

## **VICTORIAN INSTITUTE OF TEACHING**

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

**NUMBER:** 134

**REGISTERED TEACHER:** PJH

**PANEL MEMBERS:** Susan Halliday, Chairperson  
Paul Wilhelm, Registered Teacher  
Leneen Forde, Panel Member

**ATTENDANCE:** The teacher was represented by Ms Alanna Duffy, Barrister  
Ms Anne Sheehan, Counsel Assisting with Ms Katrina Galanos, Instructing Solicitor on behalf of the Victorian Institute of Teaching

**DATES OF HEARING:** 18 & 19 December 2012 and  
8 February 2013

**DATE OF DECISION:** 1 March 2013

#### **FINDINGS AND DETERMINATION:**

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 1 March 2013 the Panel found the teacher fit to teach.

The Panel determined that the teacher remains registered as a teacher in Victoria.

## REASONS

### BACKGROUND

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

By letter dated 21 October 2010, the employer notified the Institute of action taken against the teacher, a registered teacher. The teacher was formally reprimanded by the employer following an inquiry into his conduct and fitness to teach.

On 30 November 2010, the Institute received a complaint (by email) from witness 3, the details of which were identical to the allegations investigated by the employer. The complaint was lodged in accordance with section 2.6.30 of the *Education and Training Reform Act 2006*.

These matters were referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 8 December 2010 and the Committee decided to conduct an investigation.

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

A Notice of Formal Hearing dated 22 October 2012 was served upon the teacher by registered post on 23 October 2012.

### THE ALLEGATIONS

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

*Whilst employed as a registered teacher and principal at the school:*

- 1) *On the evening of 24 October 2009 you compromised your professional standing as a teacher, in circumstances where:*
  - a. *Whilst walking through the back garden of your house with witness 1 ( a 15 year old Year 9 student and friend of your daughter, witness 4) you reached up under witness 1's skirt and adjusted her clothing without her consent*
  - b. *Whilst travelling alone with witness 1 in the car, you placed a container of alcohol between her legs and made a sexually suggestive comment to her, saying words to the effect of "Let me be the only man who can put something between your legs".*
  - c. *Whilst travelling alone with witness 1 in the car, you again placed a container of alcohol between her legs and made a sexually suggestive comment to her by asking her to repeat the comment her (sic) said to her as described in 1b*
  - d. *You made sexually suggestive comments to witness 1 about her clothing:*
    - i. *By telling witness 1 with words or words of similar effect "this is when we say you are only allowed to wear what you brought," in circumstances where you*

- were aware that she did not bring any of her own clothes given witness 4's instance (sic) that witness 1 stay at your home overnight ; and*
- ii. *in relation to a game of "dress ups" witness 1 and witness 4 were playing, you came into witness 4's room and held up 2 little skirts with slits down the side and told witness 1 and witness 4 with words or words of similar effect, "I've got a challenge for you. You are only allowed to wear this and this" whilst holding up the 2 skirts. You then threw the skirts into the room and said "Go on".*

## **THE EVIDENCE**

It was requested that the Panel close the Hearing during evidence of intimate and personal matters, for the purposes of natural justice, and evidentiary burden.

The Panel took time to consider the request and noted insufficient grounds to support the request to close the Hearing during the presentation of evidence by the teacher, witness 4, witness 1, witness 3 and witness 2. The Panel noted that it is in the interests of the administration of justice to progress an open Hearing. The Panel also noted that while not a deciding factor, the allegations, and in part the evidence, had previously been raised in the Magistrates' Court in April / May 2010 in an application made by witness 3, when her daughter, witness 1, was under 18 years of age. The Panel noted that both young women were over 18 years of age at the time of the Hearing. The Panel also noted that the Privacy Screen was available to witness 1 if she wished to utilise it. Given that the request for closure was underpinned by the nature of the evidence, and the person's giving evidence, the Panel determined that there was insufficient reason to close the Hearing.

The request to suppress the name of the teacher prior to making a final determination was also denied by the Panel. The Panel did not consider the position as put, to demonstrate sufficient reason for such a request, nor did the Panel consider there to be potential to prejudice the administration of justice. The Panel considered it to be in the public interest and the interests of justice that the proceedings remain open to the public.

The Panel raised that it had no material before it to suggest that the teacher would not receive a fair Hearing. Further the Panel noted that decisions to close Hearings and to suppress names were enabled by significant powers that are to be treated with due diligence and respect by the Panel, and in turn only to be exercised if it is necessary to do so for the proper administration of justice.

### **Witness 1**

Witness 1 confirmed that her signed statement dated 15 July 2011 and attachments were true and correct. Born in August 1984, witness 1 was in Year 9 in 2009 when she made the allegations about the teacher. The teacher, who was also the father of her close long term friend, witness 4, was someone she had known for a number of years. Witness 1 regularly stayed over at the teacher's house, and visited their beach house, during the preceding two years.

Witness 1 stated that she found Year 10 difficult and believed she was impacted by what had happened and how things had progressed in 2009 and 2010. On October 24 in 2009, her mother rang in the afternoon and had asked the teacher to help with the music and lighting for the disco, as she wouldn't be back in time. Her mother normally ran the disco. Witness 1, who was at the teacher's house at the time, with her close friend witness 4 (the teacher's eldest daughter) claimed that the teacher had consumed alcohol in the afternoon before the disco. She also recalled that he consumed alcohol after the disco prior to taking her to rug her horse.

Witness 1 borrowed a skirt and top from her friend as she did not have good clothes for the disco. Walking through the teacher's back garden, via the back gate to the disco, the teacher said to witness 1 that her top had bunched up under her skirt. He said he'd fix it. Witness 1 stated that she said in response, at the time, that she'd fix it in the toilets at the disco. The teacher then kneeled down in front of her, reached up under her skirt with both hands, took hold of the singlet top and pulled it down. Witness 1 said that she was upset by the teacher doing this, but couldn't say anything at the time. It all happened in about 10 seconds.

They stayed at the disco for about two hours, and then walked back to the teacher's house. Witness 1 could not recall if the teacher walked home with them or stayed to pack up.

Witness 1 remembered she needed to rug her horse that resided at the bottom of her driveway about 2 kilometres away. Her mother was delayed and her father was away. The teacher offered to drive her home to rug her horse. It was between 8.30 and 10.30 pm. Her friend, witness 4, the teacher's daughter, stayed at home to look after her two younger sisters. Her mother had reminded her to rug the horse by phone. She had not remembered by herself.

Travelling in the small red car, the teacher had a bottle of alcohol with him. He put the bottle in between her legs near her knees and said words like "let me be the only man who can put something between your legs." Witness 1 looked away. She told the Panel that she couldn't say anything. She had recorded in her written statement that she was frightened. The teacher waited in the car as she rugged her horse. They then drove to the sports club about 50 meters from the teacher's home. The teacher and witness 1 went inside and returned with two or so cans of UDL. The teacher then said he had to put some rubbish out. Witness 1 stated she'd walk home, but the teacher told her to get into the car, saying he'd only be two minutes. Witness 1 stated that she did not know what to do. Returning the teacher put his drink between her legs and said 'now what did I tell you before?' The teacher tried to make witness 1 repeat the comment. She noted in her written statement that she just looked out of the window. Driving back to the house the bottle of drink was left between her legs. On arrival she placed the drink in the console, got out of the car and went to witness 4's room. She then called her mother and said she wanted to go home, but witness 4 was yelling out in the background that witness 1 was staying at her house. Witness 1 said she felt she should stay and that it was too difficult to say that she didn't want to stay.

At one stage witness 4 told her father – the teacher, that all of the clothes that witness 1 was now wearing were witness 4's clothes, and witness 1 only had her own bra on. Witness 1 indicated this was when the teacher said "this is when we say you are only allowed to wear what you brought". She changed into her own track pants, a shirt and a jumper. She said she had ignored the comment.

The teacher got the girls some dress-ups from one of the sister's drawers and coming into his eldest daughter's bedroom the teacher said "I've got a challenge for you. You are only allowed to wear this and this." He had little skirts with a slit down the side. Witness 1 stated that she put it on her head. She recalled that she was '*creeped out.*'

She told the Panel that on the following Sunday she left as early as she could. On Monday she told her friends at school (she attended a different secondary school to the teacher's daughter) noting that she didn't know what to do. She indicated to the Panel that her friends told her to tell her parents, and she said she did so two nights later, on Tuesday night. Her mother was out at the time and she told her father.

Witness 1 said that her mother had said to her (either on the Monday or the Tuesday) that she needed to stay somewhere next weekend as her parents were going away. She said she replied '*not the teacher's house*' as the teacher was freaking her out. Witness 1 told the Panel that previously she had considered the teacher as '*touch feely*' and recalled that when helping her with a wetsuit she was having trouble with, he put his hand down inside the wetsuit.

Witness 1 said she was sure it was car 1 she went in, to travel the distance of roughly two kilometres, to rug her horse. She said that she did not think she had ever been in car 2.

Witness 1 told the Panel that her parents did not want the teacher to be a Principal any more. They had said this to her.

Witness 1 was very upset when giving evidence and when she was asked what sat behind her level of emotion by the Panel, she indicated that she was not happy that she had to keep being involved in the stuff to do with the teacher. She indicated that she had for some time not wanted to talk about it all, but she was forced to in various ways by her parents and she was also forced to go to counselling, and finally she was not happy that she had to be at the Hearing and talking about the stuff involving the teacher again. She indicated that she was angry that her parents had made her go to counselling. She was also upset about what had transpired in relation to the friendship with the teacher's daughter. There had been some negative related interactions over recent years.

In relation to going to talk to the teacher's ex-wife, witness 1 stated that her mother had wanted her to go and see witness 7. They did as her mother wanted, and witness 7 said they should go to the Victorian Police SOCA unit person in town A. Witness 1 stated that despite a fair bit of pressure from her parents to do so, and pressure to pursue the matter, she chose not to. She was concerned about her friendship with the teacher's daughter. She said she avoided discussing the matter despite pressure from home and having to see a counsellor. She indicated that she did not want to be working with a counsellor, as she did not want to keep talking about what had happened.

Witness 1 said that there had been resultant relationship breakdowns, in particular between her mother and herself, and also her mother and her friend witness 4.

## **Witness 2**

The father of witness 1, witness 2 stated that his statement signed and dated 11 July 2011 was true and correct. He said that his daughter was uncharacteristically irritable on Monday night 26<sup>th</sup> October 2009. Witness 2 asked his daughter what was wrong and she broke down and cried. She said something bad had happened and then she said that she couldn't say what it was; but eventually she spoke up. She was crying when talking to him.

Witness 2 stated that the teacher (and father of his daughter's close friend witness 4) when walking down the hallway at the teacher's home, heading out to the disco, had commented that her top had bunched up under her skirt, and then put his hand up her skirt to pull the top down. Witness 2 stated that there was no mention or indication of any other physical contact. He just pulled the garment down.

After the disco, back at the teacher's house, his daughter remembered she had to rug her horse. Witness 2 understood that his daughter told the teacher, and he offered to drive her to rug the horse. While in the teacher's car his daughter said that the teacher had put alcohol between her legs and said words like '*he should be the only man to put something between her legs*'. Witness 2 was unsure if it was a can or a bottle, and referred to both during the Hearing. Having rugged the horse his daughter told him that they drove to the cricket club to pick up drinks. His daughter said she'd walk home, but the teacher insisted she get in the car. He again placed the drink between her legs and asked her to repeat what he had said before.

Witness 2 stated that his daughter wanted to speak to the teacher's estranged wife about what had happened. He noted that they were close.

Witness 2 stated that his wife, witness 3, was out when his daughter went through what had happened. He relayed the story to his wife once his daughter had gone to bed. Soon after, his wife and daughter were advised by the contact at Victoria Police SOCA unit at town A that one option was to press charges against the teacher for indecent assault. They agreed it was his daughter's decision, and she did not wish to do so.

On a following evening there was a call with the teacher. Witness 3 spoke and witness 2 did not hear what the teacher said on the other end, but he heard what his wife said. His wife did put the allegations to the teacher. She concluded the call saying that neither her nor her husband wanted to ever speak to the teacher again. Witness 2 stated that his wife informed him that the teacher did not deny their daughter's account, as put to the teacher via the phone call.

Witness 2 stated that his daughter had been under stress and required counselling after the event. He also said that her academic results in 2010 had been affected in his view. A fresh start at a new school in 2011 had helped the situation in his view.

Witness 2, a father of three girls himself, stated that he would not adjust the clothing of another young female, in the manner that the teacher had. He also noted that he was away in a different regional area of Victoria on the Saturday night of the incident.

Witness 2 stated that he and his wife had a preference that witness 7 was present when their daughter was at the teacher's house. He said it was not an absolute rule, and nothing had been raised with the teacher and witness 7. He said the teacher's estranged wife, witness 7 lived in the same house.

### **Witness 3**

The mother of witness 1, witness 3 stated that her signed statement of 11 July 2011 was true and correct. Witness 3 said she was a teacher, and she noted that she had taught two of the teacher's children. She said she knew him and his wife witness 7, with whom she had been friendly.

Witness 3 said her daughter witness 1 and the teacher's eldest daughter had been very good friends for a long time. She stated that her daughter was one year younger than the teacher's daughter. Her daughter would often stay at the teacher's home or beach house. The witness stated that she had had concerns about the teacher for a while, and had discussed the concerns with her daughter. Witness 3 said her daughter told her that the teacher freaked her out because he hugged and touched her. She said she found him '*touchy feely*' and it made her uncomfortable. Witness 3 said that her daughter was told that she needed to stop going to the teacher's house if witness 7 was not there. Witness 3 said this discussion took place before Black Saturday in February 2009. Her daughter was close to witness 7, and after the fires she spent very little time with the teacher, but time with witness 7.

Witness 3 stated that she normally ran the disco with the teacher's help, but she was with her two daughters elsewhere and asked the teacher to do it by himself on the afternoon of the planned event. She stated that around 10pm her daughter rang her and sounded upset. Having told her that she was half an hour away she asked her what she wanted to do. In the background she could hear the teacher's daughter calling out that witness 1 was staying at the teacher's house.

On Monday in the car in the presence of her two younger children, witness 1 told her mother that she would not be going to the teacher's beach house for New Year's Eve. She said the teacher was a paedophile and she hated his guts. Witness 2 prevented any further discussion due to the other children being in the car.

Witness 2 recalled seeing her daughter talking to her father and crying. When her daughter had gone to bed her husband stated that the teacher had told witness 1 that her top was bunched up and he put his hands up her skirt to pull it down. The teacher had also made a comment about being the only man who could put something between her legs when in the car, on the way to rug her daughter's horse. On the way home they went to the sports club. Her daughter apparently wanted to walk home and the teacher told her to get in the car. Her husband told her that their daughter had said that the teacher again put his drink between her legs or on her lap and asked her to repeat what

the teacher had said before. Her husband also told her about a game back at the teacher's house where the girls were only to wear the clothes that belonged to them.

Witness 3 said the next morning her daughter was upset. She said her daughter wanted to talk to witness 7. They went over and witness 3 indicated in her written statement that her daughter told witness 7 everything that had happened. Witness 7 suggested a contact at the Victoria Police SOCA unit and indicated that she could make an appointment for them. Witness 1 did not want to press charges so the police officer said we should call the teacher personally to speak to the concerns.

Witness 3 rang the teacher, said that she knew what he had done to witness 1. The teacher responded by asking where they wanted to meet to talk. The teacher said he would have to call back in ten minutes. The teacher then said sorry. When the teacher called back he asked where they wanted to meet and witness 3 stated that she and her husband did not want to meet or ever see him again. Witness 3 said she went through the incidents on the phone and the teacher agreed he put his hands up her daughter's skirt. Witness 3 stated that she said to the teacher that he put a can of drink between her daughter's legs and said to her that he was the only man that could put something between her legs. Witness 3 said that when this was raised the teacher responded "*yes I did.*" Witness 3 stated that the teacher back at his house said to her daughter that they were going to play a game where they could only wear the clothes that belonged to her daughter. Witness 3 said that the teacher responded and said "*yes I did.*" Witness 3 stated that the teacher was crying at this stage. Witness 3 then discussed the issues associated with the daughter's friendship and witness 1 did not want the teacher's daughter to hate her. Witness 3 stated that the teacher said that he would tell his daughter what he had done, and make it right. Witness 3 said the teacher said sorry and that he had let us down. The witness said that she raised with the teacher that he had not mentioned witness 1 – the most important person, during the conversation. Witness 3 said that the teacher said he knew, but did not want to mention her name.

Witness 3 stated that her conversations with the teacher's ex-wife witness 7, informed her that the teacher's daughter did not consider that her father had done anything wrong in correcting the bunched up shirt, and that he was treating her friend witness 1 like a daughter.

Witness 3 provided an extensive amount of information that was not direct evidence in her statement and when giving evidence in person. Much of what was provided in writing was second and third hand information.

Witness 3 gave evidence that on 30 April 2010 she sought an intervention order against the teacher. It expired on 14 May 2010. She stated that she sought the order because the teacher's two younger daughters attended the school that she taught at, and she personally became "very distressed" when the teacher walked through the school to collect his daughters. She stated that she would cry and become upset because of the trauma the teacher had caused her and her family. Witness 3 also stated that the thought that she may come into contact with the teacher on some occasion, given that he was the substantive principal of a school that was in a cluster of primary schools in the area for student sports and professional activities, made her feel physically sick. She claimed the

teacher appeared to have no insight or remorse with regard to the destruction to her family. These were the things she indicated as key to seeking the intervention order.

Her daughter witness 1 would come home and be distraught if she saw the teacher or thought he'd be collecting her friend witness 4 from an event.. She said she had trouble getting her daughter to attend events if she knew the teacher would be taking and collecting his own daughter.

Witness 3 stated that she wanted to apply for a final intervention order but received legal advice that it would probably not succeed without the direct evidence of her daughter. Her daughter did not want to engage in the process. Witness 3 stated that she was diagnosed with depression due to the stress she felt, given the potential of seeing the teacher at her own workplace and being fearful of walking into him. She took action by applying under the auspice of OH&S (for the protection of her own health) to have the teacher prevented from attending the school where his daughters were educated. The employer told the witness that the teacher was a parent, and could not be stopped from coming to the school.

Witness 3 stated that her daughter was refusing to go to counselling, even though as a parent, she as witness 1's mother could tell the incident was having a devastating effect on her daughter. Witness 3 said that when she told her daughter that she would have to go to court with her to get an intervention order to stop her and her daughter from having to see the teacher, her daughter became angry and irritable. Witness 3 informed the Panel that she considered her daughter traumatised and hence she did not want to retell the incident, so she refused to go to court.

Witness 3 stated that when her daughter started a new school, she rang the principal and went through what had happened with her daughter and the teacher. She received assurances that the teacher would not be invited to the school from her daughter's new principal.

Witness 3 said her daughter went to counselling twice at CARSA then refused to go a third time. In May 2010 the witness said her daughter's behaviour became volatile, and she and her husband considered it stemmed back to the earlier incidents. She would say at the end of blow ups "I have to deal with all of this teacher shit and I hate it." With reference to the counselling services of Relationships Australia witness 3 stated "we forced witness 1 into counselling with X. Witness 1 completely managed to divert X's attention with side issues and refused to discuss what happened with the teacher." Witness 3 said about Counsellor X that she was unable to form a connection with her daughter at all. After two sessions her daughter refused to go again. Witness 3 stated that her daughter held a lot of anger towards her because she made her give evidence and for pursuing the issue. That was the second attempt at utilising a counselling service. Witness 3 said her daughter's behaviour got worse and she was given an ultimatum – she was told that she would go to counselling or leave the family home. The new counsellor was firm that her daughter should not have any more involvement with anything to do with the teacher. Witness 3 stated "that is why we did not pursue criminal action after the employer gave the teacher a formal reprimand and we found out he was returning ...." to be a principal.

Witness 3 said that the new counsellor helped her daughter understand that none of what had happened was her fault. She also informed the Panel that her daughter knew that they had been advised to take the matter to court, but her daughter was concerned that the teacher's daughter would hate her if she did so.

Witness 3 stated that when she became aware that the teacher would be returning to work and that a letter was sent to the school community encouraging a 'fresh start' by the employer, she and her daughter were gutted and witness 3 stated that she considered writing her own letter to the school community, stating what the teacher did.

#### **Witness 4**

The eldest daughter of the teacher, witness 4 said that her statement signed and dated on 11 December 2012, was true and correct. Witness 4 stated that she had known witness 1 since primary school and that they had been very close friends, although that wasn't the current situation. She stated that they'd often stay at each other's home weekly. Over more recent times the relationship had soured.

On 24 October 2009 witness 4 said that she, her two younger sisters, and witness 1 were walking to the disco that her dad was running as a favour for witness 3. When witness 1 had arrived she was in casual clothes. As they wanted to dress up a bit for the disco, witness 4 loaned witness 1 a skirt and a top. Witness 4 informed the panel that when walking through her backyard her father said that witness 1's shirt had bunched up and looked funny. She said she could fix it later and the witness said her dad said he could fix it now if she wanted him to. Witness 1 went to him and he handed her the CDs he was holding. He reached under her skirt and adjusted her top from the sides. Witness 1 did not voice any objections. It was fixed quickly. Witness 1 said thanks, gave back the CDs, and we continued on to the hall.

Witness 1 seemed fine during the disco. Both girls repeatedly went over to ask the teacher to play certain songs. "We were happy dancing and running around."

Witness 4 stated that witness 1 was quite relaxed about how she dressed in the teacher's house in front of both parents. She said that she wore bikinis at the beach house. "She did not seem bothered about my dad being there and treated him like another father" witness 4 told the Panel.

Witness 4 said that witness 1 had forgotten to put the blanket on her horse and her father drove her over to her house to do so. "When she came back she did not seem distressed to me and we went to my room." Witness 4 believed that the vehicle used was car 2 as due to her father's relief work it was the most accessible. She did not see the car leave, but indicated it was the last parked car.

Witness 4 said that witness 1 called her mum but she did not hear the phone conversation. During it she did however say that witness 1 could stay at the teacher's that night. When witness 1 got off the phone she said that she was allowed to stay and she seemed happy about it. Witness 4 informed the Panel that witness 1 did not seem angry or upset, and did not have to stay at the house; it was her choice to do so.

Witness 4 stated that they were playing dress-ups in her room, having grabbed the dress-up from her sister's room. She stated that her father brought down some additional dress-up things that he had from the relief centre, including skirts, scarfs, tops and wigs. "At no time did he bring down just two skirts. He did say "here's some more" when he brought the things down. "He did not make the comment '*I've got a challenge for you ... you are only allowed to wear this*' at any time." We then went to the kitchen to show him our dress ups and we were all laughing.

Witness 4 stated that at one stage she had made the comment that the only thing witness 1 was wearing of her own was her under-clothes. "My dad did not say that we should just wear our own clothes" or any other similar comment. Witness 4 said that it was only when going to the disco that witness 1 had her clothes on. Witness 4 stated that while she and witness 1 were in her room they had two alcoholic drinks. "witness 1 was holding one while I was drinking one. Witness 1 had placed the drink between her legs to hold it." Witness 4 informed the Panel that when she asked for it, witness 1 said something like 'where is it?' and witness 4 recalled responding 'in your crutch' and the two girls laughed at the conversation. Witness 4 stated that her father was not present at the time.

Witness 4 stated that witness 1 had never mentioned anything of concern about her dad to her, and had often asked to come and stay at the house when she knew her father, the teacher was there, and her mother wasn't. "She never said she felt uncomfortable when at my house and she came there often .... she never checked who was home before coming over and staying."

Witness 4 said her father told her about the allegations, and that her mother was not present at the time. She informed the Panel "Dad did nothing wrong. He probably shouldn't have adjusted her shirt, but he was treating her like a daughter."

### **Witness 5**

Witness 5 was interviewed by phone under affirmation. She confirmed that her statement, signed and dated 29 July 2011, was true and correct. The sister-in-law of the teacher and the sister of the teacher's former spouse, witness 7, witness 5 stated that she was employed at the school where the teacher was a Principal.

Witness 5 confirmed that she had a conversation with her niece witness 4 about the allegations. Witness 5 stated that her niece told her that what was being said was untrue and witness 3 was lying. Witness 5 said her niece said that after the disco the two girls went to her room. They had asked the teacher could they do dress-ups and the teacher said yes. According to her niece the teacher went and got the things and said he didn't mind them doing dress-ups as long as they cleaned up the mess. Witness 5 said that would be a typical comment from the teacher as he was always tidying up after his daughters, particularly given that her sister's role meant that the teacher was often in the role of primary carer.

The witness stated that the teacher told her that witness 3 had accused him of touching her daughter witness 1, and making vulgar comments to her, almost immediately after it

all happened. The teacher told witness 5 that witness 1 was at his home and had borrowed some of her niece's clothes to go to the disco. He said his two younger daughters left the house to walk to the disco and he followed with witness 1 and her niece, witness 4. The teacher told witness 5 that he told witness 1 that her shirt was bunched up and to come over and he'd fix it. He said she came over to him, took the keys and CDs for the disco that he was holding, and he adjusted the shirt.

The teacher told witness 5 that witness 1 said thank you, and that she had consented to her clothing being adjusted. The teacher was running the disco for witness 3 that evening. Witness 5 said she was at the teacher's family home when witness 3 rang and asked him to do the disco that night for her. She stated that witness 1 and her niece, witness 4, were also there at the time. Witness 5 left the house before the teacher left to walk to the disco with the four girls.

The teacher also told witness 5 that he took witness 1 to cover her horse, after the disco. He said to witness 5 that he had a bottle of drink, which he gave to witness 1 given he was driving, and that she put the bottle between her legs. Witness 5 said the teacher stated that he did not make a vulgar comment to witness 1.

Witness 5 said that witness 3 told her that the teacher had made a vulgar comment to her daughter.

Witness 5 indicated that witness 1 often referred to the teacher as her 'other dad'. She also indicated that the teacher and her niece, witness 3, referred to witness 1 as the 'extra daughter.'

Witness 5 stated that the teacher was devastated when witness 3 complained to the employer. Witness 5 said that she had known the teacher for a long time and had never seen or heard of him doing anything inappropriate around children at school or socially. She indicated that the teacher regularly attended family events that her daughter attended and she allowed her daughter to stay for sleep-overs at the teacher's house, with the teacher and his daughters. She stated that she remains comfortable about her daughter doing so.

Witness 5 indicated that her sister moved out of the family home in May 2009. She then moved back in, in June 2009. She said that the teacher stayed in the house until November 2009. After leaving the family home however, witness 5 said that the teacher was back and forwards a lot of the time, taking his three daughters to activities, and that he would stay some nights. Witness 5 stated that her sister went to the academy in 2006 and was away a lot training and then witness 7 worked long shifts.

Witness 5 stated that she felt witness 3 was "hell bent on getting the teacher, regardless of the facts." Witness 5 said that she felt her sister, the teacher's ex-wife, did see the situation as an opportunity to get the teacher to move out of the family home. Despite being separated they had lived under the same roof for several years. Witness 5 stated that her sister had reflected and regretted trying to do so given that witness 3 had her own personal issues. Witness 5 said that it seemed that much of what had gone on was about witness 3, not her daughter, witness 1. Witness 5 stated that her sister, the ex-wife

of the teacher, had stated that witness 3 was a “drama queen” who “loved the attention” and had gone out of her way to provide information to parents and staff, and call the teacher derogatory names, at the primary school where the teacher’s two younger girls went to school. This was also the school where witness 3 taught as a part time teacher.

### **Witness 6**

The Panel examined a registered psychologist’s report prepared for the Hearing. Dated 31 January 2013 the psychologist’s report was written by witness 6, the teacher’s treating psychologist. The report detailed that the teacher had been working with the psychologist since 23 June 2011 and had attended eleven treatment sessions.

The Panel took evidence over the phone under affirmation from witness 6 on 8 February 2013. The Panel heard that the matters covered during the treatment of the teacher varied significantly, and that while the allegations before the Panel were raised during treatment, they were not necessarily the primary focus of treatment sessions. That said, witness 6 stated that there had been discussion of the allegations that were before the Panel and added that time had also been spent reviewing the nature of future interaction with young people, and further the level of increased caution that was required from a professional perspective, at all times. When asked more specifically about treatment sessions, witness 6 stated that there had not been discussion about power imbalances and specific roles, however there was some discussion around boundaries.

The nature of the work undertaken with the teacher was detailed at length by witness 6. He informed the Panel that overall he had found the teacher “*to be a man of good character*” and further that his experience of the teacher was that he was an honest person who engaged with the community in a supportive way. He also informed the Panel that attitudes displayed by the teacher since he had been treating him “*would only suggest he [i.e. the teacher] would consider the alleged actions for which he is currently under investigation to be totally abhorrent.*” Witness 6 also noted that he considered the teacher to be extremely remorseful for any harm that he might have done to witness 1 with regard to the adjusting of her clothing. Witness 6 also stated that during treatment sessions the teacher had always maintained that the other allegations against him were false. Witness 6 stated that he was of the opinion that the teacher “*did not intend in any way to harm witness 1*” and he informed the Panel that the teacher had been clear with him that he considered witness 1 like another daughter and certainly not a target for sexual suggestion.

Witness 6 stated that during treatment the teacher “*likened adjusting witness 1’s clothes to a parent reaction, something he would have done for his own daughter*” and he added that he believed that the teacher “*does accept that this action was in poor judgement and that in haste he acted in an overly familiar way*”. Witness 6 stated that he considered the teacher to be well intentioned but naïve. He informed the Panel that he did believe that the teacher had crossed boundaries unintentionally.

## **Witness 7**

The evidence of witness 7, the former spouse of the teacher, was taken over the phone under affirmation on 8 February 2013. The witness was contacted at the request of the Panel, given that she seemed pivotal to evidence that had been given.

Witness 7 stated that her daughter and witness 1 were very close and had been friends for a long time. She said that over the years witness 1 was a regular visitor at their family home, including during the period of time where she had separated from her spouse the teacher, but was living at the same residence.

Witness 7 stated that she had never been advised that the parents of witness 1 had concerns about their daughter being at the family home when she was not there. She indicated that she did not believe it to be the case, and they had not ever checked who would be at the house. Witness 7 also stated that the parents of witness 1 repeatedly allowed their daughter to be at the teacher's family home when only her ex-spouse, the teacher, was there as the parent. She was friendly with witness 3 for quite a period of time.

Witness 7 stated that she had never had any concerns about the teacher's intentions, with regard to her own female children (of whom he was the father). Witness 7 also stated that she had never had any concerns about the teacher's intentions with regard to anyone else's children. She noted that she was astute and that if she had had any concerns she would have removed her children. Witness 7 stated "*I have never known him to act inappropriately.*" She stated that witness 1 "*was like our daughter*" and that adjusting her clothing "*would be something he'd do to our girls.*" Witness 7 also provided examples of how the teacher engaged with female students during theatre activities when previously involved with drama at a girls' school. She noted that he ensured shorts were worn under dresses etc.

Witness 7 recalled that she was attending a function some distance away from the environment at the time of the allegations. She stated that soon afterwards witness 3 had let her know that she needed to speak to her by herself and in person. Witness 3 arrived, spoke briefly and then brought witness 1 in from the car. Witness 7 recalled that witness 1 did not say anything. She stated that "*witness 3 did all of the talking.*" Witness 7 indicated that the mother of witness 3 had raised the adjusting of clothing, the placement of a bottle of drink and an inappropriate comment. Witness 7 indicated she was aware of the complexities of it being her ex-spouse that the allegations were being made against and she chose not to become involved directly. She contacted a person at the Victorian Police SOCA unit (Sexual Offences and Child Abuse).

Witness 7 spoke to her SOCA contact and organised for witness 1 to have a conversation about her allegations. Witness 1 refused. The witness stated that witness 3 was very forceful when it came to encouraging her daughter to speak to the SOCA unit.

Witness 7 stated that her own daughter was going through enough and she did not want to place further pressure on her by discussing the allegations. That said, witness 7 did

state that her daughter had said that there was a comment between them about a bottle, when the girls were together in the bedroom.

Efforts were initially made by both mothers to keep the girls' close friendship intact, given what had proceeded. Witness 7 stated that it then became clear that witness 1 was spending a lot of time at the teacher's family home, apparently due to pressure witness 3 was putting on her daughter at their family home, regarding the making of police statements. Witness 1 was refusing to do police statements according to witness 7.

Witness 7 stated that witness 1 would arrive, not be concerned about which parent was at the teacher's home, and not ask her about who was going to be there. Witness 7 described this pattern of behaviour as being the same both before and after the alleged incidents.

Witness 7 indicated that she had become concerned about the behaviour, and comments made by witness 3 after the incident. She indicated that she seemed to want the teacher to lose his job. The friendship witness 7 had with witness 3 broke down when it became clear that she was talking to people about the teacher at the school and the kindergarten that her other children went to. It was said about one child 'she's just like her father.'

Witness 7 indicated that witness 3 sought intervention orders, as if she was the victim.

The written statement signed on 11 July 2011 by witness 3 was raised with witness 7. This happened post witness 3 confirming the content of the statement as being true and correct under oath. In paragraph 2.2 witness 3 stated the teacher *"no longer resides with witness 7 and has not done so since shortly after the incident involving my daughter witness 1. To the best of my knowledge, witness 7 asked him to move out as a result of what he did to witness 1."*

Witness 7 stated that the content of paragraph 2.2 was untrue. She did not ask the teacher to move out specifically because of the allegations or 'what he did to witness 1.' Witness 7 noted that the teacher did move out when he was suspended by the employer, later in 2009. Witness 7 married the teacher in 1989. While the marriage ended in 2007 they resided in the same family home for an extended period of time.

## **Witness 8**

Witness 8 provided a signed character reference for the teacher. It was undated and witness 8 stated that it was prepared in November 2012. Giving evidence over the phone under affirmation witness 8 indicated that she was only aware of the allegation regarding the adjustment of clothing in relation to witness 1.

Witness 8 described the teacher as a kind and helpful person who worked hard to organise and support people during the bushfires in regional Victoria in 2009. She indicated that she came to know the teacher quite well during that period and personally considered him a person of good character. The witness stated that she was of the view that the teacher was respected in the community.

Witness 8 stated that she had recently been in contact with the teacher as she is the Chaplain of the school that one of his daughters now attends. She stated that he was a supportive parent.

### **Witness 9**

Witness 9 provided a signed character reference for the teacher dated 9 December 2012. Witness 9 gave evidence over the phone under affirmation and confirmed that his written statement was true and correct. Noting that he was involved in the community recovery process after the Black Saturday Bush Fires of February 2009, witness 9 stated that he came to know the teacher well during that troubled period, and that the teacher was the inaugural chairperson of the Fire Recovery Section of the town B District Association.

Witness 9 stated that the teacher gave up a lot of time freely to help others, and was well respected. He indicated that the teacher had informed him about the allegations and that they had had detailed discussions about them. He informed the Panel via his statement that *“the teacher informed me of his misgivings”* and *“in my mind the teacher remains a man of the highest integrity.”*

Witness 9 stated that he had observed the teacher on a daily basis interacting with various members of the community and that he had no issues of concern. He said that he greatly admired the teacher’s empathy and the levels of care that he extended to others in times of need.

### **Witness 10**

Witness 10 gave evidence over the phone. He confirmed that his character reference signed and dated 8 December 2012 was true and correct under affirmation. Witness 10 became acquainted with the teacher during the period of bushfire recovery in 2009. He said of the teacher that he was *“an extraordinary man”* whose *“voluntary efforts during the bushfire recovery had been completely selfless.”*

Witness 10 informed the Panel that as a person working for the partnership between the Anglican Diocese and the Uniting Church in the local area, he had listened to the teacher *“recall events and display sincere regrets and disappointment at his actions towards witness 1”* including making it known that in relation to adjusting clothing *“his actions were inappropriate and done in the haste of the moment and would not be repeated.”*

Witness 10 stated that from his work he had gleaned that the teacher was a much loved and respected member of the community. He added that he had been greatly missed since withdrawing from the bushfire relief community, given the incident.

### **Witness 11**

The Panel took evidence over the phone from witness 11 under affirmation. An officer of the employer in regional Victoria, witness 11 confirmed a letter he had written dated 11 December 2012 and that it was a ‘Professional Reference’ for the teacher. The letter noted

that the teacher was removed from his school while allegations of misconduct were investigated.

Witness 11 indicated that he had taken the complaint made by witness 3, not her daughter, witness 1. He stated that witness 3 was distressed when she made the complaint.

The teacher was reprimanded. He was cleared to return to his school and role in early 2011. The teacher returned to his school after an extended period by his own choice, 12 months later so that there was time for community preparation. Witness 11 worked with the teacher in late 2011 to facilitate the transition. There were different responses. Some people stayed and wanted to move forward, some were happy he returned and some left the school. As part of a review process conducted by witness 11, a forum of parents from the school council was facilitated. "All expressed confidence and strong support for the teacher's leadership commenting favourably on his engagement with students, parents and the wider community."

Witness 11 stated that he had personally known the teacher since 2002 and had seen him interacting with children and adolescents, and had no issues with his approach.

### **The Teacher**

The teacher stated that his written statement, signed 11 December 2012, was true and correct. The teacher said that he was currently the Principal at the school, and that he had had the position since April 2001. He informed the Panel he had been teaching since 1982.

The teacher said his daughter witness 3 was close friends with witness 1 during 2008 and 2009 and that witness 1 regularly stayed at their home usually one or two nights a week. Witness 1 also went to their holiday house. His daughter would announce her as the 'extra daughter' and witness 1 would often announce herself the same way and call him her 'second dad.'

In December 2009 the teacher was advised the employer was investigating a complaint against him. It took most of 2010 to complete and having received a reprimand he was told he could return to work. Rather than disrupt the 2010 year the teacher decided to work on a project in the regional office. The teacher became aware of some concerns about his return to the school community, although he was unclear what they were and decided to continue on in the project during 2011. The teacher returned to his Principal position for the 2012 year.

In relation to the allegations the teacher stated that on Saturday 24 October 2009 witness 3 was to run the disco at the school and had arranged for him to set up the lighting. Late in the day witness 3 rang him to ask that he run the disco as she had been detailed with her younger daughters elsewhere. Witness 1 was at his home at the time as she had come around earlier. The teacher stated that he had started to drink a bottle of pre-mixed alcohol during the afternoon. He had not finished it prior to the phone call, and given the phone call he said did not drink any more of it. He said he'd spent the day cleaning out

the gutters on the roof mindful of the coming fire season. It was a rush to set up and run the disco as he was doing it by himself and witness 3 had arranged for his daughter and witness 1 to help.

On the way to the disco, in his backyard which is visible to his neighbours, he commented to his eldest daughter that witness 1 looked like she was wearing a spare tyre as her shirt was bunched up around her waist. His daughter laughed and witness 1 said she would fix her clothes when she got to the hall. He made the comment that he could fix it before they got there and witness 1 walked over to him and gave a positive response. The teacher gave her the CDs and keys he was carrying and adjusted her shirt, putting his hands up under her skirt to pull it down on both sides. Witness 1 had a short skirt on. The teacher said the action was done in haste as they had limited time to get to the hall and it was only a few seconds. He did this in front of his own three daughters and had been given permission to adjust the clothes. Witness 1 handed back the keys and CDs. They continued to the hall. At no time did witness 1 say that she did not want me to do this or tell me to stop. The teacher stated he thought his actions were assisting witness 1. In relation to his own daughters he stated that he fixed clothes, did hair and fastened shoes, etc.

During the disco he recalled his daughter and witness 1 happily came up to him and requested music of him, and spoke to him. At the end of the disco the four girls walked the short distance to the house and he packed up.

Later that evening witness 1 asked the teacher for a lift to rug her horse. The teacher questioned if witness 1 had concerns about his earlier actions why she would have sought to travel alone with him, to her horse. He said he considered witness 1 as forthright and independent young person who had never been reticent in expressing her views.

The teacher stated that having reflected he realised he should not have adjusted the clothing and that he should have been more aware of her feelings. He said he did treat her like his daughters but that did not excuse what he did to someone that was not his daughter. The teacher apologised for any embarrassment and distress that he had caused and stated that he would never repeat any such actions. The teacher agreed that whilst walking through the back garden with witness 1, that he reached up under witness 1's skirt and adjusted her clothing. The teacher disagreed that he did this without consent.

After the disco, at 9.02 pm witness 1 called her mother, having asked the teacher if she could do so, as she needed to put a blanket on her horse. The teacher stated that his phone records showed the call was made. During the conversation the teacher indicated that he could take her to her home to rug the horse. It seemed her mother indicated that she would not be home for a while and witness 1 told her mother that she would go and rug the horse. The teacher stated that he walked to the car with witness 1 and had the bottle of drink that he had not finished but started prior to the disco in his hand. They were in car 2 and it did not have a receptacle to hold the bottle so he asked witness 1 could she hold it. She took the bottle and put it between her legs near her knees. At the time the teacher said witness 1 made a flippant comment and he responded in a joking manner with words to the effect "I wouldn't put it there if I was you." The

comment was also made as a warning in case it spilt or dropped to the floor. Witness 1 responded with a laugh.

Then there was conversation about where her horse and horse blanket were. The teacher stated that he did not place the bottle between her legs. Arriving at the paddock witness 1 handed the teacher the bottle. There was a small amount left which the teacher drank while in the car after she had got out. He then placed the bottle behind the seat. It took 15 minutes and the teacher turned the lights towards the horse so she could see what she was doing. She returned, the teacher said he needed to go to the sports club and as they drove there a conversation about the light and heavy horse blankets took place. The teacher stated that he denied making the comment that had been alleged. He said witness 1 made the comment about bottle placement. He stated that she may have misconstrued his response as being sexual. He stated that he was vigilant about the making of any comments since the allegations were made and he was apologetic if what he had said caused her embarrassment or distress. The teacher said that he did not say "let me be the only man who can put something between your legs".

Arriving at the sports club the teacher grabbed some notes from the relief centre and a brochure and purchased two UDL cans of drink. Witness 1 went in with the teacher. Once outside she said she'd walk home as the teacher was emptying rubbish from small bins to large bins. He stated he informed her he'd only be a moment and that she should go home in the car. The teacher noted it was late and dark and she was talking about walking through a bushy area. Witness 1 got into the car. The teacher also got in. He recalled witness 1 taking the cans and the notes and brochure from him as he started the car. He recalled telling witness 1 to put the cans on the floor as they were cold. She did so and held the papers in her lap. The teacher denied the allegation that while travelling alone with witness 1 in the car, he placed a container of alcohol between her legs and made a sexually suggestive comment to her by asking her to repeat the comment previously alleged.

Arriving home, the teacher found his two younger daughters watching a video in the lounge room. Witness 1 went into his eldest daughter's bedroom. They came out saying they wanted to do dress-ups and make-up. The teacher noted he told them not to go overboard and then went with witness 4 and witness 1 to get the dress-ups. They were taken back to witness 4's room and put on the floor. The teacher said the girls retrieved further costumes, and he also brought some costumes in from the garage from the bushfire relief centre. He took these to the girls and reminded them to be sensible given the room was already looking messy. When the girls came out they had the dress-ups on top of their clothes which was the normal practice and they all talked and laughed about how they looked. The teacher stated that he did not make a comment that witness 1 had to wear only her own clothing and did not make sexually suggestive comments to witness 1 about her clothing. The teacher said the girls finished with the dress-ups, tidied up and then came out to show him their shuffling dancing and have it videoed on their phones.

The teacher stated that he was not intoxicated. He said he had two bottles of pre-mixed alcohol that totalled 2.2 standard drinks over a 6 to 7 hour period. The teacher said he did not consume the UDL cans or other alcohol.

The teacher stated that he was first made aware of the issues by witness 3 on Tuesday 27<sup>th</sup> October. The teacher said he couldn't talk when she first rang as he was in a fire safety meeting. He rang back and she said she didn't want him to say anything, just to listen to her. The teacher stated that witness 3 did not raise the issue of him allegedly getting witness 1 to repeat an inappropriate comment.

The teacher stated that he has known witness 3 for quite some time and his daughter stays at their house also. Never has witness 3 ever raised any concerns about his behaviour.

The teacher stated that he unofficially separated from his wife in 2007. They lived in the same house and officially separated in May 2009. He stated that his ex-wife was good friends with witness 3. He said he understood that originally his ex-wife told witness 3 she needed to go to the SOCA unit of Victoria Police.

The teacher stated that he had been a committed teacher all of his life and had engaged with the community when people were in need having had a key relief role during the bushfires in 2008. The teacher indicated that he had been working with a counsellor over a number of years and dealing with the stresses associated with his life as a while, namely the fires and fire relief work, the breakdown of his marriage and the complaints lodged by witness 3. The teacher stated that he reflected daily and was aware of the consequences of his actions in regard to the first allegation. He stated that he did not doubt the stress of witness 1. He said it was wrong to take the alcohol and that if witness 1 was upset that he didn't pick up on it. She didn't say anything. The teacher stated that he should not have adjusted witness 1's clothes, and that he was sorry that she was so upset.

## **DISCUSSION OF THE EVIDENCE**

The Panel noted that the teacher had previously received a reprimand from the employer in October 2010, and had since put measures in place to re-establish himself in the school and the community. Aware of the teacher's agreement that he put his hands up the skirt of witness 1 and adjusted her top, and acknowledging the level of reflection the teacher had engaged in since the incident, the Panel was convinced that the apologies of the teacher were genuine and that he had taken on board why his actions were not acceptable under any circumstances.

The Panel is clear that witness 1 did not ask the teacher to adjust her top. If witness 1 had done so, the teacher should have known to say no, either requesting his eldest daughter do the adjustment, or requesting that witness 1 do so herself. The fact that the teacher proactively engaged in the behaviour, despite witness 1 indicating she would do it herself, even if he had, or believed he had her agreement, is conduct that without any doubt moves beyond what is reasonable and appropriate.

The teacher would not be disadvantaged by increasing his contemporary understanding of the complexities of adult child power relationships, from both a social and a professional perspective. The Panel noted that while the teacher demonstrated a level of

understanding, a heightened more sophisticated and intellectual grasp of the relevant concepts would be beneficial. The Panel was concerned that the teacher had demonstrated the level of naivety that he did, and noted the limited assessment undertaken by him, particularly given that he was a teacher and principal. The fact that he himself is a parent is largely irrelevant. While the established responsibilities of a teacher and principal are very relevant, and accordingly the Victorian Institute of Teaching Code of Conduct, of which principals should be well versed, clearly indicates what is required of professional educators. The Code of Conduct does not in any way infer that the expected behaviour of educators is altered or limited or usurped if a person is also a parent.

The point must be made that there is no place for unsophisticated and narrow assessment of situations involving students and other people's children any hour of the day, any day of the week, by professional educators. Irrespective of whether educators are in the city or regional areas, or if they are members of the same community or sporting, or religious or community group – teachers must at all times ensure their professional responsibilities and in turn an appropriate aligned mindset, guide all of their actions and comments, all of the time.

The Panel found that on the evening of 24 October 2009 the teacher did compromise his professional standing as a teacher, in circumstances where whilst walking through the back garden with his three children and witness 1, he reached up under witness 1's skirt and adjusted her top. The Panel is not convinced either way that the action was with or without specific consent given the adult/child relationship. That said the Panel is very clear that the right approach would have been for the teacher to suggest that the student fixed the top herself, or ask his daughter to do so. Further the Panel considers that the licence the teacher took to engage in the way that he did, would never be acceptable under any circumstances. There was no evidence at any stage that the teacher specifically touched the skin or limbs of witness 1. The Panel considered the conduct amounted to misconduct.

After extensive consideration of the evidence, and the submissions of Counsel Assisting and the teacher's representative, the Panel has found that context has played a major role in the circumstances under review. The allegations refer to inappropriate conduct and intent, including sexual connotations, and vulgar commentary. To varying degrees, this is what the direct and indirect evidence of witness 1 and her parents presented for consideration. On the balance of probabilities, the Panel has found that while the teacher engaged in behaviour that fell short of what would be expected if a teacher was role modelling exemplary conduct in a social situations, particulars b, c, d(i) and d(ii) as set out under allegation 1, are not substantiated.

The Panel is of the view that the teacher would be well served by continuing to work with his counsellor given the stressful personal and community circumstances he has experienced.

The Panel is confident that the teacher has a clear understanding of the boundaries that need to be in place, in professional situations, and additionally in social situations, given the broad responsibilities and expectations of members of the teaching profession.

## **FINDINGS**

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 1 March 2013 the Panel found the teacher fit to teach.

## **DETERMINATION**

The Panel determined that the teacher remains registered as a teacher in Victoria.



**SUSAN HALLIDAY, CHAIRPERSON**



**per:**  
**PAUL WILHELM, REGISTERED TEACHER**



**per:**  
**LENEEN FORDE, PANEL MEMBER**