

Submission to the Inquiry into Teacher Education
of the
House of Representatives
Standing Committee on Education and Vocational Training
from the
Executive of the Victorian Chapter
of the
Australian & New Zealand Education Law Association Limited

Terms of Reference addressed in this Submission

This Submission seeks to make a contribution relevant to the general Term of Reference of the Inquiry into Teacher Education, namely:

To inquire into and report on the scope, suitability, organization, resourcing and delivery of teacher training courses in Australia's public and private universities. To examine the preparedness of graduates to meet the current and future demands of teaching in Australia's schools.

The Submission addresses specifically issues which may arise in the consideration of the following terms of reference:

7. Examine the preparation of primary and secondary teaching graduates to:
 - (i) teach literacy and numeracy;
 - (ii) teach vocational education courses;
 - (iii) effectively manage classrooms;
 - (iv) successfully use information technology;
 - (v) deal with bullying and disruptive students and dysfunctional families;
 - (vi) deal with children with special needs and/or disabilities;
 - (vii) achieve accreditation;
 - (viii) deal with senior staff, fellow teachers, school boards, education authorities, parents, community groups and other related government departments.

10. Examine the construction, delivery and resourcing of ongoing professional learning for teachers already in the workforce.

INTRODUCTION

Many important areas relating to professional practice need to be covered in teachers' professional education. In general, the areas which fare best in the scramble for a place in the sun of pre-service education are those relating to the fields of knowledge, skills and competencies which are mandated as prerequisite for entry to the profession by accrediting bodies and/or employing bodies or which gain priority from the need of an educational authority to implement preferred policy developments. Indeed the scope of the Terms of Reference for this Inquiry amply demonstrates this point.

These Terms of Reference also cover the ongoing professional learning of teachers. In the post-graduate education of teachers and educational administrators factors such as the need for individual teachers and administrators to develop specialist qualifications or to develop and diversify their qualifications to facilitate further career development, may determine what are the growth areas in the curriculum for the professional education of teachers.

This submission to the Inquiry into Teacher Education presents the arguments which support the following propositions:

- **that an introduction to the interface of law and education should be included in pre-service teacher education;**
- **that studies of the continuing developments in the field of education and the law should be required to be taken on a regular basis in teachers' continuing professional development courses; and**
- **that the field of education and the law is an appropriate subject in post-graduate studies in education which are undertaken by mature teachers and educational administrators.**

WHY SHOULD TEACHERS LEARN ABOUT EDUCATION AND THE LAW?

There are several reasons why it is useful for teachers to learn about the law relating to education, both in their pre-service education and training and in their ongoing professional development learning.

- **One reason is that teachers, like other professionals, need to be aware of their legal rights and responsibilities in carrying out their daily professional work.**

Some examples, which relate directly to the specific Terms of Reference of this Inquiry, may be noted. For example, they need to understand their responsibilities in relation to matters such as the physical care of children at school, classroom management and student discipline. Further, knowledge of a range of other statutory obligations, whether these be accreditation and registration requirements, the policies predicated on the operation of privacy law, or of anti-discrimination law, or the mandatory reporting of child abuse, or issues arising under family law, or occupational health and safety issues, or the conditions under which copyright materials may be copied for classroom use, is essential, as is knowledge of the development of the tort of negligence as it affects the parameters of professional negligence.

- **A second reason why it is important for teachers to understand the legal context of their professional work is that teachers in Australia need to be aware that the rights and responsibilities of parents, children and teachers in school education are determined by the operation of the legal framework of education.**

The extent to which each of the partners in the education of Australian children is empowered to influence the nature of the provision of education in the Australian community is determined by the legal foundations of the provision of education. Teachers do need to be aware of the law governing the terms and conditions of their employment and of the rights and obligations of their employing authority, whether that be a government authority or the governing body of a non-government school.

- **A third reason why the legal context of education needs to be understood by teachers is that teachers as professionals need to be aware of the interaction between the moral and ethical demands made upon them by society in their professional activities and the legal parameters of their professional tasks and powers.**

Teaching has traditionally been viewed as a caring profession, which has quite properly demanded of its members the highest standards of personal integrity and behaviour and of concern for the interest of its clients, the children and the parents. However, the business of teachers is teaching, and that is what their professional role empowers them to do. Nevertheless, it does not put the matter too highly to say that in their endeavours to meet the highest

professional standards in their teaching, many teachers have not infrequently found themselves dealing with other problems which their pupils may have. Teachers and administrators do need to be constantly aware of the legal implications of all aspects of their professional role.

- **A fourth reason why the continuing study of the interface of the law and education is of value is that it provides for mature and experienced teachers and educational administrators a useful comparative perspective on the governance of education.**

Not infrequently, models of educational organization and educational policies developed in Australia are quite properly influenced by what is perceived to be the international 'best practice'. However, other countries have quite different traditions in the governance of their educational systems. They may, for example, have entrenched constitutional legislation which provides for statutorily enforceable rights which may be relevant to the provision for education. They may, for example, have strong traditional local control in matters such as the taxing for and financing of education, or in the hiring and firing of teaching staff. The feasibility of adopting in Australian education models and practices which are effective within quite different traditions of the governance of education can only be properly assessed if the relevance of the legal foundations of education to the effectiveness of those models and practices is understood by the those charged with the responsibility of guiding the continued development of school education in Australia. Further, should formal accreditation of school leaders be introduced, some formal training in legal issues would be appropriate in the accreditation process.

THE PRACTICAL ISSUES FOR TEACHER EDUCATORS

Teaching about the law relating to education raises a number of practical issues for teacher educators.

- **Who should do this teaching?**

As a general rule, it seems desirable this work should be undertaken by academic staff who have qualifications and experience in both education and the law. However, academics qualified and experienced in education who also hold appropriate legal qualifications, and legal practitioners with an interest in educational matters, should also be able to undertake this work. The membership of the Australia & New Zealand Education Law Association Limited shows that there are many legally qualified professional educators and legal practitioners who have a detailed knowledge of the legal context of Australian education who would be well able to do this work.

- **What should be the focus of this teaching?**

The focus of any subject in a teacher education course which deals with the interface of law and education should be how the law affects educational organization and practice. The purpose of such teaching is to inform students, to raise their awareness of relevant practical issues, and to develop their professional confidence. A balanced view of teachers' rights and responsibilities should be presented. It should be clearly understood that it is a study of an aspect of education. It is not intended to and does not train students in law. Teachers and administrators must also be strongly advised that legal advice about particular issues must be sought only from qualified legal practitioners in the relevant jurisdiction.

- **What should be the duration of this teaching?**

In pre-service teacher education courses, the short introductory study of Education and the Law of six to eight hours could reasonably be included in studies related to the practicum experience. Further, short inservice units dealing with particular issues could be provided for practising teachers as part of their professional development programs. In postgraduate degree courses semester length subjects could be provided.

- **What should be the content of these courses?**

The brief introductory study could include an overview of the legal framework of Australian education, and some reference to matters such as the professional legal responsibilities of teachers, the tort of negligence and the law governing the employment and professional discipline of teachers. Further, it is not difficult to identify some of the many topics which could be included in semester length units dealing with the law relating to education: constitutional issues

in Australian education; the legal framework of education in the relevant jurisdiction; statutory responsibilities of educational authorities, administrators and teachers, including those imposed by anti-discrimination law, by privacy law, by Freedom of Information legislation and by corporations law; the relevance of copyright law and the law relating to the internet; the professional regulation of teachers; industrial law and employment law as they affect teachers; teachers and the law relating to child abuse; negligence and other tort law which might affect the professional activities of teachers; and teachers and the criminal law. The ongoing professional development units could deal with any of these topics.

- **What might be the focus of these courses?**

It is suggested that the practical implications of the law for teachers and educational administrators should provide a useful thematic focus for studies of education and the law.

- **What are the practical difficulties in providing these courses?**

One major difficulty, which will undoubtedly arise in some universities which provide teacher education courses, is that they do not have a Law Library to which education students can be given access. While this would not preclude the presentation of a short introductory unit in Education and the Law by an external expert, it makes the issue of access to source materials for semester length studies a very difficult one. It also exacerbates the resolution of the problem which will arise in both undergraduate and postgraduate semester length courses that not all education students will have an adequate background knowledge of constitutional and legal history, or of legal studies, or of the sources of law and the methodology of legal research. A law library session, presented by a law librarian or legal researcher, is of great value as an introduction to the sources of law and the methodology of legal research, and enhances the introduction to the legal system, and to legal concepts and terminology, which have to be included in such courses. However, it may be that institutional co-operation and/or online learning will provide an effective solution to this difficulty which arises in regard to semester length courses in Education and the Law.

A possible solution to the comprehensive provision of short introductory units in Education and the Law would be to seek the assistance of the State and Territory teacher registration authorities to make the completion of such a course a mandatory pre-registration condition, and to commission the preparation and presentation of such units in the Faculties of Education in all universities within the particular State or Territory. Possible sources of advice and expertise for the development of such introductory units include the membership of the Australia and New Zealand Education Law Association Limited, academics in Faculties of Law, and the educational experts in law societies. This model could also be adopted by the State and Territory teacher registration authorities to provide further seminars in Education and the Law for teachers' continuing professional development programmes.

CONCLUSION

In summary there are four reasons why teacher education courses should include some study of the interface of Education and the Law.

- One reason is that teachers, like other professionals, need to be aware of their legal rights and responsibilities in carrying out their daily professional work.
- A second reason why it is important for teachers to understand the legal context of their professional work is that teachers in Australia need to be aware that the rights and responsibilities of parents, children and teachers in school education are determined by the operation of the legal framework of education.
- A third reason why the legal context of education needs to be understood by teachers is that teachers as professionals need to be aware of the interaction between the moral and ethical demands made upon them by society in their professional activities and the legal parameters of their professional tasks and powers.
- A fourth reason why the continuing study of the interface of the law and education is of value is that it provides for mature and experienced teachers and educational administrators a useful comparative perspective on the governance of education.

It is suggested that the practical implications of the law for teachers and educational administrators should provide a useful thematic focus for studies of Education and the Law.

Finally, although it may be noted that there may be some practical problems for some universities to access the source materials for legal studies, there are nevertheless several potential solutions to these problems, and, most importantly, there are skilled professional educators, who are also trained in the law, and legal practitioners with a sound knowledge of education, who provide a valuable national resource for this vital improvement of teacher education.