

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Queensland College of Teachers v WAT* [2020] QCAT 85

PARTIES: **QUEENSLAND COLLEGE OF TEACHERS**
(applicant)

v

WAT
(respondent)

APPLICATION NO/S: OCR304-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 26 March 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Fitzpatrick, Presiding
Member Grigg
Member McDonnell

ORDERS:

1. A disciplinary ground is established under s 92(1)(h) of the *Education (Queensland College of Teachers) Act 2005 (Qld)*.
2. The teacher registration of WAT is cancelled pursuant to s 160(2)(d) of the *Education (Queensland College of Teachers) Act 2005 (Qld)*.
3. Under section 160(2)(j) of the *Education (Queensland College of Teachers) Act 2005 (Qld)* the respondent is prohibited from applying for registration or permission to teach for a period of five (5) years from his suspension on 22 August 2018.
4. A notation is to be entered into the register that should the respondent apply for registration or permission to teach after the expiration of the prohibition period, that application must be accompanied by a detailed report of a psychologist and/or psychiatrist.
5. The respondent must have obtained the prior approval of the applicant to the engagement of the particular psychologist and/or psychiatrist.
6. The psychologist and/or psychiatrist's report must

discuss the respondent's appreciation of the following:

- (a) differentiation between personal and professional relationships;**
- (b) the legal obligations of teachers and tutors;**
- (c) the development and maintenance of professional standards when working with young people;**
- (d) how to determine and implement professional boundaries with individual students;**
- (e) how to assess risks and identify potentially problematic situations early;**
- (f) how to initiate realistic solutions in order to avoid the risk of harm to students;**
- (g) the extent and nature of the trust and power invested in teachers by students, colleagues, parents and the wider community;**
- (h) personal and social behaviour that would compromise the professional standing of a teacher and the profession of teaching;**
- (i) the effect of inappropriate relationships with students;**
- (j) the trust and power granted to a teacher; and**
- (k) the importance of full adherence to the Queensland College of Teachers Code of Ethics.**

7. The report must also:

- (a) describe the respondent's mental health and give details of any therapy or other treatment undertaken since the Tribunal's decision;**
- (b) indicate whether the psychiatrist and/or psychologist is satisfied that WAT has adequately understood and addressed the points 6(a) to (k); and**
- (c) indicate that the psychologist and/or psychiatrist was provided with a copy of the Tribunal's decision and reasons, and the amended referral made by the respondent on 20 February 2019.**

8. Publication is prohibited of any information which may identify the respondent, the student involved in the matter, any members of the student's

family, and the schools or sports club involved or staff at the schools and sports club, except to the parties to the proceeding, and except that the identity of the respondent may be published to:

- (a) any employer who employs, or is considering employing, him in a teaching role, or in child-related employment;**
- (b) his current or future health practitioners;**
- (c) other teacher regulatory authorities;**
- (d) the chief executive (employment screening);**
- (e) the Minister of Education; and**
- (f) any other entity relevant to the teacher's practice of the teaching profession.**

CATCHWORDS:

EDUCATION – INSTITUTIONS – EDUCATORS – DISCIPLINARY MATTERS – GOVERNMENT INSTITUTIONS — where teacher charged with ‘serious offence’ under the *Education (Queensland College of Teachers) Act 2005* (Qld) – where more than 15,000 private Facebook and text messages – where teacher had sexual relationship with 16 year old female student – where student studied at a different high school to that at which the teacher taught – where contact was initiated at a sports club – where agreed statement of facts – whether ground for disciplinary action – whether teacher should be prohibited from applying for re-registration as a teacher

Education (Queensland College of Teachers) Act 2005 (Qld), s 3, s 11, s 92(1)(h), s 97, s 158, s 160, Schedule 3
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 66

Queensland College of Teachers v Armstrong [2010] QCAT 709

Queensland College of Teachers v Teacher CAP [2011] QCAT 541

Queensland College of Teachers v CMK [2019] QCAT 271

Queensland College of Teachers v FDA [2017] QCAT 224

Queensland College of Teachers v Grasso [2011] QCAT 292

Queensland College of Teachers v JNS [2017] QCAT 250

Queensland College of Teachers v PPK [2019] QCAT 59

Queensland College of Teachers v PPK (No 2) [2019] QCAT 270

Queensland College of Teachers v TSV [2015] QCAT 186

Queensland College of Teachers v WAS [2015] QCAT 61

REPRESENTATION:

Applicant: E J Houston, Principal Legal Officer of the Queensland College of Teachers

Respondent: D R Wilson of counsel, instructed by Wilson Law

APPEARANCES: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

REASONS FOR DECISION**Background**

- [1] This matter arises from a mandatory referral by the Queensland College of Teachers' ('the College') Professional Conduct and Teacher Conduct Committee to the Tribunal under s 97 of the *Education (Queensland College of Teachers) Act 2005* (Qld) ('the Education Act').
- [2] Under s 97 of the Education Act, if the College reasonably believes that one or more grounds for disciplinary action against a 'relevant teacher' exist, the College must refer the matter to a disciplinary body. In relation to this matter, the relevant body is the Queensland Civil and Administrative Tribunal ('the Tribunal').¹ The College is required to inform the Tribunal about the grounds for the practice and conduct matter and the facts and circumstances forming the basis of the grounds.² The Tribunal must then conduct a hearing and, as soon as practicable after finishing the hearing, make a decision about whether a ground for disciplinary action against the teacher has been established.³ The Tribunal is to make its decision based on the information provided to it by the College.⁴
- [3] The parties provided an agreed background as follows:⁵
- (a) WAT was initially registered with the College on 16 December 2011. His current registration status is 'Suspended – Full'. WAT is a 'relevant teacher' under the Education Act;
 - (b) on 21 August 2018, WAT was charged with '*Procure young person etc for carnal knowledge*' under s 217(1) of the *Criminal Code*. The Brief Particulars on the notification to the College from the Queensland Police Service read '[WAT] has allegedly built a friendly friendship with the victim as her teacher in a Taekwondo class and began an ongoing sexual relationship with her';
 - (c) an offence under s 217 of the *Criminal Code* is a 'serious offence'⁶ pursuant to the Education Act;
 - (d) as required by s 48 of the Education Act the College suspended WAT's teacher's registration on 22 August 2018 and the matter was referred to the Tribunal. The Tribunal ordered the continuation of the suspension on 15 October 2018;

¹ Education Act, s 97(2)(a).

² Ibid, s 97(4)(a).

³ Ibid, s 97(4)(b), s 158.

⁴ Ibid, s 97(4).

⁵ Joint statement of Facts and Issues dated 15 April 2019.

⁶ Education Act, Schedule 3.

- (e) by notice dated 23 October 2018, the College received advice from the Director of Public Prosecutions that WAT had been discharged as a result of the Crown offering no evidence in relation to the charge;
- (f) section 92(2)(a) of the Education Act states that the ground for disciplinary action in s 92(1)(h) of the Education Act is taken to apply to a relevant teacher whose registration is suspended under s 48 of the Education Act where the teacher has been charged with a ‘serious offence’ and that charge has been ‘dealt with’⁷ (which includes the charge being withdrawn or dismissed or a *nolle prosequi* or no bill being presented in relation to the charge);
- (g) the object of s 92(2) of the Education Act is to ensure the circumstances of the charge are examined by a practice and conduct body;⁸
- (h) the ground for disciplinary action in s 92(1)(h) of the Education Act is that:
 - the person behaves in a way, whether connected with the teaching profession or otherwise, that does not satisfy the standard of behaviour generally expected of a teacher;
- (i) given the establishment of a ground for disciplinary action by s 92(2) of the Education Act, the College referred the matter to the Tribunal in accordance with s 97 of the Education Act on 23 November 2018;
- (j) on 11 December 2018, the Tribunal made directions in the matter and ordered that the Director of Public Prosecutions produce documents to the Tribunal in relation to the charge against the respondent. The Tribunal directed that the College file and serve any amended disciplinary referral by 6 February 2019 (subsequently extended to 20 February 2019); and
- (k) the College filed an amended referral on 20 February 2019.⁹ The conduct which the College alleges occurred and established a ground for disciplinary action under s 92(1)(h) of the Education Act is set out in Annexure A to the amended referral.

[4] ‘Relevant teacher’ is defined to mean either an approved teacher, or a former approved teacher.¹⁰ WAT is a ‘relevant teacher’.

[5] The issues to be determined by the Tribunal are:

- (a) whether a ground for disciplinary action is established; and
- (b) if so, the appropriate sanction to be applied.

Was the disciplinary ground in s 92(1)(h) established?

[6] By virtue of ss 92(2)(a) and (3) of the Education Act, the Tribunal must examine the circumstances of the charge.

⁷ Education Act, s 92(5).

⁸ Ibid, s 92(3).

⁹ Ex B to the Affidavit of David Graham Dupree deposited 20 February 2019.

¹⁰ Education Act, Schedule 3.

- [7] The parties have filed a Joint Statement of Facts and Issues dated 15 April 2019. While it was not agreed in the Joint Statement, the respondent has subsequently admitted that his behaviour fell below the standard expected of a teacher.¹¹
- [8] Although the parties have now agreed the ground is established, the Tribunal must be satisfied on its own assessment of the relevant facts and circumstances that a disciplinary ground exists. For the reasons set out below, the Tribunal finds the ground in s 92(1)(h) Education Act is established.
- [9] ‘Standard of behaviour’ is not defined in the Education Act but has been addressed by the Tribunal in a previous matter:
- ...the standard expected should be the standard ‘reasonably’ expected by the community at large, as the actions of a teacher may impact directly on the children of the community; and this in turn should reflect the standard that those in the teaching profession would expect of their colleagues and peers.¹²
- [10] The *Code of Ethics for Teachers in Queensland* is also relevant.¹³
- [11] In considering the expected standard, the Tribunal considers regard must be had to the main objects of the Education Act which are:
- (a) to uphold the standards of the teaching profession; and
 - (b) to maintain public confidence in the teaching profession; and
 - (c) to protect the public by ensuring education in schools is provided in a professional and competent manner by approved teachers.¹⁴
- [12] The Tribunal agrees with the observations made in *Queensland College of Teachers v PPK* [2019] QCAT 59:

The test in s 92(1)(h) is, in our view, a broad test which focuses on the behaviour of a teacher but not necessarily behaviour which occurs in the capacity of a teacher. This is made clear by the words ‘the person’ as opposed to ‘the teacher’ and by the phrase ‘whether connected with the teaching profession or otherwise’. This means that PPK’s behaviour, to be relevant, does not need to be in the context of a teacher/student relationship or otherwise to have occurred in his capacity as a teacher. When this is appreciated, the need for there to be a direct teacher/student relationship falls away.¹⁵

...

In our view there is a difference in power and authority between a teacher and a student and generally a high level of trust placed by the student and their family in the teacher. There is also an expectation by the student and their family that the teacher will behave in a way generally expected of a teacher. This trust and expectation exists not only where the student is an immediate pupil of the teacher but more generally (even where the immediate

¹¹ Respondent’s Submissions filed 10 June 2019, [3], and Affidavit of Respondent, sworn 9 November 2019.

¹² *Queensland College of Teachers v Armstrong* [2010] QCAT 709, [33].

¹³ Education Act, s 290.

¹⁴ *Ibid*, s 3.

¹⁵ [2019] QCAT 59, [35].

relationship does not exist) by reason of the fact that the person holds the position of teacher.¹⁶

- [13] The community places trust in teachers by virtue of their position as a teacher and this encompasses their interactions with students with whom no direct teacher/student relationship exists.
- [14] Personal behaviour by teachers towards children is relevant to a teacher's professional standards and responsibilities. As has been observed by the Tribunal,¹⁷ 'personal conduct is capable of relevance to a professional discipline if there is a relationship between the conduct and relevant professional standards and responsibilities.'
- [15] Thus, in the Tribunal's view, teachers have particular responsibilities in relation to the best interests and wellbeing of children, including in their interactions with children outside of their teaching role and the school context, which includes an obligation to maintain appropriate boundaries with children.
- [16] Following are facts taken from the Joint Statement:
- (a) unless otherwise indicated, the relevant period of time is between 10 June 2018 and 21 August 2018;
 - (b) the respondent was 28 years old and employed as a teacher at X State High School;
 - (c) the student was 15/16 years old and a year 10 student at Y State High School;
 - (d) the respondent knew the student to be a 15/16-year-old secondary school student;
 - (e) the student knew the respondent to be a secondary school teacher at a secondary school;
 - (f) in addition to being a teacher at X State High School, the respondent was an instructor at W Taekwondo school;
 - (g) the respondent met the student as a result of her attendance at the W Taekwondo school. In or around June 2018, although not formally enrolled in the respondent's classes, the student started to 'show up' at the respondent's Wednesday evening taekwondo class and continued to do so, sporadically, for a period of about two months;
 - (h) the student contacted the respondent via Facebook in or about early June 2018. The respondent and the student thereafter exchanged more than 15,000 private Facebook and text messages;
 - (i) the exchange of messages included, but was not limited to:
 - (i) discussing their past and current romantic and sexual relationships;
 - (ii) discussing the possibility and legality of engaging in an intimate/sexual relationship with each other;

¹⁶ Ibid, [14].

¹⁷ *Queensland College of Teachers v Teacher CAP* [2011] QCAT 541, [20], citing the High Court decision of *Ziems v The Prothonotary of the Supreme Court of New South Wales* [1957] HCA 46.

- (iii) making arrangements to meet each other;
- (iv) discussing keeping their meetings a secret; and
- (j) on or about (but not before) the student's 16th birthday, the respondent and the student commenced a sexual relationship and thereafter engaged in sexual intercourse with each other on approximately five to seven occasions at the respondent's home until 21 August 2018.¹⁸

[17] Further facts were later agreed between the parties as follows:

- (a) that the respondent made sexual comments or remarks whilst [the student] was aged 15 years;
- (b) that when [the student] made inappropriate remarks to the respondent, he did not immediately quash them while she was under 16 years of age;
- (c) that in relation to discussing the possibility and legality of engaging in an intimate/sexual relationship with each other:
 - (i) the discussion did not remain general and focused upon what the law states in this respect; and
 - (ii) the respondent inferred that he and [the student] should or would engage in a sexual relationship of any nature (or at the very least, he was open to such a relationship); and
- (d) that the reason the respondent wished for his relationship with [the student] to remain secret was because of his position as a teacher.¹⁹

[18] The respondent submitted in relation to paragraph 17(b) above, that when the messages are considered in their entirety, there are a number of messages that demonstrate that the respondent did, at times, attempt to quash the advances by the student and dissuade her from engaging in inappropriate conversations with him.²⁰

[19] The Tribunal accepts that there are some messages prior to the student's 16th birthday which may be perceived as an endeavour by the respondent to quash the student's inappropriate remarks. However, the vast volume of messages, combined with the respondent's willingness to engage with the student, suggest to the Tribunal that the respondent's true purpose was to foster and maintain the relationship with the student.

[20] In the Tribunal's view, this is supported by the respondent's own words that:

At the time, I thought that an intimate relationship between [student] and I may eventuate after she had reached the legal age of consent. I did not understand that the relationship would be inappropriate and the basis for this misapprehension was that [student] was not a student at the school where I was employed as a teacher.²¹

¹⁸ Joint Statement of Facts and Issues dated 15 April 2019, [14]-[23] (de-identified).

¹⁹ College Submissions 17 May 2019, [11]-[17], and Respondent's Submissions 10 June 2019, [5]-[7] (de-identified).

²⁰ Respondent's Submissions filed 10 June 2019, [7].

²¹ Affidavit of WAT sworn 9 November 2019, [15] (de-identified).

- [21] It is not credible that WAT endeavoured to keep the student at arm's length – an intimate relationship was commenced with the student almost immediately when she turned 16.
- [22] The behaviour of WAT needs to be assessed in the context of the standard of behaviour generally expected of a teacher. This standard is a fluid one and informed by how the community, including the teaching profession, would expect a teacher to behave.
- [23] Despite the absence of a direct student/teacher relationship the respondent still has a responsibility to maintain appropriate boundaries with children. This would accord with community expectations.
- [24] The Tribunal finds that the respondent's conduct fell below the standard of behaviour expected of a teacher in that:
- (a) WAT and the student were known to each other as, respectively, a secondary school teacher and a 15/16 year old secondary school student at the time of the relevant conduct;
 - (b) by virtue of the age, maturity and life experience disparity between the respondent and the student, and the respondent's position as a teacher and the student's position as a student, there was a power imbalance between them;
 - (c) the respondent was an authority figure at the Taekwondo school where the student attended. While not formally enrolled in the respondent's class, the student attended classes and trained at the school where he was an instructor;
 - (d) by virtue of her age, level of maturity and life experience the student was inherently vulnerable. There is also information to suggest there was a particular vulnerability for this student. In her interview with police the student referred to a sexual assault on her by an older male, which was the subject of a then-current police investigation.²² The student told the respondent of this alleged assault. There is also reference in the messages between the respondent and the student, to the student cutting herself and having an anxiety attack.²³ The respondent was aware of the student's particular vulnerability;
 - (e) as a member of the teaching profession, with particular responsibilities and obligations towards children, and a special trust bestowed by the community in relation to the care and protection of children, the respondent had a responsibility not to breach that trust and expose the student to a risk of emotional and psychological harm. The respondent breached that trust, putting his own needs above those of the student;
 - (f) the power imbalance which existed between the respondent and the student reduced the quality and relevance of her consent to the sexual relationship. Her willingness to be involved in a sexual relationship does not impact upon the respondent's professional and ethical responsibilities not to engage in a such a relationship; and

²² ODPP 38, QPS Statement of [student] [79]-[114].

²³ ODPP 469-470, Messages 4597-4656.

- (g) the respondent was aware his conduct was inappropriate when communicating with the student and yet persisted with that communication and subsequently entered a sexual relationship with her.
- [25] In the Tribunal's view, notwithstanding that WAT did not teach the student, the respondent, by his agreed behaviour, abused the position of trust which he held.
- [26] WAT was aware that his conduct with the student would be seen as inappropriate by all his teacher friends.²⁴ In the Tribunal's view WAT sought to conceal their relationship because he knew his conduct to be improper from a professional point of view.
- [27] We find that WAT behaved in a way that does not satisfy the standard of behaviour generally expected of a teacher and, accordingly, that the disciplinary ground in s 92(1)(h) of the Education Act has been established.

What is the appropriate sanction?

- [28] Section 160 of the Education Act applies to an approved teacher. It sets out the actions which may be taken by the Tribunal where it has determined that a ground for disciplinary action has been established.
- [29] The purpose of disciplinary action is not to punish the teacher but to further the objects of the Education Act. Deterrence is a relevant consideration, comprising both a general deterrence to the profession and a specific deterrence to irresponsible conduct by WAT.²⁵
- [30] Other factors relevant to the Tribunal's consideration including the nature and context of the behaviour; the impact the behaviour may have had on students, the school and the community; what actions WAT has taken to remedy the situation; his level of experience and teaching record; the level of insight WAT has regarding the conduct; the level of remorse expressed by WAT and his participation in the investigation and disciplinary process.²⁶
- [31] The Tribunal finds that the following aggravating features should be considered in determining the sanctions:
- (a) disparities and power imbalance – WAT was 28 years old at the time of the conduct, and a reasonably experienced teacher. The student was 15\16 years old and in year 10 and attended classes where WAT was an instructor. A significant power imbalance existed by virtue of the disparities in age, maturity and life experience;
 - (b) student vulnerability and risk of harm – in addition to her inherent vulnerabilities as a 15\16-year-old student, the student had particular vulnerabilities, of which WAT was aware. In these circumstances, the potential risk of emotional and psychological harm caused by the respondent's conduct was significant; and
 - (c) relationship – the relationship was about three months in duration. The Tribunal accepts that it did not end as a result of WAT's own actions but

²⁴ ODPP 165-168 photographs 3-9.

²⁵ *Queensland College of Teachers v TSV* [2015] QCAT 186, [25].

²⁶ *Queensland College of Teachers v WAS* [2015] QCAT 61, [38].

rather because he was arrested and charged with the criminal offence of *procure a young person etc. for carnal knowledge*.

- [32] The Tribunal also accepts that a mitigating factor to be considered in determining the appropriate sanction is that WAT has agreed to the essential factual matters as outlined in the Joint Statement of Facts and Issues.
- [33] Following the suspension of his teacher's registration WAT said he sought counselling with a psychologist, ECR, with a view to gaining insight into his conduct, appropriate boundaries and appropriate behaviour when working with youth and the trust bestowed on a teacher by the community. ECR provided a report and an affidavit to the Tribunal.²⁷ She said that between August 2018 and October 2019, WAT undertook 22 sessions in relation to professional boundaries.
- [34] WAT was engaged in psychological counselling with ECR before the suspension of his teacher registration, including couples' counselling in the course of an abusive relationship and individual counselling with respect to issues surrounding the breakdown in that relationship. After the respondent's relationship with the student ceased, WAT continued to seek treatment with ECR.
- [35] ECR was of the view that WAT 'was particularly vulnerable to [the student's] advances' due largely to WAT's 'underlying depression and anxiety, coupled with a decline in his mental health and wellbeing following the abuse he suffered in his former relationship.' She formed this view despite her awareness of the student's vulnerabilities.
- [36] ECR opined that WAT is truly remorseful and has gained significant insight into his past behaviour and why it was wrong and has developed mechanisms to manage barriers.
- [37] She indicated that WAT's depression continues, and he is committed to treatment. She envisages that WAT's sessions with her 'will continue well into the future.' WAT confirmed his commitment to this ongoing treatment.²⁸
- [38] WAT's mother provided an affidavit.²⁹ She confirmed that WAT had experienced depression and anxiety. She has observed a significant change in WAT as a result of his counselling with ECR. He has expressed remorse for his conduct, including for the harm to which he has exposed the student, to her, and she is of the view that WAT has developed insight into why his behaviour was wrong. She spoke of WAT as a dedicated teacher.
- [39] The owner and operator of the Taekwondo business at which WAT worked provided an affidavit.³⁰ He has known WAT and his family since 2002 and spoke of WAT's excellent skills in the sport, including as an instructor. He spoke of the remorse WAT had expressed.
- [40] When responding to the referral to the Tribunal, WAT denied that his conduct fell below the standard generally expected of a teacher and that he engaged in inappropriate interactions with the student, but he has since accepted both. Thus,

²⁷ Report exhibited to the Affidavit of Brianna McKenzie received by the Tribunal 30 August 2019, and Affidavit of ECR affirmed 11 November 2019.

²⁸ Affidavit of WAT.

²⁹ Affirmed 9 November 2019.

³⁰ Affirmed 28 August 2019.

until June 2019, WAT had not, in the context of these proceedings, expressed insight or remorse.

- [41] However, the witnesses corroborated WAT's evidence in relation to his development of insight and expression of remorse. The Tribunal accepts that WAT has recently begun to develop insight and is remorseful for his conduct. WAT should be commended for his commitment to treatment for his mental health. The Tribunal acknowledges these mitigating factors.
- [42] In the absence of cases in the Tribunal in directly comparable factual circumstances the College referred the Tribunal to various decisions involving sexual conduct with students and conduct towards children. We address below those we consider most relevant to our consideration.
- [43] *Queensland College of Teachers v Grasso* [2011] QCAT 292 concerned inappropriate communication and an inappropriate relationship, including a sexual relationship over a period of time, with a year 11\12 student and the failure to report self-harm. The Tribunal took into consideration the youth and inexperience of the teacher, the teacher's willingness to cooperate and assist the College's investigation, the teacher's remorse and engagement in therapy. The teacher's registration was cancelled for three years from the date of the order.
- [44] We consider WAT's behaviour to be more serious and damaging than the behaviour in *Grasso*.
- [45] In *Queensland College of Teachers v JNS* [2017] QCAT 250, the teacher aged 23\24 taught a student in subjects while in years 10, 11 and 12. The teacher and student began living together after graduation. Although there was no direct evidence the Tribunal inferred the relationship was intimate. Of concern to the Tribunal was that the student was vulnerable, that the teacher fostered an inappropriate relationship over a period of almost two years, pursuing the relationship despite warnings from school staff, the teacher made no admissions, falsely denied the relationship and expressed no insight or remorse. The teacher was ordered to pay costs of \$2500 and was prohibited from applying for teacher's registration for a period of five years from the date of suspension.
- [46] We consider WAT's behaviour to be slightly less serious and damaging than the behaviour in *JNS*. While WAT made admissions, has expressed remorse and the relationship was of a shorter duration, the student was considerably younger when the intimate relationship commenced.
- [47] In *Queensland College of Teachers v Teacher FDA* [2017] QCAT 224, the 27-year-old teacher commenced communication with a year 12 student at the same school at which he taught, during 'schoolies' week and commenced an intimate relationship in January the following year. There was no direct student/teacher relationship. The teacher had been warned by other teachers and demonstrated limited insight, although he did make admissions during the interview. The teacher was prohibited from applying for teacher's registration for four years from the date of the order.
- [48] We consider WAT's behaviour to be more serious and damaging than the behaviour in *FDA*, particularly due to the student's age.
- [49] In *Queensland College of Teachers v WAS* [2015] QCAT 61, a 36-year-old teacher had a sexual relationship with a 16-year-old student. There was no direct student/teacher relationship. Both disclosed sexual abuse as children. Over the

period of the relationship there were in excess of 10,000 Facebook messages between them. The teacher gave gifts to the student. The relationship ended because it was discovered by the teacher's wife. While the teacher failed to report the sexual abuse suffered by the student, he cooperated with the disciplinary process and made early and frank admissions in respect of the disciplinary allegations. The teacher was not to apply for registration for a period of six years from the date of suspension and was ordered to pay costs of \$2500.

- [50] We consider WAT's behaviour to be similarly serious and damaging to the behaviour in *WAS*.
- [51] In *Queensland College of Teachers v PPK (No 2)* [2019] QCAT 270, a 38-year-old teacher engaged in a sexual relationship with an 18-year-old, year 12 student. There was no direct student teacher relationship, although the teacher supervised one of the student's exams. After the teacher left the school, they reconnected on Tinder in term 4 of year 12. The student was emotionally and financially vulnerable. The Tribunal found the teacher to demonstrate a disturbing lack of remorse and that he lacked insight. The teacher did make admissions. The teacher was prohibited from applying for teacher's registration for four years from the date of the order. When the period of suspension is taken into account, he was removed from the profession for a period of at least six years and seven months.
- [52] We consider WAT's behaviour to be less serious and damaging than the behaviour in *PPK*.
- [53] The respondent also referred the Tribunal to several previous decisions in relation to the appropriate sanction. We do not consider either *Queensland College of Teachers v Pau*³¹ or *Queensland College of Teachers v Teacher QKE*³² to be sufficiently factually similar to be of assistance in our consideration.
- [54] In *Queensland College of Teachers v Ashton* [2010] QCAT 80, the 31/32-year-old teacher, had an intimate relationship with a 16/17-year-old student. The student was vulnerable, coming from a troubled background, and the teacher was aware of this. The teacher was warned by other staff that the relationship was inappropriate, but she persisted in the relationship. The teacher did not seek to explain the conduct and did not express remorse or insight. The teacher was prohibited from reapplying for teacher registration for a period of two years and three months.
- [55] We consider WAT's behaviour to be similarly serious but consider a longer sanction period to be appropriate in this case. This decision was made at a time when the maximum prohibition period was five years. Further, as the Tribunal has observed previously:
- [W]e are conscious of the evolving community appreciation... of the potential for long-term harm in young people who are sexually exploited. Some of the earlier sanctions may not match current community standards.³³
- [56] In *Queensland College of Teachers v CMK* [2019] QCAT 271, a 32-year-old teacher engaged in overly familiar behaviour with senior dance students and a physical relationship with a former student of the school. The teacher was prohibited from reapplying to teach for period of three years from the date of her suspension.

³¹ [2010] QCAT 493.

³² [2013] QCAT 548.

³³ *Queensland College of Teachers v ALE* [2019] QCAT 143, [20].

- [57] While multiple students were subject to the inappropriate behaviour of the teacher in *CMK*, we consider WAT's behaviour to be more serious and damaging than the behaviour in *CMK*, particularly due to the age of the student and the extensive inappropriate communication with the student.
- [58] WAT's teacher's registration has been suspended since 22 August 2018. In all the circumstances, and having considered the authorities referred to, we are of the view that WAT's teacher's registration should be cancelled and that he should be prohibited applying for registration or permission to teach for a period of five years from the date of his suspension.
- [59] Any application for re-registration should be allowed by the College only if it is satisfied, in light of a psychologist's or psychiatrist's report and any other relevant information, that WAT has demonstrated his fitness to teach.

Non-publication

- [60] We consider that an order should be made under s 66 of the QCAT Act to protect the student, due to the student's vulnerability. Publication of the teacher's name would potentially identify the student. We consider that in the interests of justice and to avoid endangering the mental health of the student,³⁴ particularly considering our findings about the nature of the relationship, a non-publication order should be made. We prohibit the publication of any information that could identify the student in any way, including the student's name, address, the teacher and the schools and sports club involved.
- [61] The College submitted that if a non-publication order was made which included the name of the respondent, that an exception be made which enables the sharing of information for certain child-protection purposes. We agree and have expressed the non-publication order accordingly.

³⁴ QCAT Act, s 66(2)(b) and (e).