

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 141

REGISTERED TEACHER: Asha John GANSER

PANEL MEMBERS: Marilyn Mooney, Chairperson
Anne Farrelly, Registered Teacher
Paul Wilhelm, Registered Teacher

ATTENDANCE: The teacher did not attend the Formal Hearing

Mr Rodney Hepburn, Counsel Assisting with Mr Damien Cricchiola, Instructing Solicitor on behalf of the Victorian Institute of Teaching

DATES OF HEARING: 29 and 30 April 2013

DATE OF DECISION: 24 July 2013

FINDINGS AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 17 May 2013 the Panel found the teacher guilty of serious misconduct and unfit to teach.

REASONS

BACKGROUND

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

By letter dated 8 January 2010, the employer notified the Institute that it had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher.

The teacher resigned from his employment by letter dated 21 October 2009. This resignation took place during the inquiry into allegations of repeated breaches of his duty of care.

The employer subsequently advised the teacher that he was no longer permitted to seek employment within the employer.

On 1 January 2010, the teacher's registration with the Institute was suspended due to non-payment of his 2010 and 2011 annual registration fees.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 21 April 2010 and the Committee decided to continue with the inquiry and conduct an investigation.

On 11 November 2011, the Committee considered the Investigator's report and decided to continue with the inquiry and refer the matter to a Formal Hearing.

A Notice of Formal Hearing, dated 19 January 2012, was served upon the teacher by registered post on 24 January 2012.

A second Notice of Formal Hearing dated 28 March April 2013 was served upon the teacher by registered post on 16 April 2012 and an amended Notice of Formal Hearing dated 22 April 2013 was sent to the teacher by express post on 22 April 2013.

THE ALLEGATIONS

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

Whilst employed as a registered teacher at the school, during 2007 to 2009, the teacher:

1. Failed to treat the following students with courtesy and dignity making inappropriate and unprofessional comments to students, including comments about sexual and other personal matters:
 - a. During 2007, the teacher took photographs of female students, student 1 and student 2 without a valid context and without their consent.

- b. During 2007, the teacher made inappropriate comments to student 3 that she was a 'cradle snatcher' in relation to her friendship with another student.
- c. During 2007, the teacher made inappropriate comments to student 4 in relation to stating that she should take up pole dancing as a career.
- d. During Semester 1 2009, the teacher stated to student 5, "You're just the town bike aren't you?"
- e. During Semester 1 2009, the teacher stated to students in his Year 10 class, "There's no point in having a wife. Why buy the cow when you get the milk for free?"
- f. During Semester 1 2009, the teacher responded to a Year 10 photography class student who had suggested to the teacher that he looked like a particular Year 8 student, "Does he know who his father is?"
- g. During Semester 1 2009, the teacher stated to student 6, "I hate it when you talk about your single mothers going to clubs because I could meet them and end up in their beds".
- h. During Semester 1 2009, the teacher stated to students in his Year 10 Photography class that they were "all ignorant".
- i. During Semester 1 2009, the teacher attended the work experience placement of student 7 and referred to the childcare industry whilst visiting student 7 as "children's farms" or "baby farms".
- j. During Semester 1 2009, the teacher stated to students in his Year 10 Science class that "women are only good for cleaning floors"; "single mothers are worthless, they need a man to support them" and "females only want money out of men".
- k. During Semester 1 2009, the teacher made the following statements and/or behaved in the following inappropriate manner to student 8:
 - i. Stated to student 8 that "God doesn't exist" and "after you die there is nothing else".
 - ii. During his Year 10 Science class, the teacher caused student 8 to feel uncomfortable and distressed by touching student 8's hair, neck, ear and pushing student 8 by the shoulder, despite student 8 indicating to the teacher that such behaviour made her feel uncomfortable.
 - iii. During his Year 10 Science class, the teacher lent close to student 8 without due cause and commented to student 8 that he had been thinking about her.

- iv. During his Year 10 Science class, the teacher stared at student 8 in such a way that made her feel uncomfortable.
 - i. During Term 2, 2009, the teacher stated to a VCAL class that VCAL students “would be on the dole” or “trolley pushers”.
 - m. During Term 2, 2009, the teacher stated to student 9 during a Year 10 Applied Maths class, “Don’t try to be smart, it doesn’t suit you”.
 - n. During Term 3, 2009, the teacher stated to students in his Year 10 Science class, “for all you know I could be the father of one of you guys”.
- 2. Failed to treat students in his Year 10 Science class with courtesy and dignity by inappropriate behaviour and comments towards such students:
 - a. During 2009, the teacher pretended to pick papers up from the floor under the table of female students in his class.
 - b. During 2009, the teacher looked pointedly at female students when talking about sexually transmitted infections in his class.
- 3. On or about 20 October 2009, the teacher failed to maintain a safe learning environment:
 - a. The teacher transported 11 students of a Year 10 Photography class to an offsite location in the teacher’s private vehicle contrary to protocols of the school.
 - b. Parental permission was not sought or obtained to transport the said students.
 - c. The school was not advised that students would be transported by the teacher in his vehicle.
 - d. Up to six students were transported in the teacher’s vehicle at any one time.
 - e. The majority of students were unable to wear a seat belt due to too many passengers being contained within the teacher’s vehicle.
 - f. Students were left unattended at the site while the teacher returned to transport others from the school.
 - g. The teacher swore at a student saying, “Where the fuck are they going?”
 - h. The teacher left two female students unsupervised at the school who refused to be transported in the teacher’s vehicle.

THE EVIDENCE

The Principal

The Principal gave evidence under oath and confirmed his signed written statement as true and accurate. The Principal has been a teacher since 1981 and has held various teaching positions in that time including several years in senior roles and also as Assistant Principal. He is presently the Principal of the school and has been in that role since 2008.

The Panel heard that the teacher was employed at the school from around 2006 and that he taught various year levels in the subjects of Maths, Photography and Science. The Principal said that in 2006 informal complaints about the teacher being “overfamiliar” with students were first being heard. He said that by 2007 more formal complaints were being received from students, parents and teachers about the teacher using language and making comments that had sexual connotations. These comments made the students feel uncomfortable. The Principal said that at this time he was Assistant Principal and that he assisted the then Principal, Principal 2, to investigate these complaints.

The Panel heard that in February 2007 a teacher, teacher 1, reported via email to senior staff that several students confided in her their discomfort about the teacher taking photographs of them. Student 1 and student 2 were interviewed by teacher 2, Year 10 Coordinator, and completed incident reports in relation to this complaint. Teacher 1 said that the students had several concerns, including: that he may have been able to see up their skirts; that when they asked to see the photographs he said there was nothing to see; that he continued to take photos after they asked him not to; and that he made them feel “creeped out”.

The Panel was told of a complaint made by student 3 and student 10 regarding the teacher calling student 3 a “cradle snatcher” and telling her to “shut her mouth” during a Maths class.

The Principal attested to the character of these student witnesses as “stock standard kids” and said that they were basically good students. He said that the allegations were checked out and corroborated and were in no way fictitious. He told the Panel that the students had a sense of outrage that they had been spoken to in such an inappropriate manner by a teacher.

In May 2007, parents of two Year 11 Maths students made complaints about the teacher’s behaviour and teaching, including inadequate explanation of the teaching concept or the task and a lack of follow up with students needing further assistance. The parents also complained that their children found some of the teacher’s comments to be of a sexist and racist nature. In particular, that the teacher favoured the boys over girls. The Principal informed the Panel that these parents were supportive of the school and would have been extremely reluctant to raise these complaints against the school.

The Panel heard that in response to these various complaints and following a further complaint about the teacher making an inappropriate comment to a female student (student 4) that she “could make a career as a pole dancer”, formal proceedings were initiated. A letter outlining the complaints was sent to the teacher and he was requested

to respond in writing. A meeting with him was then held to discuss the complaints. The Principal told the Panel that the teacher gave a stock standard apology and displayed a 'pretty dismissive' attitude towards the complaints. He said that the teacher gave excuses or said that the incident didn't happen as reported or that he didn't mean any harm to come of it. The Principal stated that he believed the teacher did not have an understanding of the effect his behaviour had on the students; in short, the Principal said that he felt the teacher 'didn't get it'. The Principal said that at this stage he was also beginning to doubt the teacher's ability in the classroom.

The Panel was told that a pattern of behaviour was emerging involving a "knock about relationship with boys but difficult (relations) with boys who supported the girls". The Principal said that many of the girls felt very uncomfortable with the teacher. He said "even if it wasn't happening to them they felt for the others." The Principal informed the Panel that student 4 was horrified by the "pole dancer' comment. He said that the comments remain with her to this day.

The Panel heard that in 2008 there were no reported complaints or concerns regarding the teacher. The Principal told the Panel the formal complaints process had the desired effect with the teacher in that it "stopped him in his tracks" and showed him that the school took the complaints seriously. The Panel also heard that the teacher had significant health issues in 2008 that kept him away from school for extended periods of time.

In April 2009 complaints were made by student 8 and student 11 concerning the teacher looking across the room at student 8's legs. The Principal said that both students were convinced this, as well as other constant unnecessary references to sexual matters and comments that had sexual connotations, happened on a regular basis. He said that they were uncomfortable and disturbed by it all. The Principal spoke to the good character of these two students and added that student 11 was also an SRC representative.

In May 2009, the VCAL coordinator, teacher 1, reported that the teacher had made derogatory remarks to VCAL students about the program, saying, "So this is the dole bludgers class, oh no you will all be trolley boys". Teacher 1's email outlined that the students were very upset with the teacher's comments. The Principal explained to the Panel that the teacher's comment caused outrage in the school. He said that the school was in a low socio-economic area and that 40% of their students participated in the VCAL program. He stated that the school had worked extremely hard to raise the profile and credibility of VCAL within their community. The Panel heard that teachers were very disappointed in the comments as they went against everything that the school had been working towards with their students.

The Principal told the Panel that in May 2009 he received a written complaint from the Childcare Coordinator of the Neighbourhood Centre concerning comments made to her by the teacher. The Principal said that the teacher had visited the Centre to monitor student 7 who was on work experience there. The Coordinator complained that the teacher was extremely dismissive of the childcare industry in general calling them "children's farms" and she found his attitude to be rude, sarcastic and demeaning to the centre's staff.

The Panel heard that the Principal wrote to the teacher in May 2009 outlining the various complaints and asking him to respond. A meeting was then held where the complaints were discussed. The Principal told the Panel that the teacher mostly offered outright denials or would offer "I was only joking". He said that in relation to the Neighbourhood Centre, the teacher apologised if his "light hearted" comment regarding baby farms had caused offence. The teacher said that his comment to the VCAL students was in relation to the global financial situation and that being on the dole was more likely due to the harder economic times. In relation to the complaints by students 8 and 11, the teacher denied them. The teacher denied that he looked at students' legs inappropriately and said that it was only the perception of the students. The Principal told the Panel that the teacher's explanation that he was required to ensure that students were in correct uniform was simply "rubbish and not feasible".

The Panel was told that in July 2009 further complaints were made by students. Student 12 complained in her incident report that the teacher made inappropriate comments such as "why buy the cow when the milk's free". She said he spoke negatively about another student's parents being divorced and made personal comments about that student. Student 5 made an incident report regarding the teacher commenting to her "Well, you're just the town bike aren't you?" The Principal told the Panel that the student was devastated. Her mother filed a letter of complaint about the teacher and the comment that was made and questioned whether her daughter's depression was a result of the teacher's comments. She said that she had taken her daughter to a doctor because she was unhappy, was not sleeping or studying and did not want to attend school. The Principal said the teacher denied having said any such thing but claimed that he asked her if that was what the students were saying to her. The Principal told the Panel that no other student substantiated the teacher's version of events.

The Panel heard that the Principal then commenced the formal disciplinary process by contacting an officer of the employer advising his belief that there were grounds for disciplinary action in relation to the teacher. The teacher was advised in writing of the course of action pending and was provided with a copy of the allegations and witness statements in preparation for a formal meeting. However, prior to a meeting being scheduled a further incident occurred which prevented the meeting taking place.

The Principal told the Panel that the teacher had taken his Photography class on an unauthorised excursion. He said that the students were transported in an overloaded fashion in the teacher's private vehicle. The Panel was told that no parental permission was obtained, there were not enough seat belts available for all passengers, and no employer protocols for excursions were followed. The Principal stated that students were left unsupervised, and there was an allegation that the teacher swore at students saying "Where the fuck are they going?" When the teacher was confronted with these allegations he resigned.

The Panel heard that the teacher received a great deal of professional support. The Principal said that he had good people around him who provided professional guidance and advice and tried to work through the issues with him. He said that this was done in meetings but was not documented. The Principal told the Panel that teachers saw the teacher as arrogant and dismissive and reluctant to take any complaints seriously until

more formal processes began. The Principal told the Panel that the teacher was not a skilled practitioner, seemed arbitrary in his planning, and was not a team player.

In response to a question from Counsel Assisting, the Principal stated that he would not employ the teacher in the future adding "He has no capacity to understand the effect he has on students or women".

Student 5

Student 5 gave evidence under affirmation and confirmed her written statement with an alteration to the last line - remove the word "matters" and replace with "context". She told the Panel that she graduated in 2011 and is presently working as a part-time retail assistant.

The Panel heard that in 2009 her parents separated. She said that in class the teacher made a derogatory comment "about how no one would want a woman who had been married and had kids because they are worthless". Student 5 told the Panel that she was hurt and upset by this comment and that other students were dumbfounded and offended in their own ways. She stated that when a group of girls was having a private conversation, the teacher "put his two cents worth in" and made the comment to student 5 that she was the "town bike".

Student 5 said that the teacher made comments such as, "why get married when you can have the milk for free" and that he talked about some girls' parents going to night clubs and that he might end up in bed with them. She told the Panel she felt it was inappropriate for a teacher to talk like this to kids.

Student 5 said that in general she found him to be an okay teacher but that he favoured the boys over the girls and made inappropriate comments to the girls. She said that she thought he was arrogant and that he seemed to think that he was too good to be at that school.

Teacher 3

Teacher 3 gave evidence under affirmation and confirmed her written statement. Teacher 3 said that she has been a teacher at the school since 2003, has held various positions in that time and at present is an Assistant Principal.

Teacher 3 told the Panel that in 2006 she heard of complaints about the teacher making sexist remarks and inappropriate comments to girls. She said that by Term 2 2007 she received a complaint about the teacher making these comments and after thoroughly questioning the girls she spoke with him at length. She stated the conversation covered inappropriate comments and the need to be sensitive with the girls. Teacher 3 told the Panel of another complaint concerning the teacher remarking to a Year 10 girl that she could be a pole dancer and then on another occasion telling her that she wouldn't make much money out of it.

Teacher 3 told the Panel that she had twice spoken to the teacher about complaints and that the Principal and teacher 2 had spoken to him on several occasions. She said she didn't think that much progress had been made. Teacher 3 stated that she felt the teacher

had a lack of awareness of what he was doing and just didn't understand that his behaviour was inappropriate. She said he "did it again and again".

Teacher 3 said that after student 8's complaint, supported by student 11, she and teacher 2 spoke to both students. Her complaint centred around inappropriate looks to her and other female students by the teacher that made them feel uncomfortable; that the teacher touched her on the shoulder and behind the ear even after she asked him to stop; and that the teacher makes inappropriate (sexist) remarks. Teacher 3 told the Panel that student 8 was a very proud student who was working hard to improve at school. She said that the student was very upset by the attention from the teacher which she felt, and this was supported by student 11, was quite deliberate by the teacher. The Panel heard that the teacher was student 8's home group teacher and that she started coming late to school to avoid him and then stopped going to Science class.

Teacher 3 said that she attended a meeting with the Principal, the teacher and his support person to outline and discuss the complaints and to inform the teacher to provide a written response. There was no follow up meeting as the teacher became ill.

Teacher 3 told the Panel that the teacher had an air of arrogance about him. She said that he would say "yeah yeah" but she had the impression that he wasn't going to do anything to change. She said that as far as she was aware he never sought help regarding classroom behaviour. She said that he had few friends and didn't get involved with other teachers.

Teacher 2

Teacher 2 gave evidence under affirmation and confirmed his written statement. Teacher 2 said that he has been a teacher at the school since 2005 and has held various teaching and administrative roles. He was a Year 10 Coordinator from 2007 to 2009 when students and teachers made various complaints to him about the teacher. He is presently Assistant Principal at the school.

Teacher 2 told the Panel that student 1 and student 2 had complained to him about the teacher taking photos of them in a Maths class. They were concerned that he might have looked up their skirts. Teacher 2 said that the teacher ran a wedding photography business and claimed to be a professional. The teacher said that he took the photos for recognition purposes but teacher 2 told the Panel that this was unnecessary as there are photos available through school processes. He said that the two students involved did not have impeccable records but were credible witnesses with no history of 'fabricating' events.

The Panel heard that in 2007 teacher 2, although aware of complaints involving inappropriate comments, sexist remarks and derogatory comments towards women, was not directly involved. He told the Panel that in 2009 he had the need to speak to the teacher on several occasions over increasing complaints. There seemed to be a pattern developing.

Teacher 2 said that in 2009 student 8 complained about inappropriate attention being paid to her by the teacher. Teacher 2 stated that he was genuinely concerned about the

impact on the student of the teacher's behaviour towards her. He said that student 8 had no other issues with any other teacher. Teacher 2 stated that she had only minor infractions of school rules and was a credible witness. He said that the student was visibly distressed and shaking during the interview. Teacher 2 told the Panel that as student 8 was on the verge of dropping out of school, he removed her from the teacher's class.

Teacher 2 stated that he was aware of other complaints involving the teacher making inappropriate comments about single mothers, comments with a sexual innuendo, and referring to student 5 as "the town bike". Teacher 2 attested to the character of students 3 and 4 as maturing students and had no reason to doubt their credibility.

Teacher 2 said in discussions with the teacher about these complaints his response would be that the comments were made in jest. Teacher 2 stated that he remarked to the teacher that these comments are "singularly inappropriate, let alone in a teaching setting". Teacher 2 told the Panel that the teacher was quite dismissive of his role and lacked awareness and comprehension of his impact in the classroom. He said that this attitude extended to colleagues as well with him being particularly abrasive towards female staff. Teacher 2 said that of most concern was that once the teacher's inappropriate behaviour was raised with him, the behaviour simply continued - nothing changed. Teacher 2 stated that female staff found his comments of sexism and sexual innuendo inappropriate with some female staff considering formal complaints. He said that the teacher had a "locker room footy personality at school" and didn't have "the right filters" for appropriateness.

Teacher 2 told the Panel that the final incident of complaint where the teacher took his Photography students on an excursion that had no planning or permission from the school or parents, was a "reckless and dangerous act". He said that he had never seen anything worse or been aware of a greater breach of duty of care.

Teacher 2 spoke to the Panel of the credibility and veracity of the students who provided incident reports of the photography excursion. He indicated that of those he knew all were believable.

Teacher 2 told the Panel that he didn't think that there was anything more that could have been done by the school to assist and support the teacher to understand his professional responsibilities.

Student 7

Student 7 gave evidence under affirmation and confirmed her written statement. She told the Panel that she worked part-time while studying. Student 7 said that in 2009 she was a Year 10 student at the school.

Student 7 told the Panel that during 2009 she had a work experience placement at the Neighbourhood Centre and the teacher was to assess her during this placement. She said that during the teacher's visit he made comments to her supervisor such as he "doesn't like kids" and that the centre was like a "farm of animals". The centre made it known to me that they were going to put a complaint to the school about the teacher's behaviour.

Student 7 stated that the comment to student 5 that she was a “town bike” was very unnecessary. She said that she saw a smirk on the teacher’s face after he said this. The Panel heard that the teacher butted into a conversation that the girls were having. He then made his comments about single mothers and possibly waking up with one of their mothers after a night out. Student 7 was shocked with the comments that the teacher made to students.

Teacher 4

Teacher 4 gave evidence under affirmation via a telephone link. She confirmed her written statement with the alteration in the first line of paragraph 2 of deleting “2008”. In 2007 teacher 4 was a Year 10 Coordinator at the school and is now a teacher at school 1.

Teacher 4 told the Panel that two female students in the teacher’s “life skills” class reported to her about comments the teacher made to student 4 that suggested she could make money out of pole dancing. The Panel heard that he later said to the student that she wouldn’t make any money because no one would pay. Teacher 4 stated that she sent an email with these details to teacher 3, the Assistant Principal, and the then Principal.

Teacher 4 said that she regularly spoke to a wide group of the teacher’s students who indicated that they were unhappy with the teacher’s ability to communicate. She said that the two students who made the report were really uncomfortable that he was teaching them.

The Panel heard that when teacher 4 spoke to student 4 she was visibly upset and embarrassed by the comments. She said that although the student had a difficult time at home, was poorly organised and had minor behavioural issues, she was a straightforward and honest person.

Teacher 4 attested to the good character of students 13 and 14 as being good, reliable and honest people. She said they displayed a shocked demeanour over this incident. Teacher 4 spoke positively of the character of the students she knew and who have made reports or given evidence in this matter.

Teacher 4 recalled that in 2007 she had constant periods of complaints about the way the teacher spoke to students, that he was sarcastic to students and that he talked about himself. She said that complaints were of the frequency of about one a week. She told the Panel that she felt the teacher was unable to form healthy relationships with students and that he didn’t seem to enjoy the profession. She said that he didn’t have particularly good relationships with his colleagues and at times made inappropriate comments. Female colleagues avoided him as they didn’t necessarily find him threatening but didn’t feel safe or comfortable around him. Teacher 4 added, “I avoided him.”

Teacher 4 said that throughout and after the periods of professional support the teacher received she didn’t observe any change or willingness to change. She said he displayed an inability to empathise with students or colleagues and demonstrated no insight into any of his behaviour. She told the Panel that his teaching lacked organisation and planning, that he had little willingness to be part of collegial cooperation, and he

displayed an arrogant nature in that “he knew it all”. Teacher 4 stated that she would not want any of her students or her own children taught by him.

Witness 2

Witness 2 gave evidence under affirmation and confirmed her written statement with one addition in paragraph 2 of the words “Term 4” after the word “beginning”. Witness 2 told the Panel that currently she is studying and that in 2009 she was a Year 10 student in the teacher’s Photography class.

The Panel heard that about a week before the Photography excursion the teacher had told the class that they would be going on an excursion. Witness 2 said that no details of date or venue were given and no permission note was handed out. She told the Panel that she was in the first group of 6 students to get in the teacher’s car. She said that she was in the front seat, sitting on a male student’s knee with no seat belt and that there were 4 students in the back. The Panel heard the first load of students was left at a paddock site while the teacher drove back to pick up another group of students. Witness 2 told the Panel that students were not given any instructions from the teacher regarding how they should keep safe while he was returning to the school to pick up another load of students. She said that after a while the students walked back to school in time for their next class.

Witness 2 said she was nervous in the front seat as her head was nearly touching the roof and near the windscreen, and either a leg or knee of the student she was sitting on was sticking into her side. She was worried if the teacher had to stop hurriedly.

Witness 3

Witness 3 gave evidence under oath and confirmed his written statement.

He told the Panel that in 2009 he was a Year 11 student in either a Maths or English class where the teacher was filling in for another teacher. The Panel heard that during a class discussion on the VCAL, the teacher made comments about VCAL students that “we were going to be pushing trolleys” and “living on the dole”.

Witness 3 said that he didn’t take the comments personally because he felt confident about his future but he said that others got upset and were unhappy with the teacher.

The Panel heard that witness 3 thought the teacher a good teacher and had no issues with him. He said that he didn’t think that the teacher favoured any particular students.

DISCUSSION OF THE EVIDENCE

Given that the teacher was not present and was not represented the Panel was mindful to apply the rules of natural justice. The Panel is satisfied that the teacher has been given every opportunity to address and contest the allegations at all stages of the investigation and Formal Hearing.

The Panel considered all witnesses who appeared at the Hearing to have given clear, consistent and credible evidence. The Panel accepted that unsworn evidence from students and parents was convincingly corroborated, particularly when looked at in the context of other sworn evidence.

The Panel accepted that in isolation some of the student complaints were minimal, however when considered within the totality and breadth of evidence, it is apparent that a continuing pattern of behaviour was formed and sustained that was unprofessional and which brought the profession's reputation into disrepute.

All teachers attested positively to the character of students who made complaints and made it clear that they were trusted and believed. It was clear to the Panel that the students did not have a history of fabricating or exaggerating stories.

The Panel was disturbed about the harmful effect that the teacher's behaviour had on students and staff. Students felt outraged and uncomfortable, and were "creeped out" by him. Student 5 was horrified and embarrassed by his comment that she "was the town bike" and to this day is still affected by this. Female teachers, although not intimidated by him, were feeling uncomfortable and not entirely safe around him, and male teachers felt he undermined all the good work as men they were doing in establishing positive relationships with students.

The Panel acknowledges the sustained effort and support given by school leaders to the teacher to assist him develop an understanding of the inappropriateness of his conduct. It accepts that the teacher displayed an inability and an unwillingness to recognise or accept any need for a change in his behaviour. As stated in teacher 2's evidence, he lacked a filtering process for what constituted inappropriate behaviour.

The Panel acknowledges, firstly, the maturity of the students to take their complaints to teachers and, secondly, their courage to make formal written statements and to appear and give evidence at the Formal Hearing.

FINDINGS

The Panel noted that by not attending the Hearing the teacher failed to take the opportunity to demonstrate to the Panel the extent of his insight and remorse, or provide an explanation for the misconduct and possible corrective action or measures he might undertake.

The Panel considered whether the teacher's behaviour amounted to serious misconduct and/or was unfit to teach. Serious misconduct includes "conduct which would reasonably be regarded as disgraceful or dishonourable by his professional brethren of good repute and competency" (*Allinson v General Medical Council (1891-4)* All ER768).

The Full Court of the New South Wales Supreme Court described *serious misconduct* as not to be measured against the worst cases of misconduct, but by the extent to which the conduct departed from proper standards. Otherwise the worst members of the profession

will set the standard of professional misconduct. *Healthcare Complaints Commission v Litchfield* [1997] 41 NSWLR 630

The Panel found that the teacher violated the professional standards of the teaching profession and in doing so abused the position of power and trust that he was privileged to be granted. His conduct was a serious departure from the accepted standards of the profession and had lasting detrimental consequences.

In determining whether the teacher is fit to teach the Panel reflected on the words of Kirby P in *Pillai v Messiter (No 2)* [1989] 16 NSWLR 197 at 201 when he says that: "The public needs to be protected from delinquents and wrong doers within professions. It also needs to be protected from seriously incompetent people who are ignorant of basic rules or indifferent as to the rudimentary professional requirements. Such people should be removed from the register or from the relevant roll of practitioners; at least until they can demonstrate that their disqualifying imperfections have been removed".

The Panel finds that the teacher is an individual with a severe character flaw that is an impediment to proper professional teaching practice. Further it highlights the teacher's arrogant indifference as to the requirements of professional teaching.

The Panel finds all allegations and associated particulars substantiated. The teacher is guilty of serious misconduct and is unfit to teach.

DETERMINATION

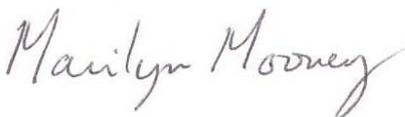
The Panel determined to cancel the registration of the teacher from 24 July 2013.



MARILYN MOONEY, CHAIRPERSON



**per:
ANNE FARRELLY, REGISTERED TEACHER**



**per:
PAUL WILHELM, PANEL MEMBER**