

# Editorial

It is with considerable pleasure that I have accepted the invitation to be guest editor for this issue of the journal.

During the past few years it has become increasingly evident that, across international boundaries, there is a considerable similarity in the legal matters that impact on schools and other educational institutions. As a consequence the need for publications such as ANZJLE that identify and critically analyse the ways the law is used to address legally-laden problems that arise in educational settings has become ever more critical. From the international perspective it is clear that courts across common law countries while, of course, not being bound by decisions in other jurisdictions, are increasingly drawing on such decisions to inform their own understandings of education law matters. This is demonstrated with considerable force in topics touched on in this issue including the ongoing discussion to do with a school authority's non-delegable duty of care and, as well, in the nascent – at least in Australian Courts – issue of educational malpractice.

Since its inception, a major objective of the journal has been for it to be an important resource to sound educational policy and practice. By being familiar with practices and trends, both within and outside of Australia, legal and educational professionals are better equipped to enhance the opportunities for best practice strategies to be implemented and maintained. This issue of ANZJLE contains, among others, five papers from the Annual Conference of ANZELA held in Brisbane in October, 2002. These articles serve to reinforce the point that Australia is not unique in the extent to which the law is now being used to seek redress for harms allegedly incurred in educational settings. While there are some minor editorial changes the papers are reproduced here largely as they were presented at the conference. In this way we hope that the original 'flavour' of the papers when they were presented at the conference will be conveyed to those readers who were unable to be there in person. The conference theme was to do with "Safety, Security and Success in Education" and the papers selected for this issue of the journal provide valuable insights into issues surrounding this theme from Australia, Canada, New Zealand, South Africa and the United States.

The first article by Jenny Thrum and Kate Offer tackles the very important concern that school staff have in administering medication to students. Using the common law as well as West Australian legislation as the basis for their article, the authors consider the legal position of staff in schools. It will be readily evident to readers that considerable complexity and more than a little anxiety on the part of educators surrounds this topic and the recommendations to do with changes to policy and to the administration of medication make a valuable contribution to best practice strategies.

The second article, and the first of the papers reproduced from the ANZELA conference papers, is to do with Disability Discrimination. Researched and written by Mary Keeffe-Martin and Katherine Lindsay the article notes that according to the Anti-Discrimination Commission's Annual Report (Queensland, 2001) disability discrimination cases in education are becoming more frequent and more complex. The article analyses a range of issues that appear in disability discrimination

case law and the authors suggests strategies which schools and education authorities can utilise to help reduce discriminatory behaviours or decisions. The article concludes with an analysis and discussion of a model constructed by Keeffe-Martin that provides a means by which legal risk management of inclusion might be more appropriately perceived.

The article by Sandra Anderson and Susan Fraser, provides a comprehensive insight into recent decisions in Canada to do with sexual misconduct, physical assault, bullying, educational malpractice and a school authority's non-delegable duty of care. Readers may well be surprised at the similarity of incidents occurring in Canada to those that have taken place, and continue to occur in Australia. As the High Court of Australia wrestles with the complex legal problem of non-delegable duty of care it is interesting to note that Courts in Australia and in Canada have not only been struggling with the same issue but have drawn on each other's judicial thinking to inform their decisions. Of particular interest here is the dissenting opinion of Justice Prowse which, the authors contend, may be influential in the ultimate decision on a school authority's non-delegable duty of care 'at the Supreme Court of Canada level.'

In a paper that has been exceptionally well researched and written Francis Hay-Mackenzie addresses the issue of bullying, not only in classroom, but also in the staffroom. Issues to do with bullying in schools and the concurrent problem of bullying in the workplace and its consequent impact on employers and employees and communities generally are discussed. What is of great concern here is the fact that all schools and likely all workplaces suffer some form of bullying. As well as addressing the legal options open to victims of bullying, Hay-Mackenzie's article makes us more aware of its insidious nature as well as its serious consequences for individuals at any workplace, schools included.

In Australia permission notes from parents purporting to exempt a child taking legal action against a school for injuries incurred in school settings have long been held not to void such actions. Other countries have reached similar conclusions and in his article Professor Oosthuizen provides a brief analysis of a South African decision in which it was held a school could not rely on a parent waiving her son's legal right to sue for damages. The article addresses the issue within a wider perspective of children's rights including those that exist in the country's constitutional provisions as well as the International Convention on the Rights of the Child.

The final article from the conference papers deals with the complex issue of random drug testing of students in schools in the United States. In this article Professor Mawdsley provides a valuable insight into the extent of drug taking by students in US schools and how the authorities are attempting to resolve the problem. While Australia does not have, or rather does not appear to have, the same level of drug use by students it is commonly accepted that drugs are a very real problem in our community. How Australian schools will deal with this issue has yet to be adequately determined and in this regard Mawdsley's article is most timely. To date it tends to have been the accepted policy for Australian schools to report any suspicions they have of students having drugs on school grounds to the police. As a consequence, schools in this country are not burdened by the complex issues surrounding drug testing whether random and with or without suspicion that bedevils those in the United States. However to be forewarned is to be forearmed.

During the latter part of 2001 and the early part of 2002 Bob Fitzpatrick, while on professional development leave from his position as Executive Director of the New Brunswick

Teachers Association, spent considerable time examining the legislative and regulatory provisions dealing with the powers of the Queensland Board of Teacher Registration. As a result of this study Fitzpatrick submitted the article dealing with teacher discipline that, with some additions and revisions from myself, appears as an Opinion. In the Opinion Fitzpatrick explores the powers of the Queensland Board and adds some comparative data from his own association.

The power of a school authority to dismiss a teacher for wilful disobedience in relation to touching of students is explored by Doug Stewart in the Case Note that ends this issue of the journal. The strategies that a school must implement and follow to ensure that they are not guilty of an unfair dismissal are clearly demonstrated in this case heard in the Industrial Relations Court of Australia.

Finally I would like to express, on behalf of the Australia and New Zealand Education Law Association, as well as the journal's many readers, our grateful thanks to Kate Lindsay for the many hours she puts in to producing each issue of the journal. I am sure I speak for all of us in wishing her well in her additional and equally demanding role of motherhood.

Doug Stewart  
Guest Editor

