

## **VICTORIAN INSTITUTE OF TEACHING**

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

**NUMBER:** 103

**REGISTERED TEACHER:** Christopher Wayne WILKIN

**PANEL MEMBERS:** Susan Halliday, Chairperson  
Leonie Sheehy, Registered Teacher  
Rowland Richardson, Registered Teacher

**ATTENDANCE:** Day 1 - the teacher and his legal representative Mr A Marshall both attended  
Day 2 - the teacher did not attend. Mr Marshall was no longer acting as the legal representative and did not attend.  
Ms G Hubble, Counsel Assisting with Ms K Galanos instructing

**DATES OF HEARING:** 29 June and 3 August 2010

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

On 26 August 2010 the Panel found that the teacher had engaged in serious misconduct and is not fit to teach and determined to cancel his registration from 26 August 2010.

# REASONS

## BACKGROUND

The teacher had deemed registration with the Victorian Institute of Teaching (the Institute) from 31 December 2002. The teacher's registration expired on 31 March 2008. On 30 June 2009, the teacher was granted full registration after lodging an application for registration under the *Mutual Recognition Act 1992*.

By letter dated 27 July 2009 the principal of the school notified the Institute that he had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 12 August 2009 and the Committee decided to refer the matter to an investigation.

On 16 December 2009, the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 16 March 2010 was served upon the teacher by registered post on 17 March 2010.

## THE ALLEGATIONS

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

*Whilst employed as a registered teacher at the school, the teacher:*

1. *On 10 June 2009 the teacher violated his professional relationship with male Year 8 student, student 1, where:*
  - a. *After dismissing a subject 1 class:*
    - i. *The teacher called student 1 back into the classroom and then closed the door to the classroom*
    - ii. *After the student attempted to leave the classroom the teacher pushed student 1 to the ground.*
    - iii. *As student 1 attempted to get up from the ground, the teacher then grabbed student 1 by his shirtfront pushing him from the front of the classroom towards the back of the classroom and backwards over a desk which fell over. Student 1 then fell to the ground a second time, where his shorts got torn and his head hit the desk as he fell.*
    - iv. *When student 1 attempted to get up off the ground, the teacher pushed student 1 again and held him down with force.*
    - v. *As student 1 attempted to leave the room, the teacher went to the door of the classroom and told student 1 to "Come back right now!"*

2. *In or about the last week of May 2009, the teacher violated his professional relationship with a male Year 8 student, student 2, in circumstances where :*
  - a. *During a subject 2 class:*
    - i. *The teacher became angry with student 2 over a problem with the computer student 2 was working from. After some discussion, the teacher pushed student 2's hands away from the keyboard, then grabbed student 2 by the shirt, pulled student 2 towards him and loudly told student 2 to "shut up".*

## **PRELIMINARY ARGUMENT**

On Day 1 Counsel Assisting made her opening statements noting that after discussions with the teacher and his representative that Allegation 1 would not be disputed.

During his opening comments the teacher's representative noted that two character witnesses would be called and confirmed that Allegation 1 would not be contested.

The Panel closed the Hearing while the two student witnesses were giving evidence and ordered that the names of the student witnesses be suppressed.

## **THE EVIDENCE**

### **The Principal**

The principal gave evidence under affirmation by telephone. Stating that his witness statement of 7 October 2009 was true and correct he informed the Panel that he was the current principal of the school and had been in the role since 2004.

The principal stated the teacher taught at the school from October 2003 to the end of 2006. The teacher then went to South Australia where the principal believed the teacher also taught. The teacher returned to the school in January 2009 and was employed to teach subject 1 and subject 2 to junior secondary students. The principal was informed of the incident involving student 1 on 10 June 2009 and deciding the matter was serious proceeded to investigate. He had the head of campus conduct some of the meetings and report to him. The principal wrote to the teacher on 12 June and met with him on 15 June 2009.

The teacher did not disagree with what had been alleged by the student 'apart from pushing the student over the desk'. The principal stated that he made the decision not to dismiss the teacher, as he felt that his actions were 'out of character'. He wrote to the teacher on 25 June informing him that his employment would continue however there were expectations about his future conduct that he needed to take on board. He stated that he was mindful that the teacher had difficulty with 'the nature of the students' in student 1's class, but considered that after a period of suspension and 'time to reflect' it was appropriate to continue employing the teacher. The teacher wrote to the principal on 6 August 2009 stating that he accepted the expectations and would abide by them.

The principal told the Panel that through discussions with the teacher, whom he considered to be a 'traditional teacher' he had asked him to give thought to whether he was 'still cut out for teaching'. The principal said he had discussions with the employer, and made his own decisions about continuing the teacher's employment. A number of expectations were drawn up by the principal to assist the teacher, and these expectations were the subject of discussions held once per term with the teacher. The principal told the Panel that self control, professional learning and the teacher's view of himself as a teacher continued to be the focus of the discussions.

The principal stated that the teacher made 'an effort' and there had been no subsequent complaints of the same nature. The principal clarified that the allegations involving student 2 happened prior to the events involving student 1, but were not reported until afterwards. Further advice was sought from the employer on hearing about student 2. The principal formed the view that it was best not to investigate the allegations involving student 2, as no formal complaint by a parent had been made and it might be seen as 'gathering dirt' given the earlier complaint, which could possibly complicate things.

The principal was aware that the teacher was experiencing some personal issues at the time. The view had been formed by the principal that the teacher was aware of the 'end point of his anger' and was 'smart enough' to recognise this and take action. The principal stated that, in his opinion, the teacher could be considered 'credible' and 'honest' and hence when he found out that the teacher had been teaching unregistered for a period of time since returning from South Australia, he was 'annoyed'.

The principal indicated that during the school's investigation of the incident involving student 1 in mid 2009 that the school became aware that the teacher was not registered to teach in Victoria in 2009, but had been teaching at the school for half a year. The teacher became registered as of 30 June 2009, and continued teaching at the school.

### **Student 1**

The Hearing was closed while student 1 gave evidence. Under oath he stated that he was currently in Year 9 at the school, and aged 15. He confirmed that the contents of his statement of 7 October 2009 were true and correct, and that he was in Year 8 and 14 when the incident took place.

The student said that the incident had left him 'shaken' and 'shocked' and 'untrusting' of teachers. He told the Panel that during the last period of the day he was sent out of the room by his subject 1 teacher, the teacher, because he was speaking after finishing his subject 1 test. After a while someone came to get him and he went back to class. When the teacher was giving out notes at the end of class he remembered saying, 'thanks mate' to the teacher on receiving his note. He stated that he believed that the teacher must have thought that he was 'being rude' because he asked him to stay behind. When everyone else had gone the teacher put his palm on his chest and pushed him back a few steps. He said that he told the teacher not to touch him and then the teacher grabbed his shirt with a clenched fist and pushed him 4 or 5 metres towards the back of the room over to a desk which flipped over, and he fell back over it. He told the Panel that he ended up lying over the desk. Referring to a picture he had drawn earlier to show the Panel the layout of the

room the student explained how he hit his head on the stack of chairs behind him, and how his shorts were ripped and his thigh was 'corked'.

The student stated that he recalled pushing the teacher off him, swearing at him several times saying things like *"alcoholic, f---, c---, psycho"* and that he *"got out of the room quickly"* as *"I was angry and in a rage"* given what had happened. The student said that when he got himself up and started to leave the room the teacher called him back. He explained that he did not return, rather he went straight to talk to of the Head of Campus. He was not there, so the student told the Assistant head of campus, what had happened.

The student stated that he told his mother and father what had happened when he got home and there was a meeting with the Head of Campus the next day. The student stated that he did not retaliate physically during the incident because he thought he might 'get into trouble.' The student told the Panel that he now knows he would not have got into trouble if he had acted to protect himself.

He explained that counselling provided to him by the school counsellor over several weeks, was helpful in getting over what had happened. The student said that the school counsellor had asked if he was prepared to accept a personal apology from the teacher but he said that he wanted a written apology, which he received. He stated that as a student he was often distracted or a distraction to others. He told the Panel that he was a good subject 1 student, and that was why he had finished his subject 1 test early.

### **Assistant Head of Campus**

The Assistant Head of Campus gave evidence under affirmation by telephone. He stated that his statement of 7 October 2009 was true and correct. He confirmed that he was the Assistant Head of Campus at the time of the events in 2009 and that student 1 had come to him on 10 June 2009, as the Head of Campus was absent. He stated that student 1 was in an agitated state and very upset. He wasn't crying, but he was shaking, and logical in his conversation. He said that he had been 'pushed' and 'hit' by the teacher. He took notes at the time. The Assistant Head of Campus told the Panel that the student had been in trouble in the past, in relation to giving some teachers 'a hard time' and because of this the Assistant Head of Campus was unsure if his story was accurate. He noted that he challenged the student about what he was saying, and that the student stuck to his guns about the story.

The Assistant Head of Campus said that the teacher arrived at his office, fairly upset when he was talking to student 1, and he sent the teacher away. When he spoke to the teacher later he said that the teacher said that student 1 was a 'smart alec'. He agreed that he had shut the classroom door and then grabbed student 1 and pushed him.

The Assistant Head of Campus told the Panel that he was of the belief that the teacher knew his actions were serious and he felt that the teacher was frustrated with the 'lack of respect' shown to him by his students. He stated that he went to the home of the teacher that evening as a friend and colleague. The teacher had previously spoken about being frustrated with the Year 8 class of boys. The Assistant Head of Campus later gave the teacher some resources that he had personally found helpful in relation to managing students, to support the teacher in his employment. He said that he and the teacher did

not have a follow-up conversation in relation to this material, and he did not know if the teacher had used it. He indicated that he also told the teacher that the student behaviour he was experiencing is what kids do, and that it was not personal. The Assistant Head of Campus indicated that he believed that the teacher 'knew his subject 1' and that his actions were 'out of character'.

### **Head of Campus**

Evidence was given under oath by the Head of Campus. He stated that his statement of 7 October 2009 was true and correct. The Head of Campus told the Panel how he had asked the teacher to write a statement detailing the events leading up to the incident with student 1 and also what had occurred when they were alone. The Head of Campus told the Panel that when he first spoke to the teacher about the incident, the teacher admitted to pushing the student. When the Head of Campus asked him to write a report about the incident the teacher only included events leading up to the incident; not the actual incident itself.

The Head of Campus told the Panel that the teacher acknowledged that he had done wrong, that he had pushed him in the chest, grabbed him by the shirt and pushed him down when he tried to get up, but he was concerned that the teacher felt he was pushed to do so. He indicated that the teacher could not identify the trigger for his behaviour. He reported that the teacher said it was an involuntary anger response. The teacher also said that the student was disrespectful, yet intelligent and one who misbehaves.

The Head of Campus was of the understanding that the teacher regretted being physical with student 1 but he did not consider that he was fully accepting of the fact that he was an adult who, no matter what, should not engage in such a manner with student 1.

After the incident with student 1 another issue was reported regarding student 2 from the teacher's subject 2 class. It allegedly took place in May 2009. The Head of Campus told the Panel that a staff member brought the student 2 incident to his attention having overheard a conversation between students. He said that he interviewed student 2 on 17 June 2009 and then provided the principal with a summary. He stated that he was then directed by the principal not to go any further with the investigation of the incident as the information may have been influenced by the events involving student 1.

When the Head of Campus met with the teacher and the principal to discuss the events around student 2, the teacher denied the incident. At the time they also spoke about the student 1 incident.

When the Head of Campus was asked about the teacher stating "*it was just a push....you'd think I'd murdered the kid*" he said that he recalled him saying this, in relation to student 1 and his sense was that the teacher was very frustrated as he had difficult students who were causing him stress in terms of classroom and student management. The Head of Campus spoke to the Panel about his concern that the teacher diminished the issue. The Head of Campus also told the Panel that he recalled the teacher stating that he felt like he was in a similar position to an earlier career incident that had happened in 1989 at another school, involving the teacher and a student.

The Head of Campus told the Panel that he believed that professional development sessions were offered to the teacher prior to the incidents. According to the Head of Campus he sent the teacher an email prior to the events involving student 1, about attending a Restorative Justice seminar. However, the Head of Campus felt that the teacher took the offer of personal development as an insult and made it clear that he was unhappy about being asked to attend. He noted that the teacher made it clear that students needed to come up to his standards.

The Head of Campus told the Panel that a number of complaints have been brought to his attention about the teacher. The Head of Campus told the Panel that he had had a number of conversations with the teacher over a period of time. When questioned, the Head of Campus stated that the teacher was a competent teacher, who was strict and demanding. He said, however, that he would question the word 'professional' if it was being used to describe the teacher.

The Head of Campus noted that the teacher was extremely upset with his own behaviour. The Head of Campus told the Panel that the teacher had been persistent about raising issues with him about managing student behaviour. He stated that he felt the teacher was still 'too quick to anger' and became 'aggressive with students' and that this concerned him.

The Head of Campus stated that he had formed the opinion, by talking to others on staff, that the teacher was very rigid and expected a very high standard of behaviour from students. He said that he had tried to work with the teacher about working with difficult students, as had other leaders in the school and the student counsellor, but he believed that the teacher 'hasn't taken much of this advice and direction on board', thus showing only 'limited movement' and hence he had concerns about whether the teacher could 'move with the pace' and had what was needed to teach secondary students these days.

**NOTE** – Day 1 of the Hearing concluded after the Head of Campus's evidence. On Day 2 of the Hearing the teacher did not attend. A letter was also received from his representative to note that he was no longer representing the teacher. Counsel Assisting informed the Panel that the teacher was informed that the matter would proceed despite the changed circumstances.

### **Student Welfare Officer**

Under oath the Student Welfare Officer stated that her statement of 7 October 2009 was true and correct. Currently the welfare officer at the school, a position she had held for 16 years, the school welfare officer told the Panel that she had worked with student 1 on and off for a year and a half before the incident with the teacher, as he was identified as having some behavioural issues with other students and teachers.

The Student Welfare Officer stated that the teacher had been struggling with student 1's particular class. She also stated that she felt the teacher generally took students' comments too personally. The Student Welfare Officer noted that the teacher had a need to feel that he was in charge of students.

The Student Welfare Officer stated that she saw the student the day after the incident. Angry, upset and embarrassed, he said he didn't want to talk about the incident. After a while he stated that the teacher had pushed him and he'd fallen over desks. The student talked about how the teacher had no right to do the things that he did, and that he should be able to feel safe from such behaviour at school. He stated that he was going to take the matter further as the teacher was not allowed to do such things and should be sacked. The school welfare officer said the student was shocked and it was as if he believed what happened couldn't happen. He indicated that he wouldn't let it happen again and that he would act to defend himself if it did. The school welfare officer noted that the student did not act to defend himself physically. He was concerned about his safety should he come into contact with the teacher who was his homeroom and subject 1 teacher.

Prior to the incident the Student Welfare Officer stated that the teacher would call into her office at times to talk about the difficulties that he was having with the student's class. The Student Welfare Officer shared in her statement that *"he seemed to me like a teacher who was reluctant to adopt more effective management strategies ... he admitted that he gets angry and frustrated, and that he felt that students should have worked out that their comments can affect his moods and his ability to control the class."* The Student Welfare Officer stated that she had talked to him about depersonalising pupil comments and suggested a behaviour management program.

The Student Welfare Officer also offered to run a restorative justice session known as a "no blame conference" for him. The teacher agreed which the Student Welfare Officer saw as positive. The aim was to discuss with the class behaviours that were affecting behaviour and relationships. A "no blame conference" was run with the student's class. The students wrote down anonymously what was happening in the class, and what it was like for them. The students indicated that they were affected when the teacher yelled at them, kept them in for reasons that were not their fault and didn't control noisy students when others were trying to learn. The teacher also shared information about student behaviour that impacted him and his ability to teach. The Student Welfare Officer stated that by the end of the conference everyone had had an opportunity to contribute and she felt things had progressed well and there was a level of understanding, and an opportunity to progress a classroom agreement. Then the teacher made a statement to the class that she considered most unhelpful. The statement was about his inability to change his behaviours, and that it was the students who would need to make changes. The Student Welfare Officer stated that the students responded negatively, and that she was disappointed that the session ended that way.

The Student Welfare Officer told the Panel that she was upset about the student 1 incident because she and the school had worked hard to address his behaviours and there had been significant improvement. Then the student found himself on the receiving end of violent treatment from a teacher. She stated that the teacher may not have been aware of how far the student had progressed, but she had suggested to him that the student needed to be managed in a certain way in the past. The Student Welfare Officer said that she was very concerned about the impact that the incident would have on the student given the historical circumstances and progress that had been made. After further

conversations with student 1 she felt student 1 was clear in his thinking that he would retaliate if something similar happened again.

After the 10 June 2009 incident the teacher returned to see her again. She recalled that he was worried, and upset about having lost control. He talked about student 1 making him angry and he said student 1 had pushed all of his buttons. His version of events was similar to student 1's.

The Student Welfare Officer explained that she had reservations about the second appointment with the teacher. She noted that she did recall telling him that he needed to learn new skills if he was going to continue to teach, because there were lots of junior secondary students like student 1 who could also make him angry with their comments and conduct. She stated that she made it clear to the teacher, and the principal, and the Head of Campus that the teacher needed professional counselling. She indicated outside help was important to help manage his anger.

The Student Welfare Officer noted that the teacher had been appointed to the school, then left to teach interstate, then returned in 2009. She told the Panel that on his return it became clear to her that he wanted *"order, silence and that he didn't want to be challenged"* by students. She stated that he *"stood out as a teacher that students would complain about"* due to how he operated in a classroom. She told the Panel that when very recent complaints in 2010 (i.e. complaints not being examined by the Hearing) were raised in a formal way, the teacher denied them, then he resigned from the school.

The Student Welfare Officer told the Panel that the teacher was encouraged to attend Professional Development but she felt that the teacher saw this as a negative thing. She believed that he did see a counsellor to address his anger management issues. The Student Welfare Officer also relayed that she believed that since then, on occasions, the teacher did exit the classroom during a lesson, as a strategy to manage his anger. The objective being that it gave him time to cool down and ask for help with the class while he was calming down.

The Student Welfare Officer noted that student 1 would not sit in with the teacher to receive an apology in person. On 13 August 2009 she handed student 1 the teacher's apology letter, which she had read with the teacher's permission. It was short. It stated that he was sorry for his actions and hoped that things would get better between them. The teacher also said that he was willing to talk to student 1 with the Counsellor, but student 1 refused to meet with the teacher.

The Student Welfare Officer stated that since the incident with student 1 she had continued to receive complaints from other students about the teacher. On each occasion she asked the students' permission to raise the issues with the teacher, and she did so. The students' complaints were similar in that they complained about the teacher's level of anger with them and his classroom management techniques, as well as his level of rigidity, regularly sending students out of class for small indiscretions, inconsistency with consequences and being verbally aggressive. The Student Welfare Officer noted that the students were always keen to resolve the concerns. On each occasion that the Student Welfare Officer spoke to the teacher he indicated that he had years of teaching experience

and effective strategies. He also consistently held the position that students needed to change their behaviour and it was not about what he was doing. Based on her experiences the Student Welfare Officer indicated that she held an alternative view.

The Student Welfare Officer did not know of the second student, student 2, as he had not come to her attention as the student welfare officer.

### **Student 2**

Student 2 gave evidence under affirmation by telephone. He said that his statement dated 11 March 2010 was true and correct. He told the Panel that he was currently in Year 9 and that the teacher had taught him subject 2 in 2009 for a term when he was in Year 8.

Student 2 said he was at the computer when he asked for some assistance because his keyboard was not working. The teacher said that he must have done something wrong as he looked at his computer screen. He was standing behind student 2. Student 2 replied that it just wasn't working. The teacher gradually started to get angry. Raising his voice the teacher pushed student 2's hands and forearms away from the computer. He then said "*get up and come with me*" and student 2 followed the teacher to his desk. Student 2 said that he and the teacher were sitting facing each other on either side of the desk. The teacher became angrier as he was talking to him and the class was also getting louder. Student 2 said the teacher raised his voice more and became red in the face as he leaned in close to him and grabbed the front of his sports polo shirt. Student 2 moved out of the chair and closer towards the teacher as he pulled on his shirt front. Student 2 stated that there were already a couple of little holes in the front of his shirt and they got bigger when the teacher pulled the shirt. The teacher was then very close to student 2's face and he yelled loudly in his face "*shut-up*" holding him by the shirt front. The teacher then let go of student 2 and he sat back in the chair. Student 2 was then told to return to his computer. He stated that he was surprised and shocked at what had happened, and that he did not expect the teacher to yell in his face or to grab him. He stated that he told some of his friends and noted "*I was scared when he grabbed my shirt.*" At the end of the day he told his mother what had happened when she asked about the holes in his shirt. Student 2 informed the Panel that the teacher "*got angry often and fired up because kids would tell him he smelt of smoke*". Student 2 also stated that the teacher would "*get up close to you and make you feel threatened*".

### **The Teacher's Record of Investigation Interview**

The teacher did not appear on Day 2 of the Hearing. He did not give evidence. The Teacher's Record of Investigation Interview contains general admissions to Allegation 1. Further, in relation to the incident, he told the investigator that it was not uncommon for him to close the door when interacting one on one with a student, so that he could ensure privacy. He also stated that he held student 1 down with force, but not for long, and then proceeded to push student 1 down a second time when he attempted to get up.

When discussing the incident with student 1 and what led up to it, the teacher told the investigator "*I think a lot of its got to do with what I totally unexpected by some of the disrespect coming from students. I previously taught at the school for three good years ... I went back to Adelaide for two years ... and I decided to come back to the school... Based on*

*my previous experiences I found that quite a bit of disrespect had come into the nature of children. When I think back I think that had a lot of impact on how I was feeling about things. I've had some fairly hard children to deal with. I've had girls tell me that they don't like me, and when would I get that into my head. I've had children behind my back saying 'yeah - you keep walking' and it's this type of disrespect I believe that simmered, lingered; it hurt a little bit, or a lot. I guess on reflection this is what led to that incident."*

The teacher noted that he had other life pressures including waiting for a visa for his fiancée and her daughter. The teacher stated *"the bottom line is that I am a 47 year old teacher who pushed a 13 year old boy, and I have to accept those responsibilities and that action ... so while I can understand a little bit of where that came from, I certainly accept the responsibility of what happened."* The teacher indicated that he had had support from the school and followed a series of conditions that the principal had stipulated as a condition of his continued employment by the school. The first was an apology to student 1. The parents requested that the teacher not engage with student 1 and the timetable was then adjusted. He also had to remove himself from class if he felt a potential situation was emerging and the teacher stated that he had removed himself three times over a couple of months. He stated that a girl had made him feel angry so he left the class, went to the library and used the phone to try and get hold of a senior teacher. He indicated that he was supposed to use the data base more often to record student management issues however he disagreed with this stipulation but had not talked to the principal about it. The next stipulation related to his teaching style and self awareness. He noted that this point was just about learning from experience and understanding that children are different these days. He was to undertake some professional learning and become more professional in his communications with parents, although he stated to the investigator that he did not think there was a problem with his communication. He was also required to do some thinking about where his career in education was heading, he was to meet with the principal regularly and he was to seek professional help from a psychologist.

The teacher told the investigator that he was struggling to accept the way children behaved and was doing his best to change their behaviour *"most probably without a lot of success."* The teacher indicated that he didn't believe that he would have the same problems in 2010 as he would start with a new group of Year 7 students and he could establish a good rapport with them. *"I think a lot of what happened this year has been about being the new teacher on the block ... they have seen me as a new teacher and tried to see how far they can go"*. He indicated that with his next Year 7 class he believed that he would have good discipline and the maintenance of his good expectations, a good focus on work, common respect for each other *"the normal expectations that I have had for 20 years"* and added *" I believe that there are a number of Year 8 students who have made teaching very difficult ... I feel that I am capable of handling one or two students that go beyond the bounds of respect, but when you have four or five in the classroom that's difficult .... I believe in my discipline of students, I believe in my expectations, I believe in my teaching ... it's not something I find easy to change when I believe in them strongly."*

When asked by the investigator what he had learnt from the incident with student 1 the teacher replied *"I've learnt that there are students out there that haven't got the background to show respect ... they haven't had the teaching or moral upbringing maybe, I'm not sure where the disrespect comes from, but there are children out there that can be disrespectful. I*

*think that what I've learnt is that I have to expect it to happen ... I think I was caught off guard with the numbers of students that can show this type of disrespect ... it's really hit me that I have to expect that there are students that do not show respect, that can talk to you quite poorly ... and that's a major hurdle.... Some of these students seem to instantly dislike you and I don't know where that comes from. They defy you. One girl was very defiant, she refused to try correct touch-typing fingers. I tried many times to talk to her. I always got a very defiant attitude. She wouldn't listen. Her tone was very disrespectful. Her explanation was 'that's me - I can't change who I am' and there was hatred in her voice..... I don't really know how to deal with these types of students after talking quietly to them ... I don't know how to get them to slow down and to think about their tone of voice ....I believe that there is one out of ten students that won't listen and I am lost with them, they say no and I don't know where to go."*

The teacher told the investigator that he also had an incident in 1989 at another school. He denied that the incident with student 2 took place.

## **DISCUSSION OF THE EVIDENCE**

The teacher's conduct occurred in May and June 2009 when he was not registered as a teacher. The notification by the employer of action taken against the teacher occurred on 27 July 2009 after the teacher gained registration on 30 June 2009. According to sections 2.6.30 and 2.6.31 of the Act the Institute may inquire into a notification about a registered teacher that relates to the teacher's serious misconduct or fitness to teach. Because the teacher was a registered teacher when the notification was made the Institute had the power to inquire into his conduct or fitness to teach.

The Panel was of the view that the principles of natural justice had been fully adhered to throughout the preparation and progression of the Hearing. Further, mindful of the altered circumstances in relation to Day 2 of the Hearing, and the fact that the teacher would not be giving evidence, the Panel was satisfied that the teacher had been fully informed in a timely manner, that the matter would proceed on Day 2.

The Panel considered the evidence given by the two student witnesses and the staff from the school to be credible. The Panel, based on the balance of probabilities, determined that both Allegation 1 and Allegation 2 were proven. The Panel noted that as a consequence of the teacher's behaviour, both the students, and the teaching profession at large were impacted in a particularly negative way. In addition, and to the extent that it was possible given the Teacher's Record of Interview and the evidence of witnesses, the Panel reflected on the teacher's lack of understanding of the full and potential impact of his behaviour and the extent to which he could manage himself in certain common school situations. The teacher appeared to have reflected in a minimal way only, with regard to the range of persons affected by his conduct and the impacts of his limited self control.

The Panel viewed the teacher's conduct as serious and was of the considered view that there was sufficient evidence to map a pattern of concerning, unpredictable and harmful behaviour that should be absent from educational environments.

Teacher's are trusted and held in high regard by the community. It is important to society that schools and individual teachers create and foster safe functional school environments. The Panel made the general observation that schools are at times a sanctuary for young people as they deal with adolescent challenges and / or dysfunctional and/or violent external environments. Registered teachers within schools are duty bound to offer and model a measured respectful and supportive adult experience to all students in their care. It is unthinkable that students should be fearful of the adults that they are encouraged to trust in a school.

The Panel considered it significantly professionally remiss for the teacher to project in the manner that he did, that his problem behaviour originates and in turn rests with the antics of 'disrespectful' Year 8 students.

The question of serious misconduct was determined by the Panel in light of the qualities a teacher is expected to possess and recognised standards of professional practice. Required qualities of a teacher extend to role, duties and everyday behavioural management responsibilities in relation to students. As teachers are in a position of influence it is essential that good predictable character and sound judgement are exhibited by teachers and experienced by students. Given that parents and society entrust children to the care of teachers, it is important that the profession is regulated in a manner that ensures the protection of the public interest.

The Panel when considering the meaning of 'serious misconduct' referred to Kellam J in *Parr v Nurses Board of Victoria* (VCAT, 2 December 1998) where His Honour observed that *"the question of whether or not a nurse has engaged in unprofessional conduct of a serious nature must depend on the facts of each case. Clearly such conduct would not be serious if it was trivial, or of a momentary effect only at the time of the commission or omission by which the conduct was defined. It must be a departure in a substantial manner, from the standards which might reasonably be expected of a registered nurse. This departure from standards must be blameworthy and deserving of more than passing censure."*

Additionally the Panel noted that it has been stated that serious misconduct will encompass conduct *"which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency."* *Allison v General Medical Council* [1891-4] All ER 768

The Panel acknowledged that fitness to teach is assessed at the time of the Hearing. The Panel was also mindful that in *Burgess v Board of Teacher Registration QLD* [2003]QDC 159 the District Court observed that *"any behaviour found to be inappropriate for a teacher is relevant to the ultimate question of fitness to be a teacher, even though the events may have happened many years earlier."*

Given that the teacher decided not to attend the Hearing on Day 2, and did not give sworn evidence before the Panel, the Panel had limited ability to assess remorse, or any personal and professional remedial work that may have been undertaken by the teacher. Of interest to the Panel were professional reflection, legitimate understanding of the real and potential damage caused by the conduct of concern, and any in-depth explanation of why the teacher behaved the way that he did. These things could not be tested. However

there was evidence before the Panel that indicated that the teacher had a very limited insight into the broader issues and implications of his conduct, and more than a passing tendency to blame others for his unacceptable behaviour. The teacher asserted to the principal that he felt like the victim, that he was pushed to the limit and that his reaction was understandable given the circumstances. He aired repeatedly that the students needed to alter their behaviour, as opposed to him.

The Panel determined that the teacher was not fit to teach. The Panel also noted that from the available evidence it appeared that the teacher lacked perspective, balance, personal insight and professional credibility. The Panel seeks to make it very clear that its concern about a lack of professional credibility was bolstered by the fact that the teacher returned to Victoria, and started teaching in January 2009, but failed to renew his Victorian registration with the Institute. It was only when the concerns about the teacher's behaviour were examined in June 2009 that it was discovered that he was not registered in Victoria. It was the professional responsibility of the teacher to ensure that he was registered. He had been registered in Victoria from 2002 to 2006. It is understood that he was registered in South Australia for 2007 and 2008. Returning to teach in Victoria in January 2009, the Panel believes that it would have been clear what his professional and legislative obligations were.

Mindful of the time that has lapsed and possible associated limitations, the Panel is of the firm view that the Institute should progress the matter of the teacher teaching unregistered, to the fullest extent possible, as soon as possible.

Finally, and in addition to the matters before the Hearing, the Panel noted with grave concern that despite the legislative and professional requirement to only employ registered teachers, the school for a significant period of time, employed the teacher, who was unregistered. Mindful of the time that has lapsed and associated limitations, the Panel is of the firm view that the Institute should progress this matter to the fullest extent possible, as soon as possible.

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

On 26 August 2010 it was determined that the teacher had engaged in serious misconduct and is not fit to teach. The registration of the teacher is cancelled.

A handwritten signature in black ink that reads "Susan Halliday". The signature is written in a cursive style with a large, stylized 'S' at the beginning.

**SUSAN HALLIDAY, CHAIRPERSON**

A handwritten signature in cursive script that reads "Susan Halliday".

**per:**  
**LEONIE SHEEHY, REGISTERED TEACHER**

A handwritten signature in cursive script that reads "Susan Halliday".

**per:**  
**ROWLAND RICHARDSON, PANEL MEMBER**