

Teachers And Their Knowledge Of The Law: What Level Of Knowledge Do Australian School Teachers Have About Australian Law And Their Legal Obligations And Responsibilities?

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Abstract : *School teachers undertake an incredibly important nonpareil role in our society. They have undertaken this role for centuries. Whilst they have the important role of delivering classroom instruction and curriculum in order to facilitate the learning of students, they also have both an implicit and explicit connection with the law. It is this connection to the law which has changed and increased with the professionalization of teaching, primarily over the past century. The undeniable stark reality is that many aspects of a school teachers role are guided by and regulated by both common and statute law. School teachers have legal obligations imposed upon them simply because of the position that they hold. That is because they are members of a particular professional group they have inescapable legal responsibilities and duties. Yet it is unclear whether school teachers are receiving sufficient instruction about the law and their professional legal responsibilities which is essential in order for them to fulfil their mandatory legal obligations. School teachers operate in an environment where their work is not only continually scrutinised and judged but it is also legalised. This study aims to examine one of the potential sources of knowledge that teachers have about the law and their legal obligations and responsibilities. This study measures the instances of and degree of legal education that is being delivered to school teachers by universities in Australia. Changes over a three year period of this information are specifically examined in order to see if there has been any measured difference in the level of legal information being provided to teachers by Australian universities.*

Keywords: *School Teachers, Legal Education, Legal Knowledge, Professional Responsibilities, Teacher Legal Education*

I. INTRODUCTION

Established literature reveals a general concern both in Australia and internationally with regard to the level of legal knowledge held by school teachers.[1][2][3][4][5][6] It is important that teachers have a sufficient understanding of the law for a number of reasons. These reasons are varied but include avoiding civil and criminal litigation that may potentially arise when a law or laws have been breached by a teacher or by a school which has a vicarious relationship with the teacher.[7] Whilst it is not the intention of this study to examine in detail what those legal responsibilities may encompass, it is sufficient to indicate that these responsibilities extend to both civil and criminal areas of the law, a breach of which could result in serious penalties for a teacher and/or a school.[8][9] What specific knowledge that teachers in Australia have is an important question to ask, but a difficult one to answer without examining the specific level of knowledge of every teacher in the country. This would be an overly onerous prospect. The level of knowledge that teachers hold will have a direct impact on how they perform their daily professional duties.[10] Teachers may inadvertently break the law if they are not aware of their legal responsibilities and this could have significant consequences for both the individual teacher, the school which employs that teacher and the schools governing body.[11]

Given that teachers in Australian schools must complete an officially recognised, accredited and regulated educational qualification prior to being permitted to work in the schooling environment, a significant source of legal knowledge for teachers will be that which they received during their formative years of educational study at an accredited university.[12] This is the type of instruction that they would have received as part their undergraduate or postgraduate course of study to become a school teacher. But this information could also be contained within a postgraduate course of study undertaken by an already practicing proficient teacher in

order to increase their level of skill and knowledge. This study reports on an analysis of information about university instruction gained via letters of inquiry undertaken three years apart, in order to examine the level of legal knowledge that school teachers in Australia hold about the law and any change(s) which may have occurred. The changes reflected during this three year period may indicate a trend that could be emerging in this field.

II. THE NEED FOR LEGAL EDUCATION

More than one commentator in the area of legal education has noted the urgent need for a system designed to manage the increased legal risks to the teaching profession.[13][14] This is not a new phenomenon, rather there has been a call for legal education to be given to all school teachers, preferably as part of their pre-service training, for a considerable period of time. Take for example the views of McLoughlin, Sametz and Strein, who in the 1980's surveyed a group of 284 students involved in pre-service teacher education in the United States.[15]

The findings of the McLoughlin, Sametz and Strein study made it very clear that trainee teachers had very limited knowledge of the law and in some instances the knowledge they had was systemically flawed. The finding of that study also indicated the very clear need for school teachers to be provided with legal training in order to properly perform their professional responsibilities. As a result of the findings of that study the authors make a plea for legal content to be included in all pre-service teacher education. They make this point very clear when they state:

Because our society is becoming more litigious, the need for colleges of education to adapt their curriculums to include legal issues...(is) essential.[16]

Pell too, whilst debating the nature and form pre-service legal education should take, acknowledges the long list of lawyers, academics and teachers who have argued in the United States since the 1970's for the inclusion of legal education into the mandatory training of all prospective school teachers.[17]

But perhaps it is the Australian, Stewart, who makes the most impassioned plea for legal education, after noting that there has been such a large change in the relevant legal circumstances affecting schools, he states that this area:

...necessitates urgent review of legal risk management policies and procedures in all educational institutions...the most important reason for enhanced legal risk management is coming from the inexorable demand for higher levels of accountability in the professions specifically and the community generally.[18]

Given the clear need for legal education it is important to realise the clear role that universities should take towards achieving this. Universities in Australia provide mandatory training for staff and are well placed to deliver what could be relevant mandatory content in relation to legal education for school teachers.

III. METHODOLOGY

To identify potential sources of the delivery of legal information to teachers, this study surveyed the entities responsible for the provision of teacher education located within all of the universities in Australia.[19] This survey was in the form of a letter of inquiry sent to every Australian university which undertakes a school teacher training course. The main focus of the survey was to determine what level of legal information was being given to trainee teachers at the stage of the formative process of them becoming teachers and thus the survey was specifically directed to the designated educational entities inside Australian universities. But the letter of inquiry would also potentially capture information contained in postgraduate type courses of instruction offered by Australian universities. In order to capture a range of responses and to illustrate if any changes may be occurring within Australian universities, the same letter of enquiry was sent three years apart. Thus the data presented in this paper represents two snapshots, each three years apart.

IV. LETTER OF INQUIRY

It is clear that data collection can be interactive or non interactive and there is considerable value in obtaining data from a variety of sources.[20][21][22] Of course it is acknowledged that all forms of research are inherently open to scrutiny and a letter of inquiry is no different in that regard. As Newlyn notes[23], all research methods draw some controversy, but nonetheless a letter of inquiry can be a useful method of discovering information without some of the constraints of other methods of research which can be very time consuming, costly or require expert knowledge of statistical analysis.[24][25] A letter of inquiry was chosen as the method of research for this study for a number of reasons. Principally a letter of inquiry has the opportunity to yield valuable data quickly and cheaply.[26]

A letter of inquiry is one source of obtaining information in a manner which is not as sophisticated as a formal questionnaire or a focus group but can be useful not just for triangulation purposes but also for the purpose of obtaining an integrated observation of all relevant information.[27][28] Leedy describes in

considerable detail the often overlooked value of obtaining information in this way. This author makes it clear that there are limitations within this methodology as the letter can be seen as obtrusive and risks reaching a target who may be inclined to be non responsive unless they can see the value of the research project for themselves.[29] Consequently researchers should be aware that no data may be obtained from this method or the information provided may be limited/generic in substance.[30]

An important element then of instituting a letter of inquiry is to direct the letter to the most appropriate target/audience.[31] Consistent with this method of data gathering in many instances is a need to follow the initial letter with either another letter or a concomitant telephone call to the intended recipient, which emphasises the value of the exercise.

At the commencement of this study, a letter of inquiry was directed to each university in Australia requesting information about any undergraduate or postgraduate course or informational material in regard to legal education for teachers which that institution might provide to either trainee or current practising teachers. It was important that the inquiry letter be directed the most appropriate audience and to this end the letters of inquiry were directed to the Chief Administrative Officer of the education entity within each university.

To strengthen the data obtained and to gauge whether there had been any change during the undertaking of this study, the same letter of inquiry was again sent to all universities three years later.[32] This letter was once again sent to the Chief Administrative Officer of the education entity within each university.

Since the letter sent to each of these entities contained details of the researcher's contact address, email address and phone and fax numbers the form of response used by each of these bodies varied. That is, some universities emailed a response, whilst some used a telephone call to respond and others posted a traditional letter. All of this data was collated for the purposes of analysis, but no differentiation has been made in the collected data to correspond with the method of response any particular university took.

Forty education entities were identified and contacted for both the original and subsequent letters of inquiry to be sent to. These entities sometimes represented a university that had multiple campuses with distinct education faculties/schools at each of these different locations. For example, Charles Sturt University had three separate campuses and three distinct education faculties (those being Charles Sturt University: Riverina, Charles Sturt University: Bathurst and Charles Sturt University: Albury) and as a result, each of these separate entities was sent a separate letter of inquiry on each occasion. If no response was received from each of the entities contacted after a period of three weeks, a follow up letter was again sent to the original recipient.

Of the 40 entities contacted initially, 27 replied to the letter of enquiry representing a response rate of 68%. Of the 40 entities contacted three years later, 31 replied to the survey representing a response rate of 78%. Table 1, below, more clearly shows these details.

Table 1
Statistical details of education entities contacted for information in regard to legal education provided to teachers

Letter of inquiry	Number of letters sent	Number of responses received	Percentage of responses received
Number 1	40	27	68
Number 2	40	31	78

Although in both instances there was a failure to achieve a 100% response rate, the data which follows nonetheless provides considerable evidence of the levels of legal information/instruction being offered to both preservice and practicing teachers, through both undergraduate and postgraduate level courses.

From letter of inquiry number 1, of the 27 universities that responded to the survey, 19 identified that they gave some form of legal information to their enrolled students, representing a percentage of 70. From letter of inquiry number 2, this figure had changed very little.

Of the 31 universities which responded to letter of inquiry number 2, 20 identified that they gave some form of legal information to enrolled students, representing a total of 65% of respondents. Table 2, below, better illustrates this information.

Table 2
Details of the number of education entities offering legal information to teachers

Letter of inquiry	Number of responses	Entities offering legal information courses	Percentage of entities offering these courses
Number 1	27	19	70
Number 2	31	20	65

From this data, it would initially seem that there is already a considerable effort amongst Australian universities to address the issue of the delivery of legal information for school teachers and therefore a recognition of the increasing role the law plays in the work of teachers. However a further examination of the type of information delivered to students of those courses is necessary as it is not just the fact that a university provides information that is relevant. The form, duration and content of that information are also very important in assessing the amount of legal information that is being provided, as clearly something as simple as a pamphlet being provided vis a vis a semester long unit of study are radically different.

V. ANALYSIS OF THE DATA RECEIVED FROM THE LETTERS OF INQUIRY

From the responses to the letters of inquiries it was evident that the form and extent of legal education varied considerably amongst the universities contacted. The content of courses ranged from providing information pamphlets, to inviting a union delegate to speak to prospective teachers for a one hour period, to entire subjects/units containing legal information for preservice or practicing teachers. To permit a better analysis of the information received and to better gauge the differences of the information that each of these entities provided, the information that was returned by these institutions has been broken down to fit into one of the following three categories, hereafter labelled as Category One, Category two and Category Three.

Category One consists of courses that offered only a very basic to minimal level of instruction, including those with merely pamphlets or the occasional lecture but not extending to a content of more than three hours in duration in totality. Category Two consists of those with more than three hours of content but less than the structure of a full semester course. Category Three consists of a minimum of one semester or longer course of instruction. Table 3, below, illustrates these categories of information more clearly.

Table 3
Details of the Category levels of legal information provided by Australian Universities

Category Level	Description of Category
One	Short courses of instruction. Basic information provided. Less than 3 hours in duration.
Two	Between 3 hours, but less than a full semester in duration.
Three	Detailed full courses of at least one semester in duration.

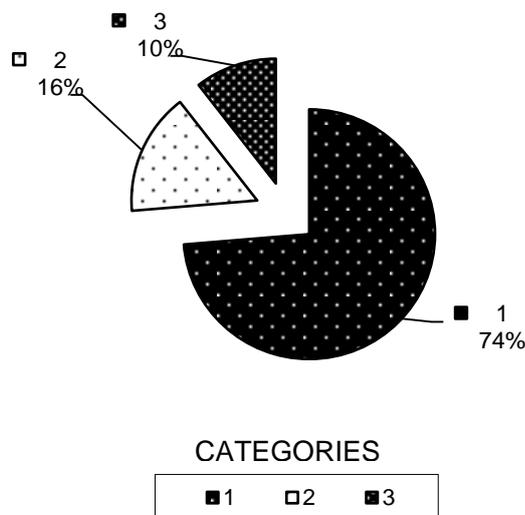
The information that the universities provided in response to the letters of inquiry has enabled each of the respondents to be placed into one of these three categories for responses received to both letters of inquiry. All of the responses received were of sufficient detail to enable the researcher to accurately determine this

categorisation. No categorisation has been possible with regards to those universities which did not respond to either of the letters of inquiry. Therefore it is possibly that all of those universities that did not respond to the letters of inquiry could be placed into any of these three categories or it is possible that they offer no legal information at all to school teachers.

Overall, the majority of educational entities that responded to each of the two the letters of inquiry could be placed into Category One, whilst very few were identified as Category Three.

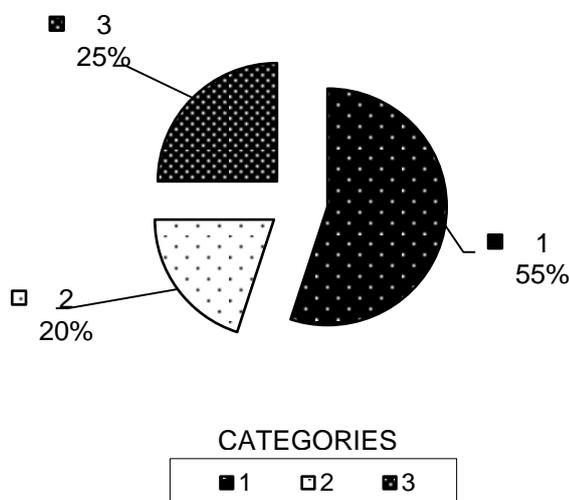
Examining the information received in more detail, it was found that of the 19 entities that responded to the first letter of inquiry, 14 (74%) were placed into Category One, 3 (16%) were placed into Category Two and 2 (10%) were placed into Category Three. Graph one, below, identifies the characteristics of these groups.

Graph 1
Level of legal education delivered at Australian Universities from first letter of inquiry



In the second letter of inquiry, these figures were relatively similar. Of the 20 universities which responded, 5 (25%) were identified as Category Three, 4 (20%) identified as Category Two and the remaining 11 (55%) were categorised as Category One. Graph two, below, shows these details.

Graph 2
Level of legal education delivered at Australian Universities from second letter of inquiry



VI. DISCUSSION

Using the raw data that is indicated above an important picture of the source of legal knowledge for teachers in Australia emerges. Fundamentally, what is evident from the data presented is that many Australian institutions have embraced the idea that teachers need to be given some form of legal knowledge as part of their professional training. That is, this is an area universities appear to recognise as one of importance. Given the fact that the majority of those that responded, 70% to the first letter of inquiry and 65% to the second letter of inquiry, delivered at least a basic level of legal education there can be little doubt on this point. Why there is this high level of exposure to legal information, even at its most basic level, is unclear, but it may be attributable, in part, to the growth of Child Protection Legislation in schools and other legal matters involving schools which have been more frequently occurring in courts and being covered by the media.[33][34] It may also be due to a variety of other factors which include requests from students for this material to be covered, requests from employers for this material to be covered, requests from educational unions for this material to be covered and/or requests from the government for this material to be covered as part of mandatory teacher training.

However what is of concern is the extent and detail of the information which is conveyed to students. Given that the majority of students at each of these institutions received only a very basic level of legal knowledge, the question clearly has to be asked just how effective was the information? It is not the intention of this study to examine this question. Although it may be that the universities had the best of intentions in attempting to provide a basic level of understanding to their students but this in turn may have simply made teachers more susceptible to potential problems as it is doubtful that any of these Category One courses was comprehensive enough for teachers to be able to identify or know how to handle potential legal problems in schools. What the respective universities may instead have done is alert teachers to a potential cornucopia of trouble which they should take every precaution to avoid thus promoting an over reaction on the part of the teachers. It may be the case that 'a little bit of knowledge is a dangerous thing'.

Given the three years between the letters of inquiry, it is also clear from the data that very few institutions have sought systematically to address this issue in a comprehensive or effective manner. If we gauge an effective course of instruction to be more than an occasional lecture delivered by a union representative or a mere one hour of information delivered over the normal three to four years of tertiary education (indicated above as Category One), then it is manifest that the majority of universities in Australia have not developed adequate levels of legal education for their students. The area of legal education for teachers is clearly one in which teachers are not being adequately informed, at least in the course of their dominant formative education.

It is of concern that there appears to have been little change to the issue of legal education during the three years between the letters of inquiry. The figures discussed above clearly show that from the first letter of inquiry 70% of respondents had some form of legal instructional and by the second inquiry letter three years later this had slipped to 65%. Given that these figures are reasonably static there is little evidence that universities have responded to the development of the need for this type of knowledge to be taught at a professional level. There appears to be little evidence that universities are aware of any need for an increase in the legal education offered to school teachers.

There is the realisation that to a certain extent universities are constrained in the content of their educational courses by the prerequisites required by the majority Government employer of teachers throughout the various states and territories of Australia who control the accreditation of educational programmes within the universities and the characteristics of teachers required for registration purposes. For example it is the case that the New South Wales Department of Education requires teachers to have developed certain competencies, such as basic computer skills and special education competencies in addition to mandatory curriculum developmental training in order for any potential teacher to be given permission to be employed within the State and universities are constrained by these prerequisites. On this basis, there is clearly a need for the Government to be made aware of the need for teachers to be given a professionally delivered course of legal education for the issue to be regarded as a priority by any university. At present the information received indicates that this is not occurring and as a result school teachers are being disadvantaged. Without adequate legal training school teachers are unable to properly perform their professional duties.

VII. CONCLUSION

Legal education for school teachers is important.[35][36] This is not a matter of dispute. Legal education is important for so many different reasons. Whilst it is not the intention of this paper to discuss the merits of legal education for school teachers, some of the valuable reasons include ensuring that an individual teacher cannot be prosecuted for breaching a duty that they may have owed without even realising it. As well as potentially reducing the risk of liability that an individual school may have for the school teacher employee. But knowledge of legal education should not simply be limited to issues such as these which revolve around risk minimisation, it extends much further than this. Given this undisputed level of importance, it is surprising to note the findings of this study. Those findings clearly indicate that over a sustained period, most universities in

Australia have not shown any interest in increasing the level of legal knowledge that they provide to school teachers. Most universities in Australia are instead content with providing very minimal or no level of legal education to school teachers.

Indeed the findings of this study indicate that the current levels of legal education being provided to school teachers are limited. Little change occurred during the three year period in which the same letter of enquiry was sent. It therefore seems that unless something significant changes there is unlikely to be much movement in these figures if similar research activities are conducted again in the future. If governments, schools, unions, universities and/or other interested parties want to see an improvement in the level of legal education possessed by school teachers then action must be immediately taken. Even if action were taken now to make it mandatory for every teacher to receive say 25 hours of instruction about the law as part of their compulsory university teacher education this will take a significant period of time to filter through to a situation where a majority of school teachers currently employed in Australian schools could be said to possess sufficient legal knowledge to perform their professional duties.

There should be little doubt that our society is becoming increasingly litigious and therefore there is an urgent need for teachers to be provided with an increased level of legal knowledge.[37] Increased legal knowledge by teachers means that teachers are better able to perform their professional duties and means that litigation could be reduced or avoided. The process of providing legal education to teachers should be commenced at the university level of training for school teachers. But as the law constantly changes that level of training will also need to be maintained throughout the entire career of the school teacher. It is certainly not the intention of this paper to suggest explicitly or implicitly that every school teacher requires such a level of instruction in the law that would be gained by the completion of a law degree, rather what is being suggested is that a Category One level of instruction, as described earlier in this paper, is insufficient and needs to change. If the level of legal knowledge held by school teachers in Australia is not increased we should expect that teachers are unable to perform their professional duties in compliance with the law.

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