

EDITORIAL

The International Journal of Law & Education (IJLE) is an important medium through which the Australia and New Zealand Education Law Association (ANZELA) strives to achieve its objectives in disseminating and promoting research, study and discussion of issues involved in education law. Consequently what research is being promoted and disseminated in this edition? In this issue our authors reflect and critique a number of ‘education law’ issues that will be of particular significance to our readers interested in law relating to schools.

The first article, in a broad sense, themes the balancing of a school’s duty of care with the students’ right to play. As a background to this theme, in the Australasian context, we should consider that each jurisdiction in Australia provides specific school policy and advisory guides for government and non-government schools (Catholic, independent and private schools) regarding the duty of care owed to students, risk assessment for student activities and playground supervision of students. However, the sentiments in the phrase ‘Marshmallow kids in a cotton wool culture’¹ has gained traction and the metaphorical wrapping of children in cotton wool to protect them from risk and harm is being challenged.² This issue is taken up by Joan Squelch in ‘*Playing Safe but Avoiding a ‘Greenhouse Generation’ of Children*’ where the author raises concerns regarding the banning of traditional playground equipment and activities in schools both because of the reality and fear of litigation. Squelch searches for the right balance between the value of play and a school’s duty of care. The author notes that ‘the law does not require schools to provide round-the-clock supervision and smother children in cottonwool’ and finds ‘that although the threat of litigation may be a reality, this should not be reason alone for banning traditional playground games and activities’.

The second article is broadly concerned with the provision of education services to students with disabilities. As a background to this article, and to provide a context for Australasian readers, we should recognise that ‘Australians with disability enter adult life already disadvantaged by their lack of education’³ and note that disability advocates call for a stronger ‘interest in the educational outcomes of students with a disability’.⁴ Australian schools have a commitment to provide quality education to students with disabilities in accordance with the Education Standards required by the *Disability Discrimination Act 1992* (Cth). These Education Standards set out the rights of students with disability and how education providers, including schools and universities, are to help these students. Education is certainly a key issue for schools and students with disability. This is true in Australia and other ‘innovative’⁵ countries, including the United States. Ralph Mawdsley discusses parallel issues facing the United States in his article titled ‘*Forest Grove and Parent Reimbursement For Placement In Private Residential Facilities Providing Medical Services*’. Mawdsley notes that ‘the *Individuals with Disabilities in Education Act* (IDEA) mandates that school districts in the United States (US) provide “free appropriate public education” [FAPE] services to children with disabilities’...however ‘Where school districts fail to provide FAPE services some parents have placed their children in private facilities that will provide those services’. Reimbursement of the fees to these parents is at issue here and Mawdsley provides a discussion on what the US Supreme Court has to say on the issue in *Forest Grove School District v T.A.* Mawdsley explains that the Court held that ‘parental reimbursement for the expenses of a unilateral private placement will depend on balancing the failure to furnish a FAPE with parents’ compliance with IDEA’s notice requirements.

The third article is by John O'Brien and concerns employment status of Boarding School supervisors. In introducing this article titled, '*Australian Boarding School Supervisors: A Voluntary Position?*' we should remember that, generally speaking, conditions of employment in schools vary according to employment status. For example employment conditions in schools for permanent, temporary or casual school staff are specified under Australia's workplace laws in relevant legislation or industrial instruments (awards) that govern the particular employee. Employment status is particularly important to implementing best practice initiatives and understanding workplace rights, responsibilities and rules,⁶ especially regarding pay, awards, leave, termination and complaints. However, an understanding of a worker's status is sometimes clouded. In John O'Brien's article the focus is on issues surrounding the legal status of boarding supervisors. The author examines the legal distinction between a volunteer and an employee and provides assistance in determining their employment status. Implications of non-employee status of boarding supervisors are also flagged.

Marius Smit's article titled, '*Free expression, cyberbullying and dignity in schools*' is our fourth and final article in which Smit tackles the difficult issue of cyberbullying in schools. Our introduction of this article is assisted by introducing this focal concept. Cyberbullying is generally defined as using technology with an intention to harm another person or group. Australian jurisdictions, to give examples in the Australasian context, provide specific school policy and advisory guides for government and non-government schools that address cyberbullying and the development of supporting safe cultures within schools.⁷ Cyberbullying is certainly a major problem for schools and students alike. For example, newspapers have recently reported on the prevalence and persistence of cyberbullying in our schools and beyond,⁸ the attempts by schools to combat the problem⁹ and the potential legal ramifications for schools.¹⁰ Marius Smit takes up the cyberbullying in South African schools in his article where he discusses the problematic issues inherent in cyberbullying and addresses the counter concern regarding free expression and its limits. Smit identifies the US approach to the problem and 'culminates with an analysis' of the South African Constitutional Court in *Le Roux v Dey*, where it was 'held that a manipulated photograph, which was published in cyberspace and at a school, is not protected free expression as it harmed the dignity of the victims of this school boy prank.'

This edition of the IJLE, like editions before it, is a culmination of the work of many, including our expert referees and our editorial assistance team. It is fitting to state our indebtedness and gratitude to our reviewers — Thank you for your time and substantial effort in the reviews, without which the quality of the journal would not be upheld. Our expression of gratitude also extends to the superb editorial assistance — Thank you Stephanie Hodgson & staff at Office Logistics.

ENDNOTES

- 1 Maggie Dent '*Marshmallow kids in a cotton wool culture..*' on Maggie Dent Facebook (October 3, 2012) <<https://en-gb.facebook.com/MaggieDentAuthor/posts/461013340609952>>; '*Marshmallow kids in a cotton wool culture*', on Happinest, (February 28, 2014) <<http://myhappinest.com.au/wordpress/?p=1>>.
- 2 See John Roskam, 'End the cotton wool culture for kids' *Australian Financial Review* (online) 31st January, 2014 <http://www.afr.com/p/opinion/end_the_cotton_wool_culture_for_aVDPsxHIVUnlsUzrEXKdNP>.
- 3 Australian Federation of Disability Organisations, 'Education Policy: Report and Recommendations' (Report paper, Australian Federation of Disability Organisations (AFDO), June 2013. <<http://docs.afdo.org.au/June%202013/AFDO%20Education%20Policy%20Research,%20Report%20and%20Recommendations%20June%202013.doc>> See generally Australian Federation of Disability Organisations <www.afdo.org.au>.

- 4 Ibid.
- 5 The term 'innovative' used here in a loose sense referring to the disability space.
- 6 See for example National Employment Standards, Fair work Ombudsman, <<http://www.fairwork.gov.au/Resources/fact-sheets/Pages/national-employment-standards>>.
- 7 See generally cyber{smart:}, <<http://www.cybersmart.gov.au/Schools/Cyber%20issues/Cyberbullying.aspx>>. See also Des Butler, Sally Kift and Marilyn Campbell, 'Cyber Bullying In Schools and the Law: Is There an Effective Means of Addressing the Power Imbalance?' (2009) 16(1) *eLaw Journal: Murdoch University Electronic Journal of Law* <<http://elaw.murdoch.edu.au/index.php/elawmurdoch/article/view/24>>.
- 8 Kate Hagan, 'Cyber bullying remains a problem for young people after they leave school' School's out but cyber bullying's still in: survey, The Sydney Morning Herald (online), March 29, 2014 <<http://www.smh.com.au/technology/technology-news/schools-out-but-cyber-bullyings-still-in-survey-20140328-35olq.html>>.
- 9 Daniel Hurst, 'Schools to target cyber-bullying' The Sydney Morning Herald (online) January 16, 2013 <<http://www.smh.com.au/technology/technology-news/schools-to-target-cyberbullying-20130115-2crjt.html>>.
- 10 Michael Inman , 'Schools could be sued for cyber bullying: experts' The Sydney Morning Herald (online) August 15, 2013 <<http://www.smh.com.au/technology/technology-news/schools-could-be-sued-for-cyber-bullying-experts-20130814-2rx8u.html>>.

John Orr