EDITORIAL

Welcome to the first issue of the *International Journal of Law and Education*. The decision was made to change the name of the journal to reflect the increasingly international focus of the articles published in its pages. In this issue, for example, we include articles by authors from the USA, and Canada as well as Australia and New Zealand. We are keen to encourage this international focus without abandoning our loyal, local writers and readers. It is useful to us all to appreciate the fact that many education controversies are current across a variety of jurisdictions. Further, it is useful to us all to gain an insight into how those controversies have been addressed outside our home jurisdictions.

The first two articles in this issue focus on the tertiary education sector. Sally Varnham and Patty Kamvounias look at the use of discrimination claims by students seeking to challenge academic penalties or exclusion from their tertiary education institution. The article highlights the underlying frustration of students seeking to negotiate a review of their treatment through a process not really designed to facilitate such a review. Many of the cases suggest that, while some injustice or unfairness may have occurred, discrimination legislation can offer no suitable remedy. If a remedy does not lie in discrimination law, what course of action could or should a disappointed student take? Is there an onus on education administrators to develop policies and procedure which more effectively address the communication and cultural dissonance which sometimes exists between student and institutional expectations of tertiary education?

Pheh Hoon Lim and Juliet Hyatt, in their debut article for this journal, have provided an interesting exploration of how the 'commodification' of education has produced a more assertive generation of student 'consumers' with expectations of a right to attend university, a right to receive a quality education and, most controversially, a right to influence what and how they are taught. These expectations claim the authors, have the potential to compromise the academic freedom of academic institutions to set curriculum and maintain standards. After reviewing the mechanisms for the protection of student rights which are in place in New Zealand, and a number of comparator jurisdictions, the authors conclude that existing safeguards in New Zealand are sufficiently robust to render any exploration of a 'Student Bill of Rights' style protection premature.

The third article in this issue looks at another topic which could also be said to have arisen from the 'commodification' of education – school marketing strategies and the potential for engaging the misleading or deceptive conduct provisions of Australian consumer protection legislation. It is uncontroversial that independent education institutions must maintain healthy enrolments to maintain viability. As part of their 'recruitment and retention' strategies, schools may exploit glossy marketing techniques such as the school prospectus. Joan Squelch and Lisa Goldacre look at the ramifications for a private school, structured as a corporation, which publicises its quality services and staff, its outstanding opportunities and results, and then fails to 'deliver' for a particular student. Is a disappointed student able to claim a legal remedy under consumer protection legislation?

The next two articles, both from North American authors, invite us to contemplate the complex task faced by educators and administrators in balancing the interests of students, parents and teachers with firmly held, but at times apparently incompatible, moral codes. Paul Clarke, in his first appearance in the journal, has contributed a scholarly paper which looks behind the simple,

though, perhaps, provocative facts of a recent decision of the Canadian Supreme Court to expose a complex interplay of student, parental and State rights, interests and duties. The case arose from the refusal of a British Columbia school board to allow a teacher to use books depicting same-sex parented families to teach his Kindergarten students about family diversity. Who, Clarke invites us to consider, should control the education curriculum? Who should determine what students may and may not, should and should not study at school?

Regular contributor, Ralph Mawdsley, has produced for this issue of the journal, another of his rigorously reasoned and thoroughly documented analyses of US education law developments. His paper is an interesting companion piece to Paul Clarke's in that it, too, addresses how rights and freedoms operate in a world which must accommodate a range of different religious and moral beliefs. Ralph's paper updates one he contributed to *ANZJLE* two years ago which explored the judicial interpretation of the Free Speech and Establishment clauses which underpin parental and student religious expressive rights. Ralph comments on a trend towards a more conservative reading of those clauses evident in two recent cases – a trend which may result in the decline of constitutional protection of freedom of religious expression in schools.

We have revived the opinion section for this first issue of the *IJLE* and encourage readers with strongly held views on education 'hot topics' to consider contributing to this section so that it may be maintained into the future. Gordon Tait has written an at times provocative piece on the stresses on the education system which have arisen as the result of increased numbers of Australian children diagnosed with learning disorders. Tait engages his readers in the debate about the nature of Attention Deficit Hyperactivity Disorder (ADHD), postulating that the ADHD 'epidemic' amounts to a regulatory tool rather than a benevolent 'unmasking' of a hitherto unrecognised psychiatric condition. Tait's primary concern is that high numbers of high needs students necessarily increase both the level of responsibility of each class room teacher and the risk that he or she may be exposed to litigation. Tait acknowledges that there are no easy solutions to this problem but that they will likely involve either increased training of teachers or reduced class sizes. He concedes that these are expensive options, but less expensive, he argues than the 'physical, professional and economic costs of injury and litigation'.

Finally, in this first issue of *IJLE*, we have a review by education law practitioner, Andrew Knott, of a new Australian text of interest to those involved in education. *Children and the Law in Australia*, edited by Geoff Monahan and Lisa Young, brings together recent, relevant research on a wide range of children's law topics including many which are pertinent to education. There are chapters, for example, on the care and education of preschool children, and on school education. Andrew Knott concludes that the book addresses 'difficult and contentious' issues with skill and sensitivity. His review suggests that the text will be a valuable addition to the school or legal library.

We are confident that you will find much of interest among the pages of this issue of the *IJLE*, whatever your background, special expertise or interest. We invite you to reflect on what you read and to respond with your own contribution to the journal. One benefit of our increased international focus, we anticipate, will be the cross fertilisation of ideas between jurisdictions. Reading about the law in Canada or the USA or Australia or New Zealand may encourage you to reflect on, and write about, how that law is reflected or rejected in your own jurisdiction.

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