STUDENT RIGHTS AND PARENT RIGHTS IN EDUCATION IN AUSTRALIA

J. Joy Cumming[†]
Centre for Learning Research, Griffith University, Brisbane, Australia
Ralph D. Mawdsley
Cleveland State University, USA

This paper is a companion paper to that by Mawdsley and Cumming on student and parent rights in education in the U.S. In that paper, student rights were examined from principles of constitutional rights. It was noted that the U.S. is not a signatory to the United Nations Convention on the Rights of the Child. In this paper, we consider the grounds by which Australian children may have rights in education that differ from or may override the rights of their parents. These are considered under the umbrella of the UN Convention which Australia has ratified. Particular attention is paid not just to the commonly-known right to free, public education that is compulsory, but, of more relevance to the study of student rights, to the conventions and articles that state that children should be recognised as having growing competence in decision-making and participation in decisions that affect them. Applications of these principles with respect to children in family, medical and privacy law are compared with recent education legislation in Australia. The paper focuses on provision of general education rights and does not consider rights under discrimination or disability legislation. The paper concludes that current education legislation may not be as reflective of the principles of the UN convention for the role of children as these other areas of Australian law.

I Introduction: The Rights of Children in Australian Education Law

As we have noted previously,[1] many differences in legal challenges in education emerge between the U.S. and Australia from the respective presence of, and lack of, a Bill of Rights. In Australia, most challenges in education are based on statutory law (especially anti-discrimination laws enacted at state and federal levels) or common law (for example, negligence and personal injury). Without a Bill of Rights, individuals in Australia do not have specific rights such as freedom of speech that can be enforced through the court system. Although a number of cases have established an implied right to freedom of speech, this has been applied in the main to cases of political advertising[2] and defamation.[3] In general, Australian courts have backed away from establishing an individual right of freedom of speech.[4] Even a legal challenge by a male private school student to wear long hair was initially successful on the basis of discrimination on the basis of gender,[5] not his individual right to have long hair as a freedom of expression.

However, contrary to the U.S., Australia has ratified international treaties such as the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)[6] and the *UN Convention on the Rights of the Child* (CRC) which both recognise the right to education.[7] CRC elaborates on the types of education and the roles and rights of the child.[8] In this paper, discussion will focus on implications of CRC and the following key Articles:

[†]*Address for correspondence*: Prof J. Joy Cumming, Dean of Graduate Studies (Acting), Griffith University, Nathan Qld 4111, Australia. Email: j.cumming@griffith.edu.au

- That in all actions (public or private, courts of law, administration, legislation) the 'best interests of the child shall be a primary consideration' (art 3);
- States will respect the 'responsibilities, rights and duties of parents' (or other caregivers) to provide direction to the child in the exercise of their rights 'in a manner consistent with the evolving capacities of the child' (art 5);
- 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child' (art 12(1)) with the child to have an opportunity 'to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law' (art 12(2));
- 'the right to freedom of expression' (art 13(1)) subject to restrictions respecting the rights of others or for national security (art 13(2)); and
- the right to education (art 28(1)) with primary education to be free and compulsory (art 28(1)(a)).

Thus, critical principles that emerge from CRC are not just the right to education but also the identification that children have rights to be involved in decision-making or representation on issues, and that they have evolving capacity to make decisions before they are legally adults. The accompanying qualifier is that decisions have to be in 'the best interests of the child'. Another boundary is that while primary education is a right it is also a compulsion on the child and their parents.

While Australian federal government legislation sets parameters for funding of education provision, the processes of school education provision in Australia are governed by state and territory[9] Acts that address governance structures, funding and the focus and breadth of learning in schools. The right to education is stated in only two state Acts.[10] However, all Acts state the ages of compulsory education and the general requirement that children should attend schools from 6 years of age until a minimum of 15 years.[11] The Acts, similar to those in the U.S., endorse the primary responsibility for the education of children as lying with parents. While an implicit right exists in Australia for parental choice of the school their children may attend, in general state systems are less tolerant of parents' rights to influence directly the curriculum provided for their children. Accredited curriculum are established at state levels[12] and all schools are expected to offer such accredited curriculum in order to qualify for public funding (available to both public and private schools, including denominational schools). Students, presumably with parental guidance, have the right to select subjects once they enter high school, from the range that a school offers. Therefore one parent right that does not exceed student rights in Australia relates to curriculum control. Neither has control.

In Australia, CRC has been declared 'an international instrument relating to human rights and freedoms' in accord with s 47(1) of the *Human Rights and Equal Opportunity Commission Act 1986 (Cth)* (HREOC). This Act incorporates the *United Nations Declaration of the Rights of the Child*[13] that a child shall be enabled to have full physical, mental, moral and social development, with laws enacted for this purpose to have 'the best interests of the child' as 'paramount consideration' (Principle 2) and 'an entitlement' to receive education for development, with the 'best interests of the child' the guiding principle and the primary responsibility of parents (Principle 7).

Despite Australia's ratification of the conventions and recognition in HREOC, it has not enacted them in legislation.[14] While the Australian government is expected to meet its obligations

under the treaties, they are not Australian law.[15] Challenges that rely directly on treaty or convention clauses have limited success in Australian courts[16] although the courts have indicated that Australian law and practices should be consistent with the conventions.[17] Legal education writers in Australia have, however, been noting in recent times that the issue of children's rights in education may be expected to become an increasing source of contention.[18] Indeed, it has been suggested that only the child has a legal expectation of a right under CRC, not their parents.[19]

> ... when read in conjunction Articles 12 and 5 clearly leave open the possibility of challenge to parental decision-making authority on the grounds that the child concerned, even though a legal minor, is nevertheless mature enough to make its own decisions in relation to the matters mentioned in the Articles. The uncertainty thus created imposes powerful constraints upon 'appropriate' direction and guidance' by parents, since such direction and guidance may be held to be inconsistent with 'evolving capacities', and the 'capability of forming' views 'in accordance with age and maturity', as judged by the child itself and open to possible confirmation at law by an authority, other than the parents, exercising subjective judgement.[20]

Therefore, these conventions and rights to which Australia is a signatory, and their principles of parental (or other) direction in accordance with the age and maturity of the child and children's evolving capacities, provide the framework in Australia that children's rights could override parents' rights.[21] To examine this framework, we examine the recognised rights and responsibilities of children in other areas in Australian law.

II Children's Rights Versus Parents' Rights

A *Developments in Family Law*

The CRC principles of children's 'evolving capacities' to be involved in decision-making and 'in the best interests' provide possible contentions in legal decision-making.

These principles, including 'considerations of physical and emotional well-being',[22] have been enacted in 1995 modifications of the *Family Law Reform Act 1995* (FLRA).[23] Major shifts have occurred in the terminology and principles underpinning the roles and responsibilities of parents and children in family law in Australia.[24] The major change is that terms such as 'custody', 'access' and 'guardianship' are no longer used.[25] Instead, both parents are deemed to have 'parenting responsibilities' to their child[26] and family dispute resolution will examine the best ways that these responsibilities can be carried out in the 'best interests' of the child.[27] The child's wishes must be taken into consideration, regardless of the age of the child:

> ... in determining what is in the child's best interests, the court must consider ... any wishes expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's wishes ...[28]

Initial family agreements are expected to be resolved in the best interests of the child through mediated agreements. However, family law cases that display competing child and parent rights, particularly with respect to schooling, can reach the courts when one parent wishes to move, often interstate and overseas, and hence alteration to the agreement is necessary. These cases demonstrate clearly the tensions between adults making decisions in 'the best interests of the child' and consideration of children's own statements of their perspective, in an education context.

Re G involved determination of the school children should attend after their parents' separation.[29] The children had been educated at one private school (A) since pre-school, although the wife had always wanted the children to attend another school (B). The parents had initially agreed upon School A as a compromise. As the parents had now separated, the wife wished the children to transfer schools for convenience (transport time, location near home). An initial judgment granted the wife's application.[30] In the appeal it was noted that

> The trial Judge properly fulfilled the process of paying appropriate regard to the children's wishes and explaining her reasons for departing from them.[31]

> The parties are 'two intelligent, genuine, caring parents simply having different points of view on this important issue... .The boys presently express a preference to stay in their familiar setting at [School A] but I will consider that further in the context of the family report... . After considering the family report, her Honour said: 'As to the children's wishes, I accept the counsellor and the wife's view that the children are reluctant at the prospect of change, but that they would cope happily if it were to occur. The only concern I have is that any normal reluctance could only be exacerbated if the issue remains a source of conflict between their parents ...[32]

Both boys had expressed a reluctance to change schools. Counsellor's reports provided to the previous hearing stated:

> It is unclear to me whether this reluctance is beyond the normal bounds that one would expect with that degree of change. If most children are happy with their school, as indeed [C] and [M] are, they would no doubt express some reluctance about a move. [M] indicated that he did not wish to change schools because he and [C] would not be able to play together because of the way in which [the locality] is set up and, furthermore, he would not be able to play in the school band at [School B]. [M] also indicated that most of the children at his current school were aware of his disability and therefore no-one asked questions about this. He expressed some reluctance to have to go through all this again at another school. [33]

After discussion of the reasoning in previous cases, the Appeal Court concluded:

> It is thus clear that proper regard must be had to the expressed wishes of the children and that reasons for decision must reflect their significance. However, there is no presumption that decisions should accord with expressed wishes and it is not to be expected that lengthy reasons for departing from expressed wishes is the equivalent to showing *'good reason'* for doing so.[34]

Despite references in the proceedings to the recognition in the international conventions and general family law principles regarding the growing capacity of a child to take responsibility for their own decisions, the explicit wishes of the children were not followed in this case but gave way to the rights of the parents. Other adults were considered in a better position to judge the children's needs than the children.

Such cases are often fought by one parent on the basis of the children's rights. In a similar case, a mother wished to move town for better opportunities, meaning the loss of the frequent contact of the children with their father.[35] The original Family Court decision had found for the mother. The father brought an appeal heard in the Full Court of the Family Court arguing that under the FLRA 'the rights of children were superior to and, where necessary, extinguished any right which a parent, as a private individual, may enjoy'.[36] The mother argued that 'ultimately

the paramount consideration is the best interests of the child (s 65E, FLRA)'.[37] The children were described as 'two delightful, intelligent, talented and well adjusted young girls who love and are much loved by each of their parents'. The children's wishes were divided between not wanting to choose between their parents but wanting to continue to live with their mother. A counsellor provided evidence that the children were 'particularly resilient'.[38] Once again, after discursion on the importance of listening to children's views, the decision to be made was argued to be based on all relevant matters[39] and the original finding upheld.

> We agree ... the rights given to children under s 60B are not rights which are legally enforceable. This view appears to suggest a major inconsistency between legislation which provides for and emphasises the rights of children and at the same time the statement that they are not legally enforceable rights ... the unenforceability of these rights is fundamentally because of the inherent conflict between the child's best interests on the one side and self-determinism by the child on the other, against a background of age, maturity, vulnerability to pressures. It may also reflect the nature of the practical day to day relationship between parents and their children.[40]

Recent family law cases have confirmed the power of the court to override a child's stated preferences expressed more strongly than in the previous cases[41] or to follow the wishes of the children when one of the children was still somewhat equivocal.[42] In the latter case (June 2005), the children (10 and 12 years of age) were seen as having 'sufficient (age and) maturity that their views should be taken into consideration'. It is not proposed in this paper to go into a full analysis of how 'maturity' of children has been determined in the family courts. However, an overall reading of the cases is that, while considerable judicial analysis of the 'best interests of the child', legislation and the international conventions occurs, the balance of convenience on 'children's wishes', given their frequent description as mature, intelligent and confident, appears to lie with the parents. The belief that children are resilient and adaptable to change is frequently indicated in the expert statements. Children themselves rarely appear in courts.

From the family law cases recently determined, the supremacy of students' rights over parents' rights, underpinned by the opinions of other adult 'experts' does not look promising for students who may want to challenge parents' decisions in areas of education, despite their perceived maturity or intelligence. Modern family law in Australia places the best interest of the child and their need and capacity to be involved in decision-making at the centre of its philosophy. However, the resolution of the tensions between these two is not clear.

B *Children's Rights and Status in Law*

Australian case law[43] in various other areas follows the *Gillick* competence principle[44] that a child's capacity[45] to make a decision depends upon the child having sufficient understanding and intelligence to make the decision and is not to be determined by reference to any judicially fixed age limit'.[46] 'A child is, according to this principle, capable of giving informed consent when they achieve 'a sufficient understanding and intelligence to enable him or her to understand fully what is proposed'.[47]

> Well before a young person reaches the age of eighteen, she or he possesses legal capacity in a variety of different areas: the capacity to commit (and to be liable to be punished for) crimes requiring criminal intent; within limits, the capacity to make a contract and to be guilty of a tort; subject to any necessary authorization, the capacity to marry...[48]

> In times when it is not unusual for fifteen and sixteen-year-olds to be supporting themselves as members of the workforce, to insist upon complete parental authority up until the age of eighteen would be to propagate social anachronism as legal principle. In the context of contemporary circumstances, the extreme statements in nineteenth century cases have, depending upon preference for irony, understatement or plain speaking, rightly been dismissed as "superbly Victorian" ..., "historical curiosity" ... or simply "horrendous" ...[49]

The principles endorsed by the Gillick competence statements are clearly resonant with the principles of the evolving capacity of the child stated in CRC, as well as the child's right to participate in legal matters and decisions that involve them. Although children have standing to act in Australian law, usually an adult (next friend or guardian) acts on their behalf.[50] Sometimes it is necessary to identify that the complaint is on behalf of the child, and not the parents[51] as parents do not automatically have standing on the child's behalf.[52] Conversely, despite Article 12(2) of CRC, children in Australia do not automatically have a right to make statements in legal matters that are being undertaken on their behalf. For example, in a sexual assault case involving a teacher, the parents did not give permission for their child to provide evidence at trial.[53]

While a child generally has legal standing, in criminal law, a child may be regarded as lacking 'the legal capacity to instruct'. The Australian Law Reform Commission (ALRC) has noted that in practice the law presumes that a child cannot assert rights or form a judgment and that it is the role of their legal representatives and the court to determine how to act in 'best interests',[54] 'children are inhibited in law'.[55] However, cases have also been noted where young people have indicated to the courts that they did not believe their lawyer was acting in their best interest, and they wished to make their own statements. The ALRC noted that more consideration should be given to children's opinions and the 'role of the mature minor in litigation'.[56]

> The best interests model of advocacy for children is based on the assumption that children lack the judgment of adults. It is generally considered that adolescents, even those who are cognitively mature, are more influenced by others in their decision making, more impulsive and less averse to risk taking than adults. As a consequence, the social and personal costs to the development of the child of allowing adolescents to exercise this limited judgment are said to be too great. These assumptions are now being challenged. Many children have the maturity and judgment to direct their lawyer just as many adults have limited maturity and poor judgment but instruct legal representatives. The fact that a child's views may be editorialised or discounted for no reason other than that the representative disagrees with those views *effectively holds children to a higher standard than adults* (emphasis added).[57]

Children in criminal law may be held legally responsible for their actions well before the age of 18. While children are considered 'incapable of crime' under 14 years of age throughout Australia, the grey area is once they have turned 14, until 17 or 18 when they will be tried as an adult, according to state.[58]

While children may have legal standing, one practical issue that might arise if a student wanted to challenge their parents about their legal rights may be the capacity to pay for such a challenge. In Australia, legal aid is available to those who can demonstrate need. Some years ago two siblings were refused legal aid to bring an action directly in the Family court. The presiding justice, Mushin J, expressed his sheer amazement, especially as the reason given was to avoid 'the floodgates (that) would be opened with respect to applications by children'.[59] Legal aid availability for children has since been recommended.[60]

In most states, legal aid bureaus provide free initial personal or online advice, but in some states a charge is incurred for court representation. Advice or representation for children and young people is generally available for criminal charges, and appearances in the Children's court. Recent cases have meant that provision of legal aid services to children (under 18 years of age) have increased, with youth specialty bureaus existing in some states. Youth services are common in most states, and in some cases recognise the CRC rights on involvement in decision making, at all ages.[61]

The issue arises however as to whether such support would be given to young people in educational challenges, if their case is not supported by their parents, and perhaps to mount a challenge to the actions of their parents. In principle aid should be available if the case is well-founded, but whether it would be provided, given the demand for service, is unknown.

III Competence and Rights of the Child in Education Law in Australia

The previous discussion demonstrates the extent to which Australian courts are aware of the rights children have, or should have, in administrative, family and criminal law. Current service provisions and policy in education in Australia have been accused of being 'abysmally ignorant' about these rights.[62] While this statement was made a decade ago, examination of current trends in education legislation and conflict with legislation in other areas seems to endorse the criticism. Areas that stand out as possible sources of challenge by students against the rights of their parents include lack of recognition of the right to decision-making and privacy law. For the former, at least one clear area of application exists. Students may wish to claim the right to be involved in decision-making about attending school, work, training or none of these, particularly in light of ever-extending compulsory years of schooling. For the latter, privacy challenges relate to possible conflicts between current educational legislation and privacy legislation, although, as in the U.S., the legislation that has been introduced appears to be conflicting on children's rights in education.

A Children's Rights to make Decisions in Education in Australia

The age of compulsory education has risen steadily over the last century. In Queensland, the *Youth Participation in Education and Training Act 2003* (*Qld*) (YPETA) introduces a 'compulsory participation phase' requiring young persons to be in education, training or work until 17 years of age.[63]

> Compulsory participation phase: (a) starts when stops being of compulsory school age; and (b) ends when the person – (i) gains a senior certificate or Certificate III (ii) has participated in eligible options for 2 years after the person stopped being of compulsory school age or (iii) turns 17.[64]

Contrary to the international convention, this Act denies a 16 year old self responsibility, despite their accountability as an adult in other areas of law. Children have a right to choose but only from a restricted range of opportunities. It is timely to reflect on whether the original intent of the CRC right to an education that is compulsory was to put an increasing regulation on children, and their parents, or to ensure children were not neglected by parents and society or exploited by employers. Under the Queensland Act, children cannot choose to be 'at leisure'. Might a 16 year old challenge this Act on their basis of their right to make a decision to do nothing?

The legislation not only removes a right to choice of action from such children, it does so at the time when in all other aspects of the law children are given in principle discretion to handle their own decisions and activities, and where they are expected to take the consequences of and responsibility for their actions. The Queensland legislation places responsibility and penalties on the parents of the student. Responsibility is only removed for an 'uncontrollable' child, nor an independent thinker.

> Obligation to ensure participation
>
> (1) Each parent of a young person in the compulsory participation phase must ensure the young person is participating full-time in an eligible option, unless the parent has a reasonable excuse.
>
> Maximum penalty – (a) for a first offence – 5 penalty units; or (b) for a second or subsequent offence, whether or not relating to the same student of the parent – 10 penalty units.
>
> (2) ...reasonable influences (b) in all the circumstances, the parent is not reasonably able to control the young person's behaviour to the extent necessary to ensure the young person participates full-time in an eligible option.[65]

The current *School Education Act 1999* of Western Australia, enforces the obligations of parents for children's attendance at school most strictly.

> S.38. Breaches of section 23
>
> (1) A parent of a child of compulsory school age must ensure that section 23 is complied with by the child.
>
> S.43 (1) In any proceedings for an offence against section 38(1) (requirement to attend school if compulsory school age) in respect of a child an authorized person may give a notice to a parent of the child requiring the parent –
>
> (a) to bring the child to the court at a time and place specified in the notice; and (b) to keep the child in attendance at the court until he or she is permitted to leave by the court or an authorized person.

These current policies demonstrate that the 19th century notion of parental control, described previously as a social anachronism and at best an 'historical curiosity', is still in place in education legislation — out of step with trends in family, criminal and other law, CRC expectations of 'evolving competency', and the *Gillick* competence principles.

These laws may well give rise to challenges by young people about a right to engage in educational decision-making. They may also give rise to challenges by their parents about their right to be seen as only partially responsible for the actions of their children.

B *Privacy Legislation in Australia and Children's Rights in Education*

Circle School, the case in the US that stimulated these companion papers, may have parallels in Australia. The recent Australian federal act that emulates the U.S. *No Child Left Behind* Act is the *Schools Assistance (Learning Together – Achievement through Choice and Opportunity) Act 2004* (a General Provisions act for funding for education to states and territories) (*Schools Assistance Act*). The *Schools Assistance Act* requires that, in order to receive federal funding

> ... each government school in the State gives the parents ... who have *care and control* of each child attending the school student reports, relating to that child, that ... are confidential and deal with the child's *academic and nonacademic* learning... (our emphasis added) [66]

Child is not defined in the Act and appears to include all students. It may be interpreted to cover the same age range as CRC, that is, up to 18 years of age, or it may be interpreted by systems to include school students of all ages. The extent of such reporting and the characteristics that may be reported are not limited. Therefore, it is possible that a school could report on values held by the child, or activities that the child may wish not to be reported. Challenges to reporting, since the child has no explicit right to free expression, would have to arise from two possible sources. Many students in Australian high schools are 18 years of age and legal adults. For example, by mid-2003 in NSW, three per cent of full time secondary school students and over 73 per cent of part time students were legal adults, that is, 18 years or over.[67] By the end of the school year, the proportion would be some 8 per cent. Across Australia, many students turn 18 during their final year of school. Is the expectation that reporting will occur for all students or all children? What is the technical importance of the phrase 'care and control'? Adult students may challenge the notion that their parents are 'in control' of their activities or that their information should be reported to parents.

The issue of reporting to parents on children's school activities also arises under Australia's privacy laws. Privacy laws at federal and state levels govern provision of personal information about an individual actively collected by an agency, including government agencies, to another without the permission of the individual. The acts appear to apply to all individuals including minors.[68]

The privacy acts therefore appear to need consideration in terms of schools reporting on personal information about a child to parents, particularly for government schools where a contract between parents and schools is not implied.[69] Exemptions to the privacy acts exist. For example, the NSW *Education Regulation 2001* indicates that results of students' tests may be given to parents,[70] specifying public testing. The 2004 NSW Department of Education and Training Code of Conduct identifies that staff must comply with the *Privacy And Personal Information Protection Act 1998* (PPIA) and the DET Privacy Code of Practice (2004) which allows for public sector agencies to exempt or modify privacy legislation.[71]

The DET Privacy Code addresses the provision of personal information to another, and notes that '[t]he extent to which the personal information rights of individual students are modified will therefore depend on the age, maturity and capacity for independent action of the students involved. Any limitation on the information rights of students will need to be justified in terms of the above considerations'.[72] The Code also indicates modification of the Privacy Act in the case when it is 'in the best interests of a student enrolled in a government school' to disclose personal information to a parent.[73] However, the Code refers specifically to the provision of an individual's 'performance information to the Board of Studies for the purpose of the School Certificate or Higher School Certificate',[74] while further modifications can apply to the provision of information following assessment by a school counsellor of a pre-school or primary child or student with a significant intellectual disability, when referred by the parent, and when it is in the child's 'best interest'.[75] The specificity of these areas of modification that note consideration of children of young ages or intellectual disability but with the qualification of 'in the best interests' implies that students' permission should be sought in government schools before achievement or behavioural information is provided to their parents. Children would appear to have control of such information. In the ACT, the *Education Act 2004* legislates reporting of both academic progress and social development.[76] The latter aspects would certainly seem to cross the boundaries of privacy legislation.

It has been noted that privacy legislation in Australia applies to all individuals including children, with minors given the protection of adult authority if necessary. The Victorian *Information Privacy Act 2000* states clearly the independent role that a child can have and the capacity of a child to make decisions and take responsibilities,[77] in keeping with the principles of *Gillick* and CRC.

> A child who is capable of understanding the general nature and effect of choosing an individual to make a complaint on his or her behalf may do so even if he or she is otherwise incapable of exercising powers.[78]

No identifiable distinctions based on age or 'child' status were found in the privacy legislation of other states. Privacy legislation applies to all individuals and all individuals may make complaints.[79] The challenge that might occur then, is the student deciding that it is either against their right of privacy and decision-making or not in 'their best interests' for school achievement, and especially more personal outcomes, to be reported to their parents. Parents may consider they have a right to know in 'the best interests' of the students. How might the courts consider the *Gillick* competency of a student claiming privacy, against claims from an adult's perspective that disclosure should override the child's view of in the child's 'best interests'? Would this be consistent with current privacy legislation?

Privacy rights for a child's medical records held by a school have been found,[80] although, despite the fact that the staff member concerned had information from the student and had accessed the student's files, the court indicated that the staff member should have sought a formal release from her parents.[81] However, the court also noted:

> The evidence is that the Teacher approached MT for confirmation of the accuracy of the information he had received from the Schoolgirls but she was dismissive of his enquiry. ... I agree that the Teacher was entitled to check with MT and given her age it is reasonable that the Teacher would do so. I also agree that it was not necessary to have to check the accuracy of the information with MT's parents. This of course may not have been sufficient in the case of a younger person.[82]

Certainly an area where privacy legislation is ambiguous is on the rights of the child in health, although not explored here. While the *Privacy Act 1988* (Cth) indicates that an organisation that provides health services may disclose information about the health of an individual to a parent responsible for the individual,[83] such disclosure cannot occur if contrary to the expressed wish of the individual.[84] This reinforces a right of a child to make a decision about their activities over the rights of their parents to information.

One area in education law where perceptions of the student as a responsible child or adult are distinguished in some states is in notification of exclusion or suspension. This is an area that is always of concern to the community, and one in which the right of the child to education is most frequently violated. In some Education Acts, it is the student who is to receive direct notice of an infringement and the decision to exclude or suspend.[85] A copy will be sent to the parents if the student is under 18 years of age.[86] The student has the right to appeal or a parent or other may do so on their behalf.[87]

C *The Right to Engage in a Sexual Relationship with a Partner of Choosing in an Education Context*

Recently, public attention was heightened when criminal charges were laid against a female teacher who had a sexual relationship with a 15 year old male student.[88] In the original hearing in the Victorian County Court, the teacher had been given a 22-month suspended sentence. Reasons for the leniency were the good prior standing of the teacher, a pleading of guilty, and the indication by the student that he had been a voluntary participant in the relationship and had initiated the relationship[89]. The Director of Public Prosecutions appealed the sentence and teacher was sentenced to two years and eight months, with six months to be served and the rest suspended.[90] The penalties were clearly appropriate under the Criminal Law, as the student was under 16 years of age and under the authority of the teacher.[91] However, the charges had been activated by the mother contacting police after seeing the teacher and her son 'looking like husband and wife'. The teacher has completed her prison term and media coverage has followed an apparent reunion with the boy concerned, now over 16 years of age. Some comment has been made that the media discussions demonstrate that the former teacher exerts a power over the former student and that an imbalanced power relationship is evident. The perspectives of the former teacher and former student still differ from public moral standards. However, the fact that the mother had initiated the action appears to have had considerable impact on the student's study progress and family relations. The student became estranged from his mother and left his school studies. Without removing the illegality of the act of the teacher in law,[92] this is a clear case where the perceptions of parent and child differed, with possibly disastrous effect.

In Victorian legislation it is also an offence for a person in authority to have a sexual relationship with a young person in their care if the young person is under 18 years of age. Under the Queensland Criminal Code the implicit age of sexual consent is 16 years old.[93] Under the *Code of Conduct* for employees of the Queensland Government Department of Education and the Arts, s.2.3.2 *Protecting Students from Harm*, school-based employees (in the main teachers) must not engage in sexual misconduct with a (any) student. Sexual misconduct, during or outside school hours, includes

> any other sexual conduct by a school based employee directed towards or involving ... *any* student under the age of 18 years attending *any* Queensland state school or Queensland state secondary college'. (emphasis added)

In the *New South Wales Department of Education and Training Code of Conduct*,[94] staff are reminded that the law prohibits sexual relationships between a teacher and 'their student' under the age of 18 years of age.[95] However, provisions are more stringent than in the Queensland code.

> DET staff must not have sexual relationships with *any* school student at *any* school. It is irrelevant whether the relationship is homosexual or heterosexual, consensual or non consensual or condoned by parents or caregivers. The *age of the school student* or staff member *is* also *irrelevant*.[96] (emphasis added)

The importance of the purpose of such codes and legislation to protect students, particularly to prevent the impact of unequal authority and power relations, cannot be understated. However, the acts can also be looked at from another perspective. Students of considerable age who are often sexually active are being denied the right to choose a sexual partner. Does this control go beyond reasonable protection? In Queensland and New South Wales, a student who wished to

have a sexual relationship with any teacher against their parents' wishes, regardless of age could end up in a similar situation as in *Ellis*,[97] with apparently devastating outcomes due to the conflict between the student and their parent.

IV Rights, 'Best Interests', 'the Common Good' and the Future

In the U.S., students may start to challenge for their rights to make educational decisions that counter the rights of parents to make decisions for them, on constitutional grounds. In Australia, an individual right does not exist except as interpreted through the conventions, Education Acts and HREOC, and case law. For students who are legal minors, the countervailing principle against the individual child's right is the 'best interest' policy. From the examples analysed here, the best interest of the child in educational contexts is, in the main, determined by adults, not the child. However, outside education provision and policy, there is increasing recognition of the competence of children, even the very young, to contribute to their own decisions, with an implicit expectation that full competence will be achieved, or at least competence equivalent to many adults, well before 18 years of age.

What is the likely impact of these countervailing principles for Australian legal challenges by students for rights not consistent with their parents' perceptions? Ludbrook has noted that 'children of compulsory school age face significant restriction of their freedom of movement and assembly, their freedom of expression and their freedom of thought, conscience and religion. … In Australia … this loss of freedom is seen as a necessary sacrifice for children's greatest good and for that of society'.[98] The fundamental contradiction of the CRC principles is the compulsion on education which is also to be valued as an individual right. Compulsory education removes the right of independence of thought and action from children beyond necessity for survival and development,[99] in direct contrast to recognition of the developing autonomy, and responsibility, of the child elsewhere in law in Australia.

Advice to students on their rights at school is available from a number of sources, including online.[100] 'Trepidation' was demonstrated by the banning by some schools of distribution of an education package for students, 'Know your rights at school'. Concern has been raised in various forums that educating children about their rights will diminish parental control and 'young people will use the information against their parent".[101] This suggests one barrier to recognition of students' individual rights is the 'floodgates' philosophy and fear of loss of control of young people. This is one indication that the CRC principle of growing competence in decision-making by children is not yet been accepted by adults.

Alternatively, despite the policy of 'best interests' and its inherent focus on individual children, and the espousal of the *Gillick* competency in areas of law where the focus is again on the rights and well-being of individual children in family or medical contexts, it is possible that the overriding rejection of individual rights in education may be based on 'the communal good'.[102] Schools as they currently exist are social institutions. Educators and policymakers may resist children having 'independent' rights in education in contexts perceived as social environments for a common, not individual, purpose. As Ludbrook noted a decade ago: 'While in the wider community the notion of children having independent rights is gaining greater acceptance, there seems to be a fear within the education system that allowing students independent rights ... will lead to anarchy or insurrection'.[103]

Is there a more underlying philosophy in Australia that 'the common good' is more significant than the individual, does this reflect a core difference between Constitutions in the U.S. and

Australia and the presence and absence of individual rights? Certainly the lack of individual rights in Australia diminishes the role of the individual in law in Australia.

V Conclusion

In this paper we have traced developments in the evolution of statutes and case law that could see students assert an evolving decision-making capacity and right to challenge the rights of parents, or other adults, to control their educational decisions. The recent cases in the USA indicate that such challenges could occur with more frequency in the future. The recognition of the mature child does raise the possibility of various scenarios of similar legal challenge in Australia. Indeed, despite the conservative nature of the Australian courts, they may be ready for the challenge. In the infamous 'hair' case with which we commenced this paper, the courts took the opportunity to note:

> ... it is another aspect of the public interest to recognise growing capacity for decision-making of children as they mature and the gradual change that occurs in those in authority over them (such as parents and teachers) from a somewhat coercive role to the role of a counsellor.[104]

Education writers for some time have indicated that students should have more powerful rights in determining their future. Further establishment of student rights could become a major challenge for parents and schools in Australia.

Endnotes

1. Ralph Mawdsley and J. Joy Cumming, (2004) 'School District Accountability, Special Education Students, and the Dilemma of High Stakes Testing: An Australia-United States Comparison' (2004) July 29 *West's Education Law Reporter* Commentary 1.
2. *Australian Capital Television Pty. Limited and Others and the State of New South Wales v The Commonwealth of Australia and Another* (1992) 177 CLR 106.
3. *Theophanous v The Herald and Weekly Times Limited and Another* [1994] HCA 46.
4. *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.
5. *Cope v Girton Grammar School Limited* [1995] VADT 2. (Cope who wished to wear long hair at his private school challenged school rules that differentiated hair length for girls and boys. Despite meeting the standards expected of the girls, and wearing a short wig on occasions, the student was denied access to classes on campus. Learning support was provided for him away from school. The Tribunal found for the student. The state legislation was later amended to allow schools to make differential rules for students to meet their own policies.)
6. Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966; right to education is Article 13.
7. *Convention on the Rights of the Child* (ratified by U.N. General Assembly Nov. 20, 1989 and by Australia December 1990).
8. Child is defined as under 18 years of age, unless a nation's legislation states otherwise (art 1).
9. Hereinafter referred to as states.
10. *Education Act 1990* (NSW) s 4; *Education Act 2004* (ACT) s 7(1).
11. The Northern Territory states 'not yet attained the age of 15 years' (*Education Act* s4).
12. Curriculum development may include the use of advisory panels with parent representation.
13. Sch 3.
14. *In the Matter of B and B: Family Law Reform Act 1995* Appeal No. NA 35 of 1996. 'Unlike the United States and continental legal systems, where the entry into treaties or conventions creates self executing law, the English and Australian position is that such treaties do not enter into domestic force unless and

until there is a legislative act. In this respect Australian law differs from that of the United States where treaties are self-executing and create rights and liabilities without the need for legislation by Congress (*Foster v Neilson* (1829) 2 Pet.253 at 314', para 10.

15. For example, *Minister of State for Immigration and Ethnic Affairs v Ah Hin Teoh (1995)* 128 ALR 353. 'Although noting that the Convention (United Nations Convention on the Rights of the Child) had not been incorporated into Australian law, his Honour stated that its ratification provided parents and children, whose interests could be affected by actions of the Commonwealth which concerned children, with a legitimate expectation that such actions would be conducted in a manner which adhered to the relevant principles of the Convention.', 13. '25. It is well established that the provisions of an international treaty to which Australia is a party do not form part of Australian law unless those provisions have been validly incorporated into our municipal law by statute. This principle has its foundation in the proposition that in our constitutional system the making and ratification of treaties fall within the province of the Executive in the exercise of its prerogative power whereas the making and the alteration of the law fall within the province of Parliament, not the Executive. So, a treaty which has not been incorporated into our municipal law cannot operate as a direct source of individual rights and obligations under that law. 26. But the fact that the Convention has not been incorporated into Australian law does not mean that its ratification holds no significance for Australian law ... That is because Parliament, prima facie, intends to give effect to Australia's obligations under international law'.
16. *Minister of State for Immigration and Ethnic Affairs v Ah Hin Teoh (1995)* 128 ALR 353.
17. *Minister of State for Immigration and Ethnic Affairs v Ah Hin Teoh (1995)* 128 ALR 353, 13: 'Although noting that the Convention (United Nations Convention on the Rights of the Child) had not been incorporated into Australian law, his Honour stated that its ratification provided parents and children, whose interests could be affected by actions of the Commonwealth which concerned children, with a legitimate expectation that such actions would be conducted in a manner which adhered to the relevant principles of the Convention'.
18. Robert Ludbrook, 'Children's Rights in School Education' in K. Funder (ed), *Citizen Child. Australian Law and Children's Rights* (1996) 84; Douglas Stewart and Andrew Knott, *Schools, Courts and the Law* (2002), 157.
19. *Minister of State for Immigration and Ethnic Affairs v Ah Hin Teoh (1995)* 128 ALR 353, para 35 citing Carr J.
20. Barry Maley, *Children's Rights. Where the Law is Heading and What It Means for Families* (1999), 23.
21. Ibid.
22. Legal Information Access Centre, *Best Interests of the Child: Hot Topics 1*. (2000) <http://beta.austlii.edu.au/au/other/liac/hot_topic/hottopic/2000/1/3.html> at 6 September 2005.
23. *Family Law Act 1975* (Cth).
24. For recognition of the principles of these changes see, eg, *Re G: Children's Schooling* [2000] FamCA 462 (23 January 2000), 21.
25. Family Law Council, *The Care, Support And Protection of Children: Interaction Between the Family Law Act and State and Territory Child and Family Services Legislation. Discussion Paper No 2. The Best Interests of the Child? The Interaction of Public and Private Law in Australia* (2000).
26. *Family Law Reform Act 1995*(Cth) s 60B, note for these sections 'child' is defined as under 18 years of age (s 65X).
27. *Family Law Reform Act 1995* (Cth).
28. *Family Law Reform Act 1995* (Cth) s 68F(1), (2).
29. *Re G: Children's Schooling* [2000] FamCA 462, para 79.
30. *Re G: Children's Schooling* [2000] FamCA 462. (In granting the wife's application, Dessau J had regard to matters such as: the children have lived constantly with their mother; the wife undertook thorough researches into the two schools; the children's wish to remain at School A, their good progress at School A and their reluctance to transfer to School B; the younger child's physical disability; the travel time from the children's residence with the mother is much shorter in respect of School B than School

A; the wife's intention to undertake retraining or employment and the hindering effect of the travel associated with School A; a Family Report prepared for the proceedings which was consistent with the wife's view that the children would cope with a change to School B.)

31. *Re G: Children's Schooling* [2000] FamCA 462, para 55. (This decision refers to and applies *R and R: Children's Wishes* (2000) FLC 93-000, *Harrison and Woollard* (1995) 18 FamLR 788, (also indexed as *H v W* (1995) FLC 92-598).
32. *Re G: Children's Schooling* [2000] FamCA 462, para 13.
33. *Re G: Children's Schooling* [2000] FamCA 462, para 17.
34. *Re G: Children's Schooling* [2000] FamCA 462, para 53.
35. *In the Matter of B and B: Family Law Reform Act 1995* Appeal No. NA 35 of 1996 No. TV 1833 of 1996.
36. *In the Matter of B and B: Family Law Reform Act 1995* Appeal No. NA 35 of 1996 No. TV 1833 of 1996, para 6.3.
37. *In the Matter of B and B: Family Law Reform Act 1995* Appeal No. NA 35 of 1996 No. TV 1833 of 1996, para 6.15.
38. *In the Matter of B and B: Family Law Reform Act 1995* Appeal No. NA 35 of 1996 No. TV 1833 of 1996, para 5.4.
39. *In the Matter of B and B: Family Law Reform Act 1995* Appeal No. NA 35 of 1996 No. TV 1833 of 1996, para 6.15; *Family Law Reform Act 1995* (Cth), s 68F.
40. *In the Matter of B and B: Family Law Reform Act 1995* Appeal No. NA 35 of 1996 No. TV 1833 of 1996, para 10.57.
41. *U & U* [2004] FMCAfam 145 (1 April 2004) 'Overall, the submission was that when all of these matters were taken into account, it would not be in J's best interests to make an Order in accordance with her stated wish', para 38.
42. *KB & TC* [2005] FamCA 458 (8 June 2005). (In this case, two children (10 and 12 years) expressed the wish to live with their father in Japan (although one child's wishes were 'equivocal'), a change in the 1999 orders that they live in Australia with their mother. In a Full Court Appeal, the mother submitted that 'a change in the children's wishes, of itself, was insufficient to constitute a substantial change'.)
43. See, eg, *Re Woolley and Another; Ex parte Applicants M276/2003 (by their next friend GS)* (2004) 210 ALR 36; *B and Another v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FamCA 456, although the latter application was dismissed in *Minister for Immigration and Multicultural and Indigenous Affairs v B and Another*[2004] HCA 20, 224 as 'a long discussion of authority and academic writing about the 'capacity' of children to make decisions' of no relevance.
44. Lord Scarman in *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] 1 AC 112, 183.
45. Under 18 years of age, CRC definition, art 1.
46. *Secretary, Department of Health and Community Services v J.W.B. And S.M.B. (Marion's Case.)* (1992) 175 CLR 218.
47. *Secretary, Department of Health and Community Services v J.W.B. And S.M.B. (Marion's Case.)* (1992) 175 CLR 218.
48. *Secretary, Department of Health and Community Services v J.W.B. And S.M.B. (Marion's Case.)* (1992) 175 CLR 218, para 3, Deane J.
49. *Secretary, Department of Health and Community Services v J.W.B. And S.M.B. (Marion's Case.)* (1992) 175 CLR 218, para 6, Deane J.
50. For example, *I v O'Rourke and Corinda State High School and Minister for Education for Queensland* [2001] QADT 1.
51. For example, in *Gregor v Department of Education* [1997] VADT 23 parents had ticked 'parental status' rather than 'disability' on the form of complaint and the judge had to initially determine that 'a true construction of the whole of the complaints is that Mr and Mrs Gregor complain on behalf of their children about discrimination against their children'. The case was then able to proceed.
52. For example, in *GA v Department of Education and Training* [2005] NSWADT 47, the complainant, a parent made applications under the *Privacy and Personal Information Protection Act* 1998 about the manner in which the Department of Education and Training (the Department) and NSW Police dealt

with personal information about himself and members of his family. The judge noted: 'Whether or not a parent is aggrieved by the conduct of an agency which relates to his or her child, is a question of fact to be determined depending on the circumstances of each case. If the parent has legal responsibility for the child, because, for example, the child is a minor or has a disability, a parent may have standing to lodge a complaint in his or her own right. However where, as in this case, the child is an adult and there is no evidence of him or her consenting to or supporting the application made by a parent , then a real issue arises as to the parent 's standing'. Similarly, an interesting case arose when a student sought to be enrolled in an apprenticeship while only 10 years of age and to have a contract with the Rural Industry Training and Extension Association Inc. registered with the Training Recognition Council for such a purpose (*French v TRC* [2004] QIRComm 37). The student was indicated as having entered into the contract and as having directly filed the appeal. It was noted that 'As Miss French is a minor there is an issue about whether she is competent to file the appeal. Having said that, the Commission is aware that pursuant to s 230(1) of the Act an aggrieved trainee can appeal certain TRC decisions, including a refusal to register a training contract. However, under subsection (2) a "parent of an apprentice or trainee can not be a person aggrieved" for any of the decisions mentioned in subsection (1). This is despite the fact that a parent has to be a party to the training contract if it involves a minor. The effect of s. 230(2) of the Act is that the parents of Miss French have no standing to file an appeal. The Act does not prohibit a minor from commencing proceedings for an appeal under s. 230, however, it would be one of very few pieces of legislation that permit a minor to institute proceedings in a court or tribunal. In the circumstances I will leave my comments there, however I believe that the issue of whether a minor should be able to institute appeal proceedings should be further considered by policy makers'. (The challenge did not succeed as the student was too young to participate in the necessary work requirements.)

53. *Ronald Ferguson and Department of Education* [1999] QIRComm 82 (28 April 1999); 161 QGIG 30.
54. Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report No 84 (1997) [13.4].
55. Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report No 84 (1997).
56. Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report No 84 (1997) [13.11].
57. Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report No 84 (1997) [13.53].
58. Australian Institute of Criminology, *Crime Facts Info No. 106: the Age of Criminal Responsibility* (2003) <www.aic.gv.au/publications/cfi/cfi106.html> at 2 December, 2005.
59. Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report No 84 (1997) [13.137].
60. *In the Matter of an Application by the Children of L* (unreported) Family Court of Australia 30 January 1997 per Mushin J.
61. See, eg, the *Queensland Youth Charter Statement of Commitment* <http://www.youth.qld.gov.au/charter/statement.htm> recognising the CRC right for those under 18 years of age, and that the 'government will also seek the participation of those under the age of 12 when it is appropriate to do so', perhaps a more age-based than evolving capacity focus, at 2 December 2005.
62. Moira Rayner, 'Self, Self-esteem and Sense of Place: An Australian Framework for Children's Rights Claims in the 1990s' in K. Funder (ed), *Citizen Child. Australian Law and Children's Rights* (1996) 33, 52.
63. At the time of writing, Western Australia was in the act of passing legislation increasing the school leaving age to 16 in 2006 and 17 by 2008.
64. YPETA s 11.
65. YPETA s 19.
66. S 13; s 22 places the same requirements on non-government schools.
67. New South Wales Department of Education & Training. (NSWDET) *Statistical Bulletin. Schools and*

Students in New South Wales, 2003 (2004).

68. *Privacy Act 1988 (Cth)*. (This legislates also for the Australian Capital Territory (ACT) but not other states.)
69. Parents pay fees to non-government schools and therefore a contractual relationship exists between the schools and the parents regarding provision of education services to the child.
70. S 18A(4), 'Results relating to a particular student may however be revealed as follows: (a) to the student or to anyone with the student's consent, (b) to the student's parents (or his or her other caregivers)...'.
71. NSW Department of Education and Training, *Code of Conduct* (2004) s 30(1), (2)(c).
72. *Privacy Code of Practice: Department of Education and Training* s 3.2.
73. *Privacy Code of Practice: Department of Education and Training* s 16.1.5.
74. *Privacy Code of Practice: Department of Education and Training* s 16.1.10.
75. *Privacy Code of Practice: Department of Education and Training* s 16.1.6.
76. *Education Act 2004* (ACT) s 25(1).
77. 27. 'Complaints by minors and people with an impairment (1) A complaint may be made (a) by a child; or (b) on behalf of a child by (i) a parent of the child; or (ii) any other individual chosen by the child or by a parent of the child; or (iii) any other individual who, in the opinion of the Privacy Commissioner, has a sufficient interest in the subject-matter of the complaint'.
78. S 27(2).
79. An example, the *Personal Information Protection Act (2004)* (Tas) s 18(1) 'A person may make a complaint...'.
80. *MT v Director General, NSW Department of Education & Training* [2004] NSWADT 194.
81. *MT v Director General, NSW Department of Education & Training* [2004] NSWADT 194, para 46.
82. *MT v Director General, NSW Department of Education & Training* [2004] NSWADT 194, para 184.
83. *Privacy Act 1988* (Cth) s 2.5(a).
84. *Privacy Act 1988* (Cth) s 2.4(c).
85. For example, *Education (General Provision) Act 1989* (Qld) s 34.
86. *Education (General Provision) Act 1989* (Qld) s 44.
87. *Education (General Provision) Act 1989* (Qld) s 35, 45.
88. A sexual relationship with a child under 16 years of age to whom one is not married is a crime under the *Crimes Act 1958* (Vic) s 47A.
89. *DPP v Ellis* [2005] VSCA 105 'In the statement provided through his solicitors the victim endeavoured to paint a different picture. He said that the relationship started innocently at basketball practice and that thereafter he took the initiative on every occasion. In his own words, he knew that her husband was away and he pursued her. He said that he had been in a sexual relationship before and denied any adverse effects on his life. On the contrary, he said, from not knowing where he was heading in school, he had begun a pre-apprenticeship course to become an electrician and was working part time as a tiler on his free days. His father had left six years before and he had had to grow up and mature faster than the average 15 to 16 year old. At all times he knew what he was doing and wanted to do it.', para 21.
90. *DPP v Ellis* [2005] VSCA 105.
91. *Crimes Act 1958* (Vic) s 45.
92. *DPP v Ellis* [2005] VSCA 105: In the original trial, the judge had noted 'In the eyes of the law her conduct is, in my view, no more acceptable than would be the conduct of a 34-year-old male who, in similar circumstances, took advantage of two 14-year-old infatuated girls.', unpaged. At the time, similar cases involving male adults and young girls in their care had been heard with much more serious penalties. However, in this case, the boy was stating that he believed he was more mature than the average 16 year old.
93. *Criminal Code Act 1899* (Qld) s 215, although it is a defence for the accused to have believed, 'on reasonable grounds, that the child was of or above the age of 16 years' (similarly, for a sexual relationship, s 299B(5)).
94. NSW Department of Education and Training, *Code of Conduct* (2004).
95. NSW Department of Education and Training, *Code of Conduct* (2004) s 28.4.
96. NSW Department of Education and Training, *Code of Conduct* (2004) s 28.3.

97. These cases both contrast with *X and the NSW Department Of Education And Training* [1999] NSWIRComm 160, where the student involved was 18 years old. The teacher was still found to have breached the appropriate code of duty, the student indicated a breach of trust by the teacher, and the teacher had breached the trust of the parent. Hence, legal age is not a factor in student rights to sexual relationships with teachers.
98. Ludbrook, above n 18, 89.
99. Ibid.
100. National Children's and Youth Law Centre, *Know Your Rights at School* <www.lawstuff.org.au> at 2 December 2005.
101. Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report No 84 (1997) [10.12], [10.13].
102. Ludbrook, above n 18, 9293.
103. Ludbrook, above n 18, 93.
104. *Cope v Girton Grammar School Limited* [1995] VADT 2, unpaginated.