

Australian School Teachers And The Law: An Ethnographic Examination Of Whether Teachers Require Knowledge Of The Law In Order To Perform Their Professional Duties?

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Abstract : *School teaching is one of the most rewarding professions in that it gives its members an opportunity to make an impact on future generations. It is the one profession which makes all other professions possible. School teachers undertake an inherently difficult and complex task which is of great importance to society. But school teaching is a complex profession that requires individuals to have not only sufficient knowledge of the areas in which they teach but also the ability to content with complex external pressures and regulations. School teachers work in an area which is heavily regulated by both common and statute law. But do school teachers require an extensive or even a basic knowledge of the law in order to undertake their professional activities? Literature has revealed a concern both within Australia and internationally regarding the level of legal knowledge held by members of the teaching profession. Concomitant with this is whether there is a need or a use for teachers to have any degree of knowledge of the law in order to perform their professional duties. Within the Australian context, this paper examines the views of teachers, the largest employer and a union body in order to examine whether teachers do require a knowledge of the law in order to undertake their professional duties.*

Keywords: *Legal Education for School Teachers, Professionals, Schools, Teachers, Professional Responsibilities, Law, Legal Education*

I. INTRODUCTION

School teachers are curriculum specialists, lesson preparers, leaders, role models, community representatives, confidants, mediators, nurses, judges, bureaucrats, psychiatrists, career advisors, agents of social change, motivators, counsellors, defacto parents, carers, police officers and lawyers.

This highlighted description provides a somewhat felicitous starting point for this paper. In this statement it is both explicit and implicit that the role of a modern school teacher is complex and diverse. Certainly there is an increasing expectation that it is not simply the role of a modern teacher singularly to deliver content. The role of a modern teacher has become much more complex than simply delivering specified curriculum content. Teachers undertake important, complex and diverse roles. Teachers provide students with purpose, set students up for success as citizens in society and inspire in them a drive to do well and succeed in life.

As it may relate to one of the roles of a school teacher, established literature reveals a general growing concern with the limited level of legal knowledge held by school teachers.[1][2][3][4][5][6][7][8] In separate publications Sungaila[9], Ramsay[10], Rossow[11] and Williams[12] note that the law is continually playing an increasing role in the everyday professional lives of teachers. Williams could not put it more succinctly when he states that the law is:

...playing an increasingly active role in education....and the momentum is unlikely to stop.[13]

So there exists a concern about the increasing legalisation of the field of education as this relates to the role of the school teacher.[14][15][16][17] Whilst there exists an extensive array of literature in the field of the legalisation of education this literature almost universally presupposes that teachers already have the relevant knowledge or that there is an implicit need for the knowledge to be held by teachers. What this literature seems

to ignore is whether there is actually a need for teachers to hold this knowledge. Therefore connected to the concern about the legalisation of education is a primary and initial question that should be posed. That question is whether school teachers require knowledge of the law in order to perform their professional duties. This is a distinctively separate question to whether the field of education is becoming legalised. It is the question of whether school teachers require knowledge of the law to perform their professional duties that is the focus of this research paper. In order to provide comprehensive information in order to address this research question, this paper undertook primary research and sought the views of teachers, a union body and an employer. The views of teachers were gathered from data obtained via the undertaking of a series of focus groups. The views of the union and the employer were gathered via letters of inquiry as well as from other sources of relevant information as are further detailed below. (Note: It is not the intention of this paper to enter into a debate about the esoteric nature of how 'law' may be defined.)[18]

II. METHODS OF RESEARCH

As part of a wider research project aimed at developing an understanding of the level of legal knowledge that was held by school teachers a series of 4 focus groups were conducted with school teachers.[19] It was via those focus groups that information emerged which could be categorised in order to address the research question posed in this paper. This information is detailed below in the section titled 'views of the school teachers'. In order to gather the views of the union and the employer the main data gathering methodology used was that of a letter of inquiry. However other methods, as detailed below, were also used in order to supplement and validate the information gathered from the letters of inquiry. A letter of inquiry is an often under utilised and misunderstood method of research.[20][21][22] Whilst not as sophisticated as a more established formal questionnaire or a survey, as Leedy discusses, it is nonetheless a recognised and valid method on research.[23] The validity of the data obtained from a letter of inquiry is increased when it is supplemented by other methods, especially where no response or a limited response is received via the initial letter of inquiry, this is a form of triangulation.[24][25][26] Letters of inquiry were chosen as the method of data gathering for the employer and the union for this paper for a number of reasons. Specifically a letter of inquiry has the opportunity to yield valuable data quickly and cheaply and can be useful where it may be difficult to illicit the types of responses required by asking people to complete a survey or undertake more time consuming tasks such as participating in focus group session.[27][28]

III. VIEWS OF THE SCHOOL TEACHERS

The views of whether school teachers believed that they required any degree of legal knowledge to perform their professional duties was obtained via the conducting of 4 separate focus groups. The size of each of the 4 focus groups varied between 8 participants and 16 participants. Members of the groups belonged to different levels of the teaching profession, including primary schools and high schools. To ensure that their comments were kept anonymous, participants were assigned a number between 1 and 53 when the comments they made were transcribed and used for the purposes of this and other research projects. The demographic characteristics of these focus group appear in the following table:

Table 1
Specific characteristics of focus groups used in this study

Category	Number
Gender	
Female	35
Male	18
Total	53
Age Range	
20-30	1
30-40	7

40-50	25
50-60	17
60+	3
Total	53
Teaching Experience Range in Years	
0-5	0
5-10	6
10-15	14
15-20	26
20+	7
Total	53
Level of Education Taught	
Primary School	30
High School	23
Total	53

Responses recorded from each of the 4 groups revealed that there was a need for teachers to hold a degree of legal knowledge. For example participant number 12 noted:

I know that this job is becoming increasingly legalised...the media seems fixated on educational negligence claims...just look at that boy in a Sydney school who was on Sixty Minutes and got money for simply being a homosexual...I'd hate to think that would happen at my school but it might.

Similarly participant number 52 noted:

My son has just started teacher training and he tells me that in his final year they will be having a representative from Federation [the union organisation] come to talk to them about education law...a simple talk isn't enough...we need to make sure that all new teachers are aware of their responsibilities and then we need to also make sure that current teachers know what to do...I want to be confident that the people I work with will do the right thing and that I can't be getting into trouble for their mistakes.

Participant number 49 made the point:

I want to know more about the law...it's that simple...and I think that it's the DET's responsibility to give us more information.

Even those teachers who believed that it was the responsibility of the employer to deal with legal problems acknowledged that it was important that teachers have a basic knowledge of the legal system in order to be better able to fully understand their employment situation, that is, their rights and responsibilities with respect to specific legal issues that arose in their work environment, such as individual contracts and superannuation. Participants number 15 noted:

I don't think that teachers need a detailed understanding of the law but it could be useful to become informed about industrial issues such as individual contracts which we keep hearing about in other jobs.

And participant number 17 stated:

I don't want to be burdened with a maze of legal knowledge...actually I'd prefer not to know at all...but I guess the reality is that this is a profession which if it wants to take itself seriously then it needs to get onto this issue.

IV. VIEWS OF THE UNION

Given that the largest number of teachers in Australia are employed within schools located in the state of New South Wales and given that more than 80% of New South Wales government school teachers belong to the same union, it can be theorised that the union represents a significant proportion of teachers' views. The main union for teachers in New South Wales is the New South Wales Teachers' Federation. In order to gauge the opinions of this body in relation to the research question of whether teachers require legal knowledge to perform their professional duties, this researcher sought to contact that body via a letter of inquiry. In order to gauge whether any change had occurred to the views of the union and whether the information that may be received could be validated, 2 separate letters of inquiry were sent. These letters were sent 3 years apart.

Each of the letters of inquiry that was sent to the union asked for responses, inter alia, to the following 2 questions:

1. What value does the Federation place on legal education for current teachers?
2. What importance does the Federation place on legal education for trainee teachers?

Details of the responses received to each of these letters of inquiry follows.

V. RESPONSE TO THE FIRST LETTER OF INQUIRY SENT TO THE UNION

When the first letter of inquiry was sent to the union, the response received was that these issues would be better directed to the unions' legal office which was run by a private legal firm. The union indicated that it would forward the letter of inquiry to that private legal firm. Unfortunately no further response was received from this firm despite follow up letters being sent directly to that office. Further attempts to follow up the letter of inquiry with telephone calls were also unsuccessful.

Given the non response of the union on this occasion it is difficult to draw any conclusive results which may be used to address this papers' research question. However there may be alternative methods which can be employed in order to gauge their interest in the legal education of teachers. These alternative methods are detailed below.

VI. RESPONSE TO THE SECOND LETTER OF INQUIRY SENT TO THE UNION

When the second letter of inquiry was sent to the union a different response eventuated. On this occasion the unions' welfare section responded with a detailed reply. That reply stated that the union had become increasingly aware of the concerns of its members in relation to the two questions posed (see above). It was the stated view of the union that it was becoming essential that all teachers, whether prospective or current, need to have detailed and specific knowledge of certain areas of the law whilst a basic knowledge of some other areas was also wise. This knowledge was needed to ensure that school teachers could satisfactorily discharge their professional duties.

VII. OTHER SOURCES OF INFORMATION FROM THE UNION

In between the 3 year period of the two separate letters of inquiry being sent to the union, there exists evidence from the union, which is distinctly separate from their formal responses, that they have an interest in the legal welfare of their members.

Within the 3 year period between the 2 letters of inquiry, no less than 38 separate articles appeared in the New South Wales Teachers Federation Journal, titled *Education*, which had some legal content. The *Education* publication is delivered to each of the Union's registered members and is also available electronically

on a regular monthly basis. Discovery of these articles was undertaken via a key word search which included searching for relevant words within the title or body of all union documents publicly available. Relevant key words in this instance were: 'law', 'legal', 'risk', 'responsibility', 'malpractice', 'rights', 'natural justice', 'mediation', 'duty of care' 'child protection', 'Act', 'Parliament', 'Bill', 'negligence', 'tort', 'crime', or 'statute'.

Some of these 38 articles include what appears to be series by the one author, Paul MacMahon, with titles such as *Teachers and the Law: Executive nightmares*, and *Teachers and the Law: Natural Justice*. Other articles include: *Don't incriminate yourself*, *When should you touch a child*, *Child protection laws deferred*, *Second thoughts on child protection*, and *Child protection laws amended and Medication of students update*.

This large volume of material suggests that the union is interested in the area of legal education for teachers and as such contrasts with their non response for information in the first letter of inquiry. The union demonstrates that they believe that it is of use for their members to have some degree of legal knowledge by producing articles for their members based on different contemporary legal issues. This is clearly done with the intention to educate current union member.

The detailed content and quality of these articles is a separate matter which is important, but one which is not within the scope of this paper. The publishing of these articles simply suggests that the union believes that it is of use for its members to have legal knowledge, it does not suggest that the union believes that its members require a significant amount of legal knowledge as a background to their professional careers and indeed due to the often specific nature of the publications may suggest that the union believes that its members only require knowledge of new or recently reformed areas of the law.

VIII. VIEWS OF THE EMPLOYER

As the largest employer of teachers in Australia, the views of the New South Wales government were important to obtain in order to address the research question of whether school teachers require knowledge of the law in order to perform their professional duties. To this end 2 separate letters of inquiry were sent to the employer at the same time that the letters of inquiry were sent to the union as discussed above. The letters posed, inter alia, 2 questions to the government employer relating to the focus of this paper, those being:

1. What value does the government place on the legal education of current teachers?
2. What importance does the government place on legal education for trainee teachers?

Details of the responses received to each of these letters of inquiry follows.

IX. RESPONSE TO THE FIRST LETTER OF INQUIRY SENT TO THE EMPLOYER

No formal response was received to this letter of inquiry. A follow up phone call was made in order to seek responses to the questions that had initially been posed to the employer. The details that follow relate to information received from that phone call.

Responses received from the employer were limited. It was the view of the employer that it took a great interest in the welfare of its employees no matter what the area of concern. But there was also a suggestion that the employer was aware of the increasing burden on its employees and that legal education may be something which was better left to trained members of the legal profession.

The following comments were noted:

Of course it's important for teachers to have some degree of legal knowledge just as it is for any citizen...

And:

DET policy documents are available to all teachers, and provide an outline of their rights and responsibilities ...

X. RESPONSE TO THE SECOND LETTER OF INQUIRY SENT TO THE EMPLOYER

As was the case for the first letter of inquiry sent to the employer, no formal response was received to this letter of inquiry. A follow up phone call was made in order to seek responses to the questions that had initially been posed to the employer. The details that follow relate to information received from that phone call.

Once again limited responses from the employer were noted. Specific comments noted included:

It is important for teachers to have a degree of knowledge of the law...that's one of the reasons that we've been making sure that full training is given in response to the DET's child protection guidelines.

And:

We're making sure that all new teachers have to have an understanding of these procedures (child protection)...

Given the limited responses of the employer on each of these occasions it is difficult to draw any conclusive results from their comments. However there may be alternative methods which can be employed in order to gauge their interest in the legal education of teachers and thus help to address the research question posed in this paper.

XI. OTHER SOURCES OF INFORMATION FROM THE EMPLOYER

The example of the letter of inquiry sent to the New South Teachers Federation, detailed above, demonstrated that the formal response received (or lack of it) may not be completely indicative of an organisations' attitudes/beliefs in relation to the content of the questions that they were posed. On the occasions that those letters were sent to the union an examination of relevant literature published by that body revealed further detailed evidence of their interest in the relevant areas. It was with this in mind that an attempt was made to gather further information on the beliefs/attitudes of the government employer which could complement that material which had been gathered from the limited material contained from the formal responses detailed above to the letters of inquiry that were sent.

A thorough search of all of the employer's relevant web sites, including www.det.nsw.edu.au and <https://education.nsw.gov.au/>, revealed no evidence of any legal information available to teachers. The entire web site was searched by generating a key word list which included searching for relevant words within the title or body of all content publicly available. In order to ensure parity, the same key word described earlier for searching through the documentation of the New South Wales Teachers' Federation was maintained. Relevant key words once again were: 'law', 'legal', 'liability', 'risk', 'responsibility', 'malpractice', 'rights', 'natural justice', 'mediation', 'duty of care', 'child protection', 'Act', 'Parliament', 'Bill', 'negligence', 'tort', 'crime', 'criminal' or 'statute'.

The closest relevant document was contained in a publication titled *Inform*, which is a publication issued both in hard copy and available online each month during the school term. A listing of the available editions from that publication revealed that the only possibly relevant document was on the issue of how to cope with a catastrophe. However, when viewed, that document contained no legal information about coping with catastrophes. No other documents or information relating to the law or legal information for schools or teachers was available via the employer's web sites.

Given the limited information obtained from the employer it is difficult to form any conclusive views in response to the question of whether the employer believes it is useful for teachers to have any degree of legal knowledge in order to perform their professional duties. A comprehensive documentary search was undertaken and it revealed that very little information is available to teachers or the general public with regard to the law.

XII. DISCUSSION AND CONCLUSIONS

The question of whether school teachers require legal knowledge in order to perform their professional duties is an important one. Consequences, including legal ones, flow from either a positive or a negative response to this question.[29][30][31] If it is decided that teachers do not require legal knowledge then the ramifications include that another person or another body may need to have responsibility for this area. If the area is ignored there is likely to be an increase in litigation following on from ignorance in this area and that is

likely to come at a significant financial cost. Community confidence and societal expectations may also suffer if it is decided that teachers do not require this knowledge. If it is decided that teachers do require a knowledge of the law a series of new questions arise. Some of these being, what areas of the law do teachers require a knowledge of, what level of knowledge do teacher require a knowledge of and how can this knowledge be effectively delivered to teachers?

This paper has sought to answer the primary research question of whether teachers require a knowledge of the law by examining the views of relevant stakeholders. Stakeholders that have been identified included teachers, a union body and an employer. It is acknowledged that the information obtained from each of these groups could be considered limited, but nonetheless definite views have been expressed that can be used to answer the question posed in this paper.

A view was expressed by the teachers who participated in the focus groups that they desired a formal system of legal education. Although there was some disagreement as to the depth and form that this level of expertise should take.

Evidence presented from the responses of the union, on behalf of its members, was that there is a need for the legal education of teachers and it is highly desirable for trainee teachers to be given a course covering legal education.

The limited responses from the government employer make it difficult to draw any comprehensive conclusions on their views. Other than general statements about everyone in society needing an understanding of the law, there was no overwhelming support for a view that teachers must have adequate legal knowledge to perform their professional duties. Certainly the lack of information regarding the law available via any of the employers publications, including its web sites, could be used to draw a conclusion that this is not an area of priority for the employer.

What was also important to note is that there was also no evidence from either the union body or the employer that either of these groups had a commitment to provide any more information or undertake any more training than was currently being provided.

What this information, or lack of information, then leads to is a somewhat muted response to the research question of whether teachers do or do not require legal knowledge in order to perform their professional duties. It certainly could not be claimed that there was overwhelming support from each of the three groups examined in this paper to support a positive response to this question. Conversely the limited responses from some of the groups could not be used to provide definitive evidence of a negative response to the research question.

However based on the data that was obtained from this research project a conclusion could be drawn that there is limited support for the view that teachers require legal knowledge in order to perform their professional duties. Although it is acknowledged that this view may be hard to sustain if examined on a wider scale, if the same research project was conducted again using the same research methods or even if the same research was undertaken again but different methods of data gathering were utilised.

What may be most perplexing is that although this paper could not provide comprehensive evidence of support for a positive conclusion to the research question posed, such a conclusion must be implicit when examining the extensive literature that exists in relation to education and the law. The plethora of literature that exists implicitly suggests that education and the law are inextricably linked. Specifically the field of education/teaching has progressively become more legalised. Teachers now have far more legal expectations of them than at any stage in history and therefore their roles as professionals are directly and causally linked to the law. To suggest that teachers could have no understanding of this or do not require an understanding of the law in order to perform their professional duties is absurd. It is certainly the case that a modern teacher no longer works in an environment where their sole responsibility is just to deliver content to students. The role of a modern teacher is much more complex than this. A modern teacher simultaneously undertakes many different roles, including that of teacher, carer, protector and role model.[32][33] Whilst it may not be prudent to suggest that the role of a modern teacher also includes that of a lawyer, as was indicated at the beginning of this paper, there can be little doubt that the role of the modern teacher is inextricably linked to the law and that teachers require a sufficient knowledge of the law in order to satisfactorily undertake their professional duties. To assert that a modern teacher could perform their professional duties without an adequate understanding of the law is illogical.

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