EDITORIAL

This is the final issue of the IJLE that we shall be editing. Our 8 year term as editors is at an end and we are leaving you with a bumper issue of 7 articles. The breadth of coverage of the articles yet again indicates the breadth of the legal controversies and conundrums which engage and exasperate those of us who study and work in the education environment. The first article in this issue explains the growth of Commonwealth government funding control of schools in Australia and the impact, particularly for independent schools, of government policies which link that funding to mandated outcomes. The next three articles address disability discrimination matters – reasonable adjustment to support the inclusion of students with disabilities in 'mainstream' schools, the maintenance of academic integrity in assessment adjusted for students with disabilities, and non discriminatory approaches to the disciplining of students with disabilities. The fifth article revisits a topic which occasioned some controversy in the last issue of the journal — corporal punishment in schools. The sixth article focuses on the problem of plagiarism — and how to avoid it — in Australian law schools. The final article looks at the ramifications of Australian corporations law for Australian universities.

Joy Cumming and Ralph Mawdsley are authors who have written many articles for this journal. Here, in a companion piece to the article on US funding and school autonomy published in the last issue of the journal, 17(1), they have collaborated on an article which is acutely relevant as we write this editorial — the public funding of Australian schools. Commonwealth parliament is poised to debate the recommendations of the Gonski report on the funding of Australian schools and schools are poised to prepare for what could be the biggest shakeup in funding arrangements in decades. Cumming and Mawdsley write about a feature of current funding arrangements which is, perhaps, likely to remain unchanged even if new funding formulae are agreed — the linking of a school's government funding entitlement to its achievement of an ever increasing range of government mandated objectives, from financial accountability to flag flying. They provide a fascinating exposition of the history of Commonwealth funding of Australian schools dating back some 50 years and referencing the stoushes, strikes, and High Court challenges which have characterised the battles between the Commonwealth and the States, and the public and independent education sectors, over who gets what money and with what strings attached. Cumming and Mawdsley are rightly concerned that, as the Commonwealth has increased its funding of the independent sector, it has decreased the independent nature of that sector. Their article suggests that the current push towards a national education agenda — a national curriculum, national assessment programs — will further erode the vital variety of independent schools.

Tamara Walsh, an associate professor in the TC Beirne School of Law at the University of Queensland in Australia, is a new author to the journal. Walsh is a well known campaigner for social justice for homeless people and the victims of poverty and domestic violence and in her article, here, applies her powers of advocacy to promote the appropriate accommodation of students with disabilities in mainstream schools. Australian disability discrimination legislation obliges education institutions to make reasonable adjustment to their policies and practices to support the inclusion of students with disabilities. Walsh's article explores the scope of the concepts of 'adjustment' and 'inclusion' by analysing the conciliated outcomes of Australian complaints of discrimination in education and the results of a survey of primary school educators which explored the effectiveness of adjustments in promoting inclusion of students with disabilities.

Walsh tries to account for a puzzling inconsistency — while the courts have persistently rejected claims of disability discrimination, complainants are generally successful in respect of matters which are resolved at conciliation. It appears that fine arguments about the way the law is to be applied are not influential in the conciliation process and, instead, good will prevails in brokering an outcome beneficial to the affected student. Good will, Walsh argues, is not enough, however, to guarantee a good education for every child with a disability. She calls for a greater alignment between law and policy and for a legislated right to an inclusive education at a mainstream school.

Elizabeth Dickson writes regularly about disability discrimination in education and in her article for this issue of the journal she analyses the intersection between reasonable adjustment to assessment and academic integrity. There is resistant belief, perhaps, that changing an assessment item to remove barriers inherent in it which may defeat the ability of students with disabilities to display what they have learnt, is to somehow provide an undeserved benefit to those students. Appropriate adjustments to assessment will not compromise the validity of a test, or advantage students with disabilities. Dickson explains that case law and legislation have made it plain that education institutions are not required to pass a student simply because they have a disability. Nor are they required to compromise the inherent requirements of a subject in order to produce an exam that a student with a disability will pass. Case law and legislation do make it plain, however, that adjustments to assessment conditions, and even, sometimes, to assessment items may be required to allow students the opportunity to communicate their understanding of core knowledge and skills.

The third article about disability discrimination in this issue of the journal addresses the problematic area of the disciplining of students with disabilities. The article is co-authored by Charlie Russo, a US education lawyer who is very familiar to readers of this journal, and a new author to the journal, Allan Osborne. Osborne is a retired principal of a school in Massachusetts, in the United States of America, and it is clear that his experience of managing a school informs the policy sections of the paper. The article starts with a comprehensive explanation of the workings of the US *Individuals with Disabilities Education Act* ('*IDEA*'), which mandates a 'free appropriate public education' in the 'least restrictive environment' for American school students with disabilities. Unlike in Australia, in the US there is a right to an inclusive education. How to manage the disciplining of a student with a disability, particularly when the behaviour attracting the discipline is caused by the disability, has troubled educators and lawyers around the world. The particular appeal of this article for educators lies in its well-informed and practical guidelines for managing the discipline process. Although the guidelines are informed by US legislation and jurisprudence, much of what is covered will resonate for educators in other jurisdictions.

Obonye Jonas, a lecturer in the Law Department of the University of Botswana and a Practising Attorney, is another new author to IJLE. He is also our first author from Botswana. We are very pleased to see that the reach of the journal is expanding and that we have something of interest to offer to people of many nations. Corporal punishment still occurs in schools in Botswana, despite the fact that it has been 'banished', to use Jonas's appropriately evocative term, from schools in other African jurisdictions and in many other jurisdictions around the world. This scholarly article is useful for its collation and clarification of information about the status of corporal punishment in a number of jurisdictions which do not often attract the attention of 'western' media: the laws prohibiting corporal punishment in schools in nations as diverse as Namibia, Zimbabwe, Fiji, India and Israel, for example, are explained. Most importantly, however, the article is a compelling argument for the prohibition of corporal punishment in Botswana. Jonas explains that the current position offends not only international conventions,

but also Botswana's own Constitution. It is to be hoped that this article attracts the attention and interest of Botswana law makers.

Michelle Evans, of the School of Law, Murdoch University, in Western Australia, is yet another author new to the pages of IJLE. Her article considers strategies for reducing plagiarism offences by law students. In Australia, being found to have committed a plagiarism offence is a reportable matter prior to admission to legal practice. The case law surveyed by Evans illustrates the often catastrophic career impact for offending students. Australian courts have made it clear that, as plagiarism is an offence of dishonesty, it is not consistent with proof that one is a 'fit and proper person' to practise law. Evans argues that the solution lies not in detection and punishment but in prevention. Evans argues that detection mechanisms are not consistently successful and that too many students are unaware of what is and what is not plagiarism. She suggests that students need to be better educated in university policies about plagiarism, in its ethical ramifications, and in proper referencing techniques. What makes her article particularly useful is that Evans gives practical examples of how these educative strategies can be embedded in the law degree.

The final article in this issue is written by John Orr, a lecturer in the School of Law and Justice at Southern Cross University in Northern New South Wales. John Orr is to take over the editorial role that we have so enjoyed for the past 8 years at IJLE. His article, here, is evidence that the journal is passing to safe hands. It addresses the vexed question of whether universities, as public institutions, are subject to the regulation of the *Corporations Act 2001* (Cth). Orr's article gives an interesting insight into the history of the university and sets out with welcome clarity the complex arguments which have been made about the university's corporate status. While Australian universities have adopted many corporate trappings in the way they face they world, Orr concludes that they are likely not subject to the corporations act. Their operations are regulated, instead, by a web of other legislation addressing such matters as occupational health and safety, privacy, consumer protection, auditing and financial and funding requirements. Orr concludes with a persuasive justification for exempting universities from regulation by the commercially focussed Corporations Act — universities, despite their often enormous budgets, are not defined by their commercial operations; they are defined, instead, by their 'important higher education and research activities for the benefit of the society within which they endure'.

We are grateful to ANZELA for entrusting us with the journal for these past 8 years. We have corresponded with many interesting authors, with interesting ideas, from interesting places. We have learnt, and so have the journal's readers, an enormous amount about the way education institutions are regulated by and engage with the law not only in Australia and New Zealand, but in nations as diverse as Ireland and South Africa, Malaysia and the United States. Donna Bennett and her team at Office Logistics, including Stephanie Hodgson and Janelle Carleton, have been invaluable supporters for our work as Editors and have ensured that each issue of the journal has gone to press with minimal fuss. We would like to thank them, and most especially, Stephanie, for their unflagging support for us as Editors. We wish John Orr every success as he takes the journal into the future.

Joy Cumming
Elizabeth Dickson