

## **VICTORIAN INSTITUTE OF TEACHING**

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

**NUMBER:** 059

**REGISTERED TEACHER:** LMH

**PANEL MEMBERS:** Susan Halliday, Chairperson  
Kevin Moloney, Registered Teacher  
Jeanette Barclay, Registered Teacher

**ATTENDANCE:** The teacher attended the hearing and was represented by Ms A Duffy  
  
Counsel Assisting: Ms G Hubble with Ms C Sherman solicitor instructing

**DATE OF HEARING:** 24 January 2008

**DETERMINATION:**

On 24 January 2008 the Panel determined that the teacher should remain provisionally registered as a teacher in Victoria.

# REASONS

## BACKGROUND

The teacher has been a provisionally registered teacher with the Victorian Institute of Teaching (the Institute) since 25 January 2006.

By complaint form dated 8 February 2007, the Principal of the school lodged a complaint with the Institute against the teacher in relation to alleged serious misconduct and/or lack of fitness to teach. The teacher was employed at the school in 2006, commencing in Semester 1 and concluding at the end of the school year in December 2006.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) on 14 February 2007. The decision of the Committee was to refer the matter for investigation. An investigation into the allegations was progressed. The Committee, having considered the investigation report, referred the matter to a formal hearing on 13 June 2007.

A Notice of Formal Hearing dated 22 October 2007 was served upon the provisionally registered teacher by registered post on 23 October 2007.

## THE ALLEGATIONS

During 2006, whilst employed as a provisionally registered teacher at the school and during 2007 whilst a former employee of the school, the teacher:

1. Failed to develop and maintain professional relationships with students of the school –
  - a. During 2006, initiated and/or engaged in inappropriate conversations with students of the school including:
    - i. About when she lost her virginity.
    - ii. About her sexual encounters.
    - iii. About fighting with her boyfriend.
    - iv. That she had tried drugs such as heroin and methamphetamine.
    - v. About the price of cocaine.
    - vi. That she was using marijuana to wean off another drug.
    - vii. That she had hit another girl during a football match.
  - b. During 2006, used inappropriate language in the presence of students including words such as:
    - i. 'Cunt.'
    - ii. 'Fuck.'

2. Failed to develop and maintain a professional relationship with year 11 student, student 1 in 2006, continuing into 2007 –
- a. During term 4 2006, exchanged mobile telephone numbers with student 1 for reasons unconnected with his education.
  - b. Telephoned student 1 via his mobile telephone including:
    - i. In or around December 2006 and/or January 2007, whilst he was on holidays interstate.
  - c. Sent text messages to student 1 via his mobile telephone including:
    - i. In or around December 2006 and/or January 2007, whilst he was on holidays interstate.
    - ii. On or around 23 January 2007, when she invited student 1 to go shopping and/or have lunch with her.
    - iii. On or around 3 February 2007, when she invited student 1 to her home.
  - d. Attended venues with student 1 including:
    - i. On or around 23 January 2007, at a suburban café.
    - ii. On or around 23 January 2007, at various shops In a suburb
  - e. Allowed student 1 to attend her home including:
    - i. For a weekend on around 3 February to 4 February 2007 where she and student 1 ate dinner, watched television and/or DVDs and talked.
  - f. On or around 3 February 2007, purchased beer for student 1 (which student 1 paid for).
  - g. On or around 3 February 2007, allowed student 1 to drink beer while he was at her home.
  - h. Engaged in personal conversations without a valid context with student 1 including:
    - i. During term 4 2006, when she told student 1 that:
      - 1) She had a girlfriend.
      - 2) Her girlfriend had dumped her.
    - ii. On or around 23 January 2007, when she told student 1 that she had broken up with her partner.
    - iii. During a weekend on around 3 February to 4 February 2007, whilst he was staying at her home for a weekend, including:
      - 1) Asking student 1 about his relationships with girls.
      - 2) Discussing her previous relationship.

## THE LAW

Section 2.6.30 of the *Education and Training Reform Act 2006* states:

### 2.6.30 **Powers of inquiry**

(1) *The Institute may in accordance with this Part*

- (a) *inquire into any information it receives under section 2.6.31 or 2.6.32 or;*
- (b) *inquire into any complaint that provides evidence –*
  - (i) *of the serious incompetence of a registered teacher;*
  - (ii) *of the serious misconduct of a registered teacher;*
  - (iii) *that a registered teacher is unfit to be a teacher*

As the teacher in these proceedings is a Provisionally Registered Teacher, she is in the process of gaining the skills to meet the standards of professional practice and so the issue of competence is not relevant.

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

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

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

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

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

*which would normally be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency. (Allinson v General Medical Council [1981-4] All ER 768)*

The conduct the subject of the inquiry may indicate a character defect incompatible with a self respecting profession. Or the conduct may illustrate that the teacher would not be able to work satisfactorily in a school environment. Whether conduct amounts to serious misconduct will depend on the minimum standards demanded by the teaching profession. Conduct that deserves disapproval may not be serious misconduct (see *Ziems*).

The degree of remoteness of the conduct in question from the professional practice must also be considered according to *A Solicitor v The Council of the Law Society of New South Wales* (2004) HCA 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*

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

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

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

In determining whether a teacher is fit to teach, the Panel may consider such factors as the duration of the misconduct, evidence of remorse, evidence of candour during the Panel's hearing, whether the teacher has provided an adequate explanation of the misconduct and whether that evidence is corroborated by independent evidence, the effect of the teacher's behaviour on the school community and the standing of the profession, the time which has elapsed since the misconduct and evidence of rehabilitation (see decision of the Panel in *Victorian Institute of Teaching and Papageorgiou*, 26 May 2005 Number 020).

A teacher's position is one of power and influence in relation to student 1 – 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).

## **DOCUMENTS CONSIDERED**

The Panel was provided with the following documentary evidence:

1. Notice of Formal Hearing dated 22 October 2007.
2. The teacher's Registration Details (4 pages) **001 - 004**
3. Witness statement of the Principal dated 3 May 2007 (4 pages) **005 - 008**
  - 1 – Document entitled; 'Issues relating to provisional registration of the teacher' (undated) (2 pages) **009 - 010**
4. Witness statement of student 2 dated 10 May 2007 (2 pages) **011 - 012**
  - 1 – File note of student 2 dated 28 March 2007 (1 page) **013**
5. Witness statement of student 1 dated 10 May 2007 (3 pages) **014 - 016**
6. Document entitled 'Issues relating to provisional registration of the teacher' (undated) (5 pages) **050 – 054**
7. Transcript of Interview between the Institute's investigator and the teacher (undated) (18 pages) **055 – 072**

## **Exhibits presented on the day of the Hearing:**

- A. Witness statement of the teacher
- B. Witness statement of the teacher's mother (withdrawn during the Hearing)

- C. Reference: written by referee 1
- D. University Report Form re the teacher
- E. Reference: written by referee 2

## **THE EVIDENCE**

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

The Principal

Student 1

Student 2

The teacher

### **Witness 1: The Principal**

The Principal confirmed under oath that his witness statement was true and correct. The Principal has been the principal of the school for three years. He estimated that he had met with the teacher at least ten times during 2006 to discuss issues of concern. The Principal said that not all of the meetings with the teacher were about the matters before the Institute. He recalled about five of the meetings being related in some way to the teacher's language and behaviour.

The Principal stated that he was concerned that the conduct of the teacher fell short of sound professional boundaries and outside of the principles under which the school operates. He stated that while some individual matters were resolved, certain patterns were emerging involving other behaviours which he considered serious misjudgments on the part of the teacher. The Principal indicated that he believed the issues of concern in relation to the teacher were the result of professional immaturity in the first instance, but then over time he felt that benchmarks for behaviour, appropriate to the school and a teacher, were not reached during the year that the teacher worked at the school.

The Principal told the Panel that in his view, correct professional standards and a correct professional approach were not achieved by the teacher, even after counselling with senior staff. The Principal said that he as a principal and other senior staff, had in the past been able to impress on new teachers suitable professional boundaries, but he felt that in this teacher's case, she did not fully grasp the concept of professional behaviour.

The Principal re-iterated that he considered that it was professional immaturity, a lack of insight and a lack of understanding of the professional requirements of a teacher generally, as well as in a school setting, that underpinned the matters before the Panel. He told the Panel that these issues were the basis of his concerns about the teacher.

## **Witness 2: Student 1**

Student 1 confirmed under oath that his witness statement dated 10 May 2007 was true and correct, with the exception of Paragraph 1, where he stated that he couldn't remember who initiated the meeting between himself and the teacher and that it was possible that he had called the teacher first.

Student 1 stated that he was 18 years old, working and living at home. In 2006, he was 17 and in Year 11 at the school where the teacher was teaching. He completed Year 12 in 2007 at the same school, but the teacher was not employed there in 2007. The Panel heard that the teacher was not one of student's classroom teachers in 2006, rather a teacher and coach he knew due to his contact with the school sports team, in which several of his friends played. Student 1 did not play in the team.

Student 1 said that he didn't have anything to do with the teacher until April in 2006. He said that it was around this time that the teacher had conversations with himself and his friends during recess and lunch. Student 1 indicated that initially the conversations were general and about sport. He stated that the teacher spoke to students in the way that he and his friends would speak to each other, rather than what he would normally expect from a teacher. Student 1 stated that the teacher did not talk down to them like other teachers, but was like one of the boys.

Student 1 stated that he had heard the teacher swear, but he didn't think that the teacher's swearing was excessive based on general conversational standards. Student 1 stated that the swearing was, however, more than one would expect students to hear from a teacher. Student 1 said that the teacher might say *'that was pretty fucking good'* for example. He stated that he had heard the teacher use the word *'cunt'* but did not remember the context. He also stated that it was possible that the teacher had used the word more than once possibly three or four times during the year, in his presence.

Student 1 stated that he was not playing competitive sport at the time and so he and the teacher would talk while watching the matches. He said they talked about motorbikes, which was a common interest, after the teacher had purchased one, around the end of Term 3. Student 1 recalled that the teacher had told him that she had a girlfriend and that her partner had dumped her, around the start of Term 4.

Student 1 told the Panel that he swapped phone numbers with the teacher around the end of 2006, but couldn't definitely remember who made the suggestion to do so. He stated that he gave the teacher his mobile number but not his home number. He then went interstate in the summer holidays of 2006 - 2007 and heard from the teacher once or twice via text or phone call. Student 1 stated that the call involved discussion about the job that he was working on and general catch up conversation. He was working for his father. He remembers a phone call but stated that it would only have been brief because he was actually working at the time.

When student 1 returned to Melbourne in late January 2007, he agreed to meet up with the teacher. They went shopping and had lunch. Student 1 was unable to say definitely who initiated the arrangements. The teacher picked student 1 up in the city at

around 10.30 am. They had lunch in a suburb. Student 1 bought a shirt while shopping.

Student 1 recalled a conversation about the teacher breaking up with her girlfriend, but could not recall why it was a topic of conversation and he also said that he couldn't recall much detail about the conversation generally. He indicated that he didn't pay much attention to the topic of conversation. After lunch the teacher dropped student 1 back in the city at about 3 pm.

Student 1 indicated in his statement that on 3 February 2007, the teacher sent a text message asking if he wanted to catch up for a few beers. He agreed and the teacher picked him up from a station after he caught a train. Student 1 had thought that it was the teacher who had suggested he come to her place for a few beers and to watch movies, but could not be definite. The beer was purchased when they went to a bottle shop after meeting. Student 1 believed that the teacher had bought a slab (24 small bottles) of Carlton Draught beer. He stated that he thought that the teacher may have also bought a bottle of wine.

Student 1 told the Panel that they then went to the teacher's villa unit in the late afternoon. He said that the teacher watered her garden and then they started watching movies. Student 1 said that he had about 12 beers and that he paid for his half of the slab. He said that he was 17 at the time. Student 1 stated that they watched normal movies but couldn't recall any of the titles other than one. He said that he thought the teacher had a couple of beers, possibly two and some wine that afternoon and night.

In his statement, student 1 stated that while at the teacher's home he looked at photos she took overseas and a photo of her with another teacher from school. He said that the teacher talked about her ex-girlfriend, made some comments about the staff at the school, both positive and negative. He said that the teacher called the Principal a 'fucking idiot' and he also stated that the teacher told him not to tell anyone that they had seen each other outside of school or she would get into trouble. Student 1 said that he went to bed first and that he stayed the night because he lived a long way away and that it was too far to go home. He said that he slept on a blow up mattress in the teacher's study. In the morning student 1 believes that he got up first and they then went to get a movie and also called into the home of the teacher's mother. He stated that they stayed there for about an hour and he recalls the teacher introduced him as her 'friend'. Student 1 said that he played on the computer while at the home of the teacher's mother.

The Panel heard that student 1 told his own mother that he was staying at a friend's house. He had also called his mother during the night, but did not do that in front of the teacher. Student 1 said that he did not think his mother would have been happy to hear the truth about where he was.

Student 1 informed the Panel that after the events came to light at the school, he was interviewed by the School Counsellor and later by the Deputy Principal and Principal. Student 1 stated that he didn't speak to the teacher again except for a telephone call which was prematurely disconnected due to a faulty line. In relation to that phone call,

Student 1 indicated that he received it at home and didn't know how the teacher would have got that number. He also stated that his mother answered the phone and told him the call was for him and that it was a female. On taking the call student 1 said that it was the teacher on the end of the line and that she asked him did he know who it was. The line then dropped out.

Student 1 stated that he told the school that he thought it was okay to catch up with the teacher because she was gay and one of the blokes. He indicated that they had had a lot of laughs and shared jokes, watched movies, that there was some swearing and that the teacher had asked him about his relationships with girls. He said that he told the Principal that he knew what the teacher was doing was wrong, but he felt it was harmless.

Student 1 told the Panel that he had been asked by the teacher to pick up her folder from another teacher at the school, as the teacher was not teaching at the school in 2007. He told the Panel that he did not pick up the folder and therefore he did not see the teacher to give her the folder.

In relation to the specifics of the allegations, student 1 also told the Panel that at some stage he recalled that he had asked the teacher if she had a girlfriend, because she referred to a partner, not a boyfriend when talking.

Student 1 did not recall when he had a conversation about marijuana use with the teacher, but thought that it may have been at her house when they were looking at photos of her trip overseas. He also told the Panel that it was not the first time that they had talked about marijuana use, stating that they had talked about it at school possibly at sport. He said that he and his friend, student 2 were talking about it and while he could not be sure, the teacher may have contributed to the conversation. He told the Panel that he had never been in the presence of a teacher while they were smoking marijuana but thinks the teacher may have talked about it. He stated that he did not believe it was unusual to talk about it with a teacher because they had education about drugs at school. Student 1 said that he did not hear the teacher talk about other illegal drugs, but thought that any other references may have been in relation to a student at school who was caught using cocaine. Student 1 believed that the teacher had reported the student using cocaine to the school administration.

### **Witness 3: Student 2**

Student 2 gave evidence under affirmation. Paragraphs 7 and 8 were withdrawn from his statement. He confirmed that his amended witness statement, dated 10 May 2007, was true and correct. Student 2 confirmed that he was in Year 11 at the school where the teacher taught in 2006. He did Year 12 at the same school in 2007 and was also a school leader in 2007.

Student 2 met the teacher in 2006. The teacher was new to the school and she coached a sports team. He told the Panel that his initial contact with the teacher was through the senior sports team of which he was a member. He also had general contact with the

teacher around the school, but she did not teach him. Student 2 stated that he did not have contact with the teacher outside of the school.

Student 2 stated that from the outset the teacher was fairly forward with students as far as her conversation and swearing was concerned. He indicated that the teacher went further than the relaxed interaction of other sports coaches. He stated that the teacher was very permissive with respect to the language that she allowed students to use around her and that students swore frequently around her, but not around other teachers.

Student 2 stated that the teacher used the same swearing language as students and as frequently as students, which was in his view, quite regularly. Student 2 stated that the teacher used the word 'fuck' quite frequently. He recalled the teacher using the word 'cunt' also, but could not be certain if the word was used more than once. Student 2 stated that he distinctly remembered the teacher using the word once when addressing the sports team, when she was referring to one of the opposition players. Student 2 stated that he had never heard other teachers use the word 'cunt' in school sporting and class environments, although he had heard another teacher use the word in a personal conversation.

Student 2 told the Panel that initially the teacher's behaviour and language seemed acceptable, but later he found that he became uncomfortable and realised that the language and context were inappropriate. When asked for examples of inappropriate conversations, student 2 recalled the teacher talking to a small group of students at recess about when she lost her virginity. Student 2 also recalled that the teacher talked about the price of some drugs including cocaine. Friends of student 2 were talking about drugs that they had tried and student 2 thought that it was possibly at that time that the teacher mentioned that she had tried methamphetamine and heroin.

Student 2 indicated in his statement that initially he thought the way the teacher was behaving and speaking was okay, it was simply different to other teachers. He indicated that as time went on however, he became more and more uneasy with the way in which the teacher interacted and the things she mentioned in her conversation with students, including her sexual encounters and her using violence in sport during a sporting match. He said that he became very uncomfortable in the teacher's presence when she started to initiate conversations, not just respond to what students were talking about.

Student 2 told the Panel that conversations often took place when students walked to a neighbouring school. While he did not recall the specific reasons why the various conversations occurred, he did recall the teacher talking about using marijuana to wean herself off painkillers. He also recalled a conversation about her breaking up with her boyfriend and another conversation about her female partner who worked at the neighbouring school. Student 2 stated that he often found the teacher's conversation confusing as she provided conflicting information at different times.

Student 2 informed the Panel that he believed that several other students also became uncomfortable with the teacher's topics of conversation. He said that students started

to fear that there would be ramifications for themselves if other teachers heard some of these conversations. That said, he informed the Panel that the number one rule was 'not to dob' and therefore he and others didn't raise their concerns.

In a brief casual conversation about violence on the sporting field, student 2 stated that the teacher mentioned that she had hit someone while on the field playing sport. Student 2 did not believe that the teacher was disapproving of the incident she was involved in. He believed it wasn't an accident from the nature of the conversation and recalled the conversation taking place around a discussion about a similar school related incident that had happened.

Student 2 could not recall the reason why a conversation about the price of cocaine took place, however he did recall the teacher discussing the price of cocaine with students.

Student 2 did speak to his father at one stage about the relaxed and open manner at sport, with respect to the new sports coach. Student 2 stated that on reflection he believed that the teacher's conversations breached the boundaries and responsibilities of a teacher. He informed the Panel that at the time he took the content of the discussions at face value and was not personally offended.

#### **Witness 4: The teacher**

The teacher took the oath and confirmed that her statement dated the 21 January 2008 was true and correct. The teacher is provisionally registered and 2006 was her first year of teaching. She was employed at the school in 2006. The teacher taught at a different school for the first three terms of 2007.

In her statement the teacher said that she did not have inappropriate conversations about any of the matters alleged in Allegation 1a (refer particulars i, ii, iii, iv, v, vi and vii). She stated that the only conversation she had about cocaine was early in Term 4 in 2006, when some students told her that a Year 11 student had sold cocaine to a Year 10 student. She stated that she reported the matter immediately to a senior staff member. She stated that she believed that one of the students involved was later expelled.

The teacher stated that she did not have a discussion about fighting with her boyfriend as she did not have a boyfriend.

The teacher stated that she may have had a conversation about playing sport, but she couldn't remember any conversation about hitting anyone during a match.

In relation to Allegation 1b (refer particulars i and ii) the teacher denied using the word 'cunt' in the presence of students. She stated that she may have used the word 'fuck' in the sporting environment, but couldn't remember any specific occasion. Regarding the use of the word 'cunt' the teacher told the Panel that it was not a word that she used in everyday language but that she may have used it out of school hours in conversation with student 1. She specifically denied that she had used the word when addressing the sports team.

In relation to inappropriate swearing at school, the teacher told the Panel that she was told by a staff member in week 3 of Term 1 in 2006 that she had sworn in front of the sports team. No swear words were identified by the staff member, but the teacher was asked to curb her language while directing sport. Although expressing surprise to hear that she had sworn, the teacher said that she was grateful to be informed by the staff member. The teacher stated that she took the suggestion to curb her language on board and did curb her language after that conversation. The teacher said that she believed there was no further incident when she was warned about swearing. She stated that she did not discuss swearing with the Principal or the Deputy Principal.

In relation to Allegation 2a, the teacher stated that she was at her parent's home watching a video with her mother when student 1 called her and asked if he could come over. She said okay. He travelled by train and she picked him up from the station. The teacher stated that she bought food and student 1 bought a slab of beer. She stated that they watched movies, talked and ate dinner. She stated that they both drank alcohol, but neither drank a lot.

The teacher stated that such a situation where she socialised with students as friends, would not arise again as she was much more aware of the boundaries after the investigation and formal process that she had been through, given the complaint that was made about her conduct. She stated that she was now aware of the Institute's Code of Conduct, which was in draft form in 2007 and had a greater understanding of a teacher's role and responsibilities.

The teacher stated that she was not currently teaching, but hoped to teach again soon. The teacher stated that she had reflected on what had happened and was very sorry for the problems caused.

The teacher told the Panel that the evidence given by student 2 was incorrect. She stated that while she was present during the conversations he raised, she did not participate in student conversations to the extent that student 2 had said.

The teacher denied that she spoke about her personal issues with students. She said that she believed that because student 1 was not a student in the school she was teaching at, she could discuss these matters with him, although she believed that she did discuss such matters in a general manner only. The teacher told the Panel that she now realised that the conversation was inappropriate and that her responsibilities as a teacher could extend beyond her immediate students and others being educated at the school where she was teaching.

The teacher stated that she came to know student 1 through his friends who were on the sports team she coached. She stated that they had similar sporting interests and that she would have had a conversation with student 1 about once a week. She stated that she swapped mobile phone numbers with student 1 because they had like interests and he was more mature than the other students.

The teacher told the Panel that on 3 February 2007, student 1 rang and asked if she wanted to catch up. She stated that he said that he didn't have much money and was

happy to just hang around. At the time, the teacher said that she saw nothing wrong with this arrangement, but now realises that it was a mistake. She stated that the alcohol was purchased by student 1, while she was in the Safeway supermarket. The teacher said she does not drink beer and already had wine at home that day and therefore made no alcohol purchases. She stated that she believed that student 1 bought beer for himself and bought a slab because it was cheaper.

The teacher stated that when student 1 stayed the night, she did not want to drive him back as the wine she drank, combined with the medication she was on, made her drowsy. She recalled that student 1 spoke to his mother but she could not describe the conversation. She also stated that student 1 text messaged his mother on several occasions.

The teacher stated that the next day she and student 1 went to her parent's home where they spent some time on the computer and ate sandwiches. She stated that both of her parents were there for the entire time. The teacher stated that student 1 received a call from his mother in the afternoon on his mobile as she wanted him to come home. The teacher gave student 1 a lift to his house.

The teacher stated that she spoke generally to student 1 about whether he had a girlfriend. She said that there may have also been some general discussion about her previous relationship.

The teacher stated that she did talk to student 1 about her girlfriend, but did not say that she had been dumped, particularly given that they didn't break up until well after school had finished.

The teacher stated that she did not tell student 1 not to tell anyone that she saw him, as at the time she didn't think it was a problem, as she no longer taught at the school that student 1 attended.

The teacher stated that she had asked student 1 to collect a folder and a farewell card from her previous school, which he attended in 2007 for Year 12, stating that she would probably see him during that week. On reflection, the teacher said that she regretted that she had asked a student to approach teachers for her folder of material.

The teacher believes that she met with the Principal during the year about five times, one of which was to do with the student whom she reported regarding the cocaine. The teacher told the Panel that the school in her view did not have a very informative system for beginning teachers. That said, the teacher admitted that she did not personally take the time to access any policy or procedure documents while at the school, but did work to rectify that oversight, reading what was available to her in 2007 when teaching at the second school.

The teacher told the Panel that she had reflected on her lack of insight and had taken the time to read school policy material. She stated that given her time over, she felt that she would have been far more enlightened and now understands well the position of influence that a teacher holds.

The teacher stated that when teaching in 2007 she did things differently to when teaching in 2006. Social conversations were discouraged by her when engaging with students and she stated that she was more mindful of things that should be referred to a school counsellor than before. She stated that she had made particular efforts in relation to ensuring her language was appropriate and curbing any swearing and that she used more discipline and was more formal with students in her second school, than in her first. The teacher stated that she had learnt much and would not make the same mistakes ever again.

## **DISCUSSION OF EVIDENCE**

### ***Allegation 1***

With respect to the particulars of Allegation 1a, while there is a level of conflicting evidence, the Panel is of the firm view that the teacher failed to sufficiently distance herself from student conversations and did at times, engage in such conversations inappropriately.

The Panel considers that there is insufficient credible evidence to prove all of the particulars under Allegation 1a and considers that the discussion about cocaine referenced in (v.) was most likely due to the teacher progressing her concerns about the sale of cocaine in the school environment. The Panel is of the view that particulars (i) and (vii) are substantiated.

The Panel considers that there is sufficient credible evidence to prove both of the particulars under Allegation 1b, mindful that the evidence given by student 1, student 2, the principal and the teacher herself to a degree, was consistent. While the teacher denied excessive use of inappropriate language, she did acknowledge that, in the sporting context, she may have been unaware of the frequency and content of her inappropriate language.

The Panel formed the view that the teacher's inappropriate language and conversations were due to professional immaturity, poor judgement, lack of personal insight and a mistaken belief that such 'student equivalent' interaction would impress the senior male students, ultimately serving to establish a good rapport and enhance her professional relationship with them.

### ***Allegation 2***

In relation to failing to develop and maintain a professional relationship with student 1 while he was in Year 11 in 2006 and continuing that relationship in 2007, after she had left the school where student 1 was doing Year 12, the Panel found on the balance of probabilities, based on all of the available evidence that the teacher did engage in conduct that fell short of professional standards and requirements.

With the exception of 2f which can not be substantiated either way, it was the view of the Panel that Allegation 2a, 2b, 2c, 2d, 2e, 2g and 2h and their relevant particulars

were proved. This determination was made mindful of the fact that on occasions it was not possible to determine who contacted whom first prior to the social catch-up activities.

With specific reference to 2h, while all of the particulars of (i), (ii) and (iii) cannot be fully substantiated, the Panel found that there was a reasonable degree of personal conversation without a valid context.

With reference to 2f, the Panel notes that there is insufficient evidence to prove that the teacher specifically purchased the alcohol for student 1, as opposed to student 1 purchasing it himself. Either way it is proved that student 1 did pay for the alcohol that he drank and that he was 17 at the time.

The Panel was satisfied that the catch-up activities were purely social and that nothing untoward occurred between the parties. That said, the Panel was concerned about the procurement and consumption of a substantial amount of alcohol by student 1 in the company of the teacher. The teacher admitted that she did not proactively discourage this behaviour. The public can reasonably expect a teacher to exercise better judgement and care.

The Panel was also concerned about the somewhat concealed nature of the social activities and the overnight stay at the teacher's unit, particularly on the part of the student. The teacher did not proactively encourage student 1 to inform his mother of his whereabouts. Again the public can reasonably expect that a teacher would be able to establish clear boundaries and to work with parents in the care of students.

## **FINDINGS UNDER SECTION 2.6.46(2) OF THE ACT**

In relation to initiating/engaging in inappropriate conversations with students, the Panel was of the view that based on all of the available evidence and the balance of probabilities, that the teacher did engage in and initiate, a level of interaction that fell short of professional standards and requirements. Hence it was the view of the Panel that with respect to such interactions the teacher failed to develop and maintain professional relationships with students of the school and engaged in misconduct. The Panel also considered that the teacher's contact and interaction with student 1 as per Allegation 2, amounts to misconduct.

Overall, the Panel notes that the misconduct of the teacher is neither persistent nor ongoing. Her past behaviour did lack insight and was not a credit to herself or her profession. The teacher failed to command respect from students and for herself as a teacher. The Panel concluded that the teacher's misconduct fell short of amounting to serious misconduct.

By the end of proceedings the Panel were of the considered view that the teacher was particularly mindful of how and why she had stepped out of line and the mistakes that she had made. The teacher also evidenced that she was well aware of the potential impact of such mistakes, for both students and the education community. The teacher

demonstrated significant levels of remorse and maturity when reflecting on what had transpired and her personal and professional misdemeanours.

The Panel found that the teacher demonstrated current understanding of the professional requirements of a teacher. The teacher also demonstrated proactive action to ensure that she had fully informed herself of her responsibilities. The Panel also noted that the teacher evidenced appropriate levels of remorse, contrition and significant personal and professional learning. Further the teacher evidenced that she had put in place mechanisms to ensure appropriate language while working with students and that she understood that her approach in the past was naive and that her conduct showed poor judgement. The teacher clarified beyond a doubt a sound understanding of why and when ‘friendships’ and ‘socialising’ with students were inappropriate. She articulated the difference between the role of the teacher and a friend, having reflected on what being a ‘professional’ actually meant for a teacher.

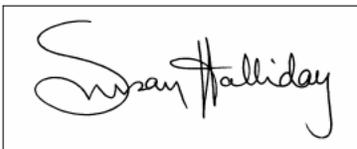
The Panel was of the view that the teacher was fit to teach and noted that she was eager to return to her chosen profession. That said the Panel wished to firmly recommend that the teacher consider the personal and professional benefits associated with taking the time to debrief, reflect and mentally prepare herself for re-entry to teaching, given what had transpired. The panel considered that it would be reasonable to utilise the services of a registered psychologist. The Panel considered that the teacher would find it most advantageous to engage in three sessions, namely (1) debriefing (2) professionally structured reflection and (3) appropriate emotional and physical preparation for re-entry into the teaching profession, prior to her return.



**SUSAN HALLIDAY, CHAIRPERSON**



**per ,  
KEVIN MOLONEY, REGISTERED TEACHER**



**per ,  
JEANETTE BARCLAY, REGISTERED TEACHER**