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The 'legalisation' of education : a study
of New South Wales teachers and their
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area of law

David J. Newlyn
University of Wollongong

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**The ‘Legalisation’ of Education – A study of New
South Wales teachers and their professional
development needs in the area of law**

**A thesis submitted in fulfilment of the
requirements for the award of the degree**

Doctor of Philosophy

from

University of Wollongong

by

David J. Newlyn B.Ed(Hons), LLB (Syd)

Faculty of Law

2006

Volume 1 of 2

ABSTRACT

This study is concerned with the legal knowledge held by teachers of New South Wales Government schools and the need for continued professional development in this area. The study commenced in 1997 and primary research concluded in 2000. The Australian experience seems to be mirroring international experiences, particularly those of the United States of America, which have seen an increase in the legalisation of the field of education. From this increase there emerged a need for a systematic programme of instruction to address the problem of a lack of legal knowledge held by teachers in order to adequately perform their professional duties as teachers and protect themselves and their employer from potential legal liabilities.

The main purposes of this study were to determine the degree of legal knowledge that teachers in the State of New South Wales possessed, the need for the development of a course of instruction to address the perceived problem of a lack of legal knowledge and to investigate the methods available to address this problem. The study then proceeded to develop and trial a systematic curriculum designed to provide a background for teachers to education and the law.

This was a multimethod ethnographic exploratory study that integrated aspects of both quantitative and qualitative research paradigms. An initial focus group interview schedule was developed and then trialled with a group of teachers in order to gauge their experiences and knowledge of the law. This interview schedule was then refined and trialled with a larger sample of teachers drawn from

a wide variety of educational backgrounds. From those focus groups there emerged clear evidence that the majority of teachers lacked knowledge of the law as it affected the performance of their professional teaching duties. What legal knowledge teachers did possess was often based on myth or misunderstanding.

Therefore there emerged a need to canvas the views of the dominate stakeholders in the field of education to gain their interest/views on developing a course of legal instruction devised to address this problem. Additionally the question of which elements of the law would be necessary in such a course was also addressed. To this end the views of the teachers, their union and their government employer were all engaged. It became clear that there was general support, particularly high amongst the teachers, for the need for such a course of instruction.

This study then moved on to develop a course of instruction which could be used at either the pre or post service levels of teacher professional development. The study examined a number of potential models of curriculum and the conclusion was reached that no single model of curriculum could be used to devise a successful and progressive course. Instead the curriculum devised was based upon a hybrid model using elements from the process and dynamic models of curriculum.

This curriculum was then trialled with a sample of teachers. At the end of the trial, course participants were asked to complete a brief survey and their comments were reported to show that the majority believed they had engaged in a positively

rewarding experience, which made them more aware of how the law was a pervasive influence on their teaching.

Overall the findings indicate that there is a definite need for pre service and practising teachers to have a degree of legal knowledge which is provided in a professional manner. There is broad support for such a course of instruction amongst the teaching profession and its dominant union body. Unfortunately there was not the same degree of enthusiasm shown by the government employer.

The study concludes with a statement that there needs to be a unilateral effort between the teachers, their union and their employer towards a common goal of instructing teachers about the law if such a course of instruction is to gain credibility and acceptance amongst the members of the teaching profession.

All information, data and law is stated as at December 2000.

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STATEMENT OF ORIGINAL AUTHORSHIP

I, David J. Newlyn, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Faculty of Law, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Signed:.....

David J. Newlyn

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It is with considerable gratitude that I wish to acknowledge the support, tolerance, guidance and encouragement provided to me by my supervisors, Professors Carla Fasano and Helen Gamble, between 1997 and 2000.

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I wish also to acknowledge and thank my partner Angela Byron and my family for the support and patience that they have shown me over the epic journey towards completion of this study.

CHAPTER ONE

INTRODUCTION

1.1 Background

Students expect their teachers to know everything – they are yet to learn this is impossible, and that the gift of knowing how to learn is of far greater value.¹

These comments by Henry Brooks Adams² provide a somewhat felicitous starting point to this research study. Adams implicitly acknowledges that teachers are unique individuals in our society who have historically and symbolically been incredibly valuable. The role of a teacher has always been a very important and difficult one, but it has become increasingly more complicated and burdensome.

This study was based on a perception that teachers are increasingly becoming involved in situations which have distinct legal characteristics when they have no formal or even basic understanding of the legal system.³ The increased

¹ 'Quotes from Henry Brooks Adams', Available online at <<http://www.cyber-nation.com/cgi-bin/victory/quotations/qlreferral/quotelib.pl?id=1015>> Date accessed March 3, 2001.

² (1838-1918).

³ See particularly the information contained in A Hopkins, *Teachers, students and the law* (Victoria Law Foundation Publishing: Melbourne, 2000) at i and 1 – 5 as well as I M Ramsay & A R Shorten, *Education & the Law* (Butterworths: Sydney, 1996) at 3 – 6 and D Stewart, 'Legalisation of education: implications for principals' professional knowledge' (1998) 36(2) *Journal of Educational Administration* 129.

expectations on teachers now make it imperative that teachers better understand the dynamics of these types of situations and are better equipped to deal with them as they arise. It is through gaining insight into the legal world in which they work that teachers become better able to deal with potential problems and this makes them inherently more confident teachers.

1.2 Need for the Study

As this researcher brings both formal educational and legal qualifications and experience to this study it would be relatively easy to provide anecdotal evidence to support assertions for the need for a study into the legal knowledge of teachers, but it is also palpable that there is a recognised trend in the literature to a more litigious mindset in the educational field.

In separate publications Sungaila,⁴ Ramsay,⁵ Rossow⁶ and Williams⁷ 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.⁸

⁴ H Sungaila, *Litigation in education* (Gavener Publishing: Sydney, 1988).

⁵ I Ramsay, 'Educational negligence and the legalisation of education' [1988] 11 *University of New South Wales Law Journal* 184.

⁶ L F Rossow, 'Current Developments in Education Law in the United States' (1996) 1(1) *Australia & New Zealand Journal of Law & Education* 55.

⁷ P Williams, 'Educational negligence: An Australian perspective' (1995) October *Working Paper Series: School of Business Law - Curtin University*.

Even though the law is becoming more relevant to the work of teachers there is a distinct lack of professional development in this area. Authors such as Pell,⁹ McLoughlin et al¹⁰ are amongst those calling for a change to this situation. These authors see the need for the development of a systematic course of instruction which would become integral to the trainee teachers' professional preparation. McLoughlin, Sametz and Streib state categorically that:

An essential component of the professional educator's preparation is knowledge of the law as it relates to children.¹¹

This study is not an attempt to suggest that teachers require law degrees or even extensive legal knowledge in order to undertake their professional duties. It will become evident that such a level of knowledge would be both undesirable and counterproductive. However, it will emerge that there is a distinct need for a basic level of legal knowledge to be held by all teachers in order for them to be able to adequately perform their professional duties in what is increasingly a more legally orientated profession.

1.3 Design of the Study

1.3.1 Background to the design.

⁸ Ibid 25.

⁹ S W Pell, 'Pre-service teachers' lack of knowledge of education law: Ignorance is no excuse' (1994) 14(4) *Illinois School Law Quarterly* 138.

¹⁰ C S McLoughlin *et al*, 'Prospective Educators' Knowledge of Children's Legal Rights' (1983) 20(4) *American Educational Research Journal* 591.

¹¹ Ibid 591.

The study was designed to focus principally on four research questions. These being:

[1] What knowledge do teachers in NSW government schools have about the law and how it affects them in the delivery of their professional duties?

[2] Is it essential or even of use for NSW government teachers to have any degree of knowledge in legal areas?

[3] What substantive areas of the law do NSW government teachers require a working knowledge of in the performance of their usual duties?

[4] How can this knowledge be most effectively delivered to NSW government teachers?

To explore these four research questions in detail an ethnographic multimethod exploratory study of the type outlined by Sellitz, Johoda, Deutsch and Cook¹² amongst others¹³ was used. This exploratory study involved the use of letters of inquiry, a trial focus group, live focus groups, a questionnaire and trial curriculum groups.

¹² C Sellitz *et al*, *Research methods in social relations* (Holt, Rinehart & Winston: New York, 1965).

¹³ See also R A Singleton, B C Straits & M M Straits, *Approaches to social research* (2nd Edition) (Oxford University Press: New York, 1993) for an examination of the characteristics of exploratory studies and more generally H Wolcott, 'Criteria for an ethnographic approach to research in schools (1975) 34(2) *Human Organization* 23 and V J Caracelli & J C Greene, 'Data

1.3.2 Specifics of the Study

The nature of the study allowed research for questions one to three to be undertaken concurrently, however the design of the method of addressing the issues raised in question four could only be undertaken after the previous three had been completed.

To this end, focus groups were principally used to explore the notions of teachers' knowledge and experiences with the law in the delivery of their professional duties. Consultation was conducted with major bodies responsible for the delivery of teacher training and development at both a pre and post service level in order to ascertain the perceived need for teachers to have legal knowledge. Trial groups were used to explore the draft curriculum designed as a result of the exploration of the need for an increased legal knowledge base for teachers. As a follow up to this trial a questionnaire was used to gauge participant interest and suggestions for change in the final curriculum product.

1.4 Rationale for the Design of the Study

There are several major considerations in the design of the study reflected in the research questions focussed upon. There was a clear need to establish, with some certainty, the teachers' level of knowledge of the legal system, and on the basis of their knowledge to design a method of addressing any perceived needs/gaps.

analysis strategies for mixed-method evaluation designs' (1993) 15(2) *Educational Evaluation and Policy Analysis* 195 for an examination of the nature of ethnographic multimethod research.

Given the focus of the study, and in particular the need to develop reliable base line data, an exploratory study was the most appropriate methodological approach to follow.¹⁴ It was necessary to combine a mutlimethod qualitative-quantitative approach as identified by Reynolds and Reid.¹⁵

1.5 Outline of the Study

Chapter One has introduced the problem on which this study is based and has briefly detailed the rationale and method for the study.

Chapter Two provides a literature background to the diverse nature and concept of law. It then provides a discussion of the nature of the law as it affects the educational professional. The Chapter continues with a discussion of the legalisation of the field of education.

Chapter Three outlines the conceptual framework and resulting four research questions for the study.

Chapter Four provides a literature review and discussion of the multimethod ethnographic exploratory research methodology used in the study. The Chapter provides a detailed description of the major data gathering tools, including the use

¹⁴ Selltiz, above n 12.

¹⁵ D Reynolds & K Reid, 'The second stage: Towards a reconceptualisation of theory and methodology' in A Westoby (ed), *Culture and power in educational organizations: A reader* (Open University Press: Milton Keynes, 1988). See also others who describe this approach such as J Brewer & A Hunter, *Multimethod Research: A Synthesis of Styles* (Sage Publications: Newbury Park - California, 1989) and Caracelli & Greene, above n 13.

of focus groups and a questionnaire. Finally the Chapter provides a description of the population and sample.

Chapter Five is a literature review of the various documented curriculum models. The merits of each of these models are examined to identify the key characteristics of a model most applicable to developing the legal knowledge of teachers. A discussion of how the curriculum designed for the study reflects the characteristics of the most applicable model is also provided.

Chapter Six provides a presentation and discussion of the data collected for the study. The focus in this Chapter is upon description and analysis of all the methods of data collection employed, including letters of inquiry, a trial focus group, live focus groups, a questionnaire and trial curriculum groups.

Chapter Seven discusses the conclusions, implications and recommendations from this study.

1.6 Summary of Chapter One

Chapter One has introduced the issues to be addressed in the thesis. The background to the design of the study, including the increasing perceived legalisation of the teaching profession was discussed.

Chapter Two begins the series of literature reviews for the study and is focussed on the broad concept of law, the more specific finite nature of educational law and the legalisation of the field of education.

CHAPTER TWO

REVIEW OF THE LITERATURE

TEACHERS AND THE LAW

2.1 Introduction

Chapter Two provides a discussion of relevant issues including the general nature and concept of law as well as more specifically the law relating to teachers in the delivery of their professional duties. The review commences with an overview of the dynamics of what constitutes the ‘law’ from both a theoretical and heuristic perspective and then from a functional perspective. The Chapter then moves on to a discussion of the specific nature of law as it relates to the teaching profession. This is followed by a discussion of the legalisation of the field of education.

The Chapter concludes with a statement that for the purposes of this study and for the purposes of the legal education of teachers it is unnecessary to examine the intricate concepts of educational law. It is sufficient to acknowledge that there is a general need for the legal education of teachers. This extends to the need for teachers to appreciate the law as one of the most important and fundamental aspects of our society and more specifically to identify potential legal problems and be able to determine whether to seek professional advice. It does not extend to encompass the idea of teachers as legal experts.

2.2 Nature of the law

2.2.1 Introduction

The law means different things to different people¹

This comment provides a very broad starting point to this section. The question of exactly what constitutes the law has plagued not only lawyers but society in general for centuries. Its definition can be taken from both traditional and historical perspectives, an academic perspective or a more functional perspective.²

It is, at this stage important to come to terms with the concept as it forms the underlying basis for discussion in this study. As the study is concerned with teachers and the law, it is important to become aware of what actually makes up the law, both generally and with specific reference to the teaching profession. It is not the intention of this study to enter into a prolonged academic debate over the jurisprudential nature of the law, however it is necessary to set the parameters of what we generally understand by the term 'law'.

¹ R Chisholm & G Nettheim, *Understanding Law* (2nd Edition) (Butterworths: 1984) 3

² For a general discussion of these definitional types see particularly P Harris, *An Introduction to Law* (2nd Edition) (Weidenfeld and Nicolson: London, 1984) and G Morris *et al*, *Laying Down the Law: The foundations of legal reasoning, research and writing in Australia and New Zealand* (2nd Edition) (Butterworths: Sydney, 1988).

2.2.2 What is ‘Law’?

This is not an easy question to answer for as Chisholm and Nettheim state “the law affects people in all sorts of ways.”³ There seem to be a number of different ways in which we can make our determination as to the meaning of this term. Principally there is the assumption that the law is simply something that orders the way we participate in society. Indeed Cotterrell is convinced that law and society are inextricably linked.⁴

But simply stating that law is society and society is law is far from sufficient. The problem is much more complex as explained in detail by Davies⁵ and encapsulated in the following statement:

...law orders the way we see the world, as
well as what we do...law imposes order on
what would otherwise be meaningless acts.⁶

This statement by Davies, and similar academic writers⁷, seems to take a rather broad view of the term. One might then speculate and ask ‘Is the law anything which makes us behave in a particular way?’ If so, could this include items such as the rules which our parents impose upon us? Writers such as Parkinson⁸ would claim that this was not possible due to the fact that there is a conceptual difference

³ Chisholm & Nettheim, above n 1, 3

⁴ R Cotterrell, *The sociology of law: An introduction* (2nd Edition) (Butterworths: London, 1992) 1.

⁵ M Davies, *Asking the Law Questions* (Law Book Company: Sydney, 1994).

⁶ Ibid 5.

⁷ See particularly D P Derham *et al*, *An Introduction to Law* (5th Edition) (Law Book Company: Melbourne, 1986).

between law and custom, morality, religion or politics such that there is a very clear distinction between legal rules and other types of rules.⁹

One only has to look at the following statement from Bottomley and Parker¹⁰ to see just how confusing and complicated the debate can become:

...law is an instrument for exerting power;
law is a check on power; law legitimates
power; law is a source of power; law is a
product of power; law is power; law is but
one aspect of power.¹¹

Indeed associating this link between law and power is a common theme in the literature but by its nature it seeks to keep the structure of the term quite broad.¹²

Other writers, such as Morison¹³, are prepared to take a more historical approach to the term and then attempt to give it a more current flavour. Morison notes that law has traditionally been defined using a positivist or natural theory.¹⁴ These theories encompass ideals associated with the custom and morality of the law. Whilst the specifics of these theories are not important to this discussion it is

⁸ P Parkinson, *Tradition and Change in Australian Law* (LBC: Sydney, 1994).

⁹ Ibid 24.

¹⁰ S Bottomley & S Parker, *Law in Context* (2nd Edition) (Federation Press: Sydney, 1997).

¹¹ Ibid 68.

¹² For example see *ibid* particularly at 60-68 for a discussion on the concept of law and power viewed from different perspectives (eg. Political, Philosophical, Marxist and Foucaultian among many others).

¹³ W L Morison, *The System of Law and Courts Governing New South Wales* (2nd Edition) (Butterworths: Sydney, 1984).

¹⁴ Ibid 3.

evident that once again for the purposes of this study the definition needs to be much more concrete.

Perhaps it is only when we turn to Enright¹⁵ do we begin to fully understand the complexities of attempting to define such a difficult term. Enright recognises the inherent difficulties, but from a practical position of needing to get on and be able to discuss specific issues he is prepared to opt for a simple but effective definition of the term.¹⁶ Enright is not alone in his wisdom and it is Duncan's belief that so as to avoid unnecessary confusion it is permissible to take a holistic view.¹⁷

2.3 Nature of educational law

2.3.1 Introduction

The idea of being able to succinctly describe or explain which areas of the 'law' affect teachers in Australia, or more specifically in the State of New South Wales, is not easy to contemplate. The first area of difficulty arises in relation to the definition and discussion given to the general notion of 'law' described earlier in this Chapter. It has been made clear that even defining the term 'law' is a complex task. But the key issue is the fact that educational law is difficult to define precisely because potentially it covers numerous areas of the law.

¹⁵ C Enright, *Studying Law* (4th Edition) (Federation Press: Leichhardt, 1991).

¹⁶ Ibid 3.

¹⁷ R M Duncan (ed), *Legal Studies for New South Wales Year 11 and 12* (Butterworths: Sydney, 1989) 1-6.

It is possible that educational law, depending on the contextualisation that it is given, could cover areas as diverse as criminal law, contract law, tort law, family law, intellectual property law, administrative law, or even constitutional law. Taking just one of those examples, criminal law, it is possible to see just how large a mass of law could be encountered given that the topic could include issues such as assault, theft, sexual assault, manslaughter or even murder.

This study does not attempt to cover every potential facet of educational law because this task would be over complicated and unnecessary in order to address the four main research questions with which this study is concerned with as outlined in Chapter Three.

It might be as Sungaila and others have suggested that it is not specifically necessary to go to the trouble of this task in relation to teachers because teachers do not necessarily have to know every facet of the law, it is enough that they are familiar with it in enough detail to be able to recognise when a legal problem is evident and when to seek further advice/assistance.¹⁸ This suggestion, and the further suggestion of a pre-emptive course of behaviour, will be dealt with later in this Chapter.

For now, what did become evident in the first part of this Chapter was that there is a clear distinction in the legal world between common law and statute law, that is

¹⁸ See particularly H Sungaila, *Litigation in education* (Gavener Publishing: Sydney, 1988) xi and E J Haller & K A Strike, *An introduction to educational administration: Social, legal and ethical perspectives* (Longman, New York, 1986) 5.

between judge made/interpreted law¹⁹ and law made by the parliament. Indeed lawyers often like to categorise problems according to whether or not they involve the law or not.²⁰ But often this is a distinction which is not necessary. It assumes that all problems are either legal or non legal. In reality situations are rarely so easy to practically dichotomise.²¹

2.3.2 Difficulty in defining the law affecting teachers

It becomes difficult in itself to identify those areas of law which affect teachers when we come to the situation of having to categorise each of the relevant elements. The question becomes who decides what is relevant and what is not? Who decides, for example, which of the following diverse examples of educational law: duty of care, trespass, searches, harassment, defamation, copyright, professional negligence, family law, bullying and assault, student discipline or even sexual assault, are relevant? If we rely on government decisions for this task then there may be a perceived bias in the areas that they seek to cover in order to minimise potential legal issues that these bodies see as high risk.

Clearly such bodies may neglect wholly relevant areas at the expense of giving a specific focus to those issues which they see as highly important. However if we

¹⁹ It is not the intention of this thesis to enter into the debate over whether Judges in our Courts make or interpret the law and whether as a result of this there is a fundamental breach of the Separation of Powers doctrine.

²⁰ J N Shklar, *Legalism: law, morals and political trials* (2nd Edition) (Harvard University Press: Cambridge Massachusetts, 1986) 2.

²¹ In the United States this has become quite a large problem and has been referred to as 'hyperlexis'. For a general discussion on this notion see particularly B Manning, 'Hyperlexis: Our national disease' [1977] 71 *Northwestern University Law Review* 767.

take the views of academics, parents or even teachers themselves then we may well be presented with a different set of criteria.

As will become evident in the findings of Chapter Six of this study, teachers in New South Wales government schools may have a different understanding of the law which affects them compared to the actual realities of the situation. Indeed this has been found to be the situation in several different parts of the United States.

Tyack and Benavot's²² research reveals that in some parts of the United States trainee teachers have been given specific courses of information on the law. This has been in response to the concerns of the government about the need for all citizens to have a thorough understanding of the legal climate that they live and work within, and how it would affect them in the course of their duties as professional teachers.

In the State of Colorado, for example, school law has been a required part of the normal school curriculum since 1887.²³ It is then surprising to note that many teachers in the United States, including those subjected to elementary levels of legal education, are described as still having grossly inadequate levels of legal education despite the best endeavours.²⁴

²² D Tyack & A Benavot, 'Courts and public schools: Educational litigation in historical perspective' (1985) 19(3) *Law and Society Review* 339.

²³ Ibid 356.

²⁴ See particularly S W Pell, 'Pre-service teachers' lack of knowledge of education law: Ignorance is no excuse' (1994) 14(4) *Illinois School Law Quarterly* 138 and L F Rossow, 'Current

In Australia our situation may be similar. In a groundbreaking 1994 PhD thesis titled *School Principals and the Law: A Study of the Legal Knowledge Needed and Held by Principals in Government Schools in Queensland*,²⁵ Stewart interviewed a selection of Queensland school principals who were able to identify ten different areas of legislation and four different areas of the common law which they encountered or thought they were likely to encounter in their jobs. The most popularly recorded legislative area was the Workplace Health and Safety Act, followed by the Education Act, the least recorded legislative area being the Queensland Criminal Code. The four common law areas identified, ranked most recorded to least popularly recorded, were physical injury, criminal incidents, defamation and intellectual harm.

Importantly these areas are not necessarily either relevant to or directly proportional to the areas of law relevant to New South Wales teachers. Further they are not even necessarily the correct and relevant areas of law for Queensland teachers; they are merely what Queensland principals viewed as most important to them in their role as principal. In Chapter Six of this study a list of the areas which teachers in the New South Wales Government perceive as the most important to them will emerge.

Developments in Education Law in the United States' (1996) 1(1) *Australia & New Zealand Journal of Law & Education* 55.

²⁵ D J Stewart, 'School Principals and the Law: A Study of the Legal Knowledge Needed and Held by Principals in Government Schools in Queensland' (PhD thesis, Queensland University of Technology, 1996) 120 & 128.

2.4 Law affecting teachers

2.4.1 Generally

Teachers in New South Wales government schools are influenced by both common law and statute law. It is evident that there is a vast mass of law which affects these schools. A simple analysis of the relevant law is not possible and could well be considered arbitrary.²⁶

Take for example one of the current leading texts on educational law by Ramsay and Shorten.²⁷ In their work titled *Education and the Law* these authors are at great pains to attempt to explain the intricate nature of the law which affects teachers and to cover many of the accepted relevant areas including duty of care, anti-discrimination and discipline. But they clearly acknowledge that it is not an easy task since there is such an enormous amount of law to be considered.²⁸ They state that:

Many areas of law affect the organisation and
delivery of educational services...it is not

²⁶ Indeed as is the case with most areas of the law the relevant issues are constantly changing. What may be relevant in the field of education today could be considerably different in six months time. Take for example the various range of topics listed in one of the leading Australian educational law journals from 1998, the *Australian & New Zealand Journal of Law & Education*, Volume 3, Number 2, 1998, which clearly demonstrates the diverse range of topics that were thought to be relevant to the field of education in that year. That edition of the journal lists topics as diverse as internet law, compulsory attendance and procedural fairness in relation to student discipline. See P Williams & K Dillon, 'The Internet and the Law: Emerging Issues for Australian Schools' (1998) 3(2) *Australian & New Zealand Journal of Law & Education* 3, A N Khan, 'Obligation To Attend School: The English Law' (1998) 3(2) *Australian & New Zealand Journal of Law & Education* 74 and P MacMahon, 'Case Notes: Procedural Fairness in Student Discipline' (1998) 3(2) *Australian & New Zealand Journal of Law & Education* 87.

²⁷ I M Ramsay & A R Shorten, *Education & the Law* (Butterworths: Sydney, 1996).

possible to cover all of those aspects...in one
text...²⁹

It is clear upon an examination of the contents of this work that this area of the law is not an easy one to be able to succinctly categorise. It is never an easy task to decide for teachers which areas of the law they require a knowledge of, it is an even more difficult task to decide the level of knowledge that they require. Even these two authors, who are eminently experienced in the educational law field³⁰, struggle to determine how some important areas of the law should be categorised.³¹ This is clearly evidenced in Chapter two of their text which includes sections such as “miscellaneous matters”.³²

What then becomes important for this study is to identify the areas which the different stakeholders of education in New South Wales view as important. To this end Chapter Six of this study reports on the views of the government employer, the relevant union body and the teachers themselves. This Chapter reports on the core areas which these bodies view as important to themselves.

It will emerge that, depending upon the group in question and its specific needs, there is a diverse range of law which becomes applicable to teachers. So much law that it would be impractical and undesirable to ever hope to be able effectively to

²⁸ Ibid particularly the preface to this work at xi-xiii.

²⁹ Ibid xi.

³⁰ For an example of their expertise see particularly I Ramsay, ‘Educational negligence and the legalisation of education’ [1988] 11 *University of New South Wales Law Journal* 184 and A R Shorten, ‘The Legal Context of Australian Education: An Historical Exploration’ (1996) 1(1) *Australia & New Zealand Journal of Law & Education* 2.

³¹ Ramsay & Shorten, above n 27, v-ix.

³² Ibid 59.

convey the information required for an understanding of it to any one individual. The volume of law needed to be understood by an individual teacher would be enormous. It would be unnecessary for teachers to become an expert in educational law because teachers only require a broad understanding of the law in order to be able to classify problems as legal or non legal and know in which situations it was necessary to seek professional legal advice.

What then becomes evident is that it is not expressly necessary to deal with these specific elements of the law which are identified. Instead what becomes more important is developing a system which promotes a basic understanding of the legal system as it relates to teachers and then developing a skill base upon which teachers are able to recognise that a legal problem exists or are able to investigate the problem further with a solid starting point. As such the teachers themselves will be in a good position to identify what areas of the law are most relevant to themselves.

Teachers, either intrinsically or extrinsically, have an understanding of the law which they are involved with through the delivery of their day to day professional activities and thus provide a very good source upon which to base the key elements of this thesis. This is not to suggest, however, that teachers were the only source from which this information could be gained. Information, for example, could have been gathered from school principals, Department of Education and Training office and administration staff or even from the profiles of reported court decisions.

In order to undertake this there is a need for a basic understanding of elements such as the differences between common law and statute law. The following examples of common law and statute law are those which have proven very typical for New South Wales teachers as reported in the findings Chapter of this Study.

2.4.2 The Common Law

It would be a mammoth task to list all of the areas of the common law which could potentially have an influence over a teacher in a New South Wales government school. Some of the more general areas include torts and criminal law. Of these two areas it is probably the area of tort law which is most relevant to the teaching profession.³³ Indeed in the Stewart study of Queensland principals this was the common law area which was most widely recognised.³⁴

It would also be a herculean task to list all of the relevant common law cases which might be of relevance to teachers. But two of the most important cases in the area of duty of care which would undoubtedly be recognised by experts in

³³ Certainly it is tort law which appears to have been a topic of frequent comment and the subject of numerous articles. Take for example these examples from the United States: I Gluckman, 'An update on negligence: A legal memorandum' (1989) February *The Journal of The National Association of Secondary School Principals* 1 and R Posner, 'A theory of negligence' [1972] 29 *Journal of Legal Studies* 29. And these examples from Australia: P Heffey, 'The duty of schools and teachers to protect pupils from injury' [1985] 11 *Monash University Law Review* 1, A Khan & P Williams, 'The liability in negligence of teachers and schools in Australia' (1993) 5(3) *Journal of Education and the Law* 155 and D Stewart, 'Compensating students for injuries incurred in school accidents' (1994) 6(3) *Education and the Law* 143.

³⁴ Stewart, 'School Principals and the Law: A Study of the Legal Knowledge Needed and Held by Principals in Government Schools in Queensland', above n 25, 128.

education law would be the cases of *Geyer v Downs*³⁵ and *Commonwealth v Introvigne*³⁶

2.4.2.1 Geyer v Downs

The case of *Geyer v Downs* involved an eight year old female student who was accidentally struck on the head by a baseball bat whilst she was crossing the school grounds on the way to her classroom at 8.50am. The principal in the case was held to be responsible for the girl's injuries as it was held that he knew or ought to have known that school children were regularly on school grounds before the start of school and he had not exercised reasonable care for the safety of these children. The principle was stated quite clearly by His Honour Mr Justice Stephen:

Children stand in need of care and supervision and this their parents cannot effectively provide when their children are attending school; instead it is those then in charge of them, their teachers, who must provide it.³⁷

³⁵ *Geyer v Downs* (1977) 17 ALR 408

³⁶ *Commonwealth v Introvigne* (1982) 150 CLR 258

³⁷ *Geyer v Downs* (1977) 17 ALR 408, 414 (Stephen J)

2.4.2.2 Commonwealth v Introvigne

The case of *Commonwealth v Introvigne* also involved the concept of duty of care. This was a case involving a 15 year old boy who attended Woden Valley High School in the Australian Capital Territory who was injured by the top of the school flag pole³⁸ which fell on to him causing serious head injuries. At the time of the accident all but one member of the staff was at an emergency staff meeting hearing of the sudden death of the school's principal. The relevant educational authority was held to be contributorily negligent as there was only one teacher on duty for over nine hundred students.

2.4.3 Statute Law

It is perhaps statute law that is more relevant to teachers today. Indeed statute law is now the predominate method of law making in Australia. Once again it would be a mammoth task to list all the relevant statutes which are applicable to teachers in New South Wales schools as potentially there are hundreds of Acts which may have an effect.

Some of the more relevant statutes, including those identified by Stewart's principals, include the relevant Teaching Services legislation, the *Family Law Act* 1975 and the applicable Occupational Health and Safety legislation.³⁹

³⁸ Known as the 'truck'.

³⁹ Stewart, 'School Principals and the Law: A Study of the Legal Knowledge Needed and Held by Principals in Government Schools in Queensland', above n 25, 120.

2.4.3.1 The New South Wales Teaching Services Act 1980

The relevant teaching service Act in New South Wales is the *Teaching Services Act 1980* (NSW). Many teachers may be aware of its existence but it is doubtful many are aware of specific sections of the Act. Take for example section 83 of the Act, headed ‘Breaches of discipline’. This section sets out elements of conduct which will not be tolerated by the employer including using “intoxicating beverages or drugs to excess...engaging in any disgraceful or improper conduct”⁴⁰

Importantly these offences are not confined to the conduct of teachers whilst they are on duty at a school, they extend to encompass the personal lives of teachers. So that, for example, a teacher who is charged with a drink driving offence can be found guilty by a court and punished and then be subjected to further punishment by the employer. This further punishment can take place whether or not the court found the offence proven beyond the requisite burden of proof as the employer does not require the same standards to be met.⁴¹

Given the current purpose approach to statutory interpretation taken by courts in Australia⁴² it is likely that many teachers, as normal adults, would be guilty of

⁴⁰ *Teaching Services Act 1980 (NSW)* s 83.

⁴¹ Sections 82 – 91 of the *Teaching Services Act 1980 (NSW)* provide details of ‘Discipline and conduct’ which all teachers are governed by. Absolute power is provided to the Director-General of Education to punish an employee for a breach of any of these detailed sections including under section 83 using intoxicating beverages or drugs to excess, engaging in any improper conduct or engaging in misconduct. Punishments under section 85 (1)(a) of the Act include a caution, a fine or even a reduction of salary. Each of these actions is independent of any court action which might also be followed by the appropriate authorities except for the actions contained under section 86 which is concerned with punishment where an employee is found guilty of a serious offence (IE punishable by a term of 12 months or more imprisonment) by a court.

⁴² Section 33 of the New South Wales *Interpretation Act 1987* makes it clear that a court must have regard to ‘a construction that would promote the purpose or object underlying the Act or statutory rule...’. But compare L Waller, *An Introduction to Law* (7th Edition) (LBC Information

these offences at different times in their careers. The result of a breach of this section of the Act is detailed in section 85 which *inter alia* states that the employer has a wide range of punishments available to them including cautioning, fines and even annulment of employment in the case of a probationary teacher.⁴³

2.4.3.2 Child Protection Legislation

Perhaps it is currently the various pieces of child protection legislation which exist in New South Wales that are the most relevant to teachers, certainly they are at least of topical interest to teachers.⁴⁴ Currently there exists in New South Wales at least four separate pieces of legislation which are designed to protect children from harm whilst they are in the care of adults, principally in a child-carer relationship.

This legislation includes the *Children and Young Persons (Care and Protection) Act 1998*, the *Commission for Children and Young People Act 1998*, the *Child Protection (Prohibited Employment) Act 1998* and the *Ombudsman Amendment (Child Protection and Community Services) Act 1998*. These pieces of legislation have been the subject of considerable criticism, largely on the basis of their

Services: Sydney, 1987) 129-149 and R Chisholm & G Nettheim, *Understanding Law: An introduction to Australia's legal system* (5th Edition) (Butterworths: Sydney, 1997) 66-77, who gives a detailed account of the minor techniques used for statutory interpretation including the Literal and Golden Rule approaches.

⁴³ *Teaching Services Act 1980 (NSW)* s 85.

⁴⁴ One only has to view the immediate press and union reaction to these legislative developments to witness the impact that they have had on the profession. See for example: A Phelan, 'Teachers live in terror over sex inquiry', *The Sydney Morning Herald* (Sydney), 19 January 1999, 10 and P Adams, 'In Pursuit of Power Abusers', *The Weekend Australian (Review)*, 13-14 February 1999, 32. But particularly the view of the Honourable Jan Burnswoods from the New South Wales Parliament who made the comment that '...there is certainly a real concern in those professions that teachers may find themselves fearing to touch a child, to comfort a child, because of a risk of

breaches of ‘natural justice’.⁴⁵ They have largely been developed by the Legislature in response to the Wood Royal Commission⁴⁶ and their broad aims are ostensibly two fold. These are to make it mandatory for people in a child caring position to report suspected cases of child sexual abuse and to make it an offence for people who have been convicted of a sex related offence against children to be employed in a child caring position.

2.5 Legalisation of Education

2.5.1 Introduction

The legalisation of the profession of teaching is not something which is unique. Other professions such as medicine, accountancy or engineering have also become increasingly legalised.⁴⁷ There has been a trend in the United States and increasingly in Australia of making individuals or government organisations more

an allegation.’ New South Wales, *Parliamentary Debates*, Legislative Council, 17 November 1998, 9935 (Jan Burnswoods).

⁴⁵ The criticism has come from a number of sources including teachers, teacher unions and academics. See particularly K Lindsay, ‘The New Children’s Protection Legislation in New South Wales: Implications for Educational Professional’ (1999) 4(1) *Australian and New Zealand Journal of Law and Education* 3.

⁴⁶ That is the Royal Commission into the New South Wales Police Service, a final report of which was handed down by Justice James Wood in August 1997.

⁴⁷ For a detailed examination of the legalisation of the medical profession see S A M McLean (ed), *Contemporary issues in law, medicine and ethics* (Dartmouth: Brookfield, 1995), B M Dickens (ed), *Medicine and the law* (Dartmouth: Aldershot, 1993) and G Sogo, ‘Legalization of Medicine’ (1987) 137(13) *Wien Med Wochensh* 289. For a discussion of the legalisation of the field of engineering see C Cooke, *Architects, engineers and the law* (3rd edition) (Federation Press: Sydney, 2001) and K K Humphreys, *What every engineer should know about ethics* (Marcel Dekker: New York, 1999). C J Napier, ‘Intersections of law and accountancy’ (1998) 23(1) *Accounting, Organisations and Society* 105 and T Lee, ‘The professionalization of accountancy: a history of protecting the public interest in a self-interested way’ (1995) 8(4) *Accounting, Auditing & Accountability Journal* 48 provide a description of the legalisation of the accountancy profession.

accountable for their actions.⁴⁸ In terms of government accountability in Australia one only has to look at the development of administrative law by the Federal Government from the mid 1970's to see its impact. From 1975 we see the development of several important statutes in Australia, the *Administrative Appeals Tribunal Act 1975*, the *Ombudsman Act 1976*, the *Administrative Decisions (Judicial Review) Act 1977* and the *Freedom of Information Act 1982*, which all seek to make government bodies more accountable.⁴⁹

2.5.2 Defining the legalisation of education

The legalisation of education has been defined rather haphazardly by Meyer as “the disorderly introduction of legal authority into educational order.”⁵⁰ What Meyer may have been attempting to make clear was that application of the law in relation to education has happened in a disorganised way. That is, it has not been systematically planned and implemented.

Perhaps a better definition of the legalisation of education encompasses the notion that there is a focus upon an individual using formal litigious procedures to resolve their disputes and to rely increasingly on decided cases and relevant

⁴⁸ See in particular the detailed longitudinal study undertaken into the legalisation of the American workforce undertaken by Sutton, Dobbin, Meyer and Scott in J R Sutton *et al*, ‘The Legalization of the Workplace’ (1994) 99(4) *American Journal of Sociology* 944.

⁴⁹ For a further discussion of the development of Administrative Law see particularly M Allars, *Australian Administrative Law: Cases and Materials* (Butterworths: Sydney, 1997), R Douglas & M Jones, *Administrative Law: Commentary and Materials* (Federation Press: Sydney, 1999), A Mason, ‘Administrative Review – The experience of the first twelve years’ [1989] *Admin Review* 66, E I Sykes *et al*, *General Principles of Administrative Law* (4th Edition) (Butterworths: Sydney, 1997) and R Tomasic, ‘Administrative law reform: Who benefits?’ (1987) 12(6) *Administrative Law* 262.

⁵⁰ J W Meyer in D L Kirp & D N Jensen(eds), *School days, rule days: The legalisation and regulation of education* (Falmer Press: Philadelphia, 1986) 2.

statutes to assert their legal rights. This is certainly the view of Neal and Kirp who maintain that the legalisation of education is characterised by:

...a focus on the individual as the bearer of rights, the use of legal concepts and modes of reasoning, and the provision of legal techniques such as written agreements and court-like procedures to enforce and protect rights.⁵¹

Indeed Sungaila and Swafford see the legalisation of Australian education as akin to the development of the rule of law in education. Quite specifically they note that it is the rights of the students, as clients, and their parents, as guardians, which are being continually refined by “the application of statute law and increasing access to judicial appeal and review of administrative decisions.”⁵²

2.5.3 Identifying the legalisation of education

There is evidence in the literature that the domain of education is becoming increasingly legalised.⁵³ The law is continually encroaching on the area of education and on the teaching profession in general. In particular authors such as Sungaila and Swafford suggest that although Australia may not have reached the

⁵¹ Ibid 344.

⁵² H Sungaila & G Swafford, ‘Out of the classroom, into the courts: The legalisation of Australian education and its implications for educational research’ (Paper presented to the first combined Australian and New Zealand Associations for Research in Education Conference, 1987) 44.

⁵³ For example P Williams, ‘Saying things about students: The legal implications for educators’ (1994) 16(4) *The Practising Administrator* 4 and Sungaila, above n 18.

levels of legalisation observed in other countries, such as the United States, there is a definite trend towards this high level of litigation and they maintain that our levels of litigation are increasing quite rapidly.⁵⁴

If there is any doubt about the extent and significance of the importance of law in the teaching profession one only has to look at the comments of Williams who categorically states that “the evidence of the legalisation of education is irrefutable.”⁵⁵ Williams goes to great effort to explain why there has been such an increase in the intertwining of law and education and explains this as a result of a generally more litigious society.⁵⁶ More specifically his explanation for the increase relates to the increasing awareness that members of society have of the accountability of the teaching profession. He states that education is a great target for litigation because the decisions can be:

...challenged by those who feel disaffected
or disadvantaged by the education system. It
is the law that is increasingly providing both
the grounds upon which such challenges can
be made and the remedies many complainants
seek.⁵⁷

⁵⁴ Sungaila & Swafford, above n 52.

⁵⁵ Williams, above n 53, 4.

⁵⁶ L M Friedman, ‘Litigation and Society’ (1989) 15 *Annual Review of Sociology* 17 and C A Newland C A, ‘Public Personnel Administration: Legalistic Reforms vs. Effectiveness, Efficiency, and Economy’ (1976) 36(5) *Public Administration Review* 529 provide a detailed discussion of the growth of litigation in society.

⁵⁷ P Williams, ‘Educational negligence: An Australian perspective’ (1995) October *Working Paper Series: School of Business Law - Curtin University* 2.

This accountability, as suggested earlier by the growth of administrative law, is not necessarily unique to the field of education, rather it reflects the fact that the community now more than ever seeks the accountability of the organisation of government.

It is not only Williams who has observed this increase in the level of litigation. In 1990, Birch and Richter noted a significant increase in the number of common law cases being brought to trial in Australia.⁵⁸ Even though Birch and Richter make it clear that this level of litigation has not yet reached the epidemic proportions of the United States there is a sufficient body of decided cases in Australia for educational authorities to seriously consider taking pre-emptive action.⁵⁹

Given the comments by these authors and the suggestion of an increase in the amount and scope of legislation applying to educational areas it becomes clear that there is a significant need for interest to be taken in this area of legal risk management. If educational establishments, and teachers in particular, choose to ignore these developments then they choose to ignore what has been quite a dramatic increase in the legalisation of their profession and they choose to do so at their own peril.

⁵⁸ I Birch & I Richter, *Comparative School Law* (Pergamon Press: Oxford, 1990) 135-140.

⁵⁹ Ibid 139. The cases such as *Geyer v Downs* (1977) 17 ALR 408 and *Commonwealth v Introvigne* (1982) 150 CLR 258 mentioned earlier in this chapter are prime examples of this. It is these cases which are being used in the area of tort law to warn educational authorities that they need to take pre-emptive action to avoid similar situations occurring in other schools. Unfortunately, however, there is no record of the number of cases the government employer in the State of New South Wales has been involved in which would reinforce the comments made by Birch And Richter.

2.6 Reducing the risk of liability

More than one commentator in the area of education law has noted the urgent need for a system designed to manage the increased legal risk to the profession.⁶⁰ This is not a new phenomenon, rather there has been a call for legal education to be given to all 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 1983 surveyed a group of 284 students involved in pre-service teacher education in the United States.⁶¹

The findings of that study made it very clear that trainee teachers had very limited knowledge of the law and in some instances the knowledge they had was fundamentally flawed. 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 the 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.⁶²

⁶⁰ See for example J Robinson, 'When education leads to litigation'(1990) 134(14) *Solicitors Journal* 387 and Center for Law and Education, 'Developments in education law' (1991) 24(9) *Clearinghouse Review* 1062. Compare the relevance of legal risk management considered in other professions which have experienced an increase in legalisation, including the police, considered in 'Private Prosecutions: A new hazard for Police?' (1995) 28(4) *New Zealand Police Association Newsletter* 56 and 'Police Education takes new course' (1995) 43(11) *Law and Order* 52.

⁶¹ C S McLoughlin *et al*, 'Prospective Educators' Knowledge of Children's Legal Rights' (1983) 20(4) *American Educational Research Journal* 591.

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 1970 for the inclusion of educational law into the mandatory training of all prospective teachers.⁶³

But perhaps it is the Australian Stewart who makes the most impassioned plea 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.⁶⁴

The question must be asked then what is the best method of inducing this pre-emptive legal risk management strategy? One method, suggested by various commentators, has been that those involved in education, whether they be principals, administrators or teachers, should receive some legal education.⁶⁵ Of

⁶² Ibid 591.

⁶³ Pell, above n 24.

⁶⁴ D Stewart, 'Legal risk management in Australian schools' (1992) 18(4) *Unicorn* 39, 39.

⁶⁵ See for example A E Knott, 'Legal risk management by teachers as employees' in D Stewart (ed), *Legal risk management in education: Proceedings of the Third Annual Conference of the Australian and New Zealand Education Law Association, Brisbane, 1994* (Queensland University

course it should be stated that there is a difference between providing legal education for all teachers, no matter what stage it is undertaken, and providing legal education for either a designated legal contact person in each school or perhaps even for members of a schools executive (such as the principal, deputy principal and perhaps even head teachers). Each of these options has merit, but implicit in the work of Stewart and Knott is that this education school be as wide spread as possible.⁶⁶

In 1990 Birch and Richter noted the increase in law courses relating to education being offered to teachers, administrators and principals at Australian universities.⁶⁷ However, as the findings will reveal in Chapter Six of this study, this situation does not appear to have been sustained. Indeed it will become evident in that Chapter that there is a distinct lack of comprehensive courses at the present time in Australian Universities.

2.7 Content of courses

Whilst the content and number of the courses in existence in 1990, at the time of the investigations undertaken by Birch and Richter, and those of the present study (1997-2001) may well be different what is important to note is what should be included in such a course of legal education for educators today. It certainly is not necessary for teachers to have the same degree of knowledge, expertise or

of Technology Press: Brisbane, 1994) and F Peach, 'Opening address to the Australian and New Zealand Education Law Association' (Paper presented at the inaugural meeting of the Queensland Chapter of the Australian and New Zealand Law Association, Brisbane, November 1992).

⁶⁶ Ibid. Stewart, above n 64.

⁶⁷ Birch & Richter, above n 58.

familiarity with aspects of the law as expected of a qualified legal practitioner or for that matter, held by any person possessing a law degree. What is undoubtedly necessary from a legal risk management perspective, however, is a knowledge of the pervasive influence of the law on the individual's life and professional duties.

It is only through an understanding of how the legal system works that any individual can begin to appreciate just how intricately linked the law is with their employment. Indeed Sungaila argues that it is highly undesirable, and of course clearly impracticable, for a teacher to possess detailed legal knowledge.⁶⁸ Instead, what is necessary is an understanding of the legal system to an extent that a teacher is able to recognise when a problem involves legal elements and therefore is able to make an informed judgement to seek professional advice on relevant issues. Sungaila states:

...there are two things educators need to know about the law. The first is that he or she should have an appreciation of the law as one of our most precious social institutions. The second is that he or she should have an understanding of that law which impinges on professional education practice sufficient to recognise whether a problem which has arisen

⁶⁸ Sungaila, above n 18, v-xi.

is one about which professional legal advice
should be sought or not.⁶⁹

Clearly teachers need to understand certain elements of the law to be able to recognise legal or potential legal difficulties. It may well therefore be as Rossow suggests that they need to be educated to be able to ask certain questions in order to be able to categorise such a problem.⁷⁰ What this then leads to, Rossow suggests, is a 'preventive school attitude'.⁷¹

It is this preventative school attitude which can be effectively used to reduce any fear of legal liability which may exist in a school. If the employees of a school have been sufficiently educated to be able to think about problems and issues then these employees can help to prevent potential legal problems occurring or to know when to seek further practical advice from a qualified professional. This is the aim of the curriculum which was developed and will be described later in Chapter Five of this study.

2.8 Summary of Chapter Two

This chapter has presented a discussion of the concept of the law and its applicability to the teaching profession. It has further provided a discussion of the legalisation of the teaching profession. It has been asserted in this Chapter that the

⁶⁹ Ibid xi.

⁷⁰ L F Rossow, *The principalship: Dimensions in instructional leadership* (Prentice Hall: New Jersey, 1990) 188. Note that in this context Rossow emphasises that this advice for asking questions is related to principals in schools, however it is submitted that since all principals are recognised as teachers, there is little distinction between the legal education needed by a teacher and a principal in a school.

teaching profession and the law are inexplicably intertwined. It has become evident that teachers require an understanding of the law in order to be adequate in the performance of their professional duties.

A clear statement has been made about the type of legal knowledge which needs to be provided to teachers. Distinctions between common law and statute law in regard to education have been made. It is apparent that the concept of educational law is inherently difficult to easily define, but it emerged that it is not necessary to detail specific information about the content of this law in order to address the stated research questions.

This Chapter has concluded with evidence that there is a real need for teachers to receive legal education which will enable them to better appreciate the legal climate they work within. The best way to address this is not via a systematic programme of delivering complex legal information and instructions to teachers but rather by way of background education which will help them to be better able to categorise problems when they arise or potentially arise and know which categories of problems it would then be necessary to seek further profession advice upon. Through providing teachers with an understanding of the background to the legal system it will enhance their understanding of relevant legal issues which are contemporary and those which may emerge in the future.

Chapter Three provides specific details of the research questions for this study.

⁷¹ Ibid 224.

CHAPTER THREE

OUTLINE OF RESEARCH QUESTIONS

3.1 Introduction

Chapter Three provides an analysis of the conceptual framework from which the research questions used in this study emerge. The four research questions examined in this study are clearly stated and explained.

3.2 Conceptual Framework

The conceptual foundation for this study is based upon the premise that the fields of education and teaching have been rapidly changing. It is this notion of dynamic development which necessitates that a broad approach to the framework be taken in order that as full a picture of the area of investigation emerge as possible. Starrat notes that in Australia the field of education has been undergoing a period of considerable change due to the changing nature of society.¹ These changes involve numerous aspects associated with the nature, content and delivery of all facets of education. This includes matters ranging from increased accountability in curriculum implementation (particularly the New South Wales High School Certificate), increased duty of care requirements and a heightened focus on child protection issues. All of these matters impact heavily on the daily work of

classroom teachers and the management responsibilities of principals. Such issues are changing the teaching landscape and signal an increased responsibility for the employers of teachers to meet the needs of their staff in this rapidly changing environment.

This study is concerned with the changes associated with educational law, which in itself is a very broad area, thus reflecting the need for a broad approach to be taken through a series of interrelated research questions. The interdependent nature of the issues faced by classroom teachers, school leaders and executives is reflected in the research questions, requiring each question to build on the next, and refer to others, in order to accurately reflect the increasing impact of the law on all aspects of teaching.

Chapter Two detailed the increasing legalisation of the field of education and noted the widely held belief that there is a need for urgent attention to address what is perceived to be a distinct lack of information possessed by trainee and practising teachers in regard to the law.

The conceptual framework for this study was based on establishing a need for a programme of professional education in the area of the law by examining the needs of the various relevant stakeholders. To this end the views of the New South Wales government employed teachers, the dominant union body and the government employer were all engaged in order to develop an accurate picture of the perceived problem. The framework then moved on to address the nature of

¹ J Starratt, 'The challenge of educational leadership' (Paper presented at the National Conference of the Australian Council for Educational Administration, Darwin, 1992).

this problem through the designing of a curriculum to address the recorded deficiencies.

3.3 Research Questions

To this end a series of research questions were developed and undertaken. The broad objectives of these research questions were to: identify the knowledge that New South Wales teachers had about matters of educational law; discover the relevance of educational law to teachers; identify the areas of law which were most relevant to teachers; and to address the problems which the first three research questions discovered.

From these broad objectives the following four research questions were developed:

3.3.1 What knowledge do teachers in NSW government schools have about the law and how it affects them in the delivery of their professional duties?

The review of the literature in Chapter Two revealed a perception amongst commentators that, at least in America, there was a lack of legal knowledge held by teachers. Indeed it was noted by Pell that teachers in the United States not only lacked legal information but often the knowledge that they had received or developed was inaccurate and based on misinformation.² It was important to this

² S W Pell, 'Pre-service teachers' lack of knowledge of education law: Ignorance is no excuse' (1994) 14(4) *Illinois School Law Quarterly* 138, 143

study, therefore, to establish with some certainty what general and specific knowledge New South Wales government teachers did have about the law.

3.3.2 Is it essential or even of use for NSW government teachers to have any degree of knowledge in legal areas?

The need for legal knowledge became evident in the literature review provided in Chapter Two of this study. In that Chapter it became evident that major commentators in the field of educational law have seen a distinct need for teachers to have legal information provided to them. It was important for this study to gain the views of all the major stakeholders in the field of education to establish the perceived need for this type of professional development.

As teachers in New South Wales government public schools become more aware of the impact of the law on their work, many have begun to question the need for an increased understanding of the law as it related to their daily work. However, it is important for this study to consider at what level this understanding needs to be developed. For instance, is it necessary for all teachers to develop some fundamental understandings of the law, or is it enough for principals in their capacity as school leaders and managers to hold this information? Further, should those responsible for policy development in state offices be the holders of their information, and act as a liaison and source of advice for those based in schools?

3.3.3 What substantive areas of the law do NSW government teachers require a working knowledge of in the performance of their usual duties?

In refinement of the previous research question it becomes evident that simply establishing a need for the legal knowledge of teachers is not sufficient. If there is not a need for legal information to be delivered to teachers there will be no need to answer this question. However it will become clear that the various stakeholders all have different opinions on this issue and that their views may differ considerably on the most significant areas of the law of which teachers require a working knowledge.

In an environment of increasing expectations of teachers in terms of the implementation of a wide range of curriculum and pedagogical initiatives of the New South Wales Department of Education and Training, it is worth considering the burden of this knowledge on teachers. Would the development of a working knowledge of the law as it applies to teachers enhance their performance, or would it merely increase pressure on an already highly pressured workforce, and limit their capacity to make instinctive decisions based on past professional experiences, particularly in the area of child protection?

3.3.4 How can this knowledge be most effectively delivered to NSW government teachers?

Once again this question might be simply answered in this research project if the answer to the need for legal knowledge is declined. However, given as already

indicated, the diverse range of responses from the stakeholders it becomes necessary to examine the various methods of conveying this information effectively to teachers. Considering also the discussion of the professional nature of the occupation of teaching there is a need to examine the environment in which this education could take place.

If this study finds that this knowledge is necessary for teachers, implementation becomes a critical issue. While staff in New South Wales government schools currently have three days per year allocated as school development days, with no students attending, these days are often spent undertaking consolidated training mandated by the New South Wales Department of Education and Training.³ Opportunities for professional learning may therefore be limited to after school hours, relying on the interest or goodwill of teachers to attend such training in aspects of the law that impact on their work. A consistent state-wide approach to training in the law would require a commitment from the employer to allocating time and budget to mandatory training.

3.4 Summary of Chapter Three

Chapter Three has presented a discussion of the conceptual framework for this study and the four research questions which flowed from that framework.

Chapter Four provides a continuation of the literature review through an examination of the literature in relation to the conceptual basis of the research

³ Of course this compulsory mandated learning might include specific incidences of legal education.

methodology used in the study, which focuses upon a multimethod research strategy utilising both qualitative and quantitative techniques.

CHAPTER FOUR

RESEARCH METHODOLOGY – A CONCEPTUAL BASIS

4.1 Introduction

Chapter Four outlines the research methodologies used in this study. The exploratory nature of the study is defined and a description given of the major data gathering tools, including the use of focus groups and a questionnaire. Finally the Chapter provides a description of the population and sample.

4.2 Concept of Research

An important first step, as the literature reveals, in designing an educational based research strategy is to decide the basis on which the research is to be founded.¹ Hence, in order to be able to conduct research the researcher must have a clear understanding of the nature and intricacies of research. The concept of research itself has many facets. Depending on the contextualisation it is given it may have

¹ For a more thorough understanding of the nature of research see G R Adams & J Schvaneveldt, *Understanding Research Methods* (Longman: New York, 1985), A M Graziano & M L Raulin, *Research Methods: A process of inquiry* (Longman: Sydney, 1997), C J Drew, *Introduction to designing and conducting research* (2nd Edition) (C.V. Mosby: London, 1980) and R L Dominowski, *Research Methods* (Prentice Hall: Englewood Cliffs, 1980) who at 2-10 describes in detail the fundamental nature of research as a fact finding activity.

scientific, mathematical, humanistic or empirical connotations.² These connotations can be complex or simple.

For example, Best and Kahn provide a scientific and control perspective in their definition of research:

Research may be defined as the systematic and objective analysis and recording of controlled observation that may lead to the development of generalisations, principles, or theories, resulting in prediction and possible ultimate control of events.³

But as the following definition of research from McMillian and Schumacher reveals, research can be a much broader concept:

Briefly defined, research is a systematic process of collecting and logically analysing information (data) for some purpose. This definition is general because there are many methods available to investigate a problem or

² Indeed J P Keeves (ed), *Educational research, methodology and measurement: An international handbook* (Pergamon Press: London, 1988) at 3 notes that two major paradigms have been drawn upon in social science research. Both of these paradigms, he notes, had their origins in the “two major philosophical traditions that have influenced the quest for knowledge”, these being the humanistic and the scientific methodological approaches. These approaches are traditionally presented in the literature as providing for a range of research methodologies which are categorised as either quantitative or qualitative.

³ J W Best & J V Kahn, *Research in Education* (6th Edition) (Prentice Hall: New Jersey, 1989) 20.

a question. Educational research is not limited to the approaches used in the physical and natural sciences, nor should the word 'research' be used indiscriminately to describe what is actually casual observation and speculation.⁴

Due to the unique nature of educational research⁵ it is therefore most appropriate to maintain as broad a definition of the concept of research as possible. The research detailed in this study accepts as fundamental the notion that research comprises systematic elements devised in order to find answers to a problem.

4.3 Methodological Stance

The methodological stance adopted throughout this study was based on several different but interrelated methodological processes and techniques. The methodology was largely ethnographic in nature and triangulation was used to ensure the integrity of the data collected. The data collection methods included letters of inquiry, a trial focus group, live focus groups, a questionnaire and trial curriculum groups. The basis of this methodology is to provide a comprehensive

⁴ J H McMillan & S Schumacher, *Research in education* (3rd Edition) (Harper Collins: New York, 1993) 8.

⁵ For a fuller understanding of the uniqueness of educational based research see particularly G De Landsheere, 'History of educational research' in Keeves, above n 2, 9-16. De Landsheere concentrates on the history of educational research including the different historical periods in which different research methodologies were favoured. See in particular the analysis given to the focus on quantitative methodology between 1900 and 1930 compared to the development of ethnographic techniques of research post 1960 at 12-16. See also E Jacob, 'Qualitative research traditions: A Review' (1987) 57(1) *Review of Educational Research* 1 in regard to treatment of the

picture of the research topic. The elements of this stance are explained and the benefits of using the approach are detailed.

4.4 Characteristics of Approach Adopted

This study was largely ethnographic, using both qualitative and quantitative techniques through the introduction of an exploratory study. Multimethod strategies were used at each stage of the research process. Multimethod strategies were used in order to provide for a more comprehensive exploration of each of the research questions posed.

4.4.1 Ethnographic Studies

Broadly, ethnographic studies in the field of educational research refer to naturalistic or qualitative research.⁶ It is a distinctive form of research which differs substantially from the types of research which have characterised the field of education over the past century.⁷ In its simplest form it is described by Slavin as:

traditions of qualitative research and J Nisbet & N J Entwistle, *Educational Research Methods* (University of London Press: London, 1970).

⁶ The works of F Erickson, 'Some approaches to inquiry in school-community ethnography' [1977] 8 *Anthropology & Education Quarterly* 58, D M Fetterman & M A Pitman (eds), *Educational evaluation: Ethnography in theory, practice and politics* (Sage: Beverly Hills, 1984), H F Wolcott, 'Ethnographic research in education' in R M Jaegar (ed), *Complementary methods for research in education* (American Educational Research Association: Washington D.C., 1988) at 187-206 and J P Spradley & D W McCurdy (eds), *The cultural experience: Ethnography in complex society* (Science Research Associates: Chicago, 1972) provide for a more comprehensive understanding of ethnographic research.

⁷ See particularly the treatment of the main research paradigms of education undertaken by Husen in Husen T, 'Research paradigms in education' in Keeves, above n 2, particularly at 17-20, where Husen discusses the historical differences between quantitative and qualitative methodologies.

Qualitative research in which social or instructional situations are observed and described in great detail.⁸

Gay expands on this definition of ethnography stating:

Ethnography involves intensive data collection, that is, collection of data on many variables over an extended period of time, in a naturalistic setting.⁹

So, put simply, ethnographic studies are studies in which the researcher observes a natural situation in order to describe it in detail. But in order to describe the situation the researcher necessarily must interpret it. Specifically when Wiersma applies ethnography to the field of educational research he states that:

Ethnographic research is the process of providing holistic and scientific descriptions of educational systems, processes, and phenomena within their specific contexts.¹⁰

Critically ethnographers do not attempt to analyse or describe an entire topic, problem or event. Instead one of the principal features of ethnography, as noted

⁸ R E Slavin, *Research methods in education* (2nd Edition) (Allyn and Bacon: Boston, 1992) 246.

⁹ L R Gay, *Educational research* (4th Edition) (Macmillan: New York, 1992) 257.

by Jacob¹¹, is the ability to concentrate on key elements in order to gain an in-depth understanding of these key elements. Consequently this then means that it is accepted that some elements will be ignored, whilst others form the focus of the study. A focus upon key elements allows the researcher to develop an in-depth understanding of these facets which in turn leads to developing a more comprehensive picture of the entire topic, problem or event.¹² Use of this approach was an important consideration for this study because of the unique nature of the research project. This project was concerned with focusing upon very specific elements in order to develop a more comprehensive picture of the topic of teachers and the law.

According to Wolcott¹³ an ethnographic methodology is a valuable form of research methodology in educational establishments because it allows the researcher a unique opportunity to “walk in someone else’s shoes.”¹⁴ In this study the researcher’s aim was to gain an insight into the legal knowledge that teachers held.

Taft provides an overview of the structure of ethnographic research when he states that it consists essentially of:

- A description of events that occur within the life of a group;

¹⁰ W Wiersma, *Research methods in education: An introduction* (6th Edition) (Allyn and Bacon: Boston, 1995) 249.

¹¹ Jacob, above n 5.

¹² Ibid 19.

¹³ H Wolcott, ‘Criteria for an ethnographic approach to research in schools (1975) 34(2) *Human Organization* 23.

- With special regard to the social structures and the behaviour of individuals with respect to their group membership; and
- An interpretation of the meaning of these for the culture of the group.¹⁵

Given the diverse nature and sheer volume of the law which impacts upon teachers in the performance of their professional duties it is argued in this study that the research procedures inherent in ethnographic studies are ideal to give a thorough understanding of the dynamics between the legal system and the teacher. Use of ethnographic research as a basis for the methodology has enabled this researcher to develop a thorough understanding of the knowledge, attitudes and beliefs of the major stakeholders on the issue of teachers and the law.

Additionally, as McMillan and Schumacher note, since most ethnographic studies are exploratory in nature they frequently identify areas of inquiry which prior research may have neglected, thus it forms an ideal basis for the methodology of this study.¹⁶ A more quantitative form of research methodology may only provide for a limited exploration of the specific legal knowledge that teachers may hold whereas a focus on qualitative aspects allows for thorough analysis.

¹⁴ Ibid 26.

¹⁵ Taft R, 'Ethnographic research methods' in Keeves, above n 2, 59.

¹⁶ McMillan & Schumacher, above n 4, 406.

Ethnography emphasises description and interpretation of data within a particular context. It was with this emphasis in mind that the use of focus groups was determined to be a very suitable form of gathering data for this ethnographic study. More specific details about the structure and value of the focus group are provided in this Chapter at 4.5.2.

4.4.2 Exploratory Studies

Exploratory studies are a type of ethnographic research technique. On some occasions the literature refers to exploratory studies as formative studies. These studies have as their central axiom the discovery of ideas and insights as opposed to more quantitative methodologies which may focus upon the testing of hypotheses.

Sellitz, Jahoda, Deutsch and Cook have been responsible for undertaking one of the most comprehensive pieces of research in the area of exploratory studies.¹⁷ These authors acknowledge the value of this type of methodology when they state that exploratory studies allow the researcher not only to gain familiarity with a particular subject matter but also the methodology is designed to clarify concepts which are of immediate concern. They note this when they state that exploratory studies provide:

¹⁷ C Sellitz *et al*, *Research methods in social relations* (Holt, Rinehart & Winston: New York, 1965).

...a census of problems regarded as urgent by
people working in a given field.¹⁸

This was one of the concerns of this study. Some of the international literature¹⁹ had indicated that legal education was already a problem or was destined to become a problem in the near future and thus this represented an opportunity to gain an insight into the potential problem in the Australian experience.

Some of the other characteristics and benefits of this type of methodology are further exemplified by Singleton, Straits and Straits.²⁰ These authors state that research using an exploratory methodology is best undertaken when little is known about the subject matter as this type of methodology allows for a much greater degree of flexibility than more traditional or formalistic methods of enquiries may permit.²¹

Given the detailed parameters identified in the earlier chapters of this study which made it clear that relatively little was known in Australia about the levels of legal knowledge held by teachers these methods of inquiry were the most valid basis for the methodology of this study. Information which was gathered using an ethnographic centred approach composing elements of the exploratory study clearly establish the possibility of obtaining a thorough exploration of the research questions outlined in Chapter Three of this study. Those questions were:

¹⁸ Ibid 51.

¹⁹ See particularly the discussion at 1.2 of this study.

²⁰ R A Singleton, B C Straits & M M Straits, *Approaches to social research* (2nd Edition) (Oxford University Press: New York, 1993).

²¹ Ibid 91.

[1] What knowledge do teachers in NSW government schools have about the law and how it affects them in the delivery of their professional duties?

[2] Is it essential or even of use for NSW government teachers to have any degree of knowledge in legal areas?

[3] What substantive areas of the law do NSW government teachers require a working knowledge of in the performance of their usual duties?

[4] How can this knowledge be most effectively delivered to NSW government teachers?

4.4.3 Integration of research methodologies

In the past the two dominant research strategies, qualitative and quantitative methodologies, have often been portrayed in the literature as being independent of each other. Indeed Bailey²² asserts some researchers, who may have preferred one of these two methodologies, have categorically denounced other methodologies as having no basis; the methodologies have been portrayed as being diametrically opposed. The example Bailey provides is of scientific researchers who have asserted that quantitative methodology is the only true methodological research approach serious researchers could contemplate using.²³

²² K D Bailey, *Methods of Social Research* (3rd Edition) (The Free Press: New York, 1987).

²³ Ibid 24.

However more recently there has been a move to accept the validity of both methodologies in social research. Wiersma provides a good example of this type of acceptance arguing that whilst there are clearly major differences between quantitative and qualitative methodologies it is perhaps best to view them as ranging on a continuum rather than as being diametrically opposed.²⁴

Brannen notes that the distinction given to each of these paradigms is not necessarily a fundamental one. There is of course a difference in the way each paradigm collects and treats the research data, but there is little difference between their fundamental notions of the concept of research.²⁵ Expressly, each of the paradigms has at its heart the systematic investigation of a problem in order to find answers.

A number of researchers argue that the distinction between the paradigms is artificial.²⁶ Keeves, for example implicitly notes that the scientific approach is not a suitable basis upon which to measure every facet of human behaviour when he states:

During recent decades understanding of the
epistemological foundations of knowledge
within the two perspectives has advanced
significantly, so that no longer can the two

²⁴ W Wiersma, *Research methods in education: An introduction* (5th Edition) (Allyn and Bacon: Boston, 1991).

²⁵ J Brannen, 'Combining qualitative and quantitative approaches: An overview' in J Brannen (ed), *Mixing methods: Qualitative and Quantitative Research* (Aldershot: UK - Avebury, 1992).

approaches to educational research be seen to
be substantially different but have a common
base...²⁷

There is definitely a greater willingness amongst contemporary researchers to accept that educational research allows for the use of either of the two paradigms and that it is quite acceptable to integrate elements of each into the one research methodology. One supporter of such a view is Burns²⁸, who argues that it is highly desirable to integrate facets of each, as no single methodological stance could hope to provide answers to all of the questions that a research project may raise.

4.4.4 Multimethod research strategies

Research strategies which use more than one method do not have a long tradition in the literature.²⁹ Caracelli and Greene³⁰ acknowledge the relative newness of this technique when they discuss the fact that their review of the literature has exposed

²⁶ See for example W R Borg & M D Gall, *Educational Research: An Introduction* (5th Edition) (Longman: New York, 1989) and S Sowden & J P Keeves, 'Analysis of evidence in humanistic studies' in Keeves, above n 2.

²⁷ Keeves, above n 2, 4.

²⁸ R Burns, *Introduction to research methods on education* (Longman Cheshire: Sydney, 1990). See also the views expressed by D Reynolds & K Reid, 'The second stage: Towards a reconceptualisation of theory and methodology' in A Westoby (ed), *Culture and power in educational organizations: A reader* (Open University Press: Milton Keynes, 1988) and J W Best & J V Kahn, *Research in Education* (7th Edition) (Englewood Cliffs: New Jersey, 1993) who note that it is not only highly desirable to integrate facets from each paradigm it is also essential that this is done in order to more fully explain the uniqueness of the educational environments.

²⁹ See for example R G Burgess (ed), *Field research: A sourcebook and field manual* (George Allen and Unwin: London, 1982) and T D Jick, 'Mixing qualitative and quantitative methods: Triangulation in action' in J Van Maanen (ed), *Qualitative Methodology* (Sage Publications: Beverley Hills: 1983).

³⁰ V J Caracelli & J C Greene, 'Data analysis strategies for mixed-method evaluation designs' (1993) 15(2) *Educational Evaluation and Policy Analysis* 195.

a situation where there is more discussion about actually using multimethod techniques and the inherent benefits of doing so rather than actual examples of its use.

It is important at this stage to understand that the term ‘multimethod research strategy’ does not only refer to different strategies used between the major paradigms of qualitative and quantitative research. The term also lends itself to the possibility of a number of different research techniques being used within the one paradigm. For example if we use the paradigm of qualitative research, multimethod research techniques might be achieved through the use of participant observation, participant interview or the issuing of a diary. These three different types of research techniques illustrate a multimethod research strategy. The same range of possibilities, of course, exists if a quantitative perspective had been taken.

At various times multimethod research has been referred to by different researchers as convergent validation, triangulation, multimethod/multitrait or multiple research strategies. The fundamental basis of combining these strategies is to develop a more comprehensive picture of the research problem. As Brewer and Hunter³¹ argue, it is wise to combine research strategies because they allow an opportunity for more accurate research to be undertaken. They state:

...the fundamental strategy of the multimethod approach is to attack a research

problem with an arsenal of methods that have non-overlapping weaknesses in addition to their complementary strengths.³²

Denzin³³ promotes the value of the divergent nature of multimethod research techniques stating that each of the major paradigms, and even individual elements of the major paradigms, have inherent flaws ranging from:

...an inability to enter realistically the subject's life-world in experiments and surveys, to the problems reflecting change and process in unobtrusive methods.³⁴

That is, that sole reliance on either quantitative or qualitative research methodologies is unwise. Equally it is unwise to rely on any one element within or across these two methodologies as a sole method of data gathering. For example it would not be prudent to design a research strategy which was based entirely upon the results of a survey or a simple letter of enquiry. Hence this study has adopted a number of different data gathering methods. The benefit in taking this approach is that even if one of the tools used produces less data than may have initially have been hoped for the other tools employed can be used to fill in gaps and provide for a greater picture to emerge.

³¹ J Brewer & A Hunter, *Multimethod Research: A Synthesis of Styles* (Sage Publications: Newbury Park - California, 1989).

³² Ibid 17.

³³ Denzin N K, *The research act: A theoretical introduction to sociological methods* (2nd Edition) (Aldine press: Chicago, 1988).

³⁴ Ibid 512.

This makes it quite clear that it is not possible for any one research method to totally or even adequately measure the given variables in any research situation.³⁵

It is therefore sound research practice to integrate a number of these methods into this research study. The basis of the design for this research study was to allow for the multimethod research strategies such as the use of qualitative, quantitative methodologies, including the use of triangulation, as a way of developing a more comprehensive and accurate picture of the situation(s) to be examined. As Jick³⁶ states, the resulting benefit of multimethod research strategies:

...rests on the premise that the weakness in each single method will be compensated by the counter-balancing strengths of another...[He further states that such a method] purports to exploit the assets and neutralise, rather than compound the liabilities.³⁷

Greene, Caracelli and Graham³⁸ have undertaken an analysis of multimethod research strategies. Their review of the literature on multimethod research is that it is highly desirable to mix research strategies in order to develop a comprehensive

³⁵ Indeed G De Landsheere, 'History of educational research' in Keeves, above n 2, clearly argues at 15 that "It is now widely acknowledged that no one research paradigm can answer all the questions which arise in educational research." See also the clear statement from Burns in R B Burns, *Introduction to research methods* (2nd Edition) (Longman: Melbourne, 1995) where he clearly states at 251 that "Ethnographic fieldwork is not a homogenous method, but involves a variety of techniques of data collection."

³⁶ Jick, above n 28.

³⁷ Ibid 138. Here Jick is specifically referring to the benefits of using triangulation, which is an example of a multimethod research strategy and is further explained in detail later in this chapter.

understanding of any research problem, particularly from the perspective of triangulation or attempting to corroborate the data collected by the use of more than one means.³⁹ This research study has indeed sought to mix the research strategies used as the basis for collecting data to ensure that such a comprehensive understanding of the research questions posed can be achieved. Implicit in the views presented by Greene, Caracelli and Graham is that by mixing research strategies it allows in any given research situation for some of the tools within the strategies employed to be more successful in gathering data than others. The authors contend that it cannot be determined which of these tools will be more successful than the other until the data collection is complete.⁴⁰ Hence by employing multimethod research strategies the researcher is ensuring that useful data will emerge from the research process followed even if some of the tools employed fail or produce less data than may have initially been hoped/forecasted.

These authors also contend that using multimethod research strategies allows for the possibility of developing insights into areas which the research may not have previously considered. One of the methods permitting this opportunity to develop involves integration of a focus group as one of the methods of research. Focus groups allow the opportunity to develop a better understanding of the participants' views. They are discussed further in this Chapter at 4.5.2.

³⁸ Greene J C *et al*, 'Toward a conceptual framework for mixed-method evaluation designs' (1989) 11(3) *Educational Evaluation and Policy Analysis* 255.

³⁹ *Ibid*, particularly at 256.

4.4.5 Triangulation

Triangulation⁴¹ is just one of the various multimethod strategies frequently referred to in the literature.⁴² The techniques origins can be traced back to the work of Campbell and Fiske in 1959.⁴³ It is a commonly used technique to improve the validity of the results obtained. In its simplest form triangulation is defined as:

...the use of two or more methods of data
collection in the study of some aspect of
human behaviour.⁴⁴

One of the most influential articles on the nature and benefits of triangulation is that written by Mathison.⁴⁵ In her article titled *Why Triangulate?* Mathison gives a comprehensive account of the history of triangulation and its benefits. Mathison is categorical in her belief that triangulation is essential for accurate research to be undertaken. She states this quite clearly in the following comments:

Good research practice obligates the
researcher to triangulate, that is, to use

⁴⁰ Ibid.

⁴¹ For a more detailed discussion of the theory behind triangulation see particularly E J Webb *et al*, *Unobtrusive measures* (Rand McNally: Chicago, 1966) [particularly Chapter 1] and J C Greene & C McClintock, 'Triangulation in evaluation: design and analysis issues' [1985] 9 *Evaluation Review* 523.

⁴² For a discussion of some of the other methods, see particularly the discussion in Greene, above n 37, at 258-260 where the possibilities of other techniques such as complementarity, initiation, expansion, and practice are discussed.

⁴³ D T Campbell & D W Fiske, 'Convergent and discriminant validation by the multitrait-multimethod matrix' (1959) 56 *Psychological Bulletin* 81.

multiple methods, data sources...to enhance the validity of research findings.⁴⁶

She further notes that regardless of epistemological or philosophical perspectives:

...it is necessary to use multiple methods and sources of data in the execution of a study in order to withstand critique by colleagues.⁴⁷

Similarly Greene, Caracelli and Graham provide a comprehensive analysis of the benefits of triangulation when they state that:

The core premise of triangulation as a design strategy is that all methods have inherent biases and limitations, so use of only one method to assess a given phenomenon will inevitably yield biased and limited results. However, when two or more methods that have offsetting biases are used to assess a given phenomenon, and the results of these methods converge or corroborate one another,

⁴⁴ R B Burns, *Introduction to research methods* (3rd Edition) (Longman: Melbourne, 1997) 324.

⁴⁵ S Mathison, 'Why triangulate?' (1988) 17(2) *Educational Researcher* 13.

⁴⁶ Ibid 13.

⁴⁷ Ibid.

then the validity of enquiry findings is enhanced.⁴⁸

Therefore it can be seen that triangulation is a technique used to give validity to the data collected. In essence it involves the use of different research devices. It is utilised to ensure that sole reliance is not placed upon one source of data.⁴⁹

In this study triangulation is used to provide validity to the data collected. A number of different research instruments were designed and implemented to give a better understanding of the situation than possible if a single data collection instrument had been used. These instruments included a letter of inquiry, a trial focus group, live focus groups, a questionnaire, documentary searches and trial curriculum groups. By using such a range of instruments allowance is made for circumstances where some of the instruments may produce less data than may have been desired, whilst still allowing for validity of the data to occur via the other instruments employed. Further details, discussion, and data for each of these elements is presented in Chapter Six.

There were different participants in each part of the research to further validate the research findings. An examination of the details of this study in Chapter Six reveals that the views of teachers, their unions and their government employer were all sought to determine all possible sources of information for the four research questions detailed in Chapter Three.

⁴⁸ Greene, above n 37, 256.

4.4.6 Benefits of Approach Adopted

All research methodologies draw some controversy.⁵⁰ If this study had chosen to focus exclusively upon quantitative methodologies it would have been open to criticism from supporters of qualitative methodologies and vice versa. Indeed the way data collection has been undertaken here is likely also to draw criticism from individuals/groups who are opposed to the methodologies chosen. However, the methodologies utilised were chosen for their suitability to the posed research questions, and the identified human participants. The methodologies were chosen because they allow for a holistic picture of the research topic to emerge. It is explicitly acknowledged that the research methodology chosen in this study has limitations and that different data may have emerged if different methodologies were employed.

The use of multiple methods or multiple research strategies reduces the possibility for criticism. As Jick notes multimethod research is a valuable strategy which allows researchers to:

⁴⁹ Further evidence of the value of triangulation can be found in the discussion by Cohen, Manion and Morrison in L Cohen *et al*, *Research Methods in Education* (5th Edition) (Routledge: London, 2000) at 112-113.

⁵⁰ Further, all research strategies have limitations. It would be naïve to suggest that any one particular research strategy could comprehensively hope to achieve the accurate recording and reporting of all of the relevant information concerning a particular problem. Instead what is necessary in the choice of a particular methodological stance is to identify an appropriate approach and make its limitations clearly known. For a further discussion on the limitations of all research methodologies see particularly P DLeedy, *Practical Research: Planning and design* (5th Edition) (Maxwell Macmillan: Sydney, 1989) at 214-220.

...improve the accuracy of their judgements
by collecting different kinds of data bearing
on the same phenomenon.⁵¹

This has been the intention of this research which has always been centred on the fundamental notions of trying to understand what knowledge teachers had of the law.

For this study it was important to utilise data collection methods which would not only identify legal knowledge that teachers had but also to afford the responsible stakeholders of education an opportunity to put forward their view points. It was also important to guarantee and maintain the anonymity of the teachers involved in the research. In this regard the research methodology adopted allowed the development of an intimate understanding of the problem to arise compared to that which may have been achieved if different strategies had been adopted.

Multimethod research strategies in this study were used to:

- discover the level and type of legal knowledge held by teachers
- collect data on the legal courses offered to teachers at university level
- validate the focus group interview schedule
- trial the draft curriculum
- collect data on the success of the curriculum trials.

⁵¹ Jick, above n 28, 136.

Whilst the advantages of naturalistic research are supported by the likes of Guba and Lincoln⁵², the possibility always exists for criticism of the methodology chosen or the selection of participants. This study, for example, could be criticised on the basis of failing to adopt a more scientific approach or for failing to find more of a balance between qualitative and quantitative methodologies. This research has attempted to overcome these possible criticisms by adopting the benefits of the approaches outlined, that is, by adopting the benefits of an ethnographic based research paradigm and using elements of triangulation to strengthen the paucity of data collected.

4.5 Discussion of Data Collection Procedures

4.5.1 Introduction

Since the Australian experience is characterised by a lack of research in the focus area of this study it was necessary to devise a comprehensive research strategy which would allow an opportunity for the major stakeholders in education to provide input into an analysis of the four research questions described in Chapter Three.

It is submitted that the various multimethod research strategies described here provide an effective method of achieving this purpose. No absolute reliance is placed upon any one of the methods of gathering data described. Instead all forms

⁵² E G Guba & Y S Lincoln, *Effective Evaluations* (Jossey-Bass Publishers: San Francisco, 1982).

of data gathered via the various methods described are used to provide a comprehensive view of the field of teachers and the law.

4.5.2 Focus Groups

4.5.2.1 Background to choice of methodology

Given the ethnographic methodological approach taken by this research project the focus group emerged as a way of developing an understanding of the nature of the work of teachers and the law that affects them in the delivery of their professional duties.⁵³ Since, according to Woods⁵⁴, the basis of ethnographic research is to determine great detail about a particular subject, which he likens to an artist working with finite detail to create a masterpiece, it is submitted that the focus group is an excellent way to achieve this purpose. Indeed Woods notes:

[In ethnography] ...great attention is often devoted to the intricate detail of the picture, and the ethnographer, like the artist, works with great care at capturing both the general and the essential characteristics, and the myriad of finer points which underpin them.⁵⁵

⁵³ For a discussion of the value of participant observation and interview, two of the most widely used techniques for ethnographic research, of which the focus group is just one example see S J Ball, ““Beachside” Reconsidered: Reflections on a Methodological Apprenticeship’ in R G Burgess (ed), *The Research Process in Educational Settings: Ten Case Studies* (Falmer Press: Lewes, 1984) and R G Burgess, *In The Field* (Allen and Unwin: London, 1984).

⁵⁴ P Woods, *Inside schools: Ethnography in educational research* (Routledge & Kegan Paul: London, 1986) 53.

⁵⁵ Ibid.

In its simplest form a focus group consists of a select group of individuals being asked a series of questions designed to establish their reactions to certain topic areas. As Brouma simply states:

In the focus group, a group of people agree to meet with the researcher and to discuss among themselves issues raised by the researcher.⁵⁶

However, the focus group interview is more than just a conversation amongst participants, it is a conversation with a definite and predetermined purpose. This is a very important distinction that separates the use of a focus group from other more haphazard interview or conversational based research methodologies. More information and details of the data collected from the use of focus groups is detailed at 6.2.3.

4.5.2.2 Value of methodology

The use of focus groups for conducting qualitative research within social science has a long history.⁵⁷ Focus groups have established themselves as a very credible

⁵⁶ Bouma G D, *The Research Process* (3rd Edition) (Oxford University Press: Melbourne, 1997) 179.

⁵⁷ Some of the earliest work in social science on focus groups was undertaken by Merton, see for example R K Merton & P K Kendall, 'The Focused Interview' [1946] 51 *American Journal of Sociology* 541 and R K Merton *et al*, *The Focused Interview* (Free Press: Glencoe, 1956). For a detailed analysis of the history of this type of information gathering tool see D L Morgan, *Focus groups as qualitative research: Sage University paper series on qualitative research methodologies – Volume 16* (Sage Publications: London, 1988) particularly at 11-14.

method of data collection.⁵⁸ They combine the strengths of a much longer in-depth interview with the element of participant observation in a group context.⁵⁹

Perhaps simplistically, it is Robson⁶⁰ who captures the essence of the focus group interview when he declares that the “interview is a kind of conversation...(but it is) a conversation with a purpose.”⁶¹ Robson further describes their value by stating that they “allow people’s views and feelings to emerge.”⁶² Emerge not on any amorphous topic that the participant themselves desire but on one in which the interviewer has some control – through their questions.

Merton, Fiske and Kendall provide a more comprehensive statement of the value of the focus group when they state that:

The primary objective of the focussed interview is to elicit as complete a report as possible...⁶³

Ary, Jacobs and Razarieh⁶⁴ agree with the suggestion from Merton, Fiske and Kendall that focus groups can be a very valuable methodology for allowing a

⁵⁸ C L Briggs, *Learning how to ask: A sociolinguistic appraisal of the role of the interview in social science research* (Cambridge University Press: Cambridge, 1986) 1.

⁵⁹ For a general critique of the criticisms and accolades given to the use of focus groups as a comprehensive methodology for primary research see particularly D L Morgan & R A Krueger, ‘When to use focus groups and why’ in D L Morgan (ed), *Successful focus groups: Advancing the state of the art* (Sage Publications: London, 1993) 3-19.

⁶⁰ C Robson, *Real World Research: A resource for social scientists and practitioner researchers* (Blackwell: Oxford, 1995).

⁶¹ Ibid 229.

⁶² Ibid 240.

⁶³ R K Merton *et al*, *The Focused Interview: A Manual of Problems and Procedures* (2nd Edition) (Free Press: New York, 1990) 21.

holistic picture of a research topic to emerge and these authors further state that the focus group interview should be considered of greater value to most other structured research tools because of the flexibility it offers.⁶⁵

Clearly then the methodology of a focus group is consistent with the ethnographic nature of the research paradigm of this study in developing a holistic picture of a topic.

4.5.2.3 Focus group structure and setting

The structure of the focus group is an important concept. It is important that there not only exists a credible balance between the characteristics of the participants selected, but there is a real need to identify the optimal number of people to constitute a focus group.

One of the structural areas of concern for the focus group is size; there is considerable debate about the optimal size for these groups.⁶⁶ Clearly a number in the hundreds is absurd whilst it is also true that too few may prove unresponsive. Figures cited in the literature appear to range between a minimum of four and a maximum of twelve. For example Krueger⁶⁷ states that there should be between four and twelve participants, whilst Morgan⁶⁸ states that there should be between

⁶⁴ D Ary *et al*, *Introduction to Research in Education* (4th Edition) (Harcourt Brace Jovanovich College Publishers: Texas, 1990).

⁶⁵ Ibid 487.

⁶⁶ On this issue of the size of the focus group see particularly Merton, above n 61, 136-137, Bouma, above n 54, 179 and Morgan, above n 55, 43.

⁶⁷ R A Krueger, *Focus Groups: A practical guide for applied research* (2nd Edition) (Sage Publications: London, 1994) 17.

⁶⁸ Morgan, above n 55, 43.

six and ten participants. The consensus is that the ideal size is somewhere between seven and ten.⁶⁹

It is also important that any focus group session be held in isolation. The group should obviously be physically isolated from others, so that they are not easily disturbed or influenced by other events.⁷⁰

There is also debate as to the time needed to make the session as effective as possible. It seems that as few as thirty minutes will be too short to be productive, whilst sessions in excess of two hours may be physically, intellectually and emotionally draining on participants. So it seems that the ideal time lies somewhere around the one hour mark.⁷¹

Additionally it seems almost mandatory, after securing the participants' consent of course, that the session be tape recorded so that the relevant material may later be transcribed and analysed.⁷² This gives the opportunity for the material to be transcribed and for a detailed analysis to be undertaken of the participants' comments.

⁶⁹ Krueger, above n 65, 17.

⁷⁰ Merton, above n 61, 139-140 discusses some of the spatial requirements for the operation of a focus group interview.

⁷¹ Morgan, above n 55, 54-55.

⁷² For a discussion on the merits of tape recording the focus group session see Krueger, above n 65, 111-113. See also Morgan, above n 55, 61-62 who states that whilst audio recording is a necessity, the use of the video camera is to be avoided as it tends to be obtrusive and stifles the

4.5.2.4 Selection of Focus Group Participants

There is a large corpus of literature dealing with the selection of participants for use in the focus group. However, most of it appears to be directed to selection of participants from a marketing point of view. In the marketing field identification and recruiting of the ‘right type’ of participants seems to be crucial to the success or failure of the focus group.⁷³

However, it is submitted that the selection of participants for the purposes of examining the four posed research questions identified and outlined in Chapter Three is not as paramount as the selection process identified for the marketing groups. The primary consideration for this study is that the participants either will be, are currently, or have been members of the teaching profession in New South Wales. Age, gender, experience or the type of educational institution at which the teaching is directed should not be a bar to the selection of participants.

4.5.2.5 Focus Group Questions

The most critical aspect of the focus group session is of course the questions that are presented to the group. Here it is imperative that the rationale for the session is achieved. But importantly a distinction must be made between a prescribed list of closed questions simply put to a group for comment and a completely unscripted

group’s willingness to be open and honest and to believe that the material that they are presenting the researcher with is less likely to remain confidential.

⁷³ See particularly Morgan, above n 55. See also Krueger, above n 65, 91-94 who even attempts to outline the costs associated with the paying of participants for their involvement in the focus group as a way of inducing their participation. He also outlines some of techniques that professional

interview which allows participants' discussion to wander off at a tangent. A balance must be struck. There needs to be some outline of the topic to be discussed but the questions cannot be completely scripted and prescriptive if the focus group is to be of full benefit.

Exemplifying the importance of the design of questions, Krueger⁷⁴ sequences five types of questions which it is possible to ask in any focus group situation. These are the opening questions, the introductory questions, the transition questions, the key questions and the ending questions.⁷⁵ Within these five groups of questions each question can be identified as either being one that is open ended, closed or scale in nature.

Closed questions are defined as those which require very simple answers, often they are suggestive and prompt a particular response, requiring only a yes or no answer. For example, a question such as 'Do you believe that teachers require knowledge of the law?' is likely to achieve a very minimal response. A better and more open ended question is designed to allow the participant an opportunity to further expand and relate their response to their own experiences. The extreme example of the open ended version of the previous closed example might be 'Tell me about your classroom experiences'.

organisations use in selecting participants such as how marketing research companies track down and eliminate potential participants through random telephone calls at 82-86.

⁷⁴ Krueger, above n 65.

⁷⁵ Ibid 54-55.

Maykut and Morehouse⁷⁶ rightly point out that the majority of questions in a focus group interview need to be open ended, which invite “the interviewee to participate in a conversation.”⁷⁷ A series of rigidly prepared closed or scale type questions will not serve the interviewer well and will certainly not allow the maximum benefit of a focus group to be achieved.⁷⁸ Hall and Hall also support the views expressed by Maykut and Morehouse in explicitly stating that by using open ended questions participants are able “to express themselves more freely than in a structured format.”⁷⁹ In the context of the aim of focus groups being for the development of a holistic picture of a subject to emerge it can thus be clearly seen that the use of open ended questions throughout the focus group session is of paramount importance.

It is also important that the interviewer does not phrase or present the questions in any way that might be suggestive of an expected response. Leading or directive questions are to be avoided. This poses a difficult task for any interviewer, requiring an ability to distance themselves from their research in order to be able to gauge a more accurate picture of the focus group participants. Of course jargon of a technical nature (in this case legalese) is to be avoided at all times. Chapter 6.2.3.1 provides more details about the interview schedule and types of questions used with both the trial and live focus group participants.

⁷⁶ P Maykut & R Morehouse, *Beginning Qualitative Research: A philosophic and practical guide* (Falmer Press: London, 1994).

⁷⁷ Ibid 88.

⁷⁸ See particularly Selltiz, above n 17, 264-265.

⁷⁹ D Hall & I Hall, *Practical Social Research: Project work in the community* (Macmillan: London, 1996) 191.

Additionally, if the interviewees are not forthcoming with information, or if their answers are shallow, the use of probes will be appropriate. Probes are questions that are more open ended in nature and tend to move away from the initial question in order to allow participants opportunity to better understand the nature of the question and to draw from their own experiences in answering. For example, if participants were posed the open ended question ‘Tell the group about your experiences in the classroom with the law’, and responses were minimal or participants were unable to think of examples involving the law then perhaps a better probe question would be ‘Tell the group about any problems you have encountered in the classroom’. Further if this also did not prove successful an additional probe such as ‘Tell the group about any problems that you have knowledge of at your school or another’. This example clearly shows a situation in which the range of possible responses increases as the breadth of the question is gradually increased.

4.5.2.6 Specific Focus Group Questions

The issue for this research study then is what types of questions needed to be asked in order to fully achieve the aims of the study and more specifically the four research questions identified previously in this study in Chapter Three. Quite obviously the questions asked must seek to address the research questions, although there is always potential that participants might not necessarily confine their comments to any one particular research question.

Take for example Research Question One. In this instance the question is clearly stated and it is: What knowledge do teachers in NSW government schools have about the law and how it affects them in the delivery of their professional duties?

Appropriate open ended questions might include some of the following:

- What do you understand by a ‘legal issue’ or ‘legal problem’?
- Can you tell me about any legal issues which affect your daily working lives?
- Can you think of any particular instances in your career which have involved a legal problem or issue. (In this case it will be important to identify whether the experience has happened to the participant or if it is one which they have heard about).
- If you were presented with a legal problem (for example an assault) what would you do? Would you feel confident that you had the appropriate legal knowledge to deal with this or other legal situations?
- What legal information do you think it is vital for a teacher in the classroom to have? Do you think that you or other teachers have this knowledge?
- Do any of you have any legal expertise? Have you attended any training courses which have addressed the issue of legal education for teachers or other professionals?

Given what has been stated about asking questions about technical issues it was more appropriate at all times to try to avoid the use of words with legal connotations such as ‘legal’ and instead focus upon ‘problems’ which have arisen within their careers. This is what was attempted.

As a result a draft and final interview schedule were developed and first trialled, then fully implemented with live focus groups. These details are contained within Chapter Six of this study. More specifically at 6.2.3.1.

4.5.2.7 Analysing focus group results

Following a focus group session a number of tasks need to be undertaken in order to develop meaningful data which can then be analysed. Knodel describes this specific process in relation to focus groups as having two essential parts, those being “a mechanical one and an interpretive one”.⁸⁰

The mechanical process referred to by Knodel is a logical first step in the organisation of material. It involves a transcription of all material that was recorded during a focus group session. This information is supplemented by notes that the interviewer has made during the conducting of the session. These notes can be very important in the conceptualisation of the information provided by any participant which may not be directly evident from the audio tape version of the session. For example, a participant may point to something or smile or shrug their shoulders and each of these events would have a specific and important context to what they have actually said. Thus the transcript which is then produced needs to be supplemented with this information wherever it is available. This process is consistent with the views of Kvale who in particular detail describes not only the

⁸⁰ J Knodel, ‘The Design and Analysis of Focus Group Studies: A practical approach’ in Morgan, above n 57, 44.

practical difficulties of this process but also the dire consequences and limitations on the data gathered if the process is neglected.⁸¹

Following the mechanical process is the interpretive stage. This stage can be just as complex and time consuming as the mechanical stage. As Burns describes, it involves taking all of the information provided from the transcript and putting it into manageable and meaningful form.⁸² This involves segmenting of the data or its categorisation. Knodel suggests that these categories be kept as broad as possible and that the key criteria in the categorisation should be with regard to the similarity of the topic that the participants are making a comment upon.⁸³ This author specifically states that material should be categorised “into analytically distinct segments.”⁸⁴ Knodel states that the process of categorisation is helped because:

...topics for analysis are generally dictated
by those included in the focus group
guidelines.⁸⁵

The classification or categorisation of this information is undertaken in order to achieve the intent of the focus group. That is, to allow the most comprehensive picture of the research topic to emerge as possible. Morgan notes this implicitly in

⁸¹ S Kvale, *Interviews: An introduction to qualitative research interviewing* (Sage Publications: London, 1996) particularly at 160-175.

⁸² R B Burns, *Introduction to research methods* (4th Edition) (Longman: Sydney, 2000) 430.

⁸³ J Knodel, ‘The Design and Analysis of Focus Group Studies: A practical approach’ in Morgan, above n 57, 37.

⁸⁴ Ibid 45.

⁸⁵ Ibid 44. The guidelines in this study are determined by the ambit of the research questions. More specific detailed information about the nature of the focus group is contained at 6.2.3.

stating that the categorisation of the focus group material needs to be consistent with the purpose of the focus group that is “...to understand why...”⁸⁶ To this end quantification will not be a useful tool in seeking to categorise information.⁸⁷

Implicit in this process is the notion of subjective judgement. It is inevitable that the researcher must use subjective judgement in the choosing of the categories to use to segment the data and then choose which data to include in those categories or even when necessary sub-categories of information. A further element of subjectivity is contained within the notion that the researcher must then choose which examples they choose to report upon as providing typical or atypical examples of a particular category of information. It is this very subjectivity which as Charles and Mertler note leaves the focus group open to considerable criticism.⁸⁸ However it is for this very reason that the focus group is not used as the sole method of data gathering for this study. Instead as has been made clear earlier in this Chapter, the focus group is used as one element in the process of triangulation.

The actual categorisation of all information gathered from the focus groups in this study is detailed throughout Chapter Six.

4.5.3 Questionnaire

4.5.3.1 Background to the questionnaire

⁸⁶ D L Morgan, ‘Future directions for focus groups’ in Morgan, above n 57, 241.

⁸⁷ Ibid.

There exists a plethora of literature, not only in the field of educational research, dealing with the concepts of design, implementation and analysis of data in relation to questionnaires.⁸⁹ According to Burns⁹⁰ the questionnaire is “the most commonly used descriptive method in educational research, and gathers data at a particular point in time.”⁹¹ A questionnaire is simply a method of implementing a survey to a series of predetermined questions.

Those predetermined questions can be either closed items, open ended items or scale items. Closed items tend to allow for the input of single responses, for example a ‘yes’ or ‘no’ response. Open ended items are more flexible and allow for a range of responses, for example ‘what aspects of this course did you enjoy?’ Scale items, such as those employed by a Likert scale, allow for participants to rank their responses, for example ‘how would you rate this course (circle number 1 to 5)?’

Questionnaires are largely associated with quantitative research methodologies, however as Wolcott⁹² notes, they can be very useful in a qualitative way in ethnographic research. The survey used in this research was largely descriptive in

⁸⁸ C M Charles & C A Mertler, *Introduction to Educational Research* (4th Edition) (Allyn & Bacon: Boston, 2002) 242.

⁸⁹ See for example C H Backstorm & G D Hursh, *Survey Research* (Northwestern University Press: Evanston, Illinois, 1983), E R Babie, *Survey Research Methods* (Wadsworth: Belmont, 1973), M Shaw & J Wright, *Scales for the Measurement of Attitudes* (McGraw Hill: New York, 1968), Borg & Gall, above n 25, D C Orlich, *Designing Sensible Surveys* (Redgrave Publishing Company: New York, 1978) and A N Oppenheim, *Questionnaire design, interviewing and attitude measurement* (Pinter Publishers: London, 1992). Note also the comments of Baxter, Hughes and Tight in L Baxter et al, *How to Research* (2nd Edition) (Open University Press: Buckingham, 2001) who note at 179 that “Questionnaires are one of the most widely used social research techniques.”

⁹⁰ Burns (1990), above n 27.

⁹¹ Ibid 285.

⁹² H F Wolcott, ‘Ethnographic research in education’ in R M Jaegar, above n 6, 196.

nature.⁹³ That is, it was not designed to measure by quantitative means participants' comments or reactions, rather it was used as a means of determining participants' reactions to the curriculum experiences in which they had participated. It therefore had the characteristics of the attitudinal questionnaires described by Burns.⁹⁴

As such it had the advantage of being able to compare the views of all participants with a series of predetermined questions. And as Mouly⁹⁵ asserts there is great potential when using questionnaires for participants to be more willing to detail their experiences, particularly where anonymity is assured. The basis of using the survey for this research project was to take advantage of this great potential.

The use of a questionnaire has both advantages and disadvantages. Some of the typical disadvantages of using a questionnaire, such as the securing of an adequate response rate, have been avoided in this research project. Indeed the response rate for the completion of the questionnaire for this study was 100%, detailed further in Chapter Six at 6.5.5.2, whilst the advantages, including cost reduction were maintained.

According to Burns attitudinal surveys are an effective means of gathering data and contribute to the process of triangulation described earlier in this chapter.⁹⁶

Burns also states that it is possible to use all three types of questions described

⁹³ Appendix B contains a copy of the final survey used in this project.

⁹⁴ Burns (1997), above n 42, particularly at 456-466.

⁹⁵ G J Mouly, *The science of educational research* (2nd Edition) (Van Nostrand Reinhold: New York, 1970) 242.

⁹⁶ Burns (1997), above n 42, 456.

above, that is closed, open ended and scale questions, in attitudinal surveys. However Burns also details criticism of using scaled or closed questions in this type of a questionnaire.⁹⁷ Instead one of the methods that allows for the full range of attitudes to be expressed by participants are those questions that are open ended in nature, although Burns does note that criticism is still levelled at this type of questioning due to the indirectness of measurement.⁹⁸

4.5.3.2 Coding of data

Once a choice is made concerning which type of question to use in the questionnaire, it then becomes necessary to interpret the data that is collected. The process of interpreting the data collected by a questionnaire is described in the literature as ‘coding’. This term is described by Cohen, Manion and Morrison as:

...assigning a code number to a survey
question⁹⁹

This definition would appear to provide a rather simplistic understanding of the nature of coding and perhaps the definition of coding in this fashion by Cohen, Manion and Morrison could be more closely associated with the coding described in closed ended or scale type questions. With the use of these types of questions the responses received from participants who completed a questionnaire would

⁹⁷ Ibid at particularly 459-460.

⁹⁸ Ibid 465.

⁹⁹ Cohen, above n 47, 265.

often be numerical in value and therefore relatively easy to ascribe a number code to, particularly due to the predictable nature of the responses.

However, it is Walizer and Wienir who note that the coding of open ended questions are particularly more difficult and cumbersome. They clearly acknowledge this phenomenon when they state:

The most difficult type of question to code is
the open-ended question.¹⁰⁰

This understanding of the nature of coding open ended questions may then lead to a more sophisticated understanding of the nature of the task of coding itself. Perhaps with this in mind the definition of the concept of coding as defined by Wiersma is more appropriate. That author describes coding as:

...a process of organizing data and obtaining
data reduction.¹⁰¹

Similarly Burns uses a more sophisticated term for coding by describing the processes of what ethnographers are involved in as a form of “analytical induction.”¹⁰² Hall and Hall note that coding will be useful to “find order among what seem(s) like chaos.”¹⁰³

¹⁰⁰ M H Walizer & P L Wiener, *Research Methods and Analysis: Searching for relationships* (Harper and Row: New York, 1978) 271.

¹⁰¹ W Wiersma, *Research methods in education: An introduction* (7th Edition) (Allyn and Bacon: Sydney, 2000) 203.

¹⁰² Burns (2000), above n 80, 413.

¹⁰³ Hall & Hall, above n 77, 199.

What therefore is involved in the coding of open ended questions is inherently more difficult because what is involved is not simply the coding of predetermined responses. Rather the very nature of the open ended question means that participants are free to write their responses in any form that they so choose. It is therefore possible that participants could answer any particular question in a manner which is not foreshadowed by the researcher.¹⁰⁴

It is therefore necessary to devise a coding strategy for open ended questions based on the information which is received after all participants have completed the questionnaire. This is implicitly acknowledged by Wiersma who points out that the codes which are chosen by any researcher will become specific to that researchers study.¹⁰⁵

Similarly Weaver and Atkinson note clearly that the strategy that a researcher chooses to code their qualitative data obtained in their attitudinal questionnaire will be a process of being able to simplify their data into its base elements.¹⁰⁶ That is, that the data which is obtained needs to be distilled into its base categories. These categories can only be determined in open ended questions after the information has been collected.

¹⁰⁴ This type of problem is not inconsistent with what has been described by Greene, Caracelli and Graham earlier in this Chapter (at 4.4.4). And it therefore reinforces the need to employ a variety of data gathering tools to ensure that even if one of the tools employed is not as successful as may have been envisaged, the integrity of the data gathered can be maintained via the use of the other methods employed.

¹⁰⁵ Wiersma (2000), above n 99, 203.

¹⁰⁶ A Weaver & P Atkinson, *Microcomputing and qualitative data analysis* (Aldershot: Avebury, 1994) 31.

According to Fleet and Cambourne in order to distil these categories ‘effective codes’ need to be developed and it is these effective codes which provide a map which unambiguously shows the elements of the responses received.¹⁰⁷ The categories chosen need only be as diverse in nature as the responses received. That is there may be a need simply to classify the data into only a few categories, or into sub categories depending on the nature of the data received. The actual coding of all questions used within this study is described in detail in Chapter Six, more specifically with the discussion of the ‘Education Law Course Questionnaire’ at 6.5.5.2

4.5.3.3 Value of the questionnaire

It is noted that attitudinal surveys may have low value and reliability since they are simply a representation of “evaluated beliefs which predispose the individual to respond in specific ways.”¹⁰⁸ The attitudinal survey may predetermine the way individuals respond to the questionnaire due to the relationship established between researcher and subject.

It is also acknowledged that validation of a questionnaire is an important aspect of its development.¹⁰⁹ Since this was an attitudinal survey, to be administered to a closed group of participants, no attempt to validate the questionnaire prior to its implementation has been made in this study. This must be recognised as a

¹⁰⁷ A Fleet & B Cambourne, ‘The coding of naturalistic data’ (1989) May(41) *Research in Education* 1, 6.

¹⁰⁸ Burns (1997), above n 42, 466. At 95-96 Engelhart in M D Engelhart, *Methods of educational research* (Rand McNally: Chicago, 1972) sets out some of the history of the criticism of the use of the questionnaire as a data collection methodology.

limitation of the study.¹¹⁰ The use of the questionnaire for this study was simply a way of triangulating results and allowing participants further opportunity to enunciate their thoughts at the conclusion of the trial research curriculum programme.

As such the results of the questionnaire, whilst important, were not crucial to all four of the research questions posed in this study. The results of the questionnaire did not introduce new data upon which the major findings of the research were based. Instead the results of the questionnaire were simply used as a method of triangulation. Further details of the questionnaire and the data collected from it can be found at 6.5.5.2.

4.5.4 Other sources of information

Given as Dominowski suggests that “research is a fact-finding activity”¹¹¹ it would be naïve to think that the methodologies described in detail so far, those being the use of focus groups and the use of a questionnaire, could be considered the only means of discovering information about the large amorphous topic of teachers and the law. It is quite obvious that there are other means of discovering information relevant to this research project which would not be covered by these two methods.

¹⁰⁹ On this point see particularly D A De Vaus, *Surveys in social research* (2nd Edition) (Allen & Unwin: Sydney, 1990).

¹¹⁰ For a further discussion on this issue of the need to validate the questionnaire see particularly the comments of Engelhart, above n 105, 87, where the author states that “a pilot-study is strongly recommended...”

¹¹¹ Dominowski, above n 1, 2.

Indeed Wiersma makes this very point when he states:

There may be other sources of data that
reflect on the research problem under
study.¹¹²

Wiersma also states that in order to gain a fuller understanding of any particular area of research the problem needs to be viewed “holistically.”¹¹³ Hall and Hall also support this notion explicitly in stating that in some situations all necessary data cannot be ascertained through primary research instead the researcher should not “overlook the usefulness of secondary sources of information.”¹¹⁴ This notion would appear to be consistent with the concept and value of triangulation which this Chapter has already detailed, specifically at 4.4.5. The examination of focus groups provides a useful illustration of this point.

Focus groups are used in this study as one of the primary methods of data collection. Knodel acknowledges that interpretation of focus groups material can be facilitated through a contextualisation of statements made in the context of other sources of information.¹¹⁵ Specifically Knodel is referring to the use of secondary sources in this context. In order to gain ‘access to the situation’ it is necessary to obtain and determine the existence of other types of information. Two such types of secondary sources of information identified in the literature,

¹¹² Wiersma (2000), above n 99, 50.

¹¹³ Ibid 198.

¹¹⁴ Hall & Hall, above n 77, 212.

¹¹⁵ J Knodel, ‘The Design and Analysis of Focus Group Studies: A practical approach’ in Morgan, above n 57, 43.

which could help to contextualise the data gathered from focus groups or be considered on their own, are letters of inquiry and document searches.

4.5.4.1 Letter of inquiry

It is quite clear that data collection can be interactive or non interactive and there is considerable value in obtaining data from a variety of sources. 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. 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.¹¹⁶ Consequently no data may be obtained from this method or the information provided may be limited/generic in substance.

An important element then of instituting a letter of inquiry is to direct the letter to the most appropriate target/audience. 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.

¹¹⁶ Leedy, above n 48, 190-191.

Letters of inquiry are used within this study for a number of purposes. Specifically letters of inquiry are used, as described in Chapter Six, as one way to:

- Determine the knowledge that teachers have about the law and how it affects them in the delivery of their professional duties by analysis of the quantity and quality of information given to them by universities within Australia (see specifically 6.2.2).
- Ascertain the views of the New South Wales Teachers' Federation about the value of legal knowledge for teachers (see specifically 6.3.3).
- Discover the views of the New South Wales Government employer of teachers about the need for current and trainee teachers to possess any degree of legal knowledge (see specifically 6.3.4).
- Find the views of the New South Wales Teachers' Federation about which substantive areas of the law that teachers would require knowledge of to perform their duties (see specifically 6.4.3).
- Learn the views of the New South Wales Government employer of teachers about which areas of the law they believe teachers should have a knowledge of (see specifically 6.4.4).
- Discover the views of the New South Wales Teachers' Federation about how legal information could be best delivered to teachers (see specifically 6.5.3).
- Determine the views of the New South Wales Government employer of teachers about which delivery methods for legal information they favour (see specifically 6.5.4).

A further discussion of the letters of inquiry used in this research is located throughout the discussions in Chapter Six.

4.5.4.2 Document searches

As well as considering approaches such as the letter of inquiry, it has also become evident that another non interactive approach such as document searches can be of value in attempting to obtain a holistic view of a research problem. It is however important to realise that there are two levels to the document search. The first is simply locating the existence of the document itself. The second is a detailed content analysis of any documents located. This research project seeks only to utilise the first of these procedures. That is to actually identify the existence of the document or information itself. There is no attempt to systematically analyse the content of the information in any of the documents discovered in this research project. Jacons asserts that the detailed content of the document is not integral to the process of triangulation, as the discovery of the document itself is significant from a factual basis.¹¹⁷ That is, once the existence of a document is established it intrinsically provides evidence that information exists about a particular topic from a particular source/author. The existence of a document therefore demonstrates that there is an interest in that topic. If no documents exist that also provides evidence to help a holistic picture to emerge. Jacons further suggests that

¹¹⁷ Jacons C, 'Holistic research techniques: What value secondary sources?', Available online at http://www.niu.edu/educat_journal#oct23_1_99#jaconsholitic?domain=niu.edu&q=education+journal&domains=niu.edu&sitesearch=niu.edu.html Date accessed February 19, 1999.

by undertaking a systematic analysis of the content of these secondary documents the results can be prejudicial when combined with other research tools.¹¹⁸

According to Walizer and Wiener there are a number of different documents which when discovered can assist in the process of obtaining a holistic picture of the research problem.¹¹⁹ May explicitly states the value of obtaining these relevant documents in the following manner:

Documents are now viewed as mediums
through which social power is expressed¹²⁰

That is that the existence of any documentary material can be viewed as a valuable source of information to help to achieve a more holistic picture of the research environment. Thus the existence of any relevant documentary material can provide invaluable data with regard to any posed research questions, without the need to undertake a detailed analysis of the content.

Principally the most important documents which could be discovered on any particular problem would be those of professional journals, government documents or information which is held on a computerised system such as the internet.¹²¹ Walizer and Wiener also detail a strategy for obtaining these documents which quite simply consists of searching for relevant information

¹¹⁸ Ibid.

¹¹⁹ Walizer & Wiener, above n 98, 137.

¹²⁰ T May, *Social research: issues, methods and process* (Open University Press: Buckingham, 1993) 138.

¹²¹ Walizer & Wiener, above n 98, 137.

using as broad a possible approach as necessary and includes the concept of locating information via the use of “a key word list.”¹²²

The existence of such documentations provides therefore another facet in the triangulation methodology outlined earlier in this chapter. It should be recalled that triangulation is a way of developing a more comprehensive and accurate picture of the situation(s) to be examined and thus any other source of information, including a letter of inquiry or a search for documentation can be used to provide valuable information needed to create this picture.

Documentary searches are used within this study for a number of purposes. Specifically document searches are used, as described in Chapter Six, as a way, to:

- Determine the views of the New South Wales Teachers’ Federation about the value of legal knowledge for teachers (see specifically 6.3.3.3)
- Ascertain the views of the New South Wales government employer about the need for current and trainee teachers to possess any degree of legal knowledge (see specifically 6.3.4.5)
- Discover the views of the New South Wales Teachers’ Federation about which substantive areas of the law that teachers would require knowledge of to perform their duties (see specifically 6.4.3.3)

¹²² Ibid 145.

- Find the views of the New South Wales Government employer of teachers about which areas of the law they believe teachers should have a knowledge of (see specifically 6.4.4.3)
- Learn the views of the New South Wales Teachers' Federation about how legal information could be best delivered to teachers (see specifically 6.5.3.3)
- Discover the views of the New South Wales Government employer of teachers about which delivery methods for legal information they favour (see specifically 6.5.4.3)

A further discussion of the types of documents discovered and the methods of discovery used for this study is located throughout the discussion in Chapter Six, which is titled 'Presentation and Discussion of Data'.

4.6 Population and Sample

4.6.1 Description of population – the schooling system

The Australian experience is that schools are broadly categorised as either government or non-government. Government schools are those schools which are organised, funded and staffed by the relevant state government. The term non-government school is a generic term given to those schools which do not fit into the first category, that is they are independent schools. These schools are often based upon religious ideologies and within the state of New South Wales the Catholic Education Commission is the largest of the non-government school

systems.¹²³ This study is entirely concerned with the teachers of New South Wales government schools.

Government schools in New South Wales are categorised by the government employer (the Department of Education and Training) into one of four different categories. These being Primary, Secondary¹²⁴, Tertiary¹²⁵ and what are described as 'Other' schools.

Primary schools in New South Wales broadly teach children from the ages of five to twelve whilst secondary schools teach children between twelve and adulthood, that is between the schooling years of kindergarten and year six in Primary and years seven to twelve in Secondary schools. Schools known as 'Other' may have children from the ages of five to adulthood depending on the nature of their special purpose. Tertiary establishments normally teach students from the age of adulthood in technical skills. This study is not concerned with Tertiary institutions.

The schools known as 'Others' are grouped this way due to the fact that they are often schools for a special purpose. They may be either secondary or primary in structure but also have a special purpose. These special purposes may be either

¹²³ In 1998 at the time the statistics were collected by the government there were 888 non-government schools in the State of New South Wales (Source: New South Wales Department of Education and Training 'STATISTICAL BULLETIN: Schools and Students in New South Wales, 1998'. Available online at <http://www.schools.nsw.edu.au/dse/d4.0/stat1998.pdf> Date accessed July 22, 2000).

¹²⁴ Sometimes known as High Schools.

¹²⁵ Known as TAFE - Technical and Further Education.

central schools¹²⁶, schools for specific purposes (eg. environmental centres) or schools which are described as field study centres.

Whilst schooling is compulsory for every child in New South Wales¹²⁷ no student has to complete every year of schooling. That is, it is possible to cease schooling as early as the age of fifteen or year nine of secondary school.

This study is concerned with government teachers from Primary, Secondary and schools labelled as 'Others'. No attempt has been made to establish whether similar results could be applicable to non-government schools. This is primarily due to the fact that non-government schools are more diverse in character, for example some are secular in nature, and in order to make any conclusions about these schools it would be necessary to directly consult teachers from that system.

Within New South Wales there are 2222 identified government schools,¹²⁸ consisting of 1649 Primary, 391 Secondary and 182 'Other' schools. Each of these 2222 schools exists in different districts, often based on geographical locations, as defined by the government employer. There are currently 40 of these districts in New South Wales. Table 4.1 details the number of each of the types of schools in each of the different districts.

¹²⁶ Central schools normally have students from Kindergarten to Year 10, or between the ages of approximately 5 and 16 years of age. They normally have small numbers of children and are often located within isolated communities.

¹²⁷ The possibility of appropriate home schooling is acknowledged although not an element of concern for this study. In 1998 there were 1492 students enrolled in home schooling in New South Wales (Source: New South Wales Department of Education and Training 'STATISTICAL BULLETIN: Schools and Students in New South Wales, 1998'. Available online at <http://www.schools.nsw.edu.au/dse/d4.0/stat1998.pdf> Date accessed July 22, 2000).

Table 4.1¹²⁹

Details of New South Wales Government Schools

¹²⁸ Not including any TAFE establishments.

¹²⁹ Source: New South Wales Department of Education and Training 'STATISTICAL BULLETIN: Schools and Students in New South Wales, 1998'. Available online at <http://www.schools.nsw.edu.au/dse/d4.0/stat1998.pdf> Date accessed July 22, 2000.

Despite investigation and subsequent requests to the government employer it was not possible to obtain information about the number of teachers from individual schools in each of these districts or even the total number of teachers in any of the forty different districts. It was possible, however, to obtain details of the numbers of teachers for the whole of the state.

The figures released by the government employer in July 2000 reveal that there was a total of 45432 permanent full time teachers of Primary, Secondary and schools described as 'Other' in March 1999. Teachers in the Primary system are categorised by the employer as either unpromoted, executive, assistant principal, deputy principal or principal¹³⁰. In the secondary school system teachers are categorised as unpromoted, head teacher, deputy principal/leading teacher or principal¹³¹. The following tables demonstrate the numbers of teachers employed in both of the systems in each of the different categories.

¹³⁰ The category of Principal is further subdivided by the employer into 6 different classes (classes 1 to 6) dependent upon the number of students enrolled at a particular school. These statistics have integrated all Principals into one category.

¹³¹ The category of Principal is further subdivided by the employer into 2 different classes (classes 1 to 2) dependent upon the number of students enrolled at a particular school. These statistics have integrated all Principals into one category.

Table 4.2¹³²

New South Wales Government School Staff – Primary Schools

Table 4.3¹³³

New South Wales Government School Staff – Secondary Schools

The employer has not categorised ‘Other’ schools separately for the purposes of highlighting the different levels teachers may be employed at in those schools. Instead they have incorporated those teachers from schools described earlier in

¹³² New South Wales Department of Education and Training, *The 2000 EEO Management Plan for the New South Wales Department of Education and Training* (2000), Appendix 1, 44-45.

this study as 'Other' into either Primary or Secondary dependent upon the predominate focus of the special nature of the 'Other' school.

There also existed a total of 5193 part time teachers in all levels of schooling, although no information was provided by the employer as to which level these teachers were employed at.¹³⁴

These figures do not take into account the large numbers of casual teachers employed in New South Wales, on which the employer was unable to provide any meaningful statistics. The statistics provided with the information on permanent and part time teachers made mention only of the fact that none of the statistics included reference to any casual teachers and no other statistics on casual teachers were available in the same or similar documentation.

However in a fax from the New South Wales Teachers' Federation in December 2000, the union representing the majority of government teachers employed in the State of New South Wales, that body indicated that it had a current membership of approximately 70,000 members. Given as indicated there were 45,432 permanent teachers recorded by the government employer in March 1999 this leaves a very large number of casual teachers for which statistics are not available. However it should be noted that the 70,000 figure provided by the union also includes retired and trainee teachers. The union was unable to provide any statistics on the numbers of its members who were full time, part time, casual, trainee or retired teachers.

¹³³ Ibid.

4.6.2 Description of population – the university system

In Australia the university system consists of both private and publicly funded institutions. However the federal government funds the vast majority of universities. These institutions are spread across the entire nation with a concentration located within New South Wales. No distinction has been made between government funded or privately funded institutions for the purposes of research in this study.

Most teachers within the New South Wales government system undertake a recognised qualification through one of the established universities within the country¹³⁵ and at some stage this educational requirement means that each potential teacher will come into contact with their university's entity which is responsible for educational studies. Within New South Wales there are currently thirteen distinct entities which offer education qualifications. These entities are sometimes part of a university which has multiple campuses with distinct education faculties at each different location or sometimes part of a large school based conglomerate. For example, Charles Sturt University has three separate campuses and three distinct education faculties.¹³⁶ Further details of the responses of the universities can be found at 6.2.2.1

¹³⁴ Ibid 46.

¹³⁵ It is also possible to qualify as a teacher in Australia by undertaking appropriate training at an overseas location.

¹³⁶ Those being Charles Sturt University: Riverina, Charles Sturt University: Bathurst and Charles Sturt University: Albury

4.6.3 Description of sample

There were four separate samples utilised in this study and these four separate samples correspond to the four separate stages of the research project:

1. A sample of all of the entities responsible for teacher education at all of the universities within Australia and more specifically within the state of New South Wales.
2. A pilot sample of eight teachers was used to trial a draft version of the focus group interview schedule.
3. The main sample for the final focus group interview schedule was carried out with four separate groups comprising a total of 53 teachers from a variety of backgrounds.
4. A trial of the draft curriculum with 32 teachers who formed three different groups and a follow up questionnaire with this same group.

By using four different samples involved in four different activities the possibility for the value of triangulation of data, described earlier in this chapter, has been utilised.

4.6.3.1 Description of sample – Stage One

The sample population, which concerned the universities of Australia, was drawn by utilising each of the available subjects, that is the sample included 100% of the population. Each entity responsible for the provision of teacher education within a university in Australia was afforded an opportunity to participate in this study.

4.6.3.2 Description of sample – Stage Two

The sample populations for each of the other three stages of the research did not utilise 100% of the population. Firstly this would have proved highly impractical given the very large number of teachers within the State and secondly it would have proved prohibitively expensive. It proved very difficult during the course of the research to find participants for this project, this is further detailed in 4.6.3.5 below.

The sample population for this trial stage of the research was derived from volunteers selected from the school at which the researcher was employed. Every teacher at that school was afforded the opportunity to participate in this trial group. A notice of the trial was given to every teacher at the school. Out of a total of 59 teachers at the school the trial group consisted of eight teachers. Further details of the school can be found at 6.2.3.1.2.

4.6.3.3 Description of sample – Stage Three

Stage three of the research utilised the largest of the population samples. The sample was taken from the district in which this researcher's university is based, that is the district known by the government employer as Wollongong (as detailed above in Table 4.1). Participants were not contacted directly through the schools at which they were employed. Instead some participants became aware of the research project because of their association with a particular professional group. For example it may have been that they were associated with a group of head teachers or science teachers.¹³⁷ Whilst the other participants became aware of the research project because of their association with the university, the researcher or the researcher's supervisors.

This sample consisted of 53 teachers from a variety of backgrounds who were used to constitute the four live focus groups used to collect the data detailed in Chapter Six.

4.6.3.4 Description of sample – Stage Four

Stage four of the research project provided the second largest population sample. In total 32 participants formed three separate groups in order to trial the curriculum which was developed as a result of the findings for Research Question Four, detailed in Chapter Six of this study.

Participants were selected in the same way as detailed above for stage three of the research project, the only difference being that participants were drawn not only from the Wollongong district identified in stage three above but also from the Shellharbour and Campbelltown districts. This extension in the parameters was due to the fact that it was not possible to identify enough candidates from the parameters outlined in stage three above. Participants were once again drawn from their association with a professional group, the university, the researcher or the researcher's supervisors.

Some of the participants who were identified in stage three also participated in this stage of the research. However no comparison between these same participants was attempted.

The participants who completed the draft curriculum trials were used as the sample for the questionnaire that was completed to determine its success.

4.6.3.5 Problems with obtaining sample

At the developmental stage of this research it had been intended to trial the draft focus group interview schedule with a select group of teachers, which would be easily assembled. This stage of the research was relatively easy to organise given the sample was taken from a school the researcher had direct access to by virtue of being an employed teacher at the school.

¹³⁷ Although this was not actually the case for this research project. For confidentiality reasons it is

It was then intended to organise groups to conduct the live focus groups in two ways, that is, to organise groups which were contacted by the means described above in 4.6.3.3 and then to afford an equal number the same opportunity to complete the focus group interview schedule. This group was to be taken from teachers who had been officially sanctioned by their employer to take part in the research. It was hoped that a comparison could be made between this officially sanctioned group(s) and the groups organised as detailed in 4.6.3.3.

However these officially sanctioned groups never eventuated. A period of more than 24 months was used trying to obtain official approval from the government employer to conduct these research groups within schools (a copy of that approval to undertake research in schools is contained in Appendix C). Once this approval was obtained the researcher sought to secure officially sanctioned research volunteers from the same geographical areas outlined in 4.6.3.3 above. This was done by contacting each of the schools within that area by letter. Only one of the schools responded to the letters. This school indicated that it had no participants available for the research project. Each of the remaining schools was contacted by telephone, between seven and fourteen days after the letter had been sent, and each made it clear that their teachers were not available for the research project. Unfortunately after exhausting all possibilities of securing new officially sanctioned volunteers this strategy was abandoned. It had proved impossible to organise any more volunteers for comparison purposes.

not possible to identify which professional association(s) these teachers belonged to.

This experience directly conflicts with that identified by Hitchcock and Hughes who state that:

...access and entry (to schools and to teachers) are not problems which immediately appear as problems teacher-researchers will face.¹³⁸

Clearly accessing participants who work within schools is a problem and the experiences that this researcher has had demonstrate this.¹³⁹ Indeed Cocklin and Mockovic¹⁴⁰ note with alarm that the issue of negotiating access to research participants within the schooling environment has received “scant attention”¹⁴¹ in the literature. Whilst the focus of their argument centres upon negotiating access to student research subjects it is submitted that it equally applies to negotiating access to teachers.

The New South Wales Government is protective of its educational establishments and negotiating access to schools for research purposes is a very intricate and difficult process.¹⁴² After encountering extensive difficulties with this process the basis of the research had to be modified to be concerned only with obtaining

¹³⁸ G Hitchcock & D Hughes, *Research and the Teacher: A qualitative introduction to school-based research* (2nd Edition) (Routledge: London, 1995) 39.

¹³⁹ For a discussion of other relevant access to participant information see particularly R Walker, *Doing Research: A Handbook for Teachers* (Methuen: Cambridge, 1985) 22-23.

¹⁴⁰ B Cocklin & M Mockovic, ‘Field research in schools: Principles, policies, practice’ (1990) 1(1) *Education Action* 9.

¹⁴¹ *Ibid* 10.

¹⁴² For a discussion of some of the problems of negotiating access to research participants within educational establishments see particularly R Dingwall, ‘Ethics and Ethnography’ (1980) 28(4) *Sociological Review* 871 and H F Wolcott, ‘Handle with Care: Necessary Precautions in the

participants from outside of the school. That is, as described above, by negotiating access with teachers through their associations with professional bodies, the university, the researcher or the researcher's supervisors.

One of the limitations of this study will always be that it was not possible to compare data collected from subjects prescriptively selected and used through stages three and four with those who were officially sanctioned to participate in the project and thus potentially increased the sample population to draw upon.¹⁴³

It was further hoped to obtain volunteers for stage four in this same way. The officially sanctioned groups once again proved impossible to organise and therefore there are no comparisons between those groups outlined in 4.6.3.4 and those which would have been officially sanctioned to undertake the research project by their employer.

However there are no particular reasons identified which suggest that the data which may have been gathered using officially sanctioned groups, using the same methodology as the study, would be different from the results presented and discussed in Chapter Six.

4.7 Treatment of the Data

4.7.1 Quantitative data

Anthropology of Schools' in M L Wax, S Diamond & F O Gearing (eds), *Anthropological Perspectives on Education* (Basic Books: New York, 1971).

The use of quantitative data is limited in this study. It is used in the form of measured statistics in order to display and summarise the data collected from the letters of inquiries detailed in Chapter Six. No attempt has been made to perform any type of variational differences using tests such as 't' tests or similar methods of validating statistical informal since the information collected is simply used to catalogue information collected. Quantitative data is also used to quantify some of the responses provided in the questionnaire.

4.7.2 Qualitative data

Qualitative data is used extensively in this study. It takes the form of focus groups, a questionnaire, documentary searches and letters of inquiry. It is used to:

- Provide insight into the legal knowledge teachers hold.
- Identify the views of the union and the Government employer in relation to their understanding of the need for legal knowledge of teachers.
- Identify the views of the union and the Government in relation to major substantive areas of education law.
- Determine the success of the draft curriculum trials.

¹⁴³ For a better understanding of the representativeness of sampling see particularly Burns (1990),

4.8 Limitations of the Study

Limitations in this study involve the problems described above with obtaining participants. In addition the lack of validation for the attitudinal questionnaire used to gauge reaction to the curriculum trials must be considered a limitation.

Limitations must also be recognised in relation to the methodology employed.

The conclusions reached in this study are also limited to some extent by the nature of the sample.

Additionally the conclusions described in Chapter Seven, based upon the methodology described in this chapter, of this study are of course strictly limited to teachers from NSW government schools.

4.9 Summary of Chapter Four

This Chapter has addressed both the research design and methodology used within the study. Details have been provided of both the population and the sample for each of the different stages of the research project. A discussion of the multimethod research strategy adopted, including the use of focus groups and a questionnaire, has also been provided.

Chapter Five provides a background to the literature in relation to the notion of curriculum undertaken for this study. The merits of each of these curriculum models are examined in order to identify the key characteristics of a model most applicable to developing the legal knowledge of teachers. The Chapter concludes with a discussion of how the curriculum designed for the study reflects the characteristics of the most applicable model.

CHAPTER FIVE

REVIEW OF THE LITERATURE

CURRICULUM DESIGN AND IMPLEMENTATION

5.1 Introduction

Chapter Four provided a literature review and discussion of the research methodology for this study. This Chapter provides a background to the nature of curriculum and the different models of curriculum that exist. A description of the different theoretical classes of the models of curriculum is provided, followed by a discussion of the merits of each of the different models.

The Chapter contains a statement about the model chosen to address research question four of this study. That question concerns the choice of method of delivering appropriate legal knowledge and skill development to teachers. The Chapter concludes with a discussion of the curriculum developed and relates this curriculum to the model which was chosen.

5.2 Defining a curriculum

The concept of curriculum may initially seem simple, but it is not at all easy to define. The very word ‘curriculum’ contains a variety of different meanings

depending on its contextualisation.¹ Whilst it is not the intention of this study to focus directly upon the various dialectical meanings, a brief analysis will be undertaken in order to set the historical and educational contexts of this concept.²

The formal concept of curriculum is relatively new, principally developing in the early part of the twentieth century. It was evident at that early stage in the twentieth century, as it is now, that there was a struggle to continually define and redefine the formal notion of curriculum; to define its parameters.³ One of the principal reasons why the concept is so difficult to define is the fact that the word is used by a variety of people, from different backgrounds, in a multitude of different situations. This necessarily results in a highly contextual existence.

Smith and Lovat make the point when they state:

The word itself (curriculum) is used in many
different contexts, by principals in schools, by
teachers, by curriculum writers in education

¹ In their introduction T J Lovat & D L Smith, *Curriculum: Action on Reflection Revisited* (3rd Edition) (Social Science Press: Wentworth Falls, 1995) at i-ii give a good analysis of the different ways a curriculum can be viewed by different people in different situations. Additionally compare A Urevbu, *Curriculum Studies* (Longman: London, 1985) at 2-16 and C Marsh & K Stafford, *Curriculum Practices and Issues* (2nd Edition) (McGraw-Hill: Sydney, 1990) at 1-4 who also provide discussions of the various definitions of curriculum.

² See particularly the discussion given to the importance of the curriculum compared with non regulated learning systems outlined in M Print, *Curriculum Development and Design* (2nd Edition) (Allen and Unwin: Sydney, 1993) especially at 1-10. But compare the traditional and historical notions of learning as espoused by fourth century philosophers and educators such as Plato and Isocrates who outlined the concept of experiential learning in almost an existentialist manner and especially without any formal notion of curriculum examined particularly in J Boardman *et al*, *The Oxford History of the Classical World* (Oxford University Press: Oxford, 1986) at 227-233. But even this may constitute a curriculum depending on how broad a definition we are prepared to give the word. So even this concept of education may contain an implicit definition of curriculum and as such provides evidence that the term 'curriculum' by its very nature is broad and quite clearly its nature has been debated over many centuries.

systems, and even by politicians. It can mean different things in each of these contexts.⁴

Whilst these two authors have provided a range of potential characterisations for the word it is clear they also ignore many of the other potential uses of the term and thus further contextualisation of its meanings. Take for example two other relatively obvious user groups, parents and the general public. Clearly these are two other relevant groups, which thus increase the number of possible variables to draw upon in characterising this term. Undoubtedly there are other groups who use this term and ascribe their own meanings.

It is not only Smith and Lovett who have contemplated this particular problem. Skilbeck also attempts to define the concept of curriculum and outlines his reasons for acknowledging it as a very difficult task.⁵ What Skilbeck encapsulates in the following passage is that it is almost impossible to give a concrete definition of the term, again due to the notion of contextualisation:

Because curriculum is such a commonplace term within education and is increasingly used in the wider public arena, definitions will just be a kind of shorthand for positions

³ For one of the earliest recorded formal texts on curriculum see F Bobbit, *The Curriculum* (Mifflin Co.: Boston, 1918) particularly at 42 for a discussion of the formalistic notion of curriculum.

⁴ D L Smith & T J Lovat, *Curriculum: Action on Reflection* (3rd Edition) (Social Science Press: Sydney, 1993) 7.

⁵ M Skilbeck, *School-Based Curriculum Development* (Harper and Row: London, 1984) particularly at 20-24.

or viewpoints which can be quite varied and
(or) elaborate.⁶

It is becoming patently evident that the term has a variety of different meanings amongst its different user groups.

Even within some of these various groups there can be confusion over the precise meaning of the term. Marsh and Stafford⁷ make it clear that within the teaching community itself there can be confusion as to how broadly the term can be defined. They state that the term is often confused with syllabus and instruction.⁸ If there is such confusion within one of the main user groups it is hardly surprising that the term is so heavily contextual.

Clearly, there is a problem if we seek to provide a concrete definition of the term. Stenhouse has suggested, “definitions of the word curriculum do not solve curricular problems”.⁹ What is clear from this statement is that it is unnecessary to be drawn into the academic debate over the nature and parameters of this concept. This study does not seek to enter into this continuing debate (although there is acknowledgement of its importance). It is important to make clear that the curriculum is an essential part of delivering information, instructions and behaviour modification to learners in an effective and efficient way. It is by acknowledging that it is via a curriculum that knowledge and skills can be

⁶ Ibid 21.

⁷ Marsh & Stafford, above n 1.

⁸ Ibid 1.

⁹ L Stenhouse, *An Introduction to Curriculum Research and Development* (Heinemann: London, 1978) 1.

communicated to individuals and groups that leads to the proposition of how this can be most effectively accomplished.

5.3 From Curriculum to Models

Learning, behaviour modification, or the delivery of information can take place in a number of different prescribed formats. These different formats are referred to in the literature as models of curriculum.¹⁰ As Brady states:

A model of curriculum development is simply a convenient way of showing the relationship between the essential curriculum development.¹¹

Similarly Print states:

The purpose of a model is to provide a structure for examining the variables that constitute reality as well as their inter-relationship.¹²

These may be rather convoluted ways of stating that models of curriculum are simply different ways of ensuring that education takes place in an organised

¹⁰ For a discussion of the various facets of a model see L Brady, *Curriculum Development* (3rd Edition) (Prentice Hall: Sydney, 1990) particularly at 57-58.

¹¹ Ibid 71.

¹² Print, above n 2,61.

fashion, or at least a system where specific labels are attached to the different processes and functional stages associated with education. Normally these labels in the curriculum field are intended to cover objectives, content, method and evaluation.

5.4 Models of curriculum

5.4.1 Introduction and background

There appears to be an endless continuum of models for the design and implementation of a curriculum. However, the emphasis of this Chapter is on providing a synthesis of the ideas in order to approach the question of which is the most appropriate method of delivery of the course content required to fulfil research question number four.¹³

Curriculum models have been divided by academics to fit into one of four main groups.¹⁴ It is unfortunate that academic writers have seen the need to classify curriculum models so prescriptively because by confining each of these examples of curriculum so specifically to one of the four main groups there is a suggestion that the models are directly opposed to each other. It will become evident that

¹³ That research question as detailed in Chapter Three of this study being: How can this knowledge be most effectively delivered to NSW government teachers?

¹⁴ It is acknowledged that there are other models of curriculum which may or may not fit into this continuum. They include, but are not limited to those proposed by Bobbit, above n 3, P Freire, *Pedagogy of the Oppressed* (Herder and Herder: New York, 1970), J F Kerr, 'The problems of Curriculum Reform' in J F Kerr (ed), *Changing the Curriculum* (University of London Press: London, 1968), D Lawton, *Class, Culture and the Curriculum* (Routledge and Kegan Paul: London, 1975) and J J Schwab, *The Practical: A Language for Curriculum* (National Education Association: Washington DC, 1970).

many of the examples of models presented in this Chapter contain elements from more than one of the categories.

Models appear to be classified according to a continuum which ranges from the extreme of the rational model to the process approach. These models have developed largely in a chronological fashion. The following table identifies some of the better known curriculum writers associated with the development of their models.¹⁵

Table 5.1
Models of curriculum

The rational models are sequential, logical and a rigid way of interpreting the curriculum, whereas at the other end of the continuum the dynamic models view the curriculum development process(es) in a much more flexible way. The cyclical models tend to fall somewhere in between the extremes of the rational

¹⁵ Table taken from a synthesis of ideas presented in Print, above n 2, 63-64.

¹⁶ See particularly R W Tyler, *Basic Principals of Curriculum and Instruction* (The University of Chicago Press: Chicago, 1949).

¹⁷ See particularly D K Wheeler, *Curriculum Process* (University of London Press: London, 1974).

¹⁸ See particularly D Walker, 'A naturalistic model for curriculum development' [1971] 80 *School Review* 51.

¹⁹ See particularly L Stenhouse, *School Based Curriculum Development* (Heinemann: London, 1975) & Stenhouse (1978), above n 9.

²⁰ See particularly H Taba, *Curriculum Development: Theory and Practice* (Harcourt Brace and World: New York, 1962).

²¹ See particularly A Nicholls & S H Nicholls, *Developing a Curriculum: A Practical Guide* (George Allen and Unwin: New York, 1976).

and dynamic models and the process models appear to exist in a category by themselves. Historically academic curriculum writers have preferred to use the cyclical or rational models while teachers, perhaps preferring the flexibility, have tended to choose the dynamic model.²³

Each of the models is preferred for different reasons, although all of the models have as their purpose delivery of educational content; all models appear to be striving to achieve the same purpose but use a variety of often perplexing methods to achieve it. Indeed some authors have commented that the various models are themselves intrinsically flawed. Certainly it is the view of Schwab (particularly commenting on the rational and cyclical models) that by having such varied and differing models the field of education is making the business of educating more difficult. Schwab specifically states:

(the curriculum field is) unable, by its present methods and principles, to continue its work and contribute significantly to the advancement of education...(it) has reached this unhappy state by inveterate, unexamined, and mistaken theory.²⁴

²² See particularly Skilbeck, above n 5.

²³ D F Walker & J F Soltis, *Curriculum and Aims* (Teachers College Press: New York, 1986) 45.

5.4.2 Rational Model

The rational model as principally espoused by Tyler²⁵ in 1949 and Taba²⁶ in 1962 is regarded as the most influential in the field of curriculum design.²⁷ This model emphasises the rigid and logical sequence of the development of a curriculum. The model was initially developed by Tyler because of a perceived need to focus upon “clearly defined purposes”²⁸ in order to construct appropriate educational content and outcomes.

The elements of this model are set out in chronological form, from which deviation is very difficult if not impossible. To deviate from this basis would be akin to changing the whole nature of the model, likely to result in the new variation being placed into one of the other three classifications of curriculum models. To change something from a fixed basis would suggest a more dynamic, thus more flexible option was being pursued.

These rational/objective models have at their core a distinctly regimented series of processes requiring a logical and sequenced fashion. Taba’s rational model of curriculum involved a formidable seven step plan:

Step 1: Diagnosis of need.

Step 2: Formulation of objectives.

Step 3: Selection of content.

Step 4: Organisation of content.

²⁴ Schwab, above n 14, 38.

²⁵ Tyler, above n 16.

²⁶ Taba, above n 20.

²⁷ Walker & Soltis, above n 23, 45.

²⁸ Tyler, above n 16, 3.

Step 5: Selection of learning experiences.

Step 6: Organisation of learning experiences.

Step 7: Determination of what to evaluate and
ways and means of doing it.²⁹

Theoretically it is the case that once the objectives have been determined, although this in itself is problematic,³⁰ it is possible to design/develop appropriate learning experiences to achieve these objectives.

There is criticism of this model for not allowing for the often unpredictable nature of teaching or of the teaching profession itself.³¹ Smith and Lovat are highly critical of the rational approach because they sense that it is:

...based on a series of assumptions that
suggest that schools can be regarded a little
like factories.³²

²⁹ Taba, above n 20, 12.

³⁰ Since it is not the intention of this study to use the rational model for the purpose of designing the curriculum for the delivery of legal information to teachers it is unnecessary to enter into a discussion of the elements which need to be considered in identifying objectives. For a fuller understanding of the various elements which need to be considered see Taba, above n 20, particularly at 194-210 and Tyler, above n 16, particularly at 3-43. Also consider the nature of objectives discussed with reference to the process of decision making in H A Simon, *Administrative Behaviour: A study of Decision-Making Processes in Administrative Organization* (3rd Edition) (The Free Press: New York, 1976) who at 61-78 discusses the nature of an individual being free to choose the basis for reaching a management decision without reference to criteria/objectives. Simon is highly critical of such a notion, believing that individuals must be constrained by prespecified objectives.

³¹ See particularly Stenhouse (1978), above n 9, 75 and Print, above n 2, at 68 where Print gives an analysis of the defects associated with the rational model, claiming that it is largely ineffective because of its rigid structure and inflexibility especially given the dynamics of the modern teaching/learning environment.

³² Smith & Lovat, above n 4, 107.

It also appears that this model would pose the most difficulty for this study's purposes as it needs to be redeveloped continuously as the content is changed and updated.³³ This point is discussed further in this Chapter at 5.4.5.

That is, when the nature of the content of the curriculum changes, even slightly, under this model there is a need to change many of the elements within the curriculum. It is submitted that this could be observed as requiring the development of a whole new curriculum each time there is a change in the content.³⁴ Smith and Lovat in criticising this approach do not go quite as far as to suggest that it is similar to the development of a whole new curriculum, but they are confident in their belief that the rational model fails because it does not take into account the changing dynamics of many subject areas and thus creates extra work for curriculum designers and implementers each time there is a change to the content. They state that:

They are (rational models) primarily inaccurate because they assume that the curriculum and teaching/learning processes are static, rather than dynamic; linear and sequential, rather than complex and multidirectional...³⁵

³³ See particularly Stenhouse (1978), above n 9, at 70-83 for a detailed criticism of the rational approach.

³⁴ Certainly this is the view of C Wallace, 'Curriculum: It's out there baby - what we want and what we need', *Washington Curriculum Writers*, Available online at <http://www.washington_curriculum_writers/curriculum/wallace_c/html/anchor3512983> Date accessed October 1, 1998.

³⁵ Smith & Lovat, above n 4, 110.

This is a major failing of the model. To suggest to a curriculum designer that even a slight change in the information to be presented, as can often occur with the dynamic and perpetually changing nature of the law, necessitates the redrafting of an entirely new curriculum or at the very least substantial changes to the various steps in the model which are unnecessarily onerous. Thus the model, even though credibly grounded in theory, would seem quite anomalous for the purposes of this study given the nature of the law.

5.4.3 Cyclical Model

In search of a perfect model it is pertinent to examine the cyclical model, which evidently falls somewhere in the middle of the entire curriculum model spectrum. The cyclical models however, appear to be more closely aligned with the rational models than any of the other categorised models, so perhaps by virtue of this very feature the model will be ineffective (as they have the same weaknesses of the rational models).

An important difference is that cyclical models view the curriculum process as a continuing activity, rather than the static process which the rational models tend to promote. This may be especially important given the dynamic nature of law. Certainly Print suspects that their value may have been underestimated by many scholars.³⁶

³⁶ Print, above n 2, 64.

Typically it is Wheeler³⁷ and Nicholls³⁸ who are associated with this model. However Wheeler's view of the model has been criticised as being too closely aligned with the rational models. It was Wheeler's position that most curriculum theories he was aware of did not work in practice, so he devised his own which was based on logical development.³⁹ It is highly likely that the basis of the criticism of Wheeler's model is based on this adherence to the logical process thus resulting in the view that Wheeler's model is really a rational approach.

Wheeler's so called cyclical model from 1974 consists of five logically sequenced phases, those being:

- (1) Selection of aims, goals and objectives.
- (2) Selection of learning experiences to help achieve these aims, goals and objectives.
- (3) Selection of content through which certain types of experiences may be offered.
- (4) Organisation and integration of learning experiences and content with respect to the teaching-learning process.
- (5) Evaluation of each phase and the attainment of goals.⁴⁰

³⁷ See particularly Wheeler, above n 17.

³⁸ See particularly Nicholls & Nicholls, above n 21,

³⁹ Wheeler, above n 17, 288.

⁴⁰ Ibid 30-31.

Wheeler states that whilst each stage is independent of the other there is a logical development from the preceding one to the next in the phase for “most commonly work in one phase cannot be attempted until some work has been done in a preceding phase”.⁴¹

It is the Nicholl’s model of curriculum from 1976 that has been taken to be more representative of the cyclical approach. The real notion of the cyclical nature of this model is present in this version of the model rather than the Wheeler version. Its nature is emphasised by Nicholls and Nicholls who states that in this model “there is no starting point...it is a never ending process”.⁴² But this becomes somewhat confused by Nicholls who also states that learning needs to be specifically planned if a “pupil’s learning is to be directed towards desired ends”⁴³ thus making it clear that at some stage there must be a starting point and possibly also an ending point depending on the need for formative assessment at a future point in time.

Like the Wheeler version of the cyclical model, the Nicholls model of curriculum development allows for a five point plan of development. These five points consist of:

- (1) Situation analysis.
- (2) Selection of objectives.
- (3) Selection and organisation of content.
- (4) Selection and organisation of methods.

⁴¹ Ibid 30.

⁴² Nicholls & Nicholls, above n 21, 14.

(5) Evaluation.⁴⁴

If simplicity of design and practicality of ideas are to be the basis for the choice of the model of curriculum then perhaps the model offered by Nicholls, or at least a slight variation of it, would prove suitable. Certainly it is far less complex and less convoluted when directly compared to the rational models.

However, as Skilbeck points out, by adopting this type of model, that is a model with a fixed situational analysis as a starting point, the whole curriculum design process is stifled by the initial baseline data upon which the objectives of the course had to be formulated.⁴⁵ Implicit in this notion is the fact that there must at some stage be a starting point. Once again no provision is made for the problem of the dynamic nature of the law (or even the dynamic nature of adult professional learning) which by its very nature has a relatively rapid and continual change in its baseline information.

5.4.4 Dynamic Model

The dynamic model lies towards the furthest extreme on the continuum. Perhaps justifiably, this model seeks to denounce all other models on the basis that they do not reflect the reality of the development of curriculum in the unique environment of educational establishments.⁴⁶ Curriculum development, proponents of the

⁴³ Ibid 97.

⁴⁴ Ibid 21.

⁴⁵ Skilbeck, above n 5, 23.

⁴⁶ Print, above n 2, 74. Where Print argues that dynamic models denounce cyclical and rational models on the basis that they “do not reflect the reality of curriculum development in educational organisations”.

model argue, does not and never will follow a sequential pattern, so a more malleable approach is not just alluring but unconditionally fundamental.

Theorists in this area appear to focus on a model of curriculum which is less complex or at least less convoluted than rational models. One of the main proponents of this model is Walker.⁴⁷ Walker's 1971 model is straightforward, comprising three phases. These being:

- (1) The platform
- (2) The deliberation phase
- (3) The curriculum design phase

Some have argued that by avoiding the obsession with focusing upon objectives this model allows curriculum developers to be far more creative.⁴⁸ But by being so creative, it is possible that the developers could mistake or distort what it was that they were originally trying to achieve. Is this essentially what Walker was concerned with; making sure the outcomes (the process achieved) are actually worthy of implementation and have some practical usage? In this way we can directly contrast the approaches taken in the rational and dynamic models because proponents of the dynamic model would argue that the rational model can never really be effective because of its inflexibility.

Given the very general nature of Walker's suggestions for a dynamic approach to be taken to curriculum design, his model is not considered to be a very good

⁴⁷ See particularly Walker, above n 18, 51-65.

⁴⁸ Print, above n 2, 78.

example. In 1984 Skilbeck⁴⁹, another of the main proponents of this model, suggested various changes which expanded its scope. Skilbeck sets out a model which is somewhat more complex than that of Walker but is essentially similar in nature.

It was Skilbeck's contention that one of the main problems in the development of curriculum theory has been associated with the use of the word 'objectives'. Indeed he clearly states that:

the very word objectives invites controversy,
in curriculum planning development and
evaluation.⁵⁰

However having stated this he does not shy away from the controversy as objectives figure heavily in his model.

The five stages of his model are:

- (1) Analyse the situation
- (2) Define objectives
- (3) Design the teaching-learning programme
- (4) Interpret and implement the programme
- (5) Assess and evaluate⁵¹

⁴⁹ Skilbeck, above n 5.

⁵⁰ Ibid 210.

Initially the five steps in this model appear to be very similar to the cyclical model proposed by Nicholls. However the important difference between the two models is that whilst the cyclical model may contain the same series of processes, it is inherent that the cyclical model is by its nature perpetual. That is, it is possible in the cyclical model to commence at any of the five steps outlined within the model unlike the dynamic model which has prespecified starting and ending points.

The problem that exists for this study is that if a progressive approach, such as is suggested by the dynamic model, is taken, it is possible that the original intentions may never be achieved. That is, it is possible to become so side tracked by creating clever and interesting delivery methods that the result may be that the curriculum ends up merely entertaining participants (teachers), rather than educating/informing them of their legal rights/responsibilities, as well as other elements of the content of the course which were clearly identified with reference to research questions one, two and three. It may well be more desirable for a less flexible approach be taken. But as mentioned previously, not such a rigid approach as would by its very nature not allow for the dynamic nature of the law.

5.4.5 Process Model

This model is unlike any of the others examined above. On the continuum of models it is positioned after the dynamic/interaction model, although some have suggested that it cannot be placed on such a continuum as it exists entirely

⁵¹ Ibid 231.

separately with very disparate and diverse ideals when compared to the other models.⁵²

Some suggest that it has developed as a reaction to a perception of curriculum designs by people who work constantly with curriculum contents rather than those who simply deal with it in isolation and thus have little understanding of the complexities and intricacies of delivering information to real people in real situations.⁵³ Indeed it is Skilbeck who states that this model has developed as a reaction to the prescriptive nature of the other models, particularly the rational models, and this model therefore belongs to a group he calls 'alternative models'.⁵⁴

The process model was developed by Stenhouse⁵⁵ in 1978. Primarily Stenhouse suggested this model because he did not believe that any of the other models, which tended to focus on the need to formulate and achieve objectives, took into account the realities of the classroom environment. They tended not to recognise that the classroom or any learning environment is an artificial and nonpareil environment which exists in a rarefied atmosphere and has special dynamics of which only educators are aware.

The model appears less structured than any of the others examined. Indeed it is immediately obvious by the fact that it has only three parts that it is less complex

⁵² Smith & Lovat, above n 4, 118.

⁵³ See for example L Brady, *Curriculum Development* (4th Edition) (Prentice Hall: Sydney, 1992) particularly at 78-80.

⁵⁴ Skilbeck, above n 5, 221.

⁵⁵ Stenhouse (1978), above n 9.

than most of the other models described in this Chapter. The major components of Stenhouse's model are:

- (1) Content
- (2) Methods
- (3) Evaluation

As a fundamental basis, the model has no initial statement of objectives. It appears to be centred on the view that education is concerned with the development of certain intellectual or cognitive development and thus what is crucial to this process is not the learning of a vast body of knowledge but rather the processes of development that are prompted (ie. critical thought).⁵⁶ Whilst objectives are important to this model they are not the central theme as compared to some of the earlier models.

The model is based on the premise:

that to have been educated is to have been helped to develop certain intellectual capacities rather than to have acquired factual knowledge or to have had one's behaviour modified in certain ways.⁵⁷

⁵⁶ A V Kelly, *The Curriculum Theory and Practice* (3rd Edition) (Chapman: London, 1989) 17.

⁵⁷ Ibid.

So it is as far removed from any type of very prescriptive based curriculum, dealt with above, as is possible.

Initially it might seem that the objectives seem to be encompassed by the content but this is something that Stenhouse has specifically rejected⁵⁸. He states that objectives are to play only a very general part in the development of the curriculum. Instead curricula:

...can - and should - be constructed...by
selecting suitable content to exemplify the
structure, content and criteria of the forms of
knowledge.⁵⁹

What then are the 'forms of knowledge' if they are not objectives? Stenhouse states that a 'form of knowledge' has "structure and it involves procedures, concepts and criteria".⁶⁰ Implicit in this then is the fact that the process approach must take into account aims and objectives, even if they are considered to be very broad in nature.

Skilbeck is just one of the critics of this model who is confused on this issue. He makes the point that Stenhouse's suggestion that objectives are to play only a minimal role in the process model is problematic. Objectives, even if they are broad, have to play some part, even if at least in the initial theorising of the

⁵⁸ Smith & Lovat (1993), above n 4, 119.

⁵⁹ Skilbeck, above n 5, 221. Skilbeck also uses the fact that objects are to play no part in the design of the curriculum as a basis for severe criticism of Stenhouse's model see particularly 200-204.

⁶⁰ Stenhouse (1978), above n 9, 85.

curriculum to select broad topic areas. It is Skilbeck's assertion that, due to the inevitable reliance on objectives, the process model suggested by Stenhouse is not very different from any of the various objective based models discussed previously in this chapter. He states:

...a careful reading of Stenhouse's discussion of curriculum planning and his description of the alternative, so-called 'process model' suggests that his own position is not so far from some kind of objectives-based analysis.⁶¹

The process model seems almost to view the individual in some type of existentialist manner, that is a person controls their own destiny; their own destiny to be able to learn what is appropriate to them. It has been widely criticised on this basis by traditional curriculum theorists.⁶²

Take for example the criticism of this approach levelled by Skilbeck who is horrified at the thought of individuals being free to choose what they learn and how they learn it. Skilbeck clearly values a more rigid curriculum where there are commonly set and held criteria upon which individuals can be educated and assessed. He states:

⁶¹ Skilbeck, above n 5, 224.

⁶² See particularly Brady (1992), above n 53, 70-80 & Skilbeck, above n 5, 200-220.

The curriculum cannot be left to the whims of individual teachers, however charismatic and brilliant, or to the child's preferences.⁶³

Whilst Skilbeck's criticism might be for a stricter approach to the objects and purpose of a curriculum than proposed by Stenhouse, it is clear this model is as far away from the rational model as possible. Tyler was adamant that a curriculum must have a specifically identifiable set of objectives and states clearly the problem with many educational programmes is they “do not have clearly defined purposes”.⁶⁴ There is little doubt Tyler would be highly critical of Stenhouse's model for failing to provide these ‘clearly defined purposes’. What has developed is a set of curriculum models which are by their very nature often diametrically opposed.

Stenhouse himself seemed to recognise that the process model may not be very successful in situations where what is to be learnt is information and skills. He clearly acknowledges this when he states that:

... (simple) skills are probably susceptible to treatment through (the use of the) objectives model.⁶⁵

But he contended that his model would be most effective in those areas of the curriculum which have a focus on knowledge and understanding.⁶⁶ There is a

⁶³ Skilbeck, above n 5, 225.

⁶⁴ Tyler, above n 16, 3.

fundamental difference between these two elements and this study is very clearly concerned primarily with the second of these elements.

The aim of this study is not to indoctrinate course participants with a multitude of specific legal facts, rather it is the intention of the curriculum designed as a result of this study, to help teachers to better understand the legal world they work in. That is, to foster an understanding of the legal climate which affects them in the delivery of their professional duties. It would be highly undesirable to give teachers detailed and specific legal knowledge as this is constantly changing and maintenance of the knowledge would place an unnecessary burden upon their already difficult teaching duties. Rather it is necessary to provide them with the background they need to better explore the relevant law for themselves as well as being able to recognise potential legal problems and therefore know when to seek further professional legal advice.

But it must be recognised there are severe limitations in judging what has been learnt under the auspices of this model. Indeed Stenhouse acknowledges that evaluation whilst still possible will be very difficult.⁶⁷ It is obvious on a comparison with the three other categories of models that evaluation is conspicuously difficult using Stenhouse's model.

Stenhouse claimed evaluation should not take into account pre-specified objectives.⁶⁸ But what is to be assessed or evaluated? It is quite possible,

⁶⁵ Stenhouse (1978), above n 9, 85.

⁶⁶ C J Marsh, *Curriculum: An Analytical Introduction* (Novak: Sydney, 1986) 47.

⁶⁷ Stenhouse (1978), above n 9, 94-95.

⁶⁸ Brady (1992), above n 53, 78.

depending on the content, that each person involved in the program will have learnt something different from the shared experience delivered via the curriculum, although this will be virtually impossible to assess.⁶⁹ This is indeed Stenhouse's contention, he noted that it was very difficult to assess using his model and highlights the need to use one of the more prescriptive models if a formative assessment of actual skills or knowledge retained is necessary.⁷⁰

Some of the things participants in the curriculum have learnt may have been what was initially intended, but what of the other things? Are these 'extras' a good thing? And how can we assess anything they have learnt if we originally did not have any objective criteria upon which to base this assessment? These are the types of questions which traditional curriculum theorists have asked of this model. It is inherent in the model that it is very difficult to provide answers to these types of questions.

It may only be possible to assess the effectiveness of the curriculum from the reactions of individuals to the material (content) they have been presented with. To gauge their confidence level in dealing with potential legal situations. But is this effective evaluation/assessment? Certainly if a formal normative or summative type of assessment is required it could be argued this model will be ineffective.

⁶⁹ Assess here means assessment in the traditional 'normative' means of assessment and evaluation on which see particularly H Dizney, *Classroom Evaluation for Teachers* (Wm C. Brown: Iowa, 1971), N E Grounlund, *Measurement and Evaluation in Teaching* (Macmillan: London, 1985) and Slatterley D, *Assessment in Schools* (Basil Blackwell: Oxford, 1981).

5.5 Implications

5.5.1 In general

The choice of which curriculum model or which variation of a particular curriculum model to choose to implement the material identified in research questions one, two and three is very important. If an inappropriate model or at least not the most appropriate model is chosen the result in implementing research question four necessarily suffers. Clearly to have the best possible result for research question four a wise decision on the merits and applicability of any or all of these models of curriculum is paramount.

In Chapter Two the notion of the dynamic nature of the law was explored and it became evident that the law can have a number of different meanings depending on the contextualisation it is given and there was little doubt also that the law is constantly changing as society changes.⁷¹ The very fact that law is a dynamic entity gives it unique properties to be considered in choosing an appropriate method of delivering educational content.

5.5.2 A comparison with technology education

Given the perceived dynamic nature of law it is pertinent at this stage to compare it to another subject area which is also considered to have elements which are, because of its nature, perpetually changing. A comparison with technology

⁷⁰ Stenhouse (1978), above n 9, 94-95.

education provides a better understanding of how another field comes to grips with similar and difficult questions of curriculum design. Whilst it is not the intention of this study to provide a detailed analysis of this entire field, for the purposes of comparison it will be evident that one specific example can provide a very useful basis for discussion.

That example concerns the delivery of course content focused on technology by distance education at an Australian university.⁷² It was the intention of the designers of this course, because of the dynamic nature of the material that they were dealing with, not to provide their participants with specific knowledge. For to do so would be of limited value as the content was continually being redefined and updated as new discoveries and advancements were made. Rather it was the intention of the course designers to educate their participants to better understand their environment and to develop their intellectual capacities to be able to actively participate in their continuing education through being able to explore relevant issues and themes at their own pace.

The authors of the article on this instructional course admit that they had a relatively difficult time convincing students of the worth of the course because at the centre of their design was:

...the assumption that our aim is not to
achieve learning. We tell our students that our

⁷¹ See particularly M Davies, *Asking the Law Questions* (Law Book Company: Sydney, 1994) 5-10.

⁷² As reported in R Walker *et al*, 'Flying in the face of instructional design: Rationale for the case study' (1996) 23(3) *Australian Educational Researcher* 29.

aim is not that you should know ‘more’ but that you should improve your capacity for judgement in relation to your professional work as a teacher, ie that you should ‘know better’.⁷³

For many, particularly traditional curriculum theorists, these are controversial ideas. There can be little doubt that such concepts would have been difficult for the more traditional curriculum theorists to come to terms with such as ‘not to achieve learning’.

On the surface what this group appears to have done is the complete opposite of the suggestion of the rational model. That is to have implicitly accepted the process model and used it as the best way of delivering the curriculum due to the specific nature of the content. However this is not entirely correct.

It is clear that the designers did have some initial thought about objectives. Although they do not call their thoughts objectives, instead they use the term ‘aims’.⁷⁴ In doing so they seem to have reached a link between the process and the dynamic models. That is they have at their centre the general theory of the process model and want students to develop their own intellectual capacities rather than rote learn information, but they still recognise the need to have at least broad aims.

⁷³ Ibid 42.

⁷⁴ Ibid 35.

They chose to use this synthesis of the models as their basis for curriculum design for two main reasons. They firstly acknowledge that their subject area is rapidly changing and it would be of limited value to teach students specific skills which would become obsolete within a very short space of time. Secondly they realise that it is very important for teachers as professionals to engage in worthwhile professional development; professional development where the learners themselves play an active part in identifying their own learning needs, a process which they state “is inevitably reflective and personal”.⁷⁵ A process which certainly cannot be facilitated by strict adherence to the more prescriptive models of curriculum. This is precisely the point that this study is making. That to effectively engage teachers in the area of legal education it is essential that they play a significant part in choosing the content and objectives that are most relevant to themselves.

5.5.3 Further implications

To this end this study has determined that a very effective method of delivery of this content would be via the use of a synthesis of the process and dynamic models. That synthesis allows for the non prescriptive elements of the process model to be combined with a broad set of aims or objectives from the dynamic model which the professional body of teachers could appropriately modify. The process model inherently allows for the flexible nature of the information that needs to be delivered and incorporates the desired elements which allow participants to develop their own intellectual capacities specifically relevant to their own situation, whilst the dynamic model allows for some, even generally,

⁷⁵ Ibid.

based objectives to be prescribed before any curriculum delivery programme was commenced.

One of the main reasons for the forced objectives, or perhaps as the previous example has provided not objectives but aims, is to avoid uninformed criticism of any curriculum which might be devised solely on the basis of the process model. Uninformed criticism on that basis could insist that it is not appropriate for a teacher to waste time with a curriculum where there could be no guarantee of what they would gain by participating in such a course of learning, or where it was very difficult, if not impossible to gauge what had been learnt.

By using a synthesis of the process and dynamic models we allow for the dynamic nature of law to be encompassed into a course specifically focussed upon the law relating to teachers. What that law will be, will largely relate to each individual teacher's circumstances.

This hybrid curriculum design, using elements from the process and dynamic models as described above, has therefore been developed for two explicit reasons. The first is that it is not the intention of the curriculum to make teachers into lawyers, rather it is the intention to provide teachers with sufficient information so that they are able to recognise a legal problem or a potential legal problem and then seek the appropriate assistance. It is through gaining insight into the legal world in which they work that teachers become better able to deal with potential problems and this makes them inherently more confident teachers. The second reason is that the very nature of the law being dynamic would lead to the

obsolescence of a detailed and specific curriculum, which focused on the substantive law as it was today, in a very short period of time.

5.6 Designed Curriculum

5.6.1 Introduction

The results from Chapter Six of this study reveal a broad support amongst the majority of the stakeholders in education for the need to develop a systematic programme of legal education for teachers. Using a synthesis of the process and dynamic models outlined earlier in this Chapter a curriculum was designed to address that need. That curriculum was trialled and the results of the curriculum trials are detailed in Chapter Six. The entire curriculum can be found in Volume Two of this study.

That curriculum contains the following elements:

- A course outline
- A participant workbook
- A set of extracted reading materials
- A set of facilitator's notes.

Participants in the course receive a copy of the course outline, participant workbook and extracted reading materials, whilst the course facilitator receives all of these elements with the addition of a set of facilitator's notes.

5.6.2 Course Outline

The course outline was designed to provide participants in the course with an introduction and background to the course of study they were about to commence. It contains details about the structure and materials of the course. In keeping with the synthesis of the dynamic and process models of curriculum it does not provide a prescriptive list of forced objectives, rather it provides a broad set of flexible subject objectives. Additionally the course outline lists the broad themes to be covered in each of the eight scheduled sessions.

There is specific emphasis on participant interaction in the learning process. Participants are notified that the course will take the format of them being provided with reading materials and broad focus questions which will form the basis of discussion at the following group session. Participants are actively encouraged to draw upon their own background experiences and interests when completing the reading and participating in the group discussions. This aspect of the curriculum can be traced to Stenhouse's focus on prompting processes of development such as critical thought, see 5.4.5 for further details.

5.6.3 Participant Workbook

The participant workbook is integral to the operation of the course. It contains details of the materials which need to be covered in each of the sessions. In keeping with the synthesis of the dynamic and process models there are no specific aims or objectives for each of the sessions listed. Instead what is provided

is a list of readings to be completed (these are located in the extracted materials contained in Volume Two of this study) and a set of very broad questions designed to stimulate participants' thinking about many of the general issues to be discussed at the ensuing formal face to face group session. Such an approach to pedagogy tends towards the views of Stenhouse and his insistence that an understanding of the learning process is more critical than developing a vast body of knowledge. Although it also allows for the influence of Skilbeck's dynamic model which, whilst not prescriptively assigning objectives, still allows for the objectives to be broadly based.

Additionally each of the sessions contains an instalment of a case study which allows participants to examine some of the theory behind what they have been learning and apply it to an actual situation. This is very much in keeping with the synthesis of ideas from the dynamic and process models of curriculum in allowing individuals to experience a thorough basis of understanding of the materials they are presented with rather than relying on information which may be traditional and rote learned as prespecified in the rational or cyclical models.

5.6.4 Extracted Materials

The extracted materials form the basis for the background readings for each of the sessions participants attend. The readings have been grouped together to focus upon the broad course aims and the sessional items to be examined. Importantly the extracted materials are not designed to provide participants with detailed knowledge of any facet of educational law. Rather they are designed to provide

participants with the necessary background information to the law, more specifically educational law, and then allow them to develop the skills necessary for teachers to be able to conduct further research in areas which may be of interest or relevance to them. The selection of these materials reflects the views of Stenhouse in the importance of selecting suitable content to exemplify critical knowledge.

5.6.5 Facilitator's Notes

The facilitator's notes have been designed to assist the facilitator of the Education Law course to better understand the nature of the entire course and provide them with information and strategies to assist in the delivery of the course information.

It is most important that the facilitator of the course has an intimate knowledge of the law in order to provide for effective delivery of the course content and particularly to ensure that teachers feel confident that the material they are receiving has been professionally prepared and delivered. Facilitators would be expected to be able to answer a broad range of questions from teachers which will necessarily flow from the eight discussion sessions of the course.

Again, the tendency towards process-based learning not reliant upon the acquisition of a body of content knowledge demonstrates the adoption of a synthesis of the process and dynamic models in the design of this curriculum and advice for its implementation.

5.7 Curriculum Evaluation and Review

The curriculum, including the course outline, workbook and facilitator's notes, contained in Volume Two of this study is the curriculum designed and trialled as a result of the processes of investigation into research question four of this study. The results of the trialling of the curriculum are detailed in Chapter Six of this study. Apart from the details contained in Chapter Six in relation to the survey of participants who completed the Education Law course no formal evaluation of the curriculum has been attempted in this study.

The concept of curriculum evaluation is perhaps as academically challenging as defining the concept of curriculum itself or the analysis of the various models of curriculum both of which this study has undertaken. Brady notes that there are intrinsic problems with even defining the precise meaning of curriculum evaluation.⁷⁶ As such the formal notion of the evaluation of curriculum is outside the scope of this study.

However it will be important for any facilitator of the Education Law course to be aware of importance of evaluation both formally and informally. To the extent that there will be a need at different times to alter the structure of the course as the nature of the law changes. There could for example be a need to update the content of the extracted materials as newer materials become available or as substantive elements of the law change. There is also the need for a formal evaluation of the curriculum for professional purposes. However it is not the

⁷⁶ Brady (1990), above n 10, 151-152. See also the general discuss given in this text of the evaluation of curriculum at 151-190.

intention of this study to enter into that formal evaluation.⁷⁷ It may be the case that a formal evaluation would be better undertaken at a latter stage when the curriculum has been undertaken by a larger number of teachers.

5.8 Summary of Chapter Five

This Chapter has addressed the aspects of the delivery of the content of the information in relation to research question four. This Chapter has provided a discussion of the various methods and models of delivering educational content contained in different forms of curriculum, these being the rational, cyclical, dynamic and process models. The Chapter contained a statement that the preferred method of delivery of information would be via a synthesis of the process and dynamic models of curriculum which allow for the dynamic nature of law to be encompassed in a course designed to focus upon the law as it relates to teachers.

The Chapter concluded with a discussion of how the designed curriculum utilised elements of the model chosen.

Chapter Six provides a detailed analysis, interpretation and discussion of the data for this study.

⁷⁷ For a better understanding of the notion of the formal evaluation of curriculum see particularly E Davis, *Teachers as Curriculum Evaluators* (George Allen and Unwin: Sydney, 1981), B J Frazer, *Case Studies in Curriculum Evaluation* (Western Australian Social Science Education Consortium: Bentley, 1985), J O'Neill & N Kitson (eds), *Effective curriculum management: Co-ordinating learning in the primary school* (Routledge: London, 1996), D Tawney (ed), *Schools Council Research Studies: Curriculum Evaluation Today – Trends and Implications* (Macmillan Education: London, 1976), P A Taylor & D M Cowley (eds), *Readings in Curriculum Evaluation* (WMC Brown Co.: Dubuque, 1972) and S Wiseman & D Pidgeon, *Exploring Education: Curriculum Evaluation* (NFER Publishing: Windsor, 1976). Also note the various models of curriculum evaluation described by Brady (1990), above n 10, at 173-187.

CHAPTER SIX

PRESENTATION AND DISCUSSION OF DATA

6.1 Introduction

This chapter presents and discusses the data collected to address the four research questions that were described in Chapter Three of this study. In order to investigate these questions the research involved both qualitative and quantitative elements. The main data collection instrument was in the form of focus groups. However other elements, including a questionnaire, letters of inquiry and document searches, were utilised. The data collection procedure took place between February 1997 and July 2000.

An examination of the discussion provided in Chapter Three revealed the four research questions associated with this study:

[1] What knowledge do teachers in NSW government schools have about the law and how it affects them in the delivery of their professional duties?

[2] Is it essential or even of use for NSW government teachers to have any degree of knowledge in legal areas?

[3] What substantive areas of the law do NSW government teachers require a working knowledge of in the performance of their usual duties?

[4] How can this knowledge be most effectively delivered to NSW government teachers?

What follows is an analysis and discussion of both the qualitative and quantitative data in respect of each of the research questions.

6.2 Research Question One: Teachers' knowledge of the law

6.2.1 Overview

The review of literature reported in Chapter Two revealed a concern both in Australia and internationally with regard to the level of legal knowledge held by members of the teaching profession.¹ Thus the question of the extent of legal knowledge held by Australian teachers was a central concern of the study.

The use of focus groups was determined to be one of the most effective methods of eliciting information on this issue. In addition this section identifies potential

¹ On Australia see particularly A Khan & P Williams, 'The liability in negligence of teachers and schools in Australia' (1993) 5(3) *Journal of Education and the Law* 155, F Peach, 'Opening address to the Australian and New Zealand Education Law Association' (Paper presented at the inaugural meeting of the Queensland Chapter of the Australian and New Zealand Law Association, Brisbane, November 1992), D J Newlyn, 'The Change in the Relationship Between Teachers and the Law: Listening to the Teachers' Voices' (1998) October *Australian & New Zealand Education Law Association Annual Conference Papers – 1998* 1-8 and D J Stewart, 'Principal's Knowledge of Law Affecting Schools' (1996) 1(1) *Australia & New Zealand Journal of Law & Education* 111. On the United States see particularly C S McLoughlin *et al*, 'Prospective Educators' Knowledge of Children's Legal Rights' (1983) 20(4) *American Educational Research Journal* 591, E Ogletree, 'Educators' knowledge of school law and the relevance of school law

sources for gauging the legal knowledge of teachers, by reporting on a survey of all Australian universities. Chapter Four, specifically at 4.5.2, described in detail the methodology and value of using focus groups as a research tool.

6.2.2 Potential Sources of Legal Information

Given that all teachers in government schools in New South Wales and other Australian States and Territories must complete an officially sanctioned and controlled educational qualification prior to being employed as a teacher, one possible source of legal knowledge for teachers might be that which they received during their formative years of educational study in a recognised university.

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, not only within the State of New South Wales but in Australia as a whole.² This survey was in the form of a letter of inquiry as described in Chapter Four, specifically at 4.5.4.1. The survey did not include the possibility that trainee teachers may have already gained a legal qualification before commencing their educational studies or the possibility that trainee teachers may have conducted further postgraduate study in the area of legal education via a faculty or university school/department outside of the educational field. 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

study' [1985] 7 *Glendale Law Review* 64 P A Zirkel, 'A test on Supreme Court decisions affecting education' [1978] 59 *Phi Delta Kappan* 521.

² Acknowledgement is made that some teachers who are employed in NSW government schools may have undertaken their training at institutions located outside of Australia.

process of them becoming teachers and thus the survey was specifically directed to the designated educational entities inside Australian universities.

6.2.2.1 Universities of Australia

At the commencement of the study, in February of 1997, a letter of inquiry was directed to each university in Australia³ 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. Consistent with the methodology of a letter of inquiry described in Chapter Four at 4.5.4.1, 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 gauge whether there had been any change during the undertaking of this study, the same letter was again sent to all universities towards the conclusion of the data gathering for this study in July 2000. 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 considerably.

³ For a sample letter see Appendix A.

Forty education entities were identified both in 1997 and 2000. 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 faculties⁴ and as a result, each of these separate entities was sent a separate letter of inquiry on each occasion.

Of the 40 entities surveyed in 1997, 27 replied to the survey representing a response rate of 68%. Of the 40 entities surveyed in 2000, 31 replied to the survey representing a response rate of 78%.⁵ Table 6.1 more clearly shows these details.

Table 6.1
**Statistical Details of Education Entities surveyed for information in regard to legal education
for teachers in Australia**

Year of Survey	Number of entities surveyed	Number of responses	Percentage of responses received
1997	40	27	68
2000	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 being offered to both preservice and practising teachers, through both undergraduate and postgraduate level courses.

⁴ Those being Charles Sturt University: Riverina, Charles Sturt University: Bathurst and Charles Sturt University: Albury

In 1997 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. By 2000 this figure had changed very little.

Of the 31 universities which responded in 2000, 20 identified that they gave some form of legal information to enrolled students, representing a total of 65% of respondents. Table 6.2 lists this information.

Table 6.2

Details of the number of education entities offering legal information sessions in Australia

Year of Survey	Number of responses	Entities offering legal information courses	Percentage of entities offering these courses
1997	27	19	70
2000	31	20	65

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 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.

⁵ Consistent with the methodology described in Chapter Four at 4.5.4.1 a follow up letter of inquiry was sent to those educational establishments which did not respond to the initial letter of inquiry in both 1997 and 2000. No further responses were received.

The form and extent of legal education varied considerably amongst these universities. 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 practising teachers. The information that was returned by these institutions has been broken down to fit into one of the following three categories.

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. 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. Figure 6.1 illustrates these categories more clearly.

Figure 6.1

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

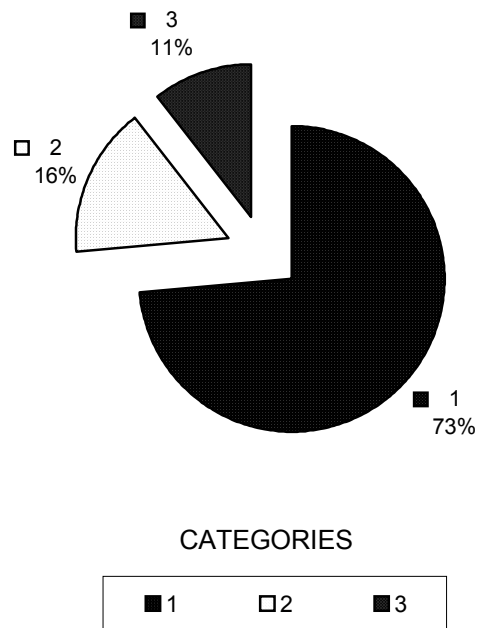
Category Level	Description of Category
One	Short courses of instruction. Basic information provided. Less than 3 hours in duration.
Two	Between 3 hours but less than a full semester in duration.
Three	Detailed full courses of at least one semester in duration.

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 both in 1997 and 2000. All of the responses received were of sufficient detail to enable this researcher to accurately determine this categorisation. No categorisation has been possible with regards to those universities which did not respond in either 1997 or 2000.

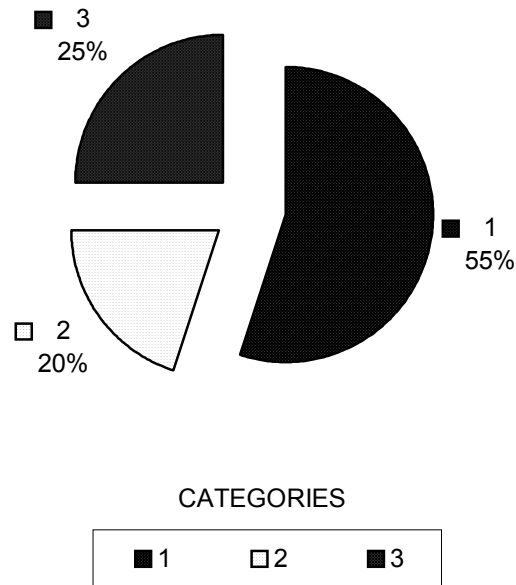
The majority of educational entities in both 1997 and 2000 could be categorised into Category One whilst very few were identified as Category Three. In fact in 1997 of the 19 entities offering legal information to teachers only two (11%) identified themselves as having full courses of information and thus qualifying for Category Three. Additionally in 1997 three (16%) entities were categorised as Category Two and the remaining 14 (73%) could be categorised as Category One. Table 6.3 identifies the characteristics of these groups.

Table 6.3
Level of legal education delivered at Australian Universities in 1997



In 2000 these figures were relatively similar. Of the 20 entities which responded five (25%) were identified as Category three, four (20%) identified as Category two and the remaining 11 (55%) were categorised as Category one. Table 6.4 shows these details.

Table 6.4
Level of legal education delivered at Australian Universities in 2000



6.2.2.2 Focus on Universities located in New South Wales

Given that it can be assumed that the majority of teachers who became participants in this study would have originally trained in New South Wales⁶, and given that it is the intention of this study to specifically focus on the legal education of New South Wales teachers it is necessary to highlight the details which relate specifically to those institutions that are located within the State of New South Wales. By identifying this group separately we allow for the possibility of differences in the level of legal education between New South

Wales and other states and territories of Australia to be discovered. With this in mind the following details and discussion are provided.

In total 13 distinct entities providing teacher education were identified as having a location within the State of New South Wales and thus potentially the largest responsibility for the legal education of teachers within the New South Wales Government controlled schooling system. Of the 13 institutions surveyed in 1997 10 replied to the survey representing a response rate of 77%. Of the same 13 institutions surveyed in 2000 11 replied to the survey representing a response rate of 85%. Table 6.5 more clearly shows these details.

Table 6.5
Details of Education Entities surveyed for information on legal education for teachers in the
State of New South Wales

Year of Survey	Number of entities surveyed	Number of responses	Percentage of responses received
1997	13	10	77
2000	13	11	85

In 1997 of the 10 entities that responded to the survey eight identified that they gave some form of legal information to their students, representing 80%. Progressing to the survey conducted in 2000, the results of which are detailed in Table 6.6, we see little change. Of the 11 entities which responded in 2000, 10

⁶ This assumption is based on two reasons. The first is that the largest number of universities in Australia are located in the State of New South Wales and secondly it is based on the assumption that New South Wales employs more teachers than any other state.

identified that they gave some form of legal information to their students representing a total of 91% of respondents.

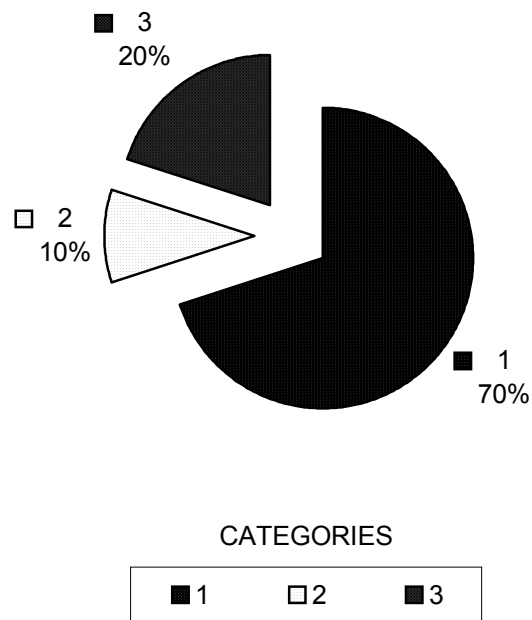
Table 6.6
Details of the number of education entities offering legal information sessions in the State of
New South Wales

Year of Survey	Number of responses	Entities offering legal information courses	Percentage of entities offering these courses
1997	10	8	80
2000	11	10	91

An analysis of the information provided by the establishments both in 1997 and 2000 revealed details of the degree of information or educational content in terms of legal responsibilities of teachers supplied to their respective students. The categorisation of the universities of New South Wales was the same as the classification of the categories for all of the universities within the whole of Australia detailed above more clearly in Figure 6.1.

In 1997 the majority of establishments could be categorised as delivering educational content capable of being classified as Category One. Category One was identifiable in seven (70%) of the establishments. Category Two identifiable in one (10%). Whereas Category Three could only be identified in two situations (20%). Table 6.7 shows these details.

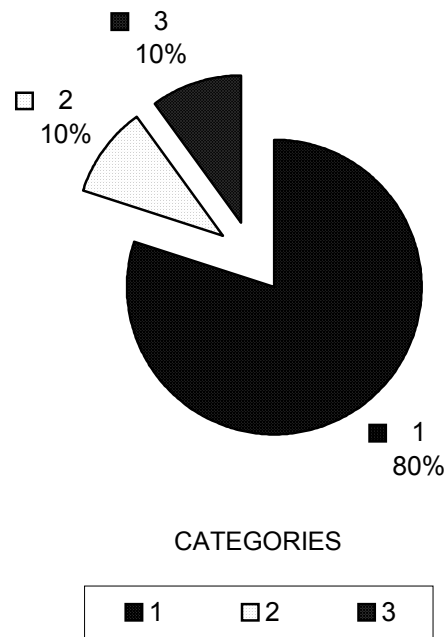
Table 6.7
Level of legal education delivered at New South Wales Universities in 1997



The situation was quite similar in 2000, when of the 10 institutions to respond eight (80%) were identifiable in Category One and one each were identifiable in Categories Two (10%) and Three (10%). Table 6.8 indicates these details in graphical form.

Table 6.8

Level of legal education delivered at New South Wales Universities in 2000



6.2.2.3 Discussion

Given that the nature of this research question is divided into two parts, those being the investigation of the current teaching practices of universities and the level of knowledge held by current practising teachers, the discussion here will focus exclusively upon the first part of the data presented.

The data presented above was intended to demonstrate the main potential current source of legal information for current practising teachers in New South Wales

Government schools.⁷ That is the source of legal information that trainee teachers who were in a course of study since 1997 or those teachers who received some form of continuing professional development from a university might have. This data will also be used in addressing other parts of the four posed research questions.

What has become evident from the data presented above 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. Indeed given the fact that the vast majority of those that responded, 70% in 1997 and 65% in 2000, delivered at least a basic level of legal education there can be little doubt on this point. This may be due to the rising issue of the responsibilities of the Child Protection Legislation in schools, detailed in Chapter Two, which began in the early part of the 1990's.

However what is of concern is the depth of the information which is conveyed to those 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 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 courses is comprehensive

⁷ Pre service or current teachers in New South Wales schools may have undertaken some form of legal education through a program/course/seminar offered outside of a university based School/Faculty of education. This may have been inside of the university itself, perhaps offered by an alternate School/Faculty or even outside of the University. Given that the letters of inquiry were sent exclusively to university faculties/schools associated with delivering teacher education, acknowledgement must be made of this possibility.

enough for teachers to be able to identify or know how to handle potential legal problems in schools. What the respective universities may simply have done is alert teachers to a potential minefield of trouble which they should take every precaution to avoid thus promoting an over reaction on the part of the teachers.

It is also clear from the data that very few institutions have sought to address this problem in an 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, then it is manifest that the majority of universities in Australia have not developed adequate levels of legal education for their students.

Given that in New South Wales, with similar figures on a national level, in both 1997 and 2000, less than 20% of institutions had sought to introduce substantial courses of instruction which progress beyond a simple one hour instructional lecture, 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 may be of concern, given the discussion of the legalisation of the teaching profession presented in Chapter Two that there appears to have been little reaction to this by universities. The figures clearly show that in 1997 70% of respondents had some form of legal instructional course and in 2000 this had slipped to 65%. Given that these figures are almost static there is little evidence that universities

had responded to the development of the need for this type of knowledge to be taught at a professional level.

There is also 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 in New South Wales and other States within Australia. It is the case that the New South Wales Department of Education and Training 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. There is clearly a need for the Government employer 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.

An examination and a discussion of the second part of the research for this question follows.

6.2.3 Focus Groups

The value of using focus groups as an informational gathering tool has been detailed in Chapter Four of this study, more specifically at 4.5.2. Focus groups were primarily used in order to gather information for this research question as they allow for a free and full range of responses to be given to an area of concern.

It was the intention of this study to determine, in the widest possible way, what legal knowledge practising teachers held in relation to their duties as teachers in New South Wales Government schools.

6.2.3.1 Focus Group Interview Schedule

6.2.3.1.1 Overview

With this in mind this researcher developed a focus group interview schedule⁸ to be used with each of the different focus groups. A draft of this interview schedule was developed and trialled in order to gauge its effectiveness. That draft interview schedule took the following form:

- Welcome – Introduction of myself and the reason for the session.
- Obtain approval from the group for recording the interview.
- Explain to participants that the information they provide will be confidential. That their names or other identifying remarks would not be used in any way which could identify themselves as individuals.
- Introductions.
 - The purpose of the session.
 - Why they were chosen as participants.
- Explain the format of the session – time it will take etc...
- Main Questions
 - Ask group members to form pairs.
 - I want you to think of an issue or a problem that has arisen at school in the last few years.

⁸ From an idea presented in P Maykut P & R Morehouse, *Beginning Qualitative Research: A philosophic and practical guide* (Falmer Press: London, 1994) 108. I also acknowledge the support of Dr Richard Mohr from the Faculty of Law at the University of Wollongong in the designing of this draft and the final version of the interview schedule.

- Can you tell the rest of the group about one of these issues/incidents you have discussed briefly?
- Choose two or three of these issues and discuss them with the group in detail. Use questions such as:
 - What would you do in a situation like this?
 - Have you experienced anything like this situation?
 - Who could you turn to for advice?
- Conclude the main question section by allowing the group the opportunity talk about other areas which they were concerned with.
- Are there other problems or incidents occurring in schools that are causing you concern?
- End
 - Debriefing session
 - Reconfirm agreement for confidentiality of information provided.
 - Thank participants for their involvement.

6.2.3.1.2 Use of trial focus group to refine interview schedule

This interview schedule was trialled with a group of eight teachers from a school at which this researcher was a current teacher. That school was a New South Wales Government operated co-educational secondary school and as such would be classified in the same way as all other schools and teachers from those schools dealt with in this study. All schools used with both the live focus groups and the later curriculum trial groups were co-educational. Further details of the characteristics of the sample schools in New South Wales was outlined at 4.6.1

The trial group was asked general questions about problems which they had encountered during their teaching careers using the interview schedule detailed above. No limits were placed on the types of problems participants could discuss. Indeed participants were free to discuss legal and non legal problems as well as

problems which had affected them personally or which they had merely become aware of through their association with teaching.

Since this trial group was not asked to confine their comments to specific legal areas their responses varied considerably. Three distinct areas of concern were identified and were grouped broadly under the headings of an injury to someone, a crime, or some other type of work related responsibility. Following feedback from the trial group it was decided to restrict the areas within which participants would be asked to identify an issue when similar sessions were held with the live focus groups. This limitation is consistent with the methodology for the use of focus groups as suggested by Knodel, who acknowledges that to gain the most advantage out of a focus group it is necessary to keep the number of concepts broad, but it is also necessary to moderate the number of broad concepts so that a detailed examination of each area can be undertaken.⁹

It was as a result of the findings for this trial group that there emerged clear evidence that teachers were able to classify potential problems/issues under these three broad headings. Consequently the draft interview schedule was amended to be used with the live participants. This restriction in the range of possible categories of questions is also consistent with the methodology for focus groups identified by Krueger¹⁰ and detailed in Chapter Four of this study, more specifically at 4.5.2.5. For the live focus groups, participants were asked to confine their discussions to issues that could be classified into one of the three

⁹ J Knodel, 'The Design and Analysis of Focus Group Studies: A practical approach' in D L Morgan (ed), *Successful focus groups: Advancing the state of the art* (Sage Publications: London, 1993) 55.

areas that emerged from the trial focus group, these areas being an injury, a crime or some other type of work-related responsibility. Importantly these issues were not identified as ‘legal’ issues. Participants were free to discuss the nature of these issues from both legal and non-legal perspectives thus maintaining the integrity characteristics of the focus group as a research methodology. The final focus group interview schedule took the following form:

- Welcome – Introduction of myself and the reason for the session.
- Obtain approval from the group for recording the interview.
- Explain to participants that the information they provide will be confidential. That their names or other identifying remarks would not be used in any way which could identify them as individuals.
- Introductions.
 - The purpose of the session.
 - Why they were chosen as participants.
- Explain the format of the session – time it will take etc... (15 minutes)
- Main Questions
 - Ask group members to form pairs.
 - I want you to think of an issue or a problem that has arisen at school in the last few years. A problem which has involved either an injury to someone, a crime, or another work related responsibility (each pair was given only one of these categories to use for their discussion purposes). (5 minutes)
 - Can you tell the rest of the group about one of these issues/incidents you have discussed briefly? (20 minutes)
- Choose two or three of these issues and discuss them with the group in detail. Use open ended questions or probes such as:
 - What would you do in a situation like this?
 - What experiences have you had in these situations?
 - Who could you turn to for advice? (20 minutes)

¹⁰ R A Krueger, *Focus Groups: A practical guide for applied research* (2nd Edition) (Sage Publications: London, 1994) particularly at 20.

- Conclude the main question section by allowing the group the opportunity talk about other areas they had identified and were concerned with.
- Are there other problems or incidents occurring in schools that are causing you concern?

(20 minutes)

- End
 - Debriefing session
 - Reconfirm agreement for confidentiality of information provided.
 - Thank participants for their involvement.

(10 minutes)¹¹

The most significant refinement to the final interview schedule was in respect of the categories of issues/problems which participants were asked to discuss. Additionally it was made clear from the trial focus group, and this is consistent with the literature presented in Chapter Four, specifically at 4.5.2.3, that it would be important to place some time restriction on the focus group. As a result it was suggested that the total time for conducting the focus group not exceed one and a half hours.

6.2.3.2 Focus Group Participants

The trial focus group was held in December of 1997 and it involved the participation of eight practising teachers who were all employed at the one school. The school involved was a New South Wales Government co-educational High School providing education for years 7 to 12. An examination of the details of these participants is provided in Table 6.9.

¹¹ Total group time not to exceed 1 hour 30 minutes.

Table 6.9**Characteristics of trial focus group**

Category	Number
Gender	
Female	5
Male	3
Total	8
Age	
20-30	0
30-40	3
40-50	3
50-60	2
60+	0
Total	8
Years of Teaching Experience	
0-5	1
5-10	1
10-15	2
15-20	2
20+	2
Total	8
Level of education taught	
Kindergarten	0
Primary School	0
High School	8
Total	8

The focus groups used as a basis of the full study consisted of a total of 53 participants. These 53 participants formed four separate focus groups of varying sizes, the sizes of the groups was consistent with the literature detailed at 4.5.2.3.

Participants of these focus groups were constituted either by the school to which they belonged or as a result of a membership of a common professional association. Thus, one of the focus groups was constituted entirely of executive level teachers including head teachers, either from primary or high schools, while one other group comprised teachers exclusively from a high school, the remaining two focus groups were constituted by teachers from primary schools, including a kindergarten department.¹² The characteristics of these four focus groups are detailed in Table 6.10.

¹² A Primary school and a Kindergarten Department are listed distinctly separately because those teachers who were used as part of the live focus groups specifically asked to be identified separately from the other Primary school teachers who were also in attendance at the same live focus groups. That is, when presented with the questions which were put to them for the purposed of compiling Tables 6.9 and 6.10 they were not willing to be included in either the Primary or the Secondary school categories which were put to them. Instead they identified themselves as Kindergarten teachers.

Table 6.10**Characteristics of live focus groups**

Category	Number
Gender	
Female	35
Male	18
Total	53
Age	
20-30	1
30-40	7
40-50	25
50-60	17
60+	3
Total	53
Years of Teaching Experience	
0-5	0
5-10	6
10-15	14
15-20	26
20+	7
Total	53
Level of education taught	
Kindergarten	8
Primary School	22
High School	23
Total	53

6.2.3.3 Focus group results

Each of the four focus groups was asked to respond to the three different classes of legal problems: an injury to someone, a crime or another work-related responsibility. All focus group sessions were tape recorded and then transcribed in accordance with the method described in Chapter Four at 4.5.2.7. Combined with written notes made by the researcher they formed a transcript on which the following discussion is based. Participants were individually assigned a number between 1 and 53 for confidentiality reasons.¹³ Before turning to an examination of the results from these groups it is important to note the overall scope of the information the focus groups participants presented in relation to the legal problems which they had or potentially would face.

6.2.3.4 Scope of focus group information

The participants believed that their roles as professionals would be enhanced if they had a working knowledge of educational law. Typically participants knew that they did not have a thorough knowledge of the law and they wanted to increase this understanding. For example participant number 48 stated:

¹³ This treatment of the data is consistent with the policy for maintaining confidentiality outlined by the Human Research Ethics Committee of the University of Wollongong who granted approval for this research to be undertaken with live subjects. A copy of that approval to undertake research is contained in Appendix D. For a discussion of the principles of anonymity within the field of educational research see particularly J E Sieber (ed), *The Ethics of Social Research: Fieldwork, Regulation, and Publication* (Springer-Verlag: New York, 1982), B Cocklin & M Mockovic, 'Field research in schools: Principles, policies, practice' (1990) 1(1) *Education Action* 9 particularly at 15 and generally J F Soltis, 'The ethics of qualitative research' (1985) 2(2) *Qualitative Studies in Education* 123.

I don't really know how to answer that (a factual problem situation)...it makes me realise that I'm not equipped to deal with that kind of situation. I'm starting to wish that I knew more about the laws affecting teachers.¹⁴

Participant 5 put it this way:

I think all of us here think that it's important for teachers to understand their legal rights and responsibilities...but it's also important that we get the right information and that information has to have a balance between not being too simple and not being too complicated...that'll be a difficult balance because there's no way that teachers want to be burdened with this like they've been burdened with other things.¹⁵

Similarly participant 17 noted:

Yes I'd like to know more about the law...I mean our society is clearly becoming more

¹⁴ Participant number 48.

¹⁵ Participant Number 5.

and more legalised...but we need to make sure that we get the right type of information...if it comes from the Department we can never be sure of its accuracy...usually they just want us to hand things over to them and even then they are difficult to contact.¹⁶

And participant number 20 stated:

We have lots of in-service in our own subject areas but we never seem to have any in-service about the law.¹⁷

However, not all of the teachers were concerned about their lack of legal knowledge. It was not that these teachers lacked the professional ability or interest in the law, rather they believed the legal branch of their employer was the most appropriate body to be dealing with these issues. Those participants responded with these comments:

I know all that I need to know about the law...it's not my responsibility when a legal issue arises...I'm a teacher NOT a lawyer...I'd simply refer the matter to my

¹⁶ Participant Number 17.

¹⁷ Participant Number 20.

principal who'd no doubt contact the DET
legal office.¹⁸

However the very next comment by this same participant makes it clear that they at best had a very limited knowledge of the law and how it affected them in their delivery of their professional duties and how they would have been just the type of teacher who could benefit from an improvement in their knowledge level. Participant number 18 stated:

...I know that I'm protected by my
employer...I know that if something goes
wrong that I can't be sued for the damage as
I'm an employee and the injured person will
sue the department and not me.¹⁹

These types of comments are consistent with the methodology for focus groups, discussed at 4.5.2.2, which present a range of information to emerge on a topic.

Participants in each group also made reference to the link between legal education and the professionalism of teachers. It was made clear by these participants that if the occupation of teaching wants to progress and enhance its status in the community then it needs to take control of itself and one of the ways of doing this may be by establishing their own body responsible for professional education, a mandatory component of which would be legal education:

¹⁸ Participant Number 18. Emphasis added on the basis of the participants use of intonation.

¹⁹ Participant Number 18.

...if we want to have ourselves as a profession taken seriously then it is essential that we, as a profession, are responsible for our own education and it seems very clear to me that this education needs to include mandatory and essential elements and legal education would have to be number one on my list...it's just something that we need to know.²⁰

An examination of the responses of these focus group participants to the three specific categories of problems they were presented with follows. These categories including injuries, crimes and other work related responsibilities were those categories identified as most relevant by the trial focus group for the draft interview schedule described in 6.2.3.1 above. Consistent with the literature for the analysis of focus group results, as detailed in Chapter Four of this study, the data for this question has been categorised under the criteria which the focus group were instructed to focus their responses. That is as described: injuries, crimes and other work related responsibilities. Within each of these categories further sub-categories will become evident. Importantly, and consistent with the methodology described earlier in this study in Chapter 4 (at 4.5.2.7), no attempt has been made to quantify the views of the focus group participants.

6.2.3.5 Injuries

Participants were able to identify a range of incidents involving injuries that had affected students, teachers or visitors to the school location. As one participant remarked:

...we've had quite a lot of injuries at our school...in fact it's probably one of the areas that we deal with...there's always the fear of some type of legal action...you know - we weren't supervising properly so we're blamed and potentially sued if anything goes wrong.²¹

The types of injuries noted appeared to vary depending on the nature of the group. Perhaps unsurprisingly, the kindergarten group related stories of students who had been injured on playground equipment, whilst high school teachers related instances of students who had been injured at sporting fixtures, by industrial machinery or during work experience exercises.

The analysis of the transcripts revealed a range of injuries, including those to students, staff and visitors to the school. These injuries have therefore been sub categorised to assist with analysis. The following discussion provides a summary of the responses to each of these sub categories and thus provides a window to their collective knowledge of the law.

²⁰ Participant Number 22.

²¹ Participant number 16.

6.2.3.5.1 Injuries to students

Each of the four focus groups was able to identify injuries to students. In fact this category elicited some of the most varied responses. Responses appeared to vary depending upon the age level of students the teachers had come into contact with. Participant number 29 summarised this point when they remarked:

I've been a teacher for 28 years and I've had the experience of working at both high schools and primary schools and I've seen dozens of injuries...you might think that it's the younger kids that get injured more often but that's not the case...older kids get injured just as much but in different ways...²²

Another teacher added:

Since my school is involved in a lot of contact sports (rugby union & rugby league) there seems to be a lot of injuries to the boys...particularly broken bones...one student has had the same leg broken twice.²³

²² Participant Number 29.

²³ Participant Number 50.

And participant Number 51 made specific reference to the types of students she had come into contact with in the following comments:

It's not common but I have come across a few accidents of our kids...particularly during work experience...we make it compulsory for them to do the experience so I get really worried when one of them gets injured.²⁴

Of note was the reactions of these teachers when prompted on what they could do in these situations. Comments recorded indicated that participants seemed confused and lacked direction with regard to the legal consequences of the events. The participants reported that their first reaction was to seek medical assistance but not to think about the legal ramifications. The remarks of participant 19 provides an example of this:

I don't think about the legal implications...I have no idea about the law...I think firstly about the student...if I think about the student first then I can't be sued for anything...can I?²⁵

Additionally participant number 31 noted that:

²⁴ Participant Number 51.

²⁵ Participant Number 19.

...I don't know much about the law here...I've heard of terms like negligent...but I don't really know what it means...I just know to do what's right...morally right...what I would do with my own children...if I do that then I'll be safe.²⁶

Teachers, although having the best intentions for the medical welfare of the students, lacked the knowledge for identifying potential areas of tort liability. Take for example the following comment from participant number 12 which illustrates the lack of understanding of the issue of vicarious liability:

...so they get injured on the equipment...it's not us they sue but the department...it's not our fault that the department won't fix the stuff (faulty/dangerous equipment)...but then they sue the department for their stupidity.²⁷

6.2.3.5.2 Injuries to teachers

Three of the four focus groups were able to identify injuries to teachers. All of the injuries noted were minor, that is none involved death or permanent incapacity.

Participant 39 remarked that:

²⁶ Participant Number 31.

²⁷ Participant Number 12.

I was injured one time...but it wasn't serious...I got hit by a volleyball when I was supervising sport...and I know of another teacher at my school who is a very big person that the kids make fun of, who was squashed into a goal post as a joke by some students...she suffered a few bruises.²⁸

Similarly participant 2 noted:

I have a friend who was quite badly injured...she fell off a ladder putting up decorations in her Kindy classroom because she is short and there was no one else to help her...she had a badly bruised leg and missed a few days off school but didn't get much sympathy....although that was a few years ago and maybe things would be different now.²⁹

Injuries of a minor nature, eg. cuts, scrapes, bruises, that they had suffered at some stage of their teaching careers, were identified by participants. Although a reluctance to classify them as injuries was present. As one teacher stated:

²⁸ Participant Number 39.

²⁹ Participant Number 2.

I get a few knocks all the time...but that's really just part of being a teacher...I mean we don't expect to be wrapped in cotton wool now do we...we deal with kids.³⁰

When teachers came to discussing how the law applied to their situation a lack of understanding became apparent. Comments recorded demonstrated a lack of knowledge about Occupational Health and Safety issues or at least a reluctance to lodge a statement of injury. There seemed to be a belief that to do so would result in victimisation of the injured teacher. Participant number 1 made this very clear when he stated:

Yes I fell off a ladder...did I write an accident complaint? Well of course not...unless you break your leg or something like that there's no point. If I reported every single time I was injured I'd forever be filling in paper work and I wouldn't have many friends left³¹

Similarly participant number 8 noted:

If I filled in accident reports for every time I cut my finger I'd never get any teaching

³⁰ Participant Number 12.

³¹ Participant Number 1.

done...but I guess there has to be times when you have to know what the law is in relation to accidents and yourself and I guess I don't really know when to draw the line...when does an incident become an accident or when does an incident become worthy of getting a legal opinion on? When do we cross that line? That's what I'm not sure of.³²

And participant number 4 stated:

I was at a school where one teacher was injured a number of times and didn't report it. Everyone knew that there would be trouble for everyone if they did.³³

6.2.3.5.3 Injuries to visitors to the school

Only one of the four focus groups was able to identify an injury to a visitor to the school.

At this particular school the injury to the visitor involved a visiting circus group which had organised an event for the school and was using the school grounds for the purposes of this event. The incident involved one of the circus's trapeze artists

³² Participant Number 8.

³³ Participant Number 4.

falling from a highwire and breaking their arm. The school involved did not believe that it was responsible for the accident but was later surprised to find out that it had been named in a court action as a defendant by a plaintiff, who alleged negligence. Participant 22 remarked thus:

To say we were stunned was an understatement...the guy missed his mark...dropped to the ground and broke his arm and collar bone...we were concerned but we never suspected...or at least our first reaction wasn't that "oh no we could be sued for this"...rather we were concerned for the guy's safety...perhaps we should have been thinking of potential legal action?³⁴

On the same topic another teacher noted:

The staffing manual certainly had nothing in it about this.³⁵

³⁴ Participant Number 22.

³⁵ Participant Number 21.

6.2.3.6 Crimes

Participants identified crime as an area of concern and direct relevance to teachers. Comments were recorded as indicating that teachers believed that crimes were increasing in number and severity within their school communities and that they needed a thorough understanding of how the law functions in this area. The comments of participant 41 highlight this point:

I know that I've been witnessing an increase in the level of crime at my school...not just petty crime, although there's an increase in that as well, what concerns me is the use of drugs, violent student behaviour and in one case even prostitution.³⁶

From the transcripts it was possible to break down the participants' responses into three main areas of concern. Those being crimes which affect students, crimes which affect teachers and dealing with the new child protection procedures introduced by the New South Wales Department of Education and Training from 1997.³⁷ These crimes have thus been sub categorised and a discussion of the data for these sub categories follows.

³⁶ Participant Number 41.

³⁷ Including the *Children and Young Persons (Care and Protection) Act 1998*, the *Commission for Children and Young People Act 1998*, the *Child Protection (Prohibited Employment) Act 1998* and the *Ombudsman Amendment (Child Protection and Community Services) Act 1998*.

6.2.3.6.1 Crimes affecting students

Crimes affecting students ranged from students' use of drugs, to theft, to possession of illegal items, and assaults (including sexual assaults) upon fellow students. Reports of the concern that the levels of intensity and frequency of these instances were rising and were recorded.

Violence was one of the issues raised by each of the four focus groups. Importantly there was a distinction made by participants between the perceived levels of increasing violence made by teachers and the attention given to the issue by the media. Thus participant number 11 noted:

I know there's a reluctance by the department to act because they just think that the media over reacts and concentrates on gang violence at schools because it's sensational stuff that gets ratings on 'A Current Affair' and the like. The truth is that there's a real problem in schools. I know, I've seen it first hand and it's getting worse.

The following comment makes it clear that there is an underlying fear in the teaching community about an explosion of violence:

My school's getting more and more difficult to work in...I know a lot of it comes from the parents but its bloody hard to teach kids who come to school with these problems who as a way of releasing their problems engage in what I could only describe as gang warfare...this will blow up sometime soon³⁸

Participant Number 18 noted that:

I have to break up fights at least once a week...now that's an assault isn't it? How do I know when I have to report it to the police?³⁹

The focus groups' responses revealed that they lacked knowledge in determining what constituted a criminal assault which needed to be reported to the police and what simply constituted a playground scuffle. Clouding this judgement was the belief that the field of education was becoming increasingly legalised and as a result teachers were more and more uncertain of their rights and responsibilities.

Participant number 18 put it this way:

³⁸ Participant Number 42.

³⁹ Participant Number 18.

There was a time when I knew just what to do
in every situation but those days are now long
gone.⁴⁰

Three of the four focus groups also made reference to the increasing use of drugs within their school communities. Participants made comments which identified concern at an alarming increase in the level of usage and supply within the school grounds. Participant number 44 noted that:

The students seem to be experimenting more
and more with drugs...the law doesn't seem
to be doing anything about it at all...we've
reported dozens of students to the police
about drugs but nothing ever happens...I'd
like to be able to catch them in the act or at
least search their bags for the drugs...which I
know some students do bring to school to sell
but...we're not allowed to do that...⁴¹

Showing a lack of understanding of the issues of criminal law and in reaction to participant 44's comments, participant 48 commented that:

It's ok to search their bags...since they're
minors they don't have the same legal rights

⁴⁰ Participant Number 18.

⁴¹ Participant Number 44.

as adults...you won't get in trouble from the police if you search them or their bags...even though the students aren't happy about it I've done it several times...⁴²

These comments by participant number 48 provide just one of the numerous examples of situations observed during the course of the focus groups where teachers firmly believed that they knew and understood the law. This example clearly shows a situation where the teacher is misguided about the legal status of bag searches. It provides further impetus for the development of a comprehensive and accurate course of legal information to be delivered to teachers.

Some misunderstanding and confusion also seemed to be present in the comments recorded which discussed instances of potential sexual assaults between students at a number of different schools. Participant number 15 recounted a situation thus:

Students at my school seem to be experimenting with sex younger and younger. Many of the girls tell me that they aren't interested in sex but they feel they have to do what the boys want or they won't be popular. A couple of times girls have come to me and told me that they didn't want to go through with having sex. But I didn't know what to do, if the students are under the

⁴² Participant Number 48.

age of consent they can't claim rape can
they?⁴³

What seemed of real concern to the participants in this field of response was the lack of involvement of the police in criminal issues. Indeed there were perplexed comments from individuals as to how the criminal law worked, noted by the response of participant number 15:

I thought that if students assaulted someone
they'd also be arrested and
punished...assaults are a daily occurrence at
our school and the police don't do
anything...as a result our principal refuses to
report these incidents anymore...what are we
supposed to do now? Do we have a duty to
report crime?⁴⁴

6.2.3.6.2 Crimes affecting teachers

Crimes affecting teachers were also identified as an area of concern. Participants reported instances of assault by students upon teachers and criminal damage to their property. One participant had experienced a number of forms of criminal activities perpetrated by students:

⁴³ Participant Number 15.

⁴⁴ Participant Number 15.

I know I'm a tough teacher...there's nothing wrong with that...but I do suffer grief from it...I've had my car vandalised...and I've been assaulted several times...since the assaults are what the principal terms 'of a minor nature' he won't do anything about them...he refuses to support me in reporting the incidents to the police...what am I supposed to do without his support?⁴⁵

And another teacher noted:

While I've never had my tyres slashed I know of several teachers at this school who have had their cars vandalised or stolen from the teachers' car park...the police aren't sympathetic at all...we've been able to identify to them the kids we knew were responsible but they don't do anything...they just keep saying that the courts will let them off...just how does the criminal law work?⁴⁶

Focus group participants appeared to lack a thorough understanding of the function of the criminal law as exemplified by the following comments:

⁴⁵ Participant Number 6.

⁴⁶ Participant Number 9.

(name supplied) has been to court several times now, but he always comes back to school...what's wrong with the justice system?⁴⁷

And:

They say (name supplied) is too young to be convicted...I don't understand...I know that he understands what he's doing so why shouldn't he face the law just like everyone else has to?⁴⁸

6.2.3.6.3 Child Protection procedures

Participants were concerned about the new Child Protection procedures which had been introduced by their government employer. Comments from participants suggested that they saw this policy as representing denials of 'natural justice' and presenting over complicated and burdensome requirements upon teachers. One participant commented:

I can't believe that we just take it (all teachers)...we should stand up and do

⁴⁷ Participant Number 18.

⁴⁸ Participant Number 26.

something about it now...I know of one teacher who was told that he had one hour to get out of the school...he wasn't told what he'd done or anything...later it turned out that some girls had said that they had seen him kissing another girl at school during the holidays...six months later he was back at school...turns out that they'd made it all up.⁴⁹

Comments recorded indicated a concern about the status of the policies, clearly noted in the following comment:

I don't understand...is this criminal or civil law...do we have to follow it...they've given us no training...⁵⁰

That point seemed to be one of contention as others appeared to note the criminal nature of the policy but did not understand how they could be held criminally liable for not reporting an incident:

I don't understand how we can go to gaol for not reporting an incident...if I'm not involved and didn't commit a criminal act how can I

⁴⁹ Participant Number 53.

⁵⁰ Participant Number 49.

get into trouble and face gaol if I'm not the
one who is physically responsible?⁵¹

6.2.3.7 Other work-related responsibilities

This category delivered the most varied responses. Participants related diverse incidents ranging from occupational health and safety concerns to truancy and after school care. There was a sense that teachers were increasingly being asked to take on more and more responsibilities which often carried legal responsibilities and liabilities but for which they received no specific training. Participant 16 made the following point:

Everyday I'm asked to do more and more as a
teacher...there's no such thing as a teacher
any more...I'm a security officer and a
welfare counsellor before I'm a teacher.⁵²

Since responses for this category were so diverse it has not been possible to sub categorise all of the comments. Instead a selection of some of the themes for this category is presented and sub categorised for discussion.

⁵¹ Participant Number 3.

⁵² Participant Number 16.

6.2.3.7.1 Truancy

Each of the four focus groups identified truancy as an issue of concern. Participants seemed concerned that they might be held legally accountable for marking the roll. One participant put it this way:

I've heard that we might get called into a court to say that it was us who marked the roll and that it was all correct...I couldn't do that...at my school I have to mark the roll but often it's done very quickly when other people are talking on assembly...there is no way that I could be 100% sure that what I had written down was right...so what I do is this...I mark the roll but I don't sign it.⁵³

Another stated:

I know marking the roll is important...they keep telling us that...they also keep using the phrase 'legally responsible' for the roll...but I've got no idea what this means...how could I be held legally responsible for the roll...I'm not even clear on how it should be filled in.⁵⁴

⁵³ Participant Number 27.

⁵⁴ Participant Number 26.

6.2.3.7.2 Child Protection

Participants used this category as an opportunity to speak of their responsibilities under the new Child Protection polices. They were worried about the obligation that they now have to report any suspected incidents of child abuse and the fact that they could be held liable if they fail to act on their suspicions.

Comments on this issue included:

...I know that it's important (the Child Protection legislation) but I don't understand what we have to do...do we put our hands up and say something if we see a bruised kid or do we use our discretion and maybe think that kids get bruised all the time and it's probably nothing serious? And who do we talk to?...the Department?...the Principal or DOCS?⁵⁵

Participant number 35 stated:

I know it's the law but I certainly don't understand it. It's just something else that we're expected to deal with...one of the many other increasing list of things to deal

with...I'm sick of all of this being made our responsibility with no training.⁵⁶

And participant number 21 stated:

If I hear an 18 year old Year 12 boy talking to his mates about having sex with a 14 year old Year 9 girl at a party what do I do? If I report the incident and it turns out he was just bragging to his mates legally where does this leave me? Or what if I don't report it at all?⁵⁷

6.2.3.7.3 Occupational Health and Safety⁵⁸

The issue of Occupational Health and Safety featured amongst all four of the focus groups. Recorded comments indicated that teachers were aware that their school had an Occupational Health and Safety committee and some participants were even members of these committees. However what did seem of concern to the participants was their lack of knowledge of the legal implications and standing of their associated activities. Participant 37 put it this way:

I'm a member of our school's Occupational Health and Safety committee...that means

⁵⁵ Participant Number 28.

⁵⁶ Participant Number 35.

⁵⁷ Participant Number 21.

I'm responsible for coordinating all of the accident forms...but that's a huge burden. I know of another teacher who holds a similar position at a different school and she's not required to coordinate the accident reports, just chair meetings...what happens if something goes wrong? Will I be held responsible?⁵⁹

Similarly participant 13 noted:

I'm not sure what my legal liabilities are in relation to being the head of the committee (Occupational Health and Safety committee)...the Principal constantly tells me what I should be doing but I think that since I'm in charge the liability if something goes wrong falls to me.⁶⁰

Participants seemed uncertain of the legal status of their committees and the legal rights and obligations that these committees may either enforce or have imposed upon them:

⁵⁸ It is acknowledge that there may be some overlap in this category with that of 6.2.3.5.2 Injuries to teachers, discussed earlier in this Chapter.

⁵⁹ Participant Number 37.

⁶⁰ Participant Number 13.

The OHS committee at my school is very militant it gets things fixed straight away...things like faulty light switches and broken toilets...the Principal isn't happy about being held to ransom about this but the committee keeps telling the Principal that she has no choice, that it's the law...I'm never sure if they're bluffing or whether they really do have the legal authority to order the repairs...and I think the only thing saving them is that the Principal's also not sure.⁶¹

6.2.3.8 Summary and discussion of data from focus groups

The teachers forming these focus groups were far from legal experts in the area of educational law. However teachers were aware that their positions and duties were regulated by certain laws. Teachers were able to identify many of the relevant areas of the law with which they might come into contact. For example, they could identify criminal and civil examples of educational law and their varied responses to the other work related responsibility category suggested that they are acutely aware that their roles as professional teachers are becoming increasingly legalised.

The participants' knowledge appeared at times to have large gaps or misunderstandings. For example, teachers could distinguish between the criminal

⁶¹ Participant Number 3.

and civil dichotomy for simple situations such as an assault but found this much harder to comprehend when facing the issue of the Child Protection Policy. Again in the area of tort liability participants failed to understand the issue of vicarious liability.

The teachers' knowledge seemed to be piecemeal or anecdotal rather than being comprehensive and based on specific legal principles. The stories and information they related during these sessions were often based on what they had overheard or information which had been passed down from somewhere; its source and accuracy were highly questionable. This seems to correlate with the work of Pell who concluded that school teachers in the United States gained their knowledge of the law predominantly through rumour and misinformation.⁶²

It was manifest that the teachers' did not have a comprehensive understanding of the law. Teachers' knowledge of the law was low and probably below what would be required to deal with common legal situations. Their knowledge was limited and in specific cases they demonstrated misconceptions about the law. In a number of cases teachers failed to even demonstrate a need to know about the law.

Throughout all sessions participants constantly looked to the interviewer for reassurance and comment on the issues being discussed. Clearly the teachers were far from certain that their information was accurate and they showed a willingness to embrace new information for the sake of clarity and certainty of dealing with future problems.

⁶² S W Pell, 'Pre-service teachers' lack of knowledge of education law: Ignorance is no excuse' (1994) 14(4) *Illinois School Law Quarterly* 138.

There was clear evidence throughout the sessions that teachers desired more legal information in order to help them to more confidently perform their professional duties.

6.3 Research Question Two: Do teachers require legal knowledge?

6.3.1 Overview

The review of the literature revealed a concern both in Australia and internationally with regard to the level of legal knowledge held by members of the teaching profession. Manifest with that concern was the need to address this issue by increasing the level of knowledge of professional teachers.

However simply claiming that teachers require legal knowledge or an increased level of legal knowledge ignores the realities of the situation in New South Wales government controlled schools. The reality is that there are a number of stakeholders who have varying positions on the issue. While the literature may point to the need, it is also prudent to examine the responses of the other stakeholders to this issue. These stakeholders being the teachers, their unions and the employer.

It was for this purpose that the research concentrated on obtaining the opinions of these bodies through a variety of means and a discussion of this follows.

6.3.2 Views of the teachers

The views of the teachers on whether they ought to have any degree of legal knowledge or an increase in their legal knowledge, whilst theoretically being implicit in the views of their unions, was obtained directly via the reactions of the focus group participants. The characteristics of these groups are contained in Table 6.10 above.

Consistent with the literature for the analysis of focus group results, as detailed in Chapter Four of this study at 4.5.2.7, the data for this question has been categorised. In these circumstances that categorisation of criteria is the criteria for research question two. That is all information relating to the teachers views on whether they saw a need for legal education for themselves or teachers in general was collated and formed one category.

Responses reported from each of the four groups revealed that there was a need for professional 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 that would

happen at my school but it might unless all teachers are given specific legal knowledge.⁶³

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 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.⁶⁴

And this teacher 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.⁶⁵

⁶³ Participant Number 12.

⁶⁴ Participant Number 52.

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 issues such as individual contracts and superannuation. Participant 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.⁶⁶

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.⁶⁷

⁶⁵ Participant Number 11.

⁶⁶ Participant Number 15.

6.3.3 Views of the unions

Given that more than 85%⁶⁸ of New South Wales government school teachers belong to one union it can be theorised that the union represents a significant proportion of teachers' views. The 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 this research question this researcher sought to contact that body at the commencement of the study in February of 1997 and again towards the end of the data gathering for the study in July of 2000. Contact initially took the form of a letter of inquiry as described in the methodology contained in Chapter Four of this study at 4.5.4.1.

A letter of inquiry was sent to the New South Wales Teachers' Federation in both February 1997 and July 2000, which contained questions about the views of the Federation in regard to the following statements:

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

⁶⁷ Participant Number 17.

⁶⁸ Source of statistics was revealed by the New South Wales Teachers Federation in a letter to the author dated 21/6/98 which also stated that the Federation had more than 70,000 members. Although this number also included retired and casual teachers in addition to current full time teachers.

3. What substantive areas of the law does the Federation believe that teachers require knowledge of?
4. What methods are available to deliver this content?

The responses to the third and fourth questions will be used to address research questions three and four of this study later in this Chapter.

Consistent with the methodology of a letter of inquiry described in Chapter Four at 4.5.4.1, 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 President at the time of the New South Wales Teachers' Federation.

6.3.3.1 Responses to the February 1997 letter of inquiry

In February of 1997 when the first letter was forwarded to the Federation the response was that these issues would be best directed to the Federation's legal office which was run by a private legal firm. Unfortunately no further response was received from this firm despite follow up letters being sent to that office. Further attempts to follow up the letter of inquiry with telephone calls were also unsuccessful. This follow up approach is again consistent with the methodology for letters of inquiry described earlier in Chapter Four at 4.5.4.1.

This result may be surprising given that one of the leading solicitors of that firm is the current head of the Australian and New Zealand Educational Law Association,

a body which has members in all states of Australia and New Zealand and which has as one of its aims the continued professional development of legal education for teachers.

Given the non response of the Federation on this occasion it is difficult to draw any conclusive results. 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 follow the methodology of achieving triangulation as described specifically in Chapter Four at 4.5.4 and include the discovery of relevant documents. This is discussed below at 6.3.3.3.

6.3.3.2 Responses to the July 2000 letter of inquiry

In July of 2000 when a similar letter of inquiry was once again sent to the Federation a different response eventuated. On this occasion the Federation's welfare section responded with a detailed reply. That reply stated that the Federation had become increasingly aware of the concerns of its members in relation to the first two questions posed (see 6.3.3 above). It was the stated view of the Federation 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.

6.3.3.3 Other sources of information from the union

Over the period that this research (February 1997 to July 2000) has taken place and over the time period for the two letters of inquiry which were forwarded to the Federation there exists evidence from the Federation, which is distinctly separate from their formal responses, that they have an interest in the legal welfare of their members. The discovery of this other information is consistent with the methodology for discovering documentation as described in Chapter Four at 4.5.4.2.

Between February 1997 and July 2000, 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. Consistent with the methodology described in Chapter Four at 4.5.4.2 these documentary publications by the Federation were discovered through the use of generating a key word list which included searching for relevant words within the title or body of all Federation 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*,⁶⁹

⁶⁹ P MacMahon, 'Teachers and the Law: Executive nightmares' (1997) December 15 *Education* 5.

and *Teachers and the Law: Natural Justice*.⁷⁰ Other articles include: *Don't incriminate yourself*,⁷¹ *When should you touch a child*,⁷² *Child protection laws deferred*,⁷³ *Second thoughts on child protection*,⁷⁴ *Child protection laws amended*⁷⁵ and *Medication of students update*.⁷⁶

This volume of material suggests that the Federation is at least interested in the area of legal education for teachers and as such contrasts with their non response for information in February of 1997. The Federation 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.

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 study. As noted in Chapter Four of this study at 4.5.4.2 this analysis would amount to detailed content analysis. The publishing of these articles simply suggests that the Federation believes that it is of use for its members to have legal knowledge, it does not suggest that the Federation 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

⁷⁰ P MacMahon, 'Teachers and the Law: Natural Justice' (1998) March 2 *Education* 6.

⁷¹ 'Don't incriminate yourself' (1998) August 3 *Education* 7.

⁷² 'When should you touch a child' (1998) October 26 *Education* 6.

⁷³ 'Child protection laws deferred' (1998) November 9 *Education* 3.

⁷⁴ 'Second thoughts on child protection' (1998) November 23 *Education* 3.

⁷⁵ 'Child protection laws amended' (1998) December 7 *Education* 3.

⁷⁶ 'Medication of students update' (1999) August 2 *Education* 2 and some other such as 'What can be done when teachers are abused?' (1997) September 1 *Education* 26, 'From caring behaviour to improper conduct' (1998) November 9 *Education* 8, 'You can touch children' (1998) November 23 *Education* 3, 'Don't administer medicine' (1999) July 7 *Education* 5, 'New legislation puts teachers at risk' (1998) April 6 *Education* 3, 'Don't throw out teacher civil rights' (1997) October

Federation believes that its members only require knowledge of new or recently reformed laws. This will be further discussed below at 6.5.3.

6.3.4 Views of the employer

In order to obtain the views of the Government employer in regards to this research question, a letter of inquiry, which was not dissimilar to the one sent to the New South Wales Teachers' Federation, was sent once again at the commencement of this research in February 1997 and towards the conclusion of the data gathering in July 2000. That letter posed four questions to the Government employer, 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?
3. What substantive areas of the law does the government believe that teachers require knowledge of?
4. What methods are available to deliver this content?

27 *Education* 8, 'The rights of teachers' (1997) June 16 *Education* 13 and 'The rights of teachers part 2' (1997) July 28 *Education* 8.

The responses to the third and fourth questions will be used to address research questions three and four of this study.

Consistent with the methodology of a letter of inquiry described in Chapter Four at 4.5.4.1, 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 legal branch of the Government employer and on both occasions no formal reply was received from that branch. Once again, consistent with this methodology, follow up letters were initiated but also received no response. It was only subsequently when the researcher contacted that branch by telephone that there was any type of response. Therefore the responses detailed below relate to telephone conversations with officers of the NSW DET's legal branch in both February 1997 and July 2000.

**6.3.4.1 Responses to the February 1997 letter of inquiry: Question One -
What value does the government place on the legal education of
current teachers?**

The response to this question came from the Chief Legal Officer of the legal branch. It was the view of the officer that the Government 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 Government 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 comment was received:

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

6.3.4.2 Responses to the February 1997 letter of inquiry: Question Two -

**What importance does the government place on legal education for
trainee teachers?**

In response to this question the feedback was of a similar nature to the first question asked. The comments represented a concern that the government might have for burdening prospective teachers with information that they might never need. The following comment reveals this in more detail:

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

6.3.4.3 Responses to the July 2000 letter of inquiry: Question One - What

**value does the government place on the legal education of current
teachers?**

In July of 2000 once again the replies took the form of a telephone conversation rather than any formal letter of reply despite several requests for an official response. Making reference to the increased level of public knowledge of the new provisions of the Child Protection Legislation the response was one which

promoted a better understanding of how the law works when compared to the response received following the February 1997 inquiry. The following comment was received:

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.

6.3.4.4 Responses to the July 2000 letter of inquiry: Question Two - What importance does the government place on legal education for trainee teachers?

Similar responses from the legal branch were received to this question. Again specific reference was made to the importance of teachers receiving an understanding of the new child protection procedures as evidenced in the following comment:

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

The existence of any type of legal in-service course provided by the employer would have revealed that the employer valued their employees having some

degree of legal knowledge and the employer was directly asked about this matter. Their response was that “they had no information about any such system”.

Given the limited response 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 this research question. These alternate methods are consistent with the methodology for discovering documentation as highlighted in Chapter Four at 4.5.4.2. This is discussed below at 6.3.4.5.

6.3.4.5 Other sources of information from the employer

The example of the letter of inquiry sent to the New South Teachers Federation, detailed above at 6.3.3, in both 1997 and 2000, demonstrated that the formal response received (or lack of it) may not be indicative of the body’s attitudes/beliefs in relation to the content of the questions that they were posed. On the occasions that those letters were sent to the Federation an examination of relevant literature published by that body revealed further evidence of their interest in the relevant areas, this was detailed at 6.3.3.3. It was with this in mind that an attempt was made to gather further information on the beliefs/attitudes of the employer which could complement that material which had been gathered from the limited material contained in the formal responses detailed above.

In order to afford the employer a fuller opportunity to detail a response to Research Question Two and indeed to Research Questions Three and Four, the legal branch of the employer was again contacted in early December 2000 by telephone. This time the employer was asked to provide details of publications that the employer produced about the law which were accessible to teachers or even to the general public. The responses of the employer in relation to Research Questions Three and Four will be detailed below.

The evidence that the employer provided in relation to Research Question Two was once again minimal. When the employer was asked to provide details of the information which was available to teachers their first response was that the relevant document would be the New South Wales *Teaching Services Act 1980 (NSW)*. This Act provides details about the scope of the employment relationship between the employee and the employer. It does not provide details of legal information which would help teachers in the interaction with their students or in the performance of their ordinary duties.

When the employer was asked about the relevance of this Act they stated that there was a series of documents which were relevant to teachers contained on the employer's web site. However they could not provide details of the titles or content of these articles or indeed a more specific reference to the articles except to state that they were available from the employer's web site. They were also unable to supply a specific URL location for each of these sources of information.

The legal branch of the employer stated that at no stage were teachers directly issued with any printed material on any legal topic from their office. However the employer did state that officers from legal branch regularly attend meetings with principals and teachers to discuss legal issues, predominantly issues involving occupational health and safety. The legal branch officer emphasised that all relevant legal information for teachers was contained on the employer's web site.

The employer also stated that all beginning teachers were the subject of an induction program within their first three months of being appointed to a full time position. And within this induction program information was given to the beginning teacher on the topic of 'teachers and the law'. The legal branch was unable to provide any specific details about the nature of the information given, topics covered during the session, the number of years in which this type of induction program has operated or the length of time given to the topic in the context of a general induction program. This induction program was available only to beginning full time teachers. It therefore does not involve the very large number of teachers who are employed on a casual or part time basis by the employer. See 4.6 for a full description of the population and sample.

A search of the employer's web sites, including www.det.nsw.edu.au and www.schools.nsw.edu.au, revealed no evidence of any legal information available to teachers. This was the source of the legal documents specified as being present by the department's legal branch. Consistent with the methodology described in Chapter Four at 4.5.4.2 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 (described at 6.3.3.3). 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 publication⁷⁷ revealed that the only possibly relevant document was on the issue of how to cope with a catastrophe.⁷⁸ That document contained no legal information about coping with catastrophes. As at December 2000, no other documents or information relating to the law or legal information for schools or teachers was available on the employer's web site.

The employer was directly asked to comment about the *NSW Department of School Education: Teachers Handbook*⁷⁹, which is a publication available in each of the state's schools. That publication includes a chapter titled 'Legal & Professional Responsibilities of Teachers' and another chapter titled 'Occupational Health & Safety' both of which have the words 'to be included' written after the chapter headings. This document also includes other topics

⁷⁷ Available online at <http://www.schools.nsw.edu.au/staff/F7.0/archive/inform.htm> Date accessed December 6, 2000.

⁷⁸ Available online at http://www.schools.nsw.edu.au/stand.cgi/staff/F7.0/inform2_5/3.htm Date accessed December 6, 2000.

⁷⁹ *NSW Department of School Education: Teachers Handbook* (New South Wales Government Printers: March 1993).

relevant to teachers such as ‘Salary and Allowances’, ‘Superannuation’, ‘Leave Provisions’ and ‘Separation from the Service’, all of which have comprehensive information provided in support of the chapter. The legal branch employee stated that they had no knowledge of this document. It is this researchers understanding that the material for chapters with the words ‘to be included’ has not yet been added. It should be noted that neither the focus group participants, the employer nor the government employer directly mentioned the existence of this document. Instead this researcher became aware of the document through their roll as a teacher in a number of government schools. It may be in time that this document will be added to the employers web sites and the details of the missing chapters contents will then be added.

Given the limited information obtained from the employer it is difficult to form any conclusive views in response to this research question. The existence of an induction session to beginning teachers and the intention to include information in a staff handbook offers some indication that the employer has an interest in the legal education of teachers. However the lack of any information contained on the employers web sites provides a different view. It may be possible that the content mentioned by the employer will be in time added to their web sites.

A comprehensive documentary search has therefore been carried out which reveals very little information which is available to teachers or the general public with regard to the law.

6.3.5 Summary and discussion of material from Research Question Two

Clearly different perspectives have been explored in an examination of this research question.

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 is also present from the responses of the Teachers' Federation, on behalf of its teaching members, 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. In 1997 there appeared to be limited information provided to support the need for legal education, however this had changed in the year 2000, at least in the area of child protection. Again when afforded a further opportunity to respond to this research question in December 2000 there was a lack of clear evidence to show a belief in the need for legal education for teachers.

There was also no evidence from either the union body or the employer that they had a commitment to provide any more information or undertake any more training than was currently being provided.

6.4 Research Question Three: What should teacher know about the law?

6.4.1 Overview

The literature reported in Chapter Two primarily identified the need, both within Australia and internationally, for members of the teaching profession to possess a degree of legal knowledge. While there were some reports of what types of legal knowledge teachers should possess, there was a lack of substance to the literature in identifying specific items which teachers needed knowledge of as opposed to those that they do not require a knowledge of.

Research Question Three of this study was designed to identify the views of the various stakeholders, the teachers, the union and the employer, to the issue of what type of legal knowledge professional teachers required in order to conduct their ordinary teaching duties. The views of these groups follow.

6.4.2 Views of the teachers

As for Research Question Two of this study, the views of the focus groups have been used in order to determine the attitude of teachers to the issue of the types of legal knowledge required. The characteristics of these groups are contained in Table 6.10 above.

Research Question One of this study revealed the areas of knowledge which teachers were most familiar with and Research Question Two revealed that

teachers desired a degree of legal knowledge in order to help them perform better as professionals. However it was implicit in the teachers responses to the focus group questions that they lacked an understanding of the areas about which most knowledge was required.

Consistent with the literature for the analysis of focus group results, as detailed in Chapter Four of this study at 4.5.2.7, the data for this question has been categorised. In these circumstances that categorisation of criteria is the criteria for research question three. That is all information relating to the teachers views on what substantive areas of the law teachers required a knowledge of was collated and formed one category.

While teachers could readily identify legal situations from their own experience in the areas of injuries, crimes or other work related responsibilities they often lacked a thorough understanding of how the legal system worked. They had a great deal of trouble in identifying which areas of the law it would be useful for them to know about. These comments typify the responses by all four focus groups:

I'd like to know more about the law, but I
don't know what I need to know and what's
just for lawyers...I guess it'd be good to
know about crimes and injuries.⁸⁰

And:

Child custody issues worry me. Where do we stand when a Dad arrives at school wanting to see his son? Do we have to check what court orders and custody arrangements there are? The whole child protection thing really worries me⁸¹

Participants appeared not to realise that they would find it difficult to understand individual areas of the law, such as the Child Protection Legislation or child custody procedures without first understanding the fundamental and basic principles of how the legal system works. So it would seem that teachers require a grounding in the basics of the legal system before any type of more specific knowledge could be communicated to them.

Teachers also failed to realise that they did not require a thorough knowledge of the law in specific and often complex areas such as tort law. Participant number 32 noted:

I need to know about injuries...I've heard horror stories about the words 'duty of care' and they have a specific legal meaning which I need to know about.⁸²

⁸⁰ Participant Number 13.

⁸¹ Participant Number 21.

Similarly participant number 42 stated with reference to the child protection provisions:

I think that it's increasingly more important
that I understand how the law works...I need
to know what happens if someone makes a
complaint against me...I need to know what
the law is in that situation.⁸³

Only one teacher believed that they had developed a thorough understanding of the law and as such did not see the need for their legal education to be developed any further. They commented:

I know all that I need to know about the law
and I don't think that teachers require more
information than they'd already have.⁸⁴

This comment assumes that all teachers have developed legal knowledge at the same rate as the participant and further that that legal knowledge is both accurate and sufficient.

It is likely that teachers would be better able to comprehend specific areas of the law if they first obtained a thorough understanding of how the legal system worked. It would be via an understanding of the underpinnings of this system that

⁸² Participant Number 32.

⁸³ Participant Number 42.

they would be able to develop an understanding of the processes involved in order to further investigate elements of the law if needed. Such understanding would also provide the ability to understand when to classify a situation as a legal one and knowledge of when to seek further advice on the problem. The following participants' comments substantiate this point. Participant number 8 noted:

I teach very young children so I guess I need to know about the law which affects them, maybe child custody arrangements and injuries?⁸⁵

And participant number 19 noted:

As a careers advisor I don't need to know so much as the other teachers know about the law but just what affects me in my role which is very different to other teachers.⁸⁶

However, another careers adviser noted:

The way things are going maybe I could be sued by a parent if I tell a kid to choose certain subjects for the HSC and then they don't get into the uni course they wanted. It

⁸⁴ Participant Number 11.

⁸⁵ Participant Number 8.

⁸⁶ Participant Number 19.

sounds a bit over the top, but it would be good to know what the implications are.⁸⁷

Manifest in these comments is the suggestion that the specific areas of legal knowledge teachers require would vary depending on the age of the groups of students they came into contact with.

So it would seem wise to ensure that all teachers have a basic understanding of the general principles of the law to be fully able to understand when a problem is of a legal nature as well as to be able to undertake further information gathering if they so desired. Since teachers are such a diverse group there is little benefit in specifically educating each of these elements with specific legal knowledge, indeed that would be highly undesirable. Instead what has been indicated by these focus groups is the need for a more general form of legal education which not only covers the basics of the system of law in Australia but which also covers specific areas of education law which have arisen throughout the course of these focus groups.

It would be sufficient for these topics to be kept general. In fact they could be kept as general as the topics which the focus groups were presented with. That is, crimes, injuries and other work related responsibilities. By providing teachers with basic knowledge in each of these elements we create teachers who begin to

⁸⁷ Participant number 23.

develop a sense of inquiry and the ability to identify problems which may have legal consequence and on which they should seek further help.⁸⁸

6.4.3 Views of the union

As 6.3.3 above pointed out, the most significant union body for New South Wales Government employed teachers is the New South Wales Teachers' Federation. Additionally, as 6.3.3 stated, that union body was asked to respond to a series of four questions in order to help address the four research questions⁸⁹ of this study. The Federation was contacted by letter in February of 1997 and July of 2000 and was posed the four questions detailed in 6.3.3. Of the four questions posed to the Federation, question number three was the most relevant to this research. That research question was:

3. What substantive areas of the law does the Federation believe that teachers require knowledge of?

6.4.3.1 Responses to the February 1997 letter of inquiry

As previously detailed for 6.3.3.1 the first letter of inquiry to all four questions sent to the Federation in February of 1997 received no response. It should be recalled as described earlier in this Chapter at 6.3.3.1, that consistent with the

⁸⁸ Certainly this is the view of L F Rossow, *The principalship: Dimensions in instructional leadership* (Prentice Hall: New Jersey, 1990) particularly at 188 who advocates that it is unwise for teachers to be given detailed specific legal knowledge, instead there is an argument for teachers to be given a much more general legal education which assists them to identify legal problems and develop an understanding of when to seek professional advice on a problem. See also the views of H Sungaila, *Litigation in education* (Gavener Publishing: Sydney, 1988) particularly v-xi.

⁸⁹ As detailed in Chapter Three.

methodology for the use of letters of inquiry detailed in Chapter Four at 4.5.4.1 that a follow up letter of inquiry was also sent which also received no response.

Given this fact it is difficult to draw any conclusion from the Federation's non response. However it may be possible to draw some conclusions from other activities of the Federation, including publications that that office is responsible for. This approach is consistent with the methodology outlined in Chapter Four of this study, more specifically at 4.5.4. This follows at 6.4.3.3.

6.4.3.2 Responses to the July 2000 letter of inquiry

In July of 2000 the Federation responded with a detailed reply to all four of the questions they were posed. It was the clear view of the Federation's welfare section that teachers now more than ever before need to make themselves aware of the legal climate that they were working within. Indeed that response made it very clear that the Federation's view was that there was a "climate of fear" in existence which was being perpetuated by the employer who was failing to do anything to "positively encourage teachers to understand their legal positions".

Whilst that response did not specifically detail areas which the Federation considered to be essential, or even areas of priority for teachers to make themselves legally aware, there was an overall commitment to helping teachers to better understand the spectrum of legal issues with which they may come into contact. Implicit within the Federation's response was the desire for its members to be better informed about how the legal system works as a whole and then to

offer some more specific advice to its members about potential and common problems. However none of these specific areas, besides the reference to the climate of fear being initiated by reference to the ‘draconian’ action taken by the employer over child protection procedures, was stated.

6.4.3.3 Other sources of information from the union

An examination of publications from the Federation over the fifteen year period 1985 to 2000 reveals that the Federation is cognizant of the fact that its members require a knowledge of many disparate areas of the law.

Consistent with the methodology described in Chapter Four at 4.5.4.2 these documentary publications by the Federation were discovered through the use of generating a key word list which included searching for relevant words within the title or body of all Federation documents publicly available. Relevant key words in this instance 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 topics discovered in these documents were diverse and included the law in relation to excursions, administering medicines, natural justice, sport, supervision, child protection and educational malpractice. Document titles included: *Sport in Schools – Risk and Responsibility*,⁹⁰, *Contemporary Legal Issues: Educational*

⁹⁰ R Kalnin & I Waters, ‘Sport in Schools – Risk and Responsibility’ (1987) April 13 *Education* 15.

Malpractice,⁹¹ *Teachers and the Law: The fine art of dealing with complaints*,⁹² *Teachers and the Law: Violence at work – your rights*,⁹³ and *Teachers and the Law: Duty of care – how far does it extend?*⁹⁴

Given the diverse nature of the content of these publications it is difficult to come to an accepted understanding of the Federation's beliefs in relation to which topics it sees as most relevant to its members. That is the range and number of the topics listed don't necessarily provide any common themes of content which could be used to address this research question. Common content may include broad topics such as negligence and duty of care, but a definitive sub-classified list may not be possible without actually listing every legal issue/theme that the Federation has written an article about.

However it should be clear that the issue of legal education for its members is one which the Federation takes seriously. Between 1985 and 2000 there were no fewer than 60 separate articles which involved a legal concept covered in Federation publications. Although there does appear to be no clear policy from the Federation as to the content of the material written or its timing; what the Federation does present is a semi regular column titled *Teachers and the Law*⁹⁵ with no systematic

⁹¹ M O'Halloran, 'Contemporary Legal Issues: Educational Malpractice' (1994) October 17 *Education* 24.

⁹² P MacMahon, 'Teachers and the Law: The fine art of dealing with complaints' (1995) November 13 *Education* 14.

⁹³ P MacMahon, 'Teachers and the Law: Violence at work – your rights' (1996) November 11 *Education* 9.

⁹⁴ P MacMahon, 'Teachers and the Law: Duty of care – how far does it extend?' (1996) December 1 *Education* 6 and others such as E Hokin, 'Child sexual assault: Teacher mandatory notifiers' (1987) December 7 *Education* 11, M O'Halloran, 'Duty of care' (1993) March 22 *Education* 14, M Taylor, 'The law and teachers' (1992) September 2 *Education* 19 and T M Rowles, 'The law and you' (1986) October 6 *Education* 12.

⁹⁵ See for example the following - MacMahon, above n 69, MacMahon, above n 70, MacMahon, above n 92, MacMahon, above n 93, and P Potter, 'Teachers and the Law: Payments for partial incapacity affected' (1998) November 23 *Education* 6.

basis for stories. Some of the stories have a common theme, for example duty of care, but there does not appear to be any statement of issues which will be covered in these articles; they appear to occur in a random fashion and may even be as a reaction to a current or topical event.

6.4.4 Views of the employer

As detailed in 6.3.4, a letter of inquiry posing four questions was sent to the Government employer both in February of 1997 and again in July of 2000. Of those four research questions posed it was question number three which was directly relevant to this research question. Question three posed to the employer was:

3. What substantive areas of the law does the government believe that teachers require knowledge of?

As previously detailed in 6.3.4, on both of the occasions that the letter was sent there was no formal reply. It was only upon subsequent telephone enquiries by this researcher that any information in relation to these questions was gathered. However, consistent with the research methodology described in Chapter Four at 4.5.4.2, there may also be other evidence of the views of the employer for this research question detailed in 6.4.4.3 below. The responses detailed below relate to telephone conversations with officers of the NSW DET's legal branch in both February 1997 and July 2000.

6.4.4.1 Responses to the February 1997 letter of inquiry

As detailed for 6.3.4.1 above, the responses of the employer to all of the questions posed were in general terms. The following comments received demonstrate this implicitly:

We recognise that teaching is a difficult
job...every person needs to have some degree
of legal knowledge.

At no stage was any emphasis placed upon specific areas which teachers might need to make themselves aware of in order to carry out their duties and also to protect both themselves and their employer. Indeed when asked specifically which areas teachers might need to have a knowledge of the following comment was made by the Chief Legal Officer:

...well that's up to each individual teacher or
school to decide.

The employer did not mention any type of in-service course which may have been available to any of its employees which could have revealed the areas of law which the employer valued most highly.

6.4.4.2 Responses to the July 2000 letter of inquiry

Very similar responses to those recorded during February 1997 were received when the same questions were put during July of 2000. Again importance was placed upon individuals making themselves aware of the law for their own peace of mind. However on this occasion when asked about areas of specific importance to teachers the following comment was recorded:

There are lots of areas of the law which affect teachers so it's hard for me to say that they need to know this one or that one...but recently the Child Protection Acts seem to be coming in for a lot of attention in the press.

The employer was specifically asked about any type of in-service course which may have been available to its employees, but stated that “they had no information about any such system”.

6.4.4.3 Other sources of information from the employer

As 6.3.4.5 detailed, the employer was afforded a further opportunity to respond to this research question in December 2000. This opportunity is consistent with the methodology contained in Chapter Four of this study at 4.5.4, which is specifically designed to ensure that a comprehensive picture of the research topic emerges. The information received from the legal branch officer on this occasion

revealed that the employer valued a number of different areas which they considered important to teachers. Information was given that these areas were set out on the employers web sites. It should also be recalled that as stated in 6.3.4.5 information was received that all relevant legal information was contained on the employers web sites.⁹⁶ However as 6.3.4.5 also revealed there was no indication of the substance of these important areas provided at the time contact was made in December 2000.

Further, despite searches of the key word list: 'law', 'legal', 'liability', 'risk', 'responsibility', 'malpractice', 'rights', 'natural justice', 'mediation', 'duty of care' 'child protection', 'Act', 'Parliament', 'Bill', 'negligence', 'tort', 'crime', 'criminal' or 'statute', described earlier at 6.3.3.3, no information about the law or legal information for teachers was found to be available on the employers web site.

If we take the employers web site as indicative of the information which the employer believes is relevant to its employees then there is a real concern that no information about the law exists on such a site. Of course in time detailed topics may appear on the employers web site and these would offer an indication of which areas were of importance to the employer.

A comprehensive documentary search has therefore been carried out which reveals very little information which is available to teachers or the general public with regard to the law, thus revealing little about the substantive areas of the law which the employer may have a preference for.

⁹⁶ These being www.det.nsw.edu.au and www.schools.nsw.edu.au

6.4.5 Summary and discussion of material from Research Question Three

The research for this question has been centred upon obtaining the views of the various stakeholders in education on the question of the substantive areas of the law of which teachers require knowledge.

A view could be taken that teachers do require a degree of legal knowledge to help them conduct their professional duties. However what has remained unclear is a clear understanding of what legal knowledge these groups require.

The views of the employer were couched in general terms and apart from a belief in legal education for all citizens it is hard to develop a synthesis of the ideas they have presented. Indeed the evidence from the employer's web site suggests there are no specific areas which teachers require a substantive knowledge of. Or at least these areas have not yet been clearly enunciated.

The views of the union were also quite general in nature. They believed that there was a need for the general legal education of teachers but apart from that general education there was no real suggestion of the need for education in specific and clearly defined areas. Except to the extent that the Federation has published widely on various different issues, without identifying which specific areas they regard as important to teachers. The only conclusion we might draw from this is that all law is relevant to teachers.

It is perhaps the comments of the teachers from the various focus groups which can be used to best gauge the synthesis of ideas for this research question. It was evident that the teachers required a background understanding of the law in order to help them develop an understanding of the more specific areas which might affect them as individual teachers or as part of a specific school community.

What is needed is for teachers to be able to understand the fundamentals of the legal system. By doing this they will be better able to understand the legal atmosphere in which they work. Through providing teachers with an understanding of the background to the legal system it will enhance their understanding of relevant legal issues which are contemporary and those which may emerge in the future. They will also develop the necessary skills to be able to identify potential legal problems and thus know when to seek further professional assistance. Additionally they will be able to recognise when they lack knowledge about a particular subject area, be able to identify that subject area and have the skills necessary to undertake further research for themselves if they so wished. This was the aim of the curriculum which was designed and trialled for this research study. That curriculum is contained in Volume 2 of this research study.

These aspects contribute to an empowering curriculum. Currently the information which is delivered to teachers appears to be in an unsystematic fashion. There is an outstanding need for a systematically planned curriculum in order to overcome these deficiencies; a curriculum which can be perpetual, not one which is dependent upon teachers memorising specific pieces of legal knowledge which they may never need.

6.5 Research Question Four: How can legal knowledge be given to teachers?

6.5.1 Overview

While the review of the literature in Chapter Two revealed a concern that teachers, particularly beginning teachers, had a lack of knowledge of the law as it affects them as teachers⁹⁷ and that there was a real need to increase this level of knowledge there was a distinct lack of literature on the topic of just how this deficit in knowledge could be addressed. The aim of this research question was to identify various methods of addressing the problem which was shown to exist within New South Wales Government Schools.

The views of the four focus groups used to identify the degree of legal knowledge that teachers held have been used along with the views of the union and the employer for this purpose. Additionally after research questions one, two and three had been addressed in this study there emerged a clear need for a systematic curriculum which was designed to cover the lack of legal training for the majority of teachers in New South Wales who were either entering into pre-service teacher education or who were current practising teachers. Of course this curriculum could be delivered to every teacher in New South Wales, or simply to a selective group, including perhaps a designated person in each school. This curriculum is based upon the literature outlined in Chapter Five of this study. A draft version of the curriculum was trialled in the first half of 2000 with selected groups. A discussion of those trial groups follows at 6.5.5.

6.5.2 Views of the teachers

A view could be taken from the teachers who were used for the focus groups outlined in 6.2 above, that there was a need for all teachers to receive legal education. These same teachers also reported a variety of different methods in which this legal education could be delivered.

Consistent with the literature for the analysis of focus group results, as detailed in Chapter Four of this study at 4.5.2.7, the data for this question has been categorised. In these circumstances that categorisation of criteria is the criteria for research question four. That is all information relating to the teachers views on how legal information could be provided to them was collated and formed one category.

In order to deliver this legal education participants comments revealed a variety of different methods. These methods included providing helpful pamphlets, having a qualified and trained teacher in each school who was a source of legal knowledge, making the employer's legal officers more accessible to providing a systematic and comprehensive course of legal instruction for all beginning and practising teachers. Participant number 1 made this point when they stated:

...there are a variety of different ways that
you could give teachers legal information,
including holding talks, giving out pamphlets,
having a centrally qualified person within the

⁹⁷ See particularly McLoughlin, above n 1 and Pell, above n 62.

school to speak with and holding proper classes by someone who is qualified.⁹⁸

Importantly this same participant also noted that the level of knowledge and the quality of information supplied were crucial characteristics of any course of instruction. They further noted that there were obviously different impacts which could be achieved via the spectrum of delivery methods that had previously been described when they stated:

If we take the department's view of either doing nothing or just handing out a few brochures at times of crisis then this clearly has a different impact to a proper course of instruction that we might have received at university before we became teachers...⁹⁹

Similarly participant number 27 stated that:

It would be important to have a formal course of instruction which was detailed enough to be useful that'd be a lot better than nothing at all or just us talking about it in our staffroom...that's what really concerns me sometimes as I know that I don't have all of

⁹⁸ Participant Number 1.

⁹⁹ Participant Number 1.

the information and on the few times that the departments given us some information I've felt that I haven't been able to trust it.¹⁰⁰

Comments were also recorded which indicated that any type of information delivery had to be by a method which was both informative and interesting, simply providing copious amounts of literature which allowed for no interaction would be of very little use. Participant number 15 noted:

I hate to admit it but I think that teaching teachers anything is one of the most difficult jobs that you can have...teachers know about education which has at its core an indoctrinal method and they wont stand for that...but I guess that legal content has to be learnt somehow.¹⁰¹

Comments recorded indicated that their preference was for a professionally conducted course of instruction, although there was a recognition that this should not be as detailed as a course of study required for completion of a university subject as part of a law degree. Comments indicated that the place for this curriculum was definitely during pre service education held at a recognised university. Participant number 18's comment illustrated this when he stated:

¹⁰⁰ Participant Number 27.

¹⁰¹ Participant Number 15.

It's very important that we trust the people who deliver the information...I don't trust the department, they'll just tell you what they think you need to know. I want to be able to think for myself...I really wish that my university course had contained legal information. That was the time to be learning about it. Not now. I'd still like to know about it now but the best time had to have been then.¹⁰²

Participant number 41 similarly noted:

...we do need to know about the law and we need to know about it now...we need proper instruction, not a legal department which you can't ever get through to. We need to make the department realise that there are serious issues happening at this school which are like a ticking time bomb. It's gunna blow up in their faces soon and I'm not going to take the blame.¹⁰³

¹⁰² Participant Number 18.

¹⁰³ Participant Number 41.

These comments indicate a concern with these participants that the curriculum that they may be presented should have credibility. There is little point in presenting teachers with a curriculum for which there is no need but it may be even worse to present them with a curriculum instituted by a body which they do not trust or value.

6.5.3 Views of the union

As for research questions two and three detailed above in 6.3.3 and 6.4.3, the views of the major union governing New South Wales Government employed teachers (the New South Wales Teachers' Federation) were sought to help identify the most effective method(s) of delivering legal information to teachers.

As detailed above, in 6.3.3 and 6.4.3, letters of inquiry were sent to the union in February of 1997 and again towards the end of the data gathering for this study in July of 2000, to gauge the Federation's opinion. Those letters contained four specific questions, the most relevant to this research question being question number four:

4. What methods are available to deliver this content?

The responses of the Union to this question follow.

6.5.3.1 Responses to the February 1997 letter of inquiry

As detailed above in 6.3.3.1 and 6.4.3.1 the letter sent to the Federation in February of 1997 received no formal reply. It should be recalled as described earlier in this Chapter at 6.3.3.1, that consistent with the methodology for the use of letters of inquiry detailed in Chapter Four at 4.5.4.1 that a follow up letter of inquiry was also sent which also received no response. Therefore it is difficult to draw any conclusions about the Federation's view of the most efficient methods of delivering legal information to its members or indeed their interest at all in this area. However it may be possible using other sources of information outlined below to draw some conclusions on their position. This approach is consistent with the methodology outlined in Chapter Four of this study, more specifically at 4.5.4. This follows at 6.5.3.3.

6.5.3.2 Responses to the July 2000 letter of inquiry

In July of 2000 when the same four questions were posed to the Federation a more detailed response was received from the welfare section of the union. That response made it clear that the Federation was acutely aware of the need for legal education of its members.

Whilst the response did make it obvious that the Federation was cognizant of the need for legal information there was a lack of detailed information as to the most effective forms the information could take. Indeed the Federation made little reference to different methods which may be available to deliver information.

Information was received on the importance the Federation placed on the welfare of its members which resulted in an attempt to include legally related informational columns in their regular journals which was published and issued to all registered members.¹⁰⁴ No information was received on the Federation's attitude to alternative methods of instruction.

6.5.3.3 Other sources of information from the union

Consistent with the methodology described in Chapter Four at 4.5.4 for discovering other types of information, reference to the journal publications by the Federation received during the formal reply to the letter of inquiry in July of 2000, and commented above at 6.4.3.3, provided a source of further information on the Federation's beliefs of the most efficient method of delivering legal information to teachers.

An examination of the 15 years of the publication of the New South Wales Teachers Federation Journal, titled *Education*, (between 1985 and 2000) revealed a total of more than 60 articles which appeared to have legal content. More detail about the nature of these articles has been discussed above at 6.4.3.3. Consistent with the methodology described in Chapter Four at 4.5.4.2 these documentary publications by the Federation were discovered through the use of generating a key word list which included searching for relevant words within the title or body of all Federation documents publicly available. Relevant key words in this

¹⁰⁴ Recall the reference provided earlier at 6.3.3 that 85% of all teachers in NSW government schools are members of the NSW teachers Federation.

instance were consistent with those described earlier in this Chapter at 6.3.3.3 and 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'.

Clearly the frequency of publication demonstrates that one of the most efficient ways, even though the publications appear to be sporadic, that the Federation believes that information can be delivered to teachers is through the medium of its publications. Manifest within these findings are some important implications. Firstly, simply publishing information about specific legal issues assumes that readers have sufficient background knowledge to be able to fully comprehend what they are reading. Secondly, it assumes that the literature produced is both accurate and unbiased. Thirdly, it assumes that the union represents all of or even a majority of employed teachers. And fourthly it assumes that members will actually read the articles in the publications.

6.5.4 Views of the employer

The views of the Government employer for this research question were gained from the same letters of enquiry detailed in 6.3.4 and 6.4.4. Those letters of inquiry were sent in February of 1997 and again in July of 2000. Those letters of inquiry posed four separate questions to the employer, the most relevant for this research question being number four:

4. What methods are available to deliver this content?

As previously detailed in 6.3.4, on both occasions that the letter was sent there was no formal reply. It was only upon subsequent telephone inquiries by this researcher, to the Chief Legal Officer, that any information in relation to these questions was gathered. This follow up approach is consistent with the methodology for letters of inquiry as described in Chapter Four at 4.5.4.1. Therefore the responses detailed below relate to telephone conversations with officers of the NSW DET's legal branch in both February 1997 and July 2000.

6.5.4.1 Responses to the February 1997 letter of inquiry

As detailed for 6.3.4.1 and 6.4.4.1 above the responses of the employer to all of the questions posed were in rather general terms. It was made clear that employees had a responsibility to make themselves aware of all departmental documents which may affect them, but other than making themselves aware of that information little response was provided on alternative methods of presenting legal content. It was not made clear as to whether reference was to a legal policy document or to any other type of policy document which may be provided to a teacher. The employer was unable to provide the name of any of the policy documents referred to, although they did suggest that all of the employers policy documents were contained on their web site. The following comment was indicative of the employer's reply:

...we provide policy documents, that's a source of information for them...all of our policies are available on our web site.

A search of the employer's web sites, including www.det.nsw.edu.au and www.schools.nsw.edu.au, at this time revealed no evidence of any legal information available to teachers generally or contained in any of the policy documents present on the sites. These sites were the sources of the policy documents specified as being present by the department's legal branch. Consistent with the methodology described in Chapter Four at 4.5.4.2 the entire web sites were searched by generating a key word list which included searching for relevant words within the title or body of all content publicly available. 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'.

It may be that in the future that the employer intends to add policy documents containing legal information. As such the employer may value the use of the internet or more specifically its own policy documents as a valuable source for communicating legal information to teachers.

The employer did not make any reference to any type of in-service course which may be available to any of its employees.

6.5.4.2 Responses to the July 2000 letter of inquiry

The July 2000 response provided a little more insight into the employer's views of appropriate methods of delivery of legal information to teachers. The previous view from February 1997 was still prevalent. However on this occasion information was received about the various forms of informational sources that were available to teachers although no distinction was made between them and there was no suggestion from the employer that it would be prudent for teachers to undertake either a pre service or post qualification formal course of instruction.

The employer was specifically asked about any type of in-service course which may have been available to its employees, but stated that no information about this was available to them.

The following comments are indicative of the response received from the employer:

...there are our various policy documents, their union's, law text books and university courses, but it's really up to teachers to decide what's appropriate for them...they can always ring through here if they have a question.

And:

They could always go out and get themselves
a law degree if they wanted to know about the
law...we know of several teachers who have
gone and done that.

What seemed apparent from the comments received was that there was no single method which the employer favoured over another for delivering legal information to teachers.

Consistent with the methodology described in Chapter Four at 4.5.4 there may also exist additional information which is helpful in gauging the employer's reaction to Research Question Four and therefore also useful in ensuring a holistic picture of the research topic is developed.

6.5.4.3 Other sources of information from the employer

As detailed in 6.3.4.5 the employer was afforded a further opportunity to respond to the content of the four research questions in December 2000. Information provided at that opportunity revealed the existence of the employer's web site which was used to communicate with teachers. Even though a subsequent search of that web site revealed that at this time no legal information existed on the site it was clearly being used to communicate information on other areas of concern to teachers including salary and working conditions. Therefore it could be presumed

that the employer values the use of this web site to communicate with its employees and as such it may be a valuable tool which could be used in the future to disseminate legal information to teachers.¹⁰⁵

6.5.5 The curriculum

As a result of the responses received to research question four by the teachers, the union and the employer it was evident that an efficient method of delivering all teachers accurate and comprehensive legal information could be accomplished by the introduction of a new curriculum. The need for the curriculum had been established by research questions one and two, while research questions three and four had identified the core areas of the legal system to be covered and the fact that it could be via a new curriculum that this could be effectively achieved.

Chapter Five of this study has outlined the literature relevant to the basis of the curriculum development. The results of Chapter Five and the responses received in relation to research question four made it evident that a new approach based on the process model of curriculum development needed to be employed in order to address the concerns of the teachers.¹⁰⁶

That curriculum was developed and trialled with three groups. The details of these trials and the responses from the course participants follow.

¹⁰⁵ Indeed it has been a policy decision of the employer that every Government school in the State must have access for staff and students to the world wide web.

6.5.5.1 Course Structure and Participants

A total of 32 teachers were selected to be involved in the trialling of the draft curriculum. These 32 people formed three separate groups and they completed the curriculum over its designed eight separate sessions. The trials took place between April 2000 and June 2000. All trial sessions were conducted by the researcher. The characteristics of these trial groups are detailed below in Table 6.11.

¹⁰⁶ See particularly L. Stenhouse, *School Based Curriculum Development* (Heinemann: London, 1975) and L. Stenhouse, *An Introduction to Curriculum Research and Development* (Heinemann: London, 1978) as detailed at 5.4.5.

Table 6.11**Characteristics of curriculum groups**

Category	Number
Gender	
Female	20
Male	12
Total	32
Age	
20-30	5
30-40	3
40-50	11
50-60	10
60+	3
Total	32
Years of Teaching Experience	
0-5	2
5-10	3
10-15	8
15-20	12
20+	7
Total	32
Level of education taught	
Kindergarten	3
Primary School	10
High School	19
Total	32

It can clearly be seen that participants were drawn from a wide variety of backgrounds. They included kindergarten, primary and high school teachers of a variety of ages. Each group was asked to participate in eight concurrent sessions

designed to instruct them in the legal content they would require as practising teachers. Sessions were held at the same time on a weekly basis. All groups met after normal school hours at a regular set day and time.

Two of the groups completed the curriculum by having eight concurrent sessions delivered on a weekly basis over eight weeks. The other group requested a break of one week after the fourth session, due to the need to catch up on mandatory school tasks, and thus took nine weeks to complete the course. Typically the sessions ran for 90 minutes each and included time for questions from participants which were possibly outside of the scope of the curriculum.

Participants were given copies of the course outline, course workbook and extracted materials (contained in Volume Two). They were taken through the course structure in the initial session and from that point each of the groups followed the format set down in the draft curriculum documents. Of the 32 participants who began the course 31 completed it. At the conclusion of the course participants were asked to complete a questionnaire designed to provide feedback on their perceptions of the course. Table 6.12 below details the characteristics of those 31 participants who completed the questionnaire.

Table 6.12

Characteristics of curriculum group participants who completed the questionnaire

Category	Number
Gender	
Female	20
Male	11
Total	31
Age	
20-30	5
30-40	3
40-50	10
50-60	10
60+	3
Total	31
Years of Teaching Experience	
0-5	1
5-10	3
10-15	8
15-20	12
20+	7
Total	31
Level of education taught	
Kindergarten	3
Primary School	10
High School	18
Total	31

A discussion of this questionnaire follows.

6.5.5.2 Education law course questionnaire

At the conclusion of the eighth and final session of the curriculum each participant was asked to complete a brief questionnaire which contained eight separate questions (contained in Appendix B). This questionnaire was designed to allow participants an opportunity to provide feedback on the course they had just completed, that is, to comment on what they had liked and disliked as well as suggesting improvements to its format and/or content.

All 31 participants who completed the course completed the questionnaire, representing a completion rate of 100%. Each of the participants completed all of the eight questions. The very high rate of completion of the questionnaire can be attributed to the fact that participants were asked to complete the questionnaire document before they departed from the eighth and final session of their course. Thus every person who was present at the final session completed the questionnaire.

To avoid confusion with numbers assigned to participants in the live focus groups outlined in 6.2.3 those completing the trial curriculum questionnaire were assigned a number between 100 to 130, representing the 31 participants who completed the questionnaire. Some of the participants who participated in the focus groups described in 6.2.3 also participated in these curriculum trial groups and thus also completed this questionnaire. However no comparison between their views has been attempted.

The coding for the responses received to this questionnaire has been explained in detail in Chapter Four of this study, more specifically at 4.5.3.2.

6.5.5.2.1 Education law course questionnaire results

The responses from the 31 participants were coded as described by the methodology outlined in 4.5.3.2. What follows is a detailed examination of the results for all eight individual questions.

6.5.5.2.2 Responses to – Question one: How did you feel about the format of the course?

The nature of the responses to this question enabled the coding of responses to be divided into one of three categories. That is, those comments which were positive, those which were negative and those which were neutral in their nature. Positive comments were noted as those comments which provided evidence that participants had reacted in a manner which showed that they had enjoyed the format of the course. Negative comments were noted as those comments which showed that they had not enjoyed the course, while neutral comments were noted as those comments which demonstrated no emphasis on whether a participant had either enjoyed or not enjoyed the format of the course.

Of the 31 comments recorded for this question 30 comments were categorised and recorded as being positive in nature, 1 comment was recorded as being neutral whilst no comments were recorded as negative.

An indicative example of those comments which were recorded as positive included those from participant number 108:

It was good...it made the course easy to follow.¹⁰⁷

And:

Very unusual...but very good...I loved the case study scenarios. You could see how the law affected real people.¹⁰⁸

The one neutral comment was recorded from participant number 100:

When I was at uni we were taught like this in a few subjects...it wasn't anything new to me.¹⁰⁹

6.5.5.2.3 Responses to – Question two: How much time did you spend preparing for each of the sessions?

The responses for this question showed that the amount of time taken to prepare for each of the course's eight sessions varied amongst participants. The range

¹⁰⁷ Participant number 108.

¹⁰⁸ Participant number 121.

varied from between minimal preparation to around one and a half hours. Some participants, whilst recording a response to this question, failed to specifically quantify the amount of time they had devoted to preparation. The coding for this question therefore involved dividing those responses which provided a numerical response to the question and those which provided only a more general/non specifically quantified answer.

Participant numbers 130 and 113 were the only two responses which provided a general/non specifically quantified answer. Their comments were recorded as:

Well I didn't read everything I was given but
I did read most of it.¹¹⁰

And:

I can't remember exactly, but it was a lot.¹¹¹

All 29 remaining participants recorded a numerical response to this question. Those responses ranged from a minimum of 25 minutes to a maximum of 90 minutes. It should be noted that 17 of these 29 responses used the word 'about' or another similar word such as 'around' to indicate that there was no great precision in the estimation of the time spent in preparation. A typical example of this type of expression can be seen in the following response recorded by participant number 112:

¹⁰⁹ Participant number 100.

¹¹⁰ Participant number 130.

I think about an hour a week.¹¹²

The remaining 12 out of the 29 responses recorded precisely accurate numerical figures expressing the amount of time. For the purposes of coding these precisely accurate figures have been combined with those figures which were expressed in a non precise way.

All 29 numerically based responses were calculated and an average of 53 minutes was determined as the amount of time that participants spent in preparation for each of the sessions.

6.5.5.2.4 Responses to – Question three: Was there anything included in the course which you think should not have been included?

Given that the course was designed to give a thorough background to the functioning of the legal system and then cover some of the more specific areas of the law that ordinary teachers would come into contact with in the course of the delivery of their ordinary professional duties it was perhaps unsurprising that the teachers remarked that they were comfortable with the depth and coverage of legal issues. The responses recorded for this question allowed the coding of data into two distinct categories. That is, those participants who were happy with the content and could see no need to delete any items from the course. There were

¹¹¹ Participant number 113.

¹¹² Participant number 112.

also those other responses which made a note of items which they thought that should not have been included in the course.

30 of the 31 responses to the question were recorded as falling into the category which were happy with the course content. Participant numbers 101 and 114 typified the responses of those 30 participants when they remarked:

No. It was all good and seemed relevant.¹¹³

And:

There wasn't anything obviously out of place.

I got what I expected I think.¹¹⁴

Only one participant recorded a comment in this section which fell into category which suggested a deletion of some of the course content. They remarked:

I didn't think that we needed to know about

OHS, this is a specialist area isn't it?¹¹⁵

¹¹³ Participant number 101.

¹¹⁴ Participant number 114.

¹¹⁵ Participant number 129.

6.5.5.2.5 Responses to – Question four: What other areas/items do you think could have been covered during the course?

The responses for this question, like question number three, also allowed the data to be coded into two categories. The first category were those responses which made a comment suggesting that there was no need to add anything else to the course, while the second category were those responses which made a list of additional content to be included in the course which were not originally included.

Three participants made a comment which could be categorised identifying an additional feature to be included in the course. The three participants made comments which suggested that they would have liked to have seen the course more tailored to the level of education that they taught. Specifically, participant number 128 made it clear that she had specialist legal knowledge requirements when she remarked:

I'd have liked to know more about the law relating to when students are on work experience, we covered the basics of injury but not specifically work experience students.¹¹⁶

The other two participants recorded in this category for this question also made similar comments about the need to have specialised knowledge, such as the legal issues raised by work experience and working with very young children.

But the majority, 28 out of 31, of participants remarked that they were comfortable with the content covered during the course. A number of the responses were quite direct in their views, for example:

None. It was comprehensive¹¹⁷

This comment by participant number 103 thus represents a clear example of this particular category of response.

Further, it was participant number 101 who made the point that:

...you could put many other legal areas into a course like this but then where would you stop?¹¹⁸

This comment by participant number 101 was typical of those recorded in this category. These responses reinforce the fact that no course can ever attempt to be absolutely comprehensive and instead what should be aimed for is a thorough understanding of the basic elements of the law and the development of a skills base. This will enable teachers to be able to either undertake further research on their own or to know when to recognise a potential problem and seek further professional advice on that issue.

¹¹⁶ Participant number 128.

¹¹⁷ Participant number 103.

¹¹⁸ Participant number 101.

6.5.5.2.6 Responses to – Question five: What do you believe were the strengths or weaknesses of the course?

The coding for this question proved more challenging than the preceding four questions due to the nature of the question and the diverse range of responses recorded. Participants were very candid in their reactions to the strengths and weaknesses of the course. The question asked participants to comment about both strengths and weaknesses and each of these elements were analysed individually. They are analysed individually because every participant who answered this question listed either a strength or a weakness, no responses were received which recorded both a strength and a weakness together. The responses for this question were divided into three different categories.

The first category were those responses which provided a response that commented upon a strength. In this category three distinct elements appeared in the responses recorded. Thus this category was further sub-divided into three different sub-categories. Those were responses which commented upon either the open (non prescriptive) nature of the curriculum, the informal delivery method of the course or the practical nature of the problems participants were presented with in the course.

The second category were those responses which made a comment about a weakness of the course. The nature of the responses to this category meant that it was not necessary to further sub-categorise these responses.

The third category of responses were those which made a comment which described something else other than the strengths or weaknesses of the course.

25 participants made a comment which was classed as strength comment. 16 of those 25 participants made a comment which was categorised into the first sub-category in regards to the open or non prescriptive nature of the course. Comments in this area reflected the fact that participants seemed positive about the structure of the course and the way it had allowed them to integrate real life experiences to what they often saw as dry law. Their comments seemed to reflect the dynamic nature of the curriculum design chosen. The following provides a typical response from this sub-category:

The fact that the curriculum wasn't always prescriptive, didn't always have specific aims and objectives but rather let us explore many of the concepts we thought were worth exploring and I guess in that way it allowed more for us to go off on tangents.¹¹⁹

Six participants from the 25 identified strength category responses made a comment which was categorised into the second sub-category which detailed their thoughts about the informal delivery methodology associated with the course. Comments typical from this sub-category included the following:

¹¹⁹ Participant number 121.

I really enjoyed the informal nature of the course. It was a real change not to have a test at the end of something to see what we had learnt! That's very different to the way we teach our students.¹²⁰

The remaining three participants, from the 25, who were classed as providing a strength response to this question provided responses which were sub-categorised as falling into the third sub-category which detailed elements relating to the practical nature of the course which they found to be one of its strengths. The following comments from participant number 122 provide an example of this type of sub-category:

I liked the way that the curriculum involved real people in real situations. I could relate to that.¹²¹

Four participants provided a response to this question which was categorised as a comment about a weakness of the course. It was not necessary to further sub-categorise the responses to this element of the question as all four responses made a comment about the same weakness. That weakness concerned the amount of time between the sessions. The following comment typified the comments made about the weaknesses of the course:

¹²⁰ Participant number 128.

¹²¹ Participant number 122.

One week between the sessions was very short...I'd have like at least two weeks.¹²²

Two participants to this question provided a response which were categorised into the third category. Their comments appeared to make a general comment about the nature of the course rather than to make a more specific comment about either the strengths or weaknesses of the course which they had just completed. These two comments were recorded by participant numbers 101 and 119 when they noted:

The course was good, it was strong.¹²³

And:

I enjoyed the course.¹²⁴

6.5.5.2.7 Responses to – Question six: What do you think was the most important thing that you gained from the course?

Two items appeared in the responses recorded to this question. Those two items were coded as two different categories. The first related to items which suggested that the most important thing gained by the participant was an improved knowledge of the law. The second were responses where participants commented without reference to improving their overall knowledge of the law. These

¹²² Participant number 118.

¹²³ Participant number 101.

participant comments were still positive but more general in nature, failing to make reference to gaining any more specific or even general knowledge of the law.

Participants remarked almost uniformly that they had improved their knowledge of the law. Indeed 29 of the 31 responses to the question made a comment which noted that they had increased their knowledge of the law. These comments from participant numbers 110 and 117 typify the responses of all course participants which were classified as reporting a response to this category of the question:

That's hard to give a definitive answer to,
probably realising that courts aren't the only
way to resolve problems.¹²⁵

And:

A little more confidence about the law.¹²⁶

Only two participants commented without reference to improving their overall knowledge of the law and were thus categorised as a response without reference to improving their knowledge of the law. Participant number 104 remarked:

I gained confidence in myself.¹²⁷

¹²⁴ Participant number 119.

¹²⁵ Participant number 110.

¹²⁶ Participant number 117.

¹²⁷ Participant number 104.

While participant number 112 noted:

I learnt a lot about the school structure, about
who's in charge when a problem or issue is
raised.¹²⁸

6.5.5.2.8 Responses to – Question seven: Would you recommend the course to other teachers? Why or why not?

Responses from this question were initially allocated one of two categories. That is, responses noted as being positive in their recommendation and responses recorded as not recommending the course to other teachers. Given that part of the question related to providing reasons for their answers it was necessary to further subcategorise the responses from each of the two categorises.

Those positive recommendations were further classified into one of three sub-categories. The sub-categories used to divide answers for this category were also the sub-categories used to divide the responses referred to in question number five of the questionnaire detailed earlier at 6.5.5.2.6. That is, as for question number five, the response could be classified as participants recorded the course be recommended either for the non-prescriptive nature of the course, the informal delivery method of the course or the practical nature of the course. Given the similarity of question numbers 5 and 7 it is not surprising that the responses to each of the questions allowed the same sub-categorisation to be used.

It was not necessary to further sub-categorise responses from the non recommending category.

Every participant was positive in their response to this question, thus providing unanimous support for the course. There was no hesitation from any participant in recommending the course to other teachers. The following comments exemplify these positive notions:

Definitely!¹²⁹

And similarly from participant number 123:

Absolutely!¹³⁰

An examination of the sub-categories from this particular category show an explanation of the reasons behind the unanimous positive recommendations. 10 participants were recorded as falling into the first sub-category, that is they felt that the course should be recommended because the curriculum was quite flexible and non-prescriptive. The following comments provide exemplars of those in this sub-category.

Yes, because it was so well organised
because we weren't restricted by what was in

¹²⁸ Participant number 112.

¹²⁹ Participant number 118.

¹³⁰ Participant number 123.

the materials, we could relate current events
to what we were reading and talking about.¹³¹

And:

Definitely! There was so much flexibility in
what the material we were using.¹³²

6 participants were recorded as falling into the second of the sub-categories of positive responses recommending the course. These were participants who felt compelled to recommend the course because of the informal methodology associated with the delivery of course content. This comment by participant number 112 is an example of the comments recorded for this sub-category.

I liked the way we could ask questions and
then explore the issues as a group. We
weren't locked into someone else's
timeframe or agenda as we so often are.¹³³

15 participants were noted as recording responses which were classified as falling into the third of the sub-categories. That is they were recommending the course to other teachers due to reasons of the practical content of the course. Comments such as those from participant numbers 117 and 121 show examples of those responses which were categorised as this sub-category.

¹³¹ Participant number 119.

¹³² Participant number 123.

Participant number 117 noted:

The case studies used were all very practical
– as a teachers I could see those situations as
arising.¹³⁴

And participant number 121 similarly noted:

Teachers are VERY busy and don't like
wasting their time. The practical nature of the
course is what makes it such a valuable
professional development opportunity.¹³⁵

No responses were categorised as falling into the non recommendation category.

6.5.5.2.9 Responses to – Question eight: Any additional comments that you would like to make?

The general nature of the question made it very difficult to code any of the responses which were received from participants. It was however possible to categorise the comments recorded as either positive or negative. The first category of responses therefore were those positive comments about the courses structure, success or content. While the second category of comments were those which made a negative comment about some aspect of the course.

¹³³ Participant number 112.

¹³⁴ Participant number 117.

All but one, that is 30 out of 31 of the comments received were positive in nature. Participants took this question as an opportunity to make a personal thankyou to the course presenter for devoting time and effort into what they saw as an extension of their professional knowledge. The following three comments typify the responses recorded to this question:

Thankyou for coming to trial this curriculum with us, I really enjoyed it. I hope that other teachers get the opportunity to undertake this course.¹³⁶

And:

The course is very good...I think that it's a must for all beginning teachers.¹³⁷

And:

Don't change a thing!¹³⁸

Only one comment was recorded as being classified as a negative comment. That response was:

¹³⁵ Participant number 123. [Emphasis reproduced]

¹³⁶ Participant number 109.

¹³⁷ Participant number 118.

¹³⁸ Participant number 111.

My biggest concern is with the amount of time it takes to go through this course, it's probably not your fault though.¹³⁹

6.5.6 Summary and discussion of material from Research Question Four

This research question was centred upon identifying the various and most efficient methods of delivering the content identified in research question three to teachers. The views of the teachers, their union and the employer were engaged in order to identify the different methods of delivering legal information.

It was the view of the teachers involved in this research that there existed a variety of different methods for delivering legal information to them. One of the most effective ways identified would be by a systematic and comprehensive curriculum which was directed firstly towards pre service teachers but which did not neglect the needs of practising teachers for training and development in this area.

The view of the teachers' union was difficult to gauge primarily because their responses did not specifically address the research question. However it was clear that the union had favoured the use of publishing legal information as one effective method of providing information to its members. The limits associated with this including bias and accuracy were discussed.

The views of the Government employer were difficult to discern due to the fact that their answers were often very general and unspecific in terms of either

¹³⁹ Participant Number 113.

content of legal information to be covered or methods to be employed. It was the view of the employer that a key feature of legal education for teachers existed in the form of the policy documents which were issued by the employer. However no comment was made on alternative methods of informational delivery systems to be engaged by the employer although the possibility of teachers undertaking their own private study was covered. Additionally the use of the employers web site was identified as a potential source of delivering information.

It was as a result of these findings that this research determined that one of the most effective ways of covering this research question was via the designing of a comprehensive curriculum designed to cover the issues canvassed in the previous three research questions. That curriculum was also based upon the literature outlined in Chapter Five of this study. It has been trialled and the results of the trials were reported above.

The trial curriculum groups responded to a written questionnaire and discussion at the conclusion of their experiences and responses were recorded. Almost every course participant responded in a positive way both initially and at the end of the course. The popularity of the course could be measured by the fact that of the 32 participants who participated over the courses eight separate sessions only one of those participants did not complete the course. The popularity could also be measured against the fact that of the 31 participants who completed the course all 31 were prepared to recommend the course to other teachers (see 6.5.5.2.8).

Further, the success of the curriculum can also be measured against the aims set out in the literature review for curriculum outlined in Chapter Five of this study. It was the aim of the curriculum to allow, as much as possible, for course participants to explore the law as a whole rather than be confined to learning specific facts of information, that is, to explore its dynamic nature and operation. The comments drawn from the questionnaire results at 6.5.5 clearly show that most teachers enjoyed the experience of learning in this way, that is, learning in a way that many identified as unique. The vast majority of teachers commented that they had increased their levels of knowledge and confidence in the law.

6.6 Summary of Chapter Six

Chapter Six has provided a detailed analysis and discussion of both the quantitative and qualitative data collected in response to the four research questions outlined in Chapter Three. These research questions were developed in order to fulfil the purpose of this study, that being the legal knowledge which New South Wales Government school teachers have, the need for development of this knowledge base and the ways in which this knowledge could be communicated to the teachers. A brief summation of the research questions follows.

6.6.1 Research question one

The data collected for this question showed that teachers have quite a wide variety of experiences which form a foundation for the development of basic forms of

legal knowledge in relation to the operation of their professional duties. The majority of pre-service teachers, since 1997, have been exposed to at least some form of basic legal education.

However both the information presented from the universities and the focus groups conducted make it clear that this information was often very limited. What teachers lacked was a fundamental understanding of the law. At their current levels of knowledge there was a distinct lack of more than a very basic level of understanding. Their understanding was often based on misinformation and misconception.

6.6.2 Research question two

The data collected for this question indicated that it is clearly important for teachers to have a degree of legal knowledge as part of their professional development in order to be able to understand potential legal problems. The views of the teachers, their union and their employer were canvassed. Whilst the veracity of each of these groups was different it was apparent that they could see the need for teachers to have a degree of legal knowledge to help them better perform their professional duties as teachers.

6.6.3 Research question three

The data collected for this question revealed a range of responses. Responses were collected from focus group teachers, the major union body and the Government

employer. What became apparent was a recognition of the need for legal education for teachers.

However what was absent was a commitment to which specific areas of legal knowledge teachers required. This was largely due to the diverse nature of the teaching profession. It was evident that teachers required a through understanding of the nature of the legal system in order to be better able to identify potential legal problems as well as a development of the necessary skills in order to be able to classify and seek out legal knowledge when desired.

6.6.4 Research question four

Data for this question was collected from a variety of sources. In order to gauge the most efficient way in which legal information could be delivered the opinions of several stakeholder groups were gauged, those being the teachers, the union and the employer. The prevailing view was for a need by teachers to have a systematic and comprehensive course of instruction provided by an independent body.

A comprehensive new curriculum, which can be found in Volume Two, was developed as a result of these views and the results of the trialling of this curriculum were reported.

Chapter Seven is the final Chapter in this study and provides some conclusions and implications to this entire research project.

CHAPTER SEVEN

CONCLUSIONS AND IMPLICATIONS

7.1 Background

The purpose of this Chapter is to discuss the conclusions reached for this entire research project and to then examine the implications of these conclusions for future research, teachers and the employers of teachers.

7.2 Overview

Since the Australian experience is characterised by a lack of research in the focus area of this study it was necessary to devise a comprehensive research strategy which would allow an opportunity for the major stakeholders in education to provide input into an analysis of the four research questions described in Chapter Three. The review of the literature in Chapter Two revealed that there was a genuine concern both in Australia and internationally that the occupation of teaching was becoming increasingly legalised.¹ It was shown that teachers were often misinformed about their legal rights and obligations as a result of not being subjected to any comprehensive or systematic course of legal instruction either at

¹ See for example H Sungaila, *Litigation in education* (Gavener Publishing: Sydney, 1988), I Ramsay, 'Educational negligence and the legalisation of education' [1988] 11 *University of New South Wales Law Journal* 184, L F Rossow, 'Current Developments in Education Law in the United States' (1996) 1(1) *Australia & New Zealand Journal of Law & Education* 55 and P

the level of pre-service or post service education. Thus there emerged the need for teachers to undergo a systematic course of instruction designed to provide them with relevant legal knowledge in order for them to be better able to carry out their professional duties as educators. There was a further concern that very little was being done in order to address this problem. It was demonstrated that there was very little literature to suggest that this issue was being addressed either in Australia or internationally in any organised fashion.²

At several stages of this research it has been made clear that teachers do not require law degrees but rather they require a basic level of legal instruction in order to be better able to characterise problems as either legal or non legal and then be able to know in which situations to seek professional legal advice. Indeed, the curriculum detailed in Volume Two of this study has at its core been developed from a synthesis of the models described in Chapter Five because of the need to provide teachers with this level of legal understanding. Further, teachers need to develop skills in the area of law in order to be able to conduct research for themselves when seeking information, keep up to date with changes in the law, seeking specific legal knowledge pertinent to the age group of children they teach or in knowing when to categorise issues as either legal or non legal.

The main findings of the four research questions reported in Chapter Six of this study revealed that:

Williams, 'Educational negligence: An Australian perspective' (1995) October *Working Paper Series: School of Business Law - Curtin University*.

² See for example C S McLoughlin *et al*, 'Prospective Educators' Knowledge of Children's Legal Rights' (1983) 20(4) *American Educational Research Journal* 591 and S W Pell, 'Pre-service teachers' lack of knowledge of education law: Ignorance is no excuse' (1994) 14(4) *Illinois School Law Quarterly* 138.

- Teachers often had little or basic knowledge of the law and that knowledge was often based upon myth or misinformation .
- Teachers and their union saw the need for educators to have a degree of legal information in order to be better able to carry out their professional duties.
- The age group of students being taught impacted on the specific substantive legal knowledge that teachers required. However there emerged several general legal areas that were common to the needs of all teachers in NSW government schools. These included criminal law, tort law and occupational health and safety law.
- Teachers were very open to the idea of a curriculum that would be designed to empower them by providing a general legal knowledge of education law, but also provided an opportunity for them to learn the necessary skills to identify legal problems and know when to seek professional legal advice when the need arose. Additionally, they sought a curriculum which provided them with a skills base in order to be able to conduct their own further research if they desired.

It should also be recalled that teachers who participated in the trial curriculum were very receptive to both the format and the content, finding the course informative and empowering.

This Chapter now turns to a discussion of the conclusions reached in relation to the findings of this entire study.

7.3 Conclusions

It was patent from the research findings that the participants had a variety of experiences which formed the foundation for the development of the legal knowledge they had in relation to the performance of their professional duties as teachers. Indeed the majority of preservice teachers in Australia since 1997 were exposed to at least some form of basic legal education. However it became evident that the legal information that the majority of teachers were exposed to was of a limited nature. Practicing teachers who took part in this study demonstrated only a very limited knowledge of the law and their knowledge was often based in misinformation and misconception.

A clear need for teachers to be given some form of legal knowledge as part of their professional development has been established by this study. The views of each of the relevant stakeholders, that is the teachers, their union and the teachers employer were all consistent with the need for teachers to be aware of the law. However the view of the type and extent of the legal knowledge deemed necessary, differed between each of these stakeholders.

The views of the various stakeholders also differed in terms of the options for delivering this type of legal information. The prevailing view was for teachers to

have a systematic and comprehensive course of instruction provided by an independent body.

7.4 Implications

A number of implications emerge from the conclusions reached in this study. These conclusions are addressed under the following headings of implications for further research, for teachers and for the employer.

7.4.1 Implications for future research

This was an exploratory study using a combination of quantitative and qualitative methodologies designed to develop an insight into the area of New South Wales teachers and the law.³ It became evident in this study that an exploratory option was desirable because of the lack of previous research into this area. Therefore there is considerable scope for further research to be conducted into the general area of educational law in Australia.

Further, due to the methods of selecting subjects in this study, it would be desirable for validation to be generated with the findings of this research study by conducting the focus groups and curriculum trials with officially sanctioned volunteers from the government employer in New South Wales. Additionally the

³ For details on the nature of the ethnographic multimethod exploratory research methodology used in this study see particularly V J Caracelli & J C Greene, 'Data analysis strategies for mixed-method evaluation designs' (1993) 15(2) *Educational Evaluation and Policy Analysis* 195, D Reynolds & K Reid, 'The second stage: Towards a reconceptualisation of theory and methodology' in A Westoby (ed), *Culture and power in educational organizations: A reader* (Open University Press: Milton Keynes, 1988), C Selltiz *et al*, *Research methods in social*

findings of this study could be enhanced or rejected through an analysis of the same four research questions using a different methodology. Or through an analysis of the results provided by teachers who are employed outside of the government employer, that is those from schools with a religious base for example.

Hence, particularly since Australian studies in education law are limited, similar research in other jurisdictions or with different schooling systems would help to sustain or repudiate the findings of this study.

7.4.2 Implications for teachers

This study has revealed a need for teachers to receive legal education in order to enhance their ability to conduct their professional duties as educators. The challenge now for teachers and their unions is to ensure that they undertake a proactive role in the processes that decide which elements are necessary in such a course of instruction and how this information will be delivered to both pre service and practicing teachers.

Teachers should also be aware that one of the indicia of being categorised as a profession is the willingness of its members to be involved in programmes of continuing professional education. It is therefore important for teachers to realise that continuing professional education is not strictly limited to their own individual curriculum areas but also includes other elements. Although this study

relations (Holt, Rinehart & Winston: New York, 1965) and R A Singleton, B C Straits & M M Straits, *Approaches to social research* (2nd Edition) (Oxford University Press: New York, 1993).

has revealed that teachers perceive a need for legal information to be provided to them it becomes necessary that teachers must actively participate in the processes of providing this form of continuing education for themselves. Teachers must realise that they have a need to increase their legal knowledge in order to better perform their professional duties and indeed also in order to better protect themselves from legal liabilities.

7.4.3 Implications for the employer

It is paramount for the employer to increase its commitment to provide legal information to teachers. There is a need to recognise that simply funding a legal branch of the New South Wales Department of Education and Training is not sufficient in order to prevent legal problems from arising in schools. A legal department will play little role in reducing the potential legal liability of the employer from acts or omissions which may occur within a school.

There needs to be a far more proactive role taken by the employer. For the government employer to be successful in increasing the legal knowledge of teachers there needs to be consultation with the teachers unions and the teachers themselves over this issue.

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Family Law Act 1975 (Cth.)

Freedom of Information Act 1982 (Cth.)

Interpretation Act 1987 (NSW)

Ombudsman Act 1976 (NSW)

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LIST OF APPENDICIES

Appendix A: Letter of enquiry to all Educational Entities within Australia.

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Appendix C: Letter of approval from the New South Wales Department of Education and Training to undertake research in Government schools.

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APPENDIX A

Letter of enquiry to all Educational Faculties within Australia

February 28, 1997

Chief Administrative Officer
Faculty of Education
Australian National University
Canberra ACT 2600

Dear Sir/Madam,

I have recently commenced work on a PhD in Education/Law at The University of Wollongong. I am broadly working on the topic of 'NSW teachers and their relationship with the law'. Ultimately I am working towards developing either a pre or post education course for NSW teachers to educate them on the benefit of being empowered by a workable knowledge of the legal issues that effect them.

As part of my preliminary work I am trying to establish which institutions offer their undergraduate or postgraduate students the opportunity to learn about how the law might effect their professional lives/duties as teachers.

This legal education might be in the form of a whole subject, either elective or compulsory, which is contained in one of your teacher education programmes or it may just include an occasional lecture as part of a wider subject/course.

I would be most grateful if you could provide me with any such details.

Thanking you for your time and effort in anticipation.

Sincerely,

D. J. Newlyn. B.Ed(Hons), LLB(Syd).

APPENDIX B

Education Law Course Questionnaire

Education Law Course Questionnaire

Now that we have reached the end of the Education Law Course it would be very useful for my research purposes if you could spend some time telling me what you thought about your experiences over the last eight sessions.

I would like to thank each of you for willingly giving up your valuable time to help me in this research project. Your help is greatly appreciated.

Please feel free to record any additional comments that you would like to make.

Your name is not required and you can be assured that your responses will remain completely confidential. You will not be able to be identified from the information which you provide here.

[1] How did you feel about the format of the course?

[2] How much time did you spend preparing for each of the sessions?

[3] Was there anything included in the course which you think should not have been included?

[4] What other areas/items do you think could have been covered during the course?

[5] What do you believe were the strengths or weaknesses of the course?

[6] What do you think was the most important thing that you gained from the course?

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[7] Would you recommend the course to other teachers? Why or why not?

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[8] Any additional comments that you would like to make?

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Thanks again for helping in this project. I hope that you enjoyed the past eight sessions.

David Newlyn.

APPENDIX C

**Letter of approval from the New South Wales
Department of Education and Training to undertake
research in Government schools**

APPENDIX D

**Notices of approval to undertake research obtained from
the Ethics Committee of the University of Wollongong**

**The ‘Legalisation’ of Education – A study of New
South Wales teachers and their professional
development needs in the area of law**

**A thesis submitted in fulfilment of the
requirements for the award of the degree**

Doctor of Philosophy

from

University of Wollongong

by

David J. Newlyn B.Ed(Hons), LLB (Syd)

Faculty of Law

2006

Volume 2 of 2

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Education Law:
Course Outline and Participant Workbook



Education Law - Course Outline

Overview

This course is designed to introduce teachers and prospective teachers, in ways that are stimulating and intellectually challenging, to the idea of law and its relationship to the teaching profession.

The rationale for the course is based on a PhD report conducted between 1997 and 2001 titled 'The Legalisation of Education – A study of New South Wales teachers and their professional development needs in the area of law'. The findings of the thesis are that there is a general lack of legal knowledge held by teachers in NSW government schools and a definite need to address this problem. This course is designed to go some way towards fulfilling that objective.

The course is not designed to provide teachers with a detailed knowledge of education law and is no substitute for seeking professional legal advice in appropriate circumstances. The course will help participants to identify when professional advice may be needed.

No prior knowledge of the law is assumed for the course.

Subject Objectives for the course participant

The course is designed for current practising teachers and prospective teachers. Its purpose is to provide a background to the law affecting teachers in order to better inform teachers of their legal rights and responsibilities, thus reducing the risk of legal liability for teachers and their employers.

Through active participation in this course participants should be able to:

- understand the meaning of law and its basic functions in Australian society.
- explain the responsibilities of teachers and their employers in key legal issues relevant to the teaching profession.
- identify problems as being of either a legal or non legal nature.
- identify appropriate strategies for addressing school based problems of a legal nature.
- utilise a variety of appropriate dispute resolution strategies.
- undertake research in the area of law and education using appropriate sources of information.

Delivery of course content

The course is designed to be delivered over a period of eight sessions. The material for the course consists of a course outline, a course workbook and course readings.

For each of the sessions, excluding session number one, participants will be provided with extracted reading materials which need to be read prior to attending the following session.

Participants will notice that the workbook contains case study scenarios and focus questions which will be used to facilitate a discussion of the content contained in the formal written materials.

Each of the sessions will largely take the format of a discussion group. Participant contribution is essential.

Outline of sessions

The following is a brief outline of the eight sessions of the course. Participants should note that these outlines are necessarily very broad and they will be adapted and overlap to suit the contextual nature of the course participants.

- Session 1: Introduction session designed to provide participants with an outline of the course content, structure and methodology. This session also begins the process of exploring the law and legal principles.
- Session 2: Continues the exploration of the theme of law by placing the scenarios into their legal/social categories.
- Session 3: Covers the issues of duty of care, occupational health and safety and the New South Wales Government's requirements for the identification and reporting of child abuse and neglect.
- Session 4: Continues the coverage of the issues of occupational health and safety and duty of care.
- Session 5: Continues the issue of occupational health and safety and introduces elements of criminal law.
- Session 6: Focuses upon the notion of dispute resolution.
- Session 7: Covers alternative dispute resolution and the procedure to be followed when an allegation of improper conduct of a sexual nature is made against a member of staff.
- Session 8: Revision/recap session.

Throughout each of the eight sessions course participants will develop an in-depth understanding of the major legal issues affecting teachers through an exploration of case studies. Participants will develop an understanding of the skills necessary to understand legal problems.

Course Materials

Course participants are advised that all necessary materials are included in the course readings. However participants are advised of the following:

- (i) It is advisable to obtain a quality legal dictionary, particularly if participants are interested in further developing their legal knowledge/understanding. EG: The CCH Macquarie Concise Dictionary of Modern Law (Various Editions) (CCH Publishing: North Ryde) or Butterworths Concise Australian Legal Dictionary (2nd Edition) (Butterworths: 1998).
- (ii) Other suggested references include:
 - Bottomley, S and Parker, S.,Law in Context (2nd Edition) (Federation Press: 1997).
 - Chisholm, R and Nettheim, G.,Understanding Law (4th Edition) (Butterworths: 1992).
 - Enright,C.,Studying Law (5th Edition) (Federation Press: 1995).
 - Cook, EtAl.,Laying Down the Law (5th Edition) (Butterworths: 2001).
 - Terry,A and Giugni,D.,Law in Society (Harcourt Brace: 1996).

Participants should not assume any expertise in the law as a result of completing this course. This course is not a substitute for seeking professional legal advice.

Education Law – Participants Workbook

This workbook is designed to be used in conjunction with the course outline and readings.

The course is divided into eight sessions. Each session consists of reading materials and focus questions. The focus questions are quite deliberately broad in nature. They are designed to get you thinking generally about the material you have read. Participants are encouraged to bring along any questions they may have to the following session.

Participants should note that due to the nature of the structure and content of this course there is necessarily some overlap between the materials and questions within each of the eight sessions delivered. That is, the readings and questions for each of the sessions are not unique to that particular session, rather they are designed to continually develop your understanding and skills base within the area of educational law. Participants can therefore expect the material and questions to cut across and overlap with a number of the eight sessions.

Course participants need to ensure that they have read the material for each session prior to their attendance. An understanding of the reading materials will facilitate more active participation in the course, and allow participants to maximise their learning opportunities.

SESSION 1:

The information presented to you in the introductory session to this course will broadly be drawn from the following source:

- 'Australia's Legal System', Available online
<http://law.gov.au/auslegalsys/auslegalsys.htm#anchor351470> Date
accessed October 14, 1999.
- Tronc, K & Sleigh, D., Australian Teachers and the Law (Butterworths: 1989).pp.4-6

The information presented to you is designed to get you thinking about the law and legal principles.

QUESTIONS:

- (1) What is law?
- (2) What role does law play in your everyday lives?
- (3) What role does law play in your role as a teacher?
- (4) Is the law more important in your professional life or personal life?
- (5) Which areas of the law are most relevant to your work?

Information will be given to you about how this course is designed to operate and what is required of you before coming to each of the sessions.

You will be encouraged to actively explore these issues by asking and answering questions within your group.

You are invited to read over the material upon which your introductory session is based and to bring along any questions or comments that you may have to the next session.

It is vital that you read the extracts provided for session two and think about the focus questions before attending the next scheduled session.

SESSION 2:

Session two will focus upon the following materials:

- Ellis,E EtAL.,Society, Law and Justice [Book One] (Second Edition) (Oxford University Press, 1996).pp39-59.
- Goulding,T.(Ed.),The Law Handbook (Fifth Edition) (Redfern legal Centre Publishing: 1995).p220.
- Diekman,C.,Legal Essentials: Understanding Australian Law (Oxford University Press: 1991).pp8-15.
- Ramsay,I.M & Shorten,A.R.,Education & the Law (Butterworths: Sydney, 1996).pp33-34.

You will need to read these materials and have thought about the following questions before coming to session 2.

Scenario A – First Instalment

Jack is an 11 year old child who has a history of violence both within the school and in the general community when presented with confrontation or complex situations.

Scenario B – First Instalment

Calypso is a 16 year old student at a high school. For some time teachers at the school have been concerned about her behaviour. What has been of particular concern is the open way in which Calypso has been discussing sexually explicit matters.

QUESTIONS:

- (1) What are the two systems for making law in Australia?
- (2) Describe the process of enacting statute law.
- (3) Describe the process of the development of common law.
- (4) Which system of law is more important for education in Australia today?
- (5) What characterises a problem as one which is of a legal nature?
- (6) How is the United Nations Convention on the Rights of the Child relevant to Australian education?
- (7) Would you categorise the first instalments of case studies A and B as being legal problems? If so why and if not, why not?

- (8) What areas of the law do you think may be involved within each of these scenarios?
- (9) What potential problems can you foresee within each of these case studies?
- (10) What non legal strategies can you suggest for dealing with these potential problems?

SESSION 3:

Session three will focus upon the following materials:

- Edwards,S Knott,A & Riley.D. (Ed's.),Australian Schools and the Law (LBC Information Services: Sydney, 1997).pp.95-120, pp.223-230.
- New South Wales Department of School Education.,Child Protection Procedures for Recognising and Notifying Child Abuse and Neglect 97/019 (S.018), March 10, 1997.
- Tronc,K & Sleigh,D.,Australian Teachers and the Law (Butterworths: 1989).pp.31-34.

You will need to read these materials and have thought about the following questions before attending session 3.

Scenario A – Second Instalment

On a hot summer day, after a generally vigorous lunchtime playground session, Jack and his fellow classmates enter their demountable classroom which is located well away from the main school buildings. Jack has arrived with a bleeding nose and a few cuts and scrapes. During the lunch break there has been an incident which involved him being pushed out of a tree, but this has not been witnessed by any of the teachers.

Scenario B – Second Instalment

One particular day Calypso is observed by a teacher to be acting out sexually explicit movements. Mike, Calypso's Food Technology teacher, decides that the best time to question Calypso about this would be when she was in his Food Technology class towards the end of the following day. The next day during the final period when Mike has Calypso in his Food Technology class he sees an opportunity to take Calypso to the side of the room and ask her about her behaviour. He asks her about why she was displaying this type of behaviour and if there might be problems at home. Calypso becomes quite upset and Mike decides to go to the adjoining Food Technology preparation room to get some tissues.

QUESTIONS:

- (1) What are some of the supervision issues that have arisen in your career as a teacher?
- (2) What responsibilities do you think teachers should have in supervising students whilst they are at school?
- (3) Do you think it is necessary to separate and focus individually on different areas of supervision within the school (eg. The classroom and the playground)?

- (4) (i) Is it possible to prevent all supervision problems at school?
(ii) What could you do as a teacher to minimise the risk of an incident occurring at school?
- (5) Would you classify the two scenarios in case study A and B as issues that you need to be concerned about?
- (6) What responsibilities does the New South Wales Department of Education and Training make it clear that the school has in relation to its students?
- (7) What do you understand by the term OHS?
- (8) Do you think that schools should be concerned by occupational health and safety?
- (9) What evidence is provided in the literature to support the argument in favour of taking the issue of occupational health and safety very seriously within schools?
- (10) (i) Would you categorise either of the instalments of the case study scenarios as presenting problems of occupational health and safety?
(ii) Do you foresee any problem of occupational health and safety arising in the case studies?

SESSION 4:

Session four will focus upon the following materials:

- O'Brien., 'School Law: General legal principals', Seminar paper presented at the School Law: A melting pot of developing legal issues conference, Legal and Accounting Management Seminars Pty Ltd, Sydney, May 1994.
- Butrej,P & Douglas,G.,Hazards at Work (Second Edition) (OTEN: 1995).p.7, 8, 10, 58, 60, 61.

You will need to read these materials and have thought about the following questions before coming to this session.

Scenario A – Third Instalment

The teacher, Mr Mavin, arrives to find the class embroiled in a boisterous argument. After settling down the class he notices Jack's injuries. Mr Mavin sets a task for the class to complete, then asks Jack to step outside the classroom so that he can try to establish how Jack's injuries have occurred. From their position, Mr Mavin and Jack are unable to be seen by the rest of the class, although Mr Mavin can overhear the classes activities. Mr Mavin begins to question Jack about his injuries. Jack is clearly agitated about the matter, but Mr Mavin is very keen to establish what has happened and questions Jack in a manner which continues to upset him. Jack begins to raise his voice as Mr Mavin continues to question him. Jack lashes out at Mr Mavin kicking him in the groin.

Scenario B – Third Instalment

When Mike returns to the room he finds that Calypso has taken her cigarette lighter and set the rooms curtains alight. Mike immediately moves towards the rooms fire extinguisher and directs the extinguisher towards the fire but discovers that it does not operate. Mike realises that he must evacuate the class to a position of safety. All students except Calypso follow Mike's instructions and evacuate the room. Calypso remains and Mike is forced to physically remove her and in doing so he accidentally touches her on the breast. Mike suffers minor burns whilst trying to remove Calypso.

QUESTIONS:

- (1)
 - (i) What do you understand by the term 'duty of care'?
 - (ii) What are some of the legal interpretations of this term?
- (2) Is there ever a 'special' duty of care which a teacher might owe to a student simply because of the nature of their relationship with them as a teacher?

- (3) (i) What elements need to be established to prove a duty of care?
(ii) What can a teacher do to minimise the risk of these elements occurring?
- (4) Is there evidence to support the assertion that the school owes a duty of care to protect students all of the time (including when they are travelling to and from school)?
- (5) What issues of duty of care arise for the school, Mr Mavin and Mike in case studies A and B?
- (6) (i) Do you approve of the course of action taken by Mr Mavin in case study A? Why or why not?
(ii) What could he have done differently?
- (7) What responsibilities does the employer have in regards to occupational health and safety?
- (8) What does a school need to do to ensure that it is fulfilling its occupational health and safety responsibilities?
- (9) What responsibilities does the employee have towards occupational health and safety?
- (10) What does an employee need to do to ensure that they are fulfilling their occupational health and safety responsibilities?
- (11) What issues of occupational health and safety arise for the school and the teachers in case studies A and B?
- (12) What could the school or the teachers concerned have done to minimise the risk of these events occurring?

SESSION 5:

Session five will focus upon the following materials:

- Goulding,T.(Ed.),The Law Handbook (Fifth Edition) (Redfern Legal Centre Publishing: 1995).pp.229, 232-234, 870, 873.
- Ellis,E EtAL.,Society, Law and Justice [Book One] (Second Edition) (Oxford University Press, 1996).pp.105-109, 111-112.

You will need to read these materials and have thought about the following questions before coming to session 5.

Scenario A – Fourth Instalment

While Mr Mavin has been outside dealing with Jack his class has been left unattended. Due to the isolated nature of the classroom, it contains expensive electrical equipment so Mr Mavin does not need to carry heavy items around the school. Pam, a student in the class, opens the storage cupboard with the keys Mr Mavin has absent mindedly left on his desk during the course of the lesson and steals a CD player. Pam places the item into her backpack.

Scenario B – Fourth Instalment

Sensing the escalating danger, Mike rings the schools fire alarm and the entire school proceeds to evacuate according to the schools evacuation plans. Unfortunately many of the staff are either new to the school or were absent on the one day earlier in the year when the school practiced the evacuation drill and are uncertain of exactly what is required. The fire reaches a critical point and several explosions are heard throughout the school.

QUESTIONS:

- (1) What do you understand by the term ‘crime’?
- (2)
 - (i) Is every person capable of committing a crime?
 - (ii) At what age do children become criminally responsible for their actions?
- (3) What is the source of the criminal law in New South Wales?
- (4) What range of defences are generally available to someone accused of committing a crime?
- (5)
 - (i) Will every person who commits a crime be subject to police questioning and court action?
 - (ii) What range of options are available to deal with someone accused of a crime?

- (6) What potential crimes can you identify in either of the case study scenarios?
- (7)
 - (i) What difficulties might arise in prosecuting any of the people involved in these scenarios?
 - (ii) Would police prosecution necessarily be the best course of action here?
- (8)
 - (i) Are there any new occupational health and safety issues which arise in the new updates to either of these scenarios?
 - (ii) If so, what are they and what steps might the school or the teachers involved have taken to minimise their occurrence?

SESSION 6:

Session six will focus upon the following material:

- Ramsay, I.M & Shorten, A.R., Education & the Law (Butterworths: Sydney, 1996). pp.173-197.

You will need to read these materials and have thought about the following questions before coming to session 6.

Scenario A – Fifth Instalment

Another teacher overhears Mr Mavin screaming in pain and rushes to his assistance. The Principal is immediately informed of the situation and takes charge. The Principal, Ms Byron, wishes to handle the matter internally.

Scenario B – Fifth Instalment

Many students, having never experienced a major fire, panic and are unable to be controlled by their teachers. Adding to the confusion the bell signalling the end of the school day sounds. Ian, a young student of 12 years of age, is extremely distraught and upset, he decides to flee the school believing that he will be safer at home. Ian jumps over the school's fence and runs towards his home. Whilst crossing the road outside the school he is hit by a school bus arriving to collect the students. The fire brigade arrives and extinguishes the fire.

QUESTIONS:

- (1) (i) Summarise your understanding of occupational health and safety and duty of care with particular focus on who will be responsible and in what circumstances.
(ii) What new information or clarification about either of these issues has been presented in the readings for this topic?
- (2) (i) What elements of duty of care or occupational health and safety arise in either of the two case study scenarios?
(ii) What factors influence your decision to identify these elements?
- (3) (i) Based on your reading so far in this course, do you think that these elements will be established?
(ii) What defences might be offered in each of these scenarios?
- (4) What course(s) of action might the individuals or schools concerned have taken to minimise the risk of these incidents occurring?
- (5) What different ways might exist of solving the problems which have developed in each of the scenarios?

SESSION 7:

Session seven will focus upon the following material:

- Goulding,T.(Ed.),The Law Handbook (Fifth Edition) (Redfern Legal Centre Publishing: 1995).pp.20-30.
- Griffiths EtAl.,Introducing the Law (Fourth Edition) (CCH Publishing, 1993).pp.227-236, 240-242.
- New South Wales Department of School Education.,Child Protection Procedures to be followed in response to allegations of improper conduct of a sexual nature by a staff member against a student 97/018 (S.017), March 10, 1997.

You will need to read these materials and have thought about the following questions before attending session 7.

Scenario A – Sixth Instalment

The following day Jack is back in class and Mr Mavin becomes aware that the school has taken no action and that the Police have not been contacted. Mr Mavin is concerned that an incident of the same nature could easily re-occur and is unsure of what he can or should do.

Scenario B – Sixth Instalment

The following day Mike arrives at school and is asked into the Principals office. Whilst in the office he is informed that Calypso and her parents have signed a written complaint about his behaviour on the previous day alleging sexual assault. During the discussion the conversation is interrupted by a phone call from the hospital where Ian had been admitted, they inform the Principal that Ian has died of massive head injuries. Mike feels that the Principal is unsupportive of him and is unsure who to turn to next.

QUESTIONS:

- (1) What alternative methods of solving disputes are identified in the literature?
- (2) What is ADR and when can it be used?
- (3) Which of the different forms of dispute resolution identified do you think is the most popular and the most successful?
- (4) What are the advantages of each of these different forms of dispute resolution?

- (5) Given the facts of the last instalments to the case study scenarios, which of these forms of dispute resolution do you think will be the most appropriate?
- (6) What course of action do you think that Mr Mavin and Mike should take?
- (7) According to the NSW Government, what constitutes improper conduct of a sexual nature by a teacher?
- (8) Outline the course of action that the NSW Department of Education and Training will follow when an allegation is made against a teacher?
- (9) What advice would you offer Mike in relation to the allegation that has been made against him?
- (10) How might the school or the individual teachers concerned in each of these case study scenarios have reduced the risk of instances like those which have been presented from occurring?

SESSION 8:

No specific extracts have been provided for use during this session.

Rather, the session will provide an opportunity to discuss many of the concepts visited during the prior seven sessions.

Participants are advised to review any of the sessions or literature presented to them which may have provided them with difficulties and to bring these concerns/queries to this session for a general discussion.

Education Law:
Facilitator's Notes

Legal Information for Teachers Course – Facilitators Notes

SESSION 1:

STEP 1 - Session one is designed to provide the participants with an outline of the course content, structure and methodology. It is also designed to get the participants to start thinking about the law and legal principals.

Participants should be informed about the rationale for the course as detailed in the course outline.

Participants need to leave the session understanding exactly what is required of them throughout the course. They should be informed that each week they will be required to read the extracts provided for the appropriate session and think about the focus questions provided. They should also be informed of the format that most of the sessions will take. That is, that sessions will largely be discussion based giving all participants a chance to have input and ask questions.

Participants need to be informed of the nature and use of the two case scenarios which they will be following for sessions two to seven. It should be explained to them that these scenarios are being used as a way of bringing out the practical information contained in the written extracts. They are a way of seeing how this information can be applied to practical situations.

After this practical information has been explained to participants they can be issued with the required materials. They should be given a copy of the course outline and the course workbook, which contains their readings, case scenarios and focus questions.

Once this is complete participants can be taken through the formal part of this session. That is, the topic of getting them thinking about the law.

STEP 2 – The focus of this part of the session is on getting the students both interested in and thinking about the idea of law. First in general terms and then more specifically focussed towards education.

There are a number of ways that this can be done and as a background the following document can be useful:

- ‘Australia’s Legal System’, Available online
<http://law.gov.au/auslegalsys/auslegalsys.htm#anchor351470> *Date
accessed October 14, 1999 (provided in their extracted materials).

Questions to generate discussion could include:

- What is law?
- What role does law play in your everyday lives?
- What role does law play in your role as a teacher?
- Is the law more important in your professional life of personal life?

- Which areas of the law are most relevant to your work?

Whilst these questions can be used to generate some discussion it will prove necessary to provide some basic facts about the legal system, to be kept as straight forward as possible. These facts can be taken from the above source. There is no need to go into too much detail as these issues will also form some of the focus for session two. However introductory concepts such as:

- A definition of the law
- What things make up the law in Australia
- The Parliamentary system
- The court system

could be dealt with.

STEP 3- The session could end with the introductory teacher and the law quiz provided by:

- Tronc,K & Sleigh,D.,Australian Teachers and the Law (Butterworths: 1989).pp.4-6 (provided in their extracted materials).

This would leave the participants with some idea of many of the issues, which they may or may not have thought about during earlier discussion in the session, which confront teachers.

Participants should be reminded of the requirements to be met for the following session.

SESSION 2:

The focus of this session is broadly on cementing the introductory notions of what the law is, outlined in session one, by putting the scenarios into their legal/social categories.

The information presented to participants is based on the following material:

- Ellis,E EtAL.,Society, Law and Justice [Book One] (Second Edition) (Oxford University Press, 1996).pp39-59.
- Goulding,T.(Ed.),The Law Handbook (Fifth Edition) (Redfern Legal Centre Publishing: 1995).p220.
- Diekman,C.,Legal Essentials: Understanding Australian Law (Oxford University Press: 1991).pp8-15.
- Ramsay,I.M & Shorten,A.R.,Education & the Law (Butterworths: Sydney, 1996).pp33-34.

They have been given focus questions which will help to generate discussion when the session is held.

Participants will also have been given the first instalment of Case Studies A and B.

The session should end with a reminder to students of what is required before their next attendance at the following session.

SESSION 3:

The focus of this session is broadly on the issues of duty of care, occupational health and safety and on the New South Wales Governments requirements for the identification of child abuse and neglect.

The information presented to participants is based on the following material:

- Edwards,J Knott,A & Riley.D. (Ed's.),Australian Schools and the Law (LBC Information Services: Sydney, 1997).pp.95-120, pp.223-230.
- New South Wales Department of School Education.,Child Protection Procedures for Recognising and Notifying Child Abuse and Neglect 97/019 (S.018), March 10, 1997.
- Tronc,K & Sleight,D.,Australian Teachers and the Law (Butterworths: 1989).pp.31-34.

They have been given focus questions that will help to generate discussion when the session is held.

Participants will also have been given the second instalment of Case Studies A and B.

The session should end with a reminder to students of what is required before their next attendance at the following session.

SESSION 4:

This session is designed to continue in the area of OHS and duty of care which was first covered in session 3.

The information presented to participants is based on the following material:

- O'Brien., 'School Law: General legal principals',Seminar paper presented at the School Law: A melting pot of developing legal issues conference, Legal and Accounting Management Seminars Pty Ltd, Sydney, May 1994.
- Butrej,P & Douglas,G.,Hazards at Work (Second Edition) (OTEN: 1995).p.7, 8, 10, 58, 60, 61.

They have been given focus questions which will help to generate discussion when the session is held.

Participants will also have been given the third instalment of Case Studies A and B.

The session should end with a reminder to students of what is required before their next attendance at the following session.

SESSION 5:

Session five introduces elements of the criminal law as well as continuing the area of OHS.

The information presented to participants is broadly based on the following material:

- Goulding,T.(Ed.),The Law Handbook (Fifth Edition) (Redfern Legal Centre Publishing: 1995).pp.229, 232-234, 870, 873.
- Ellis,E EtAL.,Society, Law and Justice [Book One] (Second Edition) (Oxford University Press, 1996).pp.105-109, 111-112.

They have been given focus questions which will help to generate discussion when the session is held.

Participants will also have been given the fourth instalment of Case Studies A and B.

The session should end with a reminder to students of what is required before their next attendance at the following session.

SESSION 6:

Broadly, this session introduces the notion of dispute resolution and continues with the concepts of OHS and duty of care.

The information presented to participants is based on the following material:

- Ramsay,I.M & Shorten,A.R.,Education & the Law (Butterworths: Sydney, 1996).pp.173-197.

They have been given focus questions which will help to generate discussion when the session is held.

Participants will also have been given the fifth instalment of Case Studies A and B.

The session should end with a reminder to students of what is required before their next attendance at the following session.

SESSION 7:

In session seven participants explore in more depth the concept of alternative forms of dispute resolution, as well as the formal procedure to be followed when an allegation of improper conduct of a sexual nature is made against a member of staff.

The information presented to participants is based on the following material:

- Goulding,T.(Ed.),The Law Handbook (Fifth Edition) (Redfern Legal Centre Publishing: 1995).pp.20-30.
- Griffiths EtAl.,Introducing the Law (Fourth Edition) (CCH Publishing, 1993).pp.227-236, 240-242.
- New South Wales Department of School Education.,Child Protection Procedures to be followed in response to allegations of improper conduct of a sexual nature by a staff member against a student 97/018 (S.017), March 10, 1997.

They have been given focus questions which will help to generate discussion when the session is held.

Participants will also have been given the sixth and final instalment of Case Studies A and B.

Participants should be reminded that session eight contains no specific reading materials. However they should be directed to re-read any of the prior extracts which have caused them problems and to bring any questions that they may have to session eight which will provide an opportunity to both review the course and allow an opportunity for a discussion of their concerns.

SESSION 8:

Participants have not been issued with any specific reading materials or focus questions for this session. Instead they have been instructed that this session will provide an opportunity to review the entire course. They have also been instructed that they should re-read any of the extracts/focus questions which have caused them problems during the prior seven sessions and to bring any queries/comments with them to this session.

The session should start with a recap of all of the major issues which the prior sessions have focussed upon. These include, the concept of what constitutes law, duty of care, occupational health and safety, supervision of students, liability for students injury, theft of school property, sexual assault and harassment procedures etc.

Participants should be reminded that the focus of the course has always been to make participants aware of the law but not to suggest that a legal remedy is the only option available or indeed the preferred remedy. To this end, emphasis

should be put on the alternative forms of dispute resolution hinted at in session six, but more fully explored in session seven.

All participants should be thanked for their active participation in the course and be reminded that the course has in no way been designed to be seen as an alternative to seeking professional legal advice when the need arises.

Education Law:
Extracted Materials