# EDITORIAL

This final issue for 2006 provides an interesting collection of reading that crosses the many boundaries of educational sectors and interests where legal matters arise, once more demonstrating the diversity and breadth of education law. The articles encompass school and higher education matters, including legislative responsibilities of schools, and a matter of great concern to all educators — copyright and plagiarism. We have a further comparative analysis of an aspect of education law, this time encompassing the United States of America, South Africa and Australia, while a new area of consideration for the *Australia and New Zealand Journal of Law and Education* is the education of lawyers themselves, particularly the education of lawyers to participate in increasingly global legal environments.

In the first paper in this issue, Ben Mathews, Kerryann Walsh, Des Butler and Ann Farrell examine legislative and policy requirements across Australian states and territories for mandatory reporting of suspected child abuse and neglect. Their analysis shows that while there is general concern about child abuse and an expectation that schools will play a role in identifying and reporting suspect behaviour, the nature of the roles and responsibilities is quite varied from state to state. A child has different definition across states, ranging from under 16 years of age to under 18 years of age; degrees of compulsion to report vary across the legislation and policy; and, the nature of what has to be reported also varies. Some legislation requires teachers to make considerable judgment about the extent of the 'harm' to a child that suspected abuse may cause. A summary table in the article shows the variety of reporting expectations and conditions. As Mathews and colleagues note, the Commonwealth Attorney-General has already indicated the need for greater equality in legislation about child protection. After reading this analysis, readers may feel the same concerns. It would also be helpful for a New Zealand reader to provide an article explaining requirements in New Zealand to add to our information resources in this very important and sensitive area.

Elizabeth Dickson in her article also examines the implications for school or institutional compliance of the new *Disability Standards for Education* ('*Standards*') introduced in 2005 by the Australian Government, particularly their import for educational provision and the expectation of 'reasonable adjustment'. The new *Standards* are likely to bring many challenges about whether provisions to students reflect a 'reasonable adjustment', as well as the issue of differences in state and federal Disability law compliance. In the article, considerations of 'reasonableness' in existing case law are explored. Dickson notes that while the *Standards* are intended to create a positive duty of adjustment, they will inevitably also work to authorise exclusionary practices, particularly for disability-related behaviour problems. The article explores the import of the *Standards* for both direct and indirect discrimination and commentary that the Standards may be interpreted to be more positively aligned with the student's views of what is necessary to succeed in educational contexts, with decisions about 'reasonable adjustment' to be made in terms of the best interests of the children.

Joy Cumming, Ralph Mawdsley and Elda De Waal examine the question of children's rights in education, with particular focus on the impact of the standard of 'best interest of the child' imported from the United Nations *Convention on the Rights of the Child*.[1] Both South Africa and Australia are signatories to the *Convention* with South Africa directly importing this concept into

their Constitution. The USA is not a signatory. In Australia and the USA, as in many other nations, the concept of decision-making in the 'best interests of the child' is one that is still evolving in, and having impact on, case law. Contestations can arise as to whether children's or parent's rights should prevail. One interesting aspect of law raised in this international comparison is the question of who is a 'parent' in the context of familial social structures of the 21st century and the responsibilities that authorities may assume or be required to assume in the care and maintenance of children. In South Africa, an interpretation of rights of children to basic shelter is that this is first an obligation on families, not the state; in Australia, the very broad term care-giver is often used to denote those responsible for children's upbringing, with Tasmanian legislation allowing the court to declare parental status; in the USA it is clear that the concept of 'parent' is one yet to be fully explored in the courts but a concept that most assuredly will be. This article examines also the practical consequences on the provision of information for schools and principals who become caught in the parental conflict over children when relationships fail.

Mary Wyburn and John McPhail have provided a careful walk through copyright, plagiarism and moral rights in Australia and implications for student and staff work. They pay particular attention to issues around higher education student assignments and electronic checking. Education provision to promote highly-educated critical problem-solvers is held to require considerable student engagement with research activities and the production of original work by students, as opposed to success on more narrowly-constrained examinations. The issues this has brought to education both in terms of ensuring that students understand how to produce their own original work and appropriately acknowledge the work of others, as well as the protection of the student's ownership of their produced work, are increasingly recognised worldwide. The issues are not just for higher education but also for schools, with the added challenging legal issue of children's legal age to sign agreements in such matters. This article will provide a very useful basis for all concerned with student work to consider the implications for their own practices, and possible avenues for resolving the above dilemmas.

Terry Hutchinson brings a new dimension to the journal — the focus on law and the education of lawyers. How should lawyers be educated for the future to engage in the world legal community? As Hutchinson's analysis reveals, cross-national law is having a major impact at all levels of operation. What is the role and manner in which lawyers can be prepared for this environment while maintaining adequacy of development of local legal knowledge? School teachers will be sympathetic to increased demands on curriculum, although schools are not in such a strongly competitive sector as the higher education sector. In the article, Hutchinson outlines changes to legal education that have already occurred, and the promotion of such transnational legal education by newly-formed professional organisations is also discussed. The article concludes with consideration of directions the changes will continue to follow, including ways to adapt the 'Priestley 11', and likely issues, not the least of which are, of course, the financial and human resources to modify curriculum and teaching strategies. We are pleased to add this new dimension of consideration of education law matters to the journal and hope that other contributors may also like to write on this topic.

Andrew Knott continues his service to the ANZELA community and our journal through the provision of a case note on a recent English education challenge about vicarious liability for professional educational decisions and negligence. As he notes, the case provides clarity and insight into judicial reasoning in an area that has had little Australian discussion, and is effectively barred in US jurisdictions, if challenged as educational malpractice. The English case demonstrates the court's confirmed reluctance to engage with both policy matters and the messy

area of educational decision-making. However, the continued elaboration in the judgments of such cases of when courts might begin to intervene means that challenges about the quality of educational provision is a space to keep watching.

Once again, if readers are aware of interesting education cases on which they would like to provide a case note, or would like to request a note, such contributions are very favourably received.

Finally, in this issue, Ann Shorten brings her considerable experience and expertise to a review of the new edition of *Education Law* in Canada, by Anthony Brown and Marvin Zuker. As her review demonstrates, the book once more provides a comprehensive overview and update of areas of Canadian legislation and case law that impact on educational practice, including, in empathy with the theme of several of the articles in this issue, the impact of family structures on children's experience of schooling.

While this issue brings together such a diverse range of articles and notes, a theme does emerge. Throughout the articles, review and case note, the topic that all do touch on is the role of the student in education, at whatever age, and an increasing awareness of the importance of the student and the provision of quality and safe learning environments over which they are allowed to exercise some control to ensure their success.

## Endnotes

1. UN *Convention on the Rights of the Child*, opened for signature 20 November 1989.

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