

VICTORIAN INSTITUTE OF TEACHING
DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 143

REGISTERED TEACHER: Maher MAKAR

PANEL MEMBERS: Marilyn Mooney, Chairperson
Kevin Moloney, Registered Teacher
Paul Wilhelm, Registered Teacher

ATTENDANCE: The teacher was represented by Mr Edward Johnson,
Industrial Officer, Australian Education Union

Mr Rodney Hepburn, Counsel Assisting, with Ms Katrina
Galanos, Instructing Solicitor on behalf of the Victorian
Institute of Teaching

DATES OF HEARING: 12, 13 and 14 August 2013

DATE OF DECISION: 15 October 2013

FINDINGS AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 15 October 2013 the Panel found the teacher guilty of serious incompetence and unfit to teach.

The Panel determined to cancel the teacher's registration from 15 October 2013.

REASONS

BACKGROUND

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

By letter dated 13 July 2010, the employer notified the Institute that it had taken action in relation to the alleged serious incompetence and/or lack of fitness to teach of the teacher. The teacher's performance was found to be unsatisfactory and it was recommended that his employment should be terminated.

The teacher resigned with effect on 11 July 2010, prior to the conclusion of the employer's inquiry.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 16 February 2011 and the Committee decided to conduct an investigation.

On 22 February 2012, the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 24 April 2013 was served upon the teacher's representative by express post.

Further allegations were referred to the Disciplinary Proceedings Committee and on 24 July 2013, the Committee adopted the recommendation of the Inquiries and Litigation Branch and authorised an own motion inquiry into the allegations against the teacher.

An addendum to the Notice of Formal Hearing dated 29 July 2013 was served upon the teacher's representative by express post.

THE ALLEGATIONS

The allegations of 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 2008 – 2009, the teacher failed to :

- 1. Effectively communicate explanations and instructions to ensure that students understood the subject matter being taught.*
- 2. Provide opportunities for students to make progress in their learning including not using a range of teaching and learning strategies, activities, resources to engage students in active learning.*

3. *Teach in a manner that catered to all levels of students' learning abilities.*
4. *Follow effectively paced lesson structures and utilise a variety of teaching methods to maintain students' attention and engagement.*
5. *Make sufficient provision of one to one or small group assistance for students who needed help whilst they were working on set tasks.*
6. *Complete sections of the course before moving on to the next topic.*
7. *Mark student assignments, keep comprehensive and reliable assessment records and provide timely feedback to students.*
8. *Establish and maintain positive relationships with students by not communicating effectively with students to build rapport and to support their learning.*
9. *Establish and maintain clear and consistent expectations for students as learners and for their behaviour in the classroom including failing to follow the school's student discipline policy in circumstances where the lack of control of the classroom made it difficult for students to learn.*

ALLEGATIONS ADDED 29/7/2013

Whilst employed as a registered teacher at four (4) previous schools spanning a period from 1998 - 2006, the teacher failed to:

10. *Establish clear and consistent expectations for students as learners and for their behaviour in the classroom;*
11. *Provide acceptable classroom control by allowing his classroom to become noisy, disruptive and rowdy to the detriment of students in the learning process;*
12. *Adopt effective communication strategies in his teaching to enable students to learn and provide clear follow up explanations when students did not understand; and*
13. *Use appropriate teaching methods and strategies to aid students in active learning.*

THE EVIDENCE

The Principal

The Principal gave evidence under oath and confirmed his signed written statement as true and accurate. He stated that he has been a teacher for 30 plus years and is currently Principal of the school having held that position since the beginning of term 3, 2008.

The Panel was told that the teacher was employed at the school from January 2008 until 2010 when he was reassigned duties outside of the school pending the outcome of an

unsatisfactory performance process. The teacher taught Maths and Science across Years 7 - 10.

The Principal said that Year level co-ordinators brought his attention to complaints from parents about the teacher's lack of communication with students and that he called students "boy" rather than by their names. The Principal said that he spoke to the teacher about the need for clear and varied explanations and that he instructed him to use students' names and not call male students "boy". He told the Panel that his expectation was that teachers should know students' names and certainly by term 3 would know them. The Principal said that when teachers did not know students' names it is difficult to communicate effectively, to gain students' cooperation or to build relationships based on mutual respect. The Principal told the Panel that towards the end of 2008 the Science Key Learning Area (KLA) Coordinator raised issues with him concerning the teacher's lack of engagement with students in his classes, poor student management strategies and a lack of contribution to curriculum development in the Science area. More specifically the coordinator complained of the disruption to the Science excursion caused by the teacher's lack of student supervision and poor attention to administrative details prior to and during the excursion.

The Panel heard that while planning for 2009 staffing it was evident that 3 Maths/Science positions would need to be filled. The Principal employed the teacher on an ongoing basis, starting his one term probation period in January 2009. He said that although there were concerns with the teacher's competence he was confident that with the appropriate mentoring and curriculum support the teacher would be well equipped to carry out his duties. As the teacher had indicated that he was more confident teaching Maths not Science, his 2009 allotment reflected this with more Maths classes than Science. The Principal said that the support provided to the teacher was provided by teacher 1, the Science KLA Coordinator, teacher 2, the Maths KLA Coordinator and teacher 3, a Leading Teacher who taught Maths at the same year level. The Panel heard that a Teaching and Learning Literacy Coach, teacher 4, had been assigned to the school to support teachers with the integration of literacy across the curriculum. The Principal said that from February 2009 she supported the teacher in his classroom.

The Principal told the Panel that he did have serious concerns about the teacher but felt confident that the support processes he had put in place would be successful. The Principal said that in discussing his role for 2009, he indicated to the teacher that he should focus on the areas of his performance which required improvement but that he supported his interest in extra-curricular activities as a way of improving his relationships with students. The concerns discussed with the teacher related to four main aspects of his work and included – lateness to school and to class; inadequate supervision of students in class and on excursions; lack of knowledge of students' names and the need to develop positive relationships; and inadequate classroom preparation or contribution to curriculum development in the KLA. The Principal stated that the teacher acknowledged that improvement in these areas was necessary.

The Principal told the Panel that not long after offering the teacher on-going employment he received further complaints from Year 7 and 8 Level Coordinators, teacher 5, teacher 6 and teacher 7, in relation to the teacher's student and classroom management. He said

that it was after staff became aware of the teacher's on-going employment that they brought to his attention the number and frequency of complaints that they had received either as KLA leaders or Year level coordinators. The Principal said that he also received an email in December 2008 from teacher 8, a Year 7 and 8 teacher, outlining complaints regarding the teacher's classroom management that she had observed and also received from students and parents.

The Principal stated that as he had not received any reports that the teacher had not satisfactorily completed the probation period in term 1, 2009, his employment became ongoing at the school. He said that in February 2009 he did meet with parents of a Year 8 student who had concerns about the teacher not marking or handing back assignments and also in relation to the teacher's lack of clear explanations. The Principal stated that these parents were reasonable people and not prone to frivolous complaints and he therefore took them seriously.

The Panel was told that at the end of term 1 the Principal met with the teacher to discuss his progress. Issues covered included the teacher's concerns that some students were falling behind while he needed to move on to other topics. The Principal explained to him that these students need to understand concepts before he moves on. The teacher offered to meet and work with these students at lunchtime. A particular area of discussion was the need for the teacher to ensure students could understand his explanations – this included the teacher being conscious of his heavy accent when speaking to students as well as being equipped with different ways to explain concepts and materials. The teacher said that he was implementing a seating plan suggested by other teachers to help with classroom management and he requested that he be able to observe other classes. The Principal told the Panel that his level of concern was rising but that there were some areas of improvement and the teacher had acted on some strategies.

The Panel heard that around the end of term 1 2009 the Year 9 Level Coordinator, teacher 9, raised further complaints from students and parents with him. These continued to involve classroom management and communication but also that a parent had requested her child be removed from the teacher's class. The parent complained that her daughter was spending a lot of time out in the corridor as punishment. The Principal said that the result of the teacher not dealing quickly or fairly with behaviour issues - for example, he would punish the whole class rather than the specific student - was that students became angrier and uncooperative.

The Principal explained to the Panel that most parents were prepared to compromise when strategies to solve the problem were presented. He told the Panel that of two complaints from parents he did not particularly know one of the students, while of the other one, he said the student was forthright and outspoken and would not "sit back and take it" if she felt she was being treated unfairly. The Principal said that this student's mother could be reasoned with, but not if she felt that her daughter was not being taught properly or treated fairly.

The Panel heard that by the end of term 1 2009 The Principal observed some efforts to improve and said that the teacher was making a greater effort with students, for example, he remembered to wish a student a "Happy Birthday". He said that after he observed the

teacher's classes he discussed several issues with him including: the need to continue to improve in giving clear and accurate explanations of tasks; to be explicit with connections between ideas and processes; to listen to students' questions and answers; to make more effective use of text books rather than poorly presented handouts; and to ensure that the class is quiet and attentive before giving directions and marking the roll.

The Principal told the Panel that for most of term 2 the school supported the teacher by providing opportunities for him to work with Leading Teacher, teacher 3, on lesson preparation, by providing the teacher with opportunities to observe other teachers and by continuing to make the Teaching and Learning coach, teacher 4, available to work with him in the classroom. The Panel heard that during term 2 the Year level coordinators and the Principal continued to receive complaints in relation to the teacher. The Principal said that the complaints received were from the parents of conscientious students who usually did not make complaints to the school. The Panel was told that teacher 4 was optimistic and held a degree of hope that with the support being provided to the teacher, he would improve his lesson delivery and classroom management.

The Panel heard that by mid-2009 complaints regarding the teacher's performance had escalated substantially. Complaints were received from parents who, up to this point, had been patient with and understanding of the school's processes and who were also willing to give the teacher a chance to improve. He said that parents who never complained were contacting the school with concerns about the quality of teaching their children were receiving and in some cases requesting their children be moved from the teacher's classes. The Principal said that he received a string of complaints from teachers, coordinators and from a variety of students and year levels. Some of these students could be challenging in terms of behaviour in the classroom, but some were very conscientious and well behaved.

The Principal stated that due to the consistent nature, volume and frequency of the complaints being received he contacted the employer for advice. He said that in July 2009 he met with the teacher to inform him that he was implementing the formal process for managing complaints, misconduct and unsatisfactory performance. The Principal told the Panel that he wrote to the teacher in early August 2009 outlining the complaints and the process involved in investigating the matter and requested a written response. The Principal said that he was concerned with the teacher's responses as he did not seem to realistically acknowledge his deficiencies or be aware of the seriousness of the situation. He said that the teacher did attempt several ideas and strategies but that he was not aware that these strategies were not working nor of the impact the situation was having on his students. The Principal said that other than parent teacher interviews he was not aware of the teacher having any other contact with parents.

The Principal stated that towards the end of August 2009 he met with the teacher to discuss the complaints and areas of unsatisfactory performance. Also in attendance were teacher 9 (Union representative and support person) and teacher 10, an Assistant Principal. The Principal explained to the teacher that a Professional Support Group would be established and a period of monitoring would occur. Several days later he wrote to the teacher informing him of the monitoring period from 24 August 2009 to 30 October

2009, which would provide him with a further opportunity to improve his performance to the required standard as set out in his letter of 13 August 2009.

In late August 2009, the Principal received a phone call from a parent of one of the teacher's students regarding her daughter having missed sitting an exam. Her daughter was very upset and confused about arrangements for resitting the exam and was worried that she might fail Maths. The student had gone to meet with the teacher at lunchtime as arranged with him but he was not there. The Principal told the Panel that this student is a very conscientious and responsible student and the fact that she and her mother came to see him indicated the seriousness of the issue. The Principal explained to the Panel that this was another example of the teacher's poor communication and his lack of awareness of the need to attend to an issue immediately.

The Principal gave the Panel several examples from teacher 4's observation notes from early to mid-August that demonstrated the teacher's failure to implement strategies. These included a lack of a seating plan to help with classroom management; ignoring students' misbehaviour; being unaware of a student not having a Maths book; giving unclear instructions and explanations; and not enforcing directions. The Principal questioned whether the teacher's inability to follow through with advice was a fear of failure, or a feeling that he does not have the authority, or whether he is just reluctant to put strategies in place.

The Panel heard that the Principal met with the teacher and his support group in October 2009 to discuss his progress. It was noted during these meetings that there had been some improvement, particularly with him using students' names. However, there still needed to be improvement in the structure and pace of lessons, and in keeping students active, attentive and on task. The Principal said that teacher 4's observation notes highlighted the ongoing issues that continually presented in the teacher's classes. These included the teacher giving directions but not ensuring students understood or complied; not following up with student issues, for example, a boy who consistently throughout the year said that he did not have his glasses; no use of a consistent seating plan; poor classroom management; unclear explanations of tasks; and not providing a variety of activities for different abilities.

The Principal said that he was disappointed but not surprised that complaints were still being received this late in the year. His observations and the feedback from teachers and coordinators confirmed that there had been no significant improvement and the teacher had not achieved the required standards in all areas. He told the Panel that a second monitoring period was then instigated and he met with and wrote to the teacher at the end of October 2009, outlining the process and areas still needing improvement by 11th December 2009, the end of the monitoring period. The Principal said that the teacher had achieved the required standard in two areas and although showing improvement in the other areas, he still had not performed at the level expected of an Expert Teacher.

The Panel heard that complaints continued to be brought to the Principal's attention throughout November and December 2009. These included a parent who continued to be concerned about her daughter's Maths class. The parent complained that while other teachers are in the teacher's class, students behave and work is explained appropriately.

However, when other teachers were not in the room the level of student misbehaviour, lack of clear explanation and assistance with work had improved little from earlier in the year. A Home Group teacher brought the Principal's attention to students being confused with end of year assessments including very short deadlines and some tasks not being accepted when handed in. At the end of December 2009, teacher 11, an Assistant Principal, wrote to the Principal outlining a number of issues that were of a major concern to her regarding the teacher's competence and performance. She said that on two occasions she had to intervene during the teacher's classes. One of these was where a test was being completed and due to students behaving disruptively and the teacher requiring assistance, she intervened to establish an orderly learning environment. The Assistant Principal also reported that in working with Year Level Coordinators to arrange classes for 2010 they had to respond to 12 requests from parents that their children not have the teacher as a teacher. Some of these requests came from parents of primary school children.

At the conclusion of the second monitoring period on 11 December 2009, the Principal met with the teacher. Teacher 11 (Assistant Principal), teacher 9 (Union Sub-Branch President), and MH (Union representative) were also present. At this meeting the teacher was informed that although he had met some of the requirements and that there was some improvement in his work, there were still several areas of concern and that not all standards had been met. The Principal stated that he told the teacher that he was referring the matter to an officer of the employer. He invited the teacher to provide him with a written response to the concerns raised in his letter by 16 December 2009, after which he would meet with him to discuss the issues. The Panel heard that the teacher's response to the issues indicated that he believed he was performing appropriately. This view was at odds with the documented evidence of continuing complaints from parents and students, observations and complaints from other teachers, as well as teacher 4's classroom observation notes.

Counsel Assisting put it to the Principal that two teachers, teacher 12 and teacher 13, believed the school to be monocultural in nature and to have racist undertones. They believed this situation contributed to students having difficulty in accepting the teacher. The Principal stated that to some extent the teacher's accent contributed to students having difficulties understanding him but he did not believe that it was a significant factor. He told the Panel that although the school had a predominantly Anglo-Celtic demographic, there were teachers and students from other ethnicities.

The Principal responded to teacher 12's observations that the teacher planned his lessons effectively by noting that teacher 1, (Science KLA leader) had said that there was no contribution from the teacher at KLA meetings. The Principal added that the planning the teacher did was ineffective and that there was a disconnect between the plan, the topic, the introduction and the activity. In response to teacher 12's assertion that very little support was given to the teacher by the administration, the Principal said that he discreetly supported the teacher and that the confidential nature of the process meant that not all staff would have been aware of the support process.

The Principal refuted many of teacher 13's claims. He told the Panel that it was not possible for teacher 13 to have observed the teacher's classes as his office was in R wing

and in 2009 the teacher did not teach in R wing. The Principal said that teacher 13 was in no position to make comment on the teacher's classroom management and competence as he had no formal or professional relationship with the teacher and was never in the physical proximity to make those observations.

Under cross examination the Principal rejected the proposition that staff felt resentment towards the teacher and said that if anything they were trying to be as supportive as possible. He added that staff in positions of responsibility also had to deal with the reality of the situation which was that the teacher's performance needed to improve. He agreed that perhaps the teacher was not culturally attuned to his environment and the students picked up and acted on this.

The Principal told the Panel that he trusted that the leaders and support people involved in the early support process would be professional in their roles. He said that although it was not a formal process with no formal reporting back to him he was confident that it would be carried out proficiently and without bias.

Under cross examination the Principal agreed that teacher 4 observed positives in the teacher's performance but he clarified that it was not only discipline issues that the teacher need assistance with. He also needed to improve lesson preparation and delivery and engaging students in the teaching and learning process.

It was put to the Principal that the teacher felt unsupported by teacher 3 and the support process as he was not helped in the classroom by him. The Principal said that he was surprised if this happened although timetabling constraints could have impeded this occurring. The Principal pointed out that the teacher was reluctant to visit other teachers' classes.

In cross examination it was put to the Principal that other teachers expressed difficulties with a particular Year 8 class, so much so that one teacher emailed other teachers to organise a meeting to discuss strategies and a way forward. The Principal conceded this did happen, but said that the teacher had issues across classes, not just one and his issues also involved curriculum preparation and delivery.

In cross examination it was also put to the Principal that teacher 4 found "nothing chaotic" in the teacher's classes. However, in Counsel Assisting's re-examination, he cited teacher 4's November notes, including – "students not listening; two boys playing with paper; student 1 playing with a bracelet; the teacher yelling; chewing gum popping in mouth; students talking" and asked the Principal if this is chaotic behaviour? The Principal agreed that it was chaotic behaviour.

In response to a question from the Panel concerning the teacher's professionalism or "teacher smarts", the Principal explained that the teacher was lacking in this intuitive knowledge and that it "went to the heart of the problem". He said that he did not understand duty of care, or know how to talk to or engage with students. The Principal added that the teacher just "didn't seem to understand the problems that he had".

Teacher 11

Teacher 11 gave evidence under affirmation and confirmed her written statement as true and accurate. She said that she is an Assistant Principal at the school and has been a teacher for 23 years.

Teacher 11 told the Panel that she knew the teacher as a member of the Maths and Science teaching staff in 2008 and 2009. She said that during 2008 she was aware that concerns had been raised in relation to the teacher's classroom and student behaviour management but as the year level coordinators dealt with the issues she had no direct involvement in their management. She said that in the teacher's second contract position she became more aware of issues, particularly from teacher 1 (Science KLA leader) who had concerns related to the teacher's classroom and student behaviour management and his lack of curriculum knowledge. Teacher 11 said that as Science KLA Leader, teacher 1 provided informal assistance to the teacher in the way of examples of relevant curriculum to support him until the end of his contract. She was also aware that in 2008 teacher 5 (Year Level Coordinator) had received many complaints from parents and students of the teacher's poor classroom and student management skills.

Teacher 11 explained to the Panel that under the conditions of the relevant employment agreement, the teacher was entitled to be offered one of the 2009 ongoing Maths/Science positions. She said that as a result of the concerns raised in relation to the teacher's Science classes the school leadership made the decision to allocate the teacher mainly Maths classes rather than Science for 2009.

Teacher 11 said that on several occasions during 2009 she observed that there was excessive noise and an apparent lack of structure in classes run by the teacher. She said that in speaking to the students in an attempt to settle the class down, it was her observation that students were unclear about the work they should be doing. Her concern was that the teacher's lack of control in the classroom led to an environment in which it was difficult for students to learn. Teacher 11 told the Panel that on a number of occasions during 2009 she received complaints from parents in relation to the teacher's classes. One complaint from a Year 9 parent concerned bad behaviour and the teacher's lack of control with her daughter's class. All year the parents had encouraged their daughter to "stick it out and try to understand what is being taught" but they described the latest incident where "spit balls were being thrown around the class" as an impossible classroom in which to learn. Teacher 11 said that this particular girl was an excellent, high achieving student whose parents, like others, were trying to make the situation work. The Panel heard that parent complaints were mainly about communication and classroom management issues. Parents were worried that their children were getting behind because work was not covered while the teacher tried to deal with misbehaving students.

Teacher 11 stated that in the middle of 2009 year level coordinators continued to raise issues with her and senior management of the teacher's ongoing inability to deal with behavioural issues in his classes or follow the school's student management processes. She acknowledged that some of these students did present with behavioural issues but could be managed if dealt with fairly and consistently. She said that rather than deal with an issue and follow the school's student management process the teacher would pass the

responsibility on to coordinators. Teacher 11 told the Panel that as she had overall responsibility for the junior sub-school including serious student discipline issues, she was aware that some students were extremely rude to the teacher on occasions. She said these circumstances made it very important that agreed discipline processes were followed. Teacher 11 stated that the email she received from teacher 5 regarding the behaviour of one of these students reinforced for her that student behaviour management and class control generally were real areas of concern in the teacher's teaching practice.

Teacher 11 clarified to the Panel the ability to observe activities in rooms that the teacher taught in. In 2008 the teacher mainly taught in the Science block which was called B block. She said that office doors of B5 face each other but that it would be difficult to see in. In 2009 the teacher taught in E3 and E4 (no office window); F4 (if door open); F2 (if sitting in right space) – Textile and Health teachers would be in this block. A1 and A2 (staffroom opposite); R3 (office directly opposite and would have a view). She said that teacher 13 is in that office presently but that she did not know if he was there in 2009.

Teacher 11 said that the school provided the teacher with a substantial amount of support to assist him. Initially the support was informal and included teachers helping in his classes with student management and assisting with ideas and strategies for curriculum provision. In third term the process was formalised as part of a formal unsatisfactory performance process. A support group was established and managed by the Principal. Teacher 11 said she acted as note taker at several meetings as the process went on.

The Panel heard that during 2009 teacher 11 was made aware of 12 requests from parents that students not be placed in the teacher's classes the following year. She said that she was also contacted by a parent of a student entering Year 7 in 2010 who requested that their child not have the teacher as a teacher. Teacher 11 said that the number of these requests was not sustainable for the school.

Under cross examination teacher 11 said that teacher 3 was an experienced Maths teacher and well respected by students and staff. She said that he was in charge of school operations which included timetables and room allocations. She acknowledged that she had never seen any documentation from teacher 3 that showed he contributed to supporting the teacher.

It was put to teacher 11 that two teachers, teacher 12 and teacher 13, supported the teacher and would say that he is competent and performing well. Teacher 11 responded by questioning teacher 13's ability to comment as it would have been very problematic for him to have observed the teacher's classes. She acknowledged that teacher 12 could have observed the teacher's planning as they shared an office.

Under cross examination an email, sent from a Graduate Teacher to all teachers of the Year 8.5 class outlining her concerns in teaching and engaging students in this class, was brought to teacher 11's attention. The email named three groups of students indicating her problems with each group and asked other teachers for advice and feedback and whether they could meet to discuss. When asked if any parents of these students had complained she responded that she was not aware of any.

Teacher 11 agreed that the teacher had made improvements in some areas. She said that all through the process he showed improvement but that he could not maintain that performance when left to work independently on his practice. She said that with someone of his experience it was expected he would have the ability to teach proficiently.

Teacher 10

Teacher 10 gave evidence under oath and confirmed his statement as true and accurate. He said that he has taught for over 30 years and presently is an Assistant Principal at the school.

Teacher 10 said that in 2009 he got to know the teacher quite well as he was a member of the Year 10 Professional Learning Team (PLT) of which teacher 10 was the leader. The PLT was a reading and discussion group focussing on Year 10 teachers and covered pedagogy and other educational issues. He said that the teacher was always present and participated in discussions at an appropriate level and was open to new ideas. Teacher 10 told the Panel that through general discussions he became aware that the teacher had an Egyptian background. He said that he had a strong accent which was unusual in the school community which was quite monocultural.

Teacher 10 said that in 2008 he had no involvement with the teacher as he taught in the junior school and teacher 10 was a senior school teacher. He said in 2009 he became aware that the school was providing some support to the teacher and that teacher 4, the Teaching and Learning Coach, was working with him but he did not know the details of that support. In term 3 2009 teacher 10 said he was asked by the Principal to be a member of a formal support group for the teacher. The Panel heard that the teacher requested teacher 10 be part of the group. Teacher 10 said that as part of the process he was scheduled to observe the teacher's Science classes and provide feedback to him after each class. He told the Panel that he did not observe any "out of control" situations and as far as he could tell the teacher was well prepared and had appropriate knowledge of the content. Teacher 10 said that student behaviour issues in the classes that he observed were dealt with appropriately and his control of the class, whilst not perfect, was no worse than teachers' classes that he had seen over his career. He agreed with Counsel Assisting that often students would modify their behaviour if another teacher, particularly an Assistant Principal, was in the class.

Teacher 10 said that the main area that the teacher needed to improve in was the pace and structure of his lessons. He said that sometimes the teacher would spend too much time on the introductory explanation which resulted in the students losing focus, becoming disruptive, and then having too little time to complete tasks. Another area of improvement was related to the teacher's choice of explanations or examples which were sometimes too abstract for junior level students. Teacher 10 said that it was his observation that the teacher needed to make clearer links between his examples and areas of student interest or choose examples of more immediate relevance to them. He said that this approach may also have assisted the teacher in building a greater rapport with the students. Teacher 10 told the Panel that sometimes he observed the teacher's strong accent and his choice of vocabulary impacted on the way students received his

explanation. For some students if they did not understand what the teacher said they stopped trying, disengaged from the lesson and soon became disruptive.

The Panel heard that the teacher was very open to receiving feedback and guidance and that he did try to keep lessons moving along. Teacher 10 told the Panel he was very impressed that the teacher maintained such a positive attitude towards the process and his colleagues throughout the unsatisfactory performance process. In an email sent to the teacher, teacher 10 told him that he believed he could teach successfully at a school where he felt comfortable with that school's student management processes and which had teachers from countries other than Australia. However in response to Counsel Assisting, teacher 10 said that he was not aware that the teacher had in fact been in such schools where the same concerns were an issue, prior to the school.

Teacher 10 said that he was disappointed with the system that the teacher had to contend with and that remedial action should have been taken long before the school. Teacher 10 told the Panel that teacher 1, teacher 3 and teacher 14 were all caring, experienced teachers. Teacher 10 felt the school did all it could to provide the appropriate support for the teacher and could not have done much more.

Under cross examination teacher 10 told the Panel that the teacher's accent was an impediment to his engaging with the students. He said that if students want to "give you a go" they will but they can also make it very hard for the teacher. He acknowledged that the support group never actually met as a group to discuss progress. teacher 10 said that he did not have contact with teacher 1 the Science KLA Leader but in some respects that was a good thing because it meant he was going in cold and had no prejudice.

Teacher 12

Teacher 12 gave evidence under oath and confirmed his written statement as true and accurate. Teacher 12 told the Panel that he has been a teacher for more than 10 years and a teacher at the school since 2009.

Teacher 12 said he taught English and the teacher Maths, and as such never had the opportunity to work closely together. They did however share a staff room and sat in close proximity to each other. Teacher 12 said that he never observed the teacher in the classroom and therefore did not see student behaviour towards him but he did observe ethnicity based derogatory comments aimed at him in the playground. He heard comments such as "black c...".

Teacher 12 said that he saw the teacher put a lot of time and effort into preparing for his classes. He said he observed him gathering resources, preparing and modifying handouts to cater for individual students. He said the teacher also spent a lot of time marking tests and student workbooks, and giving written feedback comments on students' work. The Panel heard that the teacher involved himself in lunch time activities such as soccer, in an attempt to engage with students and build more positive relationships with them. Teacher 12 stated that the teacher was softly spoken with a slight accent and came from a non-Anglo-Australian background which was very unusual at the school. Teacher 12 observed that a number of students responded very negatively towards the teacher and were extremely rude to him.

Teacher 12 told the Panel that he believed extra professional development activities should have been offered to the teacher to help build his skills and teaching practice but that it did not happen.

Under cross examination teacher 12 agreed that he would not be able to comment on the effectiveness or type of support offered or provided in the Professional Support Group process due to the confidential nature of the process. He said that he did see the teacher correcting work and planning activities but could not comment on their timely return to students or the teacher's effectiveness in the classroom.

It was put to teacher 12 that according to the timetable he and the teacher would have minimal contact in the staffroom. Teacher 12 agreed if during class time but said that before and after classes was a different matter. Teacher 12 said that he was not aware of all the support mechanisms provided nor was he aware that the teacher attended professional development activities in 2009.

It was put to teacher 12 that the teacher only provided him with information that supported his case. Teacher 12 refuted this saying that the teacher asked him to write a letter outlining his improvement in dealing with students and in planning lessons.

When Counsel Assisting put to teacher 12 that his statement was devoid of any factual observations teacher 12 replied "As far as it goes – Yes." Teacher 12 said that he had been asked by the teacher to speak up for him and added that he had no real knowledge of the full situation.

Teacher 5

Teacher 5 gave evidence under affirmation and confirmed her statement as true and accurate. Teacher 5 said that she had been a teacher at the school for 9 years and has held various positions of responsibility. She told the Panel that in 2008 she was the Year 7 Coordinator and in 2009 was the Year 8 Coordinator.

Teacher 5 told the Panel that during 2008 she received many complaints from Year 7 students and a number of complaints from parents of Year 7 Science students about the teacher's classes. She said that in general the complaints related to the teacher's poor classroom management. Specific issues involved the teacher referring to students as "boy" or "girl" instead of using their names, that the teacher yelled at students to try to control classes, that students did not understand the teacher, and that students were not learning anything in the classes.

Teacher 5 stated that in 2008 her office shared a wall with a Science classroom and that she was often in her room when the teacher was teaching in the adjacent room. She said that almost every time she was in her office when the teacher was teaching she could hear a lot of noise coming from the room. Teacher 5 said that the types of noises she could hear were chairs crashing and screeching on the floor very loudly, equipment crashing, students shouting and swearing at each other and at the teacher. She said she could hear the teacher yelling at students in an attempt at getting control over the class. Teacher 5 said that it was her observation that the teacher's classes lacked the order necessary for

students to learn productively. She told the Panel that she would often discreetly and at other times not so discreetly, enter the room to settle the students.

The Panel heard that the teacher's strong accent made it hard for students to understand what he was saying, however the main issues were that the teacher did not have a strong connection or rapport with the class and very often his management of student behaviour was ineffective and inconsistent. Teacher 5 stated that she discussed management issues with the teacher that included – using seating plans, the importance of establishing clear expectations for student behaviour in class, and using behaviour management processes such as exiting students from class when the behaviour did not meet expectations consistently. She said that the teacher did not properly follow through with the strategies suggested and serious problems with his classroom management persisted.

Teacher 5 told the Panel that she had a discussion with teacher 1 (Science KLA Leader) concerning the teacher's classroom and student behaviour management and how it impacted on the delivery of the course content. She said that teacher 1 indicated that she had serious concerns with these issues.

Teacher 5 stated that she raised her concerns and complaints with the Principal so late in the year due to a number of reasons. She said "A lot goes on in a school in a day!" She said this includes teaching, coordinating and dealing with students. She also said that teachers can take time to settle in to a new school so she was giving him a chance. Teacher 5 told the Panel she thought, due to the complaints and serious concerns held by other teachers, that the teacher's contract would end and he would move on. She said the catalyst for her to write the email was the belief along with some other teachers that the teacher was to be offered an on-going position for 2009. She emailed the Principal because of her ongoing concerns regarding the teacher's classroom and student management and the negative effects of this on his curriculum delivery and the students' learning environment.

Teacher 5 told the Panel that it was her observation that during 2009 the teacher continued to have significant problems managing student behaviour in his classes. She stated there was one student who was particularly difficult to manage and other staff members had reported issues with managing her. Teacher 5 said that the teacher and this student had a particularly poor relationship and she had observed her speak to the teacher in a very disrespectful and often humiliating and aggressive manner. The Panel heard that she spoke to the teacher and they agreed on some strategies and a process to deal with the student but the system broke down because the teacher did not follow the process consistently. Teacher 5 said that she and the teacher discussed behaviour management strategies such as setting up a classroom agreement with students, and using seating plans, but it was her observation that he did not follow through or use these strategies consistently so little progress was made. She said her belief was that the underlying cause of the teacher's poor relationships with students was due to his inability to develop any positive rapport with them.

Teacher 5 explained to the Panel that she was not directly involved with the formal support process but knew that some support was being given and that in term 3 a formal

monitoring process had been implemented. She said she knew that teacher 4 had been working with the teacher throughout the year and that teacher 3 was involved and present in some of the teacher's classes. Teacher 5 said that it was noticeable to her and also reported to her by students, that when another teacher was present in the room the classes were calmer and the students worked much better. However when support was not there the classes became noisy and some students lost focus.

Teacher 5 said that the compilation of the 2010 class lists became very complicated due to the number of requests from students and parents that the teacher not teach particular students again. She said that these requests were made in relation to very conscientious students as well as students who the teacher had experienced a lot of difficulty with.

Under cross examination teacher 5 was asked about the September 16 2009 email sent to Year 8 teachers from a graduate teacher expressing difficulties she was having with a particular Year 8 class. Teacher 5 told the Panel that this class wasn't especially difficult, but acknowledged that as Coordinator she had an advantage with these students as she knew them and had built up a relationship with them. She said those teachers who had received the email, including the teacher, had a mixture of experience.

It was asked of teacher 5 if she had any safety concerns involving the teacher's classes. She said that her observations were of his classes being chaotic. It was put to teacher 5 that the teacher believed that she did not support him in that she ignored his emails and gave him no classroom help. Teacher 5 denied this.

Teacher 13

Teacher 13 gave his evidence under affirmation and confirmed his written statement as true and accurate. Teacher 13 said he has been a teacher at the school for 11 years including 4 as a year level coordinator. Presently he is the Learning Support Coordinator.

Teacher 13 said that he knew the teacher as a Maths and Science teacher in the junior sub-school. He said that to the best of his knowledge he took over established loads of teachers on long service leave which can be unsettling for students. Teacher 13 said that he did not work directly with the teacher, but that during the two years he was at the school, the teacher was very often timetabled to teach Maths in the classroom next to his office. This meant that he could informally observe the teacher's classes through the glass window. Teacher 13 said his office was in a Mod 5 portable building in between rooms 7 and 8.

The Panel heard that from time to time in 2008 and regularly throughout 2009 he informally observed the teacher's Maths classes. Teacher 13 said that it was his observation across this time that the teacher was competent in his classroom practices. He said that he saw him deliver his lessons using common Maths strategies in a standard structured way. Teacher 13 gave the example that the teacher would start with an explanation of what the class was doing, and then run through an example by practising it on the board. He would then take questions and the students would move into working on problems. The teacher would then move around the class helping students with the work.

Teacher 13 told the Panel that he observed students being openly rude and making racist comments to the teacher. He said that on one occasion he observed a red-headed lass being rude and heard a male student say words to the effect of “not that black bastard again.” The Panel was told that teacher 13 removed a female student and whilst escorting her to the Year 8 Coordinator she continued her rudeness to him.

Teacher 13 said the classes he observed of the teacher’s were not excessively noisy. He said that the teacher’s manner was quite shy and reserved and he was very softly spoken but occasionally raised his voice to gain the attention of the students. Teacher 13 believed that students took advantage of the teacher.

Teacher 13 told the Panel that the school is overwhelmingly monocultural in nature and that it was his observation that some students were very unwilling to engage with the teacher and were quite intolerant of his accent. He said the fact he trained as a teacher in a different education system made it more difficult for the teacher to “read” the students and establish positive relationships with them. The Panel heard that the teacher worked hard to find a place for himself in a school environment where some students were very unwilling to engage with or cooperate with him.

Under cross examination it was put to teacher 13 that during 2008 the teacher taught Science in B Block and as such could not have taught next to teacher 13’s office in R Block. Teacher 13 responded that there were several changes with the map and building over the years and although he did not have a clear memory he was adamant that he was there when the teacher was teaching.

Counsel Assisting put it to teacher 13 that in 2009 the teacher had one Maths class in R block in a room not near teacher 13’s office but across the hallway. Teacher 13 said he believed that the Principal was wrong with the timetable and the map and that there would have been changes over time. It was put to teacher 13 that because of the support process, room allocations and the teacher’s classes were timetabled closer to the administration area, particularly many in B block. In teacher 10’s evidence the monitoring sheets he used indicated the teacher teaching Maths on Monday P3 in Room R1 which is nowhere near teacher 13’s office. Teacher 13 could not confirm any room changes but maintained that he observed the teacher’s classes in Semester 2.

Teacher 13 stated that during the period in 2009 when the teacher was provided with formal support, he observed that he demonstrated significant improvement in classroom control, curriculum management and general teacher effectiveness. He said that during Semester 2 he observed 4-6 of the teacher’s lessons a week.

It was again put to teacher 13 that, as the teacher did not teach in R block throughout the whole monitoring process in Semester 2, other than period 3 on a Monday, how could he make that comment as he could not have observed his classes from his office. Teacher 13 told the Panel that he disputed the timetable and the room allocation and recalled the teacher coming into his room seeking advice.

Teacher 13 said he could not recall observing any teachers supporting the teacher and was unclear about ever observing teacher 4 in the teacher’s classes. Teacher 13 told the

Panel that it was very difficult to recall facts or instances some 4 years after they happened.

Counsel Assisting put to teacher 13 that teacher 4's observation notes of the teacher's teaching practice and classroom management differ markedly from teacher 13's positive comments. When asked whether someone observing in the classroom was in a better position to offer commentary than someone outside, teacher 13 responded that that was not necessarily so.

Teacher 13 had no explanation as to why or how his comments differed from those of other teachers.

Teacher 13 said that he did not witness any rowdy or chaotic behaviour in the teacher's classroom. When it was put to teacher 13 that other teachers had observed behaviours such as "spit balls flying around; spitting at front of class; ipods being used; calling out and swearing; playing on computer and not on task; and squeezing pimples", teacher 13 responded that he had not observed any of this type of behaviour.

It was put to teacher 13 that he was not in a position to comment on the improvement in the teacher's teaching performance and now that he had the timetable and room allocation information would he change his statement. Teacher 13 told the Panel that he would not change his statement as that is what he believed at the time.

Teacher 13 stated that he maintains his position that if the teacher was placed in a more accepting and multicultural environment and allowed to settle in he would prove to be a capable teacher. Counsel Assisting asked teacher 13 if he would change his opinion if he knew that the teacher had had competence issues at schools such as this but teacher 13 stood by his opinion.

Teacher 13 told the Panel he thought "rough justice" had been dealt to the teacher although he said the people involved in the process were good human beings.

Teacher 9

Teacher 9 gave evidence under affirmation and confirmed her statement, signed on 13 August 2013, as true and accurate. Teacher 9 said that she has been a teacher at the school from 2002 to 2004 and from 2008 holding various positions of responsibility including that of Year 9 Coordinator in 2009.

Teacher 9 stated that she knew the teacher as a teacher in 2008 and 2009 and that he was a Maths and Science teacher in the junior sub-school. She said that she was aware in a very general way that there were concerns with the teacher's classroom management. Teacher 9 stated she could also recall that there was some discussion related to some of the students complaining that the teacher had not learned their names and referred to them as "boy" or "girl" instead of using their names. The Panel heard that teacher 9 felt that communication issues facing the teacher were compounded by some resistance to him from students due to his race, as the school is very anglo-centric in its demographic.

Teacher 9 told the Panel that from early in 2009 she observed the teacher having some difficulty in controlling some of his classes. She said that on occasions when walking past his classes she observed that students were not on task or engaged with the activity nor were they paying attention to the teacher. She stated that some students were chatting and being quite noisy and sometimes others were sitting with their feet on the desks. Teacher 9 told the Panel that she also heard the teacher yelling at students in an attempt to get their attention.

The Panel heard that teacher 9 was concerned that the environment in some of the teacher's classes was not conducive to positive teaching and learning. She said from about mid-year onwards she had several conversations with the teacher about teaching, reporting, classroom management strategies and engagement of students. Teacher 9 said that from her discussions she formed the view that he was knowledgeable about the subject matter but that he could not use other strategies or alternative approaches when the lesson was not working out and he did not have the students' attention. She said that during her discussions with the teacher he was open to receiving advice and suggestions.

Teacher 9 told the Panel that up to the point where the unsatisfactory performance process began in term 3, she received complaints from parents and students in relation to the teacher's lack of control of classes and the impact this was having on their learning. She said that some of these complaints were accompanied by requests to move students from the teacher's classes or not to be in his classes in 2010. Teacher 9 said that in mid July 2009 she contacted the Assistant Principal in relation to these matters. She said that some students were moved to different Maths classes around the end of first semester 2009. Teacher 9 told the Panel that by the time she had discussions with the Assistant Principal in mid-July she was very concerned about the situation, both for the students and for the teacher. She said she felt support was needed for the teacher, particularly regarding strategies for classroom management and curriculum delivery.

Teacher 9 stated that during the period of the performance management process she did not receive any complaints from parents or students in relation to the teacher's teaching practice. She said that she observed a change in the teacher's communication with students as he seemed to have a greater rapport with them. Teacher 9 said she noticed students approaching the teacher in the playground to talk with him. She told the Panel that although she did not directly observe any of the teacher's classes during this period, in her discussions with the teacher he seemed to be more aware of himself as a teacher. She said he was able to articulate how he attempted to use strategies to improve his classroom management and student engagement. Teacher 9 stated that it was also her observation that the teacher's students were more responsive and generally seemed happier.

In responding to the point that her observations were at odds with those of teacher 4's who noted that students' behaviour was not changing, teacher 9 stated she based her conclusions on her observations when walking past the teacher's classroom. She agreed that if people are seeing different things then there is no consistency in performance. Teacher 9 said that feedback she received from some students and parents was that when another teacher was not in the room, the classes were not as well controlled nor learning as effective.

Teacher 9 told the Panel that by the end of the year she observed considerable improvement in the teacher's engagement of students and his class control. She said at the end of 2009 and beginning of 2010 students were asking after the teacher and displaying quite a different attitude to what was displayed towards him at the start of 2009. Teacher 9 said this indicated to her that over the year the teacher had created a greater rapport with students and they were becoming more accepting of him.

In response to the situation that by the end of the year there were still complaints being received, teacher 9 commented that she would want to know the nature of the complaints and that perhaps their previous experience tainted the view of parents. She questioned whether it was really still about the teacher's practice or was it his reputation.

Under cross examination teacher 9 confirmed her view that some students had difficulties with the teacher due to his ethnicity. She told the Panel that the teacher took on board suggestions for improvement and did seem to be implementing strategies but poor communication and earlier negative experiences hampered his continued improvements.

Teacher 9 stated that she did not know that the teacher had been receiving support all through the year, particularly from teacher 4. She said that as Year 9 Coordinator she would have expected to have been informed.

Teacher 9 said that as the Union representative she was involved as a support person for the teacher but was not involved in the formal process. She was not aware of specific criteria the teacher had to accomplish.

Teacher 9 told the Panel that she would have been happy for the teacher to teach at the school in 2010.

Teacher 14

Teacher 14 gave evidence under oath and confirmed his written statement as true and accurate. He stated that he has been a teacher at the school for 22 years and in 2009 taught Year 10 Maths and was the school's Report Coordinator.

Teacher 14 told the Panel he knew the teacher as a Maths and Science teacher throughout 2008 and 2009 although he had very little professionally to do with him in 2008. The Panel heard that in 2009 the Principal asked teacher 14 to be part of a formal support team to provide feedback and guidance to the teacher in relation to his performance. This support team consisted of teacher 10, teacher 3 and himself. Timetabling constraints meant that teacher 3 was unable to attend any of the teacher's classes. As part of his role on the support team he attended the teacher's Year 9 Maths class on five occasions. He said this class contained several students who were quite difficult to manage. Teacher 14 told the Panel that the teacher's explanation of the lesson was generally okay, but there were issues around the consistency of his management of student misbehaviour and around keeping students engaged. He said that the teacher had given thought to a seating plan and attempted to implement it.

Teacher 14 told the Panel that of his observations of other classes he believed the teacher had made some improvements in relation to: reinforcing class rules; seating plan, using

names of students; following through with consequences when needed; attempting some positive reinforcement; and keeping his instructions brief. He formed the view that the teacher still needed to be more consistent with student discipline and ensuring that students were prepared for the lesson. He gave the example of the teacher needing to reinforce what examples had to be copied into workbooks; and reminding students to bring the correct books and equipment to the next class. Teacher 14 made the point that several of the teacher's students really wanted to do the work but he needed to provide more opportunities to extend these students to keep them focussed and challenged.

Teacher 14 said that sometimes the teacher had to repeat explanations because students said they could not understand him. Teacher 14 believed this impacted on the students' focus and also the pace of the lesson.

Under cross examination teacher 14 responded that he was not aware of all the support and assistance that had been provided to the teacher throughout 2009, and certainly not before the formal support process began.

Teacher 14 agreed that during the extensive formal support period and even with the help of teacher 4 and other teachers, the teacher was still inconsistent with implementing and maintaining strategies as they related to setting short term goals, seating plans, lesson explanations, and consequences for student misbehaviour. Teacher 14 said that although that was all true there was some evidence that the teacher was willing take on board all the advice and was trying to give things a go.

Teacher 14 told the Panel that during the time he was assisting the teacher, he was unaware that the Principal had been observing the teacher's classes or that other teachers such as Assistant Principal, teacher 11, had observed the teacher's rowdy, noisy and poorly managed classes. Teacher 14 said that although he believed the teacher's accent and ethnicity had contributed to significant communication problems at the school, he agreed that it would concern him to find out that the teacher had in fact worked at multicultural schools before and had similar communication and control issues.

The teacher

The teacher gave evidence under oath and confirmed his signed statement as true and accurate.

The teacher told the Panel that he arrived in Australia in 1991 and ran his own milk bar business and did private tutoring also. He said he gained his teaching qualifications in Mathematics at the University of Cairo in Egypt, in 1978. He told the Panel that he holds both a Bachelor of Science and a Bachelor of Education degree from that country. The Panel heard that in late 1992 his prior learning and teaching qualifications were recognised by the Registered Schools Board (RSB) of Victoria.

The teacher stated that he taught Maths and Arabic to middle years students (Years 7, 8, and 9) in Iraq and classes up to Year 12 in Libya during the 1980s. The Panel heard that from 1998 the Victorian Department of Education certified the teacher to teach both Arabic and Mathematics up to Year 12 level. The teacher said his initial employment history could be characterised as "permanent casual relief work" which sometimes

developed into short-term, fixed-contract positions. He told the Panel that as he came from a non-English speaking background he found it quite difficult to adjust to the Victorian education system. He said although he knew his subject matter well and he tried to keep up to date with the changing curriculum, it was difficult to discover how young students in his new country set about learning.

The teacher's representative referred him to Exhibit B – an affidavit containing the results of the Institute's inquiries into employers of the teacher prior to the school and subsequent interviews with them. The idea held by some teachers at the school that the teacher would be better suited at a school with a more multicultural demographic was explored by the teacher's representative. He was referred to the statement of the former Principal of school 1 who rejected the proposition that the teacher would be better suited to a school like hers. She made the point that school 1 was comprised of approximately 60% non-English speaking background, namely students of Muslim descent and of Arabic speaking background. The former Principal of school 1 held the belief that even with this multicultural demographic the teacher still demonstrated poor classroom management skills, weak communication with students and failed to understand the fundamentals of teaching. The teacher explained to the Panel that the majority of students were Muslims and as he was a Coptic Orthodox Christian this gave rise to a conflict in religion. He said that the students saw him as "the one out of the circle".

Another statement from the former Principal of school 2 claimed that the teacher's 6 month contract was terminated due to an incident where the teacher manhandled a student. He also said that during the teacher's time at the school significant issues of classroom management and a lack of competence were observed. The teacher denied manhandling a student and said that he left the school because his contract had ended. The former Principal of school 2 also claimed that the teacher had difficulty developing positive relationships with students and simply expected them to do as they were told. The teacher told the Panel that he liked to build good relationships but sometimes students reacted against him.

The statement of the former Principal at school 3 claimed that the teacher was not a very competent teacher and was employed on a short term contract as a Mathematics teacher. She recalled that his knowledge of VELS curriculum was limited although he did seem to know Mathematics. The teacher told the Panel that he was not employed as a teacher but rather as a School Services Officer (SSO) and as such took Arabic speaking students out of the classroom and worked with them in small groups.

The teacher told the Panel that in 2008 he was interviewed by teacher 1 and the then Principal of the school, Principal 1 and subsequently employed to teach Maths. He said that he was willing to teach Science and teacher 1 said that she would give him support. The teacher stated that in term 3 2008 the Principal told him that there were some concerns with his teaching but that the school would help him deal with them. He told the Panel that he was unaware of any issues or concerns to do with the excursion. He explained the process of organising an excursion and denied that he did not follow correct processes.

The teacher stated that the ongoing employment at the school gave him the opportunity to settle and with help from the school, overcome his weaknesses. The teacher told the Panel that he got some support from teacher 1 in 2008 but as she was upset that he had received ongoing employment, she “wouldn’t even say good morning to me” and did not give any support in 2009. The Panel heard that the teacher met with the Principal and teacher 11 in early 2009 where support was promised but the teacher stated that none was forthcoming during this time.

The teacher stated that the Principal informed him that teacher 4 would be supporting him in his classroom for the whole year. He said at first she helped him use literacy in his Maths lessons but later she just observed his curriculum delivery and classroom management. The teacher said “Everything was negative in my class – nothing positive!”

In response to the Principal’ belief that the teacher just did not understand the issues he needed to face, the teacher said that he kept asking the Principal about what he could do to overcome the problems and get better. The teacher said he felt that there were only a small number of parental complaints out of 120 students and said there were disruptive students who made teaching difficult. He told the Panel he thought his major deficiency was his classroom management. The teacher said the formal support group never met to discuss the issues. He stated that he never attended their classes and never had the opportunity to discuss issues with them.

The teacher told the Panel that to improve he needed to attend an English course which would help him communicate better with young people. When asked what would be different if he went back to the school and what was meant by “teacher smarts”, the teacher talked about having better relationships with parents, solving classroom problems and getting to know what kids are interested in. Only with coaxing from his representative was the teacher able to acknowledge specific classroom and student management strategies as being important to his improvement.

Under cross examination it was put to the teacher that in his application to be registered with the RSB he claimed that he was qualified to teach Mathematics and Science. The teacher responded that he could not remember what he told the RSB. The teacher told the Panel that his was a Bachelor of Science and Education (double degree) and subjects included – Pure Mathematics, Applied Mathematics, Physics, Chemistry and English. The teacher conceded that he studied Physics and Chemistry in the first two years of the Degree but he could not recall exactly what was studied in these subjects.

The teacher told the Panel that in 1992 the RSB restricted his registration to teaching only Mathematics although there was no mention of this in the RSB’s documentation acknowledging his registration. The teacher stated that when his qualifications were recognised in Australia he was told that he needed more training to teach Physics.

It was put to the teacher that in spite of his belief that he was not registered to teach Science he continued to apply for Maths and Science positions. The teacher agreed but told the Panel that at interview he always explained his limitations.

The Panel heard that the teacher's explanation for not disclosing the entirety of his employment history when applying at the school was because he disclosed his present position and believed that the school would speak to previous Principals. The teacher refuted the suggestion that he only mentioned school 4 because he had received a positive reference from the Principal there: however, most of the schools in the intervening time would not have provided similar references.

The teacher told the Panel he contacted the former Principal at school 1 to ask for a job, not for a reference, as she had stated. It was put to the teacher that if working at school 1 was so bad that he "was out of the circle", why did he contact the former Principal to seek employment there again. The teacher responded that he hoped with a majority of middle-eastern students that might help him to be accepted as a school teacher.

In Exhibit B, the school 5 Principal, Principal 2, said that she employed the teacher on a short term contract, however there were problems with his teaching style, he did not engage particularly well with students and despite support, had difficulty implementing the school's discipline policy. The teacher disputed her versions of events and said that he did try to implement suggested strategies.

A teacher at school 6, teacher 15, provided a written statement acknowledging the teacher as a well-respected person in the school community. She said he knew his subject area well but was out of touch with the CSF and VELs. She stated that he had problems with class discipline and lacked clear communication with students. The teacher conceded that the classes were relatively small and the students were generally well behaved but "you can still find problems in a small class".

The teacher was asked what, if any, professional development, courses or training he had undertaken in response to the difficulties he had with classroom management, student discipline and communication. The teacher said that he read newspapers, listened to the radio and tried to update himself with young adults' interests. The Panel heard that in the intervening years the teacher had not really done anything to improve or change his teaching practice or improve his English speaking. He said he investigated an English language course at RMIT but was unsuccessful in receiving an offer. The teacher told the Panel that at school 5 and other schools he had not been made aware that there were issues with his teaching and communication. It was put to the teacher that his evidence was inconsistent as he did concede that a school 5 staff member did offer him support. The teacher's evidence was that he personally was aware of his failings but no one professionally raised anything with him.

Counsel Assisting put several questions to the teacher regarding the need to have good curriculum knowledge, including an understanding of what VELs is, to be able to build positive relationships with students. The teacher's response to the Panel was put in simplistic and unconnected phrases such as "teach well; respect; have good relationships; be aware of them; know their hobbies and build trust." When asked what he expected from students, the teacher said "to try to get them to understand acceptance of others".

The teacher told the Panel that at school 2, the Year 8 Coordinator gave him advice on strategies to use in the Science lab. These included – seating plans; prepare well with a

variety of activities; keep students safe and accept struggling students. It was put to the teacher that if he was still experiencing difficulties with engaging students and classroom control then he had learned little in terms of strategies and classroom management. The teacher told the Panel that there are always challenges.

The teacher gave evidence that he taught at an independent school in suburb W after school 2. He said that he had not disclosed this in any resume or advised the Institute before because he had not received a reference from the school. The evidence surrounding the circumstances of this employment was confusing with an apparent conflict between the Assistant Principal (who hired him) and the Principal who was on leave at the time. The teacher told the Panel that he was not trying to hide anything.

The former Principal of school 7 made a statement that there were significant and substantial problems with the teacher during his time at school 7. These included student and parent complaints, classroom management issues, problematic behaviour and dissatisfaction from parents with respect to his teaching ability. The former Principal of school 7 said that he spoke with the teacher on a number of occasions concerning the complaints and his performance in general and asked a Maths-teaching Assistant Principal to support him and monitor his performance. The former Principal of school 7 said that although the teacher cooperated there was little evidence of improvement by the time he left the school. The teacher refuted that he had problems all the time and told the Panel that “there are good days and bad days”. The teacher did not agree with the suggestion that the consistent theme and pattern of poor classroom management and poor communication was continuing. He admitted that he had discussions about ideas and strategies with the Assistant Principal but did not regard this as support.

The teacher acknowledged that he had some problems in his classes and that students react to his accent. He said he does not blame the schools but they should help students become more tolerant.

The teacher told the Panel that although the curriculum stays the same, resources may differ from school to school. This meant he had to familiarise himself with new textbooks and prepare for new classes.

It was put to the teacher that yet again he had not disclosed his previous employment and that he was being selective with his disclosures. The teacher told the Panel he would raise this at interview but also believed that the school could find out where he had been.

The teacher was then asked about his employment at school 8. He told the Panel that he first did voluntary work there and later was offered casual relief teaching from July 2010 until June 2011. The teacher said he was unaware that he was not allowed to teach in a Government school even though he was informed of this in a letter sent to his home address and dated 12 July 2010. The teacher was shown a copy of the letter but claimed not to have seen it before. He denied that the Principal also explained this situation to him.

The teacher attributed the problems with his performance in 2008 to the fact that he was teaching Science and not Maths. He said that the problems and classroom issues that he

encountered in the Science labs at the school in 2008 were different to what he had experienced at his previous schools. The teacher's evidence was contradictory in that on one hand he said he did not agree with any allegations raised by teacher 1 or teacher 5 in 2008 but conceded that teacher 1 offered him some strategies to deal with the student management issues that he in fact acknowledged he had.

He told the Panel that teacher 5 was just out to see his faults and hadn't seen his classes. He did not agree that for teacher 5 to say what she did, she in fact, needed to have seen his classes. The teacher admitted that he sometimes forgot students' names saying that it took him 10 weeks or up to a term to learn their names.

Counsel Assisting put questions or propositions to the teacher in many and varied ways to try to help him understand their meaning and context. The teacher clearly had difficulty in understanding and often gave an unconnected response. The teacher could not provide any clear explanation as to how his communication skills would improve so as to ensure that students would receive clear explanations and he would be in a position to understand their questions and confusions.

The Panel again heard contradictory evidence when the teacher stated that his communication problems only occurred in 2001 and 2002 and since then has not been a major problem. Later, he acknowledged that he did have problems and saw communication as his main concern and if this was resolved everything would be OK. The teacher told the Panel that he tried to learn and improve each year. Counsel Assisting put to the teacher that if this is the case, why were the issues that were so evident over the previous 10 years, still occurring in his classes as the Principal observed.

The teacher told the Panel that prior to the formal performance management process, the Principal only discussed issues in general terms with him and that nothing specific was raised until he received the official letter outlining the allegations and inviting him to respond. In his response the teacher denied all the allegations.

It was put to the teacher that by the conclusion of the two monitoring periods, he still had not reached some required standards. The teacher's response to the Panel was that mistakes are just being looked for and "you have good days and bad days."

DISCUSSION OF THE EVIDENCE

The Institute's witnesses were respected professionals with a broad range of experience and seniority. Their evidence was overwhelming in consistency and detail and given with credibility.

The evidence detailed difficulties in the teacher's teaching performance over a long period of time, commencing in 1999 and continuing to manifest itself in a number of schools throughout the next 10 years. The Panel accepts that the teacher's strong accent contributed to the difficulty he had in communicating with students. However the Panel found it troubling that over a 10 year period there was no discernible improvement in his ability to develop positive relationships and build a rapport with students.

Communication issues were very evident to the Panel throughout the Hearing, as time and time again questions had to be repeated, rephrased or simplified so that the teacher could understand what was being asked. This demonstrated to the Panel the very communication issues that the teacher's students would have had with him.

Although the teacher was given professional support at all the schools he taught in, classroom and student management issues continued to surface wherever he went. At the school informal support was initially provided with teachers in his subject area giving advice on teaching approaches and classroom and student management. He was also provided with a specialist teacher to work with and advise him in his classroom for the 2009 year. Eventually a formal support group was established in which the teacher was provided targeted and structured support from caring and experienced teachers to help his development in the clearly documented areas of performance that needed improvement. This support was extensive, professional and carried out in good faith that the teacher would achieve sustained improvement. The Panel was impressed with the first hand approach the Principal took in this matter.

The evidence demonstrated that the teacher was receptive to advice and tried to implement suggested ideas and strategies; however, nothing became imbedded or constant in his practice and he was unable to build on or maintain improvements. His inability to develop and implement (even understand the need for) strategies that engage students in their learning, reflects his lack of understanding of the intrinsic principles of teaching and learning. The fact that the teacher took up to a term to learn students' names would have only exacerbated his communication problems with them. The evidence showed that much of the support provided by schools was repeated from school to school. For example, the need for a seating plan was raised at several schools and constantly mentioned at the school without the teacher ever implementing this simple strategy on a consistent basis.

The teacher said that many of his problems arose from his Science classes - a subject he claimed he was not qualified to teach. There are three relevant and confusing aspects to this claim. Firstly, in 2008 the teacher did primarily teach Science and not Maths. In response to his classroom difficulties and his preference not to teach Science, the school ensured that the teacher taught mainly Maths in 2009. The result of teaching his preferred subject was that there was still no obvious improvement in class and student management. Secondly, although the teacher claimed not to be qualified to teach Science he indeed applied for both Maths and Science positions at schools he worked at. Thirdly, in the teacher's application to the RSB he states his qualification as a Bachelor of Science and Education and cites Maths and Science as his subjects. Furthermore, registration documents from both the Teachers Registration Board (TRB) and the RSB show there to be no restriction on what the teacher could teach. The Panel finds the teacher's stance on this issue to be contradictory and baffling.

The Panel found the evidence of the teacher's witnesses to be well meaning but lacking in informed objectivity. In particular, teacher 13's evidence that he observed the teacher's teaching from his office, was simply implausible as the teacher at no stage taught in a room next to teacher 13's office as he claimed.

The teacher lacks insight into, and understanding of, his professional practice and the areas in need of improvement. His evidence relating to this was contradictory and superficial. At various times he vacillated between denial that he had any problems, to communication being his problem, to classroom management being his greatest problem. One comment he made “You have good days and bad days” highlighted the lack of depth of understanding he has of the issues. The Panel has no confidence that the teacher truly accepts that he has professional practice issues that need to be worked on and improved. The Panel believes that without the ability to identify and acknowledge his shortcomings, the teacher is unable to take the steps necessary to move forward. One small example is instructive to the teacher’s lack of corrective action - that although he conceded that his strong accent contributed to poor communication with his students, the teacher did not, until recently, seek out an English language course to improve in this area.

FINDINGS

The Panel finds all allegations made out and deems them proof of serious incompetence. In determining the matters of serious incompetence and fitness to teach the Panel considered the decision in *Moran v Victorian Institute of Teaching* (2007) VCAT 1311 at 46 and 51 which made clear that a simple error of judgement or a simple negligent act is not sufficient to constitute serious incompetence. Moran also found whether conduct amounts to serious incompetence will depend on the facts of each case but the incompetence must be of such a degree or so frequent that it reflects on the teacher’s fitness to teach.

The Panel was also helped by the definition of serious incompetence within the teaching profession in Western Australia *Teacher Registration General Regulations 2012* (WA) at s6(3) where the phrase “seriously incompetent as a teacher” includes anything that constitutes substandard performance as defined in the *Public Sector Management Act 1994* (WA) section 3(1). That Act states the performance of an employee is substandard if and only if the employee does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard that a person may reasonably be expected to attain or sustain in the performance of those functions. *Public Sector Management Act 1994* (WA) s79.

In terms of the teacher’s fitness to teach the Panel was guided by *Davidson v Victorian Institute of Teaching* [2007] VCAT 920 at 169 where it was suggested that “*there must be a perception that the conduct complained of is of a continuing and persistent nature” and conduct which throws doubt on how the person would behave in future in the classroom will indicate a lack of fitness”. The Panel also relied 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 the 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 considers the teacher's inability to effectively and honestly reflect on his professional practice and to fully understand the nature of the teaching task, means he is seriously incompetent. The Panel also finds the teacher unfit to teach because, despite significant professional support, his serious incompetence has been of a continuing and persistent nature at a number of schools over a long period of time.

In finding the teacher not fit to teach, the Panel seriously considered the gravity of the situation and understands the severe consequences of this decision on the teacher's future livelihood. However, the teacher's performance is a serious departure from accepted professional practice, consequently the Panel found that in order to protect the public and the reputation of the profession it must cancel the teacher's teacher registration and finds him unfit to teach.

The Panel considered but decided against other possibilities such as a suspension of registration with conditions. The Panel took this decision as it believed that any conditions it mandated would be similar in nature to the professional support already given to the teacher and as that resulted in little sustained improvement in performance, the Panel had no confidence implementing this course of action.

The Panel commends the school for the way in which it supported the teacher and endeavoured to improve his practice. In particular, the Panel commends the parents who, despite their probable misgivings and worry for their children, gave patient support to the school as it carried out its duty.

DETERMINATION

The Panel determined to cancel the registration of the teacher from 15 October 2013.



MARILYN MOONEY, CHAIRPERSON



per:
KEVIN MOLONEY, REGISTERED TEACHER



per:
PAUL WILHELM, REGISTERED TEACHER