

If it's not on the syllabus, you don't need to know it

By Nathan Henrich

Think about this scenario: a student currently sitting the Higher School Certificate wants to know what mark he or she needs to achieve to be placed in the top performance band. In theory, this should be a simple and relatively easy process. In practice, it's not. Having just recently completed my HSC, as well as currently tutoring high school students, I know too well the lack of transparency with regards to the education system in New South Wales.

Many would argue that the only information needed for students to succeed, would be information relevant to the subject content. However, from my experience, the Higher School Certificate is much more complex than that and that adequate knowledge on aspects such as the moderation and scaling of marks and school ranks, should be made easily available for those who choose to use them.

You may be asking, how is this relevant to law and social justice? I believe that a fundamental aspect of a democratic society is to provide the right to access

to information and free speech. It is my belief that these rights are currently being breached.

The first issue deals with the right to access information. Currently, the right to access information is protected at a federal level under the *Freedom of Information Act* 1982 (Cth) and at a state level under the *Freedom of Information Act* 1989 (NSW).

Although both Acts aim to ensure that transparency and democratic accountability is upheld, often they are not. An example which highlights the lack of transparency in the system happened recently in 2005, when the Board of Studies denied Bill Kanafani (a former HSC student) access to his raw examination marks.¹

Another example occurred in 2001 where former HSC student, James King (a UNSW Law graduate), lodged a successful freedom of information request which was initially rejected, however approved by the tribunal.² The data surprised many, due to the significant differences in marks, for

example, a raw mark of 66 in Extension English was scaled to 92, which placed the student in the top band.

Many would question why the Board would 'cover-up' such information? The answer is simple – the Board of Studies itself (in its rejection letter to Mr Kanafani) stated that the publication of raw marks would “assist in the determination and then public disclosure” of the full scaling process and obviously, they do not want this.

Whether this is because they believe some may deem scaling to be unfair, or whether they fear this information could hinder the reputation of the New South Wales Higher School Certificate is unknown. However what is known is that there is a clear breach of the right to free information.

The importance of this issue is not solely based on the right of students to have access to all possible information which may assist them in their studies. It can be suggested that by denying the public access to public information, the government of the day will be able

to avoid a sufficient evaluation (and if needed) scrutiny of its decisions.

This idea has been confirmed by the NSW Ombudsman, in his recent special report to Parliament entitled *Removing nine words: Legal professional privilege and the NSW Ombudsman*. The report stated that “sometimes, government agencies are intent upon preventing us from doing our job, challenging our involvement in matters and wherever possible preventing us from accessing the information.”³

This was a direct accusation that the current NSW Labor Government was using their rights to legal professional privilege (which refers to a law which allows them to refuse access to exempt matter or an exempt document) to avoid a “fair, reasonable and appropriate scrutiny by an independent watchdog body” and that the claims for legal professional privilege were often “shown to be without foundation, and appear to be primarily aimed at frustrating our investigations”.⁴

The report made specific reference (Case Example 2) to the Board of Studies’ refusal to release sixty-six documents which contained information about HSC exams (which included the student’s raw marks) to the student or the office of the Ombudsman.

The Ombudsman stated that “evidence indicated it was possible a number of letters from the Office of the Board of Studies (OBOS) to the student had been either drafted by their legal advisors or were largely based on legal advice” and that “being unable to review those 66 documents prevented us from being able to make recommendations for improvement to some of the OBOS’ practices”.⁵

Therefore it is clear that the Government (and its agencies, such as the Board of Studies) are clearly using their right to legal professional privilege and external legal advice to avoid the release of information which they believe would damage their credibility. This notion is also expressed by the Ombudsman himself, who stated that the government’s position “stands in contrast to the stated intent of the government to be more open and more accountable”.⁶

The second issue refers to the right to free speech. In 1997, the *Daily Telegraph* labelled the Mount Druitt High School Class of 1996 as the “class we failed” upon discovering that none of the students achieved a Tertiary Entrance Rank (UAI equivalent at the time) above 45.7. As a result, the NSW Government introduced legislation which protected the publication of

school results. Currently, the *Education Act 1990* (NSW) prohibits anyone to “publish any ranking or other comparison of particular schools according to school results, except with the permission of the principals of the schools involved, or identify a school as being in a percentile of less than 90 per cent in relation to school results, except with the permission of the principal of the school.”

Over the past decade, apart from selective schools, the majority of schools which have made the ‘Top 200 list’ have been private schools. I would like to clearly state that I do not believe private schools are better than their public counterparts in any way, however many who do look at the rankings come to that conclusion. Therefore, it is a possibility that these results can influence the perception of voters on the Government’s performance in relation to education.



Hence, as expressed by George Williams, this can be seen as political censorship.⁸

It is my belief, that school ranks should be openly published. I believe parents have the right to know where a school stands relative to other schools when making the decision to enrol their children. I also believe that school ranks should be openly published to increase the transparency and accountability of schools. Although it is unfair to compare schools with extremely different contexts (such as an academically selective school to a rural school), comparing similar schools is a reasonable approach. If a school performs poorly in comparison to other comparable schools and/or past performances, action must be taken to correct this to ensure that the highest possible level of education is provided.

The publication of school ranks does not have to be solely for the purposes of criticism and scrutiny. Schools which perform well should be celebrated and the teachers and students should be congratulated on their efforts. I believe my high school is a good example of how rankings can be effectively utilised. For most years, our school ranked reasonably well and the graduating class and teachers were congratulated on their efforts. However, in the year

before my own, our ranking dropped significantly and although no official comments were made, many of the teachers (including my own) pushed us to achieve and that payed off, as my cohort performed fairly well overall.

Therefore, it is my belief that transparency is the key to a good education system. The Federal Government has attempted to do this through launching the 'My School' website,⁹ comparing school performances in the NAPLAN tests. If the NSW government is serious about increasing transparency and accountability, more must be done. Recommendations have included changes to the current legislation as well as the reduction of the State Government's legal professional privilege.¹⁰ Until the NSW government 'opens-up', it continues to hinder the education system of this state, denying students access to crucial information as well as denying the chance to hold the education system accountable for any flaws which may exist. ■

References

- [1] Justin Norrie, 'Students battle to learn raw HSC marks', *Sydney Morning Herald* (Sydney), 21 December 2005, <<http://www.smh.com.au/news/National/Students-raw-scores-seen-as-threat-to-HSC/2005/03/11/1110417692293.html>> at 5 July 2010.
- [2] Ibid.
- [3] Bruce Barbour, 'Removing nine words: Legal professional privilege and the NSW Ombudsman' (Special Report to Parliament, NSW Ombudsman, 2010), 15.
- [4] Ibid.
- [5] Ibid.
- [6] Imre Salusinszky, 'ALP Government Hiding Behind Legal Tricks says NSW Ombudsman', *The Australian*, 11 June 2010, <<http://www.theaustralian.com.au/news/nation/alp-government-hiding-behind-legal-tricks-says-nsw-ombudsman/story-e6frg6nf-1225878157945>> at 11 July 2010.
- [7] Nick Ralston, 'No League Tables for New South Wales Schools', *Sydney Morning Herald* (Sydney), 6 May 2009, <<http://news.smh.com.au/breaking-news-national/no-league-tables-for-nsw-schools-firth-20090506-av0g.html>> at 11 July 2010.
- [8] George Williams, 'League Tables Law is Simply Rank', *Sydney Morning Herald* (Sydney), 17 November 2009, <<http://www.smh.com.au/opinion/politics/league-tables-law-is-simply-rank-20091116-ii8k.html>> at 11 July 2010.
- [9] Barry McGaw, 'My School site brings fair comparisons', *Sydney Morning Herald* (Sydney), 28 January 2010, <<http://www.smh.com.au/opinion/politics/my-school-site-brings-fair-comparisons-20100127-mz0x.html>> at 3 July 2010.
- [10] *Supra* n 3.

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