

**VICTORIAN INSTITUTE OF TEACHING**

DECISION AND REASONS OF THE FORMAL HEARING

**NUMBER:** 078

**REGISTERED TEACHER:** Matthew Walter Graeme HELEY

**PANEL MEMBERS:** Terry Hayes, Chairperson  
Anne Moloney, Registered Teacher  
Jeanette Barclay, Registered Teacher

**ATTENDANCE:** The teacher attended day one of the Formal Hearing and was not represented  
Ms A Sheehan Counsel Assisting with Ms A Haslam, instructing

**DATE OF HEARING:** 13 & 14 November 2008

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

On the 10th February 2009 the Panel decided to cancel the registration of the teacher.

## REASONS

### BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 21 January 2005.

By letter dated 13 July 2007, the employer notified the Institute that they had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher. The teacher resigned from the employer with effect from 16 July 2007.

On 13 February 2008, the matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute and the Committee decided to refer the matter for investigation.

The Institute arranged for an investigation of the allegations and on 25 June 2008, the Committee considered the investigation report and determined to refer the matter to a formal hearing.

On 1 July 2008, the teacher's registration with the Institute was suspended for non-payment of his annual fees and the matter was again referred to the Committee. On 8 October 2008, under section 2.6.47 of the *Education and Training Reform Act 2006* (the Act), the Committee decided that the teacher should be treated as if he is a registered teacher and confirmed their decision to refer the matter to a formal hearing.

A Notice of Formal Hearing dated 10 October 2008 was served upon the teacher by Registered Post on 14 October 2008.

### DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. Letter the employer to the Institute dated 13 July 2007 (2 pages) **007 - 008**
2. The teacher - Registration Details (4 pages) **009 - 012**
3. Notice of Investigation letter the Institute to the teacher dated 11 March 2008 (3 pages) **013 - 015**
4. Report to and Decision of Disciplinary Proceedings Committee – Inquiry into Unregistered Teacher, dated 8 October 2008 (3 pages) **016 - 018**
5. Witness Statement of the principal dated 360 April 2008 (2 pages) **019 - 020**
  - Attachment 1 – Letter assistant principal 1 to the teacher dated 13 October 2006 (2 pages) **021- 021.1**

- Attachment 2 – Letter the teacher to assistant principal 1 undated (4 pages) **022 - 024.1**
  - Attachment 3 – Letter the principal to the teacher dated 24 November 2006 (2 pages) **025 - 025.1**
  - Attachment 4 –Letter the teacher to the principal dated 7 December 2006 (3 pages) **026 - 027**
  - Attachment 5 – Letter the employer to the principal dated 29 November 2006 (1 page) **028**
  - Attachment 6 – Letter the principal to the teacher dated 14 & 18 December 2006 (10 pages) **029 - 038**
  - Attachment 7 – Letter the teacher to the principal dated 8 January 2007 (30 pages) **039 - 067**
  - Attachment 8 – Letter the principal to the teacher dated 30 January 2007 (1 page) **068**
  - Attachment 9 – Letter the teacher to the principal dated 1 February 2007 (4 pages) **069 - 072**
  - Attachment 10 – Letter the principal to the teacher dated 27 June 2007 (1 page) **073**
  - Attachment 11 – Investigator’s Report dated 27 June 2007 (135 pages) **074 - 209**
- 6.** Witness Statement of the former principal dated 1 May 2008 (2 pages) **210 - 211**
- Attachment 1 – Record of Interview with student 1 dated 12 December 2005 (1 page) **212**
  - Attachment 2 – Record of Interview with student 2a dated 12 December 2005 (1 page) **213**
  - Attachment 3 – Record of Interview with student 2b dated 12 December 2005 (1 page) **214**
  - Attachment 4 – Letter the former principal to the teacher dated 12 December 2005 (3 pages) **215-217**
  - Attachment 5 – Letter the teacher to the former principal undated (6 pages) **218-223**
- 7.** Witness Statement of assistant principal 1 dated 29 April 2008 (1 page) **224**
- Attachment 1 – Witness Statement of assistant principal 1 dated 7 December 2006 (2 pages) **225-226**
  - Attachment 2 – Letter teacher 1 to assistant principal 1 dated 8 July 2006 (2 pages) **227-228**
  - Attachment 3 – Letter teacher 2 to assistant principal 1 dated 13 September 2006 (1 page) **229**
  - Attachment 4 – Diary note (assistant principal 1) dated 7 September 2006 (1 page) **230**
  - Attachment 5 – Letter assistant principal 1 to the teacher dated 13 October 2006 (2 pages) **231-232**
  - Attachment 6 – Letter the teacher to assistant principal 1, undated (4 pages) **233-236**

- Attachment 7 – Diary note (assistant principal 1) dated 11 October 2006 (1 page) **237**
- 8.** Witness Statement of assistant principal 2 dated 16 April 2008 (2 pages) **238-239**
    - Attachment 1 – Witness Statement of assistant principal 2 dated 1 December 2006 (4 pages) **240-243**
    - Attachment 2 – Interview with student 4 dated 6 June 2006 (1 page) **244**
    - Attachment 3 – Interview with student 5, undated (1 page) **245**
    - Attachment 4 – Interview with student 3, undated (1 page) **246**
    - Attachment 5 - Interview with student 4 dated 13 October 2006 (2 pages) **247-248**
  - 9.** Witness Statement of teacher 3 dated 15 April 2008 (1 page) **249**
    - Attachment 1 – Witness Statement of teacher 3 dated 1 December 2006 (1 page) **250**
    - Attachment 2 – Handwritten notes, teacher 3 dated 5 September 2006 (2 pages) **251-252**
  - 10.** Witness Statement of teacher 4 dated 16 April 2008 (2 pages) **253-254**
    - Attachment 1 – Witness Statement of teacher 4 dated 1 December 2006 (4 pages) **255-258**
  - 11.** Witness Statement of teacher 5 dated 1 May 2008 (1 page) **259**
    - Attachment SM1 – Witness Statement of teacher 5 dated 11 December 2006 (1 page) **260**
  - 12.** Witness Statement of teacher 1 dated 27 June 2008 (1 page) **261**
    - Attachment 1 – Witness Statement of teacher 1 dated 1 December 2006 (3 pages) **262-264**
    - Attachment 2 – Letter teacher 1 to assistant principal 1 dated 8 July 2006 (1 page) **265**
  - 13.** Witness statement of student 1 dated 16 April 2008 (1 page) **267**
    - Attachment AP1 – Witness Statement of student 1 dated 5 December 2006 (3 pages) **268-270**
  - 14.** Witness statement of student 2a dated 5 May 2008 (2 pages) **271-272**
    - Attachment AT1 – Witness Statement of student 2a dated 20 December 2006 (2 pages) **273-274**
  - 15.** Witness statement of student 2b dated 10 May 2008 (2 pages) **275-276**
    - Attachment 1 – Witness Statement of student 2b undated (1 page) **277**
  - 16.** Witness statement of student 4 dated 15 April 2008 (3 pages) **278-280**
    - Attachment 1 – Witness Statement of student 4 dated 1 December 2006 (2 pages) **281-282**

- Attachment 2 – Notes of Interview with student 4 dated 13 October 2006 (2 pages) **283-284**
- 17.** Witness statement of student 5 dated 20 April 2008 (2 pages) **285-286**
  - Attachment 1 – Witness Statement of student 5 dated 30 December 2006 (3 pages) **287-289**
- 18.** Record of Interview between the Institute’s investigator and the teacher dated 7 April 2008 (66 pages) **290-355**
- 19.** Notice of Formal Hearing dated 10 October 2008

The following exhibits were tendered at the formal hearing:

- A.** Statement of the principal dated 30 April 2008 including attachments
- B.** Statement of student 4 dated 15 April 2008 including attachments
- C.** Statement of student 2b dated 10 May 2008 including attachment
- D.** Statement of student 5 dated 20 April 2008 including attachment
- E.** Statement of student 3 dated 7 November 2008 including attachment
- F.** Statement of the former principal dated 1 May 2008 including attachments
- G.** Statement of assistant principal 2 dated 16 April 2008 including attachments
- H.** Statement of teacher 4 dated 16 April 2008 including attachments
- I.** Statement of teacher 3 dated 15 April 2008 including attachment
- J.** Statement of assistant principal 1 dated 29 April 2008 including attachments
- K.** Statement of teacher 5 dated 1 May 2008 including attachment
- L.** Written response of the teacher beginning ‘student 1’
- M.** Letter from the wife of the teacher to the Institute dated 10 November 2008
- N.** Transcript of interview between student 6 and the teacher’s wife
- O.** Article entitled ‘Believe Her! The Woman Never Lies Myth’ by Frank Zepezauer
- P.** Card from student 7 to the teacher, December 2005
- Q.** Note from parent 1 to the teacher, undated

- R. Baby Card from teachers
- S. Transcript of interview between the Institute's investigator and the teacher (pages 290 to 354 of Hearing Book)

The following documents were tendered subsequent to the formal hearing:

- i. Email the teacher to the Institute, dated 24 November 2008, attaching the teacher's closing submission dated 20 November 2008 and a reference (undated) from a former student, student 8.
- ii. Closing submissions in reply on behalf of the Institute, dated 28 November 2008.

## **THE EVIDENCE**

The allegations of serious misconduct and/or lack of fitness to teach as set out in the Notice of Formal Hearing are:

*During 2005 and 2006, whilst employed as a registered teacher at the school, the teacher:*

1. Failed to maintain professional relationships with students including engaging in inappropriate communication and contact:
  - a. In 2005, with female year 9 student, student 1, including
    - i. Treating student 1 as a favourite in class.
    - ii. In term 2, describing student 1's act of writing on her thigh as 'a bit slutty'.
    - iii. In September 2006, giving student 1 a book for her birthday.
    - iv. During Term 2, asking student 1's mother (teacher 4) if student 1 had a boyfriend.
    - v. In Term 4, writing student 1 a Haiku poem which included lines –  
'She stares at summer  
With her black-ringed blessed blue eyes  
student 1 Rocks'
    - vi. On or around 18 November 2005, insisting that student 1 have a private conversation with him after class and telling her that she had a 'devastating' effect on him.
    - vii. Having regular conversations with student 1 of a personal nature during which he discussed his personal life.
  - b. In 2005, with female year 9 students, student 2a and student 2b including
    - i. Treating student 2a as a favourite in class.
    - ii. Having regular conversations with students 2a and 2b of a personal nature, during which he discussed his personal life.
    - iii. Talking to student 2b about drugs including that 'you should not mix marijuana and ecstasy but that marijuana by itself was okay'.

- c. In 2006, with female year 12 student, student 3, including:
    - i. Treating student 3 as a favourite in class.
    - ii. Having regular conversations with student 3 of a personal nature, during which he discussed his personal life.
    - iii. Bringing a box of chocolates to class that he said were for his 'favourite student' and were given to student 3.
    - iv. Touching student 3 in the inner part of her bare leg and stating 'I will make it worth your while,' whilst encouraging her to miss a lecture and instead meet with him and another student for tutoring.
  - d. In 2006, with female year 12 student, student 4, including:
    - i. Treating student 4 as a favourite in class.
    - ii. Having regular conversations with student 4 of a personal nature, during which he discussed his personal life.
    - iii. From about June until October 2006, engaging in regular MSN messaging with student 4 via his mobile telephone, including messages of a personal nature.
    - iv. Spending large amounts of time alone with student 4 during her free periods and after school, including alone in classrooms (separate to the main building).
    - v. During the school holidays between Terms 3 and 4, meeting student 4 and other students in the town library without parental notification.
2. Failed to communicate appropriately with colleagues and students including:
- a. In 2006, while talking to teacher 4, referred to student 5 as 'big breasted'.
  - b. In 2006, told student student 5 that he had to have sex with his wife to induce the baby when she was due to give birth.

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

- The principal
- Student 4
- Student 2b
- Student 3
- Student 5
- Assistant principal 2
- Teacher 4
- Teacher 3
- Assistant principal 1
- Teacher 5 (by telephone)

At the commencement of the hearing the teacher made a submission that his name be suppressed after the decision had been made because of the adverse effects that any publication of his name might have on his children. The Panel pointed out to the teacher that it was not within its authority to rule on the suppression of names *after* a final determination had been made. However, under Section 2.6.45 (f) of the Education and

Training Reform Act the Panel can make such a decision “prior to the making of a formal determination” if it “considers it necessary to do so to avoid prejudicing the administration of justice or for any other reason in the interests of justice.” After due consideration, the Panel ruled that the publication of the teacher’s name be suppressed until the final determination had been made.

### **The principal gave written and verbal evidence under oath**

The principal informed the Panel that he had been appointed acting principal of the school at the beginning of 2006, having previously served as Campus Principal at school 1. He said that he was confirmed as principal in June 2006. Having taken long service leave from June 2006 he returned to the school five weeks before the end of the 2006 school year. Assistant principal 1 had been acting principal in his absence.

The principal described the school as a 7-12 school with 1400 students, 130 teaching staff and 40 support staff. It was a traditional type of school with a quite high standing in the community. It had a middle class clientele and was considered by many in the community to be the equivalent of a private school.

The principal stated that on his return to school he had been informed by assistant principal 1 about a number of allegations put to the teacher, principally in relation to a Year 12 student, student 4. The principal said that, having considered the teacher’s response to these allegations, he then informed him that he would be recommending an inquiry pursuant to the relevant Act.

The principal said he was subsequently appointed investigator for the inquiry by the employer. He said that the investigation involving the teacher’s relationship with student 4 revealed a number of other incidents involving other students, including allegations in relation to student 1, which had been documented in 2005. The principal said his investigation involved interviews with, and witness statements from various staff members and students. In all 21 witnesses were involved.

The principal said on 27 June 2007 he reported on his investigation to the employer and indicated that the evidence supported the majority of the allegations made against the teacher.

The principal stated that he was unable to comment on the teacher’s capacity as a teacher given his brief tenure as principal and given the size of the school and number of staff. He said he believed teacher 1, who had been appointed to mentor the teacher by the former principal, to be a conscientious and professional teacher, having worked with him in a previous school.

The principal stated that, in his professional opinion, teachers need to be aware of the need for professional distance and professional boundaries in their relationships with students and the Victorian Code of Conduct makes such expectations explicit. The principal said that parents place trust in teachers to meet their children’s learning, emotional and physical needs. Students, he said, expect teachers to develop supportive

positive relationships with them and also place high levels of trust in them. Any breach of that trust has ramifications for not only parents and students but the wider community.

The principal stated that the school did have a mobile phone policy which applied mainly to students. Given the number of extra curricular and sporting programs the school ran the mobile phone was seen as an important means of communication between teachers, students and parents. However, the expectation was that it should always be used in a professional context about school related matters and not for personal messaging between students and staff.

In response to questioning by the teacher, the principal recalled stating in his “headland” speech at the beginning of his tenure the need for teachers to build positive relationships with students but he did not recall using the example of girls babysitting for teachers, nor did he believe he would have done so. The principal said that he did not agree with the teacher that there were differing opinions about standards expected of teachers. He said the standards were quite explicit and staff talked about them with one another all the time.

The principal stated that his primary aim on becoming principal was to maximise student learning. He had subsequently hired a consultant to analyse data related to what he considered was not an exceptionally good attitude by students to their learning. The consultant also analysed data related to low staff morale. The principal said he did not know what the causes of the low morale were but had addressed the issue through attention to role clarity, professional growth and professional learning. Since the initial survey, he said, the data now showed that student attitudes to learning and staff morale had improved considerably.

#### **Student 4 gave verbal and written evidence by affirmation.**

Student 4 is currently working. She attended the school from Years 7 to 12. She said that the teacher was her Year 11 subject 1 teacher in 2005 and her Year 12 subject 2 teacher in 2006. She said that subject 2 had not been offered in Year 11 and she and her friends had approached the teacher and teacher 1 about introducing subject 2 in Year 12. She said that two classes had been created but she had not known which of the teacher or teacher 1 would be teaching her.

Student 4 stated that she had been interviewed on 13 October 2006 by assistant principal 2, because a few teachers had expressed concerns about student 4 spending too much time with the teacher and how this might look to the rest of the school. Student 4 said the interview had not come about because of any complaint on her part. She said she had been scared and worried about being interviewed because she realised it was about a really serious matter and she wanted the matter to go away. Student 4 said that she had exactly the same feelings at the time she made her witness statement on 1 December 2006.

Student 4 stated that assistant principal 2 had spoken to her previously in June about spending too much time with the teacher and how this might look to the rest of the school. Student 4 said that she had met the teacher during her free periods, often just

after he had finished yard duty, and after school twice a week or more. They met in a room near his office after school and then after the meeting with assistant principal 2 on seats outside the school library.

Student 4 said she considered the teacher a good teacher and liked spending time with him because he did not have the professional approach she experienced with other teachers, teachers who were absolutely fantastic but who were not friends. She said, in comparison, she considered the teacher more a friend than a teacher.

Student 4 said the conversations with the teacher were sometimes about school but were also interspersed with personal information about their lives and what the teacher had done before he started teaching. She said that subject 2 is a subject which allows for a wide range of issues about life to be discussed but she and the teacher did not talk much about specific philosophers or their theories.

Student 4 said she had also met the teacher at the town library during the term break between Terms 2 and 3. This had been a study meeting with other students that the teacher had organised before the end of term.

Student 4 stated that the teacher had driven her home from one of another Year 12 subject 3, teacher 3's revision classes which ran from 7.00 – 9.00 pm. She had rung her mother and sought her permission. She said the teacher had also driven her home after an 18<sup>th</sup> birthday party and after another party. Another time he had dropped her off at a club in town. Student 4 said that on the night of the subject 4 exhibition the principal had phoned her mother and informed her that someone had read student 4's text messages to the teacher. Student 4 said that the teacher did not give her a lift home after the subject 4 exhibition.

Student 4 said that she obtained the teacher's mobile phone number probably at a student's 18<sup>th</sup> birthday party in June 2006. She said that once she had the teacher's number they exchanged text messages on a daily basis, usually in school time. Each of them, she said, initiated about 50% of the messages. The messages were mainly about where she was in the school, such as the library. Some of the messaging she said was personal. Student 4 said one she could recall was when the teacher texted her lines out of a romantic poem by e. e. cummings, a poet they had studied in Year 11 subject 1. Another was when he texted her that his wife had given birth and he and his wife were trying to pick a name. Student 4 said that around October the teacher's wife telephoned her on multiple occasions. She thought that the teacher's wife did not know who she was but had possibly found her number on the teacher's mobile or had found his telephone bill.

Student 4 said she was happy when she received the lines from the poem because she had a crush on the teacher. She said that the teacher's attention and friendship were "a lot of fun", and friendship had given way to infatuation on her part. In retrospect, she said she feels embarrassed and regretful about the infatuation.

Student 4 said she did not believe she was treated as a favourite in class by the teacher though the comments made by other students suggested that this was the case. She said

the way the teacher treated her in class was the way he treated her all the time so she may have been ignorant of the possibility that he was favouring her.

Student 4 said that in reflecting on the comments that the teacher made on her Year 12 subject 2 work there were some which now surprised her. While there were comments such as “concise” and “brilliant” there were also comments such as “Love your work, doll face” and, where she had abbreviated Premise 2 to P2, he had commented “That’s cute.” When she had used P2 again on the following page, the teacher had written “Don’t be too cute (hard for you I know).”

Student 4 stated the following about the text messages raised in the interview with assistant principal 2 (13 October 2006). She said she had made the comment about it “looking suss if we left together”, referring to the subject 4 exhibition, because she knew people had already commented on her and the teacher being together and she wanted to avoid the same thing happening again. She said the reference to “Do you want to play?” was something the teacher knew that she used to indicate “catching up”. It was, she said, a reference to recess as “playtime” when one catches up with friends. The comment “Are you going with student 3?”, referring to the subject 4 exhibition, she said, was done partly in jest and partly as a tease. Student 4 said that student 3 was a very persuasive person and that whenever any of the girls in the teacher’s class demanded something of him he would go along with it. She did not believe there was any other reason, other than perhaps curiosity, for the teacher to attend the exhibition.

Student 4 said that she did not send the teacher any text message which included reference to mandarins. Nor did she recall sending a text message “waiting for a bus so that he could pick me up”, though she said it was possible she may have responded to a question from the teacher as to where she was with “ I’m waiting for the bus”.

Student 4 stated that, in hindsight, she believed the teacher should have been a great deal more transparent in his dealings with her and behaved more appropriately. She said she believed he should have drawn the line in respect to how much time he spent with her which, in retrospect, she felt was an enormous amount of time.

### **Student 2b gave verbal and written evidence under oath.**

Student 2b is currently completing Year 12 at the school which she has attended since Year 7. Student 2b said that the teacher taught her subject 3 in Year 9 and for some of Year 10.

Student 2b said that the teacher was quite different from any other teacher who had taught her before. She felt he connected better with kids individually than other teachers did. She said he had made her feel more special and more intelligent. She said he worked in with her to make her feel better about and more interested in her work. She said the teacher had been a positive incentive for her to do well because she wanted his respect.

Student 2b said that the teacher, from the start of Year 9, singled out three girls in class – herself, student 2a and student 1. A fourth student, student 9, was included in the group because he was a friend of the three of them. Student 2b said that the teacher “pretty

much hung out” with them in class. She said that after he had started the class he would come over to their table, sit opposite them and chat while the rest of the class pretty well did what they wanted. She said, as well as teaching them, he would talk to them “like a friend about all kinds of stuff” such as books and stories and personal stuff about his wife and son. Student 2b said the teacher talked negatively about his wife and said that he and his wife fought a lot.

Student 2b stated that she recollected that the teacher talked to her and student 9 outside class about drugs. She remembered him saying that you should not mix marijuana and ecstasy but that marijuana by itself was okay. She said she recalled this conversation because it had shocked her at the time that a teacher would talk like that.

Student 2b said that she and her friends loved the very personal relationship they had with the teacher because he made them feel different and special. They all felt they could talk to him about anything and that they could swear or do anything they wanted.

Student 2b stated that the teacher took more notice of student 1 than anyone else. Sometimes, she said, he would just stare at her, looking straight into her eyes. Student 2b said that student 1 was very smart and mature and that the teacher loved getting into fights with her about various issues. She said that when student 1 debated with the teacher she would often yell about a topic and one day got so angry she walked out of class. Student 2b said she remembered the teacher saying “When she’s angry she knows what she’s doing.” She said the teacher deliberately wound student 1 up to get a reaction and loved it when this happened.

Student 2b said that on one occasion student 1 had written a very scrappy poem which the teacher returned with an A++ on it and a poem from him. Student 2b said that the poem was personal and student 1 got very angry about this and the mark and walked out of class. She said that other students did not get poems from the teacher.

Student 2b said that in second semester she remembered the teacher giving student 1 a book for a birthday present. She said she remembered student 1 being very confused and not understanding why the teacher would give her a birthday present. As far as she knew the teacher had not given books as birthday presents to other students, though she agreed with the teacher that he had given books to her and student 9.

Student 2b stated that the teacher often made student 1 stay back after class. She said student 1 asked her to stay with her which she did. She said she would deliberately stand in the doorway and wait which “annoyed the crap” out of the teacher. On one occasion she recalled the teacher coming out of the room and saying something like “Oh God, that girl confuses me.”

Student 2b said that the teacher would often see her and her friends in the library. She said on one occasion he came up to her and said “Behind that blonde beautifulness is smart, too.” Student 2b said she had thought this was a really gross statement and it had made her feel very uncomfortable.

Student 2b said that the teacher taught her again for some of Year 10 but his behaviour that year was quite different. She said he was an “arsehole” to the whole class and was constantly angry and different. In response to questioning from the teacher student 2b agreed that his relationship with her in Year 10 had not been negative but distant. She said she assumed the teacher had been distant with her because he knew about what she had said to other teachers about “the stuff with student 1” in Year 9.

Student 2b said that the last time she had seen the teacher was in the Christmas holidays when she went into a shop with a friend, his mother and student 1. The teacher was serving. She said he was “in disguise” and initially she did not recognise him but student 1 did and walked out of the shop.

In response to questioning from the teacher student 2b said she recalled having a conversation in Year 10 with the teacher and her friend ‘B’ about taking drugs and teenage drinking though it had not been as “extreme” as the conversation about marijuana and ecstasy in Year 9. When the teacher explained to her what the term meant she agreed that he could have been talking about “harm minimisation.” Student 2b said she would be more inclined to listen to the advice of a teacher who used this approach.

Student 2b agreed with the teacher that she had been absent a lot in Year 10 but had not been aware that her mother had “pleaded” with the teacher to do something about her attitude.

Student 2b agreed with the teacher that it was pretty common for teachers to favour some students. Regarding the other students in her Year 9 class she said she and her friends were so into conversations with the teacher that she did not really know what the other students were doing. She said she thought that the teacher was just an average, normal teacher to them. She also agreed with the teacher that it was a good skill in a teacher if he were able to be engaged with her and her friends while keeping the attention of the other students in the class.

Student 2b said as 2005 progressed, she and her friends were not sure whether the teacher was really creepy or really nice. She said they loved him but they felt bad about it because they knew he had crossed the boundaries. She said they did not want to believe that he could do anything wrong. Student 2b said that the teacher had probably “charmed” her in Year 9 but now that she was older she could see that he had been crossing boundaries in his relationships with students. Student 2b also agreed with the teacher that her changed opinion of him may have been influenced by what she had heard about the teacher in the intervening three years. When asked by the Panel chair about where she had first heard the phrase, “crossing boundaries”, student 2b said she could not recall.

### **Student 5 gave verbal and written evidence under oath**

Student 5 currently works. She was a Year 12 student at the school in 2006 having attended the school since Year 7.

Student 5 stated that the teacher was her Year 12 subject 3 teacher. She said that the teacher was different from any teacher she had ever had. She said he treated her and other students differently to other teachers in that he would talk to them in a really personal way and about his own personal life. She said because he was so open with them it encouraged them to be open with him. She said they trusted the teacher completely and would tell him things they would only tell their friends or a counsellor. Student 5 said she was quite happy to have conversations or discussions with the teacher that she would not have with her mother. She said she found it difficult to explain but she would describe the teacher's teaching style as one which "seduces his students to like him."

Student 5 said she remembered the teacher telling her and possibly other students that he had to have sex with his wife to induce the birth of their baby. She said she could not remember the exact circumstances where he spoke about this but it was not to the whole class. She said she remembered this comment because it was something out of the ordinary. She said if any other teacher had said this she and her friends would have thought it weird but with the teacher it felt normal because they felt so comfortable with him that they did not think it wrong or inappropriate at all.

Student 5 said that she and student 3 spent an awful lot of time with the teacher. She said in subject 3 they were two of his favourite students as was student 10. She said that even though he was friends with everyone in the class he had a select few that he would speak to about personal matters.

Student 5 said that the teacher would talk about things that other teachers would not. He also, she said, made sexual jokes and references on a number of occasions. Student 5 said she recalled one incident when the teacher had asked her why she was not modelling a bikini at the subject 4 exhibition like her sister. She said that she had replied that she did not have a bikini body and the teacher replied that she had a great bikini body. Student 5 said she did not feel uncomfortable about this remark at the time because of the unusual friendship like relationship that they had with the teacher. She said that this was not the only time that the teacher talked about breasts or implied something about breasts to her.

Student 5 stated that the teacher talked about what he did and did not like about other students which she thought was an unusual thing for a teacher to do. She said he also expressed his feelings about other teachers. She said, for example, he expressed his frustration with the fact that teacher 3 had told him that it was inappropriate to drive student 4 home after an evening subject 3 revision class.

Student 5 said she believed that the teacher had taken student 4 home on a number of occasions. She said she and student 3, when they had been working on their subject 4 work after school, would often see student 4 stay back at school with the teacher for one on one tutoring and still be in the classroom at about 5.00 pm. Student 5 said that one day in Term 3 she was alone in the classroom with the teacher doing a SAC and student 4 walked past the room. She said the teacher just went over and stood near the door. She said it seemed obvious to her that the teacher was only standing there looking out because student 4 was there.

Student 5 said that she remembered once in Term 4 that student 3 did not want to go to tutoring with the teacher and had said that she did not think it would be worth it. Student 5 said the teacher's reply was something along the lines of "I will make it worth your while" and had touched student 3 on the leg, but she was not sure where or how. She said that this kind of suggestive comment was typical of the teacher but they were not too bothered because he was just like this with her and her friends all the time. Student 5 said that this comment occurred at the same time as the conversation about the bikini and all three – her, student 3 and the teacher – were all sitting down at the time.

Student 5 said she and her friends never reported anything about the teacher to other teachers because they liked and trusted him because he was so different from any of the other teachers. She said the teacher's style of interacting with students was so different that they never thought anything of his comments and behaviour.

Student 5 said all this changed the day she and student 3 came to school on a student free day to be tutored by the teacher. She said what happened was a "sort of a realisation that maybe he had gone too far." She said they were in a classroom together and she had picked up the teacher's mobile phone from the desk. She said she probably should not have done so but she looked in his inbox and noticed many messages, three of which made her feel sick.

Student 5 said the three messages said something like this: "It might look a bit suss if we leave together", "Pick me up after school if you want to play" and "I'm eating a mandarin as the juice is oozing out I am imagining it is your lip and I'm licking it off". Student 5 said the words "want to play" could mean "hang out". She said that generally the students thought that the teacher and student 4 hung out together. She said she believed the messages came from student 4, even though her name did not come up, because of the context of the messages and the fact that it was well known and very visible that the teacher and student 4 were spending heaps of time together.

Student 5 said she was shocked by the messages and believed the teacher had seen her looking at them. She said that she and student 3 had gone to the subject 4 area to help prepare for the exhibition. She said student 3 had cried when she told her about the content of the messages and she was upset also. They told teacher 5, the Student Welfare Coordinator, who noticed them crying, and asked why they were so upset. Student 5 said that after these messages she and student 3 believed the teacher was having an affair with student 4. She said she remembered this being her gut feeling when she read the messages.

Student 5 said that after that evening student 10, who was tutored by the teacher at his home, had approached her and aggressively told her that she and student 3 had ruined the teacher's career. She said that student 10 knew all the details of the messages and she could not understand how he would know this unless the teacher had told him. She said she believed that student 10 and the teacher had had contact since the teacher left the school. Student 5 said she also knew that the teacher had asked another student, student 11, who was dating her relative at the time, to lie and to say the messages were from him.

In responding to both questioning from the teacher and from the Panel Chair, student 5 reiterated that she saw the teacher touch student 3 on the leg, but she could not recollect where, and heard him say “I will make it worth your while.” This had occurred, she said, at the same time as the teacher had made remarks about her looking good in a bikini. She said the incident happened during a tutoring session in a Year 12 classroom on the same student free day as the subject 4 exhibition which had taken place in the evening.

Responding to questioning by the teacher student 5 stated that she had used the term “counsellor” not to indicate a professional psychologist sort of person but as someone she might confide in. She said that her opinion of the teacher had changed because of the content of the first two text messages but she could not obviously “discard” the third message when forming her conclusion that his relationship with student 4 was deeper than she had previously thought.

Student 5 said, apart for the remark about having sex with his wife to induce their baby’s birth, she could not recall the specifics of other personal conversations with the teacher. She said by “personal” she meant it was more the teacher’s open manner when compared to her other Year 12 teachers whom she considered her friends. She said that the teacher acted very kindly to all his students in his class but was more open with those, both boys and girls, who were less shy and more forthcoming. When she used the term “favourites” it was these kinds of students to whom she referred. She agreed with the teacher that all teachers have favourites, that is, students whom they talk to more than others.

### **Student 3 gave verbal and written evidence by affirmation**

Student 3 is currently studying at a tertiary institution. In 2006 she was in Year 12 at the school. The teacher was her Year 12 subject 3 teacher.

Student 3 stated that the teacher was far more personal than other teachers. Whereas her other teachers were there to concentrate on teaching the teacher initiated personal conversations about his life, his wife and children and the subjects he did at University besides teaching, such as philosophy. He also expressed interest in her and student 5’s art work.

Student 3 said that the teacher was prone to singling students out and would show his favouritism by tutoring students. She said that the teacher repeatedly told the class that she was his favourite student. On one occasion he brought a box of chocolates to class and left them on his desk. At one point student 10 asked him who the chocolates were for the teacher replied “For my favourite student” and student 10 started eating them. The teacher became a bit upset and said “I was going to give them to student 3.”

Student 3 said that at the beginning of Year 12 she found the teacher very friendly and open. She said that up until Term 3 she loved him as a teacher. She said that she was quite smitten with him and he was her favourite teacher. Student 3 stated that she did not believe she had a crush on the teacher even though he had called her out of her subject 5 class to tell her that a boy had said she had a crush on the teacher. She said that she found the teacher charismatic and intelligent and that she was impressed with the fact

that he studied at University for an extensive period and was well qualified. She said that in Term 2 she had taken a photo of herself and the teacher on her mobile phone camera and had saved it as the wallpaper on her phone.

Student 3 said as the year developed she found aspects of the teacher's teaching very frustrating. There were occasions where the first twenty minutes of class were gone before he attempted to teach anything about subject 3 because he initiated conversations about other things and it was very hard to get him back on track. She said on one occasion she was almost rude to the teacher because he was wasting so much time and he called her a "princess" when she complained unsuccessfully and had walked out of the classroom. Student 3 said at the beginning of Term 4 she started making comparisons with work produced by teacher 3's students and believed she would not be able to compete with them.

Student 3 stated that the teacher was often sleazy and inappropriate. She said he was not usually a blunt person but very suggestive about things. She said on one occasion the teacher took a picture of her with her camera. When he handed it back he said "You are beautiful." She said that she thought it was strange for a teacher to say that but because they had a good relationship and he was a teacher she considered a friend and trusted she did not feel uncomfortable. She said that on another occasion the teacher had seen a photo of her at a semi-formal which she thought he had seen when chatting to students on MSN Messenger. In class the next day the teacher said to her something like "Before I teach you subject 3, I just have to tell you that you're beautiful in that dress."

Student 3 said that she remembered talking in class one day about how she was going to a costume party and was trying to work out what to wear. She remembered the teacher saying she should go as a female superhero because she had "sexy curves". Student 3 said she also knew that the teacher commented on students' physical appearances on several occasions. She said she had been told that he had said something about student 5's breasts to his Year 11 subject 3 class though she did not hear the teacher say this directly. She said he did, however, say one day in the Year 12 subject 3 classroom that student 5 would "look good in a bikini."

Student 3 stated that once in Term 4 she had stayed back at school to do some extra work and the teacher had offered to drive her home. She had refused, despite his persistence, because she lived in the opposite direction from him. She said that she was aware that the teacher had driven student 4 home on several occasions.

Student 3 said that on a student free day in Term 4 a VCE subject 3 Examiner from VCAA came to the school to give Year 12 students a lecture on preparing for the exams. She said that even though she and student 5 made the decision not to attend the lecture they did so on the teacher's advice that "it was not going to be worth it, (it would be) boring, and he could not imagine them saying anything of relevance." She said that she was reluctant to miss the lecture but that the teacher had offered her and student 5 private tutoring instead. In her December 2006 statement student 3 said that the teacher had said something like "I will make it worth your while" or "I will make it beneficial for you" and had rubbed the inner part of her leg near her knee when he said it. Student 3 said that she was sitting down at the time wearing her summer dress and that the teacher was

standing in front of her. She said that she thought his action was a bit sleazy but she did not do anything about it because that is what he was like – not an authority figure, more like a friend. In her November 2008 statement student 3 said that both she and the teacher were sitting down. When asked about this discrepancy by Counsel Assisting, student 3 said from what she could remember both she and the teacher were sitting down. What she was clear about was that a conversation about the VCAA seminar had occurred several times with the teacher and, while her recollection might be “a bit hazy”, she certainly remembered feeling uncomfortable about the particular occasion when the teacher touched her leg.

Student 3 said that subject 4 exhibition occurred on the same student free day. She and student 5 were helping to set up the exhibition. She said that, in the tutoring session with the teacher, while she had been talking to him and expressing her frustrations about him not focusing on the work in class, student 5 had picked up the teacher’s mobile phone and was playing with it. She said she remembered student 5 turning white and when they got to the subject 4 area student 5 had said to her “student 4 and the teacher are having an affair.” She said student 5 had then told her what was in the text messages on the teacher’s phone.

Student 3 said she remembered student 5 telling her that one of the messages had her name in it and said something like “I suppose you’re going to see student 3 at the subject 4 night. Have fun.” Another one had referred to the bus. Another was about a mandarin and lips and implied something about kissing. Student 3 said that she knew from the context of the text messages that student 5 was right and they must have been from student 4.

Student 3 said she did not believe student 5 at first but then she remembered how the teacher and student 4 had lunch together every day and how she had seen them in the corridor late after school around 5.00 pm on many occasions in Term 3 and 4. She said she remembered that it made her feel sick and she started crying. She said she thought student 5 cried too. Student 3 said that teacher 5 saw them and asked what was wrong and they told her.

Student 3 said that at the subject 4 exhibition that night she remembered seeing the teacher and student 4 walking up to the building together which suggested to her that they had arrived together. She said she remembered feeling very upset when she saw the teacher but assistant principal 2 had calmed her down. She said that she had not had anything to do with the teacher since that time.

Student 3 said she knew that the teacher went to student 10’s house after the teacher had left the school. She said student 10 came to school three days after the teacher had left and told her and other students that the teacher was really stressed and depressed.

Student 3 said that since all this had happened student 4 had been giving her dirty looks, had tried to trip her up, and had kicked a chair from under her. She said student 4’s behaviour towards her had been noticed by others so she knew she was not imagining it. She said that in September 2007 she had been slapped across the face by student 4’s flatmate and accused of “breaking up student 4 and the teacher.”

In responding to questions from the teacher regarding his actions related to the VCAA seminar student 3 reiterated her view that the conversation about attendance had occurred on more than one occasion – when she may have been sitting and the teacher standing, when both had been sitting and when passing in the corridor.

Student 3 also agreed with the teacher that he had been generous with his tutoring and that anyone who sought tutoring was assisted. She said of herself that she was weak in subject 3 and required a score of 30+. The teacher, she said, had tutored her many times after school.

In response to questioning from the Panel chair student 3 said that the incident relating to the VCAA seminar where the teacher had touched her leg had occurred in one of the classrooms in the Year 12 building and that student 5 had been present.

### **The former principal gave verbal and written evidence under oath.**

The former principal of the school held the position from 1999 until the end of 2005.

The former principal stated that the teacher commenced teaching subject 3 at the school in 2005. In 2006 he also taught subject 2. The former principal said that during November 2005 she had occasion to speak to the teacher about the contents of a Year 11 subject 1 examination he had set after a staff member had drawn her attention to the “inappropriate nature of the content.”

The former principal said that on 21 November 2005 she had received a phone call from student 1’s father who requested a meeting to discuss a matter relating to a staff member. The former principal said she had met with student 1’s father and his former wife and student 1’s mother, teacher 4, who was also a teacher at the school. Student 1’s father, she said, had accused the teacher of “grooming his daughter.” Teacher 4 had said she had also been concerned about the teacher’s behaviour towards her daughter and had sought advice from the School Welfare Coordinator. The former principal said she later spoke to the School Welfare Coordinator and informed him that he should have spoken to her, given the seriousness of the matter.

The former principal said that after the interview with student 1’s parents she had contacted the employer and subsequently conducted, along with assistant principal 3, interviews with three Year 9 students – student 1, student 2a and student 2b. The former principal said she found the girls to be mature, credible and very articulate for their age.

The former principal said as a result of the meeting with student 1’s parents and the interviews with the three students she wrote to the teacher requesting an explanation from him about a number of issues related to what she considered to be his inappropriate behaviour towards student 1. The former principal stated she received an almost immediate written response from the teacher explaining his behaviour. She said she subsequently appointed teacher 1, who would also be teaching subject 2 in 2006, to act as mentor to the teacher in that year. She said that she appointed teacher 1 because she thought he would have the necessary rapport because she had seen him work with parents, students and other staff. Her understanding was that the teacher and teacher 1

would meet informally and discreetly, given they were teaching the same subject, and not necessarily through formal meeting procedures.

The former principal said the teacher had only been teaching for a few years and she believed lacked experience in dealing with young people under his care. She said her concerns about the teacher focused on his seeming failure to understand students' responses to his behaviour. She believed he did not have a clear understanding of "that line between personal and professional conversations with students." She said it was important in the professional life of a teacher to have this developed understanding because students will very quickly pick up on that personal conversation and this could lead to inappropriate behaviours both on the part of the student and the teacher. On the part of the student this could take the form, in the classroom, of unruly behaviour which took advantage of the perceived friendship. On the part of the teacher it could lead to the development of an inappropriate relationship through developing a personal link with the student. She said, also, that other students resent such personal conversation and this can lead to tension in the classroom.

The former principal said she did not receive a formal report from teacher 1 before she left the school at the end of 2005. She said she had informed the incoming principal of the mentoring relationship in conversation but not in writing. She said she was not aware of any formal processes regarding the teacher put in place by the school in 2006.

**Assistant principal 2 gave verbal and written evidence by affirmation.**

Assistant principal 2 is currently an assistant principal at the school, having been appointed in 2006 with responsibility for student management, wellbeing and programs in the Later Years. Assistant principal 2 has been at the school since 2002 and, as well as her administrative responsibilities, teaches subject 3 and subject 6.

Assistant principal 2 stated that after the 2005 incident with student 1 she had been informed by the principal that the teacher was being mentored by teacher 1 and that he had been given specific advice about not spending time alone with female students. Assistant principal 2 said she considered teacher 1 to be a brilliant and respected teacher and a compassionate, gentle and kind man. She believed he would be the perfect mentor because he would approach his role without prejudice to help people through a difficult time to assist them to build appropriate skills for relating to students.

Assistant principal 2 said she knew from her own observations that the teacher was ignoring the advice given to him. She said she had observed him with student 4 after school coming from the upper floors as late as 5.00 pm, several times a week. She had also seen them together at the front of the school as she was leaving around 5.00 pm. Assistant principal 2 said she was concerned because the conversations between the teacher and student 4 often looked more like casual chats than tutoring, and student 4's demeanour was, to her mind, flirtatious.

Assistant principal 2 said that, over the course of 2006, three or four teachers had also raised concerns with her that the teacher was spending an unusually large amount of time with student 4. Assistant principal 2 said she first interviewed student 4 about this in

June 2006. She said that student 4 had told her that she had initiated the contact with the teacher because he had taught her subject 3 in Year 11 and she felt that he was a good teacher who could help her with her work. Assistant principal 2 said that student 4 said that she and the teacher usually worked back late in a classroom and that it never occurred to her that anyone could consider this inappropriate. Assistant principal 2 said that student 4 was very concerned that she may have put the teacher in an embarrassing situation and was shocked and embarrassed that anyone might think that her interest in him was romantic. Assistant principal 2 said she told student 4 that if the teacher was to continue to tutor her then they should meet in a public place.

Assistant principal 2 said that on another occasion teacher 5 had spoken to her about the teacher coming to her subject 4 room when some senior girls were working after class. Assistant principal 2 said that teacher 5 said she was uncomfortable with it because he was just “hanging around” like the boys’ girlfriends did sometimes.

Assistant principal 2 said on 11 October 2006 teacher 5, who was also a Student Welfare Coordinator, spoke to her about a conversation she had just had with student 5 and student 3 regarding text messages, which student 5 believed were from student 4, which student 5 had found on the teacher’s mobile phone. Assistant principal 2 said that she had immediately spoken with both of the students who were crying and sobbing. She said she had asked how student 5 accessed the teacher’s phone and they replied that the teacher often left it on the desk and students played with it because that was the “informal” nature of the teacher’s class.

Assistant principal 2 said student 5 told her what she recalled of the text messages she had read. These included “I’m going to the subject 4 night it’ll be suss if we leave at the same time”, “You can pick me up from there...if you still want to play”, “Are you going because of student 3?”, “I’m eating a mandarin and it’s like your bottom lip as the juice is running from it and I’m licking it” and “I’m waiting for the bus. You can pick me up if you want.”

Assistant principal 2 said that student 5 had felt that these indicated there was an inappropriate relationship between the teacher and student 4. Assistant principal 2 said student 5 went on to say that she was concerned about the teacher because she had observed that he and student 4 often stayed behind until late at the end of the day and that student 4 frequently waited for him after classes.

Assistant principal 2 said that student 5 recalled the teacher making inappropriate comments about student 3 and on one occasion compared her to a female superhero and said that she had “sexy curves”. Assistant principal 2 said that student 5 was also upset as the teacher was reputed to have said to student 12 that he could not take his eyes off student 5’s “tits”.

Assistant principal 2 stated that student 3 was upset because she said she had had a close relationship with the teacher and now she felt she could not trust him. Assistant principal 2 said that student 3 had said she was now concerned about the conversations she had shared with the teacher because she had told him some very personal information because he had shared personal information with her. Assistant principal 2 stated that

student 3 now felt that the messages and the fact that the teacher may have had a relationship with a student made his contact with her seem “sleazy” rather than concern for her welfare.

Assistant principal 2 said that student 3 also said that the teacher frequently made suggestive comments with sexual connotations that now seemed inappropriate, as well as comments about her physical appearance, though at the time she had thought them just his “way”. Assistant principal 2 said that student 3 said that on one occasion the teacher had looked through her camera and said that she was not only beautiful but photogenic too. Assistant principal 2 said that student 3 had said that on another occasion she had not wanted to do something related to work and the teacher had rubbed his hand on her leg saying “Come on it’ll be good for you.” Assistant principal 2 said student 3 described the teacher’s teaching style as “seductive” and that he was very “manipulative” in that he tried to make students like him.

Assistant principal 2 said that after her interview with student 3 and student 5 she had informed the acting principal, assistant principal 1 about the messages, in particular the one that suggested that the teacher and student 4 were arranging to meet after the subject 4 exhibition and, as a consequence, assistant principal 1 had informed student 4’s mother of their concerns.

Assistant principal 2 said that on the evening of the subject 4 exhibition the teacher and student 4 had approached her, somewhat confrontationally, seeking an explanation about the call to student 4’s mother. She said that she and assistant principal 1 interviewed the teacher and student 4 separately from 7.30 to 8.15 pm. Assistant principal 2 stated that in the interview the teacher claimed that there was no inappropriate relationship with student 4, that he had continued to tutor her, that they had exchanged text messages relating predominantly to school matters, and that he had deleted the text messages in question. Assistant principal 2 said the interview ended with assistant principal 1 outlining the process that would be undertaken in investigating the allegations related to the text messaging, and the teacher claiming he had done nothing wrong.

Assistant principal 2 stated that student 4 confirmed that she had sent the text messages relating to meeting up with the teacher at the subject 4 exhibition and then again after the evening had finished. Assistant principal 2 said that student 4 claimed there were no sexual implications in her messaging, that she and the teacher had a close friendship, and that she could not remember sending any of the other messages about which she was questioned.

Assistant principal 2 stated that the teacher asked to speak to her after student 4 left. She stated that in this conversation the teacher’s responses were fairly confused and he gave off many mixed messages. She said, on the one hand, he acknowledged that he had difficulty in complying with the boundaries set for appropriate student-teacher relationships and he would be interested in counselling to help him work through his problem. On the other hand, he said why should he have to conform with conservative boundaries. Assistant principal 2 said that the teacher said he tried to make friends with students as he was not a good teacher and that if students liked him they would not

notice his poor teaching. When asked by the Panel about this perception assistant principal 2 said that she thought the teacher was very confident about his own intellect and teaching but there had been complaints from Year 10 coordinators about not exactly unruly behaviour in the teacher's classes but a not particularly strong work ethic, with girls clustered around the teacher chatting to him while boys worked on computers. Assistant principal 2 said that the teacher said that each year he chose a student he thought "special" because he enjoyed the stimulation he gained from working with intelligent students and that had driven him to continue to meet with student 4 as he had done with another student, student 7 in 2005, even though he knew at another level he should not do so. Assistant principal 2 said that the teacher also said that he could communicate better with student 4 than he could with his wife.

Assistant principal 2 said she noticed a difference in the teacher's demeanour when he was talking to her alone and how he spoke when assistant principal 1 was present. When speaking with her, she felt he was needy and he "was trying to play the sympathy card" with her. With assistant principal 1 present, she said the teacher was "a bit more routine", dealing with the facts of the situation.

Assistant principal 2 stated that when assistant principal 1 rejoined the conversation, he and she were concerned for the teacher's personal safety as he appeared quite distressed. She stated that offers were made to support the teacher by providing emergency contact numbers, assistance to return home and alternative accommodation (at assistant principal 1's home) as, at one point, the teacher said he did not want to return home. She said an arrangement was then made to meet with the teacher the next morning.

Assistant principal 2 stated that there was nothing wrong with mentoring and coaching students but such tutoring should be spread amongst all students, not reserved for chosen favourites. She said that one problem with cultivating favourites was that it caused jealousy in other students. She said that personal text messaging was wrong because it changes the nature of the student-teacher relationship. She said there should be no room for a student to misunderstand the nature of a relationship that a teacher has with them.

In response to questioning from the Panel assistant principal 2 said that the school did not have an explicit policy or professional development programs relating to mobile phone usage by teachers. She believed appropriate usage would have been assumed in the documentation all new teachers received relating to information about student-teacher relationships in codes of conduct, standards of professional practice and school procedures. She said she could not remember who might have been the teacher's buddy or mentor but it was school practice to appoint one for a new teacher.

#### **Teacher 4 gave verbal and written evidence by affirmation.**

Teacher 4, a teacher of 29 years standing, is currently teaching at the school where she has taught for the past 12 years. She is also the mother of student 1.

Teacher 4 said that initially she got on quite well with the teacher. She considered him hard working though a little bit disparaging of his colleagues at times.

Teacher 4 said that in 2005 student 1 was doing really well at school being nominated at the end of Semester 1 for six Excellence Awards which recognise outstanding achievement. She said that student 1 was a very confident girl who spoke her mind but that no teacher, including the teacher, had ever raised questions about student 1 being a trouble maker or being disruptive in class.

Teacher 4 said that in 2006 student 1 struggled and had been seeing a counsellor. She said that student 1's results in Year 10 had been very poor and her school work had deteriorated. Teacher 4 stated that student 1's problems only started towards the end of the year when she was taught by the teacher. The first time she remembered student 1 needing to sleep during the day was when she was on holidays immediately after the incident on 18 November 2005 when the teacher had told student 1 that she "devastated" him. Teacher 4 said she could not attribute student 1's behaviour solely to the teacher's treatment of her but she did think it had a serious effect on student 1 and could not be underestimated.

Teacher 4 said that she did not often see student 1 at school as she was not in any of her classes. She said the size of both the school and the student population made interaction between her and both her children minimal. She said that sometimes student 1 would see her around school and say to her that the teacher was "a bit of a freak." Teacher 4 said that she dismissed these comments as she believed that it took a while for students to get used to teachers at the beginning of the year.

Teacher 4 said that, unlike student 1's other teachers whose questions to her at school about student 1 and her other child were very minimal and very professional in that they were no more than the kinds of questions that might be asked of other parents, the teacher took a strong interest in student 1's personal life. She said he very quickly got to know student 1 and would often comment to her on student 1 after classes, making remarks about her potential as a subject 3 student. Teacher 4 said that the teacher would also tell her if he and student 1 had been fighting and when student 1 would not speak to him. Her response she said was along the lines of - well, she is a 14 year old girl after all. Teacher 4 said that these conversations were almost always when she and the teacher were alone in the staffroom.

Teacher 4 said that in Term 2 the teacher asked her on several occasions whether student 1 had a boyfriend. Teacher 4 said she had replied that student 1 had never had a boyfriend. Teacher 4 said such a question would not have been inappropriate if it had been expressed in the context of a concern for a student's emotional wellbeing but it was not. She said that the teacher never explained to her the reasons for his questions nor did he ever express any concerns about student 1's behaviour in class or her mental and emotional wellbeing to herself or student 1's father. She said that student 1 had also told her that the teacher had asked her several times if she had a boyfriend. Teacher 4 said that the teacher seemed very possessive of student 1 and student 1 later told her that the teacher had approached one of the boys with whom she was friendly and told him that he was not to sit or go near student 1. Teacher 4 said had the teacher not been her colleague she may have reacted more quickly and with greater anger about his interest in student 1.

Teacher 4 stated that one day in Term 2 student 1 came to her in tears and told her that the teacher had called her “slutty”. Teacher 4 said that student 1 had written something in texta on her upper thigh and that the teacher had told her what she was doing was “slutty”. Teacher 4 said she spoke to the Student Welfare Coordinator about this and also because student 1 was showing general signs of distress. She said she also approached the teacher and told him how upset student 1 had been by his comment and explained that teenagers are easily offended and take things to heart. She said she told the teacher that he had to be careful about how he spoke to young girls, and particularly the language he used. Teacher 4 said that student 1 had told her that the teacher had attempted to apologise in class by writing on his palm pilot that even “Mr D” was an “asshole” sometimes placing it on her desk. She said that student 1 said she read the message and slid the palm pilot back to the teacher.

Teacher 4 said at one stage in Term 3 the teacher had said to her something along the lines of “I’m worried student 1’s not achieving her full potential.” Teacher 4 said at this stage she was already well aware of the effect the teacher was having on student 1 and she had replied “That’s my and student 1’s father’s problem, we’ll worry about that.” She said that she did not want the teacher to become even more involved with student 1 and basically explained to him that it was just his job to teach her and that she and her ex-husband, as parents, would do the rest.

Teacher 4 said that in September 2005 the teacher gave student 1 a present, a sequel to a novel. She said the fact that the teacher had given other students books did not change her impression that he had intended the book as a birthday present, and that it had been carefully chosen to play along with student 1’s interest in a particular author. Teacher 4 said she believed it reflected the teacher’s “incredible desire to win over some of those children” intellectually. She said if giving books were his modus operandi then he should be doing so with all his students, not choosing three or four students to promote their intellectual wellbeing, possibly at the expense of others. She said it would have been more appropriate to recommend to a student to read a book than to give it to them as a present.

Teacher 4 said she thought the present of the book very strange at the time but did not say anything about it. However, when student 1 told her she felt very uncomfortable with the teacher, she did tell her not to be in a room alone with him but to have someone with her. Teacher 4 said she also told student 1 to tell the teacher how he made her feel so that he would understand the effect his behaviour was having on her. She said student 1 told her that she had told the teacher this on a number of occasions but his behaviour did not stop.

Teacher 4 said that at least once a week she would have an 8.00 am meeting and student 1 would watch TV in an office before school started. She said that if she had meetings after school student 1 would also wait for her there. Teacher 4 said that on a number of times after school the teacher had been in the room talking to student 1. She said there was no reason for him to be there. She said student 1 said that the teacher talked to her about aspects of his personal life. Teacher 4 said some of this, such as his relationship with his wife and the fact that she had had a miscarriage, she considered totally inappropriate whereas remarks about his son were less so. Teacher 4 said that student 1 told her that

when she would try to ignore the teacher and not speak to him he would simply stand or sit there. She said she did not believe that the teacher touched student 1 but played “mind games” with her. She said that on one occasion the teacher had a box of sultanas and was silently arranging them on the table in front of student 1. Teacher 4 said she was alerted to the teacher’s behaviour by the cleaner who expressed concerns.

Teacher 4 said she was aware of the poem the teacher wrote to student 1 because student 1 showed it to her. She said that student 1 had said that the teacher said he had written it to demonstrate a style of poem that had been taught in a class that she had missed, but teacher 4 said the content was very personal. Teacher 4 said that student 1 was extremely upset by the poem because she felt as if she was being singled out by the teacher.

Teacher 4 said that in retrospect she did not think she took enough action early enough to try to stop the teacher from making student 1 feel so uncomfortable. She said it was not until student 1 had burst into tears in the car after the occasion when the teacher told her she had “devastated” him that she and her ex-husband decided to take action. Teacher 4 said that she did not understand the context in which the teacher made this comment to student 1. She said if he had been worried about her progress in subject 3 she would have expected him to use words such as “worried” rather than “devastated”. She said she also would have expected that the teacher would have expressed his concerns to her and student 1’s father and these concerns would have been reflected in her reports. They were not. Teacher 4 said she had instructed student 1 to always have a friend stay with her when the teacher wished to speak with her. On this occasion that friend had been student 2b, and the teacher had instructed student 2b to leave the room. Teacher 4 said that student 1 told her she had said to the teacher “You can’t say that to me, you’re my teacher” and the teacher had replied, “Am I your teacher or your friend?” By that stage teacher 4 said she believed that student 1’s emotional wellbeing had been quite compromised.

Teacher 4 said that, on one occasion in the staffroom they shared, the teacher had mentioned student 5 and, when she said she could not recall her, the teacher had made a lewd comment and said “You can’t miss her, look for her breasts” which teacher 4 thought was inappropriate. When student 5 had come to the staff room teacher 4 said the teacher said to her “See what I mean?” and made a gesture about the size of student 5’s breasts with his hands, and laughed. Teacher 4 said she had said to him “I think you’re disgusting.”

Teacher 4 said that the teacher was certainly very popular with some of the students. She had heard some boys refer to him as a “champ.” On the other hand, in September 2006 she had a Year 12 student, student 13, transfer to her class from the teacher’s and, while she had not been officially told the reason, student 13 had told her that she could not stay in the teacher’s class because “he freaks me out.”

Teacher 4 said that the teacher spent a lot of time in 2005 with a Year 12 student, student 7. She said she remembered the teacher telling her that student 7 was very “needy” which surprised her because she had taught student 7 in previous years and found her to be one of the most independent girls in the school. In 2006, teacher 4 said she had

observed the teacher spending a lot of time with student 4 at lunchtimes on a very regular basis even when he was not on yard duty. Teacher 4 also said that on one occasion, when she was supervising a Year 12 subject 3 exam with the teacher, he stood next to student 4's desk for about half an hour and made a lot of eye contact with her rather than move around the hall as other teachers did.

Teacher 4 said that she was told that after the teacher left the school he visited a Year 10 student, student 14 and told her that he was not at school because he was stressed and the Year 10 Coordinator, teacher 6, was the cause of his stress. Teacher 4 said that she did not believe that this was appropriate behaviour by a teacher.

Teacher 4 said her working relationship with the teacher had been very poor in 2006 and she had returned to school that year frightened about how she was going to be working with him. The principal, she said, had attempted mediation between them but the teacher's body language and manner indicated that was something he would do reluctantly. Teacher 4 said that when they left the mediation the teacher said that it was a "waste of time". She said that the teacher had said to her that "student 1 lied" and, when she challenged him about what student 1 had said specifically that was a lie, he backed off and said that she did not lie but she had misunderstood his intentions.

Teacher 4 said, in response to questioning from Counsel Assisting that she believed it would have been devastating for student 1 to have to give evidence at the hearing, even though some people had suggested it would have allowed closure. She said student 1 had been badly affected in the last three years and her behaviour had completely altered both at school and home. In Year 10 she saw a psychologist and was put on a low dose of anti depressants. Teacher 4 said that treatment still continues and the dosage has been increased. Teacher 4 said that student 1's schoolwork has suffered. She had to be cajoled to go to school in Year 10 and, once there, often truanted. Teacher 4 said that student 1 did poorly in Years 10 and 11 and throughout Year 12 was extremely anxious that she would not achieve the result that she would like and that she knew she was capable of achieving. Teacher 4 said that student 1 found it difficult to focus and persevere and to concentrate on schoolwork so did little or no homework. At home she said student 1 suffered from massive mood swings, was defiant and stretched the boundaries with regards to rules. Teacher 4 said there had been days when student 1 has cried, often uncontrollably, expressed dislike for herself and questioned her own worth. Teacher 4 said student 1 appeared to distrust any boys of her own age who had tried to get close to her.

In response to questioning from the Panel chair teacher 4 said that, in retrospect she thought that the teacher had been grooming student 1 but at the time, as a colleague, she trusted him. She said she now thought that the teacher had shown an unnatural interest in student 1. She said one of the problems student 1 was now coping with was that she liked the way the teacher had made her feel "special" and thought she was very clever. Teacher 4 said that the teacher's behaviour indicated someone who was building confidence and trust in a child for him in particular, and that amounted to grooming.

Teacher 4 said that she did not believe the issue was taken as seriously as it should have been by the school administration. She knew that the teacher had been given a mentor

but she had remained in the same staff room with him which made matters very difficult. She said she knew that the teacher had been instructed not to have contact with student 1 and, on the rare occasions that he did, teacher 4 had reported it to the administration. Teacher 4 said she did not know that “a lot was done at the time.”

Teacher 4 said that she did not believe that student 1 thought that the teacher was a very good teacher by the end. She said student 1 had said to her that the teacher wanted to be “everyone’s friend, a champ, someone that everyone liked.” She said that student 1 had recognised that other students were being neglected because she said that the teacher was not teaching the rest of the class. He spent all his time with her, student 2a and student 2b and would send other students to the computer pods.

Teacher 4 said whenever the issue about the teacher came up student 1 went through a series of behaviours which indicated her distress continuing. Even if student 1 saw a car that she thought was the teacher’s that made her extremely anxious. Teacher 4 said, to the best of her knowledge, student 1 had had only once had contact with the teacher since he left the school. She said on that occasion student 1 had gone into a shop with a friend of teacher 4, unaware that the teacher was the owner. She said that student 1, on discovering him there, immediately left the shop and texted her. Teacher 4 said she advised student 1 to remain out of the shop which she did.

Teacher 4 said, in response to questioning from the Panel that she was not aware of any procedures in the school to assist parents who are also teachers at the school.

### **Teacher 3 gave verbal and written evidence under oath.**

Teacher 3 has been a teacher for 30 years and is currently head of subject 3 at the school where he has taught since 1998. He said that when the teacher joined the staff he shared an office with him and teacher 7, the other subject 3 coordinator. Teacher 3 believes the teacher would have been assigned to his office by the Professional Development Coordinator. As subject 3 Coordinator, teacher 3 said he considered himself the first port of call to assist the teacher regarding school procedures, regulations and protocols, as well as courses he was teaching and resources. Teacher 3 said he got to know the teacher reasonably well and considered him a “mate” with shared interests in music. He said they often met socially at teacher 3’s place for socialising and work related matters.

Teacher 3 stated that in Term 3 2006 he held regular revision classes, usually for the higher achieving students, in the morning and on two evenings from 7.00 – 9.00 pm. He said he had an agreement with parents that they would arrange for their children to be picked up after the evening class. Teacher 3 said that on one such evening the teacher, without being invited, wandered in about 8.00 pm. Teacher 3 said the teacher contributed to the discussion, but he also played the practical joker or fool, including switching the lights on and off.

Teacher 3 said that at the end of the evening, after the students had left, he noticed student 4 waiting outside the school. He said that he told student 4 he would wait for her until her mother picked her up. He said student 4 became quite agitated and annoyed by

his suggestion. Teacher 3 said that shortly after that the teacher came out and said “Don’t worry I’m taking student 4 home” and he and student 4 took off very quickly.

Teacher 3 said he did not believe that action was appropriate and, the next day, spoke to the teacher privately for about 15-20 minutes about the matter. Teacher 3 said he made it clear to the teacher that he spoke to him as a friend about the appropriateness of his actions and the dangers he could get himself into. He said that, despite the fact that the teacher knew what would happen to him if he did not follow school protocols, Teacher 3 did not know whether the teacher was listening to him or not. However, he said there was no doubt in his mind that the teacher had explained to him “fully well” what was proper and what was not in relation to relating to students.

Teacher 3 said that during the year he had often noticed the teacher spending a lot of time with students, particularly student 4, out in the yard and around the school after school hours and at lunchtimes and recess. Teacher 3 said that the teacher often sat or stood in very close proximity to female students. Teacher 3 said that when this behaviour continued towards student 4 after his conversation with the teacher he felt sufficiently strongly about it to record his thoughts and to inform the Student Welfare Coordinator.

Teacher 3 said that some students had told him that the teacher had talked to them about his conversation with him. Teacher 3 said that he thought it was very unprofessional of the teacher to discuss a private conversation with students.

### **Assistant principal 1 gave verbal and written evidence by affirmation**

Assistant principal 1 is currently an assistant principal at the school, a position he has held from 2002. He was acting principal in Terms 3 and 4 2006 until 13 November.

Assistant principal 1 stated that at the end of 2005 the former principal had appointed teacher 1 to mentor the teacher following a complaint in relation to his treatment of student 1. Assistant principal 1 had been made aware of this through conversations with the former principal. Assistant principal 1 said he believed it had been agreed by the teacher that he had problems with recognising and maintaining appropriate boundaries between teacher and student and the former principal had organised the mentoring by an experienced male teacher, teacher 1, who could help the teacher with defining these boundaries and acting appropriately.

Assistant principal 1 said that teacher 1 and the teacher met regularly over the first six months of 2006 and discussed a broad range of matters in relation to effective teaching with particular reference to the development of appropriate student-teacher relationships.

Assistant principal 1 described teacher 1 as a brilliant and respected teacher who had demonstrated an ability to engage with and build really strong professional relationships with students who found him compassionate, caring and approachable. Assistant principal 1 considered him an ideal mentor for the teacher because of his age and teaching experience. Assistant principal 1 said teacher 1 had seen a lot of life himself, was no prude, and “worked back from the individual he was trying to help.”

Assistant principal 1 said that in July 2006 teacher 1 approached him about how he might conclude the mentoring process and assistant principal 1 had requested him to do so by letter. In the letter assistant principal 1 said that teacher 1 indicated the mentoring had been proposed to assist the teacher to make the distinction between professional and personal responses to any situation a far more sharp and rigorous one, and to exercise vigilance with respect to any possible misinterpretation of any of his actions. Teacher 1 stated that the teacher had been honest, open and very keen to be seen as a professional teacher committed to the terms and values of the profession. Teacher 1 said that the teacher, in his relations with students, was thoroughly aware of the need to temper enthusiasm with caution, and scholarly commitment with prudent reflection. Teacher 1 said that the teacher recognised “the implications of the fact that human relations are ambiguous, volatile and complex, and always open to radically different interpretations as to motive and intent.” Teacher 1 also said that the teacher’s work in introducing a new subject, Units 3 and 4, subject 2, to the school had been outstanding. Teacher 1 concluded his letter by stating that the teacher had responded “cooperatively, positively and appropriately to (teacher 1’s) attempt at mentorship.” Assistant principal 1 said he thought teacher 1’s letter reflected a belief that the mentoring period had been satisfactory rather than expressing a high level of confidence in it, or expressing a judgment about how successful it might prove to be.

Assistant principal 1 was asked by Counsel Assisting to comment on the opinion the teacher expressed about teacher 1’s mentoring in the following statement:

Teacher 1 was duly appointed as a mentor. Teacher 1 and I think he would agree, is probably the last person suited for such a role – although, because I knew teacher 1 very little then, I could scarcely have guessed that. Teacher 1 and I met exactly twice to discuss the issues raised in the original allegations. Once at the start of 2006, when teacher 1, who was clearly reluctant to take on his role, told me he had been sounded out by the former principal and once in June of 2006, when teacher 1 told me that he was convinced that I was no longer a threat to the public, and that he was handing assistant principal 1 a letter to that effect. Teacher 1 seems to be suggesting that we met more than that, but unfortunately took no notes as to the sort of discussions we had. In fact, teacher 1 is mistaken about the frequency of our meetings. I recall, incidentally, when assistant principal 1 asked me how often teacher 1 and I had been meeting during the year for “guidance” and I told him “never”, he regarded me at length. I realised immediately, of course, that he did not believe me (I now realise why), and I knew, additionally, that I was being “set up” by the school administration. In such a situation as I faced – an inexperienced teacher with incongruent ideas about how teaching should operate – I would have expected a little more support from my superiors, both emotionally and professionally.

Assistant principal 1 stated that he affirmed the choice of teacher 1 as mentor. He said teacher 1 was the least judgmental person he had on staff. He said he believed that one of the reasons that the former principal had appointed teacher 1 as mentor was because he and the teacher had attended a week long subject 2 professional development program at a university and they would have got to know one another fairly well. Assistant

principal 1 said he could not recall the discussion alluded to by the teacher where the latter had claimed that teacher 1 had never met with him.

In a subsequent witness statement (1/12/2006), tendered as evidence in the Hearing book, teacher 1 expanded on his mentoring work with the teacher and his subsequent concerns about the degree to which the teacher had accepted his advice. Teacher 1 said that he did not see his mentoring involving regular meetings on a formal basis. He said he and the teacher met perhaps three or four times but they would talk as issues arose or when they bumped into one another. He said he found the mentoring relationship an awkward one, particularly as the teacher was clearly aggrieved and felt that he was an innocent party in the matter which led to the mentoring.

Teacher 1 said that he had decided to approach his task as mentor from a non-judgmental point of view and instead of judging the teacher's actions, tried to emphasise to him the need for every teacher to adopt self protective behaviours. Teacher 1 could not recall precise topics or examples but said they would have included such matters as tutoring groups of students but not individuals after school, being aware of closed doors, and taking particular care where female students were involved. Teacher 1 stated that, after six months, the time period stipulated by the former principal had elapsed and he felt he had done all that he could. He said that he was not confident that the teacher had agreed with all the measures suggested because the teacher said that they implied a lack of trust. Teacher 1 said he was confident that the teacher understood the advice he gave him but was not confident he would follow it.

Teacher 1 said that some of the teacher's behaviour since the mentoring period had concerned him. One was seeing female students one-to-one as that was something he had specifically advised the teacher against when mentoring him. Teacher 1 said that he was aware of the fact that the teacher spent a lot of time with student 4. Teacher 1 said he had also spoken to the teacher about restricting his conversations with students to school work and not to enter into personal matters. Teacher 1 said he did not know what the teacher spoke to students about individually but assumed it was work related from conversations he had had with him. Teacher 1 said that he did not see anything predatory or exploitative in the teacher's behaviour but thought it inappropriate because of the ways in which the teacher's behaviour might be perceived and interpreted. Teacher 1 said he also advised the teacher that if he were to tutor students at the town library in out-of-school hours to make sure that he tutored groups not individuals and to do so after following appropriate school procedures about informing parents and seeking their permission.

Assistant principal 1 said that he did not inform the teacher of the letter or that the matter was finalised because on 13 July staff members, teacher 8 and teacher 9, spoke with him individually about having seen the teacher and student 4 sitting together in the public bus shelter outside the school at 4.30 pm the previous day. Assistant principal 1 said that about this time another teacher, teacher 2, expressed concerns to him about the teacher meeting regularly with student 4 on a seat in the schoolyard near the gym. Assistant principal 1 said that teacher 2 was concerned that this meeting was occurring on a weekly basis and that it appeared to be social rather than tutoring as no books were visible. Assistant principal 1 said that he then spoke to assistant principal 2 and

determined that she had also received complaints from staff about the teacher and the manner in which he was relating to some female students.

Assistant principal 1 said that on the basis of the above concerns, another from teacher 3, and his own observations of how much time the teacher was spending with student 4, he spoke to the teacher about his relationships with students. Assistant principal 1 said that as one of the teacher's "superiors" he had intended the discussion to be supportive rather than of a disciplinary intent. Assistant principal 1 said he explained to the teacher that he felt obliged to have the conversation because of the fact that another member of staff had raised concerns about their perception of the amount of time the teacher was spending with student 4 around the school. Assistant principal 1 said he and the teacher discussed perceptions and the importance of ensuring that no one could misconstrue the reasons as to why he was meeting particular students and for what purpose. Assistant principal 1 said that the teacher challenged why any one could construe his behaviour to be inappropriate and claimed that other teachers acted in a similar way. When questioned about this the teacher, assistant principal 1 said, could not name any specific teacher who he thought was doing something similar to himself. Assistant principal 1 said that when the teacher brought up other staff who did one on one tutoring assistant principal 1 pointed out that they did so in places similar to the common room, that is, in public spaces. assistant principal 1 said thatt he teacher did not display a great deal of insight into how his behaviour was perceived and tried to put the blame for complaints about him on those with whom he shared a staffroom. Assistant principal 1 said that there was a clear undertaking from the teacher that he would be far more circumspect about where he met with student 4 and the teacher made a firm verbal agreement that he would tutor student 4 in the staff common room only, a very visible space, where other staff and students were present. In response to the teacher's assertion that if he had been given a written directive about the staff common room being the only suitable location he would have concurred with it but, as it was not, he felt his choice of the seats in front of the school library a suitable alternative, assistant principal 1 said that the teacher had simply made other arrangements and ignored what they had agreed upon. In response to questioning from the Panel chair, assistant principal 1 said that the site chosen by the teacher was a big improvement on the previous one. Assistant principal 1 said he had not issued a written directive because he wanted the teacher to understand that he wanted to support him and that he trusted him to do the right thing.

Assistant principal 1 stated that on 11 October 2006 assistant principal 2 had alerted him to an issue raised by student 5 and student 3 that involved text messages on the teacher's mobile phone. Assistant principal 1 said that student 5 had read some messages on the teacher's phone, that she believed had been sent by student 4 , which she felt were inappropriate between a student and teacher. Assistant principal 1 said he directed assistant principal 2 to interview the students to ascertain as many facts as possible. He said that he was sufficiently disturbed by what had been said that he and assistant principal 2 decided that the following actions needed to be done: he would contact student 4's mother and ensure that she collected student 4 personally after the subject 4 exhibition; that he would contact the employer the next day to inform them of the situation; and that he and assistant principal 2 would meet with the teacher the next day to inform him of the allegations that had been made and what action might be taken.

Assistant principal 1 said that at approximately 7.30 pm on 11 October the teacher and student 4 approached assistant principal 2 demanding to discuss the text message issue. Assistant principal 1 said that assistant principal 2 immediately brought the teacher and student 4 to his office. He said he directed student 4 to wait outside while he discussed the matter with the teacher in the presence of assistant principal 2. Assistant principal 1 said he told the teacher he would more fully investigate the matter before any allegations would be made and there would be no discussion of what those allegations might be. The teacher continued to talk about the text messaging and the appropriateness of what he was doing. Assistant principal 1 said that the discussion was very broad ranging and he left the meeting at 8.15 pm to see other staff and parents. Assistant principal 1 said that on returning to his office he was surprised to see assistant principal 2 still in conversation with the teacher. Assistant principal 1 said that at one point the teacher agreed that he would undertake counselling as he did have difficulty determining the boundaries when interacting with students. Assistant principal 1 said the teacher said things about his family and the lack of support he would have at home. Assistant principal 1 said that, at times, he teacher felt sorry for himself. Assistant principal 1 said he was concerned enough to have felt that, now that the student was safe, he was concerned about the teacher's wellbeing. Assistant principal 1 said that during the meeting the teacher was very argumentative though there was no aggression in his manner. There was clear thought and logic in what the teacher was saying but assistant principal 1 said that he had real problems with the values the teacher was expressing.

Assistant principal 1 said that, in concluding the meeting, he informed the teacher that he did not want him back at school the next day because there were too many unknowns in the situation and the teacher did not seem fit for teaching. Assistant principal 1 suggested they meet off site the next morning to determine the teacher's needs in terms of his own wellbeing and to give the teacher some idea of what process would be put in place. Assistant principal 1 said that he and the teacher met the next morning.

In response to Counsel Assisting's questions about the text messaging, assistant principal 1 said it was totally inappropriate, and the word "play" disturbed him greatly, because the messaging was not between two adults or two teenagers but between one of each. This, he said, was especially inappropriate when the adult was in a position of trust and care for that young person.

Assistant principal 1 was asked by Counsel Assisting to comment on the professionalism of the teacher's response to the allegations regarding favouring students in the following assertion:

I had a large following amongst the students... I was well liked. Assistant principal 1 remarks that I was a popular teacher. ...How many teachers become popular because they favour certain students? The panel I think from their own experience might even find that those teachers who tend to favour certain students are actually deeply unpopular with the rest of the student community. That is certainly my experience. And yet I do recall the odd complaint along these lines – to my surprise. I think that certain students felt "unwanted" by me because attention- seeking kids, those who sought attention for the sake of it

Assistant principal 1 said that good teachers do not go out to be liked by kids. Students liked teachers because the teachers are compassionate and understanding, and meet the students' needs. Assistant principal 1 said that good teachers do not look at popularity polls. Assistant principal 1 said there were groups of students who either loved the teacher or hated him. He said there was also a big group of students who felt overlooked, particularly boys who felt they were left to work on their own while he paid attention to the girls in the class. Assistant principal 1 said there were several girls who reported to him that they found the teacher "creepy" and that they felt uncomfortable around him.

Assistant principal 1 said that it would have been more appropriate for the teacher to be more "irritated" by the lack of learning and the failure of some of his students to be engaged, than by students who sought his attention for the sake of it. Assistant principal 1 said that when the teacher was removed from the school there were at least three complaints from parents who defended the teacher as a good teacher.

Assistant principal 1 said he did not agree with the teacher's assertion that "boundaries were harmlessly strayed over." Instead, he said, that the teacher had clearly crossed the boundaries on numerous occasions and that the teacher had acknowledged such, as he did in the discussion on the night of the subject 4 exhibition. Assistant principal 1 said he believed that the teacher had deliberately ignored the boundaries in many cases.

When asked by Counsel Assisting what else could have been done in explaining to the teacher his need for professionalism in relation to students, assistant principal 1 said that, other than giving directives about what not to do, little else could have been done. He said he had problems with directives because of the difficulties of policing them. Assistant principal 1 said that, in the teacher's case, he believed, initially, he was dealing with someone who would come to see clearly where the boundaries were and embrace the need to respect them. Assistant principal 1 said the only course of action left to the school administration was to initiate formal performance management procedures because the other things had been done. He said these things included six months of mentoring and conversations with himself as principal about appropriate behaviour. In those conversations, assistant principal 1 said, he had pointed out role models of staff who were engaging kids and building positive appropriate relationships and asked, "Why isn't teacher X being criticised by his peers?" and "Why isn't someone coming to me expressing concerns about teacher X meeting with kids?" Assistant principal 1 said in the teacher's case there was a big difference in the way he was perceived by his peers. Assistant principal 1 said he believed the school had done everything it could do to support and develop the teacher.

In response to questioning from the Panel, assistant principal 1 said the teacher was not asked to observe other teachers teaching as a way of modelling management because, to his knowledge, there had been no formal complaints about the teacher's classroom teaching. The complaints had been about his individual relationships.

Assistant principal 1 said that a student code of conduct existed but, in 2006, there had not been much work done about whole staff professional development on developing positive teacher-student relationships. That situation was in the process of being rectified through professional development provide by the employer and through a program,

which was a form of mentoring about getting the teacher-student relationship right by recognising that it is a professional relationship in which one does have to care about kids but one cares about them as a teacher.

### **Teacher 5 gave verbal and written evidence by affirmation.**

Teacher 5 has been teaching for eight years, four of them at the school, where she teaches subject 4 and is a member of the School Welfare team.

Teacher 5 stated that early in Term 4 she had reported to assistant principal 2 that she saw the teacher with student 5 and student 4 in her subject 4 room during one of her afternoon classes. She said she had not invited the teacher to the classroom but he spoke briefly to her while he was there. She believed the two students had invited him to come and see their subject 4 work. She said the teacher interacted with the students in ways that did not seem right to her. She said it was not what she considered to be the typical professional teacher-student relationship. She said the teacher just seemed to “hang around” and seemed more interested in talking to the students than looking at their work. She said the teacher’s body language and behaviour was more like that of the boyfriends who visited their girlfriends in the subject 4 room. She said the teacher and the students spoke in “hushed tones” and the interaction was a bit flirtatious.

Teacher 5 said that on 10 October 2006 student 5 and student 3 were preparing for the subject 4 night. She said they informed her that they had been working for the teacher and that student 5 had read some messages on the teacher’s phone which student 5 said were from student 4. Teacher 5 said that the messages were suggestive including one from student 4 asking the teacher if he was going to the subject 4 night. Teacher 5 said the suggestion was “Can we go and then have a play afterwards.”

Teacher 5 said that student 5 and student 3 were appalled by the text message and became upset. Teacher 5 stated that student 5 and student 3 said they were upset because they had been “violated” previously by the teacher through their interaction with him both inside and outside the classroom.

Teacher 5 said that, after the incident, both student 5 and student 3 were concerned about how they had been treated by student 4 and her friends and that at one stage student 4 had tried to trip student 5 up.

### **The teacher**

The teacher did not give verbal or written evidence under oath or by affirmation and only attended Day 1 of the hearing.

The teacher presented his responses to the allegations in the following ways.

- opening verbal submission
- written statement entitled “student 1’ at the beginning of the hearing

- closing written submission in which he responded specifically to each of the allegations

As well, the Panel had access in the Hearing Book to the following statements from the teacher:

- letter in response to assistant principal 1's letter (13 October 2006) containing allegations related to student 4 and inappropriate remarks about physical appearances to student 5 and student 4
- letter in response to the Notice of Allegations (14 or 18 December 2006) from the principal in his role as the employer's investigator in relation to allegations about inappropriate relationships with student 1, student 4, student 5, student 3 and student 2a and failure to comply with a lawful direction given to the teacher by assistant principal 1 without a reasonable excuse
- interview with the Institute's investigator ( 7 April 2008) in which the teacher responded specifically to each of the allegations.

In the document "student 1" the teacher addressed the issues of "favouring students" which formed the basis of Allegations 1a(i), 1b(i) and 1c(i) and "personal conversations" with students which formed the basis of Allegations 1a(vii), 1b(ii), 1c(ii), 1d(ii)) and 2b. In his closing submission the teacher denied all of these specific allegations.

The teacher stated that, regarding "favouring students", he was well liked and had a large following amongst students, both girls and boys. The teacher said that assistant principal 1 had told him that he was a popular teacher and that teacher 4 had said that many boys thought he was a "champ". The teacher said he did not think it would have been possible for him to be popular if he had favoured certain students only. Nor, he said, did he think it would have been possible to keep the attention of male students in his Year 9 class if he had given attention only to the three girls in the class whom he is alleged to have favoured, student 1, student 2a and student 2b. The teacher said he was aware that there was the "odd complaint" that he favoured certain students but he believed these complaints came from attention seeking students who felt "unwanted" by him. He said he felt ambivalent about such students and even though they irritated him he gave them more attention than they needed, which was more than he gave other students.

Regarding having personal conversations with students, the teacher stated that he did not think that talking in an incidental way to students about his child or family was particularly personal. He said he had a liking for sprinkling his teaching with anecdotes, some of which were drawn from his life and a reputation for being "upfront with his comments and stories" as student 5 had said. The teacher said that, as a subject 3 teacher, he believed it was important to share with students to gain their trust and that he had a way off getting students to talk about themselves. He said he believed that students at the school were "so starved of any kind of personal attention from teachers ...that they consider anyone who shows an interest in them as being 'friend like' to use that obnoxious term."

The teacher said he drew the line about talking about his emotional life. He said that no student or teacher had noted that he “disliked the school, despised many of (his colleagues) because they were bitter, backstabbing cynics, considered the leadership of the school morally-outnumbered and bunkered...”

The teacher said that he rejected the idea that he chose a few students to be “convivial” with. For example, in his response to the Notice of Allegations, the teacher said that the comment about “the inducement of childbirth through sexual congress” was not made in a private conversation with student 5 only, but was said as a joke to his entire Year 12 class and none of them, including student 5, had found it inappropriate at the time. In the “student 1” document the teacher stated that he did not recall even making the comment. “Did I really say it? I can’t say.”

The teacher stated that, to his detriment, he had not thought about the possibility that he was engendering thoughts of friendship in students because, given his nature, he had never thought that he was creating friends unintentionally. The teacher said that he believed that he was treating all students the same and that was part of his problem. He should have, he said, been more careful with the girls who were prone to develop a “fantastical relationship” with him.

The teacher denied Allegation 1a(i). He described student 1 as a bright but demanding and attention-seeking student who constantly sought reassurance about her worth. He stated that the attention he gave her should not be construed as favouritism but rather as him giving her the attention her behaviour required. At all times, the teacher stated, he was concerned about student 1’s academic and emotional wellbeing.

The teacher also stated that on one occasion student 1 had harassed him in the school library by placing her foot on his under the desk and drawing the attention of senior students to that as a way of making them jealous. As well he said, student 1’s behaviour towards him in 2006 was akin to stalking. In relation to Allegation 1a(iv) the teacher said that he had asked the question because of his observations of student 1’s erratic behaviour in class. He said he believed from what he observed that student 1 was bipolar and the question about the “boyfriend” was a more circumspect way of raising issues about student 1’s psychological state with teacher 4. He said that teacher 4 had said that student 1 had had a boyfriend. The teacher said that on one occasion he had told teacher 4 that he thought student 1 was depressed and teacher 4 had replied that student 1 had a difficult relationship with her father. The teacher said he spoke to teacher 4 about student 1’s behaviour on a number of occasions because he knew that teacher 4 found student 1 to be a difficult child and found it difficult to deal with her herself. The teacher said that he had been frustrated by teacher 4’s efforts to constrain student 1 and, therefore, to help him deal with student 1’s progress he would often speak to colleagues teacher 3, teacher 10 and teacher 11.

In relation to Allegation 1a(ii) the teacher stated that his remark in calling student 1’s behaviour “slutty” was unwarranted but that the context and manner of his remark should be taken into account. Student 1, he said, had been writing on her thigh and had asked him to comment on her behaviour which he did. He also pointed out that he was not censured by the school for his remark.

In relation to Allegation 1a(iii) the teacher admitted that, in the circumstances, giving student 1 a book was a “misplaced act”. He said the book was not intended as a present but he had announced it to the class as though it was in a joking fashion. He stated that he had given many students in his classes books either because they had not purchased the set texts themselves or as a way of encouraging and extending their reading interests. He stated that on the day he gave student 1 the book teacher 4 had said to him “That was a very nice thing you did for her.”

In relation to Allegation 1a(iv) the teacher admitted that he gave the poem to student 1 but he had done the same with many students. He said he enjoyed writing poetry as a response to the poems students wrote for him and as a way of reinforcing their knowledge of a particular style such as haiku. Regarding the haiku in question the teacher said it was exactly the same as he had written for another student with the last line changed.

In relation to Allegation 1a(vi) the teacher, in the interview with the Institute’s investigator, described the context of the conversation with student 1 in which he used the word “devastating”. He denied that before having this conversation he had instructed student 2b to leave the room. The teacher said that by Term 4 his relationship with student 1 was basically “gone” and he “kind of felt that that – that was really disappointing that it kind of had come to that and it was kind of my fault I suppose.” the teacher continued: “In – in the classroom – and I probably do it a little more than I should, but I really invested a lot in teaching, you know. So I suppose using that as a personal language I guess is a way of saying that, you know, the fact that, you know, she wasn’t really working out as a student, to put it mildly, actually affecting me personally, and you know, it’s not something I do often, – I probably – I’ve probably taken that approach maybe twice before with kids, you know. If I think they can understand, if – if I think they’ve got the ability to actually empathise, you know empathise. I wanted to reach in and get her to empathise a little bit with what I was – where I was coming from. You know I tried it once I remember in – in with a Year 9 boy in a (indistinct) probably, you know a couple of terms in I suppose and he was giving me – he was the only kid I had ever trouble with and I – and I took that approach and said, ‘Do you know the effect that your behaviour has on me as a human being?’ I mean can we ... can we not talk about this, you know this student-teacher but just as human beings versus a human being, and do you know the effect that you can have on a teacher kind of thing. He kind of thought about it and – you know even though he put up a front he...it did... it did get to him, you know, it did get to him. I think other teachers do it as well.”

In relation to Allegation 1a(vii) and specifically to the occasions when he was said to have had personal conversations in the library with student 1 before school and after school when she was waiting for her mother, the teacher said that these meetings had occurred only twice in the morning and twice after school. He said he had a legitimate reason to be in the library in the morning as he was collecting and returning AV cables. He had not gone there specifically to speak with student 1. On one of the afternoon occasions the teacher said he had been in the library tutoring a student and the other was when he had come in to return books.

In his closing submission the teacher stated that he was deeply mortified by the knowledge that student 1 was not coping well at the present time. He said that in his 2005 statements he had indicated that he thought student 1 might have a depressive illness. He said he found it utterly tragic and therefore ironic, that his own actions may have contributed to her illness.

The teacher denied all of Allegations 1b(i), (ii) and (iii). His responses to Allegations 1b(i) and (ii) are contained in his general remarks about favouring students and personal conversations. Regarding Allegation 1b(ii) he stated that any discussion of drugs he might have engaged in would have been in the context of talking to students about harm minimisation. The teacher drew attention to the school's drug education program which was "based on the principles of drug minimisation and uses current strategies for effective delivery" and states that "Drug Education is an (implicit) part of the curriculum with all staff expected to promote safe behaviours and positive attitudes to drug use."

The teacher said that student 2b was "quite simply a terrible student." She was lazy, disruptive and frequently absent and as a result, he was always playing catch up with her. The teacher said that student 2b attached herself to a group of boys and girls who were very bright as a way of basking in reflected glory. He said she fancied herself as the "deep one" and enjoyed trying to psychoanalyse him. The teacher said that in the second part of the year student 2b attended school more frequently and showed an interest in academic things. He said he encouraged her in her ambition. The teacher said he did not tell student 2b that he fought with his wife. That, he said, seemed to be student 2 b's own "unique embellishment" on the narrative that he talked a lot about his family.

The teacher denied all parts of Allegation 1c. He said student 3 was "a really awful girl, she was such a princess and the kids despised her, but I protected her naturally as you would as a teacher from the bullying in the class." The teacher said that student 3 singled him out for a great deal of harassment during 2006 and that he was appalled that the investigation had totally disregarded the facts of her harassment and the effects they might have had on her allegations against him. The teacher said he believed student 3 had a history of making vexatious complaints about male teachers.

The teacher said that the chocolate incident referred to in Allegation 1c(iii) was a case of him attempting to protect student 3 from being bullied. He had had three chocolates in his pocket and, along with other things in his pocket, had placed them on his desk. He said an argument had broken out amongst the kids about why they were there and who they were for. The teacher said that while he was just getting on with the class, student 3 had taken the chocolates and a boy was bullying her about it. He said student 3 said words to the effect "the teacher gave them to me because I'm his favourite." The teacher said he had said to the boy "Let her have the chocolates." At no time did he say or intimate that student 3 was his "favourite" student. The teacher said that student 3 could "bleat" all she liked about being a "favourite" but no one, including himself at the time, took much notice. The teacher also said that the principal, after interviewing both student 3 and student 5, did not believe that he had favoured them.

The teacher denied Allegation 1c(vi), in particular that he touched student 3 on the leg while suggesting he would make it worth her while to miss a VCAA subject 3 revision

lecture. In his closing submission the teacher stated that he had, in several interviews and responses during the course of the investigations, pointed out the inconsistencies in student 5 and student 3's statement regarding the location of the incident, the time at which it happened and his and student 3's relative positions when the leg touching is said to have occurred. The teacher pointed out that no evidence was provided that he ever touched a student in the way suggested by student 3 which, he said, should be taken as evidence that he did not have that propensity.

The teacher denied treating student 4 as a favourite in class and said that, at the time, that had been her impression also. He said he could not account for the reasons as to why she has since changed her opinion. He said he was not conscious of the amount of time he spent with her as he spent time tutoring a range of students. He said many of the so called sightings were after tutorial sessions attended by other students as well, and that student 4 would often linger after these sessions. The teacher said he was not particularly aware of the fact that student 4 had a crush on him and that he mistook her infatuation for an enthusiasm for what he was trying to teach. He said that he was "sure that, as with any kid, boundaries were harmlessly strayed over. I am human. Most teachers are."

In his response to assistant principal 1's letter (13/10/06) the teacher said he should have ceased his relationship with student 4 when he became aware that students were getting bothered by it, regardless of the actual nature of the relationship. The teacher said he "should not have enjoyed the intellectual "intensity" of his engagement with student 4, and he should have been more open to the possibility that whatever he may have been thinking, student 4 may have been developing other ideas."

In relation to Allegation 1d(iii) the teacher said he did not send student 4 messages of a personal nature. He said all the messaging between them was information about meeting to discuss or pick up school work. The teacher said he did not believe he was breaching any particular code of conduct in doing so and in fact assistant principal 1 had told him, with what he thought was implicit approval, that a music teacher at the school regularly texted his students.

Regarding the alleged messages he exchanged with student 4, that were accessed by student 5 and reported to teacher 5 and then assistant principal 2, the teacher stated they appeared piece meal and were shorn of context. The teacher explained the context as a series of messages over the course of a student free day involving him trying to arrange a meeting with student 4 to provide her with readings to help her prepare for a subject 2 exam. Possible meeting places included at "the subject 3 thing", the bus stop and at the subject 4 exhibition night which he had already planned to attend. The teacher said that since student 4 had been critical of him and teacher 1 for not doing their jobs properly he had suggested they arrange a class somewhere and go through the material "pronto". The teacher said that student 4 had replied with her usual joke that if he was interested in raising suspicions by "picking (me) up" then he might as well drive her home from the subject 4 evening also. The teacher said that the meaning of the word "play" in student 4's message would have been clear to any teenage girl as meaning "talk" or "chat" or something of that nature.

The teacher stated, regarding student 4's statement that he sent her lines from a poem by e. e. cummings, that "I certainly did not send her a poem with 'romantic inferences'... student 4's only evidence regarding the messages being of a personal nature is apparently a single poem of e. e. cummings. It was elicited under questioning that cummings is a romantic poet of some sort. I deny that cummings is a romantic poet. I did not send student 4 lines of a romantic nature. I know I did not give her a cummings' poem because I've always hated the idea of using someone else's work as a kind of emotional conveyancing machine. If I was going to send a poem to someone, it'd be my own work."

In relation to Allegation 1d(v) the teacher admitted to meeting students at the town library and accepted that a breach of a school protocols had occurred. In his interview with the Institute's investigator the teacher said such meetings were not planned as he was doing research for his PhD. The teacher said he had discussed the idea of taking tutorials in the term break with teacher 1 and teacher 1 had suggested that while he himself was not keen to do so he gave the teacher the impression that it would be a good idea if he did.

In relation to Allegation 2a the teacher did not deny that he made a reference to student 5's breasts in a conversation in the staffroom involving himself, teacher 4 and teacher 3. The teacher said the conversation had come about because teacher 3 had mentioned to him that student 5 was looking for him and teacher 4 did not know who student 5 was. The teacher said he began describing student 5 pointing out that she was short and had long dark hair. The teacher said that teacher 3 had said "Isn't she the one with big..." and the teacher had concluded the obvious joke, "yes, breasts", with much rolling of the eyes. The teacher said when student 5 turned up he had smiled at teacher 4 as if to suggest "here is the student in question." The teacher said his comments were not salacious in the least and that teacher 4's view of the conversation was biased, placing emphasis where there was none originally. The teacher added that teacher 4 had not been averse to commenting to students about their anatomy.

The teacher was highly critical of both the support and advice offered to him by teacher 1 in his role as mentor and by the school administrators who counselled him. The teacher said that teacher 1's support as mentor was practically "non-existent" except for the advice to, whatever he did, make sure he "covered his tracks." He stated that the advice and examples the former principal gave him about inappropriate conversations with students was ambiguous and, similarly, advice and examples offered by assistant principal 1 were both ambiguous and nonsensical. He also stated however that, in retrospect, he should have acted on that part of assistant principal 1's advice about being aware of the way students might form a kind of emotional dependency on him. The teacher stated that most of the advice he received from other teachers and administrators was geared towards his own self preservation, something he had never been much interested in. Consequently he said he felt that the advice offered to tutor students in "public" in order to protect himself was not apropos to what the issues were. He said that had he been advised that his "open" style of teaching might have been counterproductive in the long term and even damaging, including to himself, he might have been more prone to listen because this would have been advice related to students' welfare, something which he valued highly.

## **DISCUSSION OF THE EVIDENCE**

The Panel found the teachers/administrators to be credible witnesses who, in their different ways, articulated clearly their understanding of the professional boundaries that should exist between a teacher and a student and why the teacher's behaviour, in its various manifestations, from the constancy of his attention to student 4 to his behaviour with student 5 and student 3 in the subject 4 room as witnessed by teacher 5, was of concern to them.

The teacher/administrator witnesses were not alone in their concerns. Both assistant principal 1 and assistant principal 2 expressed concerns based on their own observations but also spoke of the concerns expressed to them in their administrative roles by other teachers. Assistant principal 1 made the point tellingly that other teachers engaged in one-on-one tutoring with students as the teacher did, but their behaviour had not elicited concern or disapproval from their peers. The teachers/administrators also made clear the level of trust they placed in the teacher to do the right thing once their concerns about his behaviour had been raised with him. Teacher 3 said he spoke to him as a friend and "mate" about his driving student 4 home. Assistant principal 1 said that he had not given the teacher a directive about where to meet with student 4 but trusted him to understand and act upon the urgency of the concerns expressed by other teachers and about how his relationship with student 4 was being perceived.

Teacher 4, as both a teacher and parent, impressed the Panel by the way she spoke of her daughter's continuing health issues. She too, as a colleague, trusted the teacher when he expressed his interest in student 1's potential and wellbeing, though she made it clear that as the year progressed she had becoming increasingly concerned about the nature of that interest and the effect it seemed to be having on student 1. To her credit teacher 4 did not draw a direct causal link between the teacher's behaviour and student 1's current psychological and mental state. She said it may have been a contributing factor though she left the Panel in no doubt that student 1 had told her that the teacher's behaviour distressed her and made her feel uncomfortable, and that student 1 had conveyed this to the teacher. This behaviour included the incidents with the book, the haiku poem, the "sorry" message on the palm pilot and the teacher's presence in the school library when she was waiting for school to commence or waiting for her mother at the end of the day. Teacher 4 was sure that, by the time of the conversation late in 2005 in which the teacher had told student 1 that her behaviour had "devastated" him, that her daughter's emotional wellbeing had been compromised by the teacher's behaviour towards her.

The Panel found the four students and ex-students to be truthful, forthright, open and willing to make concessions about matters they did not completely recall. Student 2b and student 5 were particularly impressive in the way they stood their ground under questioning from the teacher which the Panel believed bordered on intimidation. Of particular note to the Panel was the way each of the students struck a balance in their assessment of the teacher. All made it clear how different a teacher he was to any others they had experienced and also how much they admired, even adored, him. Student 2b said that the teacher provided a strong incentive for her to work because she wanted his respect. Student 3 said she found the teacher inspiring and was smitten by him. Student

4 said she was infatuated. But equally each student was clear in their expression of disillusionment with the teacher. For student 2b that disillusionment came gradually and painfully. She did not want to think ill of a teacher she trusted and adored. For student 3 it was a recognition that the teacher's personal conversations were an impediment to preparing her for the end-of-year exam. For student 5 it was the shock of the text messages and the realisation that she too might have been compromised because of the personal conversations she had had with the teacher. For student 4 the realisation came more slowly but, two years after, she was clear about what the source of her disillusionment was. In retrospect, she believed the teacher should have been more transparent in his relationship with her and, by implication, as the adult in the relationship, taken action to contain or modify it.

Would the same could have been said about the teacher and the level of consideration that he showed for his students and colleagues. Instead, he characterised the students, variously, as needy, attention-seeking, neurotic, vexatious, deluded about his favouring them – “student 3 can bleat all she likes...” – and motivated by jealousy and malice in their allegations. Not only that but, according to him, they stalked and harassed him.

The Panel found the teacher's comments about his colleagues equally troubling. The administrators, he said, were concerned with “covering their own arses”, and assistant principal 1 was a “slimy bastard.” According to the teacher the upshot of teacher 1's “non-existent” mentoring was advice about making sure he “covered his tracks”. Of teacher 3 he said, “everyone despises him, he's hopeless” and the VCE lecture he had organised was not one really but a seminar “given by an old hack subject 3 teacher who was friends with (teacher 3)” and was “a waste of time.” He said that teacher 4 was “unrelenting and scurrilous” about other teachers who had taught student 1.

The Panel noted that on the occasions where the teacher admitted he may have transgressed, his defence more often than not was that other teachers did it. Other teachers drove students home. Other teachers conducted classes in the town library without seeking parental permission. Other teachers met with students out of school hours. Other teachers sent text messages to students. Other teachers made derogatory or salacious remarks about students' physical appearances. The implication in all of these claims was that, because other teachers did it, the teacher should not have been censured for doing so. The Panel thought that the teacher's attitude to these matters revealed a shocking abrogation of personal responsibility and professional collegiality.

The Panel found the same abrogation of personal responsibility evident in the way the teacher described the advice and counseling given him. It was, he said, ambiguous and nonsensical, and conceived in ways that misled him about the potential danger of his interactions with students. By implication, the inadequacy of the advice was an indication of the administration's failure to care for him as a relatively inexperienced teacher. It was advice, he said, framed too much in terms of his self preservation and not sufficiently in terms of students' welfare. Had it been otherwise he would have taken it more seriously. He even implied, after having quibbled as to whether or not assistant principal 1 had given him a directive about the appropriate place to meet with student 4, that had assistant principal 1 given a clear directive, he would have complied with it and been more alert to the seriousness of the concerns. This belief, the Panel believed, was at odds

with the significance of the observations of teacher 1, teacher 3 and assistant principal 1 that they were sure that the teacher had understood “fully well” – to use teacher 3’s phrase – the advice they had given him and its import but they could not be sure that he would act on it. The issue, for example, for the Panel was not whether assistant principal 1 gave a directive or offered advice – assistant principal 1 says it was the latter – but the teacher’s subsequent action, after being, in Counsel Assisting’s words, “warned and warned and warned” in the most benign ways by his colleagues. Having argued that student 4 was not receiving special attention but was tutored as part of a group, and the sighting of them together was because she often lingered after the group tutoring, the teacher then proceeded to tutor her regularly at a location in full view of staff already concerned about, and students possibly jealous and resentful of, the amount of time he spent with her. The Panel believed that this was both a foolish and highly provocative act on the teacher’s part.

Regarding the various claims of showing favouritism to particular students the Panel accepted that these were very difficult allegations to prove, depending as they did very much on perceptions of what constituted favoured treatment from both those students who were purportedly favoured and those who felt they were not. In the case of student 2b, student 2a, student 3 and student 5 the Panel felt that their perceptions were possibly coloured by their early adoration of the teacher and then their subsequent disillusionment. For every student who claimed that the teacher favoured them the teacher was able to cite students who claimed he did not, and, as student 3 herself stated, he offered tutoring to any students who requested it.

Regarding personal conversations, the Panel understood that it is fairly common practice for teachers to talk about their personal lives and experiences as a way of engaging with students, and this is probably more true for subject 3 and subject 2 teachers given the human interest nature of the subjects. However, as teacher 4 pointed out, there are some matters which are appropriate to talk about with students such as one’s children and some which are distinctly inappropriate, such as intimacies about one’s relationship with one’s wife. Regarding the teacher, a good number of students seemed to know details about his relationship with his wife. Student 4 said that he frequently interspersed personal information in his conversations with her and in Year 11 had told her and a group of students about “a matter which was intensely personal and involved his wife.” As for the comment regarding “the inducement of childbirth through sexual congress”, the Panel believed the comment was entirely inappropriate whether it was made to student 5 alone or to the whole class.

The Panel believed that the teacher offered a plausible explanation of the kind of conversation he might have had with student 2b about drugs. That is, that it was a conversation about drug minimisation and that it fell within the parameters of the school’s Drug Education policy guidelines.

As well as expressing disquiet about the nature of some of the teacher’s personal conversations the Panel expressed concerns about the degree to which the teacher commented on students’ physical appearances and the element of what can only be called flirtatious banter in some of his remarks to students. It was difficult for the Panel to ascertain where the looking-good-in-a-bikini conversation took place, or who initiated

the conversation, but the Panel was in no doubt that this type of conversation should never have taken place or that the teacher should have very quickly nipped it in the bud when the subject was raised. Similarly, the Panel felt it was entirely inappropriate for the teacher to comment to student 2b, as she said he did in the library, “Behind that blonde beautifulness is a smart too” or to embellish student 4’s essays with comments about her “cuteness”.

The Panel believed that the situations with student 1 and student 4 were of a substantially different and more serious nature than those with the other students who were the subject of the allegations. They raised very serious questions about his professional judgment regarding his responsibilities when relating to students.

The teacher argued that the attention he paid to student 1 could not be construed as favouritism but was because of what he had deduced about her emotional and psychological state. The Panel agreed. The Panel also believed that the teacher offered a plausible reason for several of his actions – the giving of the book, the haiku poem, possibly even the episodes in the library – and that it may have been that student 1 misunderstood his intentions, as he is purported to have said to teacher 4. However, the Panel felt that the teacher failed to understand what was seriously inappropriate in his final conversation with student 1. The Panel did not believe it was appropriate to tell a 14 year old emotionally wrought student that she was having a “devastating” effect on him given what he had already said he had deduced about her psychological state. It was not, the Panel believed, the effect that she was having on him that should have been the focus of his awareness but rather the effect his behaviour and actions were having on her. He should have been alert to the fact that what he saw as honest emotional engagement on his part felt to her like emotional manipulation and modified his behaviour accordingly. As the former principal said the real nub of the teacher’s problem was his failure to fully understand the effect and possible consequences of his actions on students.

The Panel believed that this failure to understand was at the heart of the inappropriateness of the teacher’s relationship with student 4, rather than that he was grooming her or was predatory towards her. The Panel believed that the teacher almost came close to this realisation himself in his response to assistant principal 1’s letter when he said: “I should have ceased my relationship with student 4, or more heavily modified it, when it became clear that students were getting bothered by it, regardless of the actual nature of the relationship. I should not have enjoyed the intellectual ‘intensity’ of my engagement with student 4 and been more open to the possibility that whatever I might have been thinking, she may have been developing other ideas.” In his closing submission the teacher was also gracious enough, given what he has said about assistant principal 1 elsewhere, to acknowledge the wisdom of assistant principal 1’s advice about being careful about allowing a student to develop an emotional dependency on him.

The teacher argued that the school did not have a policy on text messaging between students and teachers and that the text messaging that took place on a fairly frequent basis between himself and student 4, including the flurry of messages on the day and evening of the subject 4 exhibition, was basically about seeking and confirming information about one another’s whereabouts or school work. The Panel had doubts about this as the tenor of the messages sent by student 4 certainly suggested something

resentful on her part about their relationship being the subject of public concern and something conspiratorial about maintaining it. Student 4 also stated that the teacher had sent her at least one personal message that she could recall, a text message containing lines of a e. e. cummings poem that she thought were romantic in nature. The Panel felt the teacher's response to this was evasive. He neither confirmed nor denied that he sent student 4 lines of poetry of a romantic nature. Instead he contested whether he would have sent lines from a published poem, given his preference for his own verse writing for conveying feeling, and whether e. e. cummings was a romantic poet. The Panel wondered, given the teacher's predilection for semantic precision as displayed in his cross examination of two of the student witnesses, in what sense he might have been using the term "romantic" given such cummings' poems as "I have found what you are like", "I like my body when it is with your body", "if I love you", "I love you much (most beautiful darling)", "I carry my heart with me (I carry it in my heart)" and any other number of lyrical romantic pieces.

The Panel was very concerned about the teacher's focus on himself and his feelings in the way he characterised his relationships with student 1 and student 4. He was "devastated" because of student 1's behaviour towards him. The intellectual "intensity" he was enjoying in his relationship to student 4 blinded him to what she may have been feeling. The Panel believed that a professional relationship with a student requires a more impersonal focus on a student's needs, otherwise the capacity for either deliberately crossing professional boundaries or straying across them "harmlessly" (though hardly harmlessly in student 1's case) remains potent.

To his credit, the Panel believed that the teacher expressed genuine distress and remorse when he heard of student 1's current psychological state, and admitted that his behaviour may have had some role in contributing to it. He conceded that he could have taken a different course of action, one involving formal meetings with her parents to discuss his concerns and consultation with the student welfare officer.

Similarly the Panel believed the teacher had reflected on what might have been inappropriate in his relationship with student 4. In his closing submission he stated that, to his regret, he had mistaken her infatuation with enthusiasm for his teaching, and that his failure to recognise that, and then to properly handle that sort of enthusiasm, was one of his greatest regrets as a teacher. However the Panel also felt that this insight was still tinged too much with laying blame on the student for "the inappropriateness of her behaviour." In terms of a sustained insight about the inappropriateness of *his* behaviour the Panel felt that the teacher is not there yet in terms of what is required of him professionally.

## **FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT**

The Panel determines that Allegations 1a and 1d are proved and that the teacher is guilty of serious misconduct and is unfit to teach.

The Panel determines that Allegation 1a is proved on the basis of substantiated credible evidence provided by teacher 4 who described in comprehensive detail the cumulative

effect of the teacher's behaviour on the emotional and psychological state of her daughter. The allegation is confirmed by the teacher's admission that his actions may have contributed to the distress and anxiety the student continues to experience.

The Panel determines that Allegation 1d is proved by the comprehensive, credible and corroborative evidence provided by a range of teachers, administrators, students and the student who was the subject of the allegation. The teacher also admitted to allowing an emotional dependency on the part of the student to develop because of the nature of his behaviour towards her.

The Panel determines that Allegations 1b(ii), 1c(ii), 1c(iii), 2(a) and 2(b) are proved but, while reflecting foolishness and varying degrees of inappropriate behaviour on the teacher's part, do not constitute serious misconduct.

The Panel determines that Allegations 1b(i) and 1c(i) are not proved because they relied on perceptions of general behaviour that are hard to prove rather than a number of specific examples where the students were receiving attention at the expense of other students.

The Panel determines that Allegation 1b(iii) is not proved on the basis of the teacher's explanation that his conversation was within the parameters of the school's drug education policy and the student's concurrence in the fact that this was possibly the case.

The Panel determines that Allegation 1c(iv), particularly that aspect of it relating to the teacher touching the inner part of the student's leg, is not proved on the basis of the conflicting evidence provided by the students as to the specifics of the incident.

The teacher is currently an unregistered teacher having had his registration suspended on 1 July 2008 for non-payment of fees. The Panel notes that Section 2.6.47 of the Act allows the Institute to extend its jurisdiction in disciplinary matters to cover teachers who are no longer registered if the conduct the subject of the notification by the employer, occurred when the teacher was registered. The conduct the subject of the notification in the teacher's case occurred in 2005 and 2006 when the teacher was registered as a teacher and the Institute decided on 25 June 2008 to extend its jurisdiction in this matter. The Panel's jurisdiction in a matter such as this extends to the Panel having the ability to make findings in relation to the teacher's conduct and to impose a determination where appropriate. However, the jurisdiction does not extend beyond this point. That is, the Panel can not impose a determination that imposes an obligation on the person to undertake certain activities while that person is no longer a registered teacher. The determinations under the Act enable the Panel to impose conditions on a teacher's registration, suspend a teacher with or without conditions or cancel a teacher's registration. If the teacher is no longer registered the Panel could not impose conditions on their registration because that registration no longer exists. However the Panel does have the power to suspend or cancel the person's registration. Cancellation of registration has a number of repercussions in relation to the person seeking to be registered in the future in Victoria or else where. Suspension prevents the person applying to be registered for a period of time.

In making its determination of serious misconduct the Panel was mindful of the ruling in *Kellam J in Parr v Nurses Board of Victoria VCAT* (2 December 1998):

*In my view the question of whether or not a nurse has engaged in unprofessional conduct of serious nature must depend on the facts of each case. Clearly such conduct would not be serious if it was trivial, or of 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.<sup>1</sup>*

The Panel believes that the teacher's behaviour was a serious departure from the professional standards in that he failed to recognise that the teacher-student relationship requires a professional distance based on the teacher's recognition that it is ultimately a power relationship between an adult and a young person and as such, the adult must be professionally attuned to the effects his actions and behaviour have on that young person.

The Panel does not believe that the teacher's behaviour with either of the students constituted grooming or was sexually predatory in the conventional sense of those terms. Nevertheless the Panel is mindful of the findings in *Davidson v Victorian Institute of Teaching* (2007) VCAT 920 and particularly these remarks of Judge Harbison:

*It is clear that any sort of sexual overture to a student would constitute serious misconduct. This is not such a case. However we must also protect children and their parents from the development of inappropriate relationships or emotional dependency between teacher and student which may have deleterious effects upon the student, even when there is not overt sexual suggestions made. Thus it is not just overtly sexual behaviour which may fall short of the professional standards. The teacher has, by virtue of his occupation, a position of power over the student. Conduct may reasonably be regarded as disgraceful or dishonourable if it is conduct which inappropriately abuses the power relationship between teacher and student, whatever form that abuse takes.*

The Panel agrees that "it is not just overtly sexual behaviour which may fall short of the professional standards" required of teachers and therefore constitute serious misconduct. Such misconduct is also evident in any abuse of the power relationship between teacher and student that "may have deleterious effects upon the student." In the process the potential for bringing the profession into public disrepute is considerable.

## **DETERMINATION UNDER SECTION 2.6.46(2)**

The Panel is aware that the teacher has many good qualities as a teacher. Teacher 1 praised his work in introducing subject 2 to the school and said he would be a loss to the system. Even students critical of his behaviour attested to him being an inspiring teacher who was a positive influence on their motivation and attitude to learning. The teacher, in his evidence, demonstrated a passion for and commitment to teaching, which the Panel

believes, if it were tempered with discerning professional judgment devoid of the vanity and self justification present in so much of his evidence, could make any future contribution by him to teaching a valuable one.

The Panel is also mindful of the fact that the teacher, in his closing submission - and one might add, at long last - showed some capacity for self reflection and a recognition that his behaviour had “deleterious effects” upon the students. However, the Panel determines that the teacher is unfit to teach at the present time because it has serious doubts as to how sustained and substantial his insight is into his behaviour. His closing submission had a “road to Damascus” sudden conversion whiff about it, given how self justifying and egotistical his responses, particularly those in the ‘student 1’ document, were to the various allegations in the investigations and interviews documented for the Panel. He also has much repair work to do with his colleagues given how dismissive, scurrilous and unprofessional his opinions were about them. It is for this reason the Panel has decided that the most appropriate determination is to cancel the teacher’s registration as a teacher.

Consequently the Panel believes that were the teacher to decide to re-apply to return to teaching he would do well beforehand to seek counseling from a registered psychologist to help him to seek a deeper understanding of the professional behaviour required of him. In particular he should consider the following as fruitful grounds for exploration :

- differentiating between personal and professional relationships (adolescent / student and adult)
- power relationships between students (be they male or female) and teachers / tutors
- development and maintenance of professional standards when working with young people, and actively determining and implementing professional boundaries with individual students,
- risk assessment and early issue identification of potentially problematic situations and venues, and the importance of progressing credible mature responses as well as initiating realistic solutions for all parties
- an in depth examination of the extent and nature of student, colleague, parental and community trust inherently invested in a teacher / tutor
- personal and social behaviour that could compromise the professional standing of a teacher, the profession of teaching and those who tutor
- appropriate ways in which to affirm and develop student self esteem, devoid of stereotypes, and probing what it might be like to experience life from the student’s perspective (irrespective of gender)
- what constitutes flirtation, mixed messages and inappropriate communication
- the legal obligations of teachers / tutors,
- understanding and full adherence to the Victorian Institute Code of Ethics and the Code of Conduct.

The Panel also feels that, given the teacher’s interest in poetry, he might well consider the following comments on the student-teacher relationship by W.H. Auden:

*For a teacher to be of real value to his pupils, he must be a mature and above all a happy person, giving the young the feeling that adult life is infinitely more exciting than their own; he must be prepared to give them all his powers of affection and imaginative understanding when they want them, yet to forget completely the moment they are gone, to be indifferent to them personally, and lastly he must have no moral bees in his bonnet, no preoccupations of what the good child should be; he must be shocked or alarmed at nothing, only patient to understand the significance of any piece of behaviour from the child's point of view, not his own; to see in the perfect little ape his most promising charge, and watchful to remove as tactfully and unobtrusively as possible such obstacles to progress as he can.*

There is much to learn from and admire in this reflection. First, Auden recognises that the teaching relationship is, as teacher 1 said, like all human relations, “ambiguous, volatile and complex.” However, a good teacher recognises that the relationship is essentially one between a young person and an adult who recognises and exercises his responsibilities towards that young person. Second, a good teacher must recognise the appropriate impersonality of the relationship, to be friendly but not a friend. Third, a good teacher recognises the need to balance empathy and detachment in the relationship. He must be able to see the world from the young person’s point of view and to enter imaginatively into it, but he must also have the maturity and discernment to enable him to assist the young person to develop intellectually and emotionally. Fourth, a good teacher focuses on the needs of the young person, not his own needs for “intellectual intensity” or his “devastation” if things go wrong in the relationship. Fifth, a good teacher recognises the need to be non-judgmental even if the young person’s behaviour “irritates” him. Finally, a good teacher strives to see potential in all his students, even “the perfect little ape”, and not just the chosen few.



**TERRY HAYES, CHAIRPERSON**



**per:**  
**ANNE MOLONEY, REGISTERED TEACHER**



**per:**  
**JEANETTE BARCLAY, PANEL MEMBER**