

## EDITORIAL

Education law is an area that gives rise to issues of many different types. In this volume, contributors address issues that range from the rights of children in schooling across international jurisdictions, to conflicting responsibilities of parents and children with respect to children, to university academic staff's rights in university employment. While these areas might appear disparate, they have in common an underlying theme, individual freedoms and responsibilities within institutional contexts.

Joan Squelch, a regular IJLE author and major contributor to education law research in Australia, examines the banning of religious dress and symbols in public schools, an area she appropriately identifies as 'emotive and controversial'. The core issue is the counterbalancing of rights to freedom of religion and its practice, including the wearing of religious symbols, and limitations that can be imposed by societies for a range of general policy purposes. Squelch's discussion draws on caselaw from the United Kingdom (UK) and the European Court of Human Rights, concluding with implications for schooling in Australia. Always interesting in caselaw in this area are decisions handed down by courts in nations with strong religious unity. These decisions often show these nations to be more restrictive in religious freedoms within education contexts, particularly with respect to religious clothing, for reasons that include not only security and safety but also the maintenance of religious neutrality in schooling.<sup>1</sup>

Two contributions in this volume address the nature of academic freedom for university academic staff. Mary Wyburn, a previous contributor to the journal, provides us with a comprehensive and informative discussion of the recent litigation between the University of Western Australia (UWA) and Dr Bruce Gray, and others,<sup>2</sup> a matter that went as far as the High Court for consideration. The basic question was the entitlement of the UWA to profits from a pharmaceutical discovery by Dr Gray.

Wyburn's article provides a thorough analysis of the facts prior to the legal actions and the interplay between parties. She also provides a description of the work undertaken by Dr Gray in terms understandable to laypersons. Wyburn explains the context of the discoveries and the timelines for the work, the contributions of various parties, and, perhaps most significantly, the way in which the UWA was managing its commercialisation of university work and intellectual property policies at the relevant time. This article may be the most comprehensive and explanatory analysis of this series of cases and their context that will be published.

The findings of the cases may be considered fairly clearcut. It was held that under his contract of employment as a university academic staff member, Dr Gray was not employed to 'discover' but to conduct research. Therefore, commercial outcomes of any discovery were not covered by an employment agreement. When UWA applied to the High Court of Australia for special leave to appeal, the application was heard and rejected as not providing questions of law appropriate for the High Court to determine.<sup>3</sup> The *UWA v Gray* litigation provides, however, considerable food for thought for those negotiating terms of employment and the limits to academic freedom. The decision has prompted universities around Australia, and possibly internationally, to revisit their employment contracts with staff and intellectual property and commercialisation policies.

University income from research and international student activities is increasingly important for Australian universities, as discussed by James Stanton. Stanton, a first time contributor to the journal and recent graduate of the University of Sydney Law School, addresses more generally the impact of university policy focus on commercialisation and intellectual property. He provides an insightful, at times colourful, consideration of the changing nature of universities in a global context and concerns such as international student recruitment and overall maintenance of 'standards'. Commercialisation of universities and impact on staff and student freedoms have been raised in our journal previously by contributors such as Jim Jackson.<sup>4</sup> In a broader focus, Stanton also visits the *Gray* case analysed by Wyburn as well as a prior significant Australian commercialisation-academic rights case, *VUT v Wilson*.<sup>5</sup> Both Wyburn and Stanton discuss the requirement for employees to act 'with good faith and fidelity'. However, the boundaries of such terms clearly will need to be determined in context.. Wyburn's and Stanton's articles show that more legal claims can be expected in the university setting in the future as the vagaries and, perhaps, vagueness, of modern university and academic roles are challenged. Stanton challenges us to identify the legal and policy status of the modern university in global environment. We think it will be interesting to watch the career of this new lawyer.

The final two articles in this volume address specific but significant issues with respect to children in schools. Ralph Mawdsley and James Mawdsley address the critical issue of school and teacher responsibility for implementing, by inaction rather than action, a Do Not Resuscitate (DNR) order for a child in a classroom. Inclusive education and the goal of including all students in regular classrooms, including students with identified disabilities or special learning needs, is commonly practised in many nations including the United States of America (US) and Australia. In the US, the requirement for a free, appropriate public education (FAPE) for students with disability under the *Individuals with Disabilities Education Act* (IDEA)<sup>6</sup> makes inclusion of these students in regular classrooms a government priority. Inclusion of students with a variety of medical conditions leads to specific requirements and actions for student management, often by supporting aides or school nurses, sometimes by teachers. Mawdsley and Mawdsley confront us with a different issue — a requirement for inaction by teachers or others in a school when a child with a DNR order enters a life-threatening state in a classroom. Mawdsley and Mawdsley explore the existing limited caselaw on the matter in the US and relevant medical policy, and different interpretations of parents' rights to impose the DNR order on schools. A major concern is the effect on other students, particularly young children, of watching a classmate die without any apparent assistance by an adult. The effect on teachers is also a concern. While this is an education law topic most of us would prefer to avoid, it has become a practical issue for education institutions.

The final article in this volume addresses a concern common to schooling everywhere — student truancy. Improving both student completion of schooling and student participation, by attendance, are major policy goals of Australian education. One factor may be the increased age of compulsory attendance or compulsory participation in education for young people,<sup>7</sup> in general to the age of 17 years. However, recent years have seen increased federal and state and territory legislated penalties in Australia for student truancy as well as a range of policies designed to control truancy. As Elizabeth Dickson and Terry Hutchinson explore, such legislation has increased 'responsibilisation' of parents in the government school sector for the actions of their children. Dickson and Hutchinson explore the extent of truancy as well as the extent to which legislated penalties are being enacted in Australia, including federal welfare reform policy. Their discussion shows that there is still considerable work needed in finding effective processes to

address this issue. Perhaps a core problem is finding ways to ensure students are more engaged in their own education so that truancy is less attractive. Dickson and Hutchinson call for more basic research examining effective strategies in other nations for application in Australian contexts. We invite our readers to provide us with insights from their own experiences on this very important matter.

### Thanking our Reviewers

It is common practice for journals to publish lists of reviewers of journal articles. This serves to acknowledge the very important work of reviewers who donate time and expertise to the journal. The list of reviewers also shows the academic and legal standing of those who review IJLE submissions. Reviewers' comments are always taken seriously in respect for the reviewer's time and expertise. Authors tell us the constructive comments of reviewers are very helpful and do lead to the creation of a better publication. We, the editors, also publish in IJLE as we consider it the primary source of informed discussion on Australian and New Zealand education law matters and of growing significance as a quality international publication in education and the law. When one editor submits a paper, the other manages the confidential and blind review process. Like other contributors, we also find reviewers' comments helpful.

The final pages of this volume list the reviewers who have considered submissions over the last five years. We thank you for this valuable contribution to research, policy and practice in education law.

We wish you all a very successful 2011 and look forward to joining you in person at the 20<sup>th</sup> Annual Conference of the Australia and New Zealand Education Law Association to be held in Darwin, Northern Territory, from 2 to 4 October 2011.

### ENDNOTES

- 1 See, eg, Tie Fatt Hee, 'Constitutional Challenge to Freedom of Religion in Schools in Malaysia' (2008) 13(2) *Australia & New Zealand Journal of Law and Education* 89.
- 2 See, eg, *University of Western Australia v Gray* (2008) 246 ALR 603.
- 3 *University of Western Australia v Gray* [2010] HCATrans 011.
- 4 See, eg, Jim Jackson, 'Regulation of International Education: Australia and New Zealand' (2005/2006) 10(2)/11(1) *Australia & New Zealand Journal of Law & Education* 67; Jim Jackson, 'Commonwealth Controls Over Australian Schools, TAFEs and Universities via Tied Funding: Time for Constitutional Reform?' (2008) 13(2) *Australia & New Zealand Journal of Law & Education* 101.
- 5 *Victoria University of Technology v Wilson* (2006) 68 IPR 597.
- 6 20 USC § 1400 et seq.
- 7 See, eg, *Education Act 1990* (NSW) s 21B, *School Education Act 1999* (WA) s 6, *Education (General Provisions) Act 2006* (Qld) s 231.

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