attention of the school authorities because the student told the Principal's secretary.

The question of the teacher's competence as a teacher was never raised as an issue and the Panel heard oral and documentary evidence that he had a good reputation amongst his professional peers. The Panel accepted that he was a competent teacher.

The term *serious misconduct* is not defined in the Act and so the Panel applied the principles from case law outlined previously. The teacher's acts were neither trivial or of momentary effect. He admitted that he met the student at Frankston and the Panel found that he took the student to Hastings. The Panel found that it was a substantial departure from the accepted standards of the teaching profession for the teacher to:

- arrange to collect a female student from a public park at a late hour and not inform either the girl's parents or the school authorities, or other support authorities of his intentions or purposes;
- take a female student to the hotel and allow her to gamble;
- allow a female student to consume alcohol in his home;
- touch a female student inappropriately on the leg;
- attempt to keep the events described a secret.

The Panel found that the teacher's acts constituted misconduct and were within his will, power and control. At various points during the evening he should have exercised his professional judgement but he failed to do so. Oral and documentary evidence was provided that the school had clear guidelines on the consumption of alcohol and

tobacco in its drug education programs and as a professional teacher the teacher was either aware of these guidelines or should have been. The teacher did not argue that his conduct was as a result of an inability to cope with a work situation or ill health, which may have been a mitigating factor. Although there was evidence that the teacher had experienced a prolonged period of ill health, the Panel was not presented with any evidence that this ill health was connected to his poor judgement. The teacher did indicate that he had been receiving psychological counselling after resigning from the school.

As a teacher he had power and influence in relation to a student and was in a position of trust in relation to the student. His misconduct was an abuse of this trust. His conduct reflected attitudes and characteristics inconsistent with the moral qualities required of a teacher. His behaviour was destructive of his professional relationship with a student and his position of authority and respect as a teacher.

The Panel found that by his misconduct, the teacher is unfit to teach. The Act and the case law clearly illustrated that the purpose of disciplinary proceedings is, amongst other aims, to protect the public. These proceedings are not meant to punish the teacher. When he resigned from his position as a teacher the teacher certainly suffered a form of punishment. However the purpose of these proceedings is the protection of the public.

The teacher continued in his evidence and line of questioning to suggest that he had been manipulated by the student and that her alleged mental state justified his behaviour. He persisted in his belief that he could assess each situation without reference to clear professional boundaries between student and teacher. The Panel determined that he lacked a clear understanding of why his acts amounted to misconduct. He agreed that he had exercised poor judgement but when specifically questioned on this point he said that he could not guarantee that he would not act in the same way again if he believed the circumstances warranted it. The teacher showed a continuing lack of moral responsibility and an absence of insight and understanding of right and wrong within an ethical context for the teaching profession.

The Panel is supported in its finding that the teacher is unfit to teach because the teacher disregarded his legal and moral obligations. The Panel found that the teacher had not maintained the highest standard of integrity and parents, other teachers and the education community would not be able to trust him or believe that he would act with integrity. The teacher made no attempt to tell the school authorities or the student's mother about the events described and it was only after the student's discussion with her school councillor that the incident became known. The teacher's secretiveness betrayed the trust in a teacher a student was entitled to rely on, a trust the public expects of a teacher. The Panel found that the teacher's misconduct brought the teaching profession into disrepute.

Under Section 42(2) of the Act, the Panel makes the following findings.

- (b) the teacher is not fit to teach
- (c) the teacher is guilty of serious misconduct

**DETERMINATION**

The Panel was of the opinion the teacher’s behaviour required a severe penalty because:

- the acts amounted to serious misconduct;
- he showed a lack of understanding of appropriate teacher/student boundaries;
- he shows a continuing lack of insight into the moral and ethical standards required of a teacher;
- there is a clear need to protect the public and maintain the reputation of the teaching profession.

The Panel determined that the imposition of conditions, limitations or restrictions was inadequate. The Panel determined that a suspension was inappropriate because:

- the misconduct was serious, and
- the teacher could automatically re-enter the profession at the end of a period of suspension without having developed the necessary understandings and moral insights required by the teaching profession and the public.

The Panel decided that because of its finding that the teacher was unfit to teach and that the only appropriate penalty was that the teacher’s registration should be cancelled from the date of this decision pursuant to section 42(2)(i) of the Act.



.....  
**Susan Halliday**



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**for Garry Salisbury**



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**for Sophia Panagiotidis**

## THE EVIDENCE

### Documentary Evidence:

1. Written statement by the teacher provided at the hearing on 30 January 2004, which is summarised as follows:
  - The teacher developed an appropriate trusting student/teacher friendship with the student. He provided phone numbers to his students and believed this was an acceptable practice. He received SMS messages and phone calls on a reasonably regular basis from the student and did not terminate them because of his belief that she was suffering from insecurity, low self esteem and neediness. He has given similar assistance to his daughter and niece previously.
  - After his return from sick leave, the student approached him in a Year 7 class, placed her arms around his neck, gave him a hug and said she had been worried and missed him. He felt embarrassed and shrugged it off.
  - After returning from holidays in New South Wales he received a phone call at about midnight by what sounded like an alcohol affected student. The phone call was brief and he returned the call but could hear only muffled noises and muted music and laughter.
  - The next day he was uneasy and called the student at 6.18 pm and spoke to her for about an hour. As a result of that phone call he felt the student was depressed, bored, guilty and alone.
  - The teacher stated that as a result of his experience in the Police Force he felt a responsibility to assist her. He phoned again at 10 pm to ask if she would like to meet and talk. The teacher admitted that this was outside the normal student/teacher relationship but believed these were secondary to concerns about the student's safety and well being.
  - He met the student at 10.40 pm at the park. He drove via where he believed his daughter (and her car) would be, but not finding her, he then drove the student to his house. The student seemed quite happy on arrival. When he arrived home, his daughter was not at home and rather than be in the house on his own with the student, they went for a 200 metre walk to the shops. Finding everything closed, they went into the television section at the front of the hotel where he bought the student two cokes.
  - They left the hotel after 20 minutes, and went back to his house, whereupon the student rushed to the toilet.
  - The teacher saw a light on in the study and found his daughter who said she was not interested in talking to the student because she had problems of her own. He did not mention to the student that his daughter was present in the house during the evening or the next morning.
  - When the student returned from the toilet, she demanded a drink and he told her to help herself, knowing that in his refrigerator there were stubbies of light ale.
  - They talked for some time and then the teacher said it was time for her to go home. She looked annoyed and upset and sat on the couch and he consoled her by placing his hand on her leg just above the knee. She reacted in shock and the teacher was hurt that his gesture had been misinterpreted. The student refused to go home and went into the

- daughter's bedroom and lay on the bed. He tried to wake her up on a number of occasions but she would not get up. He asked his daughter for advice. She said let the student sleep and take her home in the morning. The teacher then slept in his own bed, alone.
- The next morning they were awakened by teacher colleague 1 knocking on the door. Teacher colleague 1 and the student had a brief conversation. Teacher colleague 1 said he was going to a petrol station before going to the teacher's family farm to do some fencing. The teacher drove the student to the petrol station. He was annoyed with her behaviour on the previous night and said to her "Well, you did a hell of a job on me last night didn't you?" The student became quiet and thoughtful and teacher colleague 1 told her the teacher had been joking.
  - The teacher then dropped the student at her street and told her to keep talking to people about her problems.
2. Prior to 17 February 2004, the teacher forwarded a second written statement to the Panel for its consideration. In summary he states:
    - He did not knowingly supply the student with alcohol at his home and he denied drinking alcohol himself. He assumed that the student was drinking soft drink.
    - He did not buy alcohol for the student at the hotel.
    - He only had \$10.00 to pay for drinks and so he borrowed \$10.00 from the student to help pay. He used the change playing the poker machines.
    - He did not procure, supply or smoke any cannabis, either for himself or for the student.
  3. In her statement, teacher colleague 2 writes:
    - In 2001 she received mobile phone calls and SMS messages from the student which increased in frequency and became erratic and inappropriate. The student appeared to be affected by alcohol on some occasions.
    - She became uncomfortable and felt that the student's behaviour was becoming obsessive, so she stopped answering her calls or responding to text messages.
    - The calls continued for about a month, then stopped.
  4. In her statement the daughter of the teacher writes:
    - Her father had always been concerned with the welfare of others and that this was his motivation on the night concerned.
    - On the night in question, she had an argument with her boyfriend. When she returned home she went straight to the study. When her father came in she told him that she did not wish to try to help anyone else with their problems and the student could sleep in her room.
    - Later she heard her father tell the student loudly that he wanted her to go home.
    - Her father asked her advice and she said 'let sleeping dogs lie'.
  5. Letter from the Principal of the school confirming the teacher's employment record.

6. SMS Message from the student to the teacher in late 2003 expressing her regret at the outcome of events.

## **Oral Evidence**

### **The Student**

The student gave evidence in the company of the school councillor from the school.

In summary, the student told the Panel:

- She was a student at the school from the age of 13 or 14. In Year 10, the teacher was her Home Room and Religion Teacher. He was not her teacher in years 11 or year 12. She did not have any contact with the teacher outside school until year 12.
- The teacher suggested she stay at his house when he called her on her mobile phone. They talked about other things and she agreed to stay at his house. About an hour later they met at the park. She chose the spot for no particular reason. They met there because her mother was home and she did not want her mother to know. She would not approve of the student staying at a teacher's house.
- They went in the teacher's car to a suburb to buy alcohol, but it was late at night and there were no bottle shops open. On the way they discussed buying alcohol and having a drink at the teacher's house. They went to the hotel with the idea of buying alcohol. The teacher bought the student a bourbon or Canadian Club and coke in a small glass. They had about three rounds at the hotel and the student said that she felt fine. The teacher was drinking too. They played the pokies for about 10 minutes and the teacher suggested having another drink. They were at the hotel for about half an hour. The teacher drank three glasses and did not seem affected by alcohol. The teacher saw some people he knew and introduced her as a friend. They left the hotel, and got back in the car. She did not think the teacher had been drinking beforehand.
- They drove to the teacher's house. She had been to his house once before. The student expected the teacher's daughter whom she had met once or twice before, would be there. The teacher said that he was not sure if his daughter would come home. She did not come home that night.
- There was beer at the house and they had another drink. She drank more than one beer, but less than five and the teacher drank the same amount. She had no reservations about buying alcohol at the hotel or having alcohol at his home. The teacher showed her his new stereo in the lounge room. About midnight they began dancing, separately at the start and then like couples dance. They probably danced that way for about one minute. The student got another drink and at one stage went outside. The teacher went outside, picked her up, carried her inside and threw her on his bed and left the room. She can not remember why, or if the teacher said anything. She said she was tired but got up again. She thought that there were two bedrooms in the house, the teacher's and a spare. They had talked about her sleeping in his bed and him sleeping in the spare bed. They had forgotten about his daughter by then. They had another drink and the music was still playing. She kept saying she was tired and wanted to go to bed. He suggested

sharing a bed, like father and daughter. While she would share a bed with her father, she would not with him.

- When she was sitting on the couch, the teacher sat down next to her, talking, laughing and watching a DVD. He was tickling her and they ended up on the ground laughing with his hands on her legs. She told him to stop and he did. He had some cannabis and produced a joint. She took it and smoked it. There was no discussion about whether it was appropriate. He knew she had smoked cannabis before.
- She went to bed in his bed and slept for five to six hours. He came in a few times at 3.30 or 4.00 am to wake her up. He slept in the spare bed. She did not feel affected by substances she had consumed.
- The next morning the alarm went off and she got up and had breakfast. The teacher got ready and teacher colleague 1 came round to go and work on the teacher's mother's house. Teacher colleague 1 drove his own car to the garage to get petrol and she left with the teacher in his car. In the car he told her she had given him a 'head job'. He was serious to begin with and then he said he was joking. She did not think he would say that to her although they used to joke around a lot.
- The student said she did not talk to teacher colleague 1 much. The teacher told teacher colleague 1 that he was joking about the 'head job'. Teacher colleague 1 told her not to believe him; he was just joking around. She was not bothered by it.
- The teacher dropped her at the park and she went home. There was no suggestion she be taken home. This happened in July in the two weeks school holidays. She thought it was in the first week. It was on a Thursday and she was dropped off on Friday. She stayed home for the rest of the holidays.
- She saw the teacher briefly when she returned to school. She does not think they talked about what happened.
- When the teacher dropped her off at the park, she felt strange. She does not know why. She felt fine for the rest of the holidays and when she returned to school she felt fine until she was questioned about what happened.
- She had told the Principal's secretary what happened because she tells her everything. She has known her since year 7 and they have come to know each other more since year 11. She sent her e-mails. The student was surprised that other people got to know about what happened. She spoke to the school councillor and then had the interview with the Principal. She told him everything that had happened.
- The last contact she had with the teacher was when she sent him a message to let him know she had nothing against him. It was not all his fault; it was also her fault. Not all the blame is his. She felt guilty about sneaking around behind her mother's back. She should not have agreed to stay at his house. She was 17 years old and the teacher is about 42.
- She regards teachers as friends who are responsible for you inside school, but not outside. She has never spent the night at another teacher's place.
- She and the teacher used to text message each other and he rang her a couple of times from about the end of year 11. She sent him a lot of messages, and he sent her a lot as well - usually in the afternoons. If he called, it would be at night. He had never asked her to go to a hotel before.

- She wishes she could still be friends with the teacher and she feels like she disappointed him by telling the Principal's secretary what happened. It was supposed to be a secret. She had agreed on the Friday morning in the car after it happened that she would not tell anyone because he would probably get into trouble or get fired.

**Cross-examination of the student by the teacher:**

Was the student sure of the timing of the event? *Not precisely, but she thought it was at the end of the first week.* The teacher said this was not possible as he was on holidays in NSW.

Was it possible it was in the second week of the holidays? *Yes.*

What was her state of mind emotionally and psychologically on the night he rang her? *Fine and she was happy he called. She trusted him.*

Was their friendship an appropriate teacher student one? *Yes in school, but not with the phone calls.*

Did the student phone and SMS the teacher frequently, especially 3 or 4 weeks prior to the holidays? *Yes.*

Was the student able to describe her feelings and thoughts to the teacher? Did she feel comfortable? *Yes.*

Were there events in the student's life that were not happy? *Yes.*

Did the student phone or message the teacher the night before the incident? What was she doing the night before? *She can not remember.*

Did the student phone the teacher's number for a short time at approximately midnight the night before the incident? *She might have, she can not remember.*

The teacher told the Panel that his telephone account which listed phone calls direct to mobiles, shows that on 10 July 2003 at 12.38 am, he made a phone call which lasted 26 seconds to the student's number in response to a call from her.

Did the student remember that phone call? *She vaguely remembered.*

Did the teacher call the student at 6.15 pm on 10 July and speak to her for 62 minutes and 14 seconds? *Yes.*

The teacher also said there was another short phone call at 8.20pm that lasted 1 minute and 46 seconds. He told the Panel that there were a sequence of calls in response to the call he received that caused him to worry.

Was it possible that the student got some of her facts wrong? *Yes.*

Did the student recall a conversation which took place in the Art Room some weeks before when she had told the teacher that she wanted to come to his place? *That sounded right.*

Did the teacher tell the student on a number of occasions that there was no way she was going to his house? *Yes.*

On an earlier occasion did the student come to the Art Room with her bags and say to the teacher "Are we going to Rosebud?" *Yes, he said "no", so she called him a "chicken shit".*

On a number of occasions did the teacher treat the idea of the student going to his house as ridiculous? *Yes.*

On the night the teacher made the hour-long phone call, did they discuss a sexual liaison between the student and a male student? *Yes*

Was her state of mind tense and was she worried? Was she was upset about that situation and was she in an emotional state? *No, not that upset.*

Did the student believe the teacher was concerned about her and did they discuss the situation at length? Did she agree he was concerned and worried about her? *Yes.*

Did the teacher try to lift the student's spirits? *Yes.*

Did the teacher tell the student about his daughter staying at his house that night? *She thought he was unsure if his daughter was coming home.*

Did the student make phone calls to a lot of teachers and text them on a regular basis? *Yes.*

At the hotel did the teacher ask the student what she wanted to drink and did she go with him the first time to buy the drinks? *Yes.*

Was the student sure that the drinks were alcoholic? *Yes, because she had tasted alcohol before.*

Is the hotel about 350 metres around the corner from the teacher's home? *Yes.*

When they returned to the teacher's home, how much alcohol did the student drink? *She thought two beers or light ale.*

Did the teacher say to her to get a drink if she wanted and that he did not know what was in the fridge? *Yes.*

Is the student a regular smoker? *Yes.*

How did the student know what cannabis was like? *She had smoked it before. It looked like it and smelt like it.*

Did the teacher roll it in front of her? *It was already rolled, but she saw cannabis and tobacco.*

Was the teacher dancing in any way that was offensive? *It was a little bit, but not really.*

Describe the house. *The house was small. She did not go into both bedrooms; she went into the teacher's. It had all his stuff in it and he told her it was his.*

The teacher told the Panel that it was his daughter's room. The student said it was very feminine, but she did not remember.

The next morning had the teacher referred to 'blowjob' or 'head job'? *The teacher had referred to 'head job'. She thought they were the same thing.*

Was it possible in any way that what the teacher said was not in fact 'blowjob' or 'head job' and that she might have misheard? *No, she recalled him saying it.*

Could the teacher have offered her chop/chop which is raw tobacco, not cannabis? It did not have much effect. *Yes.*

The teacher told the Panel that his house is a 3 bedroom house. The student said she did not remember, and she did not check all the bedrooms.

### **Questions by the Panel**

The student said that she had visited the teacher's house on one previous occasion. She was in Frankston and she stayed at the house for half an hour. Teacher colleague 1 was there. This would have been in year 11 or at the start of year 12. She had been keen to go to the teacher's house and he had brought it up before, but she did not think he would take her. The student said that the teacher knew she was 17 when he took her to the hotel and that she was drinking alcohol. She had played the poker machines at the hotel.

### **The evidence of the Principal's Secretary:**

In summary the secretary told the Panel:

- She confirmed that she is the secretary to the Principal and an Enrolment Registrar at the school.
- She confirmed that she knows the student.
- In about the second week of term 3 after the July holidays the student told her about an incident during the holidays with the teacher. She told the school councillor and the Deputy Principal. She also received two e-mails from the student.
- After the holidays, the student came into the office as usual and she was chatting about the school holidays. That is when the student told her about the events in the holidays. She said that she needed to tell someone and she seemed a bit

confused. The Secretary was not sure how to handle it. The student did not appear to be upset, although she seemed confused.

- The Secretary told the Panel that the student is a student at the school and their relationship is casual. They have never seen each other socially and they are not particularly close. They are friends. The Secretary said she was worried about the student's emotional state, and that is why she passed on the information. The student felt she could confide in the Secretary.
- The Secretary confirmed that only two e-mails were sent by the student to her. They did not exchange a lot of e-mails.

#### **Evidence of the Deputy Principal:**

In summary, the Deputy Principal told the following to the Panel:

- The Deputy Principal confirmed that she had been employed by the college for 9 years. She had been Acting Principal for about two weeks and a couple of days. She received information about the student on the last day in her role as Acting Principal. The Principal was due back on the Monday. She learnt about the incident on the Friday afternoon at about 4.30pm. She waited until the Principal returned on Tuesday before taking any action.
- The teacher commenced employment at the school on 24 January 2000. A year prior to that he had been a student teacher when he was supervised at all times.
- The school has a handbook regarding policies and procedures. These include a drug education policy which involves a harm minimisation approach. All staff are expected to be familiar with these policies. There is also a behaviour management policy which involves discipline. There are mutual respect procedures and policies staff are expected to adopt outside classes. The policies include role descriptions for Home Room Teachers and Subject Teachers and a Mandatory Reporting policy.
- In 2003 the Principal gave a direction to all teachers in relation to year 12 students that they were not to participate in non-school social functions. The teacher was not present when this direction was given. The teacher was present at staff meetings, but the Deputy Principal was not sure whether it came up at those meetings. The policy is expected to be followed for any year level students. There is no express guideline regarding students staying in teachers' homes. It occurred with an exchange student, but apart from that it is not correct.
- Usually there are 25 to 30 students allocated to a Home Room Teacher. The relationship between teachers and year 12 students is different from other year levels.
- The drugs mentioned in the school's drugs policy and procedures manual include unauthorised drugs as well as tobacco and alcohol.

#### **The Evidence of the Teacher:**

The teacher read from a prepared statement at the hearing. A summary of this is referred to above.

In summary the teacher told the Panel:

- He has been waiting seven months for this hearing and he has had to live with this for quite a while.
- He confirmed that he has no counselling qualifications. He knew that the student had been seeing the school councillor and he had spoken to the councillor on a

number of occasions. He said that knowledge comes from experience and he responded to an immediate situation. He was trying to keep the student alive and well. It did occur to him that the situation could be seen as inappropriate. However if he had not done something that night, the result could have been very different. He took what he considered was the best action at that time. He thought it was the right thing to do. He felt afterwards that the crisis had been resolved, but he also felt that he had been conned by the student. The student had told him she would see the school councillor.

- When he picked up the student she was not as anxious as she had said she was. He was upset because he felt he may have made a mistake.
- He did not tell the student not to tell anyone.
- The student had a cigarette, a roll your own with chop/chop. He does not smoke cannabis, but he believed chop/chop is illegal to sell, but not illegal to buy.
- The student drank light ale at his house. He did not think about it at the time. It did not seem to be a point of contention. He played pokies at the hotel. She did not, but she accompanied him. He felt that there was a lot more at stake than being at a hotel. The crucial issue was why she was there. That was the most important thing to him - her safety.
- He had no idea what the student had said to her parents. She had met his family before and she had spoken to various family members when she called on the phone.

**Cross examination of the teacher by Counsel Assisting:**

- The teacher confirmed the dates of his employment at the school as those set out in the Principal's letter. The teacher is a registered teacher with the Victorian Institute of Teaching. He confirmed that he had been employed by the school since 24 January 2000 and that he submitted his resignation on 30 July 2003. Prior to being employed full time by the school, he had been employed as a casual relief teacher and he had also been a student teacher when he had been supervised by other teachers.
- The teacher said that he did not recall any formal discussion of rules of behaviour at the school. There may have been reference to these, but never any discussion of formal boundaries. He was aware of boundaries being referred to in his training, but there was never any protracted discussion.
- The teacher's understanding of teacher/student boundaries is that you do everything you can to control the class, and nurture and assist students in what ever they need. He learned this at teacher's college, on teaching rounds and as a teacher. He understood about natural boundaries between teacher and students. But every situation needs a different assessment, an assessment on its merits. There are fluid situations and there is no one rule that covers every circumstance. The prime directive is the students' welfare. Teaching and student learning is most important and inevitably there is some degree of social interaction. They are people not just students. There will be a degree of social interaction. He sees students as people first to whom he provides a degree of guidance. It is a student centred/person centred learning process.
- There was a different view in the police force where he used to work. In teaching, the process is not alienating the teacher from people, but developing a relationship with students. In relation to boundaries, it is important to love, nurture and

understand students. A teacher is not just an educator. He is more than that. Each student requires a different assessment.

- The teacher was aware of boundaries but thought there must be some fluidity of boundaries as they change from time to time. Boundaries are not set in concrete.
- He had only worked a few weeks as a casual relief teacher. He was supervised as a student, but not as a casual relief teacher. He commenced full time work as a teacher on 24 January 2000. He attended regular staff meetings, a minimum of once a month. He does not recall discussing the issue of boundaries. It was never raised.
- The teacher said that boundaries are set and implicit and are obvious. He would not deliberately cultivate a personal or intimate relationship with a student. There should be no physical contact. Social contacts had not been discussed. It was never his understanding that social contacts were off limits. This was not an issue. The health and safety of students is paramount. He is aware that there are clear policies on drugs- illicit drugs, tobacco and alcohol. He has read this in the school reference handbook given to him when he first attended the school. He did not believe that social contacts are not permitted. Social contact is appropriate between a student and teacher, if it occurs in public, having a talk or a coffee is OK.
- He has had no formal training as a counsellor, but he dealt with drug and alcohol problems in the police force, mostly of an illicit nature. The approach was very different from a school environment. He is aware of the dangers of alcohol and cannabis. He has no formal training in the assessment of mental states but has had comprehensive experience dealing with difficult situations through his previous work and life. He was a police officer from 1980 to 1988. He was stationed at a number of different suburban police stations and achieved the rank of Senior Constable. He left the police force to pursue his artistic inclinations. He lived overseas for a year, returned to Australia and studied for a degree. He wanted to give and nurture. In the police force, an officer has to respect personal boundaries. They can use discretion in certain situations. He would never encourage anyone to break the law or condone anyone else doing so. The school knew about his previous work history.
- The teacher said he first had contact with the student in 2000. She was a student under his care in year 10. He was her Home Room Teacher for one year. This meant he was a mentor or guide, someone she could approach and become familiar with, within boundaries. There was no phone or other contact between them in year 10 outside school hours. In year 11, the student may have contacted him, but he does not recall any personal involvement. He gave his phone number to students as he believed that this was common practice. Students could contact him during the school holidays and ask questions regarding their folios. He also opened the school during the school holidays for students who wanted to do some work.
- He did not teach the student in year 11. The Art Department pooled their resources so that all teachers made it a practice to assist each other. They helped the students of other teachers with their folio work and assessment. There was no extensive contact between him and the student that he can recall.
- In 2003, when the student was doing year 12 he was required to be of assistance to VCE students. VCE is a stressful year. He had year 11 VCE, not year 12. Both VCE year 12 Art teachers approached him on a number of occasions in first semester to

help with students. There are three Art teachers and they work as a team. A lot of students get involved in 3 dimensional works which meant that he was frequently required to help outside school hours. He has curated all the art shows at the school and is in constant contact with students. He has helped students throughout the year. One of the Year 12 Art teachers specifically asked him to help a number of students including the student, with their work for second term. The student wanted to do a body cast. He explained the concepts and how it related to her work, and gave instruction. The Principal and the Deputy Principal are aware of the way the Art room works. There is constant dialogue between the teachers.

- In 2003, the student contacted him a number of times by phone and also contacted a number of other teachers. The student would talk about all sorts of things. He has had several mobile phones and he is unsure of how she got his phone number. The arrangement whereby he was assisting year 12 students was informal and as required. The student may have got his number from another student. The first call was prior to July 2003. He may have mentioned these calls to other teachers. The calls started to annoy him but he did not see it as a real problem. He may have mentioned the calls to the other two Art teachers. He received calls at least two to three times per week. He told teacher colleague 2 that the student had been doing the usual ringing up. She said to him "yeah, it can drive you crazy". It was a nuisance. He also told teacher colleague 1 who was teaching science and agriculture about the annoying phone calls. It was a passing comment. He did not consider it necessary to tell the Principal or Deputy Principal. He may have mentioned the calls to the school councillor. He spent a lot of time with teacher colleagues 1 and 2 and it was natural to mention the calls to them.
- During the phone calls the student complained of not doing well, struggling, boredom and going crazy. He tried to encourage her. The student officially left school at one stage. He encouraged her to finish school and was passionate about her continuing her education.
- The student usually rang him in the evening between 10.00 and 11.00 pm. The calls would vary from 30 seconds to 5 minutes. He did tell her to ring only if it was important, and not to waste his time. He did tell her to talk to people like the school councillor or her mother. He felt she trusted him and he tried to be there for her. His intention was to be a conduit because she felt comfortable with him. He did not want to close the door on her. The student came back to school and completed year 12 and her VCE because of him.
- He did not think to tell the Principal or anyone else because he thought it was the right thing to do and he was helping. He would not do the same now.
- Prior to July 2003 he met the student outside school on one occasion. In about March he was in Frankston and she rang to say she was at the station and wanted a lift and a coffee. She wanted to talk. He was on his way to pick up his mother and family. She met his mother and his sister. They did not sit down and talk but were together for about 2 to 2½ hours. Effectively it was a social occasion, but he felt he was her mentor and he wanted to extend that role. Teacher colleague 1 did see them together in Hastings.
- He feels he was manipulated to a certain extent because he let her control what happened on the night. He probably made a mistake. In 2003 he was 42 nearly 43 years old and M was 17. It was his stupidity and naivety and he probably would not do it again. He did not think it was a problem at the time and he did not tell

anyone at the school about this meeting. He has heard of other teachers meeting with students outside school.

- Between March and July he met the student at school only and he never called her. She would sometimes call him. At the mid year break the student asked him a couple of times about going down to Rosebud to his house. He said 'no', and 'don't be ridiculous'. He treated it as a joke. In the first week of the holidays he was in southern NSW.
- He missed half a year of work in 2002, the entire semester 1 until the middle of term 3. He was in the Alfred Hospital for 3 months and in a rehabilitation hospital after that.
- He had been inexperienced about phone calls and lacking in judgement. Teaching is different from the police force. The police force was insular. He was still naive but he was prepared to embrace different feelings and a different code of life.
- He called the student because he was worried and wanted to find out if anything was wrong. He waited all day, and then he decided to ring. He believed the student was in a severely depressed state because of the things she had told him such as leaving school before the end of term. He tried not to think of her when he was on holidays. He was aware the student was seeing a counsellor.
- He called the student at 6.18pm on the Thursday night for about one hour. She mentioned an incident of an intimate nature. He thought she might harm herself and he did not want to take that chance. He could help her or call the police. If he called the police, he might destroy her confidence and he was not sure of her intentions. He felt that the best thing to do was to respond directly by making contact and ensuring she was alright.
- The student suggested he pick her up at the park. Her mother did not know and he did not pursue it. The conversation in the car was about how things were going. He drove to a street in Dandenong where he thought his daughter would be. He wanted to pick up his daughter to have someone else present with him and the student. When they got to Dandenong, his daughter's car was not there and so he drove back to his house. When he got to the house, he saw that no-one was there. He did not want to be alone with the student so they went for a walk.
- There was nothing open except for a service station and the hotel. He bought two drinks at the hotel, bourbon and coke for himself and a coke for the student. He did not want to buy her an alcoholic drink. He does not recall ordering her coke and bitters. He did not buy her alcohol. The student's evidence was incorrect. She wanted alcohol but he did not buy it. He went to the pokies section of the hotel and he played the pokies. It was probably inappropriate but he wanted to use up time until his daughter came home. He wanted the student to meet his daughter and he took her to a safe, occupied place in the meantime. He did not think that the hotel was detrimental.
- Earlier that night, he had arranged for his daughter to meet him at home. When he had arrived home, he called his daughter to find out where she was and she said she was on her way home. He mentioned this to the student. They did not drive from his house to the hotel as this is only 200 metres away. They walked to the hotel and back. He did not intend that the student stay overnight.
- When they got back to his house, the student demanded a drink. He is not a beer drinker and the only alcohol that might have been in the fridge was left over from his birthday. It did not occur to him that there were stubbies of beer in the fridge.

He thought she would have a soft drink. She took a drink from the fridge and placed it in a furry stubby holder. He did not pull out the bottle to see what the student was drinking. He assumed she was drinking ginger beer or portello. He was thinking of other things.

- His daughter arrived home while they were at the hotel. When he and the student came home, the student went straight to the toilet. He realised that his daughter was home but she was upset and did not want to be involved so he shut the door of the study where she was. He did not tell the student that his daughter was home because he was worried about why his daughter did not want to talk to her. The main thing was that his daughter was in the house. His daughter would have arrived home about midnight.
- There was music on television and he fooled around a bit trying to be happy - jiggling around. They did not do any slow dancing. He did not pick her up and carry her anywhere. He cannot physically do so because he has had an operation. At one time he told the student to go home but she refused. He was in a dilemma. He had to let her stay.
- He and the student left the house the next morning about 9.00 am. He told teacher colleague 1 and his family that his daughter had been in the house but he did not tell the student. He told the Principal and the Deputy Principal about expecting his daughter to come home that night but they were not interested. They were only interested in whether he called the student as well as whether the student had had alcohol in his house. There was no reference in the minutes of the meeting with the Principal about his daughter's presence in the house.
- He does not smoke cannabis and he did not supply it to the student. Cannabis has a distinctive odour and he has never had it in his house. He had chop/chop which is different from tobacco. He purchased the chop/chop from his sister who got it off a girlfriend. The student said she knows the difference between cannabis and chop/chop. But she was incorrect when she said she was given cannabis. He had pre-rolled cigarettes and so did not roll a cigarette in front of her.
- The teacher could not recall whether he had told the Principal about the cannabis or the chop/chop. He was not asked. He thought the student remembered it later. She put it in her second e-mail.
- In relation to the 'head job', the teacher agreed that the student had said it. But he had not said anything about a 'head job' or 'blow job'. There is a vast difference between a 'hell of a job on me' and 'head job'. The student got him to believe that she needed help. He felt she had manipulated and conned him, and made him look like a fool. He had been a bit short with her in the car because his patience had worn a bit thin, and he felt he had been manipulated.
- In relation to the student saying that he suggested they share a bed, the teacher denied he had said that. Under no circumstances did this occur and nor did he suggest it to the student. She thought she was going to sleep in his bed. He did not know why. She slept in his daughter's room which is decorated with soft pastel colours and dresses. It is neat with a Thai box cupboard and jewellery. His bedroom has one big painting, a bed and a computer.
- The teacher agreed that he did put his hand on the student's leg, but in a fatherly way. When she told him to stop he got a shock and then realised that something was wrong. He started to get suspicious about the whole thing.

- There are three bedrooms in his house, the spare room with a computer and a divan, his daughter's room at the far end and his room next door.
- The teacher told the student not to go blabbing about what had happened. It would look wrong and he realised this. He told her not to tell people because he would get into terrible trouble. This was said in the lounge room on the night. He did not put this in his statements because he did not think about it.
- The teacher confirmed that he left the student at the park the following morning. He was happy to drop her anywhere she wanted. He presumed that her home was not far away. He returned to school the following Monday. He did not ring the student in the meantime to see how she was going.
- When he returned to school on the Monday, the teacher confirmed that he did not mention the incident to any one as the student appeared to be OK. He knew she was seeing a counsellor. He had told her to tell the school councillor about her problems and he did not report the incident to anyone. He thought that he had handled it and the crisis was over. He should have followed it through.
- The teacher said that he did not keep it a secret because he told teacher colleague 2 when he went back to school. Teacher colleague 2 told him that he was silly to have taken the student to his house. He also told teacher colleague 1.
- When he had told the student not to tell anyone about that night he was referring to other students. He thought they would all turn to him for help. Everything seemed OK. He saw the student a couple of times in the Art room and she seemed OK. He did not discourage her from talking to anyone. He and the student did not discuss what had happened because the situation did not arise. He did not see it as an incident at that time.
- The teacher denied that he corrupted the student. She was already drinking and smoking, although he admits he gave her tobacco. He believed that the student was suicidal at that time and he did the best he could.
- The teacher was asked whether his resignation was an acknowledgement of wrongdoing. The teacher said that when he resigned he was extremely emotional and under stress. He was told he had to resign. He knew he was innocent although his actions had been wrong. He did not corrupt the student nor were his actions immoral. He did not provide alcohol wilfully or knowingly and he did not put his arm around the student.
- The teacher did not believe that the student had destroyed his career. He thought it appropriate that the student tell someone at school what had happened. He had some unease about what had happened. He did not think that the student bore him malice and he did not bear her any malice. The teacher agreed that he did not enforce the boundaries between them.
- The student sent him a phone message in October after she was instructed not to contact him, apologising for what had happened. The teacher thought this illustrated that the student did not understand boundaries and her signing off with "love" was used in the way teenagers use the word.
- The teacher told the Panel that he wanted to remain a teacher at this time. He is seeking personal counselling about coping with the situation. He has discussed the incident with the student with his counsellor.
- The teacher's daughter does not smoke and she has an anti-drug attitude.
- The teacher agreed that the appropriate person to contact if his daughter were suicidal would be him, a counsellor or the school. He had thought of contacting

the student's mother, but he understood that her mother was part of the student's problem. It did cross his mind to call the police, but he thought it was not appropriate in the circumstances. He did mention the incident to teacher colleagues 1 and 2 who were his colleagues and friends.

- He recognised that the student was not suicidal when she was at his home. They talked about how he had dealt with problems in his life. He did most of the talking. The teacher denied knowingly or wilfully doing something detrimental to the school, to a student or to the learning environment and learning culture. He was trying to do something to help. She was in a vulnerable state. He made a lot of mistakes but he acted in her interests.

#### **The Daughter's evidence:**

The daughter read a statement to the Panel. This has been summarised and referred to above. In summary the daughter told the Panel:

- In relation to her statement, she wrote about the night in question and what she felt. She had been living at her father's house all of last year, on and off because her father had been unwell and she had been caring for him. At the time of the incident, she and her father had just returned from a holiday. For the last six or seven months she has lived at her father's house with her own bedroom.
- On the Thursday night, she was supposed to have been home by 10.00 pm, but got back about midnight. Her father had thought she was at a party in Dandenong and he was thinking of picking her up from the party if she had been drinking. Instead she had been at Olinda and had had a fight with her boyfriend.
- When she got home, she parked her car in the street, up the road a bit. She went to the study because she wanted to work. She often crashes in the study. She was behind in her work, because she had not taken any work with her on holidays. She was also upset after a call on the mobile from her boyfriend.
- Their house is small and she could hear footsteps when her father and the student came home. Her father had told her about the student. She had answered the phone a number of times when the student had rung the house. She did not think much about the student being there. Her father used to help people a lot. She told him the student could sleep in her room. Her father came and spoke to her twice that night. She did hear the television or some music. She did not leave the room although she was up for a couple of hours. She went into the study about 12.00 midnight and was up until 2.00 or 2.30 am. She left the room in the morning about 10 or 11.00 am.
- She heard her father asking the student about going home. He used an affirmative voice. She also heard the student say no and that she was tired. Her voice was not clear.
- The daughter said she did not see any alcohol in the house. Her boyfriend drinks beer and generally this is in the fridge. She can not remember what was in the fridge. Her father does not drink beer, and neither does she. She has never seen cannabis in the house. She knows that it is green. She has seen cigarettes in the house, 'rollies'. She does not know what chop/chop is. She said that the house did not smell of cannabis; there were the normal butts from her father's smoking. She did clean up the next morning. She was in bed when teacher colleague 1 came in the morning and no-one else saw her at the house that night. She cannot remember seeing any cans the next morning and she can not remember saying

- goodbye to her father. The music on that night did not keep her awake and did not disturb her. She had been very upset following the fight with her boyfriend.
- Her father had spoke to her about the student and mentioned that she was troubled. He really wanted to help her. The student had called her father a few times when she was depressed. He told her about the student and asked her to talk to her.
  - They have always discussed issues like suicide. He said that the student suffered from depression. She can not remember if he ever mentioned suicide in relation to the student. Her father had never brought another student home before.
  - She has suffered from depression herself and has had counselling. Her mother is bi-polar and finds the effect of her medication distressing. For this reason the daughter refuses to take medication for her depression. She and her father believe that depression should be treated by discussion and counselling. She has completed an Arts degree and is thinking about teaching.
  - She wrote her statement herself.

**Teacher Colleague 2's evidence:**

Teacher colleague 2 read from a prepared statement which has been summarised and mentioned earlier. Teacher colleague 2 told the Panel the following:

- She is a teacher in the Middle School. Towards the end of her first year she was invited to a year 12 end of year party. She is aware of boundaries between teachers and students although sometimes these are blurry. Duty of care is also sometimes confusing. A teacher's duty is to protect students and they have a duty to ensure that they are safe.
- She has never had a student stay overnight with her. She has never been in such a position. She would have to assess the situation if it ever came up. School policies do not always cover what happens out of school. Certain things are assumed but they are never specifically mentioned.
- Teacher colleague 2 agreed that social interaction is forbidden between teachers and students, but there is a blurry line. It is clearer now, but it was not before.
- In 2001 she was not sure if the student was troubled or whether she was attention seeking. The student was already seeing a counsellor. She did speak to the student about her phone calls but she cannot remember the student's response. She did not formally refer the student to the school councillor, nor did she discuss the student with the school councillor.
- Sometimes the student would start inappropriate conversations with her about other students and their exploits. She did not speak to anyone formally about the student in 2001 and by 2002 the phone calls petered out. She saw the student as attention seeking, a girl who just wanted to attach herself to people. The school councillor knew about the phone calls.
- In 2003 she did not have any official contact with the student, just cursory. She became closer colleagues with the teacher when they worked together on productions. She remembers him telling her about the phone calls and she told him to be careful.
- The teacher told her that the student had been to his house and she said that she was a student. He was miserable. She was probably dismissive at the time. She was abrupt with him and told him he was stupid. If she had seen the teacher in a

hotel with the student, she would have expected he had a reason for being there. She would not be surprised if the student had a crush on the teacher.

- He never told her until recently about having seen the student socially. She knew that her own experience with the student was problematic and she feels it could have been her in the same position. It took over four months for the problems to resolve with the student in her case. She may have SMS'd the student, but she never called her.
- As a teacher, the teacher is passionate, eccentric and dedicated. He is in teaching for all the right reasons.
- Since this incident, there has been an intense focus on these issues at school. There has been an enormous shift with specific reference now to teachers and boundaries.

#### **Teacher Colleague 1's evidence:**

Teacher Colleague 1 had provided two previous statements which had been circulated to all parties prior to the hearing. Teacher colleague 1 gave evidence by conference telephone. In summary, teacher colleague 1 said:

- He taught the student science in about 1999 or 2000. He was not aware that boundaries between students and teachers had been mentioned at the school. He was aware the school had policies including a drug policy. He had assumed that social interaction between students and teachers was forbidden.
- Teacher colleague 1 said that on the morning he was to meet the teacher during the school holidays, the student opened the door of the teacher's house. They had a brief conversation and he did not stay long. He was not aware of anyone else being in the house. The teacher later told him that his daughter was supposed to be there, and was there, but he did not see her. He knew the teacher's daughter to say hello to and to exchange pleasantries.
- He learned that the student had spent the night at the teacher's house a few days later. He was a little bit surprised and thought it was unwise. He guessed it would have been forbidden by the school.
- Teacher colleague 1 confirmed the he had seen the teacher and the student once before in Hastings. He does not think they had a coffee. He met up with them in the street for about ten minutes. He assumed it was a social outing and he did not think much of it at the time. Teacher colleague 1 does not socialise with students.
- The teacher smokes roll-your-owns. He does not believe that the teacher uses marijuana.
- When he first saw the student at the teacher's house, he thought she was his daughter. He was a bit surprised to see her there, but he never thought that the teacher had slept with the student.
- On the day he went to the teacher's house, they were supposed to be building a boundary fence. He understood that the student was there because she had been upset and she and the teacher had been talking.