

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 072

REGISTERED TEACHER: Tania WEBBER

PANEL MEMBERS: Susan Halliday, Chairperson
Norm Fary, Registered Teacher
Michael Butler, Registered Teacher

ATTENDANCE: The teacher did not attend the Formal Hearing
Ms A Sheehan Counsel Assisting with Ms A Haslam
instructing

DATE OF HEARING: 22 September 2008

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

On 27 October 2008 the Panel decided to suspend the registration of the teacher from 27 October 2008 to 26 October 2009.

REASONS

BACKGROUND

The teacher became registered with the Victorian Institute of Teaching on 26 April 2005. The teacher was registered following the completion of an *Application for Registration under Mutual Recognition*.

By letter dated 4 August 2006, the employer notified the Institute that it had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) on 20 December 2006. The Committee decided that the matter should proceed to a formal hearing. An investigation of the allegations was undertaken. On 12 September 2007 the Committee considered the investigation report and confirmed its decision to refer the matter to a formal hearing.

The Notice of Formal Hearing dated 6 February 2008 was served upon the teacher by registered post on 11 February 2008.

On 29 February 2008, the teacher advised the Institute that she no longer wished to be registered as a teacher with the Institute. On 12 March 2008, the Committee determined to continue the inquiry as if the teacher was registered in accordance with section 2.6.47 of the *Education and Training Reform Act 2006* (the Act).

DOCUMENTS

The Panel was provided with the following documentary evidence:

1. The teacher - Registration Details (4 pages) **001- 004**
2. Witness statement of the acting principal dated 29 May 2007 (1 page) **005**
 - 1 – Minutes of Meeting with the teacher dated 11 October (1 page) **006**
 - 2 – CD of Video Footage from ‘Bowling Incident’ dated 27 October 2005 (1 page) **007**
 - 3 – Minutes of Meeting with the teacher dated 28 October 2005 (1 page) **008**
3. Witness statement of the campus principal dated 27 June 2007 (3 pages) **009- 011**
 - 1 – Letter to teacher 1 from teacher 2 (undated) attaching document entitled: ‘Concerns from within 8E with English and SOSE’ (2 pages) **012- 013**
 - 2 – Student 1’s workbook (12 pages) **014- 025**
 - 3 – Minutes of Meeting with the teacher dated 11 October (1 page) **026**

- 4 – Handwritten notes by teacher 3 dated 27 October (1 page) **027**
 - 5 – Market Day Tasks for Assessment document by teacher 3 (undated) (3 pages) **028- 030**
 - 6 – A3 poster entitled ‘The Tossers’ (1 page) **031**
 - 7 – Memo from teacher 4 dated 27 October 2005 (1 page) **032**
 - 8 – Minutes of Meeting with the teacher dated 28 October 2005 (1 page) **033**
 - 9 – Letter to the teacher from the principal dated 4 November 2005 (3 pages) **034- 036**
 - 10 -Minutes of Meeting with the teacher dated 11 November 2005 (1 page) **037**
4. Witness statement of teacher 1, dated 31 May 2007 (2 pages) **038- 039**
 - 1 – Letter to teacher 1 (undated) attaching document entitled: ‘Concerns from within 8E with English and SOSE’ (2 pages) **040- 041**
 5. Witness statement of the principal, dated 27 July 2007 (1 page) **042**
 - 1 – Letter to the teacher from the principal dated 4 November 2005 (3 pages) **043- 045**
 - 2 – Minutes of Meeting with the teacher dated 11 November 2005 (1 page) **046**
 - Letter from the principal to the teacher dated 15 November 2005 (1 page) **047**
 - Letter from the principal to the teacher dated 17 November 2005 (1 page) **048**
 6. Witness statement of teacher 4, dated 6 August 2007 (1 page) **049**
 - 1 – Memo from teacher 4 dated 27 October 2005 (1 page) **050**
 7. Witness statement of teacher 3 dated 25 July 2007 (3 pages) **051- 053**
 - 1 – Handwritten note to the campus principal from teacher 3 dated 25 October 2005 (1 page) **054**
 8. Witness statement of the student aide dated 4 June 2007 (1 page) **055**
 - 1 – Memo from teacher 4 dated 27 October 2005 (1 page) **056**
 9. Witness statement of teacher 2 dated 2 July 2007 (1 page) **057**
 - 2 – Letter to teacher 1 from teacher 2 (undated) attaching 1- Document entitled: ‘Concerns from within 8E with English and SOSE’ (2 pages) **058- 059**
 10. Statement of the teacher dated 1 June 2007 (1 page) **060**
 - 1 – Letter to the teacher from the principal dated 4 November 2005 (3 pages) **061- 063**
 - 2 – Response letter from the teacher, undated (4 pages) **064- 067**
 - 3 – Fax from principal 2 to the teacher dated 16 December 2005 (2 pages) **068- 069**
 - 4 – Letter to the teacher from the employer, dated 21 July 2006 (1 page) **070**

- 5 – Letter to the employer from the teacher undated (3 pages) **071- 073**

11. Notice of Formal Hearing dated 6 February 2008.

The following exhibits were tendered at the hearing:

- A.** Letter from the Institute to the teacher dated 15 September 2008
- B.** Facsimile from the teacher to the Institute dated 1 June 2008
- C.** Email from the teacher to the Institute dated 10 June 2008
- D.** Letter from the Institute to the teacher dated 8 September 2008
- E.** Letter from Teachers Registration Board of South Australia to the Institute dated 12 September 2008
- F.** Letter from the campus principal, the school, dated 12 June 2008
- G.** The school Staff Handbook 2005
- H.** The Institute Standards of Professional Practice for Full Registration
- I.** Statement of the acting principal dated 29 May 2007
- J.** Video Footage of bowling incident of 27 October 2005
- K.** Statement of teacher 1 dated 31 May 2007
- L.** Statement of teacher 3 dated 23 July 2007
- M.** Statement of teacher 2 dated 2 July 2007
- N.** Statement of the student aide dated 4 June 2007
- O.** Statement of the campus principal dated 27 June 2007

THE EVIDENCE

The Notice of Formal Hearing set out the following allegations:

During 2005, whilst employed as a registered teacher at the school, the teacher:

1. Failed to teach effectively and engage students in active learning
 - a. Did not provide students in her classes with adequate work.

- b. Did not follow the curriculum or use resources that had been provided to her by the school.
 - c. Failed to provide adequate instruction and provision of resources to students in order for them to undertake tasks.
 2. Failed to monitor and record a student's progress
 - a. Did not adequately assess student work or provide feedback.
 3. Failed to adequately supervise students and establish and maintain standards for student behaviour
 - a. During period 2 on 26 October 2005, allowed students from her Year 8E SOSE class to disrupt other classes. These students had to be moved back to the teacher's classroom.
 - b. During period 4 on 25 October 2005, allowed students from her Year 8E SOSE class to wander around the school unsupervised. The students disrupted other classes and had to be escorted back to the teacher's class.
 - c. Was unable to supervise the class and focus the students on completing their work.
 - d. On 27 October 2005, sat at the front of the classroom and did not move from her desk:
 - i. Students lined up classroom tables as a bowling alley.
 - ii. One student lay across a computer chair.
 - iii. Other students wheeled/bowled him down the classroom.
 3. Failed to communicate effectively with parents
 - a. Failed to communicate effectively with parents at parent/teacher night or to comment on the students' academic progress.

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

1. The Assistant Principal
2. Teacher 1
3. Teacher 3
4. Teacher 2
5. The Student Aide
6. The Campus Principal

At the outset it was noted that the matter had been previously postponed on two occasions. The first was at the request of the teacher who had indicated she was impacted by a medical condition. The second postponement also related to a request from the teacher a few days before scheduled proceedings. The teacher sought an

alternative Formal Hearing date due to having recently commenced a new job and her inability to take time off. On this occasion the teacher did forward a series of comments refuting the allegations that had been made. The Panel agreed to both requests for postponements. A third set of Formal Hearing dates was scheduled and the teacher was notified.

The teacher contacted the Institute, having received the third set of Formal Hearing dates, and informed Institute staff that she would not be attending the Formal Hearing. The Formal Hearing proceeded without the teacher. The teacher did not send a representative. It was also noted that the teacher was no longer registered; however the inquiry was continuing under Section 2.6.47 of the Act.

The Acting Principal

The Panel heard evidence from the acting principal. A career teacher with a further five years in the principal class the acting principal affirmed that his written statement of 29 May 2007 was a true and correct record of events. Currently the acting principal at the school, the acting principal indicated that the teacher in question had joined the school staff on 18 July 2005 as an Expert Teacher at the top of the salary scale, replacing a teacher who was on extended leave.

The acting principal stated the school was one of limited cultural diversity, with wide student abilities and in his experience lower than average parent expectations. He also commented that while students did try out new teachers, the school had very clear and well documented support structures and procedures. He indicated that comparatively speaking it was not a difficult school to teach in and also stated that the teacher had been provided with a mentor/buddy teacher.

The acting principal stated that in his view adequate support was offered to the teacher and that she was treated no differently to any other staff member. He stated that the teacher knew that she could send a difficult student to a member of the principal class, or the student could be dealt with by the teacher's mentor/buddy. The acting principal said it was standard within the school to induct new teachers, introduce them around and offer them support. He stated that no one had ever mentioned to him that the teacher had concerns with anything at all and as far as he recalled the teacher's mentor /buddy had not raised anything. The acting principal stated that despite what was put forward by the teacher there was no personal animosity between them as far as he knew. He added that in his view there was no animosity between the teacher and the campus principal and no animosity between the teacher and teacher 1. He said that teacher 1 had been supportive of the teacher.

The acting principal stated that if there were issues with curriculum or difficult students then the processes were in place for the teacher to act and get help. He said that if she felt threatened then she should have spoken to someone senior. The acting principal stated that if the teacher had felt threatened, she could have sent another student for help.

In his statement the acting principal indicated that in early October 2005 he became aware via discussions with the campus principal that there had been complaints about the teacher, with particular reference to Yr 8 students. A meeting was held on 11 October 2005 involving himself, the teacher and the campus principal. The complaints were discussed with the campus principal outlining the reasons for the meeting, including that parents had complained about the lack of work given to students and the lack of student assessment that had been done and received. The teacher had been asked to bring two examples of her units of work, information related to her assessment strategies and examples of student work to the meeting. The acting principal indicated that the examples gave broad outlines for both SOSE and English – but there were no specifics. She also brought some examples of student work. The acting principal indicated that drafts had not been assessed and there were up to six weeks at a time where there had been no student assessment taking place. The teacher was instructed to set progressive assessment dates, ensure that there was regular written feedback and to use a variety of tools. The acting principal reported that the teacher said very little during the meeting. Another meeting was scheduled for four weeks time in order that monitoring of the teacher's work could take place, including the requirement that the teacher bring marks that had been gathered for all students and a more detailed curriculum outline. During the 11 October 2005 meeting the acting principal stated that the teacher had assured him and the campus principal that she was receiving good support from teacher 1 and teacher 3. The Panel had access to the Meeting Minutes.

The acting principal also indicated that on 27 October 2005 that he viewed a student activity that had been recorded on a mobile phone video. Brought to him by teacher 1, the particular activity of concern took place in the teacher's Yr 10 Foundation English class. This video showed students using another student as a bowling bowl, and bowling him (whilst positioned on the teacher's chair with wheels) at classroom chairs/furniture that was pushed together for the purpose of being knocked down like bowling pins. Classroom furniture had been lined up like a bowling alley. The teacher could be seen in the background of the video, sitting at a table making no attempt to stop what was happening, nor taking any action after the student had been 'bowled'. The Panel viewed the video several times. The acting principal said he believed what he had viewed on the video was most inappropriate and breached the duty of care that a teacher had.

With respect to the teacher's comments in her Institute Investigation Statement about feeling angry and agitated at the time of the bowling incident, the acting principal noted that she did not appear that way to him on the video, and further that the teacher when questioned about the incident did not indicate to him anything about feeling angry and agitated. In relation to the teacher's position on utilising physical activity as a learning tool, the acting principal stated that appropriate physical activity could be used as a learning tool; however it should be used as a reward, without breaching duty of care.

The acting principal indicated that the teacher had little response to the bowling incident when the matter was raised with her at a meeting on 28 October 2005. Minutes of this meeting were taken and provided to the Panel. The Minutes indicated that there had been no notable change with respect to the on-going assessment of

students and their work, and no notable change in the level of feedback provided to students. There was continued parental concern being aired. Other staff including members of the principal class had raised concerns also, with particular reference to the teacher's lack of involvement in the Market Day activity and the fact that she did not attend meetings nor do what was required of her with her students. The inappropriate nature of the Market Day stalls her students had proposed, including water bombing an individual student, was problematic.

The acting principal indicated that he did not recall the teacher talking much about feeling intimidated by students or anyone else at the school. He stated that the Foundation English Class only had about 16 students.

Further the documentation accompanying the signed statement of the acting principal show that two staff from the Deaf Facility who attended the teacher's classes as Student Aides had reported that no work was being done in the teacher's classes, and that things were being thrown around the room. In addition they provided information about students not being held accountable for failing to complete their work and inappropriate classroom behaviour. One Student Aide had indicated that her hearing impaired student was not doing any work at all, but this was not challenged by the teacher.

The acting principal indicated that the school informed the teacher about the range of concerns during the October meetings, including that her daily lesson plans lacked details and information about expected levels of student achievement and outcomes. The teacher told the acting principal at the meeting that these details were in her chronicle. The acting principal told the teacher that as the school's expectations were not being met that she should produce her chronicle. The teacher was informed that the situation could not continue. She was also told that her duty of care was compromised as her students were wandering around out of class unsupervised, inappropriate and dangerous classroom behaviour was taking place, and there was a significant lack of planning and assessment of student work. The Minutes of the meetings show that the teacher was told to seek assistance if she had classroom management issues. She was also told that the issues of concern must be addressed immediately or unsatisfactory performance management procedures would proceed. A further meeting was scheduled for early November 2005. In mid November 2005 the teacher was removed from classes and redeployed in the school Resource Centre.

Teacher 1

The Panel heard evidence from teacher 1 who confirmed that her written statement of 31 May 2007 was a true and correct record of events. Teacher 1 indicated that she had been a Department Head at the school and had been a teacher for nine years. She was now at another school.

Teacher 1 stated that when she first met the teacher she talked about her experience with 'at risk' students in some detail and appeared to have a good grasp of current curriculum and practice. Teacher 1 also indicated that part of her role was to support the teacher. She stated that she did what she could and that she had made her own

filing cabinet contents and resources available to the teacher. Teacher 1 stated that she always attempted to be accessible and supportive of the teacher. Teacher 1 said that she checked on the teacher's progress in the beginning and helped her familiarise herself with processes for booking facilities, and when she needed advice on school policies. She said that the teacher did seem approachable in the beginning, and would participate in general discussions, but this attitude had changed in a couple of months, and the teacher started to ignore advice and suggestions becoming quite isolated because she did so.

Teacher 1 stated that she had no agendas, she was there to do fill her role and that she was always available to provide advice and support. Teacher 1 said that she refuted what the teacher had claimed as she personally did not let politics get in the way of her doing her job.

Teacher 1 indicated that it was at the beginning of Term 4 that a number of concerns had emerged. In her statement she said she had received a note from the previous Yr 8 teacher. This teacher had spoken to a Yr 8 student in the holidays as he had told her that he wished to raise concerns about what was happening at school. Known to be a good honest student and talented writer, the Yr 8 student told the previous teacher that he was losing interest in school and that he had lost confidence in his abilities. His mother was very concerned also about his change of attitude. Teacher 1 documented the concerns and handed them to the campus principal.

Teacher 1 provided further information about a parent complaining about no work being done in class and then personally examining students' work. Finding that there were no spelling or reading logs, and that answers were downloaded from the internet minus teacher comments or suggestions for improvement, and that there were no corrections although there was a generalised mark, greatly concerned her. All up it looked like two weeks work had been done in the term. Further examination by the teacher 1 showed that the Yr 8 curriculum was not being delivered by the teacher.

Teacher 1 also detailed walking past the teacher's class on several occasions and observing her reading the newspaper or something else, or just watching students. She stated that there was little interaction or direction provided. In addition, teacher 1 said that she, due to unruly behaviour of students in the teacher's class, had intervened on a number of occasions – these students being situated both inside and outside the classroom when she had intervened. Teacher 1 stated that the students were disengaging and realising this she offered to help the teacher, but her offers were not accepted.

In relation to preparation for Market Day which was part of the curriculum, teacher 1 stated that the teacher permitted her students to be outside of the classroom unsupervised to do preparation. She noted that students should have been supervised. She said that some were skateboarding and others running in corridors, and she herself had taken students back to the teacher's class. On explaining that the students were not doing what they were supposed to be doing when outside of the classroom (i.e. preparing for Market Day) the teacher simply said 'thank you' and showed no great concern. Further teacher 1 stated that the students were not involved in legitimate

preparation and when she sent them back to the classroom, she observed the teacher was sitting doing nothing. Teacher 1 said there was no reason to believe that the teacher was having a bad week and that there were no particular issues of concern going on at the school involving the teacher that she knew of, hence there was no reason that she could see for what was happening.

Teacher 1 spoke about her first hand knowledge of the teacher having difficulty with discipline, and a lack of control of students. Teacher 1 stated that it became clear that classroom behaviour management and the quality of the teacher's interaction with students were issues of concern. Teacher 1 detailed that while there were complaints and concerns being expressed by a range of people about the teacher, there were also offers of support and intervention by the school and by individuals like herself. Offers to remove unruly students to another class or to involve other staff as support mechanisms were made, but not accepted by the teacher.

Teacher 1 indicated the on-going issue of the teacher's unwillingness to seek advice or help was not the only problem, as she knew that the teacher was not providing feedback to parents, as well as failing to operate as a member of a team. Teacher 1 stated that this was particularly evident in the teacher's inability to co-operate with the school's Market Day Activity. The teacher's role in this extensive term activity was to oversee and monitor the organisation of her students' ideas and projects. While this activity provides a great deal of flexibility for students it is also highly structured and organised, with written support material. The activity has clear definite goals and objectives, and requires commitment and engagement from all teachers as a team. Teacher 1 indicated that the teacher herself did not engage in this activity, and that she provided little structure for students, as well as allowed an inappropriate activity involving students to be organised. The teacher also failed to monitor or supervise her students who she let out of class.

Teacher 1 stated that on 27 October 2005 a Yr 10 student told her that he had video taped an incident in the teacher's class. Teacher 1 said she viewed the video and was stunned by the students' physical bowling activity in the classroom. Knowing the students in the class she said she was angry that their learning needs were being neglected. Teacher 1 stated that they were reasonable kids with low literacy levels who were anxious about their VCE preparation as they headed to Yr 11. She stated that what she saw had no links with the curriculum and was not constructive. Further she stated that the teacher was not delivering the curriculum. She indicated that there was likelihood of physical injury and that the teacher had no control of the class from her observations. Teacher 1 said the teacher could have gone to a number of people for help. Teacher 1 stated that she didn't think teachers felt threatened and intimidated by students at the school. Teacher 1 took the video to the assistant principal. She stated that the classroom was set up to simulate a bowling alley and that a student was lying across a computer chair while other students bowled him down the classroom. In the video the teacher was just sitting at the front desk. Teacher 1 stated that she did not accept the explanation given by the teacher that these students needed physical activity to learn. Teacher 1 also stated that she did not accept the teacher's excuse that she was so threatened by the students that she could do nothing about their behaviour.

Teacher 1 stressed that there were avenues of support available in the school if people had trouble with students or curriculum, and that by anyone's judgment the activity recorded by the Yr 10 student on video was not appropriate, and further it was a violation of a teacher's duty of care. She stated that the teacher was removed from classes and redeployed in the library. Required to catalogue and review video resources, as well as prepare abstracts and cross curriculum links, the teacher was instructed to report to her daily on her progress. Teacher 1 said that the teacher did not fulfil this requirement.

With the departure of Yr 12 classes the teacher's classes were allocated to others. Teacher 1 stated that she and other teachers found that students had completed very limited Yr 8 work and it was difficult to get them back on track to achieve the bare minimum of Victorian Curriculum Standards Framework requirements before 2005 ended.

Teacher 3

The Panel heard evidence from teacher 3 who stated that she had been teaching since 1974. She confirmed that her written statement dated 23 August 2007 was true and correct. Teacher 3 stated that she was a teacher at the school, and had been teaching at the school for 16 years.

Her statement indicated that the teacher in question had joined the SOSE team in Term 3 of 2005 and that she herself was the co-ordinator of the SOSE team. At the time students were undertaking a geography unit and the teacher did not attend normal team meetings to discuss curriculum to be delivered, nor did she assist with the preparation of materials. Teacher 3 stated that she had very little success establishing a collegial relationship with the teacher despite making numerous efforts to do so. However as the SOSE co-ordinator she made sure the teacher was kept informed and that work for her students was regularly put in her pigeon hole. In the face of no feedback about the materials from the teacher, teacher 3 decided to personally give her prepared guidelines and work units to try to ensure that the curriculum was being delivered to the teacher's students. Teacher 3 stated that the teacher's response to this was to simply place the materials on her desk. Further her approaches to the teacher were met with a dismissive response and the teacher remained reluctant to engage with her colleagues.

Teacher 3 stated that by the end of Term 3 she had largely given up trying to engage the teacher in collegial activity. However she was concerned about the students in the teacher's SOSE class as she often heard excessive noise and some of the teacher's students had informed her that they did nothing in their SOSE class.

In Term 4, Yr 8 SOSE students commenced an economic unit which involved Market Day. Strict guidelines had been established which involved students planning and executing a market day initiative. Students were required to undertake a three to four week planning phase, which included the development of planning documents, complete with resource needs and the publication of advertising materials. Advertising material was to be displayed around the school and students could leave their classes to

do so if they had a note related to a specific task. It was expected that students would only be absent for a short period of time and could be located at the Resource Centre, the teaching block corridors or canteen.

The teacher did not request guidelines for Market Day nor seek assistance. She told teacher 3 that she had done it all before. Teacher 3 queried this as it was a unique program with special purpose funding from an external organisation, and it was required that the unit was taught in a specific way. Teacher 3 stated that many Yr 8 classes were involved, and that commitment and cooperation from teachers was essential. She said this was not forthcoming from the teacher. Teacher 3 indicated that the Market Day involved all teachers working as a team but the teacher did not come to the Market Day meetings she should have attended. She stated that she continually tried to keep the teacher involved and personally put the information on her desk.

Teacher 3 stated that she found the teacher quite difficult to deal with as well as overconfident at times. She said that she provided each teacher with a large box of materials for poster making and provided access to large poster paper. In the end however it seemed like the teacher's students did nothing over the four week period and many of her students did not have stalls on the day, and absented themselves. Teacher 3 said at times it was sad because students in the teacher's class saw what others were doing with their teachers, and indicated that they wanted to be fully involved.

Teacher 3 stated that the teacher put an articulate confident argument forward about it being good to run classes without text books and to teach without text books. She said that while she discussed this with her, she really did not have personal conversations with the teacher, although she always tried to be inclusive and friendly. Teacher 3 stated that the teacher did not take on the culture of the school but personally believed that it would be something that you would expect someone to do, if they wanted to be teaching there.

Teacher 3 stated that Resource Centre staff talked to her about the teacher as they had issues with her, as did other staff, and that she would personally have had more than ten complaints about the teacher.

Teacher 3 stated that in the actual lead up to Market Day she received visits to many of her classes from the teacher's students, affecting her Yr 11 and VCE students. The visits were the teacher's students seeking assistance with various things including materials and poster paper, hence she had to leave her Yr 11 and VCE classes. The students also asked questions about stalls. It was disruptive and she told the Yr 8 students to return to class and arrange their needs through their teacher, ahead of class time.

Teacher 3 stated that also during the lead up to Market Day she witnessed a great deal of aimless wandering around the school by the teacher's students. Many were excessively noisy and disruptive. Teacher 3 stated that there had never been an issue with Market Day preparations for the ten years that the program had been running. She stated that she had been very concerned that the actions of this teacher and the lack of

control of her class would affect the good will of the school and other teachers that was extended in relation to the preparation time for the activity.

Teacher 3 stated that she filled in for the teacher when she was absent on one occasion and realised that the class needed strong direction for their Market Day activity. It was close to the Market Day and students had not decided on the type of stalls to run, despite that several planning weeks had passed.

On 25 October 2005 teacher 3 observed three Yr 8 girls sitting outside. They were loud and disturbing her class. She went to speak to them. They were from the teacher's class, but did not have a note, and they weren't doing school work. As they were unsupervised they were sent back to class and the matter was reported to the campus principal.

Many of the students in the teacher's class completed little or no planning for the Market Day. They had little idea of what they were supposed to be doing. Teacher 3 said that the teacher was fully aware of the Market Day requirements and had all of the necessary materials. She said that she was shocked to find the teacher's Market Day resource box in disarray with many articles missing and lost planning folders. Teacher 3 stated that she believed that the teacher became increasingly difficult and dismissive of others. She said that she would withdraw when faced with difficult situations.

A copy of an inappropriate poster promoting a water bombing stall, prepared by one of the teacher's students, was viewed by the Panel. It included the photograph of the student who would be water bombed at the stall. Teacher 3 indicated that in general terms water bombing was prohibited and certainly was not an appropriate activity for a stall.

Teacher 2

Teacher 2 confirmed that her written statement dated 2 August 2007 was true and correct. She stated that she had taught at the school for 13 years. She was the teacher on extended leave who was replaced by the teacher in question. Teacher 2 said that she had never met the teacher in question. She noted that when she took leave she left individual notes on each student outlining their strengths and weaknesses to assist the teacher who was to replace her.

Teacher 2 stated that she had never seen her classes out of control and that the students were bright and generally good. She stated that she was very surprised when she heard what was happening in the classroom and how little work was done.

Teacher 2 visited the school at the end of Term 3 and was approached by a Yr 8 student who asked that she phone him at home. He expressed concerns about what was happening in his SOSE and English classes with the teacher who had replaced her. Following the phone call, teacher 2 contacted the school to express her concerns about what she had been told by the Yr 8 student. She outlined what had been reported to her and expressed her surprise at the description of how little work was being done by the student and how out of control behaviour seemed to have become in her former

classes. She also raised as a concern the lack of feedback to parents that had been shared with her. She informed teacher 1 about what she knew.

Teacher 2 indicated that other teachers had also spoken to her regarding their concerns related to the negative behaviour that now existed in her previous classes.

Student Aide

The Panel heard evidence from the student aide who confirmed that her written statement dated 4 June 2007 was true and correct. The student aide stated that she was an SSO – Interpreter 2 within the Deaf Facility at the school, and that she had held the position since 2001. The student aide assisted as a Deaf Translator in the teacher’s classroom.

The work undertaken by the student aide involved her working with students in class, using sign language and helping them gain access to the information that they needed in the classroom. The student aide indicated that she and the teacher initially got on well, and the teacher seemed to have good ideas and appeared interested in her students. However this soon changed - she seemed to lose interest, then things went downhill.

She stated that she provided assistance to a Yr 8 student who was in the teacher’s SOSE class. The class was particularly unruly and the student aide described the behaviour of students as ‘wild’ in the classroom. She said that they completed little work, played with mobile phones and were very noisy during lesson time. The student aide stated that it made her nervous to be in the classroom and that no other classrooms that she was assisting in were as ‘wild’ as this one. Students would often be yelling and shouting, throwing paper and tacks around the room according to the student aide who also stated that the behaviour was often so bad that she would feel the need to make excuses to leave the classroom with her deaf student, and return to the Deaf Facility. The student aide stated that she would stay in the classroom for about half of the lesson. The excessive noise was because students were not working, including the student that she was there to assist. She stated that she could not recall her student or any other student handing in work for assessment. She stated that modified work was not provided for her student. While it may have been a hard class to motivate, the teacher aide said that the students were better behaved with other teachers.

The student aide said that she would not normally make complaints but she was concerned that the teacher was unable to control her class, and she was concerned about the welfare of the students so she reported her concerns to the principal.

The student aide said she had social conversations with the teacher when she first started. She also stated that as the teacher became disinterested, she started to lack motivation. She noted that she would sometimes read the newspaper in class, but the newspaper had nothing to do with the curriculum. The student aide indicated that the teacher, when confronted with a difficult situation, would often simply withdraw and do nothing. The student aide was most concerned about the effect that this situation was having on her student whom she saw as quite vulnerable. She also detailed her

concern regarding the teacher's overall lack of duty of care and noted her concern about her own safety in the classroom.

The Campus Principal

The campus principal was interviewed by telephone as she was overseas. She confirmed that her written statement dated 27 June 2007 was true and correct. The campus principal had been a teacher since 1984 and working at the school since 2002. She stated that she was the campus principal.

The campus principal indicated that initially the teacher had appeared to be very personable and eager to take up the position at the school. By the middle of Term 3 however the campus principal stated that it had become apparent that there were a number of performance issues with the teacher. She stated that she was alerted to problems with the running of the teacher's Yr 8 classes by teacher 1 who had passed on information received from a teacher on leave. The mother of the student who had discussed his concerns with the teacher on leave, then met with the campus principal on 4 October 2005. The mother complained about the lack of work done by the student and that the teacher in question could not comment on her son's academic progress during Parent & Teacher Interviews.

On 7 October the campus principal received a complaint from another Yr 8 parent. The issues were the lack of work done and the lack of supervision during classes. The campus principal also learned from this parent that lollies were given to students as rewards, even though no work had been completed. It appeared that no work had been assessed in this student's workbook and further that the policy of 10 minutes silent reading at the beginning of the English period was not adhered to by the teacher. The campus principal examined the English workbook of this student and detailed that she was shocked to see how little work had been done during Term 3. The campus principal noted that this was a bright student. The Panel examined the student's photocopied workbook and noted it housed very little content.

On 27 October 2005 teacher 4 had left her a note regarding Yr 8 students from the teacher's class that she had found wandering around unsupervised. It was also reported to her that the day before students from the teacher's class had interrupted teacher 4's Yr 11 class. The campus principal added that the teacher had allowed her Yr 8 students to organise activity that was in violation of the guidelines provided, but the posters were already up advertising the stall. The panel viewed the Market Day guidelines and an inappropriate poster. The campus principal also stressed that Market Day was a pivotal time in which the community was involved with the school and made judgments about the programs and practices of the school. It was a time of student and teacher activity and involvement, with sponsorship from a Bank. It was viewed by the school as an opportunity to showcase the best aspects of the school and it required weeks of preparation and organisation. The campus principal said that the teacher's lack of commitment, organisation and willingness in relation to Market Day also needed to be seen in this light. For the teacher's class none of the objectives for Market Day were achieved.

The campus principal stated that she also received a memo from teacher 5 of the Deaf Facility. This concerned staff member shared the responsibility of assisting the Yr 8 student in the teacher's SOSE class with the student aide. The memo stipulated that students were given a list of work to do then left to their own devices. Teacher 5 said that many students would sit and do nothing except talk, disrupting those who did want to work. She said that she believed most of the students saw the class as a 'bludge' class in her memo and that there weren't any consequences if they didn't do their work. She also informed the campus principal that the classes were very noisy and the teacher yelled at students to do their work but didn't walk around the classroom to see what they were doing. Students played with their mobile phones even though they were told to turn them off. Teacher 5 noted that she was concerned for her student who would sit and do nothing except talk. She also informed her that the teacher had been on her mobile phone in class as students were arriving on 27 October 2005.

The campus principal stated that she was also shown the footage of the bowling incident in the teacher's class on 27 October 2005. She said that the next day she and the assistant principal again met with the teacher to discuss the complaints that had been received and to provide instructions with respect to future class work and lesson planning. The union member acted as a support person for the teacher. Meeting minutes were kept.

Due to the increasing number of issues the principal sent a letter dated 4 November 2005 to the teacher advising that he required an explanation. The Panel viewed the letter. The campus principal stated that the teacher had not responded to the letter and on 11 November 2005 the principal, herself and the assistant principal again met with the teacher. Again she was accompanied by her union support person. When it was noted that the teacher had not responded to the principal's letter the campus principal claimed that the teacher said that she saw no point in doing so. The campus principal also stated that the teacher did not bring any of the previously requested materials to the meeting with her, and when asked why not, the teacher responded by asking 'what are you going to do?' The campus principal stated that the principal went through the allegations that he had put in his letter and the teacher admitted each of the incidents had occurred. Meeting minutes were kept. These were viewed by the Panel.

The campus principal stated that the teacher had never spoken to her about strategies or tactics to deal with poor behaviour. She said that the teacher was flippant in her approach. The campus principal did recall that when the issues were put to the teacher in late October, she talked about being intimidated and the boys in the class running 'rough shod' and that she had given up. The campus principal noted that the teacher still didn't get assistance and that there was something fundamentally flawed in her teaching practice. The campus principal recalled the teacher throwing her hands up in the air during the interview when questions about the bowling incident were asked, and saying "yeah – I'm guilty, I don't know what to do" The campus principal noted that that was the extent of the teacher's response. The campus principal stated that her Yr 8 and her Yr 10 classes had said to others that they could just do what they wanted to do.

The campus principal stated that shortly after the last meeting the teacher was removed from classes and redeployed to the Resources Centre. The campus principal added that the teacher was unable to complete her end of year reports as she had not collected students' books and further she had not completed any assessment tasks.

The Teacher

The teacher did not attend the Formal Hearing hence none of the material written by the teacher could be tested under oath/affirmation. The teacher did however sign an Institute Investigation Statement on 1 June 2007. The statement noted that she had been employed at the school on 18 July 2005 to replace a teacher on leave, and that she was allotted English and SOSE classes. The teacher's statement also stated - *in November 2005 I received a letter from the Principal The letter asked me for an explanation as to the substance of a number of issues which had arisen in the course of my employment. I sent a response to this letter. I now affirm that response.*

The teacher's response to the principal's letter was provided to the Panel. It contained a number of points directly related to the allegations put by the Institute. In her response letter to the principal the teacher wrote

- There have been some issues of adjustment by the students to a new teacher after a year and a half with the same person. I also was adjusting to a different system... I was given some guidance, but felt that I had to work out what to teach and how to teach it as 'these were just Yr 8's and anyone can do this.'
- As part of this adjustment I did set numerous tasks, trying to find the balance that suited the class and my teaching style. In term three we worked on a number of written and spoken tasks. We also looked at issues and what we viewed. I provided skills development activities also, and many of these had grids, outlines or were done on paper. I have not worked with students having a workbook before so did not realise the significance of not having work there.
- When issues such as my marking style were brought up I have endeavoured to change that, as seen in recent draft work and editing of work. In the time between the contacts from the student's mum I was absent for three days, and on the other lessons students were involved in viewing tasks. This would be the reason that no work appeared to be done, except in a lesson where we were unable to get a DVD player. During this lesson a task was done that reinforced their viewing work.
- With regards to the Yr 8 English class I have found them challenging since the lesson where I fell over in class and twisted my knee, also hurting my wrist and back. Since this time, as I fell over a student's shoes that should not have been on the floor, I have been reluctant to engage the class in learning. I recognise that I should have reported this, but I was not comfortable doing so, after previous attempts to get support with Yr 8 was not successful.
- During the lesson mentioned I had my mobile phone with me as I was trying to contact my mother with regards to how my grandmother in casualty was. I do not

recall using the phone in class, unless it was her ringing back. I did have my laptop with me and I realise that this was not a productive or interactive lesson. In the next lesson a number of students were moved or made to do the work expected of them.

- There are times when that class is not motivated; unfortunately my usual strategies of having classrooms set up in a certain way don't work when moving around each lesson. I have been working with this class to improve work habits and outputs, and regained my confidence moving around and engaging students.
- In terms of students leaving class, I have been vigilant in the last week since that matter was drawn to my attention to ensure that students have a note to move anywhere. In one incident one student of the group got a note and two others notorious for not paying any attention to my instructions. They assumed that they were on the note and so went to the library. I have sought support for working with student 2 but he has continued to be a challenge, and only teacher 6 has provided advice, but little of value. Student 3 is going through personal problems so he was not likely to be listening to instructions.
- Trying to make Market Day a success has been a challenge as I have been using some English lessons to do the work. Our preparations have been interrupted by having students on Environmental Duty and also having two SOSE lessons after lunch which are often not the most productive times. When trying to follow up incidents it has been difficult, leading me to hold a whole class detention with the support of a coordinator. Since then students have been working much better and a number of students have made positive changes to their behaviour.
- In the incident where students made a recording of a classroom incident, which happened a number of weeks ago, was not something that I had much control over. These students had been physically and verbally intimidating for a number of weeks. I had sought some help from others, but found that it was a compounding of small issues that was making things difficult. I was not feeling confident with dealing with this group of predominantly boys. When they were told that if they had issues to discuss them with the coordinator, they chose to stay in class and to take no other action than being difficult.
- The lesson where they re-enacted a stunt that had seen on the movie 'Jackass' and were not going to stop even when I asked them a number of times. This was a time when I had gotten into a number of disputes with one or more of the students involved, and did not want it to escalate. I was feeling very threatened and had to make a choice to intervene, or to let it go. These students come to class, after lunch, with no intention of attempting work. I asked them many times to sit down and do what was asked, but I got replies that were making me feel threatened. This was also a time when I was under some emotional pressure, so probably didn't deal with the situation as I could have at the time. They re-enacted the scene which is the one recorded. What is not seen on the footage is me going and removing the chair and very loudly having to demand they sit down and do what they are told to do. I had to sit and take some time to calm down as I was at

an angry and agitated state. This may well be what was seen on the footage. While I did not allow them to do this, I did not directly stop them. What the community has seen is a group of students who did a stunt in the classroom after they had continued to harass a teacher. After this incident the students have realised that their safety is most important. I still have incidents with one of the students who doesn't listen and thinks he can flick a tennis ball in class. He is argumentative and when taken to task makes comments about being weak and running to coordinators. I have sought help from the Senior School team.

- It would have been appreciated if someone had talked to me about these incidents and allowed me a chance to explain and clarify situations. A lot of what has happened can be attributed to me learning the ways of the school and adjusting to a new system. It would have been good to have a more thorough induction process and to feel confident that when I act to work with a student it will be followed up. This is not an excuse, but I would never have intentionally disregarded rules and avoided duty of care. My time at the school has been a learning experience.

When the teacher wrote to the Institute to request a postponement to the second Formal Hearing that had been scheduled, she also provided specific comments with respect to what had been alleged about her conduct, and further the teacher requested that her comments in this correspondence be taken into consideration. This material was provided to the Panel. The teacher stated a number of things including the following comments relevant to the allegations

- The school was undergoing major changes, moving to two sites. There were issues with people trying to win leadership roles, and some of this influenced people like teacher 1.
- The principal was on leave for term 3, then returned for the term 4. He was applying for positions and overseeing the transition. There were a number of leadership changes during this time.
- I was provided with positive feedback in the first term about my work. It was only after the 'text book' incident occurred that questions were raised about my performance. This also coincided with issues being raised about another temporary teacher who had left, and so I was targeted.
- The school was in transition and I was basically left to my own devices. I had assumed the transition to VELS would occur like ours did in South Australia to SACE. I did not realise that there were a number of traditional teachers who were resisting the change. I was given little curriculum guidance, just left to work in the best way I knew how. I had brought limited resources over from South Australia.
- There were relationships between teacher 2 and the parents mentioned. These instances occurred after the 'text book' incident. I have only ever met this teacher in passing, and she was on leave while I was replacing her.

- There was personal animosity from teacher 3 towards me and I believe this may have influenced some of this information. I have provided feedback about the alleged incidents in previous reports, but affirm that these matters were dealt with without listening to my side.
- A number of times I was referred to as a liar, saboteur and other negative comments from those in Administration. I did all in my power to continue working in a positive way, after being treated like this. This culminated in no recognition of my contributions on the final day of school, which was most disturbing.
- I had a developmental English Class for Yr 10. My methods may have been considered unorthodox, but I used physical activities to keep the boys working and to help them learn without thinking that they are learning. The incident caught on camera phone appears to be one of these times, and may have been an error of judgement on my behalf. It can easily be taken out of context, but at no time was my duty of care breached.
- The incidents that are mentioned also occurred in other sectors of the school and would go unnoticed if not for particular attention being paid to me. When seeing the list of evidence providers, these are ones with personal issues with me. I ask that consideration be given to this written evidence I have provided so far when judging incidents.
- Due to being called a liar and being told that I was making excuses, I do not feel comfortable confronting these people to give evidence. I was treated poorly at the college. And this has certainly influenced my decision not to teach in Victoria again. I may reconsider this in the future, and this would only be in Special or Alternative schools.
- These incidents occurred almost three years ago and caused me great distress in having to re-live them.

The Panel also viewed the letter the teacher sent to the employer. The teacher made several statements relevant to the Allegations. She wrote

- I left the school to return to South Australia for family reasons at the end of the short term contract. At the time I was aware that an investigation was being conducted, but I was under the impression that it was being done outside the school. After receiving notice of the original allegations, I provided a response to the principal. This information was disregarded and treated with scorn by him...I was removed from my classroom while the investigation was occurring.
- I moved interstate and was provided with little support for the transition. It was claimed that the teacher I was replacing had given me ample work and met with me when I started. This was in fact the CRT that she met with, and I was not provided with any documentation or curriculum materials.

- I was not made aware that certain procedures were followed at this school and so it appeared that I was not following procedure when in fact I was unaware of what the procedure was. This includes a planning process for an activity that students had checked out the safety aspects, but I was then informed of an incident that had happened previously. Just operating under a new timetable and new classroom structure was difficult enough, without all of the politics of space, place and people.
- There was a lot of unrest due to the split to a multi campus mode. At the time there was a lot of power playing going on, which meant limited leadership and trying to secure positions by other people. There was also a faculty decision made that saw me in conflict to a number of people, and therefore I was regarded as an outsider.
- The SBM process at the school was a totally new experience, with no withdrawal room, and having to send students to a coordinator who was often unavailable. This meant managing students in classrooms was a new challenge. The moving of classrooms each lesson also was challenging, as being able to assign seats assists in SBM and routines.
- I was treated very badly by the school ... I spent a week in hospital over the stress relating to this time. I was able to take up my modified duties, which I conducted myself with dignity despite being made to feel like an outcast...The internal personalities and politics had taken over the place. A number of staff mentioned the poor treatment of me during this process and I question how a fair outcome could have been reached with a prejudiced group conducting the investigation.
- I was often the only person on yard duty, therefore I state that my duty of care responsibilities were always foremost. Many incidents have been recorded from a certain perspective and I was not given an opportunity to clarify them. My classroom practice suffered from lack of guidance and from being unable to interpret the way things were done...
- I am aware that this could sound like I was a poor teacher and am blaming the situation I was in. I am aware that a number of personal issues impacted on my teaching, but the school was not supportive of contract teachers. They reacted to situations after they had occurred, rather than a proactive, constructive approach to in-service and performance management.

DISCUSSION OF EVIDENCE

The Panel acknowledged that it was bound by the principles of natural justice, and the Panel was comfortable that the principles of natural justice had been applied throughout the preparation for the Hearing, and to the fullest extent possible during the progression of the Hearing given that the teacher did not attend. The Panel also acknowledged that it was not bound by the rules of evidence and could inform itself as it saw fit.

The Panel found all of the witnesses that appeared before it, to be credible. In addition the Panel was presented with the school's Personnel Policy Manual and the 2005 Staff Handbook which included the Teaching & Learning Policy, the Staff Code of Practice, the Facilities & Furniture Management Policy, the Student Code of Conduct (also detailing the requirement of a note from the teacher if a student is to leave a lesson) the Occupational Health & Safety Policy as well as Induction material. The Panel also viewed the Staff Development and Welfare Manual, and the Performance and Development Handbook (which articulated the professional standards against which teachers at the school were assessed). The Panel found the documentation to be clear and comprehensive, providing extensive detail on the school's vision, goals and priorities, the expectations and responsibilities of all staff, fulsome guidelines around curriculum for Yr 7, Yr 8, Yr 9 and Yr 10, on-going student assessment and reporting requirements, and a wealth of information covering a teacher's daily operational requirements within the school. In addition the documentation mapped the role and responsibilities of the classroom teacher explicitly. The documentation viewed by the Panel was the documentation available to the teacher in 2005. The Panel noted that this material provided clear parameters and guidelines with respect to each of the four allegations, and all of the related particulars, put by the Institute.

The Panel was mindful of the complexities stemming from the teacher's absence and had regard for the potential damage to the reputation of the teacher and further the consequences for her livelihood. Hence the Panel acted with care and caution noting that while the 'balance of probabilities' was the standard of proof, the facts had to be proven to the reasonable satisfaction of the Panel ref *Briginshaw v Briginshaw* (1938) 60 CLR 336. Accordingly the Panel carefully considered all of the material available and reflected vigilantly on the material that the teacher requested be submitted for Panel consideration. This material was sent to the Institute by the teacher when seeking her Hearing postponements.

It was noted that there were certain particulars housed under the allegations admitted to by the teacher, at least in part, although she presented a series of contextual arguments in her defence in her written material in relation to her admissions. As the teacher did not attend the Hearing there was not an opportunity to explore her contextual arguments under oath / affirmation. Nor was there an opportunity to hear in full her alternative perspectives that emerged in her written material. That said, the teacher did claim that she had been left to her own devices and was at a disadvantage because of the inadequate support provided to her. She also put forward that there were insufficient policies and procedures in place for her to do her job in the manner that was expected. This was with particular reference to there being insufficient policies and support in place to help her to manage students. The teacher also claimed that she was targeted and threatened, as well as the victim of an untoward highly political school / staff dynamic and more specifically, personal animosity.

The teacher's written claims were not substantiated by the evidence that was provided under oath / affirmation at the Hearing. The evidence identifies that there were many avenues of support in relation to student behaviour and curriculum material available to the teacher. Further the evidence before the Panel demonstrated that there was a wealth of policy, procedural and induction material available in 2005. In addition there

is evidence that the teacher had the benefit of being supported by the mentor/buddy system, and when asked on several occasions she did not state or infer that she was lacking support or needing help.

On the evidence there appears to be a significant change in the teacher's behaviour and attitude as she progressed from the commencement of Term 3 into the depths of Term 3. The Panel was of the considered view that the available evidence provided ample exemplification that the teacher lacked the ability to engage students, that the teacher was unable to demonstrate appropriate supervision and control, that the teacher did not adequately interact as a member of the staff team to the detriment of her students, that the teacher fell short of being able to provide, teach and assess the required curriculum, that the teacher was unable to promote, provide and foster a safe learning and working environment for all parties, and finally that the teacher had failed to ensure the appropriate discharge of her duties in relation to her duty of care.

In particular, the Panel reflected on the teacher having provided different explanations in relation to the 'bowling' incident in her written material. In her correspondence to the Institute in mid 2008 she stated *I had a developmental English Class for Yr 10. My methods may have been considered unorthodox, but I used physical activities to keep the boys working and to help them learn without thinking that they are learning. The incident caught on camera phone appears to be one of these times, and may have been an error of judgement on my behalf. It can easily be taken out of context, but at no time was my duty of care breached.*

In her written correspondence to the principal, the teacher stated *the incident where students made a recording of a classroom incident, which happened a number of weeks ago, was not something that I had much control over. These students had been physically and verbally intimidating for a number of weeks. I had sought some help from others, but found that it was a compounding of small issues that was making things difficult...The lesson where they re-enacted a stunt that had seen on the movie 'Jackass' and were not going to stop even when I asked them a number of times. This was a time when I had gotten into a number of disputes with one or more of the students involved, and did not want it to escalate. I was feeling very threatened and had to make a choice to intervene, or to let it go. These students come to class, after lunch, with no intention of attempting work. I asked them many times to sit down and do what was asked, but I got replies that were making me feel threatened. This was also a time when I was under some emotional pressure, so probably didn't deal with the situation as I could have at the time. They re-enacted the scene which is the one recorded. What is not seen on the footage is me going and removing the chair and very loudly having to demand they sit down and do what they are told to do. I had to sit and take some time to calm down as I was at an angry and agitated state. This may well be what was seen on the footage. While I did not allow them to do this, I did not directly stop them. What the community has seen is a group of students who did a stunt in the classroom after they had continued to harass a teacher.*

The Panel viewed the video several times. As evidenced by the video, the teacher was not paying attention when sitting at her desk, she did not appear to stop the students from setting the room up to simulate the bowling alley, she did nothing to prevent the

activity as it got underway and she did not react in a concerned, competent, or caring manner immediately post the event.

FINDINGS UNDER SECTION 2.6.46(2)

The Act does not define ‘seriously incompetent’ or ‘not fit to teach’ as every case needs to be viewed in relation to its own unique and specific set of circumstances. The Panel, as an appointed expert panel, is entrusted under the legislation to make a determination in relation to teaching standards, practice and professional behaviour in light of the unique and specific set of circumstances before it. Determinations made by the Panel are not punishments, rather outcomes struck in the public interest.

The Panel noted *“The public needs to be protected from delinquents and wrong doers within professions. It also needs to be protected from seriously incompetent professional people who are ignorant of basic rules or indifferent as to rudimentary professional requirements. Such people should be removed from the register or from the relevant role of practitioners, at least until they can demonstrate that their disqualifying imperfections have been removed.”* Per Kirby P, *Pillai v Messiter* (no 2) 1989 16 NSWLR 197 (at 201).

In addition the Panel noted *“The gravity of professional misconduct is not to be measured by reference to the worst cases, but by the extent to which it departs from proper standards. If this is not done there is a risk that the conduct of the delinquents in a profession will indirectly establish the standards applied by the Tribunal.”* Per Gleeson CJ, Meagher JA, Handley JA, *Health Care Complaints Commission v Litchfield* [1997] 41 NSWLR 630.

The Panel agreed on the balance of probabilities and all the available evidence that all four allegations put, and their respective particulars, had been substantiated. This includes the fourth allegation where the Panel notes that much of the evidence is secondary or hearsay.

The Panel drew on the observations of Kellam J to reflect on the degree of seriousness that must be present to be satisfied that the conduct in question would amount to “serious incompetence” and the teacher being declared “not fit to teach.” The Panel noted *“In my view the question of whether or not a nurse has engaged in unprofessional conduct of a serious nature must depend on the facts of each case. Clearly such conduct would not be serious if it was trivial, or of a momentary effect only at the time of the commission or omission by which the conduct was so defined. It must be a departure in a substantial manner, from the standards which might be reasonably expected of a registered nurse. The departure from such standards must be blameworthy and deserving of more than passing censure.”* *Parr v Nurses Board of Victoria* VCAT (2 December 1998, cited with approval of *Domburg v Nurses Board of Victoria* [2000] VSC 369, per Ashley J).

The panel noted also that VCAT had recently provided guidance on lack of fitness to teach. The Panel noted *“We take the view that a finding that a teacher is unfit to teach must carry with it a perception that the conduct complained of is of a continuing and persistent nature. It is conduct which throws doubt on how he would conduct himself in the future in the classroom. A determination that a teacher is unfit to teach 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 to the children in his care is profoundly and irretrievably flawed....” Davidson v Victorian Institute of Teaching [2007] VCAT 920.

The Panel considered carefully the matter before it in light of *Zechner v Department of School Education* [1999] FCA 445 where a teacher was dismissed from a school for incompetence. Having heard the evidence the Court found the teacher to be incompetent and indicated that the teacher was not trusted by parents or other teachers to perform the duties of a teacher, had poor relationships with colleagues, was unable to implement meaningful lessons or communicate ideas or information, was unable to develop a rapport and confidence with students, was unable to maintain teacher / student relationships, was deficient in curriculum knowledge, and was unable to see the need to improve teaching skills. The Court nominated these as fundamental requirements for a teacher and that a failure to exercise these skills indicated incompetence.

Finally the Panel noted that over recent times VCAT in summarising the authorities with respect to serious incompetence in relation to *Moran v Victorian Institute of Teaching* [2007] VCAT 1311, indicated that the cases to which they referred established that serious incompetence need not result from criminal conduct, but that the incompetence must be of such a degree or so frequent that it reflects on the teacher’s fitness to teach, and that whether conduct amounts to serious incompetence will depend on the facts of the case. Further a teacher may still be judged to be seriously incompetent even though the events in question have arisen by reason of a lack of support.

The Panel concluded that the teacher was seriously incompetent and unfit to teach.

DETERMINATION UNDER SECTION 2.6.46(2)

The Panel considered it worth noting in its determination that it was unfortunate that the teacher did not take the opportunity to attend the Formal Hearing to provide her side of events and talk to what she had been doing since 2005. The Panel would have welcomed not only the teacher’s insights into what had transpired in the second half of 2005, but what she may have personally gleaned from the experience after a period of reflection. The Panel would have also valued the opportunity to have understood the nature of any personal or professional development since that point in time.

The Panel has suspended the registration of the teacher for a 12 month period, so the teacher can not re-apply for registration for at least 12 months. Further the Panel firmly recommends that if the teacher does successfully regain registration with a teaching authority, that she is required to return as a provisionally registered teacher (or that an equivalent set of conditions be imposed) for the period of a year fulfilling all the standard requirements prior to achieving full registration once again.

The Panel considered that the public interest and the teacher would be well served, if and when she planned to return to teaching, that she initiate a series of professional development activities targeted at the areas of concern detailed in the substantiated allegations. Further the Panel considers it would be in the best interests of all, if the teacher was to utilise the services of a registered psychologist prior to seeking re-registration. Focusing on strategies for a successful re-entry into the profession, and group dynamics accompanied by the essential requirements for collegiate behaviour in schools, these sessions could also address professional confidence concerns.

The Panel acknowledges that it does not have the power to impose a condition, via a teaching authority, at the point in time when the teacher becomes re-registered. Nor does the Panel have the power to impose a condition on the teacher personally as she is currently not registered. That aside the Panel has made these two recommendations in the public interest. Having heard all of the available evidence the Panel has formed the firm view that the teacher has a significant amount of personal and professional developmental work to do if she wishes to teach again.



SUSAN HALLIDAY, CHAIRPERSON



**per:
NORM FARY, REGISTERED TEACHER**



**per:
MICHAEL BUTLER, REGISTERED TEACHER**