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978-1-108-72476-0 — Law and Ethics for Australian Teachers
Mark Butlin , Noeleen McNamara , Kerrie Anglin
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LAW AND ETHICS FOR AUSTRALIAN TEACHERS

Coming to grips with law and policy can be daunting for beginning and established teachers alike. *Law and Ethics for Australian Teachers* provides an overview of the professional, legal and ethical issues teachers may encounter in the classroom and the broader school environment. This book breaks down the relevant case law, as well as state and territory legislation and policy, through an accessible and reader-friendly approach to help readers navigate these complex issues. Topics covered include duty of care and mandatory reporting, work health and safety issues, family court orders and parenting plans, suspensions and exclusions, and criminal law issues. The book also explores teacher registration, professional regulations, and the general ethical responsibilities of teachers.

Each chapter features definitions of key terms, case studies, detailed scenarios and scenario-based questions to help readers understand a wide range of professional issues.

Written by a team of authors with both teaching and legal expertise, *Law and Ethics for Australian Teachers* is an essential resource for pre- and in-service teachers.

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FOREWORD

I was a young principal in a remote high school in western Queensland for a period, and the school was running very smoothly – students working, teachers teaching and happy parents content with school operations. In the mail I received a subpoena to provide records on a previous student. I did not know her, and lots of questions were stirred up such as should I provide this information, what are the consequences if I do or if I don't comply with this, what form do I provide the information in, how do I get advice?

I have had 36 years in secondary education in Queensland – 22 of these years as a school principal. During this time, predictably, there have been many changes; however, our greatest responsibility as educators remains representing students, such that a teacher may be the only consistent voice in the care of a student. This has never changed – and nor it should.

It has been said that we live in a litigious world and this has become part of schools' collective thinking. Teachers and school leaders will encounter a legal situation at some time in their careers – being prepared for it is the logical approach. Exercising forward thinking is the best preparation and indeed considering 'what if' scenarios in conjunction with policy documents must now be undertaken prior to all activities, decisions and actions. Student protection is possibly one of the most important and high-risk areas that teachers and school leaders need to work in – seemingly on a daily basis.

In the current educational landscape, with many competing interests and challenges impinging on their role, teachers need to have a level of understanding of education law that relates to their daily work as educators. Even though studies have shown over the years that teachers are inadequately guided in this area in their initial teaching qualification, teachers do find themselves faced with dealing with a multitude of legal matters as part of their regular work. Duty of care in and out of the classroom; professional standards; child protection; mandatory reporting; following Family Court orders and judgments; bullying and cyberbullying; discrimination, particularly on the basis of disability; student discipline; privacy; social media implications; teacher registration and regulation; policy (e.g. education, government department and church); disciplinary proceedings; and professional ethics are the main legal frameworks in which teachers must work.

The area of education law is an ever expanding one where lawyers now practise in this space alone due to the growing workload and demand for such specialists. Helping

teachers and schools with writing contracts and interpreting documents while meeting compliance requirements was all that lawyers advising schools had to do once upon a time. Now, the field is so all encompassing that some schools have their own lawyer or compliance officer on site working full-time at the school. This trend is only going to become the more regular practice for schools. There is no doubt that teachers need to be cognisant of the law pertaining to the delivery of their job and school operation, for several reasons. First, they must be able to make and sustain sensible and reasonable decisions when turning their minds to the children entrusted into their care each and every day. Second, they need to know when they should be referring a potential legal matter to school leadership to ensure that the school's best interests are protected while also providing appropriate protection for the child in question. Third, they should have some legal understanding so as to not fear litigation for litigation's sake but instead know how and when the law will protect them when acting in the course of their employment. Finally, school leaders need to run the 'legal check' over most decisions. Baseless fear can negatively affect the decisions made by teachers and school leaders which can then have a detrimental effect on the students' learning. A common example of this is where teachers will not take students on a constructive and meaningful excursion as they fear legal consequences if a student is physically injured.

In days past, the art of teaching was grounded in the relationship between teacher and student and the transfer of knowledge between them. This remains fundamentally the same; however, teaching is now underpinned by an ever growing legal framework that pervades educators' thinking, affecting obvious aspects of school life such as roll marking, student protection, privacy matters (photos and names in school publications) and playground incidents. It is becoming a minefield for teachers who are not trained in the intricacies of the legal ramifications of acting or not acting.

So increasingly teachers must call on their knowledge of the laws and policies on the protection of students. I used to say that a teacher might need to draw on this knowledge once during his or her career; now, sadly, it might be several times a year.

The authors of this text firmly believe that having a little knowledge on legal matters as they pertain to the school environment – in other words, having a degree of 'legal literacy' – is an important aspect of a teacher's professional knowledge. A book such as this one is a valuable resource as it provides a wide coverage of the sorts of legal matters that teachers will find themselves involved in, wanting to know where their responsibility starts and stops. It provides a 'close at hand' source for teachers and pre-service teachers on legal principles and the implications of these in their daily work.

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The authors have a wealth of experience in both the education and law fields that will be evident in reading this book.

For contemporary teachers and particularly those seeking the position of school leader in the future, legal issues will continue to be part of their normal work – it has never been so important for all teachers and school leaders to have an understanding of their obligations and the implications of their decisions. To this end, I commend this work to you and encourage you to keep it as a resource going forward.

Andrew Pierpoint

President, Australian Secondary Principals' Association

Toowoomba, September 2020

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PREFACE

There is no doubt that teachers benefit from having some understanding of education or school law. Research shows that all teachers, including those who have moved to middle management or higher positions, need to have a degree of understanding of education law as it pertains to their employment roles. It is certain that parents are becoming more litigiously minded and, as a consequence, are more willing to become involved in legal battles with schools in the protection of their children. These legal scenarios are often acrimonious and damaging to all stakeholders including the child, parent/caregiver, school, teacher, principal and even the school authority. It is also certain that if teachers are able to avoid such legal tangles or even resolve them before they become litigious, it advantages all such key stakeholders. We, the authors, are not suggesting that all teachers should become lawyers or garner a comprehensive understanding of the law as it applies to the school environment. Not at all.

However, we agree with the research already undertaken, some of which is presented in this book, that having a degree of ‘legal literacy’ is valuable to help teachers know when to act and what to do in certain circumstances. It is also important to have some understanding of when a matter needs to be referred to the school leadership or even when to gain external specific advice from legal personnel to assist with a potentially damaging situation. Unfortunately, not many teachers are taught this knowledge in their undergraduate initial teacher education degree and tend to learn it ‘on the run’. This might manifest as a reactive reply to a matter that occurred in their classroom or while students were in their care as opposed to a carefully considered response to hopefully avoid any further legal haranguing.

This book endeavours to provide teachers, pre-service teachers, school leaders, school administrators and school authorities with some of that legal understanding in an accessible, easy-to-read volume that will assist educational professionals in a variety of ways and contexts. We have written about topics that you, as teachers and school leaders, are likely to encounter every week in your roles as education professionals. Topics covered in the book include, but are not limited to: duty of care; child protection and mandatory reporting; cyberbullying; understanding Family Court orders; anti-discrimination; and teacher disciplinary proceedings. We have attempted to unpack the current laws in Australia and explain them in a non-complicated way that is easy to follow. At the same time we have sought to provide real-life applications of the law to school situations that will assist your deeper understanding.

In law, ignorance is no excuse. Teachers cannot say that they did not know about a particular matter so as to avoid potential prosecution or a compensation claim being brought against them. It is assumed that teachers, along with all citizens, do possess some level of understanding of their legal rights and responsibilities. This book attempts to provide teachers and others working in primary and secondary school settings with that rudimentary level of legal knowledge.

As part of a PhD study (Butlin, unpublished), a small group of school teachers at an independent secondary school, including some heads of department, were surveyed to yield sample data as a precursor to collecting a larger quantum of information to be analysed and used to answer formal research questions. They were chosen at random from the one school where the researcher knew the Head of Senior Secondary School, a willing participant in the trial of the research survey. As well as answering research questions, the aim of the survey was to gain a more in-depth understanding of what teachers working in independent schools believe about the topic of education law. These analyses are explored in the full thesis to be published on the completion of the PhD inquiry.

A number of interesting and informative deductions can be gleaned from the sample data. Despite the small number, inferences can be made as there were sufficient teachers surveyed to establish common themes on a number of issues. First, all of the participants stated that they believed they held a ‘reasonable understanding’ or somewhere between a ‘limited’ and ‘reasonable understanding’ of education law. However, when questioned more specifically and deeply, this, unfortunately, was not the case. All participants were only able to demonstrate a narrow understanding of school law. An inference can be gleaned, therefore, that each participant’s overall perception of their level of understanding is higher than their actual level of demonstrated knowledge and understanding of the law as it relates to school environments.

Second, out of the 25 common areas of education law listed in the survey (e.g. cyberbullying) most participants identified that they encountered or were involved in nine or more areas each year in their day-to-day work as teachers in independent schools. They also reflected that they were, for the most part, confident in dealing with such matters when they arose in their schools. Again, this level of confidence was not matched when asked to demonstrate that sound level of understanding of these matters as they pertained to their workplace.

Third, when asked about their preferred method of gaining further knowledge and understanding of education law, it was interesting to note that having a textbook on the subject area was their equal second preferred alternative. Out of the variety of options available to them, having ready access to an authoritative text on education law was, in these teachers’ opinions, highly sought after. This supports the need for, and use of, this

textbook; it has been written so that such teachers and others, including administrators in schools, fellow teachers and pre-service teachers still studying to become education practitioners, can avail themselves of a comprehensive, easy-to-use resource.

Lastly, the areas of education law in which teachers need initial or further training were outlined in the survey. By far the most popular area, and by a significant margin, was the duty of care of teachers. The participating teachers identified clearly that this area was of most need or most pressing. As a result, the first chapter, and indeed the largest chapter, of this book covers the duty of care of teachers both inside and outside of the classroom. The next most popular issue for teachers to receive training in was teacher ethics. Professional ethics for teachers forms the second largest chapter of this text (Chapter 10). Excursions was another popular topic for which teachers expressed a need for further training. This is covered in the duty of care chapter. Staffing issues and teacher liability (which also encompasses duty of care) were commonly nominated as required training for teachers. These areas are also covered in Chapter 1. Child protection and mandatory reporting were sought-after areas of specialised knowledge that teachers were looking for. This area makes up the third biggest chapter of this book (Chapter 6). Finally, student disciplinary matters were a common thread of preferred training for teachers as far as school law is concerned. We have consequently dedicated a whole section of this book to this topic (Chapter 7). The remaining chapters in the book cover other important issues relating to education law, such as dealing with family law and discrimination matters in schools, and how they impact on teachers in their daily work.

This book has, as a result of the research undertaken in this sample study of independent school teachers, attempted to cover the areas of need and the issues that the teachers themselves wish to have specialised knowledge of. In this way the research has informed the book, and importantly, this text is offered as a useful and accessible resource for all teachers seeking to know more about where they stand on education law matters.

Law is renowned for its complexity, but we have tried to minimise this as much as possible, with language that is clear and straightforward, to enhance your understanding of and engagement with the content. We have covered a range of relevant topics on school law that are applicable to both teachers and school leaders alike. Each chapter contains learning objectives to assist you in working through the chapter, and clear and concise margin definitions of key terms for easy reading. Furthermore, each chapter contains case studies or scenarios to help explore the legal principles in a more practical manner. Finally, each chapter concludes with a case-study scenario for further reflection and study.

Mark Butlin

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