The Enrolment Contract

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David Ford is the senior partner at Emil Ford & Co - Lawyers of Sydney. He practises mainly in commercial and education law. He has advised well over 50 educational institutions throughout Australia. David is also often engaged by schools to investigate allegations against members of staff.

David is President of the NSW Chapter of the Australia & New Zealand Education Law Association (ANZELA). He is a member of the American and South African Education Law Associations and of the Editorial Board of the CCH *School Principals Legal Guide.* He is the editor of *Education Law Notes,* which keep schools throughout Australia up-to-date with education law developments. David is also a former Chairman of the Council of MLC School, an independent school for girls in Sydney.

David has presented at conferences in the United Kingdom, Belgium, the Czech Republic, South Africa, New Zealand and throughout Australia, and published numerous papers on topics as varied as student rights; teachers' liability; tort law reform; investigations; risk management; teachers, school counsellors and confidentiality; bullying and cyber bullying; outdoor education; misleading and deceptive conduct in school marketing; multiculturalism in education; discrimination; and child protection. He regularly presents in-school seminars for both teachers and administrators on education law matters. He also consults to schools and their boards on governance issues.

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What is this paper about?

This paper is about the contract between independent schools and parents. "The [school] operates a business. It enters into contracts with parents to provide a service and parents agree to pay fees for that service."[1] This contract is the fundamental source of the obligations that the school has to its parents and that they have to the school. Accordingly, it is vital to ensure that:

- the contract is only entered into when the school has decided that it has the resources to provide its educational offering to the student and that the parents have the resources to pay for that service; and
- the contract includes all appropriate terms.

I will consider the steps that lead to the formation of the enrolment contract and the importance of ensuring that marketing the school does not involve misleading and deceptive conduct. The impact of disability discrimination legislation will also be considered at this point. I will show how a comprehensive enrolment policy can be an important tool to ensure that the enrolment process proceeds smoothly.

I will suggest matters that ought to be dealt with by the enrolment contract. While in most cases there will never be any need to go back to that contract during the course of a child's education, the need to do so in a few cases underlines the importance of getting it right from the outset.

Sadly, some parents will find themselves in difficult financial circumstances during the course of their children's education. Their ability to pay school fees can be affected. The enrolment contract will be the basis of any recovery action. I will consider issues related to this.

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[1] *Wright v Christ College Trust* [2006] TASSC 107 (15 December 2006) per Tennent J at Para 22

Misleading and Deceptive Conduct

The Legislation

Schools must not engage in conduct that is misleading or deceptive or is likely to mislead or deceive. Section 52 of the *Trade Practices Act (Cwlth)*, which apples to trading corporations, states that:

> *A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.*

Section 42 of the *Fair Trading Act (NSW)*, which applies to everyone, states that:

> *A person shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.*

The courts have said that not-for-profit organisations can be engaged in trade or commerce. Schools are clearly in this category. While the actual activity of teaching students is not considered to be in trade or commerce, the conduct of the business of the school is[2]. Therefore, schools must be mindful of these provisions when drafting their prospectus or other marketing brochures.

What must be proved?

A student or parents seeking to get a remedy under the misleading and deceptive conduct provisions must prove that:

1. the school made a misrepresentation; that is, that its conduct in all the circumstances conveyed a representation that was inconsistent with the truth;

2. the misrepresentation was misleading or deceptive; that is, that the school's conduct led them into error or misconception;

3. they relied on the misrepresentation; that is, they were induced to do something or refrain from doing something as a result of the misrepresentation;

4. as a result, they suffered loss or damage.[3]

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[2] *Plimer v Roberts* [1997] FCA 1361 (5 December 1997)
[3] *Zhang v St Mark's International (General)* [2005] NSWCTTT434 (28 June, 2005); *Forwood Products Pty Ltd v Gibbett* [2002] FCA 298 (20 March 2002)

Where it is alleged that a brochure contains misleading or deceptive representations, the test is whether what is written is misleading, deceptive or likely to mislead or deceive a reasonable person - a hypothetical person who is an ordinary or reasonable member of the class of persons who will see the brochure. Accordingly, reactions to the statements in the brochure that are extreme or fanciful are excluded as being unreasonable.[4] Similarly, strained, false or unreasonable interpretations are rejected. One must ask how the ordinary, reasonable reader would understand the brochure. Where only a part of the brochure is relied upon as being misleading or deceptive, that part must be read in the context of the whole. It is wrong to select some words as misleading or deceptive if, in their context as a whole, they were not capable of being so.[5]

Once misrepresentation has been shown, a formal disclaimer won't be effective. If a disclaimer is to be effective, it must be by enabling the conduct as a whole (including the provision of the document containing the disclaimer) to be seen as not misleading.

It is not relevant that the school did not intend to mislead or deceive. Accordingly, there does not need to be evidence of actual deception, although that will be required before damages will be awarded.

Damages

A person who suffers loss or damage by the misleading or deceptive conduct of another person may recover the amount of the loss or damage by action against that other person.

In assessing loss or damage for the purposes of sections 82 and 87 of the *Trade Practices Act*, it is necessary that a comparison be made between the actual position of the person allegedly suffering loss or damage, and the position in which that person would have been but for the contravening conduct. Economic loss may take a variety of forms. But whatever the form of economic loss, when it is said that the loss was, or will probably be, caused by misleading or deceptive conduct, the person must show that he or she has sustained (or is likely to sustain) a prejudice or disadvantage as a

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[4] *Campomar Sociedad, Limitada v Nike International Limited* [2000] HCA 12 (9 March 2000)

[5] *Australian Competition and Consumer Commission v Dell Computers Pty Limited* [2002] FCA 847; *Tobacco Institute of Australia Limited v Australian Federation of Consumer Organisations* (1992) 38 FCR at [22]

result of altering his or her position under the inducement of the misleading conduct.[6]

A person who is misled suffers no prejudice or disadvantage unless it is shown that he or she could have acted in some other way (or refrained from acting in some way) which would have been of greater benefit or less detriment to him or her than the course in fact adopted.

The Application Form

This form usually contains the first information a school obtains about a prospective student and his or her parents. It is therefore important that the form be designed to obtain information which will assist the school to decide whether or not to make an offer of a place at the school for the student.

Accordingly, parents ought to be asked to:

- disclose any physical, learning or other disabilities of their child;
- disclose their marital situation; and
- provide copies of Family Court orders.

The school should also insist that both parents sign the Application Form.

The Application Form should have attached to it the school's current enrolment terms to which the parents will have to agree if a place is offered to their child and they accept the offer. This does not mean that the parents are agreeing to those terms when they submit their Application Form. Rather, it means that they know in advance that they will be asked to agree to such terms or to similar terms that will be current when and if an offer of a place is made to them.

Disabilty Discrimination

The Legislation

Schools are bound by the *Disability Discrimination Act 1992 (Cwlth)* and the *Disability Standards for Education* which commenced in 2005.

Section 22 of the Act provides:

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[6] *Fennell v Australian National University* [1999] FCA 989 (22 July 1999) per Sackville J at Para 10

(1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's disability or a disability of any of the other person's associates:

(a) by refusing or failing to accept the person's application for admission as a student; or

(b) in the terms or conditions on which it is prepared to admit the person as a student.

(2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's disability or a disability of any of the student's associates:

(a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority; or

(b) by expelling the student; or

(c) by subjecting the student to any other detriment.

(2A) It is unlawful for an education provider to discriminate against a person on the ground of the person's disability or a disability of any of the person's associates:

(a) by developing curricula or training courses having a content that will either exclude the person from participation, or subject the person to any other detriment; or

(b) by accrediting curricula or training courses having such a content.

(3) This section does not render it unlawful to discriminate against a person on the ground of the person's disability in respect of admission to an educational institution established wholly or primarily for students who have a particular disability where the person does not have that particular disability.

(4) This section does not make it unlawful for an education provider to discriminate against a person or student as described in subsection (1), (2) or (2A) on the ground of the disability of the person or student or a disability of any associate of the person or student if avoidance of that discrimination would impose an unjustifiable hardship on the education provider concerned.

Part 4 of the *Standards* deal with students with disabilities seeking to enrol at a school. Section 4.2 is relevant to this discussion:

4.2 Enrolment standards

(1) The education provider must take reasonable steps to ensure that the prospective student is able to seek admission to, or apply for enrolment in, the institution on the same basis as a prospective student without a disability, and without experiencing discrimination.

(2) The provider must ensure that, in making the decision whether or not to offer the prospective student a place in the institution, or in a particular course or program applied for by the prospective student, the prospective student is treated on the same basis as a prospective student without a disability, and without experiencing discrimination.

(3) The provider must:

(a) consult the prospective student, or an associate of the prospective student, about whether the disability affects the prospective student's ability to seek admission to, or apply for enrolment in, the institution; and

(b) in the light of the consultation, decide whether it is necessary to make an adjustment to ensure that the prospective student is able to seek admission to, or apply for enrolment in the institution, on the same basis as a prospective student without a disability; and

(c) if:

(i) an adjustment is necessary to achieve the aim mentioned in paragraph (b); and

(ii) a reasonable adjustment can be identified in relation to that aim;

make a reasonable adjustment for the student in accordance with Part 3.

(4) For this section, the provider has taken reasonable steps to comply with subsection (1) if the provider has complied with subsection (3).

Note See Part 10 for exceptions to the legal obligations set out in the standards. These include a provision that it is not unlawful for a provider to fail to comply with a standard if, and to the extent that, compliance would impose unjustifiable hardship on the provider (section 10.2).

Section 3.4 deal with reasonable adjustments:

3.4 Reasonable adjustments

(1) For these Standards, an adjustment is ***reasonable*** in relation to a student with a disability if it balances the interests of all parties affected.

Note Judgements about what is reasonable for a particular student, or a group of students, with a particular disability may change over time.

(2) In assessing whether a particular adjustment for a student is reasonable, regard should be had to all the relevant circumstances and interests, including the following:

(a) the student's disability;

(b) the views of the student or the student's associate, given under section 3.5;

(c) the effect of the adjustment on the student, including the effect on the student's:

(i) ability to achieve learning outcomes; and

(ii) ability to participate in courses or programs; and

(iii) independence;

(d) the effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students;

(e) the costs and benefits of making the adjustment.

Note A detailed assessment, which might include an independent expert assessment, may be required in order to determine what adjustments are necessary for a student. The type and extent of the adjustments may vary depending on the individual requirements of the student and other relevant circumstances. Multiple adjustments may be required and may include multiple activities. Adjustments may not be required for a student with a disability in some circumstances.

The Standards generally require providers to make reasonable adjustments where necessary. There is no requirement to make unreasonable adjustments. In addition, section 10.2 provides that it is not unlawful for an education provider to fail to comply with a requirement of these Standards if, and to the extent that, compliance would impose unjustifiable hardship on the provider. The concept of unreasonable adjustment is different to the concept of unjustifiable hardship on the provider. In determining whether an adjustment is reasonable the factors in subsection 3.4 (2) are considered, including any effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students, and the costs and benefits of making the adjustment. The specific concept of unjustifiable hardship is not considered. It is only when it has been determined that the adjustment is reasonable that it is necessary to go on and consider, if relevant, whether this would none-the-less impose the specific concept of unjustifiable hardship on the provider.

(3) In assessing whether an adjustment to the course of the course or program in which the student is enrolled, or proposes to be enrolled, is reasonable, the provider is entitled to maintain the academic requirements of the course or program, and other requirements or components that are inherent in or essential to its nature.

Note In providing for students with disabilities, a provider may continue to ensure the integrity of its courses or programs and assessment requirements and processes, so that those on whom it confers an award can present themselves as having the appropriate knowledge, experience and expertise implicit in the holding of that particular award.

Relevance of Standards to enrolment

The *Standards* require schools to take reasonable steps to ensure that the student is able to seek admission to, participate in or access support services on the same basis as a prospective student without a disability and without experiencing discrimination.

Put very briefly, this means that the school must:

- consult the parents (and student) about how the disability affects the student's ability to participate in the school's courses; and

- in light of that consultation, decide what adjustments are required to ensure that the student can participate in the school's courses on the same basis as a student without the disability; and
- if adjustments are necessary, make reasonable adjustments.

In determining whether an adjustment is reasonable, the school ought to consider:

- the student's disability;
- the views of the student and the parents;
- the effects of the adjustment on the student and others; and
- the costs and benefits of making the adjustment.

Schools do not have to make adjustments which are not reasonable. If the adjustments are reasonable, the school still need not make them if it can show that to do so would cause unjustifiable hardship.

Section 11 of the Act states that, in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including:

(a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and

(b) the effect of the disability of a person concerned; and

(c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship; and

(d) in the case of the provision of services, or the making available of facilities - an action plan given to the Commission under section 64.

The school should not rely only on the information contained in the application form when considering whether or not to offer a place. Rather, the school ought to gather further information by interviewing the parents and prospective student, checking references, examining school reports and, in particular, finding out more about any disabilities that the prospective student has.

Schools should have a comprehensive enrolment policy dealing with these disability discrimination issues. The policy should act as a checklist for

principals and enrolment officers to ensure they avoid disability discrimination claims.

The Enrolment Contract

Making the Contract - Offer and Acceptance

Contracts are formed when one party makes an offer which is accepted by the other. The enrolment contract is no different. It is important for schools to ensure that their process is such that they are making the offer to the parents. This allows the school to dictate the terms upon which the offer is made. While in theory parents could come back with a counter offer, in practice parents will either accept the offer or reject it.

Accordingly, schools ought to ensure before making an offer that:

- the parents are able to afford the school fees and other expenses of their child attending the school;
- the parents are familiar with the school's culture or ethos and are comfortable for their child to be educated within it; and
- the school is able to make whatever reasonable adjustments are required for students with disabilities.

Once satisfied of these things, the school normally makes an offer of a place at the school for the child to commence in a particular year. The parents are asked to accept the offer by signing a document which sets out the terms of the contract and by paying an enrolment fee. When this happens, the enrolment contract has been made.

Just as it was important to ensure that both parents signed the original Application Form, so too it is very important to ensure that both parents sign the document which accepts the school's offer of a place. If only one parent signs, the enrolment contract will be with that parent. This means that if it becomes necessary to sue for unpaid fees the action can only be maintained against the parent who signed the acceptance. Clearly, it is in the school's interests to be able to recover unpaid fees from either or both parents.

Both parents should be asked to sign the acceptance form even if they are separated or divorced. If the Application Form is signed by only one parent, the school is on notice that it may have to contract with only one parent if it proceeds with the enrolment. The school, of course, may do this. However,

it is important that the school do so deliberately and with full knowledge of the situation of the parent with whom it is dealing.

Schools must be very careful to ensure that the process of offer and acceptance, of entry into the enrolment contract, is carried out carefully. If it is not, unexpected and unfortunate consequences may follow. In a case where the local guardian of an overseas student had signed the Acceptance of Offer document, the Court said that this document did not amount to an undertaking to pay the fees as the guardian had not been a party to the arrangements with the school for the student's enrolment and the school had not previously obtained the guardian's acceptance of financial responsibility for the student. In fact, the guardian understood that the student's parents would pay the fees. Rather than an acceptance to pay school fees, the Acceptance of Offer document was held to be one touching upon the day-to-day relations between the school, the child and the guardian with whom the student lived. Thus, the guardian was not liable to pay the fees. The school had pursued the wrong person. It should have commenced proceedings against the parents. As a practical matter, recovery from people overseas is difficult. It is therefore important that a school secure its position by either getting fees paid in advance or by having a binding agreement from some local person of substance to pay the fees.[7]

Terms of Enrolment

Most schools already have various terms that they expect parents to agree to in the enrolment contract. Unfortunately, in some schools, these terms were prepared many years ago and no longer represent best practice or even the day-to-day practice of the particular school. It is important that the terms in the enrolment contract are reviewed regularly. For example, terms dealing with the issues dealt with in the following paragraphs should be included.

The "Helicopter Parent" clause

Given the unfortunate tendency of some parents to hover over schools and teachers in a misguided attempt to promote the best interest of their child, it is prudent to include in the enrolment contract some terms covering the expectation that parents will abide by school rules and policies and participate appropriately in their child's education and the school's activities.

[7] *Bankstown Grammar School Limited v Park* (No 2) [2000] FCA 1218 (1 September 2000)

It is also a good idea to include in the terms provisions giving the school some flexibility as to the courses it offers from time to time and noting which courses and activities are compulsory. This will usually prevent complaints from parents looking for some excuse not to pay fees.

Conducting searches

Teachers may conduct searches under their general authority as teachers. That authority may be extended or limited by contractual arrangements in the case of independent schools. While it is appropriate to ask for permission, this is not strictly necessary if the authority to conduct a search has not been abolished or limited by the enrolment contract. It is even better if the right to search student's belongings or person is specifically mentioned in the contract.

Discipline

Parents should be asked to agree to support the school's discipline policy and to acknowledge that students may be suspended or expelled for serious breaches of that policy.[8]

Health and Safety

A school has a duty of care to its students[9] and should not try to avoid its obligations in that regard in its terms. Fortunately, it has been some time since I have seen a term like this in an enrolment contract:

> *We understand that while everything is done to ensure both the comfort and safety of those attending the school and whilst every care will be exercised by those who are in charge, the school and its staff are not responsible in any way for any accident or sickness which may occur or happen through any circumstances.*

Those who included such terms often wrongly believed that such terms provided complete protection. In fact, they do not stop a student suing. The parents sign it. The child has the right to sue. Even if the child signed, it would not be effective as the child is a minor.

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[8] Reference to procedural fairness is sensible given that it is required for school registration: see my paper *Discipline and Procedural Fairness* (2008) available at www.emilford.com.au.

[9] See my paper *Tort Reform: Does it affect teachers and schools?* (2004) available at www.emilford.com.au.

However, it is reasonable for a school to expect parents to co-operate with it in fulfilling the school's duty of care. Accordingly, terms should be included requiring parents to keep the school fully informed of a student's health issues or other special needs. Likewise, the principal or his or her delegate should be authorised to consent to urgent hospital and/or medical treatment (for example injections, blood transfusions, surgery) for the student.

Privacy

The *Privacy Act* only regulates videos and photographs where the identity of the individual is apparent or can be reasonably ascertained.[10] Accordingly, if individuals cannot be identified from particular images, the School may use them as it pleases. However, in many photos found on school websites, it is quite easy to identify individual students.

I therefore recommend that school privacy policies and enrolment contract terms include statements allowing the school to take photographs and video footage of students and parents for use in school publications, on the school's website and in other marketing and promotional material.

Amending the Terms of Enrolment

Normally, a contract cannot be unilaterally amended by one party to it. An enrolment contract will normally cover a period of six to thirteen years. During that time, a school may wish to update its terms. To ensure this is possible, the terms should include provision for amendment subject to giving parents enough notice of the change to allow them to find another school for their child if they are not happy with the change.

Recovering Fees and other Charges

Have both parents sign!

I have already mentioned the importance of having both parents sign the Application Form and the acceptance of the offer of a place for their child at the school. As stated above, the school only has a contract with the people who accept the offer. Accordingly, the school can only seek to recover unpaid fees from the people who have accepted the offer. If only one parent has accepted the offer, the school can seek to recover fees from that parent alone.

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[10] This topic is explored in detail in Michael Winram's paper *Keeping Students and their Personal Information Safe from Predators, Parents, Teachers and Themselves* (2006) available at www.emilford.com.au.

Beware the Consumer Credit Code

Although most parents have good intentions when they enrol their children, occasionally, as all schools know, they are unable to pay school fees on time. Schools are often put in the awkward position of deciding whether to end the child's enrolment or to try to come to some arrangement with the parents to pay the outstanding fees by instalments. If a school agrees to an instalment arrangement, the school ought to ensure that it enters into a new contract with the parents that complies with the *Consumer Credit Code*. This code applies across Australia. Failure to comply with the Code can lead to civil penalties up to $500,000 and criminal charges so it is important to understand the school's obligations under the Code.

A Term's Fees in lieu of Notice

Typically, schools include in their enrolment terms provision for parents to give a term's notice that a student is to be withdrawn. This is followed by a statement that a term's fees will be charged where notice is not given. Is this enforceable? The law says "No" if it is a penalty but "Yes" if it is for "liquidated damages".

A penalty is a requirement to pay an amount of money to frighten the potential offending party into compliance. In other words, is the school threatening the parents when it says to them: "Give notice or pay up!"? Liquidated damages, on the other hand, are a *genuine pre-estimate of the damage* to the school of the parents' failure to give notice. To determine whether the term in the enrolment contract is a penalty or liquidated damages, one must look at the circumstances at the time the contract is entered into, not at the time of the parents' failure to give notice which may, of course, be years later. One must construe the contract to determine whether it was the *objective* intention of the parties that the term was to be a coercive penalty, or whether the intention was that it be a genuine pre-estimate of the value of the damage.[11] The *subjective* intention of the parties is irrelevant.[12] The name, if any, given to the payment in the enrolment contract is not determinative. In other words, to simply say that the term's fees in lieu of notice are a genuine pre-estimate of damage will not save the term if a term's fees were not, at the time the contract was made, a genuine pre-estimate of damage.

[11] *Boucaut Bay Co Ltd (in liq) v Commonwealth* (1927) 40 CLR 98, Isaacs ACJ at 107
[12] *O'Dea v Allstates Leasing System (WA) Pty Ltd* (1983) 152 CLR 359 Deane J at 400

I suspect that very few schools have inserted this term in their enrolment contracts after giving careful consideration to the damage they will suffer if a student is withdrawn without a term's notice. Having said that, it is no obstacle to the amount stipulated being a genuine pre-estimate of damage that the consequences of the breach are such as to make precise pre-estimation almost an impossibility. Indeed, that is just the situation when one needs to estimate the amount of the future damage. Of some comfort is that the High Court[13] has said that latitude must be given to genuine pre-estimates of damage, and that the sum must be "out of all proportion", or "extravagant, exorbitant or unconscionable" before being declared a penalty.

Family Law Considerations

The Family Court and Fees

The Family Court makes orders directed to the parties before it, usually the parents.[14] These orders cannot vary the terms of the enrolment contract. For example, if the Family Court has ordered the father to pay school fees in a situation where both parents have signed the enrolment contract, the school can, despite the Court order, sue one or both for any unpaid fees. If, in this situation, the school recovers some or all the fees from the mother, she may be able to recover them from the father because of the court orders but this is not the school's concern.

The Family Court and School Information

Family Court orders often refer to information that should be provided to a child's school and to information that both parents have a right to be given by the child's school. Such orders are binding on the parties to the dispute. It is important that the school is made aware of the court orders. Schools should not put obstacles in the way of compliance by the parties with the orders. Indeed, schools should wherever possible facilitate a parent's access to information and material concerning the child.

However, even though schools ought to facilitate the rights of parents under Family Court orders, it is not a school's role to oversee compliance with such orders by the parents concerned. A school principal has no authority from the Court either to oversee a parent's compliance with the orders or to enforce the orders.

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[13] *Esanda Finance Corp Ltd v Plessnig* (1989) 166 CLR 131 Wilson and Toohey JJ at 141

[14] For much more detail about the type of Court Orders schools should consider, see *Family Law and the Enrolment of Students* (2006) available at www.emilford.com.au.

The Family Court and School Reports

The information in school reports is personal information and therefore its use is governed by the *Privacy Act*. Under NPP 2.1(a), the use and disclosure of personal information is permitted for the primary purpose for which it was collected. The information in a school report is collected so that the school can record and follow the progress of a student. Personal information may be used for a related secondary purpose that is within the reasonable expectations of the student. Most students expect their school reports to be provided to their parents (whether or not they are living with their parents).

However, schools must be alert to particular family situations. For example, if there are orders of the Family Court directed at preventing a parent from knowing the whereabouts of a child (usually for safety reasons), the school ought not to send a school report to that parent. Hence, the importance for schools to obtain copies of current court orders from parents.

The Family Court, Schools and Sex Discrimination

Dr Hudson and his wife had separated before their child began attending a South Australian state school. It was not a happy family, having been before the Federal Magistrates Court and the Family Court 44 times before Dr Hudson brought a claim of sex discrimination against the school! [15]

One of the Family Court orders said that the mother had to enter the father's name and contact details as the second person to be contacted in case of emergency on any school enrolment form. The school knew of the orders. Dr Hudson complained that his telephone number was incorrectly noted on the enrolment form. The Tribunal said that the order was directed to the mother and did not impose an obligation on the school to ensure that the mother complied with the order. As noted above, schools are not enforcement agencies for the Family Court.

While it is expected that schools will respect court orders, it does not mean that wherever there has been a failure to comply with the orders by one of the parties to whom the orders are directed, resulting in a detriment or possible detriment to the other party, the school is guilty of discrimination on the ground of sex, against one of the parties. Dr Hudson lost.

[15] *Hudson v State of South Australia* [2008] SAEOT 8 (22 May 2008)

Five points to remember

The enrolment contract is one of a school's most important documents. Therefore, remember:

1. Get the enrolment process right!
2. Have a comprehensive enrolment policy.
3. Understand your disability discrimination obligations.
4. Keep your enrolment terms up-to-date by regular review.
5. Get both parents to sign everything.