

EDITORIAL

The articles in this issue once again address a range of issues in education law that schools and educators encounter. Three articles address legal ramifications of student use of and exposure to the internet, an issue for schools growing at a rapid rate. The first of these articles focuses on school policy responses to a problem that is debated not only in school staff rooms but also around family dinner tables — cyberbullying. Its authors are eminent Australian educators and their cyberbullying research is supported by a prestigious Australian Research Council grant. Des Butler, Sally Kift, Marilyn Campbell, Phillip Slee and Barbara Spears introduce their article with a summary of the evidence of the prevalence of online aggression, ‘a blight on the current generation of students’. Such is the uptake of social networking sites and platforms that students from around the world are exposed to risk of harm, and even at young ages. One study addressed by the authors reports on the impact of cyberbullying on children as young as Year 4. While the appropriate legal response to even ‘traditional’ face to face bullying remains unsettled, the emergence of this cyber variety magnifies the uncertainty about how bullying should be managed in order both to prevent attacks and protect victims.

The authors give a useful survey of how a variety of jurisdictions have responded to this challenge and speculate about how existing legal actions may be used to provide a remedy or redress to those harmed: negligence, defamation, anti-stalking and other criminal offences. The immediate import of the article, however, lies in its treatment of policy responses already made by schools to the cyberbullying problem. The article analyses the policies of nine Australian schools: three government and three non government schools from Queensland and one government and two non government schools from South Australia. It assesses the policies in terms of definition and recognition of cyberbullying, reporting and complaints handling, acknowledgement of school community responsibility, management of school technology and students’ personal technology and school based and legal sanctions. In addition to this analysis, however, the authors explain the implications of the policies in a manner which may be used by schools to inform best practice in the area. They conclude their article with a timely reminder that generating a policy alone is not enough, it must be acted upon: it is essential that school policies are ‘well-publicised, enforceable and implemented consistently’.

The second article relevant to the use and abuse of technology is by regular US contributor, Ralph Mawdsley and his co-author, James Mawdsley. It too focuses on the theme of ‘electronic messages ... that are crude, insulting, disparaging, and, perhaps, even threatening’, and especially on how such messages may be regulated in a nation like the United States (US) with strong Constitutional protections of rights and freedoms, including a freedom of expression. The US seems to set the pace for other nations in terms of the development of education case law and the Mawdsleys are able to contextualise their analysis by reference to cases of high authority including cases from the US Supreme Court. The paper looks closely at how subtle differences in the way cyber abuse occurs can affect whether and how — in the US at least — it can be managed at school level. Particularly problematic is cyber expression that originates off campus as this scenario anticipates a clash between the scope of school disciplinary procedures and the constitutionally-guaranteed right of parents in the US to direct the education of their children.

It is interesting to compare the approach of the authors of the Australian School Policy cyberbullying paper, with that taken by the authors of this US paper. The Australian paper situates the cyberbullying problem squarely within the scope of school control and anticipates, even, school liability for cyber attacks made by its students. Ralph and James Mawdsley, however, caution against allowing the school to intrude into what they see as an area better managed by parents. While the differing approaches are no doubt informed by different legal, and, particularly, different constitutional contexts, the Mawdsleys do make one particularly memorable comment: ‘By setting up school officials as the final arbiters of what is distasteful or inappropriate in student, home-generated webpages, we not only have made adversaries of parents but have made certain that the webpage content that was probably accessible to only a relatively few students will now be memorialized in West Publishing Company’s reporter series’. It is an undoubted irony of this area of the law that punishing cyberbullying sometimes entails also publicising it.

Our third internet-related article is also from the US and written by another regular contributor to the journal, Charles Russo. Instead of focussing on student rights infringed and wrongs suffered, however, this article looks at another problem which has become increasingly acute in recent years — how much can a teacher say in his or her private life, before it affects his or her public role? Now that teachers, like lawyers and accountants and builders and retailers, post details of and images from their private lives on networking sites such as Facebook which are also accessible to their students, it is difficult for the private/public divide to be maintained. Should teachers be banned from Facebook and other similar sites in order to ‘protect’ their students? Or would this amount to an unreasonable infringement of the teachers’ rights? Charles Russo brings together the US cases that have considered the privacy and free speech rights of US teachers and concludes his article with a list of recommendations as to how to manage staff and computer usage policies so as to minimise the opportunity for conflict and controversy.

The fourth article in this issue, and the second article authored by Ralph Mawdsley, works as an appropriate companion piece to his cyber speech article. This article considers in more detail the ‘fundamental and clearly established’ right of US parents to direct the education of their children. While the earlier paper looks at how this right intersects with school disciplinary powers, this article looks at how it intersects with children’s rights. Although lawsuits involving plaintiff children are usually brought by parents acting on behalf of their children, this paper contemplates the possibility that parent interests and student interests may not always coincide. Moreover, the US Supreme Court, in the case *Tinker v Des Moines Independent Community School District*, has recognised that students have constitutionally protected rights too. Who would prevail in a parent-student rights clash? Could a child, relying on a right to privacy, direct a school not to provide parental access to his or her school results? Even more controversially, could a student assert a right to see an ‘R rated’ movie to be shown at school against the wishes of his or her parents? While Ralph Mawdsley concedes that while it is unlikely that such scenarios as these will be played out in court in the near future, his ‘hypotheticals’ raise legitimate questions about what amounts to the ‘best interests’ of a child and expose the fact that the law may sometimes develop with consequences unintended and unanticipated.

The final paper in this issue reports on an Australian research project investigating whether participative and restorative practices in schools foster the development of citizenship skills in students. It could be said, perhaps, that some of the most memorable lessons to be learned at school happen not in class but in the hustle of the tuck shop queue. This article, by Sally Varnham, Tracey Booth and Maxine Evers, postulates the view that democratic principles can be taught in schools not only explicitly in, say, citizenship classes, but also implicitly in the way the

school is structured and managed. Moreover, the authors suggest, as the school is a microcosm for the community at large, skills modelled and observed and learned at school will inform the development of a more democratic society. The research project has focussed on two specific areas of school life where democratic principles may be demonstrated and practised: school decision-making and the school response to conflict and safety issues. The project is contextualised by a case study and the article devotes some space to describing how the democratic trial played out in the case study school. This part of the article makes for fascinating reading. The authors acknowledge that it is difficult to define 'success' in the context of a project such as theirs, but it is easy to see that their innovative project has ramifications for the development of strong and resilient students.

As this issue of the journal goes to press, the education sector faces a period of significant change. The Federal funding model for schools is under review for the first time in decades. Devolution to principals of the power to hire and fire is mooted as part of the new package. The deadline for the implementation of the national curriculum is fast approaching. Workplace health and safety laws have been reviewed and Federal discrimination laws are under review with draft legislation set to be released mid 2012. We believe that all this change contains opportunities for experimentation and innovation, for discussion and debate, for research and writing and we invite our readers to consider that they might contribute their thoughts to the pages of this journal.

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