

EDITORIAL

Education in schools and higher education institutions is a complex and ever-changing area. We are finding that the range of topics addressed in articles on education and law in this journal has broadened considerably from the early issues. Variation is due not just to the range of jurisdictions being considered but also to the introduction of new matters of legal concern arising from changing expectations in educational practice.

Our first article in this issue is by new contributors to the journal, Pauline Sadler and Anna Bunn from Curtin University. Sadler and Bunn consider copyright implications of the use of YouTube materials in university lecturing, and in particular, possible infringement of copyright law if the lecture content is uploaded to an electronic format. University students today have an expectation that university lectures will be entertaining as well as informative. Video materials are an effective way to demonstrate a point in an engaging way for students, and YouTube materials are often highly relevant to younger students. However, a further expectation of both higher education institutions and students is that program delivery will be in flexible format, with recorded materials providing resources for learning that do not require student attendance on campus.

Sadler and Bunn provide a very informative analysis of the *Copyright Act 1968* (Cth) (CA) for Australian higher education institutions. They consider the implications of the CA with respect to lecturers showing YouTube materials in downloaded or direct transmission formats in a lecture to students, and the ramifications of an electronic capture of the lecture for future student use. Their general finding is that the recapture of YouTube materials in an 'ilecture' would be an infringement of use and could have consequences for the higher education institution, and also for the individual lecturer. Sadler and Bunn discuss briefly the commercial nature of some university activity, which holds different copyright implications. They recommend that staff need increased formal training in the copyright issues around electronic media, to the extent that this can be recorded on staff employment records. The issues addressed in this article are also relevant to schools as they increasingly use electronic media and resources such as electronic whiteboards. Some schools may also be maintaining electronic records of classroom presentations and activities on websites for access by students who are absent. Australia is generally regarded as having high quality copyright and intellectual property legislation and practice. Electronic media such as YouTube contain material that crosses jurisdictional boundaries, further complicating the possibility of infringement. We consider the discussion in Sadler and Bunn's article will provoke thought for readers from all jurisdictions.

General issues of copyright law have been a continuing focus in the journal in recent times. Another continuing issue is plagiarism. Bruce Lindsay discusses student plagiarism in higher education institutions, revisiting the scope of definitions and expectations of intent, the grey area that has always been problematic for universities and the law. Lindsay explores new issues in his article through considering three issues in particular: the educative role of universities in training students, particularly new university students, on the nature of plagiarism, expectations of student academic behaviour and their opportunity to gain practical, working knowledge of plagiarism examples; the need to have different standards for students at different phases of their career and

the sliding scale of expected behaviour for students in comparison to ‘the professor’; and finally, the need to ensure that the *Briginshaw* standard¹ is applied to any considerations in universities with regard to academic misconduct or plagiarism, that is the seriousness of consequences for the student should be taken into consideration.

Lindsay notes that current considerations may focus on the damage to an institution of student plagiarism. However, he notes that if, as he argues, an educative approach to plagiarism is taken, then remediation of such conduct prevents damage to the institution. Lindsay concludes the discussion by consideration of the impact of plagiarism on two groups of students, students in law programs, and international students, for whom the consequences of university academic misconduct allegations are great and may lead to failure to gain a licence to practice law for the former, or, loss of visa and deportation for the latter. For many international students, deportation and failure to complete studies involves not only loss of educational and career opportunities but also loss of face and sometimes considerable financial support provided by extended families. Through his article, Lindsay extends current considerations of plagiarism in higher education to provide a more assistive and responsible framework to students.

The next two articles in this issue address another new matter for education and law in Australia: the use of external testing for the certification of teachers. Such testing, in literacy, numeracy and science skills and knowledge, including knowledge of pedagogical skills, is to be introduced in Queensland in 2011. The tests will be managed by the Queensland College of Teachers, the teacher registration authority of Queensland, and will be in addition to normal academic program graduation. Similar requirements have been in place in many states in the United States of America (US) for some time and have led to legal challenges by those who have failed to gain registration when they were not successful on the testing component, despite having other teaching qualifications, and in some contexts, successful teaching experience. In the first of the two articles, Ralph Mawdsley and Joy Cumming explain the context for the new requirement in Queensland and discuss broad issues and legal outcomes from legislation, policy and case law in testing and teacher certification in the US. In general, challenges arise under discrimination law and due process.

When the testing requirement is introduced in Queensland, it can be expected that some successful graduates of teacher education will fail the tests and not gain registration of employment as teachers in Queensland. It is likely, then, that such applicants for registration will seek to appeal the decision and undertake legal challenges if necessary. However, this is a new form of professional certification in Australia and no precedents appear to exist. Further, this certification requirement is being introduced for near graduates, a change in expectations from when they first enrolled. In the second article, Cumming and Mawdsley examine implications from US law for Australian legal contexts including discrimination law, employment law and administrative law. The impact of the introduction of the tests in Queensland will be an interesting area to follow in the next few years.

In the final article in this issue, Marie Parker-Jenkins, a previous contributor to the journal, provides another thoughtful and provocative piece on children’s rights in education, drawing on her extensive research background in the area. She considers children’s rights historically and in broader contexts, before turning to rights in schooling. She proposes that the concept of children’s rights is dynamic, adapting to the social norms of a time. Parker-Jenkins also examines decisions of the European Court of Human Rights which strongly promotes children’s rights, particularly in education. Parker-Jenkins provides an informative overview of the development of children’s rights in law, culminating in the United Nations’ *Convention of the Rights of the Child* (CROC)²

adopted in 1989. It is interesting to consider how much additional force children's rights gained following this date. Parker-Jenkins turns attention to the basic concepts of 'childhood' and the vagaries of the concept of 'rights'. While CROC was intended in many areas to provide children in many nations with a notional 'childhood' free from labour and the right to education, it does have implications for more widespread freedoms in education, which Parker-Jenkins explores in this article³. As Squelch and others have noted, the overall issue in rights becomes the balancing of such individual rights in broader societal contexts, not only for children in schools but also for adults in all walks of life.

We are pleased to announce that the journal is now searchable on the Australian free access database www.austlii.edu.au. Issues in the most recent two years are excluded to protect benefits to ANZELA members and IJLE subscribers. Access through Austlii will make commentaries on Australian, New Zealand, and other jurisdictions' education and law available to all interested in this area. We often note in this journal that we gain more appreciation and understanding of our own education and law contexts by looking at the education law issues in other nations. In keeping with this philosophy, in this issue, we provide a commentary on internet resources available from a range of jurisdictions for those interested in education and law, and on an interesting education law debate that has recently emerged.

ENDNOTES

- 1 *Briginshaw v Briginshaw* (1938) 60 CLR 336.
- 2 United Nations' Convention of the Rights of the Child, opened for signature 20 November 1989, UNTS 1577(entered into force 2 September 1990).
- 3 Marie Parker-Jenkins, 'Children's Rights and Wrongs: The Developing Nature of Human Rights for Pupils at Schools' (2011) 16(1) *International Journal of Law and Education* 87, 94.

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