

## **VICTORIAN INSTITUTE OF TEACHING**

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

**NUMBER:** 112

**REGISTERED TEACHER:** Shayne Robert HAUSLER

**PANEL MEMBERS:** Susan Halliday, Chairperson  
Garry Salisbury, Registered teacher  
Alina Jonas, Specialist Member

**ATTENDANCE:** The teacher did not attend the Formal Hearing  
Melinda Richards, Counsel Assisting with Ms Katrina Galanos, Instructing Solicitor on behalf of the Victorian Institute of Teaching

**DATE OF HEARING:** 2 and 3 August 2011

**DATE OF DECISION:** 31 August 2011

**FINDING AND DETERMINATION:**

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 31 August 2011 the Panel found the teacher guilty of serious misconduct, serious incompetence and unfit to teach. The Panel determined to cancel the registration of the teacher from 31 August 2011.

## REASONS

### BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 31 December 2002.

By letter dated 5 March 2009, the employer notified the Institute that it had taken action in relation to the alleged serious misconduct, serious incompetence and/or lack of fitness to teach of the teacher. The teacher's employment with the employer was terminated as a result of these allegations.

On 1 April 2009, the teacher's registration with the Institute was suspended due to non-payment of the 2009 annual registration fee.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 12 August 2009. The Committee decided to continue with the enquiry under section 2.6.47 of the *Education and Training Reform Act 2006* and referred the matter to an investigation.

On 24 November 2010, the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 18 April 2011 was served upon the teacher by registered post on 5 May 2011.

### ALLEGATIONS

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

*Whilst employed as a registered teacher at the expert level at the school from 2002 – 2007, the teacher:*

1. Behaved in an aggressive, intimidatory and disrespectful manner towards the Principal, including:
  - a. Making threats about the Principal to other staff members, including teacher 1 and teacher 2, making comments such as "I'll bring him down", "if I go, he goes", "I'll get the Principal before I go" and "I'll keep going until I bring the Principal down";
  - b. Making comments to other staff members, including teacher 3, such as "fuck this, the Principal hates me" and "I hate the Principal and I don't feel part of this school" and "he can't run a place, he doesn't know what he is doing";

- c. On 1 November 2005:
    - i. aggressively entering the staff room during a staff gathering, yelling, swearing and demanding that the Principal intervene in a fight between two male students;
    - ii. yelling, swearing and waving his arms in the corridor outside the staff room, nearly knocking the Principal over on his way to an Assistant Principal's office;
  - d. On 19 August 2006, while the Principal was walking around the lake in town B, swerving his car towards the Principal while yelling at him.
2. Behaved in an aggressive, intimidatory and disrespectful manner towards the Assistant Principal, including:
    - a. During the 2004/2005 school holidays, when teacher 1 was walking down the main street of town A with her children, yelling "teacher 1 you moll" out of his car window as he drove past.
  3. Behaved in an aggressive, confrontational and intimidatory manner towards teacher 3, the Head of the Health and Physical Education (HAPE) Department from 2004 to 2006, including:
    - a. On approximately 5 or 6 occasions, during discussions with teacher 3 after school when other members of staff had left for the day, shutting the office door and standing in front of it, blocking teacher 3's access so that he could not leave the room;
    - b. When teacher 3 tried to raise issues with him, responding by yelling, invading teacher 3's personal space, accusing teacher 3 of picking on him and threatening to report teacher 3 to the employer's regional office.
  4. Behaved in an aggressive, confrontational and intimidatory manner towards teacher 4, the Head of the HAPE Department in 2007, including:
    - a. Acting in an angry, threatening and aggressive manner when she raised issues relating to his work;
    - b. Standing over teacher 4 in her personal space when he had conversations with her;
    - c. Closing the door behind him when he was alone in a room with her or putting his arm up in the door frame blocking the exit to the room;

- d. On 23 February 2007, confronting teacher 4, standing in her personal space and yelling at her in front of students whilst she was enforcing a rule in the school's gym;
  - e. On 6 June 2007:
    - i. approaching teacher 4 her in her office alone at approximately 4 pm when other staff had left to discuss issues he had raised in an email of 5 June 2007;
    - ii. closing the door behind him and standing over her during the discussion;
    - iii. telling teacher 4 that if she had any problems with him she should go directly to him and should not go above him to someone else about issues to do with him.
  - f. After the exchange on 6 June 2007, not speaking with teacher 4 but instead stared at her often for prolonged periods, including at a professional development session on 24 August 2007.
5. Behaved in an aggressive, intimidatory and disrespectful manner towards graduate teacher 5, including:
- a. In 2006, after finding out that teacher 5 played sport with the Principal, accusing teacher 5 of being a "double agent" and saying that he was not to be trusted;
  - b. On 23 February 2007, while teacher 5 was in the Science staff room with other staff members:
    - i. swinging open the door to the staff room and placing his hand on the door jamb;
    - ii. loudly and aggressively asking teacher 5 "Why are you fucking playing sport with that arsehole?", referring to the Principal;
    - iii. telling teacher 5 that he "needed a fucking big jar of Vaseline";
    - iv. storming out of the staffroom and slamming the door.
6. Undermined graduate teacher, teacher 6 and disrupted his classes, including:
- a. In 2006, when asked by teacher 7, the Head of the Technology Department, to provide teacher 6 with resources to assist him to teach Year 7 Woodwork

- for the first time, failing to provide any written resources to teacher 6 other than a rough semester planner;
- b. During 2006 and 2007, frequently entering the classroom where teacher 6 was teaching woodwork, disrupting teacher 6's class and unsettling teacher 6.
  - c. During 2007 constantly entering the classroom in which when teacher 6 was teaching Year 8/9 girls Woodwork, when he was teaching in an adjoining classroom class;
  - d. During 2007, interfering in teacher 6's management of his classes, including by:
    - i. telling him off in front of a class for the behaviour of a student who teacher 6 had allowed to go to the toilet;
    - ii. complaining that a student had looked from the small storage room into his classroom;
    - iii. yelling at students who teacher 6 had instructed to measure the height of a chair in teacher 6's office;
    - iv. instructing students who were completing tasks that teacher 6 had set.
  - e. On Wednesday 22 August 2007:
    - i. confronting teacher 6 in front of his Year 11 class, and criticising him for allowing a student to work in the room next door.
    - ii. complaining in front of the Year 11 class that one of teacher 6's students was using his mobile phone in the storeroom, and demanding that teacher 6 do something about it;
    - iii. interrupting teacher 6's afternoon class on 6 to 8 occasions, each time challenging him about a minor issue in front of the students;
  - f. Repeatedly challenging teacher 6's qualifications to teach woodwork, including directly with teacher 6, with teacher 7 and in faculty meetings.
7. Undermined teacher 8 and disrupted her class, and then behaved in an aggressive, confrontational and intimidatory manner towards her, including:
- a. On 24 June 2005, while looking through a glass window into teacher 8's Year 9 PE class, sticking up his middle finger at student 1 in view of other students in the class;

- b. After the class, confronting teacher 8 at the door of her office, blocking her entrance, standing over her and telling her angrily that his gesture was alright because he had a great relationship with his students and that she should get over herself;
  - c. A few days after the incident on 24 June 2005, standing behind the glass window of the assembly hall and staring at teacher 8 in an intimidating manner as she spoke with a colleague in the corridor on the other side of the window.
- 8. Failed to contribute equitably to curriculum development in the HAPE department, including:
  - a. In 2005, supplying incomplete and inadequate lesson plans for units of study in Health that were required for the use of all teachers in the HAPE department;
  - b. In 2007, not completing the units of curriculum relating to 'golf' and 'swimming' that were assigned to him;
  - c. Failing to prepare lesson plans for his classes, not following the curriculum, and relying on other teachers' materials for lesson preparation.
- 9. Generally failed to demonstrate collegiality, courtesy and respect towards his colleagues and to work co-operatively with them:
  - a. The matters alleged in 1 to 8 are repeated.
- 10. In Semester 2 of 2007, did not provide adequate learning opportunities to students, by failing to follow and deliver the required curriculum in the following HAPE classes:
  - a. Year 8 Health Class including:
    - i. Not teaching part of the curriculum that related to coping with stress, general coping skills, and grief and loss, on the grounds that he could not teach the curriculum as he had depression;
    - ii. Failing to advise teacher 4, the Head of the HAPE Department, that he was not comfortable teaching that unit and was teaching alternative curriculum;
    - iii. Failing to keep the class up-to-date in line with the other Year 8 Health Class;
  - b. Year 9 Health Class including:

- i. Failing to organise a “Creating Conversations” evening for the Year 9 Health class, as was required of all Year 9 Health teachers;
    - c. Year 11 PE Classes including:
      - i. Delivering classes in a manner that disengaged students, using PowerPoint presentations with copied parts of the textbook on slides with no explanation or effective discussion of the material;
      - ii. Failing to deliver parts of the curriculum including the topic on muscle fibres which was part of the required curriculum.
11. In 2006 and 2007 failed to deliver and demonstrate an understanding of the required curriculum in the Technology department including:
- a. Failing to follow the Curriculum Standards Framework (CSF) and Victorian Essential Learning Standards (VELS) in his Woodwork classes, delivering only the practical components and not the theoretical components of the curriculum;
  - b. On 6 May 2007 emailing a proposal to teacher 7, the Head of the Technology Department, to teach a pre-driver education unit to Year 10 students as part of the Technology Curriculum, when the Technology curriculum focused on woodwork, metalwork, textiles and Computer Aided Design (CAD) as key learning areas;
  - c. In 2006, failing to deliver the curriculum to his Year 7 Woodwork class in accordance with VELS, in circumstances where at the end of the year student workbooks largely consisted of drawings of pictures of tools and the naming of tools.
12. Failed to maintain a safe learning environment for students, including:
- a. In Term 2 of 2007 on one Wednesday afternoon:
    - i. allowing a Year 7 Student, student 2 to leave the classroom in a distressed state after being teased by other students in the class;
    - ii. allowing unsupervised students to run in and out of the classroom, disrupting the adjacent classroom;
    - iii. failing to supervise the class adequately, so that one male student was observed holding a drill and poking it at another student as if to stab him;

- b. Frequently referring issues of routine classroom management to the Assistant Principal, instead of dealing with the issues himself

On 1 November 2005 when a fight broke out with 2 male students in his presence, coming into the staffroom in an agitated and aggressive manner demanding that the Principal deal with the incident, instead of attending to the incident himself.

## **EVIDENCE**

Counsel Assisting noted that the hearing set down for Tuesday 31 May 2011 had been adjourned after a late request for an adjournment was received from the teacher on the afternoon of Friday 27 May. The request was made on the basis of a medical condition. The teacher agreed to forward evidence of the medical condition; however this information was not forwarded. Just prior to the rescheduled hearing of Tuesday 2 August 2011 the teacher submitted a statement dated 1 August 2011 in which he expressed his regret that he would not be able to attend the hearing because of a recent surgical procedure and the death of his mother several weeks prior. The teacher also stated that all the evidence was available and that attendance at the hearing could impact on his recovery.

Counsel Assisting noted that the teacher's statement did not contain a specific request for a further adjournment.

Counsel Assisting noted that there were three years of allegations covering the period 2005-2008 from seven previous colleagues of the teacher. She noted that the Panel had to consider the teacher's current fitness to teach and if serious incompetence, serious misconduct and unfitness to teach were established. She submitted there was no evidence to justify a referral to a medical Panel.

Panel member Halliday declared that she knew the Principal as around 15 or 16 years ago she had met with the school's principal, Principal 2, and the Deputy Principal, the Principal, when the school was involved in an industry based activity. She also recalled that the witness had attended a regional Principal class dinner of about 40 persons where she had been the guest speaker about six ago. Panel member Halliday stated that she did not have a personal or professional relationship with the Principal, and had never worked in a school as a colleague with the Principal.

The Panel adjourned to consider the teacher's statement of 1 August 2011, the possibility of referring the matter to a medical Panel and Panel member Halliday's declaration. The Panel agreed to continue the hearing.

After all of the evidence had been presented to the Panel, the Panel requested that correspondence be forwarded to the teacher on its behalf noting that the medical documentation he had agreed to forward in support of his request for the adjournment of the 31 May 2011 Formal Hearing had not yet been received, that Panel member Halliday had made a declaration in relation to witness, the Principal, at the commencement of the hearing, and that the Panel would be finalising its decision on 31 August 2011.

At midday on 31 August 2011 the teacher forwarded an email to the Institute noting only that he would appreciate an email of the outcome of the hearing as soon as possible, saying that he would like to peruse the decision and act upon the outcome prior to his departure for interstate work.

### **The Principal**

The Principal was the former Principal of the school and said that apart from two minor typographical errors in his statement dated 15 March 2010, it was true and correct. The Principal's professional history was:

- commenced teaching as a legal studies, accounting and economics teacher at school 2 in 1972
- school 3 for 13 years
- from 1989-1993 was at the employer's regional office and later in that period was appointed to the Principal class in charge of school reorganisations
- Deputy Principal and Principal of the school from 1993-2010
- part time with an association as an on-call resource for principals
- conducting school reviews for the employer (approximately six per year).

The Principal said school 1 had become the school in the late 1980's. When he took on the role of Principal, having previously served as Deputy Principal, the school had 850 students which had increased to 1050 students over time. Students were drawn from a low socio-demographic area. The Principal said an educational precinct plan had been developed so it catered for pre-school up to post year 12 students. Staff had grown from 90 to 140 including part timers. The school had a high percentage of students who ranked low on the School Family Employment Index (SFOI). There was a large component of single parent, transient families. There was a Housing Commission area close to the school. Most of the students had mono-cultural, Anglo-Celtic background. The staff had experienced generational turnover and now contained a mix of new and experienced staff. The school's strengths were supporting individual needs, the leadership opportunities for students and the sporting and academic achievements of its students. The School Leadership team had been recognised and awarded by the employer. The school provided an increasing range of subjects and training courses continued to grow in number. The staff took a great deal of pride in the school and the community's perception of the school was improving. The Principal described the school as embedded in the local community and with close links to local primary schools.

The Principal said the teacher:

- trained as a carpenter in the Royal Australian Navy
- was employed by the school as a physical education and technology teacher.
- was absent between fourteen and thirty days each year

- was often non-compliant, had difficult relationships with teachers and his mindset with the principal was not good
- was provided with support, professional development, counseling, support groups and individual mentoring
- had experienced some family difficulties and health issues with his son who made a good recovery.

The Principal said that he had changed the teacher's duties from careers advisor to classroom teacher. This was done in consultation with the Local Administrative Committee (LAC). The teacher had been in the position for two years and the change had been made in consultation with the teacher. He said the teacher had not complained to him of the change. The teacher was given a support group in 2002 which sought to address issues surrounding his communication skills, his behaviour and his teaching obligations. The teacher did not respond well and withdrew from the process. He reached the appropriate level of competency but only to the lowest level.

When questioned about the alleged remark made to the teacher's son, the Principal said it was a total concoction and there was no basis for it. He said an officer of the employer held a formal investigation and decided that there was no basis for the complaint.

In the school review process from 2000 on, goal setting was aligned with the school charter. The Principal said that the teacher felt the process was directed at him. The Principal offered him professional development to develop his skills and the teacher accessed counseling services. In 2004-05 teacher 3 was his mentor. He said the teacher had been given a number of support groups since 2002 but he could not remember the details. The Principal said that the teacher succeeded in gaining compassionate transfer status in 2005 which meant he would be given priority for a transfer. A position in town B was available along with other suggested positions. The union was also enlisted to help. The Principal said that the feeling in the region was that schools would not advertise a vacancy because they might end up with the teacher given his priority status.

In relation to allegation 1(d), the Principal said that the teacher's car was eight metres from him; the occupants of the car were yelling at him. The incident took 8-10 seconds and then the car sped off. The Principal didn't want to report it to the police as he wanted to keep it at a school level. He said that in 2003-04 there were a series of performance issues with the teacher. In relation to allegation 1 (c ii), the Principal said that the teacher's actions were not accidental but a deliberate attempt to intimidate him.

#### **Teacher 4**

Teacher 4 stated she was a secondary teacher at the school and she had made a statement dated 12 March 2010 which she had re-read. She did not wish to make corrections. She agreed that it was a true and correct statement.

Teacher 4 said the Health and Physical Education department (HAPE) contained 10-12 teachers who worked collaboratively both in planning curriculum to comply with the Victorian Essential Learnings (VELS) but also to ensure consistency throughout the school.

She said the curriculum was planned week by week which made it easier to share resources. There was a culture that teachers didn't deviate from the curriculum unless it was discussed with the other HAPE teachers. Units were divided up amongst staff but the teacher never completed or submitted any. When the agreed date arrived for submission the teacher claimed that he wasn't told but teacher 4 denies this. She said that when she went to his desk in his absence to see if there was any work completed she found the resources she had provided to the teacher to assist him to write the unit untouched.

In regard to allegation 4(d) she stated that it was a wet slippery day and HAPE staff was attempting to reduce the amount of water and mud being walked inside by students. She said the teacher never raised any safety issues with her and junior students were still going around the back to use that entrance. In regard to allegation 4(e) she said it was a lengthy conversation with the teacher who began aggressively but ended in tears. In regard to allegation 10(b) (i), teacher 4 said that the teacher did not collect the notebooks that students were to progressively complete in the unit. She said that the notebooks were to assist students to discuss drug use with their parents and were crucial in their success. In relation to allegation 10(a), teacher 4 stated she was not aware that the teacher had an arrangement with teacher 9 not to teach the unit on stress and when she discussed the teacher's claim with teacher 9 she denied it. Teacher 4 had told the teacher to get help from an Assistant Principal for his problems which she felt unable to assist with. Teacher 4 said that she felt the teacher either didn't know the effects of his behaviour on others or he was being calculating. On reflection she thought it was the former. She asked why he would show a video on depression if he was not comfortable with the topic.

In regard to allegation 10(c) (i), teacher 4 said that teachers would use a PowerPoint presentation in conjunction with other activities including discussion and explanation. The teacher was merely providing slabs of photocopied sections from the textbook. In relation to allegation 4(f), teacher 4 said that she would find the teacher staring at her once or twice a week and she grew tense and didn't want to be at school. She stated that the teacher thought everyone was out to get him and she was still frightened she would see him. His impact on the HAPE team was negative. Teacher 4 said that good preparation time was available to teachers to plan classes but she never saw the teacher produce any results. She said that health issues were very important to students because of the risk-taking behaviours they engaged in. She could not trust the teacher to deliver the curriculum and he used age-inappropriate activities. She said it wasn't appropriate to challenge staff publicly when they weren't doing the right thing but instead she tried to be encouraging and send emails as a way of making progress with the teacher. She said she did not observe the teacher's classes in action.

### **Teacher 3**

Teacher 3 said he had made a statement on 15 March 2010 and said he had no corrections to make to it. He said it was a true and correct statement. He had been at university 1 completing his undergraduate degree between 1997 and 1999 and completed a Graduate Diploma of Health Education in 2000. He had taught at the school since 2001 and both his parents had worked at the school. He stated that his timetable had an increasing PE load. He found the teacher difficult to work with and he took little care in his appearance, preparation and punctuality. He was unhappy and negative about

everything. When he became Head of HAPE in 2004 the teacher challenged everything he did and had a problem with the leadership at the school.

Teacher 3 said that the PE staff always organised the school swimming sports and it was a day for them because of all the organisation and responsibility. He said the teacher was absent and had been assigned a role. Teacher 3 expressed his disappointment to the teacher who claimed that he had his own medical issues and his son was ill. When the PE staff shifted the teacher refused to move his desk to the new area and when he complained later teacher 3 reminded him that he had been the one to refuse a move. He said that the teacher complained that he was out of the loop. As the Department Head teacher 3 said he tried to send the teacher emails but he always had excuses why he couldn't attend meetings or prepare work. He said the teacher was very aggressive towards the Principal.

Teacher 3 said that the PE department worked harmoniously after the teacher left, after what had been a very stressful period. There had been a lot of collateral damage caused by the teacher's behaviour. Teacher 3 said that the teacher berated students in front of the class and some students were scared of him. He said that the teacher wouldn't plan classes. He sat at his desk looking at football websites or reading the newspaper. He said that the teacher's classes were based around playing games and practical activities. The classroom management plan was not followed. He would dump students with other teachers or send them to the year level coordinators. Teacher 3 said the teacher did not take advice and would not change his behaviour. He always claimed to be the victim and invaded people's personal space. Teacher 3 said he didn't tackle the teacher on performance issues because it just created more problems and everyone was on eggshells. He stopped delegating tasks to the teacher.

### **Teacher 1**

Teacher 1 stated she was an Assistant Principal at the school since 2007 and she had made a statement dated 12 March 2010 which she had re-read and did not wish to make corrections to. She agreed that it was a true and correct statement. Her qualifications included a Bachelor of Arts in History/English from university 2 followed by a PE/English degree at university 1. She had commenced teaching at school 4 in 1990 and was on the staff at school 5 from 1991-2000. She then took family leave and commenced teaching at the school in 2002. She was responsible for year 7 as coordinator, became a leading teacher in charge of student wellbeing and then the Assistant Principal in overall charge of the same area. She had taught Health and PE to year 7 and VCE Units 1 and 2 PE.

Teacher 1 said the HAPE department at the school was very progressive and team oriented. The curriculum was current and evolving and they had taken the opportunity to develop units in a vertical system. They had a good capacity to improve and they shared their work. They reviewed the curriculum carefully and were mindful of the need to include a literacy component and catered for both VCE and VET students.

In 2002 the HAPE department was not functioning well because of difficulties with the teacher and there was clear evidence of tension at that time because of his negativity. In relation to allegation 2(a) teacher 1 had no doubt she heard the words "teacher 1, you moll!" yelled at her. She said the teacher had a very distinctive car with a loud engine. She

felt humiliated and said she would never speak to him in that way. She said she was new at the school and took no action apart from telling the Principal. She said she felt that the teacher was using his physical size to dominate her, he spoke loudly. She felt he had a clear hatred of the school administration and he often tried to collude with her by getting in close. She said the teacher repeatedly claimed ignorance to avoid doing what was requested of him. Teacher 1 said HAPE leaders were methodical in their emails, content was shared and group emails were regularly sent. The teacher always claimed that he didn't get them and teacher 1 felt he ignored his professional obligations. In regard to allegation 10(c) (i-ii), teacher 1 said the curriculum was set and the teacher ignored it. She said that the PowerPoint presentation was being used to reproduce material that was already provided in a seventy dollar textbook.

Teacher 1 said the teacher engaged well in practical activities as part of a team but when new curriculum with more emphasis on theory was introduced along with greater professional accountability, he could not manage it. Teacher 1 stated that he lacked the capacity to do so. He wasn't interested in sharing or acting on the new VCE curriculum. When his son was ill the teacher was offered lots of support but he didn't access it. His absences seemed to increase after his football club won. In regard to allegation 12(a) (i-iii), teacher 1 said there were only six students left in the classroom and the teacher was not there. She was of the opinion that the teacher had told the other students to tease student 2 and having reflected she said that if she had had more experience as an assistant principal she would have talked to the teacher about his behaviour. She believed the boys' version of events that they had been encouraged by the teacher to tease student 2. She felt that the teacher was a poor role model and that he did not deliver the planned curriculum. She thought he was barely competent and did not satisfy the standards set down for the Expert teacher class by the employer.

### **Teacher 6**

Teacher 6, a technology teacher at the school, stated that he had made a statement dated 11 April 2010 which he had re-read and did not wish to make corrections to. He agreed that it was a true and correct statement. Teacher 6 had completed a Diploma of Education in Applied Learning at university 3 in 2005 and started at the school in 2006. He had eleven years previous technology experience and had an advanced diploma which he said was the equivalent of an apprenticeship in a trade.

He said that his VCE class had received excellent results in 2006 but the effect of the teacher's behaviour had been devastating for him. Because he had been so impacted it affected his family and his relationship with his children. He couldn't sleep and was anxious about each new day. He became depressed about the whole issue and couldn't handle it anymore. Thanks to teacher 7 and other staff he was able to cope but without such support he wouldn't be teaching. It was a huge relief when the teacher left the school. He said he now felt more comfortable but talking about the events brings it all back and affects him. He said technology teacher meetings were tense and he was too frightened to say anything. He said the teacher's behaviour impacted on students, for example the student building the chair whom the teacher ejected from the office. Teacher 6 said the teacher was verbally aggressive, stood over the student and intimidated him. Teacher 6 said other teachers supported him but the teacher systematically bullied him. He said the teacher didn't leave work for classes and couldn't provide teacher 6 with any

handouts for students. His semester planner contained little information. He stated that the teacher's classes did no theory work.

### **Teacher 7**

Teacher 7 stated that she had made a statement dated 12 March 2010 to which she did not wish to make corrections. She agreed that it was a true and correct statement. She said she was a secondary teacher at the school and had received a Diploma of Fashion Design/Production at the TAFE 1 in 1973. In 1974 she received a Diploma of Education from college 1. She commenced teaching at school 6 in 1975 and consequently taught at school 7, lectured at college 2 and then took family leave. She had been teaching at the school for 23 years. She had been a year level coordinator for 13 years and the Technology Head of Department in 2006-07. Originally the technology department contained accomplished trade teachers including woodwork, metal, electrical, foods and textiles teachers but this mix had changed. Teacher 7 stated that the teacher commenced teaching woodwork in 2003 and taught it for some years. Teacher 7 said she was never game enough to ask him what his actual qualifications were. She said that considering the number of putdowns he handed out in relation to other people's qualifications and experience she was 'gutless' for not asking the teacher about his own.

As a technology teacher she said the teacher showed no evidence that he understood either the Curriculum Standards Framework (CSF) or VELS. She said that the teacher provided excuses as to why he hadn't completed curriculum outlines after being given the pro-formas to fill in. He did not use them. Teacher 7 felt that his length of time in the profession suggested he should have accumulated resources over that time. She contrasted the teacher's efforts with teacher 6 who helped out with ideas he had networked from other schools. Teacher 6 was a hard working teacher who created a paper trail of resources. Teacher 7 said she had never seen a person as upset as teacher 6 by the harassment of the teacher. Teacher 6 was intimidated and made to feel he wasn't good enough by the teacher who tried to make him look like a fool in front of his class.

Teacher 7 said the emails from the teacher were so persistent that she refused to deal with him and asked the Principal class to do so. Teacher 7 said she could not understand why the teacher was undermining young teachers and she was aware that other teachers were experiencing trouble with him. She said that the Principal did not encourage teachers to find fault with the teacher. Teacher 7 said she began to document events and discussions with the teacher because she believed he was irrational. She said she became aware of the teacher's issues in regard to professionalism and competence when she became a Department Head. He was not prepared to follow department guidelines, he provided no documentation, didn't produce outlines when asked and couldn't help new teachers. She gave an example of a folder she prepared to allow him to store outlines and notes in order to get him organised. After five weeks he had done nothing.

### **Teacher 9**

Teacher 9 said she had made a statement dated 10 March 2010 to which she did not wish to make corrections. She agreed that it was a true and correct statement. She had taught literature, media and legal studies at school 8 and school 9 previously and at various times had been a year level coordinator, VASS coordinator and VCE coordinator. She had been an Assistant Principal at the school since 2001.

In regard to allegation 10(a) (i), she said that the teacher did seek permission to use a different resource but she told him he needed to take that up with his key learning area and it was not her place to grant that permission. She would not have made a judgement because she wasn't up-to-date with the health curriculum. The teacher had told her he was interested in depression so he wanted to teach that unit. Teacher 9 referred him on to get some advice on conflict resolution. She recalled that depression was mentioned in connection with the teacher in 2005. She said he was referred to collegial services, employee assistance services, professional development activities, the teacher Education Network in town B and regional psychological services. In February 2006 she was told he was okay to return to teaching. She said that the teacher had used up all of his available leave and noted that he did not take too many days together. A very small number of teachers supported the teacher. She said that most HAPE teachers in health and PE were young and enthusiastic while the teacher was reluctant.

A timeline of events was provided to the Panel. Teacher 9 said the Principal confronted unprofessional behaviour and the teacher could not cope with this. Teacher 9 said she had to deal with the teacher who occupied more of her time than any other staff member. She said the school had been unchanging for some time and the Principal was a brave Principal who in his first five years established a new leadership team and that quite radical changes were made. The Principal was very supportive of staff. A vertical curriculum structure was introduced and while most staff were delighted, the teacher was confronted by it. Teacher 9 said that about 3-4 staff were unhappy with the changes and preferred the 'old ways.' She said the Principal did not keep his door closed and staff became used to working hard.

Teacher 9 said she supported teacher 4's view that the teacher did not follow the curriculum outlined by departments. She said the VCE curriculum was not covered. She said the teacher wanted to focus on baseball and she tried to talk him into focusing on the development of skills rather than just playing the game. The teacher focused on finding fault rather than trying to develop solutions. He had a history of conflict with the leadership in the HAPE area. She felt that teachers were too forgiving when faced with a colleague who was negative and difficult. She said that the evidence by the end of 2006 was that the teacher could not reach the standards required for his classification and he performed at the lowest level of competence at best. His relations with students were overbearing and physical. He'd back students into a corner and then appeal to members of the principal class to deal with the problems he'd created. She said that the group that was unhappy with how the school was progressing, and shared the teacher's feelings about the school, had now left the school. She said that the teacher had a huge negative effect on those around him.

### **Teacher 8**

Teacher 8 gave evidence by telephone and said she had made a statement dated 10 May 2010 to which she did not wish to make corrections. She agreed that it was a true and correct statement. She was a secondary school teacher who had a Bachelor of Human Movement from university 1 and a Diploma of Education from university 4 at town B. She commenced teaching at school 10 in 2000, had a term at school 11 and then four years at the school. She had taught science, mathematics, physical education and health.

She said prior to her confrontation with the teacher their relationship had been okay and they would talk to each other professionally. She said that after the incident the teacher had come out of the office forceful, aggressive, and angry. He was trying to justify what happened. She denied that he had apologised and noted that the issue had never been resolved. She declined to sit down with him and discuss the issue because she was concerned about her own safety. She said she became emotional and although she was mad about it at the time the actual incident was no big deal. She said a series of events occurred which she believed were related to the school incidents. She said that she began to receive crank phone calls and her letterbox was blown up. She no longer felt safe and the incidents went on for a long time. She didn't report the calls or damage to the police and these things only stopped when she moved house.

### **Teacher 5**

Teacher 5 gave evidence by telephone and said he had made a statement dated 25 March 2010 to which he did not wish to make corrections. He agreed that it was a true and correct statement. He said his professional background was as a medical scientist working in hospitals and in institute 1. He had completed a Bachelor of Applied Science and worked in the laboratory at the school while he completed his Graduate Diploma of Education. He had taught mathematics, science and chemistry and was now teaching at school 12.

Teacher 5 said he was embarrassed by the circumstances in which the confrontation with the teacher occurred. He confirmed that the words used by the teacher as outlined in allegation 5, were the words that were used. He said that he had never felt threatened by the teacher. He agreed that the teacher's behaviour was unacceptable, but noted that the context had to be considered. He said that the teacher had been an active contributor to the production of school goals working in a small group. Teacher 5 had witnessed the teacher's involvement in sport days where he gave positive feedback to students and he contributed to school activities. He said that he would have observed some of the teacher's classes when he was given an extra class in physical education

### **Witness 1**

Witness 1 was subpoenaed to appear and the teacher's medical records were tabled. Witness 1 said he had received his MBBS in 1991 and qualified as a surgeon in 1996. He had operated in town B since 1995 and the teacher had been a patient since 2000. He said that he had a good rapport with the teacher. Witness 1 did not believe that the teacher had a medical impairment that would affect his ability to practise as a teacher.

### **Closing Statement**

Counsel Assisting in her summation said that the witnesses had sworn to the truth of the events and that the Panel could rely on their statements. Her opening statement provided detailed argument about each allegation. She stated that the teacher denied swerving his car towards the Principal, denied calling out crudely to teacher 1 in town A, and denied confronting teacher 5 in the science staffroom; but the witnesses were able to provide clear recollections of each of those events pointing to the veracity of their statements. She stated that the evidence for the truth of allegation 10(b-i) was limited and pointed out that teacher 4 was unclear and perhaps the teacher had merely been tardy in organising what was required.

Counsel Assisting stated that in assessing whether the teacher's behaviour satisfied the standard of serious misconduct and serious incompetence and fitness to teach, the Panel had to use the provisions of the 2006 Act rather than the recent amendments. She described the teacher's bullying, aggressive behaviour towards a number of the witnesses and in particular his behaviour towards teacher 6 as disgraceful. She said that without the intervention and support of teacher 7 and others a very fine teacher could have been lost to the profession. She described teacher 6's account of his harassment and undermining at the hands of the teacher as moving and said it could not be doubted. She said the teacher's treatment of colleagues, particularly younger colleagues, and those who took on positions of responsibility was unprofessional and not collegiate.

She noted that it may be difficult to judge whether the teacher was seriously incompetent in his teaching practice. However there was evidence of the teacher's poor performance. Counsel Assisting stated that a finding of serious incompetence was open to the Panel given their expertise in the area of education.

In relation to fitness to teach Counsel Assisting said that witness 1's evidence should be accepted and that the teacher had no medical impairment, and further that there was no evidence to warrant referring the case to a Medical Panel.

Counsel Assisting stated that the teacher's serious misconduct showed a lack of insight and no contrition which was the only information about, or guide to, his behaviour in the future.

Counsel Assisting stated that a lesser outcome than cancellation was not appropriate.

## **FINDINGS**

The Panel found all the witnesses reliable and their statements consistent between their written and oral evidence. The Panel accepted Counsel Assisting's submission that they could be relied upon as to their truthfulness. The Panel was struck by the impact on witnesses when relaying accounts of the teacher's behaviour, and when giving oral testimony they appeared to relive the events; the thought of having to deal with the teacher again caused them emotional distress.

In relation to allegation 1(a), the Panel agreed there was sufficient evidence from a number of witnesses, namely teacher 1 and teacher 2, that the teacher made the alleged comments. The Panel substantiated the allegation and believed that it amounted to serious misconduct given his disrespectful, intimidatory and aggressive tone is unacceptable in a profession which values respectful and dignified communication between staff and students. Such language is a severe departure from accepted standards; it indicates a lack of respect and a lack of commitment to shared human values in education.

In relation to allegation 1(b), the Panel found clear evidence in the statements of teacher 3 and teacher 5 and substantiated the allegation utilising the same arguments applied for allegation 1(a). The Panel heard sufficient evidence from a number of witnesses to accept the position that the teacher habitually tried to undermine The Principal and the respect

due to him, given the nature of his position. The Panel saw the teacher's outbursts as evidence of him trying to position himself amongst staff as a victim of a personal vendetta rather than the more reasonable view that the Principal was properly asking the teacher to account for his teaching practice and behaviour. A number of witnesses commented on the depth of the teacher's hatred of the Principal. The Panel noted that the teacher commented in his interview that he believed the Principal was his enemy because of the scrutiny, harassment, victimisation and intimidation that the Principal allegedly employed.

In relation to allegation 1(c) (i), the Principal provided clear evidence demonstrating that there was truth to the allegation. The teacher claimed that he had only raised his voice to make himself heard above the audio/visual system and he said the Principal had laughed at him. One of the students involved in the fight who was standing near the staffroom stated that the Principal was not laughing at the teacher. The Panel was unclear whether the student had witnessed the initial contact between the teacher and the Principal inside the staffroom but accepted the Principal's version of events and interpreted the teacher's aggressive behaviour as an attempt to confront and blame the Principal for the teacher's grievances. The teacher's behaviour in this instance reflected the pattern of angry outbursts and attempted intimidation against staff at all levels of the school. The Panel substantiated the allegation.

In relation to allegation 1(c) (-ii), the Principal provided clear evidence as to the truth of the allegation. The teacher did not respond to the allegation. The Panel asked the Principal if the corridor was a narrow one and if the teacher might have accidentally moved close to him but the Principal said that the corridor was sufficiently wide that the teacher could have avoided him but it was an obvious attempt at physical intimidation. The Panel substantiated the allegation.

In relation to allegation 1(d), the Principal provided a clear recollection of the event described and estimated the distance the teacher's car came towards him. He described the car with its personalised number plates, various stickers on the car, the manner of driving and that there were others in the car with the teacher. He was unsettled by the event, described his distress and said he reported it to the employer. In written material before the Panel, the teacher had vehemently denied the allegation and described it as a complete fabrication and a complete lie. He said it showed the lengths the Principal was prepared to go to achieve his dismissal from the employer. The Panel weighed up the evidence for this very serious allegation and found that the Principal's recollection and reaction were consistent. The Panel felt that this was one of a number of allegations where the principal and teachers at the school should have been less forgiving of the teacher's behaviour and taken more substantial action by reporting the matter to police. The Panel substantiated the allegation. That said, the Panel accepted and understood that the principal and teachers who had issues of concern that could have been reported to the police, chose not to do so, given that the teacher was working in the school and people indicated that they feared that to do so would have made things even worse for the staff and school community.

In relation to allegation 2(a), teacher 1 provided both written and oral evidence as to the truth of the allegation. She described the embarrassment and fear she experienced and

that her children were upset and unsettled. Her children asked her who the man was and why he had sworn at her. The teacher stated that teacher 1's allegation was a fabrication but agreed that he had been holidaying at town A for many years. While the allegation is a serious one to make about any person, the Panel thought teacher 1's evidence was reliable and authentic. The Panel believed the allegation to be substantiated.

In relation to allegation 3(a), teacher 3 provided clear, consistent evidence in both his written and oral evidence that the teacher had been aggressive, bullying and intimidatory. The teacher denied that he had been intimidatory towards teacher 3 and to the contrary indicated that he was very supportive. The teacher suggested that his closing of doors and standing close to a person was acceptable if done by other members of staff but not by him. He said he closed the door so as to have private and personal conversations. After hearing repeated accusations of the teacher behaving in this manner the Panel was persuaded that he repeatedly acted in this way, rather than the innocent interpretation the teacher placed upon such behaviour. The Panel accepted that it was a part of a pattern of intimidation and aggression that he practiced on a number of witnesses including teacher 6, teacher 3, teacher 2 and teacher 1. The Panel was also of the view that the teacher's side of events showed a continued and consistent lack of insight into the effect of his own behaviour on others, including students on occasions. The Panel did also detect a pattern in the teacher's behaviour where he was at times careful to intimidate without other witnesses being present. Another aspect of concern regarding this pattern of behaviour that emerged during evidence was that the teacher would simultaneously pledge support and admiration for colleagues while undermining them in private. The Panel found the allegation substantiated.

In relation to allegation 3(b), teacher 3 provided clear evidence in both written and oral statements that as the leader of the HAPE area he confronted the teacher about lateness to class and lack of documentation of curriculum to which the teacher would respond by yelling and invading teacher 3's personal space. Teacher 3 said that the teacher never acknowledged that he had done anything wrong and often threatened to report him to the regional office. The teacher claimed that he only wanted to go to the regional office because of the lack of fair treatment he was receiving at the school. He appeared to believe that in raising concerns with him teacher 3 was part of the Principal's conspiracy. The Panel came to the view that the teacher's threats were a frequent response when being questioned about his failure to complete his professional obligations and that his threat to report teacher 3 were just another variation of the types of intimidation the teacher employed. The Panel accepted teacher 3's view that the teacher had great difficulty in working with and accepting and progressing the requests from persons in authority at the school. The Panel also thought that the teacher's inability to accept when he had done the wrong thing by not providing curriculum, or arriving late or being constantly negative in HAPE meetings was indicative of a lack of insight on his part, supporting the argument that he was not fit to teach.

In relation to allegation 4(a-c), teacher 4 gave clear and concise evidence in both written and oral form to support the allegations. As teacher 3's successor as the Head of HAPE she witnessed the teacher's angry, confrontational and intimidatory behaviour personally and impressed the Panel with her honesty and assertive manner. The teacher had previously denied the accusations and said that he was merely being passionate about the safety of

children and mentioned the building works going on at the school. Teacher 4 said that she had confronted the teacher about not teaching the appropriate curriculum, not completing the writing of unit work and other performance issues in addition to the movement of students in the HAPE area. The teacher did not respond to these particular accusations in his interview. In relation to allegation 4(b) the teacher said that his behaviour had been misconstrued because of his physical size. In regard to allegation 4(c) the teacher said again his behaviour was misconstrued and that other teachers behaved exactly the same way. He said that he was leaning against the doorframe as part of a relaxed conversation he hoped to have. The Panel accepted teacher 4's evidence which was clear and unequivocal and substantiated the allegations. The Panel saw this behaviour as a repeat of the intimidating behaviour established by teacher 3's evidence, and that it amounted to serious misconduct. That the teacher was again unable to see that he was being threatening to colleagues, particularly younger ones who had taken on positions of authority, showed a continued lack of personal and professional insight on his part.

In relation to allegation 4(d), teacher 4 described both orally and in written statements how the teacher angrily confronted her, moved into her personal space and yelled at her in what she considered to be an unprofessional and intimidating manner. She found his later apology, delivered on bended knee in her office bizarre, strange and patronising. In a staff memo dated the same day teacher 1 corroborated teacher 4's version of events and teacher 1 formed the view that teacher 4 believed the teacher had been intimidating and his apology contrived. The teacher had denied the accusation stating that he was concerned over student safety and that he was no more agitated or aggressive than anyone else would be in that situation. He said he got down on one knee because he was trying to keep his apology light-hearted and nine out of ten staff members would have done the same thing and their actions not interpreted as condescending. The Panel accepted the evidence of teacher 4 and found the allegation substantiated. The Panel also found the teacher's misconduct to be serious. It is not acceptable behaviour amongst professionals to publicly berate a colleague in front of students. Not only is it a departure from respectful discourse between teachers who are required to role model acceptable modes of behaviour to students, but fellow professionals would reasonably regard it as disgraceful for a male, experienced teacher to publicly undermine a female teacher who was quite properly exercising her authority in front of a class of year 9 boys. Evidence from teacher 6 that the teacher berated him in front of students provided confirmation that this was not an isolated practice on the teacher's part. The previous cases *Victorian Institute of Teaching and Wolfe* (4 June 2010, Number 98) and *Victorian Institute of Teaching and Strahan* (9 August 2008, Number 65) dealing with similar allegations provided additional guidance to the Panel. The Panel substantiated the allegation and was of the view that this was another example of the teacher's lack of personal and professional insight into how his behaviour affected others and denigrated the role of teachers, and more broadly the reputation and role of the teaching profession, hence indicating a lack of fitness to teach on his part. His aggressive, bullying and intimidating behaviour was continuing and persistent and coupled with his lack of insight confirmed to the Panel that it could not have confidence that the teacher would change his behaviour in the future. As the teacher did not attend the hearing he could not provide evidence to the contrary under oath, requiring the Panel to form conclusions on the tested evidence provided. While the context may have been a difficult one (i.e. it was a

rainy day with building works in progress), every teacher had to deal with the circumstances and the sensible decision to stop students entering through a particular entrance should have been supported by all staff and not an occasion for the teacher to become angry and confrontational.

In relation to allegation 4(e) (i-iii), teacher 4 gave consistent accurate evidence in both written and oral form as to the truth of the events on 6 June 2007. Teacher 4 provided evidence of the teacher closing the door, standing over her and warning her not to go to the administration of the school. Teacher 4 said she was so anxious and stressed by the teacher's behaviour that she had to attend a counselling session prior to the hearing. The teacher denied that he was aggressive and only shut the door for privacy but admitted that he was trying to get her to see that she was being used by the Principal as part of a "witch hunt" related to himself. The Panel accepted teacher 4's version of events and noted that the effect on her was severe and consistent with the events described in the allegation. The Panel thought the teacher's misconduct was severe and serious because of its intimidatory nature. The Panel substantiated the allegation. His lack of personal and professional insight into the affect of his persistent and continuing pattern of intimidatory behaviour on colleagues further indicated a lack of fitness to teach. The Panel was left with the view that the teacher attempted to enlist any staff he could to support him in his position that he was a victim of the Principal and that this was one of his motivations for trying to conduct secretive meetings with colleagues.

In relation to allegation 4(f), teacher 4 gave detailed, consistent statements in both written and oral form as to the truth of the events. She stated that his staring was aggressive and intimidating and she was shaken by this. The teacher denied the allegation. The Panel accepted teacher 4's evidence and substantiated the allegation. The Panel thought that the allegation amounted to serious misconduct because it fell into a pattern of intimidating behaviour and that fellow professionals would regard it as a substantial departure from the reasonable standards of a registered teacher. Evidence from teacher 8 indicates that the teacher had stared at her in an intimidating fashion after they had a confrontation provided further support for the Panel's belief that the teacher utilised intense staring as an intimidatory tactic.

In relation to allegation 5(a), teacher 5 provided written and oral evidence as to the truth of the allegations. The teacher did not deny that he had made the statements but argued that they were no different to what other colleagues said, and that his comment was only a light hearted comment. The Panel had heard no other evidence that other people were making similar comments but found it hard to accept that the teacher's public enmity for the Principal, to which all witnesses have attested, could have been interpreted as light-hearted. The Panel substantiated the allegation and regarded it as serious because it formed part of a pattern on the teacher's part to systematically undermine the Principal's authority, and fellow professionals of good repute would have regarded it as disgraceful. Many witnesses commented that they attempted to distance themselves from the teacher when he began to attack the principal particularly when he attempted to garner support for his conspiracy theories. The teacher had commented in his interview that teacher 5 supported him in his view that teacher 5 had been used by the Principal to get at the teacher. Teacher 5 agreed with this view in his telephone interview but nevertheless regarded the teacher's behaviour as unprofessional and unacceptable.

In relation to allegation 5(b) (i-iv), teacher 5 provided oral confirmation that his written statement as to the truth of the allegations was correct. The teacher strongly denied the allegations although he had admitted he might have made a passing comment on teacher 5's sporting friendship with the Principal. Teacher 5's evidence was detailed and concise and the Panel accepted the truth of the allegations. The Panel thought the teacher's behaviour was a substantial departure from professional standards and disgraceful. It demonstrated the teacher's failure to treat colleagues with dignity and respect and was a departure from required standards of conduct. The teacher's lack of remorse and his lack of personal and professional insight to the effects of his behaviour supported the argument that he was not fit to teach.

In relation to allegation 6(a), teacher 6 provided evidence both orally and in written form that the teacher provided him with a rough semester planner with little detail and no useable class resources. The teacher argued that the woodwork department traditionally lacked documentation and that it just wasn't available. The Panel found it difficult to accept the teacher's position that because no other woodwork teacher had a curriculum outline it was acceptable practice to continue without one, nor was it reasonable of him after being asked by teacher 7 to support teacher 6 to make no effort to do so. In substantiating the allegation the Panel regarded it as serious that an experienced senior teacher namely the teacher either could not or would not provide curriculum materials to teacher 6. The Panel interpreted his behaviour as a departure from the Victorian teaching profession's Code of Ethics and the Code of Conduct given his behaviour and the significant lack of integrity and responsibility on the teacher's part in supporting teacher 6.

In relation to allegation 6(b), teacher 6 provided numerous examples of the teacher entering his class interrupting and unsettling teacher 6. The teacher said that he only entered teacher 6's class to speak to students who were showing inappropriate or unsafe behaviour and that in doing so he thought he was providing support to teacher 6. While the teacher's justification sounded plausible, the Panel in considering all of the allegations and the tested evidence provided considered that the teacher was being disingenuous and that his real motive was to undermine teacher 6. As a graduate teacher the development of student management skills is a challenging one early in a teacher's career and a skill set that develops with a combination of experience, the guidance of mentors and a clear set of established procedures by the administration. A more supportive approach would have been to have pointed out the examples of inappropriate behaviour to teacher 6 in private and suggested some strategies for him to implement. Any professional teacher or mentor knows that it is important to maintain the dignity and authority of a graduate teacher in front of their students and entering the classroom and taking over achieves the opposite effect. At a time when teacher 6 was highly vulnerable and needed a quiet, supportive mentor the teacher used his greater expertise, power and authority to systematically undermine teacher 6. Any fellow professional of repute and competency would regard the teacher's behaviour as disgraceful and dishonourable and a clear departure from the Code of Ethics. His justification that he was supporting teacher 6 by regularly entering his classroom suggests that the teacher lacks personal and professional insight and is unfit to teach. The evidence showed that teacher 6 was a highly valued teacher and an individual who had been innovative, offering much of value to the school and students.

In relation to allegation 6(c), teacher 6 testified that the teacher entered his year 8/9 woodwork class for girls regularly. The Panel substantiated this allegation. The comments it made in relation to allegation 6(b) stand for this allegation also.

In relation to allegation 6(d) (i-iv), teacher 6 provided clear detailed evidence as to the truth of the allegations. The Panel substantiated the allegations after considering the evidence carefully. While the teacher was correct in bringing dangerous practices to teacher 6's attention his method of doing so was not. The Panel thought the allegations contributed to an overall picture of the teacher systematically undermining teacher 6 in a way that reflected very badly on the teacher. That the teacher could not understand that he was undermining teacher 6 indicated a lack of insight on his part and an indication of his lack of fitness to teach. The Panel's view was consistent, irrespective of whether the teacher's behaviour was of a calculated nature or not. The detrimental outcome and the issues for teacher 6 were the same. The Panel notes that some witnesses viewed the behaviour of the teacher as calculated.

In relation to allegation 6(e) (i-iii), teacher 6 provided detailed, consistent written and oral evidence as to the truth of the allegations. The teacher argued that he had no recollection but it might have been when he needed to use the machine shop or he'd witnessed a student doing something potentially harmful. teacher 6 agreed that he had spoken to students who were using their mobile phones and so he was providing him with what he regarded as support in that situation. The Panel thought that the context of the teacher's behaviour needed to be considered and that it was reasonable for him to intervene if he could see that teacher 6 couldn't see the students or they were causing damage or they weren't being productive. However, the allegation is that after confronting the students about the infraction of school rules he then complained to teacher 6 in front of the year 11 class and demanded that he do something about it. The Panel came to the view that the teacher could have sent the students back to teacher 6 or quietly drawn his attention to their behaviour or taken some other form of action that would have assisted teacher 6 and preserved teacher 6's authority and dignity. Instead the teacher confronted teacher 6 in front of the year 11 class and put him on the spot to address the problem.

Teacher 6's testimony indicated the severe affects the teacher's treatment had had on him. It was apparent to the Panel that teacher 6 had suffered badly and the effects on himself and his family were profound. In giving his testimony the Panel witnessed teacher 6 relive the trauma he had experienced. teacher 6's testimony indicated to the Panel the severe effects the bullying behaviour a graduate teacher can have, particularly at the hands of a colleague from whom he could reasonably expect support and guidance. The Panel substantiated the allegations and regarded them as evidence of serious misconduct and a major departure from acceptable standards. These proven allegations indicated the teacher's continued lack of insight and evidence of his lack of fitness to teach.

In relation to allegation 6(f), teacher 6 gave evidence that from his appointment at the school the teacher publicly said that he should not be teaching woodwork and that teacher 6 was not qualified to do so. The teacher did not provide any evidence of how he had come to the conclusion that teacher 6 was unqualified despite being told that teacher 6 was fully qualified. One of the teacher's arguments was that many other unnamed technology teachers challenged teacher 6's management and qualifications. It would not

have surprised the Panel had teacher 6 needed to develop class management strategies because a lack of knowledge is often symptomatic of inexperience as a consequence of being a graduate or inexperienced teacher, rather than incompetence as the teacher was suggesting. In addition, the teacher had already been asked by the Head of Department, teacher 7 to mentor and assist teacher 6 because it was his first time teaching year 7 woodwork, hence it was particularly inappropriate for him to be repeatedly challenging teacher 6 in regard to his qualifications. Teacher 7 corroborated the allegation and provided examples of the teacher's persistent complaints about teacher 6's qualifications. The teacher would not accept that the decision had been made about class allocations and that teacher 6's qualifications were satisfactory. The Panel was provided with evidence of the teacher's disingenuousness, in that he could praise teacher 6 as doing an excellent job in an email to teacher 7 on 18 October 2006 but then simultaneously undermine teacher 6 by his systematic bullying. The Panel substantiated the allegation and thought it formed part of a single-minded, orchestrated campaign by the teacher to undermine teacher 6 so that the teacher could gain the classes he coveted. The teacher again appeared to lack any personal and professional insight into the effect of his behaviour on teacher 6 and there was no suggestion of remorse at the time or in his subsequent statements. The teacher's defence that he was in fact supporting teacher 6 rang very hollow indeed to the Panel because all the evidence pointed in the opposite direction. The regularity and sustained nature of the questioning of teacher 6's qualifications indicated to the Panel that this was another proven example of serious misconduct and the teacher's inability to see the effects of his behaviour, be it calculated or otherwise, showed a lack of fitness to teach.

In relation to allegation 7(a-c), teacher 8 agreed that she had provided a signed statement dated 10 May 2010 and agreed that it was true and correct and that she did not wish to make any alterations. She described the events of 25 June 2005 as outlined in the allegation in detail and provided a map indicating her position, the classes' position and the teacher's position. She also provided a copy of a letter and notes she had made shortly after the events. Teacher 8 was concerned and shaken at the time and it was apparent to the Panel even via telephone that teacher 8 had been greatly upset by the incident and continued to be so, particularly in relation to events that followed that she considered to be related. In her evidence teacher 8 described a further series of events, which did not form part of the allegations. Teacher 8 described in detail the teacher's intimidating behaviour when she returned to her office and she told him his behaviour was not acceptable, including the subsequent intimidatory staring at her at the assembly hall. The teacher said that in regard to allegation 7(a) in hindsight it was a professional misjudgement on his part. In his interview he went on to say that teacher 8 used extremely strict discipline and the class was doing an extremely regimented, methodical and stultifying warm-up. The Panel substantiated the allegation and regarded it as a serious departure from professional standards because it indicated a lack of respect and support for another professional teacher. The teacher appeared to the Panel to be undermining teacher 8 by using an obscene gesture to a male student who should have been attending to his teacher. The teacher was indicating to the male students who were watching him that a different and lower level of professional respect was afforded to female teachers by male teachers. The teacher appeared to believe he was not in a professional environment where it was important that all teachers regardless of their sex or experience needed to show each other and the students, appropriate professional

respect. The teacher did not appear to understand either then or in his subsequent statements that he, by virtue of his position of power and authority as a professional, had a responsibility to all his colleagues, including teacher 8, to behave appropriately. Students are quick to identify a lack of respect shown by one teacher to another. The Panel substantiated the allegation as being an example of serious misconduct and indicated a lack of insight on the teacher's part leading, in part, to the conclusion that he was unfit to teach.

The teacher said that in regard to allegation 7(b) and (c) that he realised that teacher 8 had either taken it the wrong way or he'd been unprofessional. Previously he had denied the allegation of blocking the doorway but that 'maybe I'd got it a bit wrong.' The Panel accepted teacher 8's version of events and substantiated allegation 7(b). The misconduct was serious and in light of the previously substantiated allegations regarding the teacher's aggressive and intimidatory behaviour regarded it as contributing to a pattern of serious misconduct. The teacher's minimal insight and lack of remorse indicated a lack of fitness to teach on his part.

In relation to allegation 7(c), teacher 8's evidence was clear and unequivocal. The teacher denied it vehemently. The Panel accepted teacher 8's version of events and substantiated the allegation. The Panel previously substantiated a similar allegation against the teacher by teacher 4, and teacher 7's evidence of the teacher staring at her in an intimidatory way supported the Panel's view that this was a practice of the teacher's and another indication of his bullying tactics. In his interview and other written material the teacher never accepted that he stared at staff in an intimidating way, nor did he show relevant personal and professional insight or remorse.

In relation to allegation 8(a), teacher 4 described the teacher's four units on health as incomplete and inadequate. He did not provide an electronic copy. The questions for the video lessons were not provided and teacher 4 had to write them herself. Previously the teacher stated that he was being treated for a depressive state, that he was struggling and that if he had not completed the units it was not intentional. He said that he was still carrying out his role well if not better than most people in the HAPE department. The Panel heard expert medical opinion that the teacher was not suffering from a physical or mental impairment. The Panel accepted teacher 4's evidence and substantiated the allegation. Evidence of the teacher's inability or unwillingness to complete units of work in two faculties was substantial and extended over a considerable period of years. There was also a considerable amount of evidence from teachers of their efforts to support him to complete a most fundamental part of his professional responsibilities none of which were successful. The Panel regarded this inability on the teacher's part to write units of work, and deliver the required units of work, particularly given the amount of support he was provided with, indicated serious incompetence. It is central to a teacher's professional responsibilities. Witnesses generally believed and gave evidence that the teacher was both incapable and unwilling to write the required units of work and would not engage in teaching theory in addition to practice as it relates to his subjects. These concerns remained after the extensive support and professional development activities provided to the teacher. The Panel formed the view that the teacher's serious incompetence in this area, be it related to ability or willingness, was serious given the information provided under oath by witnesses. The teacher's incompetence was

accompanied by a lack of insight on the part of the teacher from what the Panel could glean from the available evidence. The Panel noted the levels of competence required by the school, by teacher colleagues and deservedly by the students. The Panel viewed these levels of competence as an integral part of the teacher's work as a teacher. Given that the teacher did not attend the hearing the Panel had no contrary evidence before it to argue the point that the teacher was not seriously incompetent and hence, based on the available evidence felt comfortable with the finding of serious incompetence.

In relation to allegation 8(b), teacher 4 described how each member of the HAPE department was assigned to write two units of work that were then to be shared with each member of the faculty. Her evidence, both oral and written, was unequivocal that the teacher did not complete his units on golf and swimming by week six, term three, the due date. He did not tell her that he would not be doing them nor did he provide an explanation why he had not completed them. In the end teacher 4 completed his unit writing tasks. The teacher said that he had never been asked for them and claimed that he was either developing them or had done so. He also said that this occurred when he was actually removed from the school so he had no opportunity to complete them. In the timeline of events provided to the Panel the teacher was removed from the school on 31 August approximately a week after the units were due. The teacher was a teacher of many years' experience and he should have been able to draw on resources he had collected and developed over that time. His statement that he did not have an opportunity to complete the units because he was no longer in the actual environment is not supported by the evidence. The Panel substantiated the allegation and regarded it as an example of serious incompetence because unit writing or curriculum development is a fundamental part of a teacher's professional obligations. When a teacher is not strong in this area they need to make concerted and strenuous efforts to become so. The variety of professional development activities and the opportunity for sharing through professional networks, subject associations and websites makes it inexcusable that any teacher cannot reach a reasonable level of competence in curriculum development.

In relation to allegation 8(c), teacher 4 gave evidence of the teacher not preparing lesson plans for his classes, not following the curriculum and relying on other teachers' material. She gave various examples of this including his students' workbooks not containing material which other classes at the same year level in the same subject included. Teacher 6 provided corroborating evidence that he had never seen any lesson plans or paperwork from the teacher apart from a generic outline of what he taught. Teacher 7 further corroborated this when she stated that in 2006-07 the teacher never submitted unit planner for any year 7 technology subjects. She was of the opinion, and the Panel agreed, that the teacher, classified as an Expert teacher, should have been capable of planning and documenting curriculum. Her examination of his students' notebooks and his unit folder supported her view that the teacher did not prepare his classes adequately. Teacher 4, teacher 7 and teacher 1 all provided evidence of the teacher's reliance on other teachers' work. In one case he provided outlines to teacher 7 which were, in her view, 25 years old; in another case teacher 1 used the term 'badgering' to describe the teacher's demands for teacher's work. The teacher agreed that there was a sharing of resources but that when he borrowed a textbook or resource from a desk it was alleged to be piracy. He argued that he was not acting any differently to any other teacher but what was different was the treatment he received and the interpretation of staff that accompanied, or the

interpretation that was placed on his behaviour. The teacher did not provide any unit outlines that he had completed and with the combined weight of evidence from witnesses the Panel was confident in substantiating the allegation. The teacher's argument that he was not acting any differently to other staff was not supported by the evidence and it was not a strong argument in the Panel's view that the standard of competence is set by the lowest performing teachers. The individual and cumulative effect of substantiating all three parts to allegation seven is that the teacher was guilty of serious incompetence because he did not or was not able to complete a fundamental part of his professional obligations. The teacher did not indicate any personal and professional insight into this failure on his part nor did he express any remorse at his actions in his interview or any other written information.

In relation to allegation 9 (allegations 1-8 are repeated), the Panel found a great weight of evidence from a series of witnesses which indicated that the teacher did not demonstrate collegiality, courtesy or respect towards his colleagues. This was demonstrated through:

- his inability to work collegially in the sharing of units of work
- either using students to publicly undermine colleagues or attacking students with the real purpose of denigrating colleagues
- his use of obscene language towards his colleagues without any thought for the effects on them or anyone else who might have been listening
- his repeated undermining of colleagues in front of students
- his willingness to take school related matters into out-of-school hours when staff had the right to enjoy their private lives and in the case of the incidents with the Principal and teacher 1 to behave aggressively, threateningly and disgracefully
- his intimidation and bullying of younger, less experienced staff and females using a range of techniques including body language, obscene language, using classes as an audience, closing doors to avoid scrutiny
- his attempts to drive divisions between staff and the administration of the school
- moving beyond passive non-compliance with his colleagues to actively attacking, bullying and undermining them on a regular basis.

The Panel substantiated these allegations, noting the striking lack of personal and professional insight and the lack of remorse in the teacher's previous statements which indicated a lack of fitness to teach on his part. The teacher's very limited apologies for his behaviour were seemingly always qualified by an insistence that he was not acting any differently to other staff or that the victims of his bullying were not victims, rather people who had misunderstood him. In only one case did he begrudgingly suggest that he might have got it a 'bit wrong'.

In relation to allegation 10(a) teacher 4 gave clear evidence as to the truth of these allegations. Teacher 4 said she had only discovered this because she had taken the

teacher's class in his absence and noticed that they were not being taught the designated curriculum and they were behind other classes. She said that she emailed the teacher on 20 August 2007 noting that he was not teaching the appropriate curriculum and two days later he informed her that he wasn't teaching it because he was suffering from depression. Teacher 4 documented what had happened in an email to the principal. The Panel substantiated the allegation. She stated that the teacher had more than six weeks to tell her he was not comfortable with teaching that particular unit. The teacher argued that he had sought and gained the permission of teacher 9. Teacher 9, in her oral evidence, firmly refuted this and said that it was not her place to give that permission, and she was not familiar with the health curriculum and referred him back to teacher 4. Had teacher 4 not taken the class the Panel was of the view that she would not have known of the teacher's departure from the prescribed curriculum because of the teacher's lack of collegiality and lack of trustworthiness. The Panel heard from the teacher's treating physician that the teacher was not suffering from depression but rather some anxiety and that the teacher's statement, despite his own belief, was misleading. His justification that he gained teacher 9 permission was dishonest. The Panel substantiated this allegation and because of the context in which he departed from the prescribed curriculum regarded it as serious incompetence on his part. In addition the Panel thought the teacher's lack of honesty with teacher 4 in regard to his alleged medical condition, his failure to teach the prescribed curriculum and his dishonest statement about teacher 9's alleged permission created serious concerns that the teacher was not honest and ethical in his dealings with his colleagues, which was in turn detrimental to the students' learning. The Panel viewed this as a flaw in his character which made him unfit to teach.

In relation to allegation 10(b) (i), teacher 4 stated that the teacher did not organise the notebooks for his year 9 health class where all other teachers did. Teacher 1 stated that well after the term had commenced the teacher came to her and said he did not know anything about it. She showed him the comprehensive box of resources that accompanied the program and told him his materials were awaiting collection in the HAPE office. Teacher 4 stated that the teacher did not collect the box which included student workbooks that students were to complete throughout the program. The teacher stated that the paperwork had been sent out, the information had been provided to the class and he was in the process of booking the library when he was removed from the school. Teacher 4 stated in oral evidence that she was unsure if the teacher had completed the tasks he said he had. Due to insufficient evidence the Panel did not substantiate this allegation.

In relation to allegation 10(c) ( i-ii), teacher 3 stated that some of the teacher's students came to him in 2007 and said the teacher used PowerPoint with no discussion and students just made notes from the slides. Teacher 1 corroborated the evidence that the PowerPoint slides consisted of sections of the textbook which had been "cut and pasted". The material was not explained to them and they had to take notes word-for-word as quickly as possible. In regard to allegation 10(c) (ii), teacher 1 had a discussion with the teacher regarding the students' unwillingness to complete the muscle fibres section. According to the teacher they didn't want to do it in year 11 because it was in the year 12 course. The teacher stated that these allegations were absurd. He said his use of PowerPoint indicated his utilisation of technology and that he had not taught the subject before and he was not given the resources required. He said teacher 4 and teacher 1

made it difficult for him to access the overhead projector but his SAC and assessment results were acceptable or above acceptable standard. He stated that the allegation was another attempt to undermine him. The teacher stated that he had decided to reverse the order of two units to make them more logical for students and more teachable. He said he was never given any indication that this variation was not acceptable.

The Panel had heard ample evidence of the high level of curriculum planning by the HAPE department and thought it was reasonable to assume that they would have made the decision to include that section in year 11, despite it being repeated in year 12, for sound educational reasons. In addition the Panel thought there was clear evidence of a team approach to curriculum development and the teacher was failing to demonstrate collegiality by not supporting the HAPE team. If he had disagreements about the inclusion of that particular unit, he should have raised it and put his case to the HAPE teachers at the appropriate time during the planning period, well before the unit was to be taught. If he had not been able to convince his faculty leader and the HAPE team, he had to accept it and move on, not fail to teach the unit and then try to raise it again at a later, inappropriate time.

The teacher's suggestion that he was going to teach the muscle fibres section but just in a different order appeared unlikely to the Panel because:

- no other witness testified that he had given any hint of his plans
- the lateness of his discussion with teacher 1 suggests he was trying to avoid teaching the muscle fibres unit
- the teacher's explanation in his interview differs from the explanation he provided to teacher 1
- the provision of a justification from students was on the basis of not doing it at all rather than doing it at a different time
- the teacher did not provide any unit plan or curriculum overview to suggest he had reversed the order of two units.

The Panel substantiated allegation 10 (i-ii) and considered with the other evidence that students in the VCE Unit 1 & 2 Physical Education course were not well prepared because:

- the teacher did not demonstrate curriculum development skills (eg. the heart rate laboratory task which according to the detailed evidence of teacher 1 was hastily created and badly formulated)
- some parts of the curriculum had not been addressed and topics (e.g. the long bone topic), had not been taught
- the teacher did not demonstrate assessment skills appropriate to a VCE teacher (eg. teacher 1 examined the VCE Unit 1&2 PE students' books in August 2007 after the teacher's departure from the school and they had not completed any SAC or assessment tasks and teacher 1 was not able to find any assessment records)

created by the teacher, which meant an extra assessment task had to be created for the teacher's students)

- some parts of the end-of-year examination had to be altered because the teacher's class had not been taught the material.

The Panel considered the evidence showed serious incompetence on the teacher's part because curriculum planning and delivery as well as the ability to prepare accurate assessment tools are fundamental to a teacher's professional skills. The teacher showed no evidence of trying to develop his skills in this area and his lack of paperwork and the sub-standard way in which he prepared his VCE students indicated deep flaws in the teacher's teaching practice and no evidence that he made any attempt to improve them.

In relation to allegation 11(a), teacher 7 stated that the teacher was only interested in production in technology and she described his efforts to move outside of these as token. She said he did not understand VELS or the design brief process. She said this ignorance extended to the previous Curriculum Standards Framework (CSF). She said it was a constant source of frustration to her that the teacher could not prepare adequate lessons or keep a folio of work. She said that this lack of knowledge partly explained his inability to help teacher 6. The teacher had previously argued that every other woodwork teacher was doing the same thing as him and that there were very few written resources. The teacher also argued that a focus on theoretical aspects would occur to the detriment of the quality of the final product. The teacher's written statement indicated that the allegations were correct and that he continued to teach only practical aspects of technology because he believed he was justified in doing so. The difficulty of the teacher's approach was that it was not the approach as outlined in the VELS requirements that he was obliged to follow as a professional. Not only was his outdated view of technology teaching unjustifiable, it did not prepare students adequately for promotion into technology subjects at higher levels and left them at a severe disadvantage if they continued into VCE where a sophisticated understanding of the design process was critical. The teacher's continued support for an out-of-date approach and his willingness to ignore requests and teach in his own way indicated to the Panel that he lacked insight into his own performance, and showed no remorse that he had inadequately instructed the students whose education he was responsible for. The Panel substantiated the allegation and thought it was serious because it indicated a fundamental lack of knowledge of the curriculum structure he was expected to follow, and his continuing justification for doing as he wished indicated a lack of personal and professional insight on his part.

In relation to allegation 11(b), teacher 7 provided an email to the Panel which showed a proposal from the teacher to offer a pre-driver education unit to year 10 students. Teacher 7 stated that this was evidence of the teacher's lack of familiarity with the VELS structure. The teacher argued that teachers had been encouraged to think outside the square and develop units that complemented what the students at the school needed. Teacher 7 commented in her evidence that pre-driver education had been previously taught at the school. Teacher 4 talked about the teacher's willingness to develop curriculum that addressed issues in students' lives. A great deal of evidence points to the teacher's knowledge of VELS as inadequate and his proposal as inconsistent with the VELS

Design, Creativity and Technology curriculum. However, the Panel also saw it as a rare example of the teacher making an attempt to make a curriculum contribution. The Panel was not satisfied that it could reasonably use this particular piece of evidence to substantiate the allegation because it was susceptible to a number of interpretations. The Panel did not substantiate the allegation.

In relation to allegation 11(c), teacher 7 stated that when examining the teacher's students' woodwork books they contained only labelled drawings of tools and no work, risk and design plans. The teacher argued that his students' books were as comprehensive as any other woodwork teacher at that year level at that time, and that an unbiased and impartial observer would have regarded them as high quality compared to his colleagues. The Panel had already found evidence that the teacher did not prepare or implement classes that contained a theoretical component as required under VELS guidelines. It was not surprising that his students' books reportedly lacked this essential and obligatory requirement. The Panel substantiated the allegation and regarded it as serious incompetence because it indicated a serious departure from the professional obligation to teach according to the appropriate curriculum standards, and because the effects of not doing so, was deleterious for students.

In relation to allegation 12(a) (i-iii), teacher 1 provided a detailed account of her coming across student 2, the year 7 student. She described his behaviour, language and emotionally distressed state in considerable detail. Teacher 1 calmed the student and eventually established what had happened from his point of view. She described the anarchic scene of the teacher's class when she arrived as detailed in allegations 12 (ii-iii). Students were:

- running in and out of the classroom
- not in possession of notes for leaving the classroom
- disrupting other classes and playing in the toilet block
- behaving dangerously, with one student poking at another with an electric drill.

It was only after teacher 1 settled the class that the teacher appeared. Teacher 1 took some students back to her office to ascertain the facts about the alleged bullying of student 2. Teacher 1 said that the students said that the teacher had said that student 2 had deserved to be teased because he looked like he had "pissed in his pants" and that the teacher was angry because the student had made puddles on the floor. Teacher 1 made no effort to discuss the events with the teacher and her priority had been to manage the bullying, rebuild the relationship between student 2 and the other students and contact his parents. She said that at the time she was doubtful that the teacher would actually condone and encourage bullying of a student. On reflection she stated that had she been a more experienced assistant principal she would have spoken to the teacher about the safety risks for students and his treatment of student 2. The teacher denied the allegations and said he had no memory of it. He said he had a long record of ensuring the safety of his classes and classrooms and the allegations were completely opposite to what his teaching philosophy has been. He found the allegations condescending and an embarrassment. The Panel found teacher 1's account compelling because of the level of detail she provided and the consistency of her statements over time.

The Panel weighed the evidence carefully because of the serious nature of the allegations and the serious deficiencies and unprofessional behaviour it alleged against the teacher. The teacher gave a great deal of information about safety being a great concern to him and a number of witnesses gave evidence that he complained about safety issues constantly. To make a finding on this particular incident that he was ignoring safety regulations casts doubts on the teacher's veracity and professionalism. In the end the Panel did substantiate the allegation and regarded it firstly as serious misconduct in that supporting students to bully another student is an abnegation of his professional responsibilities and a contravention of the Code of Ethics and Code of Conduct. Secondly, the Panel viewed his behaviour as evidence of serious incompetence because in not supervising the classroom properly the potential for serious injury in a technology workshop is not to be underestimated. In the situation described to the Panel it is unlikely that any curriculum-aligned learning was occurring and further, other classes were being disrupted.

In relation to allegation 12(b), teacher 1 gave evidence of the teacher sending students to her both from the yard when he was doing duty and from the classroom. She said that many of these matters were routine and that the teacher did not follow the school policy of reporting the matter to the student manager. She said she felt it was a game on his part where he tried to manipulate teacher 1 into accepting responsibility for behaviour problems he should have been managing himself. The teacher stated that in his career he had handled his discipline problems himself and that he took pride in not passing students onto people above him. He felt the allegations came from people who were groomed and used by the Principal to undermine him. The Panel substantiated the allegation because:

- teacher 1's evidence was clear and credible
- the teacher had taken students to the Principal as outlined in allegation 1(c) despite denying that he ever did it
- the teacher's significant dislike, even hatred of the Principal and any teacher who took on administrative responsibility is consistent with his attempts to question, confront and undermine teachers with positions of authority by using students as the vehicle
- the teacher's admission that he had unwisely referred inappropriate conduct to teacher 1 because he did not believe that the principal would handle any complaints satisfactorily.

While substantiating the allegation the Panel regarded the evidence as general and stemming from one source. Teacher 1 became the Assistant Principal in 2007 and thus any flow of students to her for disciplinary reasons occurred over a relatively short period leading up to the teacher's departure from the school. The Panel noted the need to find evidence of a pattern of the teacher failing to discipline students and referring them to other colleagues before it can reach the level of serious incompetence.

In relation to allegation 12(c), the Principal's evidence both oral and written was clear that the teacher confronted the Principal in the staffroom in an aggressive and agitated

manner and demanded that he deal with the students. Teacher 1 gave evidence that while it was a volatile situation between the students the teacher was ranting and yelling about the Principal. The teacher had previously denied the allegation categorically and stated that the Principal had systematically destroyed his career and injured his good health. The Panel assessed the Principal's evidence and considered it to be truthful. The teacher's own record of events describes his own behaviour as being completely in control and the victim of aggressive behaviour from the Principal. The context was such that the teacher:

- had a personal grudge against the Principal who he saw as the architect of all the injustices he had experienced
- was so incensed he left the school premises and went to complain to the regional office.

The Panel was confident that it could accept the Principal's evidence as to the truth of the allegations. In addition the Panel had already established that the teacher used obscene and inappropriate language towards other members of staff including teacher 1, teacher 3, teacher 6, teacher 5 and teacher 4. Having established the teacher's aggressive, intimidatory and disrespectful manner towards the Principal in allegation 1 (c-i), the main thrust of allegation 12(c) refers to demanding the Principal deal personally with the students. The Panel was of the view that having separated the two students who were fighting, and brought them up to sit outside the Assistant Principal's office the teacher had acted appropriately in a serious manner. The teacher then opportunistically used the events as a justification to attack the Principal which was not appropriate. There was no evidence that the assistant principals have not or would not have followed the normal protocols in dealing with this serious infraction of the school rules. The teacher's account of the events in 2005 suggested to the Panel that the fight between students occurred at a time when the teacher had experienced conflict with his colleagues and regarded himself as being treated unjustly. The fight appeared to be a catalyst for the teacher whose angry reaction suggested that he was not coping. Many witnesses commented on the teacher's anger, one describing it as a barely suppressed sense of rage.

The Panel substantiated allegation 12(c) and regarded it as serious incompetence because teachers have a professional obligation to deal with student management problems both in and out of the classroom. Students cease to respect the teacher if they believe there are no consequences for poor behaviour or that the teacher allows others to deal with their problems. Naturally there are more serious consequences for serious misbehaviour and schools anticipate this with a graduated series of steps leading up to involvement by year level coordinators, assistant principals and ultimately the principal.

The Panel had to determine whether the teacher's conduct and competence as a teacher amounted to serious misconduct and serious incompetence and/or unfitness to teach. In considering this the Panel recognised that the intention in such proceedings is not to punish the teacher, but to maintain proper standards of conduct and competence for the profession, to protect the reputation of the profession and to protect the public (*Ziems v the Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279. In its deliberation and decision the Panel must be satisfied based on the evidence that the

teacher is seriously incompetent and/or not fit to teach as set out in sections 2.6.46(1)(b)-(c) of the *Education and Training Reform Act 2006* (the Act).

*Serious incompetence*

The Panel noted the case of *Moran v Victorian Institute of Teaching* [2007] VCAT 1311 where the Tribunal considered the meaning of the term “seriously incompetent”. The Tribunal states [at paragraph 46 – 47]:

“... ”

47. *What is serious incompetence? A simple error of judgment, or a simple negligent act, is not sufficient to constitute serious incompetence. There are a few decided cases on this issue. Some of these cases were referred to by the Panel in its Reasons for Decision and adopted by the Respondent in its submissions.*

48. *In Zechner v Department of School Education 1999 FCA 445 a teacher was found to be incompetent as he was:-*

- a. *Unable to implement meaningful lessons;*
- b. *Unable to communicate ideas or information;*
- c. *Unable to develop rapport or confidence with students;*
- d. *Not trusted by parents or other teachers to perform the duties of a teacher;*
- e. *Poor relationships with colleagues;*
- f. *Unable to maintain teacher – student relationship;*
- g. *Deficient in knowledge of the curriculum;*
- h. *Unable to see the need to improve teaching skills.*

...

51. *The cases to which we were referred establish:*

- a. *That serious incompetence need not result from criminal conduct;*
- b. *That the incompetence must be of such a degree or so frequent that it reflects on the teacher’s fitness to teach;*
- c. *That whether conduct amounts to serious incompetence will depend on the facts of each case;*
- d. *A teacher may still be judged to be seriously incompetent even though the events in question have arisen by reason of a lack of support...”*

If a teacher’s practice were such that it would defeat the cause of imparting knowledge to students then the teacher would be seriously incompetent. There is a duty on all teachers to achieve and maintain an appropriate level of competence and care. If the teacher has been guilty of negligence or incompetence in a professional capacity, which has been to such a degree or so frequent to reflect on the teacher’s fitness to teach, then the teacher would be seriously incompetent, *Glynn Brown [2005] VIT 19*.

In the matter of the *Robyn Gordon [2009] VIT 92* the Panel in that case noted that serious incompetence in a teacher needs to be more than shortcomings in performance in an employment sense; it needs to be evident that the teacher has, over an extended period of time, failed to do the most basic requirements of the job, and when confronted with such, does not demonstrate any acknowledgement of the shortcomings or any willingness to take the opportunity to address the situation.

In the matter of *Neil Larsen [2008] VIT 76* the Panel noted that if a teacher's practice were such that it would defeat the cause of imparting knowledge to students then the teacher would be seriously incompetent. There is a duty on all teachers to achieve and maintain an appropriate level of competence and care. If the teacher has been guilty of negligence or incompetence in a professional capacity which has been to such a degree or so frequent to reflect on the teacher's fitness to teach then the teacher would be seriously incompetent. There is a duty on all teachers to achieve and maintain an appropriate level of competence and care. If the teacher has been guilty or so incompetent in a professional capacity which has been to such a degree or so frequent to reflect on the teacher's fitness to teach, then the teacher would be seriously incompetent (see *Raylee Patricia Harley v Robert McDonald & Ors [1999] NZCA 145*).

#### *Fitness to Teach*

In relation to "fitness to teach" the Panel was guided by the matter of *Davidson v Victorian Institute of Teaching [2007] VCAT 920* where the Tribunal considered factors relevant to whether the teacher's conduct in that case demonstrated a lack of fitness to teach. These factors in summary are:

- a. there must be a perception that the conduct complained of is of a continuing and persistent nature;
- b. conduct which throws doubt on how the person would behave in the future in the classroom will indicate a lack of fitness;
- c. an act or a series of acts of serious misconduct that explicable in context and unlikely to recur do not of themselves demonstrate a lack of fitness;
- d. a finding that a person is unfit to teach carries with it an assessment that the person should not be in a position of authority and trust with children, because his or her whole approach to teaching and to the children in his or her care is profoundly and irretrievably flawed.
- e. the whole of the teacher's conduct as found is relevant to a decision as to whether the teacher is fit to teach. Any behaviour found to be inappropriate for a teacher is relevant to the ultimate question of fitness to be a teacher.

What must be considered is the fitness of the person concerned to work as a registered teacher. The question of whether the person has the qualities which would permit him or her to be safely accredited to the public, without further inquiry, as a person to be entrusted with the work of a teacher (*Singuenza v Secretary to the Department of Infrastructure [2002] VSC [33 – 34]*).

In the matter of the *Peter Papageorgiou [2005] VIT 20* the Panel considered relevant factors for the duration of the incompetence, evidence of insight, evidence of candour during the Panel hearing, whether the teacher has provided an adequate explanation of the incompetence and whether that evidence is corroborated by independent evidence, the effect of the teacher's behaviour on the school community and the standard of the profession, the time which has elapsed since the incompetence and the evidence of corrective action taken by the teacher.

The Panel considered the words of Judge Harbison, Vice President and Mr Eccles, Member at [169] when addressing issues in relation to *Davidson v Victorian Institute of Teaching* [2007] VCAT 920. The Panel noted:

“We take the view that a finding that a teacher is unfit to teach must carry with it a perception that the conduct complained of is of a continuing and persistent nature. It is conduct which throws doubt on how he would conduct himself in the future in the classroom. A teacher may commit a single act of serious misconduct, or a series of such acts, but those acts may be explicable in context and unlikely to recur. A determination that a teacher is unfit to teach appears to us to be a more severe penalty. It carries with it an assessment that that person should not be in a position of authority and trust with children, because his whole approach to teaching and to the children in his care is profoundly and irretrievably flawed. It would often involve consideration of criminal conduct.”

A key element in determining the fitness of a teacher who has breached such trust is the degree and sincerity of the remorse shown regarding that breach, the degree of insight into the consequences of such a breach, the circumstances which contributed to its occurrence and possible remedies to ensure that such a breach does not occur again.

Mindful of the direct and indirect impact for the students, the Panel was of the view that in relation to fitness to teach the same approach should be used with respect to the teacher’s relationship with their colleagues. If the complaints about their behaviour show that the conduct of the teacher was of an ongoing and persistent nature, if there is doubt as to how they conduct themselves in the future or if their approach to their colleagues is profoundly and irretrievably flawed then this must lead to a conclusion that the teacher is unfit to teach. If the conduct is so serious, it could be considered criminal conduct.

In assessing whether the teacher was guilty of serious misconduct the Panel was guided in its decision making by *Briginshaw v Briginshaw* (1938) 60 CLR 336 that the allegations need to be proved on the balance of probabilities and to the reasonable satisfaction of the Panel.

The Panel found allegations 1 a,b,c (i-ii),d, 2a, 3a, b, 4a,b,c,d,e (i-iii),f, 5a b(i-iv), 6a,b,c,d (i-iv), e(i-iii) f, 7a,b,c, 8a,b,c, 9a, 10a (i-iii),c (i-ii), 11a, c, 12a(i-iii) b, c proven.

The Panel found that the teacher had:

- behaved in an aggressive, intimidatory and disrespectful manner to the Principal and the Assistant Principal of the school
- behaved in an aggressive, confrontational and intimidatory manner towards teacher 3 and teacher 4, the Heads of the HAPE Department at different times
- behaved in an aggressive, intimidatory and disrespectful manner towards graduate teacher, teacher 5
- undermined, harassed and bullied graduate teacher, teacher 6

- undermined and behaved in an aggressive, confrontational and intimidatory manner towards teacher 8
- failed to demonstrate collegiality, courtesy and respect towards his colleagues
- engaged with students in an overbearing and physical manner and he allowed, even encouraged them, to tease and bully each other.

The Panel was guided by *Guss v Law Institute of Victoria* (2006) VSCA 88 citing *Allinson v General Council of Medical Education and Registration* (1894) 1 QB 750,763 that misconduct in a professional sense is conduct which would reasonably be regarded as disgraceful or dishonourable by fellow professionals of good repute and competency. The Panel regarded the teacher's misconduct as serious because it was not of a momentary or trivial effect. The teacher behaved in a disgraceful manner towards people in authority as well as inexperienced teachers. His treatment of his female colleagues was similarly dishonourable. The Panel found considerable evidence to justify its conclusion that the teacher had substantially departed from the standards which might reasonably be expected of a registered teacher and that he is deserving of more than passing censure.

The teacher's unsubstantiated argument that he was acting no differently to other teachers and that he was the victim of a conspiracy was not supported by the evidence. As a professional the teacher had to judge himself by the standards of his profession as outlined by the Victorian teaching profession's Code of Conduct and Code of Ethics rather than self-serving positions. The teacher's behaviour did not maintain professional relationships with his colleagues and lacked integrity. He showed a lack of respect of his colleagues and acted irresponsibly. The Panel rejected the teacher's assertion that his behaviour was affected by a medical condition, noting his treating physician rejected the idea that the teacher had a physical or mental impairment. The teacher lacked personal and professional insight into the effects of his behaviour and of further concern were his justifications in his statements that either he had been misunderstood or that he was acting no differently to any other teacher, or that the complaints against his behaviour stemmed from a conspiracy against him. The teacher showed no remorse and continued to cast himself as a victim.

In relation to the allegations regarding serious incompetence the Panel found that the teacher:

- failed to contribute to the development of the HAPE and technology departments
- failed to contribute to unit writing in those departments
- failed to plan his lessons, did not follow the required curriculum and relied on other teachers' materials
- delivered classes requiring copying of work without discussion or explanation
- failed to understand the VCE and VELs based curriculum in the technology area

- failed to maintain a safe working environment for students
- did not follow the school's student management processes.

The Panel found that the teacher had failed to understand the VELS and VCE based curriculum and was not capable of, or willing to develop curriculum in the HAPE or technology areas. This was not an error of judgement because he had been asked repeatedly in both departments to make a contribution, provided with materials and organising tools, deadlines and professional development, but instead chose to ignore his professional obligations, students' needs and the school's requirements. The Panel heard evidence of the teacher's serious incompetence in this area over a period of years and his litany of excuses including that he hadn't been told, that he was not acting any differently to other teachers and that any teaching of theory would result in a lesser quality product. The Panel did not accept these excuses. The Panel thought that the teacher's teaching practice defeated the cause of imparting knowledge to the students. He ignored the requirements to teach a theory component in both HAPE and Technology and impacted on his students in a serious way. He showed limited professionalism and the Panel regarded his unwillingness to maintain an appropriate level of competence reflected badly on him. There was no suggestion that the teacher lacked support to maintain his professional obligations, indeed one witness commented that she had offered the teacher more mentoring, support and professional development than any other member of the school between 2002-2007. Other indications of the teacher's serious incompetence apart from his deficiencies in knowledge of the curriculum and failure to act on his lack of knowledge were his poor relationships with his colleagues. It was apparent to the Panel that the teacher had lost the trust of his fellow professionals to deliver the appropriate curriculum. The Panel heard evidence that over an extended period of time the teacher failed to demonstrate any acknowledgement of his shortcomings or any willingness to address the situation. The Panel was of the view that if the teacher's serious misconduct and serious incompetence had been dealt with earlier, for example, by the school failing him in his performance review, then his colleagues might have been spared their subsequent trauma. It was felt that the teacher had been provided with too many opportunities for limited or no return on his part.

In relation to the teacher's fitness to teach the Panel found evidence that his serious misconduct had been occurring for some years and viewed it as continuing and persistent, with no evidence to suggest a change in behaviour. The Panel was concerned that the teacher had not been confronted more formally at an earlier stage, but there was considerable evidence that the teacher was left unaccountable because of his intimidating behaviour. The principal was instructed by his regional manager not to have any dealings with the teacher and other colleagues felt that they had to be very careful in their dealings with him. One assistant principal described the effects of his behaviour as devastating on staff. One teacher reported leaving the school to escape the teacher's bullying and harassment. The Panel was of the view that as an experienced professional teacher the teacher had a responsibility to nurture and support less experienced teachers and not the opposite which the Panel considered him guilty of. After reading the teacher's statements the Panel had no information or confidence that he would behave any differently in the future. The teacher did not attend the Formal Hearing and the Panel could detect no change in attitude in his written statements which showed a lack of insight and a lack of

remorse on his part further indicating that he was unfit to teach. The Panel was of the view that the teacher interpreted all behaviour as if he was the victim.

The teacher did not appear to the Panel to have differentiated between being properly asked to explain and justify his behaviour and to practice as a professional, and a conspiracy. Nor did he seem capable of controlling his impulses, anger and rage over a period of years. The Panel could find no satisfactory contextual reason to justify the teacher's behaviour. The Panel found that the teacher's approach to teaching and his colleagues was irretrievably and profoundly flawed. One witness provided limited evidence that the teacher had contributed to the school but the weight of evidence was overwhelmingly opposed to this position. Even the witness who provided the limited evidence of the teacher's contributions to the school regarded some of his behaviour as totally unacceptable.

In the Panel's view the teacher's denials were never an adequate explanation of his behaviour and while untested his justifications sometimes revealed a lack of honesty and candour on his part. Evidence of this are his claims to never having been told of curriculum writing requirements or activities that a whole year level would undertake in concert; his systematic undermining of teacher 6 while claiming to support him; and his claim that teacher 9 had given him permission to not teach a unit.

The effect of the teacher's behaviour on his colleagues appeared to have been substantial to the Panel and for some, of an extreme nature. The Panel noted that a number of witnesses appeared to have been so traumatised that the effects of the trauma continued. Some witnesses described the atmosphere at the school after the teacher left, as happier, calmer and more harmonious. This depiction of the workplace after the teacher's departure speaks to the behaviour he engaged in while at the school.

The Panel considered that it would be appropriate if the teachers and members of the principal class affected by the teacher's behaviour were brought together with a registered psychologist in order to debrief. The Panel considered that the opportunity to discuss the trauma experienced, with a view to alleviating its effects and ensuring a debriefing that delivered appropriate levels of closure for the affected parties, would be professionally and personally valuable. The participants should also include affected parties who have since left the school.

## **DETERMINATION**

The Panel found the teacher guilty of serious misconduct, serious incompetence and unfit to teach. In the absence of any insight and remorse the Panel cancelled the teacher's registration on 31 August 2011.



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**SUSAN HALLIDAY, CHAIRPERSON**



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**per:**  
**GARRY SALISBURY, REGISTERED TEACHER**



.....  
**per:**  
**ALINA JONAS, PANEL MEMBER**