

## **VICTORIAN INSTITUTE OF TEACHING**

### **DECISION AND REASONS OF THE FORMAL HEARING**

**NUMBER:** 0038

**REGISTERED TEACHER:** Alexander PORQUEDDU

**PANEL MEMBERS:**

<b>Marilyn Mooney</b>	Chairperson
<b>Peter Ryan</b>	Registered Teacher
<b>Kathleen Bragge</b>	Registered Teacher

**ATTENDANCE:** MR PORQUEDDU did not attend the Formal Hearing

MS ANNE SHEEHAN Counsel Assisting, with Ms Carolyn Pickett instructing

**DATE OF HEARING:** 29 and 30 August 2006

#### **DETERMINATION UNDER SECTION 42(2):**

On 30 August 2006 the Panel decided to cancel the registration of Mr Alexander Porqueddu from the date of this decision.

# REASON

## BACKGROUND

On 31 December 2002 the Teacher was deemed registered pursuant to section 91(3) of the *Victorian Institute of Teaching Act 2001* (the Act) because he was a person who was employed as a teacher in a State school in an ongoing position within the period of two years before the commencement of the Act.

School 1 is a Secondary School for girls. School 1 currently has 55 teaching staff and 20 non teaching staff catering for 782 students. The principal advised that the Teacher was appointed to the school staff on 29 January 2002.

This inquiry is the result of a notification from School 1 pursuant to section 27 of the Act, that it had taken action in relation to a registered teacher, the Teacher. The Teacher was dismissed from School 1 on 27 November 2004 following an investigation by School 1 into allegations of inappropriate conduct.

The notification was referred to the Disciplinary Proceedings Committee on 22 December 2004 and the Committee determined pursuant to section 31 to refer the inquiry to a formal hearing.

On 21 November 2005 the Institute arranged for a consultant to take witness statements in preparation for the formal hearing. On 29 March 2006 the Disciplinary Proceedings Committee confirmed that the inquiry proceed to formal hearing.

A Panel was constituted in accordance with section 39 of the Act and a Notice of Formal Hearing dated 1 August 2006 was served upon the registered teacher by registered post on 1 August 2006.

### **Nature of allegations:**

The information the Institute has received as evidence of possible serious misconduct and/or lack of fitness to teach is:

1. That in 2002 whilst a teacher at School 1 the Teacher groomed a year 12 student at School 1, Student 1 commencing a relationship with her in January 2003.
2. Alternative to (1) above, that in October 2002 whilst a teacher at School 1, the Teacher commenced an inappropriate relationship with a year 12 student at School 1, Student 1. Emails referring to the commencement of the relationship include
  - i. On 11 September 2003 Student 1 sent an email to the Teacher including the statement "HAPPY 11 MONTHS"
  - ii. On 11 September 2003 the Teacher sent an email to Student 1 including the statement "p.s. happy 11 months"
  - iii. On 20 October 2003 Student 1 sent an email to the Teacher including the statement "we haven't had time to ourselves for our One year."

- iv. On 11 November 2003 the Teacher sent an email to Student 1 including the statement “happy 1 year and 1 month”
  - v. On 11 December 2003 Student 1 sent an email to the Teacher including the statement “Happy 1 Year and 2 Months Again”
  - vi. On 11 December 2003 the Teacher sent an email to Student 1
  - vii. including the statement “yes happy 14 months”
3. That whilst a teacher at School 1 in 2004 the Teacher had an inappropriate relationship with year 12 student, Student 2, a student in his legal studies class, including
- i. In September 2004 at Café A, the Teacher danced inappropriately with Student 2
  - ii. In September 2004 at Café A, the Teacher kissed Student 2
  - iii. In September 2004 at Café A, the Teacher drank alcohol with Student 2 who was a minor
  - iv. In September 2004 at Café A, the Teacher and Student 2 stood close together and sat together on a couch
  - v. In 19 September 2004 late in the evening the Teacher and Student 2 were sitting together at Café B.
  - vi. During 2004 Inappropriate telephone contact between Student 2 and the Teacher
  - vii. That the Teacher continued contact with Student 2 despite a direction from the principal of School 1.

## THE LAW

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

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

- to protect the public
- to maintain proper standards of conduct for the profession, and
- to protect the reputation of the profession.

The standard of proof that applies in disciplinary proceedings is the *balance of probabilities*. The appropriate standard of proof that applies in civil matters was considered in *Briginshaw v Briginshaw* (1938) 60 CLR 336 where the High Court said that the ordinary standard of proof applied *subject only to the rule of prudence that any*

*tribunal should act with much care and caution before finding that a serious allegation ... is established.*

And later:-

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

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

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

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

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

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

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

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

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

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

The term *fit and proper person* is intended to cover conduct other than dishonesty and include significant impropriety, lack of integrity or bad faith. Persistent failure to meet a teacher's obligations to the education community shows a disregard for these obligations and not just carelessness, incompetence or lack of organisation. A failure by

the teacher to understand that the conduct complained of was serious misconduct will indicate the teacher's unfitness to teach (see *Cameron v Bar Association of NSW* [2002] NSWSC 191 and *Marten v Disciplinary Committee of the Royal College of Veterinary Surgeons* [1965] 1 All ER 949).

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

## **DOCUMENTS CONSIDERED**

The Panel was presented with the following documentary evidence:

- Witness statement of Principal 1 (4 pages) and attachments **001-004**
  - 1 – Witness 1's notes 27 September 2004 **005**
  - 2 – Meeting notes
    - 22 November 2004 **006**
    - 17 November 2004 (1 page and handwritten notes) **007-009**
    - 12 November 2004 (13 pages and handwritten notes) **010-039**
    - 28 October 2004 – Student 3 (2 pages and handwritten notes) **040-043**
    - 27 October 2004 – Witness 2 (3 pages and handwritten notes) **044-050**
    - 25 and 26 October 2004 handwritten notes (3 pages) **051-053**
    - 26 October 2004 – Student 1 (3 pages) **054-056**
    - 13 October 2004 – Student 4 (4 pages) **057-060**
    - 12 October 2004 – Student 5 (2 pages) **061-062**
    - 12 October 2004 – Student 6 (2 pages) **063-064**
    - 12 October 2004 – Student 7 (2 pages) **065-066**
    - 12 October 2004 – Student 8 (2 pages) **067-068**
    - 12 October 2004 – Student 9 (2 pages) **069-070**
    - 6 October 2004 – Student 10 (2 pages and handwritten notes) **071-074**
    - 6 October 2004 – Witness 3 (1 page and handwritten notes) **075-076**
    - 4 October 2004 – Student 2 (3 pages and handwritten notes) **077-086**
    - 4 October 2004 – Student 11 (2 pages and handwritten notes) **087-090**
    - 1 October 2004 – Student 12 (1 page and handwritten notes) **091-093**
    - 1 October 2004 – Witness 1 (1 page and handwritten notes) **094-097**
    - 30 September 2004 – Student 13 (1 page and handwritten notes) **098-100**

- Document dated 12 November 2004 (10 pages) **101-110**
    - Handwritten notes 12 November, 11 November, 8 November, 1 November, 27 October **111-116**
  - 3 – copy emails/handwritten notes (32 pages) **117-148**
  - 4 – copy emails with Student 1 9 September 2003 to 1 September 2004 (152 pages) **149-300**
  - 5 - copy report – telephone calls (31 pages) **301-331**
  - 6 – copy emails with Witness 4 –not included **332**
  - 7 – letters to the Teacher
    - 1 October **333**
    - 15 October **334-335**
    - 21 October **336**
    - 8 November **337**
    - 17 November **338-340**
  - 8 – responses from the Teacher
    - 5 October **341**
    - 19 October **342-345**
    - 15 November **346**
  - 9 –facsimile transmission from Witness 5 26 October 2004 **347-352**
  - 10 – staff memo **353**
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- Witness statement of Witness 6 (2 pages) **354-355**
  - Witness statement of Witness 1 (4 pages) and attachment **356-360**
  - Witness statement of Witness 7 **361**
  - Witness statement of Witness 2 (2 pages) and attachment **362-364**
  - Witness statement of Witness 8 **365**
  - Witness statement of Witness 3 **366**
  - Witness statement of Witness 9 (4 pages) and attachment **367-375**
  - Witness statement of Student 2 (2 pages) **376-377**
  - Witness statement of Student 4 **378**
  - Witness statement of Student 10 (1 page and attachment) **379-380**
  - Witness statement of Student 11 (2 pages) **381-382**

The following exhibits were presented to the Panel:

- A. The Teacher’s statement – 18 August
- B. Agenda Staff Meeting – 18 March 2003
- C. Attendance Register – 18 March 2003
- D. Agenda Staff Meeting – 20 July 2004
- E. Attendance Register – 20 July 2004
- F. Melways Map #364
- G. Phone records

## **THE EVIDENCE**

### **Principal 1**

Principal, School 1 since 1998.

Principal 1 gave evidence under oath and confirmed that the statement taken by the investigator for the Institute and provided to her was true and correct.

Principal 1 stated that:

- In the process of investigating rumours concerning a possible inappropriate relationship between Student 2, a student and the Teacher in 2004, she came across evidence that suggested a further inappropriate relationship between the Teacher and Student 1, another student in 2002.
- She obtained, through the Business Manager, emails from 9 September 2002 to 1 September 2004. There were numerous emails of an inappropriate nature between the Teacher and Student 1. Principal 1 said, “The language used indicated an intimate emotional relationship, not a student teacher relationship.” She told the Panel that the dates on the emails indicated that the relationship had been established while Student 1 was a student at School 1, and that the relationship continued during 2003. Phone records also indicated that between 13 November 2002 and 14 October 2004 there were numerous calls from the Teacher’s school telephone extension and Student 1’s home telephone number.
- In September 2004 two teaching staff members, Witness 1 and Witness 6, brought information to her alleging inappropriate conduct by the Teacher with a student, Student 2.
- She regularly spoke of the issue of professional boundaries with staff. She tabled the Staff Meeting Agenda (18 March 2003 – Exhibit B) and Staff Meeting Agenda 20 July 2004 – Exhibit C) both of which included items on Staff Code of Conduct, Duty of Care and Legal Liability. An attendance sheet, signed by the Teacher, accompanied each.
- She individually cautioned some younger staff members, including the Teacher, who attended the student organised Year 12 “after party” on 23 October 2002. As well as this verbal and written advice, she then informed all staff both verbally and in writing not to attend any student functions which were not official School 1 functions.
- The teacher-student relationship is a privileged one. She said that the Teacher’s behaviour was a “dreadful violation in trust that students have in teachers.”
- Professional counselling had been made available, at the school’s cost, to the Teacher once the allegations had been made and he had been stood down.
- She wrote letters to the Teacher during October and November 2004 concerning the allegations and the progress of the investigation and procedural matters. She said that in the letter of October 15 she directed the Teacher not to contact any school student at any time and not to be alone with any student whether in the school or outside the school.
- In a conversation with Witness 5 and Witness 9 (Student 2’s parents) they confirmed that the Teacher had telephoned Student 2 after he had been directed not to have any contact.

- During her final formal interview with the Teacher, he had remained “calm” and “compliant” throughout, answering her questions in short sentences and phrases.
- There was an educational psychologist on the staff of School 1.
- There was a process within the school for students’ social and emotional issues to be worked through. This included contact with the Year Level Co-ordinator then Student Counsellor. The Panel heard that the school did not endorse staff handling matters that they are not qualified to do.
- That, in her opinion, the Teacher presented himself as victim throughout the course of the interview. She said that, in response to being questioned as to why he allowed Student 2’s phone calls to continue, the Teacher stated that “she (Student 2) was concerned for my health and safety and she was making sure I wasn’t going to do anything stupid.” He said, “He had to talk to someone”. Principal 1 told the Panel that she felt this was an unusual conversation and relationship for a teacher to have with a student.
- That when she asked why the 11 October 2002 date was celebrated as an anniversary with Student 1, the Teacher explained it as “A joke between them.” He said they played on the rumour that they were having a relationship and just kept it going.  
He said that he coincidentally bumped into Student 1 on the beach at Torquay in January 2003 and that their relationship did not start until the end of March. 2003

### **Witness 6**

Deputy Principal, School 2 and formerly Deputy Principal, School 1.

Witness 6 gave evidence under oath. At the time the incidents in question were alleged to have occurred, she was Deputy Principal at School 1 and was present, in a note-taking capacity during the Teacher’s final interview at the school. She accepted that the statement taken by the investigator for the Institute and provided to her as being true and correct.

During the giving of her evidence, Witness 6 stated that:

- She had previously held a high opinion of the Teacher as a professional and as a teacher.
- Teachers at the School 1 were frequently and clearly reminded of appropriate boundaries to be maintained with students.
- That it had been mentioned to teachers that it was wise for them to leave a venue outside the school environment when they found students to be there socially. She said, “Adults know what the boundaries are. Students don’t, and can become confused as they are out of school and think that the rules don’t apply.”
- Witness 1 had raised with her concerns from students regarding the Teacher being with Student 2 at Café A. She said that she was concerned enough to contact the Principal immediately even though it was school holidays.
- That the Teacher’s final interview had been “formal but fair”
- That, during the interview, the Teacher had been attentive, and had responded to Principal 1’s questions in a calm manner.
- That the Teacher had been provided with ample opportunity to state his case during the course of the interview.



## **Witness 1**

Deputy Principal, School 1 and formerly Level Coordinator at School 1.

Witness 1 gave evidence under oath. She accepted that the statement taken by the investigator for the Institute and provided to her as being true and correct.

In the course of her evidence, Witness 1 stated that:

- She had been concerned for some time about the amount of attention that the Teacher and Student 1 had been paying to each other.
- Staff were surprised when Student 1 arrived at the “Sleep Out” activity, as she did not normally participate in such activities.
- Her presence was further noted when she arrived with her signed permission slip, instead of having provided it previously. There had been some discussion among supervising staff as to whether this was acceptable before she was permitted to stay.
- There was one other male teacher (beside the Teacher) supervising during the night.
- She was concerned when Student 1 moved her sleeping bag close to that of the Teacher (away from the other students). She was concerned that any student would be in such proximity to the teacher’s sleeping bag, but particularly concerned that it was Student 1, as she was aware of rumours about the relationship.
- She strongly advised the Teacher not to continue the sleeping arrangements. Her advice was ignored and she eventually had to move Student 1. Witness 1 said that she was not happy that the Teacher continued to talk with Student 1 at the back of the hall.
- She expressed some shock at, and strongly denied, the Teacher’s claim that she was “jumping all over” him.
- She (Witness 1) was accompanied by her 8 year-old daughter at the activity. Her daughter was sleeping right next to her throughout the evening and night.
- Between 6 and 10 times she had strongly enforced the importance of appropriate boundaries with the Teacher, particularly when she saw Student 1 spending lengthy periods with the Teacher in his office. She said that he appeared grateful that she had raised the issues with him and gave the impression of being naïve as to how his behaviour could be misinterpreted.
- She had specifically warned the Teacher not to go to the “After Party” and called him an “idiot” when she discovered that he had, in fact, attended.
- The Teacher came to talk with her to clarify rumours stemming from the party, specifically that he had kissed Student 1 at the party. When Witness 1 asked him if he had, the Teacher said “No.”
- In early 2003, not long before school holidays, the rumours were still rife that The Teacher was having a relationship with Student 1, (now an ex-student). Witness 1 asked a teacher, to talk with the Teacher about the implications if there was a relationship. The Teacher then spoke with Witness 1 and denied any relationship.
- In May 2003 at the school athletics carnival after asking her what she thought of teacher-student relationships, several students said, “So you don’t approve of the relationship between the Teacher and Student 1?”
- In September 2004 a student told her that she had seen Student 2 with the Teacher at Café A. Witness 1 passed this information on to the Deputy Principal, Witness 6, who in turn told the Principal.

### **Witness 8**

Canteen Manager, School 1.

Witness 8 gave evidence under oath. She accepted that the statement taken by the investigator for the Institute and provided to her as being true and correct.

In her evidence Witness 8 stated that:

- The Teacher frequently helped out serving students in the canteen at busy times.
- The Teacher was always pleasant and polite and his presence in the canteen was always welcome and appreciated.

### **Witness 7**

Parent of a former student at School 1. Witness 7 gave evidence under oath and accepted that the statement taken by the investigator for the Institute and provided to her as being true and correct.

In her evidence, Witness 7 stated that:

- She was a hairdresser who had established her salon in the converted garage of the family home.
- That her daughter, Witness 2 a student at School 1, often came home after school and spent time with her in the salon.
- The family home was quite close to the home of Student 1.
- On more than one occasion Witness 2 had pointed out to her mother that the Teacher was driving past their house.
- In 2003 Witness 7 saw the Teacher drive past 3 or 4 times.
- Her daughter told her that the Teacher gave a girl a kiss at the "After Party" but that she did not know the girl's name.

### **Witness 2**

Formerly a student at School 1. Witness 2 gave evidence under affirmation by telephone. She accepted that the statement taken by the investigator for the Institute and provided to her as being true and correct.

Witness 2 stated that in 2003 she had seen the Teacher drive past her home on a number of occasions and had seen him return with Student 1 in the car. Witness 2 the Panel that somewhere around Term 2, 2003 she saw the Teacher and Student 1 holding hands at the Mall.

In 2002, she said Student 1 was "always there with the Teacher. When he was on yard duty she was always there with him, when he was correcting work at lunch times in his office she was there."

### **Witness 3**

Teacher at School 1 Witness 3 gave evidence under oath and accepted that the statement taken by the investigator for the Institute and provided to her as being true and correct.

In giving evidence Witness 3 stated that:

- She had become aware of rumours surrounding the Teacher's relationship with Student 2 in September 2004.

- She had mentioned these rumours to the Teacher on 14 September 2004 with a view to warning him to take care.
- The Teacher had become angry on hearing this and had told Witness 3 that it was “old news” and that he had already discussed the situation with the principal.
- Some weeks later, the principal made a veiled reference to the situation in a staff meeting and asked for staff with additional knowledge to come forward.
- Witness 3 had interpreted this as meaning that the principal had only just been made aware of the situation and that the Teacher had deceived her by telling her that he had discussed the matter with the principal prior to September 14.
- She had become angry at being deceived. She acknowledged that the principal might have been in possession of the information for some time before mentioning it to staff.

### **Witness 9**

Parent of a former student at School 1, Student 2, the subject of allegation 3. Witness 9 gave evidence under oath and accepted that the statement taken by the investigator for the Institute and provided to her as being true and correct.

In giving her evidence, Witness 9 stated that:

- On 3 September 2004 she had seen Student 2 and the Teacher alone together at Café B when she went to pick her up.
- Student 2 was initially excited and thrilled by the Teacher’s attentions at school. She was flattered by his noticing her hair, by his knowing where she lived and what sort of car she had and by the time he gave her at school.
- Student 2’s attitude changed, and she became withdrawn and depressed.
- Witness 9 attributed this change to Student 2 becoming aware of rumours of a relationship between herself and the Teacher.
- After the Principal had spoken to Witness 5 and Witness 9, they examined Student 2’s mobile phone bill and identified over 200 calls from Student 2 to one number.
- Student 2’s father had identified the number as that of the Teacher when he obtained Student 2’s mobile phone and called the number in question.
- They (Student 2’s parents) had, on another occasion found a text message on her phone from “Joe”. Witness 9 had concluded that “Joe” was, in fact the Teacher as she had previously discovered a note to Student 2 from a friend urging her to “stand by” the Teacher. In the note, “Joe” was identified as being the Teacher.
- When Student 2 was confronted with the evidence of these calls she had told her parents that she was the only one the Teacher could confide in.
- Student 2’s father spoke to the Child Sexual Abuse Unit of Victoria Police, though Student 2 refused to give a statement. She had told the police that the Teacher had not “done anything” but agreed that the relationship was inappropriate.
- The incident had significant effect on Student 2, possibly impacting on her VCE result, especially given the timing near the exams. Student 2 was ostracised at school, as fellow students blamed her for the removal of an effective and popular teacher. The relationship between Student 2 and her parents was damaged, although that has now been restored. Student 2’s brothers were also involved, as the rumours of Student 2’s relationship with the Teacher reached their nearby boys’ school – with negative effect.

## **The Teacher's statement**

As the Teacher was not present during the hearing and was not represented, the evidence given during the hearing was not contested, other than through his signed statement (dated 18/8 – presumably 2006) provided to the Institute through the investigator. The Teacher was not cross-examined on the contents of this statement, nor was it sworn.

In that statement, the Teacher denied any form of inappropriate relationship with either Student 1 or Student 2. He did agree that there was a “boyfriend and girlfriend” relationship between him and Student 1 in 2003 (after Student 1 had left school). In various places, he offered contradictory suggestions that this relationship had begun in January, February or March of 2003.

He claimed that the attention he paid to both Student 1 and Student 2 was to assist them with personal problems or with school work and that nothing untoward was intended. He denied that colleagues had warned him to take care with professional boundaries and, in fact, expressed anger at the school for not offering him stronger support.

He readily acknowledged that the emails in question were between him and Student 1. He claimed that the “anniversary date” to which six references were made over a three month period were by way of a private joke and referred to the time when he and Student 1 became aware of rumours about their relationship. The “anniversary date” was 11 October 2002, while Student 1 was in Year 12.

The Teacher stated that there were no phone calls or SMSs to Student 2 when he was her teacher.

## **DISCUSSION OF EVIDENCE**

The Panel was satisfied that the Teacher had notice of the hearing and chose not to attend the hearing. He provided a written statement which the Panel considered when making its findings.

Counsel assisting submitted that the Panel should consider Allegations 1 and 2 as alternatives to each other.

### **Allegation 1: That in 2002 whilst a teacher at School 1 the Teacher groomed a year 12 student at School 1, Student 1 commencing a relationship with her in January 2003.**

In relation to Allegation 1 the Panel heard evidence from the Principal 1 that there had been many emails between the Teacher and Student 1. These emails confirm that the Teacher and Student 1 were indeed in a relationship in 2003 and 2004 but the Panel finds that it is the contents of some of these emails that provide evidence that the Teacher was grooming of Student 1 in 2002. Of particular significance was the series of

emails dated around September and October 2003 celebrating anniversaries of 11 months, 12 months, etc. The Panel does not accept the Teacher's "private joke" explanation for the significance of these dates. Rather it finds that on the balance of probabilities something occurred on 11 October 2002 significant enough to warrant anniversary celebrations. The e-mail references to an 'anniversary' on 11 October 2003 point to a significant event on 11 October 2002 in the development of their relationship. While it remains unproven that it was, at that time, sexual the Panel finds on balance of probabilities, that an inappropriate relationship was being fostered by the Teacher. School telephone records also confirm that the Teacher telephoned Student 1 6 times in November and December 2002 whilst she was still a student at School 1, and that there were over 140 further phone calls in 2003/04. The Teacher's response to this evidence was "Phone bills don't lie."

The Panel heard evidence from Witness 1 and Witness 2 that in 2002 the Teacher gave a lot of time and attention to Student 1, to the extent that it was noticed and of concern to his colleagues. He was often seen talking at length with her on yard duty, in his office and in the corridor. He admits that he did spend a lot of time with her but his explanation is that "she needed help and wasn't getting it from the School Counsellor who was just providing support." This explanation was of great concern to the Panel as it is completely inappropriate for a teacher, other than the School Counsellor, to have personal information of or about the student and to be involved in a counselling relationship without appropriate qualifications.

Witness 1 was a credible and forthright witness. Her evidence included the fact that between 6 and 10 times throughout 2002 she had occasion to speak to and counsel the Teacher about the importance of maintaining appropriate boundaries between teacher and student. Included in this was the 'Sleep Out' activity where the Teacher ignored her advice to move Student 1 and her sleeping bag away from his. Witness 1 also strongly advised the Teacher not to attend the Year 12 'After Party' – advice he again ignored. The Panel found the evidence from this event cast the Teacher's professional behaviour in a very poor light.

The Teacher admitted that he was at the bar at the after party with Student 1 and that they were standing close to each other face to face. What is relevant and a concern to the Panel is that he was in close, physical proximity to a student, despite being frequently and strongly advised of the importance of maintaining appropriate professional boundaries, and he has been unable to offer any plausible explanation for his behaviour.

It is not contested that in early 2003 a relationship commenced between the Teacher and Student 1. The Teacher provides various starting dates as January (after bumping into her at the beach), February (when she called after her birthday) or March. The Panel does not accept that the meetings between the Teacher and Student 1 in early 2003 were coincidental; rather it finds that, on balance, they were the outcome of the Teacher's grooming of Student 1 in 2002. The Panel finds that the cumulative weight of evidence substantiates Allegation 1.

**Allegation 2: Alternative to (1) above, that in October 2002 whilst a teacher at School 1, the Teacher commenced an inappropriate relationship with a year 12 student at School 1, Student 1**

The Teacher denies Allegation 2 but does acknowledge that a relationship did commence in early 2003 after Student 1 had completed her secondary schooling. The emails concerning the ‘anniversary celebrations’ are confusing in regard to what it was that was being celebrated. The Teacher’s explanation for these emails is that it was their “private joke” and referred to the date on which they became aware of rumours at the school about their relationship. The Panel finds it incredible that a celebratory anniversary based solely on a ‘private joke’ would continue for so long and indeed be the basis for an anniversary holiday to Queensland 12 months later. However, in relation to Allegation 2, the Panel concludes that as there is insufficient direct evidence this Allegation cannot be substantiated

**Allegation 3: That whilst a teacher at School 1 in 2004 the Teacher had an inappropriate relationship with year 12 student, Student 2, a student in his legal studies class.**

In reviewing the evidence relating to Allegation 3, the Panel accepts the credible evidence of Witness 9 that when she went to Cafe B on Road A to pick up her daughter Student 2, she saw her inside the café with the Teacher and that they walked out of the café together. The Teacher acknowledges that he was at Café B, that he saw Student 2’s mother outside in her car but denies that he was with Student 2. The Panel finds his explanation that “One time I remember that Student 2 was on Road A when I was” to be unacceptable. The telephone records show that there were over 200 from Student 2 to the Teacher after 8 September 2004, some of which occurred after the Teacher had been directed by the principal to cease contact with students. A number of these calls extended over 3 or 4 hours.

Telephone records clearly indicate that there was significant contact between the Teacher and Student 2 before and after Principal 1 directed the Teacher not to have any contact with her, and also after the school investigation began. The Teacher said that he was helping Student 2 with schoolwork and she was keeping him informed on what was happening at school. His evidence that he did not stop Student 2 contacting him because he “had to talk to someone, and she was concerned that he wouldn’t do anything stupid” reflects particularly badly on his credibility and professionalism. The Panel finds the Teacher’s use of a student as a ‘confidante’ particularly troubling and views his behaviour as a serious breach of professional boundaries. The Panel finds that the Teacher was manipulating the situation and playing on Student 2’s emotions. Clear evidence was presented that demonstrated the Teacher spent considerable time with Student 2 and gave her inordinate attention. His attempt at disguising this as helping her with schoolwork is not accepted by the Panel. The Panel finds Allegation 3 substantiated.

## **FINDINGS UNDER SECTION 42(2)**

Teachers are entrusted with a duty to protect students in their care and the discharge of this duty has led to the establishment of clear professional obligations and boundaries. In its consideration of the matters before it in this case, the Panel was mindful of its duty to protect the public and to uphold the standards of the profession.

The Panel finds Allegations 1 and 3 to be substantiated. A teacher's relationship with a student is based on power and influence. The community expects that power and influence to be used always for the benefit of the student. It is always the teacher's duty to manage the student/teacher relationship.

In late 2002 the Teacher engaged in behaviours which the Panel concluded were designed to foster a special and intimate relationship with Student 1. This was not an opportunistic incident but a series of sustained measures which the Panel finds to constitute grooming. Grooming is a gross breach of trust, a callous preying on the vulnerabilities of targeted students.

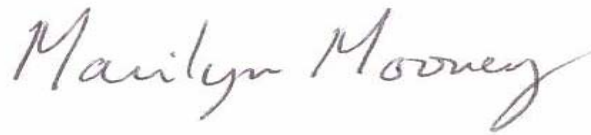
The Teacher received advice and warnings from colleagues and school authorities during this time but it appeared to the Panel that he chose to ignore these. He allowed and nurtured a second inappropriate relationship during 2004 with Student 2, which is all the more reprehensible. The Teacher ignored the principal's direct instructions. He ignored or deflected advice from fellow teachers. He again preyed on a susceptible student, singling her out for totally inappropriate attention, in and out of school. His failure to maintain proper professional boundaries, both by action and inaction, served to fuel a "romantic" relationship.

The Panel saw no evidence that the Teacher comprehended or cared about the damage done to the two students and their families, to other students, and to the school. He minimized his culpability, attributing blame widely to others – colleagues, the school administration, and students, whilst claiming the status of victim. Explanations offered by the Teacher seemed to the Panel to be self-justification and implausible. The Panel notes that in its view the school was fair and thorough, with processes properly worked through. Staff were supportive and professional and the Principal clear in her expectations of teachers. Expert counselling was available at the school

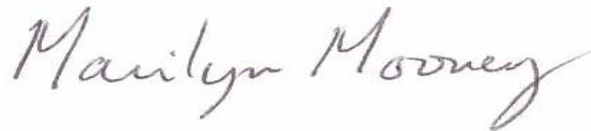
The Panel was charged with determining whether the Teacher had committed serious professional misconduct and whether he was fit to teach. Over an extended period, despite warnings given and support offered, the Teacher failed to discharge his duty to protect and care for students in a professional manner. He betrayed the trust invested in him, behaving in a predatory way. Nor did he when confronted with the evidence accept moral responsibility or demonstrate insight or remorse.

The Panel gratefully acknowledges those who responsibly report cases of unprofessional behaviour and those who appear as witnesses, an activity which can at times be very difficult and stressful.

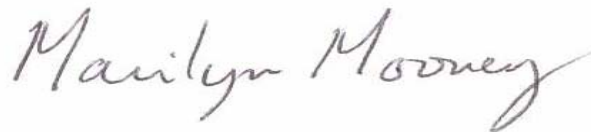
Based on the findings above and the application of the law, the Panel finds the teacher guilty of serious misconduct and not fit to teach.

A handwritten signature in cursive script that reads "Marilyn Mooney".

**MARILYN MOONEY, CHAIRPERSON**

A handwritten signature in cursive script that reads "Marilyn Mooney".

**PER:  
PETER RYAN, REGISTERED TEACHER**

A handwritten signature in cursive script that reads "Marilyn Mooney".

**PER:  
KATHLEEN BRAGGE, REGISTERED TEACHER**