

Book Reviews

Schools and Litigation: Developing Legal Policies

Brendan C Nolan and John D Spencer (Editors)

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This book is one of the publications in the series *Foundations in Administration and Management Practice*. It is published and distributed by PCS Publications Toowoomba. The editors are both senior lecturers in the Department of Administration and Training at the University of New England. Both have wide educational experience.

In Chapter One, after referring to the need for teachers to have a knowledge of basic legal principles, the editors note that some schools have ‘gone much further’ and have developed their own specific ‘In-School Law Policy Documents’. The purpose of this book is well summarised at the foot of page 14 in the following terms:

In order to obviate the ‘re-invention of the wheel’, this book is an endeavour to share some of those policy documents and some of the working papers prepared for the corporate development of in-school policy, with individuals and schools having a desire to formulate their own.

Without doubt, it is easier to develop policy from a selection of other people’s attempts and/or successes, than to begin with nothing more than warm desire to fill a need!

The editors later emphasise that ‘this book is not a measured argument about educational or legal theories’, but is ‘an endeavour to address a practical, ‘chalk-face’ need - to provide some thoughtfully developed tools by which school administrators can proceed with some confidence into the realm of legal liability in the educative process’.

Chapter One concludes:

No attempt has been made to ‘sequence’ the documents in some prioritised order - the relevance of each document is the reader’s decision entirely. The aim of the authors is to facilitate, not to direct.

Chapter Two, entitled 'Should One Be alarmed at the Modern Law?', is a short chapter dealing with basic principles of law relevant to negligence and assault, written by a solicitor of the Supreme Court of New South Wales.

Chapters One and Two should be approached with some caution insofar as they purport to discuss basic legal principles. For example, it is disappointing to read (Chapter One) in a work published in 1997 that 'the school has duty of care or is *in loco parentis*'. Chapter Two is only 5-6 pages in length, and unfortunately is not sufficiently detailed and comprehensive to be very helpful to a reader attempting to become familiar with basic principles. In particular, the discussion of assault does not deal adequately with the principles relating to encouraging or consoling contact or those forms of contact which are essential as part of the education process or for the purpose of controlling or managing students.

The core of the book is Chapter Three (pages 27-183), and contains ten policy documents or working papers. Eight of the ten have been developed in primary or secondary schools, and two in education system offices. These policy documents, or working papers, will be of great practical assistance to school administrators and teachers with responsibilities in legally relevant areas (which these days tends to be everybody). Whilst, as the editors note, each school needs to consider its own particular circumstances, these documents will be extremely useful in a number of ways. Firstly, they draw attention to the issues. Secondly, they contain a lot of very sensible, practical advice. Thirdly, they contain a number of extremely useful forms such as Consent Forms, Accident Report Forms, Application for Excursion Forms and Instructions to Teachers and Students. There does not appear to be any other Australian publication which deals in such detail with these very practical 'hands on' issues, let alone one which provides so much stimulus to thought about what should be done in practice, or gives so many examples of documents which can be drawn on to meet the needs existing in particular schools. To that extent, this book fills a very real gap in the Australian literature.

Chapter Four is entitled 'Essential Components of a School Policy on Law' and is written by the Principal of New England Girls' School, who herself holds a degree in law. After discussing the rationale, purpose and aims and objectives of a school policy on law, the Chapter then deals systematically with a range of issues on which school policies should be developed.

The final substantive part of the work is entitled 'Outdoor Education - Aftermath of a Tragedy: Personal Perceptions'. This Chapter was stimulated by an outdoor excursion incident resulting in the death of a Year 10 student and the Coronial Inquest which followed. It draws attention to a number of issues which should be addressed when planning outdoor education activities, and it also provides advice on the handling of critical incident situations. The appendix to the chapter is a very detailed and helpful document entitled 'Guidelines for Crisis Management at The Friends' School, Hobart'.

Whilst other works should be consulted for discussion of legal principles, this book will be extremely useful to school administrators and teachers, as a careful reading of it, accompanied by consideration of the particular activities being planned by those administrators or teachers, will

certainly facilitate outcomes which will reduce the risk of injury and the level of anxiety in those taking on such responsibilities.

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Educational Management and the Law

Patrick Walsh

Auckland: Longman

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Subtitled 'A practical guide for managers involved in pre-school, primary, secondary and tertiary education in New Zealand' Patrick Walsh has provided a timely and most useful text for educational administrators. The text utilises a presentation format which, rather than simply addressing the technical aspects of law impacting on schools, discusses and applies legal principles to a wide range of school settings and situations.

As a professional educator with experience as a classroom teacher, school principal and lecturer in various teacher education programs, the author has been exposed to the ever-increasing influence of aspects of law on the everyday life of the school. As a barrister and solicitor he is well placed to identify and bring to education the legal knowledge needed to lead, management and administer schools.

The text comprises seven Chapters each containing extracts from either statute or common law followed by 'Comment' on how these particular aspects of law impact on school administration. All Chapters have a section - headed 'Points to Ponder' - which contain legally-related problems that have the potential to impact on school policies and practices. The author then provides discussion, in the form of 'Points to Consider', of some of the more important issues arising from the problems which principals need to take into account when managing legal matters.

Chapter 1 provides a very brief overview of the areas of law which school administrators may be involved with and which, as a consequence, necessitate their having an appropriate level of legal literacy. Chapter 2, which takes up over one third of the book, analyses selected areas of legislation relevant to educational practice including statutory provisions to do with privacy,

health and safety, employment, human rights, the Bill of Rights, copyright and consumer guarantees. Chapter 3 considers employment law in relation to education while Chapter 4 addresses legal issues related to educational governance and management. Chapter 5 examines the role of various government agencies - including the Auditor, the Education Review Office, the Ombudsman and the Commissioner for Children. What might, arguably, be thought the most important current legal issues for schools - those to do with student management and increasing possibility of educational negligence - are contained in the final two chapters. There is a brief bibliography containing references to conference papers and journal articles as well as relevant texts. In an era of rapid legal and educational change it is comforting to see that the bibliography is largely confined to very recent materials. Appendices A to H contain documents and discussion related to suspensions and expulsion, a school discipline policy and code of conduct as well as important cases to do with school management and employment.

The strengths of this work lie in its user-friendly format and the practical nature of the issues addressed. Legal and educational administration issues are well wedded and have resulted in a book that provides sound practical advice to school administrators. The integration of the law with educational administration is accomplished without any false claims of there being any overarching body of school or educational law such as pertains in the United States but not in New Zealand or Australia. However, the claims that the text applies to all sectors of the New Zealand education system - from pre-school to tertiary - are not substantiated in the book. In this regard, while the areas of the law addressed are certainly applicable across all education levels, the author largely addresses the contents of the book to primary and secondary school administrators. Readers will not find any direct application, by way of extended comment, illustrations in 'Points to Ponder' or 'Points to Consider', of how the law might be seen to impact on tertiary institutions and, to a lesser extent, pre-schools in New Zealand. Indeed, confronted with the extent of the impact of law on education, the task of covering the legal matters pertinent to educational administration at each level was never going to be an easy task, particular in view of limitations on space imposed on authors.

Despite these minor reservations this is a text which will appeal to the wide range of persons who are involved in the nation's education. It has relevance not only for school administrators but for classroom practitioners, members of school boards, parents and, dare I add, students. Areas of law relevant to New Zealand's schools is thoughtfully developed through the array of materials and 'in-basket' type problems typically faced by principals. Above all readers are alerted to emergent areas of concern to schools such as those to do with children's rights including the rights of children with special needs or those associated with issues to do with suspension and exclusion. It is regrettable, however, that limitations on space prevented a detailed discussion being undertaken of the very important emergent topic of schools and the internet.

This is a book which, given reflective consideration of the areas of law and the guidelines for educational administration provided by the author, can only serve to enhance legally safe school policies and practices.

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Australian Schools and the Law

Jane Edwards, Andrew Knott, Dan Riley (eds)

LBC Information Services: Sydney

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In Australia the growing body of Education Law continues to attract examination and discussion. *Australian Schools and the Law* is a different and useful contribution to that examination and discussion.

The editors - a senior lecturer at the University of Melbourne Law School, a solicitor in private practice in Brisbane, and a senior administrator with the Catholic Schools Office in regional New South Wales, respectively - are lawyers with considerable expertise in the field of Education Law. In the forward to the book, they comment that their intention is to provide those who work in schools with an overview of contemporary and emerging legal issues in education. With this in mind, the editors have compiled a collection of chapters by a number of different authors from Queensland, New South Wales, Victoria and the Australian Capital Territory.

The book is divided into three parts: the rights and responsibilities of teachers and schools, students' rights and responsibilities, and legal regulation of activities in schools.

The first part contains eight chapters. Chapter 1 is a tantalising overview of various issues relevant to the management of legal risks in schools. Some of the later chapters in the book then go on to explore in greater detail some of the matters touched on briefly in chapter 1. Chapter 2 examines the recovery of compensation by teachers for work-related stress. It contains an enlightening discussion of different factors that might contribute to work-related stress in schools; it examines the right of teachers to pursue compensation through workers compensation legislation, and it ends, somewhat abruptly, with a brief reference to compensation under common law principles. Chapter 3 is a well-structured discussion of the teacher as employee. It examines

the question of who is an 'employee', it then explores the different categories of employee within a school setting, and it discusses various other aspects of the employer-teacher relationship according to both common law principles and under industrial and other legislation. A strength of the chapter is its use of case studies to explain concepts and principles explored in the chapter. Chapters 4 and 5 address the issues of discrimination and equal opportunity laws in education. While chapter 4 provides a nicely focused explanation of the different statutes governing discrimination and their application in educational settings, chapter 5 offers a more specific discussion of legal principles and cases involving indirect discrimination with respect to female teachers. Chapter 6 offers the reader a straight-forward explanation of principles of negligence law and an informative discussion of how those principles have been applied by judges in a variety of situations with which some teachers have been confronted. Chapter 7 is a 'state of play' discussion of educational malpractice, summarising the American and English responses to cases alleging educational malpractice and offering a brief exploration of how the issue might be argued in Australia. Chapter 8 discusses the subject matter of termination of employment, explaining the different ways, at common law and under statute, by which a teacher's employment can be brought to an end.

Part 2 of the book contains five chapters. Chapter 9 is a less than dispassionate discussion of the 'rights of the child' movement and the directions that the movement seems to be taking. It is, however, a useful chapter, raising broad issues and offering food for thought. Despite an absence of any real examination of relevant legal issues and principles, chapter 10 offers an informative discussion of bullying in schools and guidance on ways schools might address the matter. Chapter 11 explores the legalities of sport in schools. This is an innovative chapter, with an exploration of how different legal principles might be applied to sport in schools and an examination of different court decisions involving legal liability and sport. Chapter 12 is a valuable chapter. The author demystifies some of the concepts and terminology found in family law and then provides a very readable examination of the application of family law to situations in which teachers sometimes find themselves. A reworking of a paper published elsewhere, chapter 13 is a helpful examination of the legal framework that governs suspension and expulsion of students from both government and non-government schools.

Part 3 of the book contains five chapters. Chapter 14 provides an overview of occupational safety and health laws and their application in school settings. Based upon a previously presented conference paper, chapter 15 looks at the application of freedom of information laws in education. Sitting somewhat uncomfortably in a book of this nature, chapter 16 describes the experience of Victorian government school teachers in their attempts to respond to the changing industrial framework in Victoria. Chapter 17 is a useful contribution to the examination of law in schools. While it assumes some prior knowledge of legal concepts on the part of the reader, it sets out the legal framework within which school boards must operate and it offers some practical advice to members of school boards in the performance of their functions as board members. Chapter 18, the final chapter in the book, offers an informative and well structured discussion of how the Australian Constitution, and the High Court's interpretation of its

various provisions, have allowed the Commonwealth to play an increasingly influential role in education in Australia.

The book also contains a table of cases, a table of statutes, a bibliography and an index. The bibliography is a particularly helpful addition to a book of this nature. However, some of the citations in the bibliography are confusing. For example, some of the citations refer the reader to the 'ANZELA Journal of Education' or the ANZELA Journal of Law and Education'. It would appear that such journals do not exist. These citations are obviously referring to the 'Australia & New Zealand Journal of Law & Education', the official journal of the Australia & New Zealand Education Law Association.

One might be tempted to quibble about the choices the editors have made in allocating certain chapters to a particular part of the book rather than to another. And one might also be tempted to wonder why a couple of chapters in particular were included at all in a book of this nature, when, as the editors indicate, it is directed at folk who have little prior knowledge and understanding of matters legal. However, some chapters address areas of the law not previously dealt with in any Education Law text in Australia. And many of the chapters offer straight-forward explanations of legal principles and practical guidelines for dealing with issues. *Australian Schools and the Law* is an eclectic and useful offering in the field of Education Law.

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