



University of  
**Southern  
Queensland**

# **LEGAL PRINCIPLES FOR EDUCATORS: AN INVESTIGATION INTO THE IMPLICATIONS OF EDUCATION LAW FOR EDUCATORS IN INDEPENDENT SCHOOLS IN QUEENSLAND**

A Thesis submitted by

Mark Andrew Butlin

(B Ed; Grad Dip Th (Ed); Cert Disp Res; M Ed)

For the award of

Doctor of Philosophy

2024

## ABSTRACT

There has been a widely held view for some time that school teachers and principals need to possess a level of knowledge and understanding of the legal regulation of schools and that of its workers. This study explores the level of understanding of legal matters pertaining to the school environment that independent school teachers hold in Queensland. This level of 'legal literacy' is investigated in a qualitative research study with 'Creative Works' that aims to explain the various areas of education law that are known and those that are less understood by such educators. Additionally, a framework that explores the various dimensions of the construct legal literacy is conceptualised. Data was collected using an online survey instrument that utilised, amongst a variety of question types, scenario questions to determine understanding. These scenario questions were largely based on actual court decisions or legislative provisions from state and Commonwealth statute law that regulate school activities. Data was then analysed using content analysis methodology, using a coding scale that was created specifically for the purposes of coding the participants' scenario responses. The creative work that emanated from the study was the creation of a textbook on education law for Australian teachers, pre-service teachers and school leaders: *Law and ethics for Australian teachers* (published by Cambridge University Press) of which the researcher was the lead author. Overall, it was discovered that the level of legal literacy held by Queensland independent school teachers was low. The data collected as part of this study informed the writing of the textbook including pertinent decisions regarding content inclusions. The development of the textbook is aimed to help increase this level of legal literacy among educators in Australia.

## CERTIFICATION OF THESIS

I, Mark Butlin declare that the PhD Thesis with a creative work component entitled *Legal Principles for Educators: An Investigation into the Implications of Education Law for Educators in Independent Schools in Queensland* consists of the specified word length of 70,000 words including quotes and exclusive of tables, figures, appendices, bibliography, references, and footnotes. My creative component consists of 50% of the overall research. The work is original and has not previously been submitted for any other award, except where acknowledged. I have acknowledged any key collaborators and their level and type of contribution, where deemed appropriate in the statement of contribution.

Date: 7 August 2024

Endorsed by:

Professor Karen Trimmer  
Principal Supervisor

Professor Noeleen McNamara  
Associate Supervisor

Student and supervisors' signatures of endorsement are held at the University.

## STATEMENT OF CONTRIBUTION

I, Mark Butlin have made the majority contribution to the conduct of this research project. I have written all of the thesis, except where I have acknowledged other authors and included these in the reference list.

I have written the majority and was the lead author of the textbook which forms the creative work of this research project. I also had an editorial role over the entire manuscript.

The two other authors of the textbook were Noeleen McNamara and Kerrie Anglin. Please see the reference to the published work below.

Butlin, M., McNamara, N., & Anglin, K. (2021). *Law and ethics for Australian teachers*. Cambridge University Press.

## **ACKNOWLEDGEMENTS**

I would like to acknowledge and thank a number of people who have helped me undertake and complete this project.

To my family and friends, thanks for all of your help, support and encouragement along the mammoth journey. Your love and patience is acknowledged, and your confidence shown in me helped me get to the finish line. Whilst Dad is not alive to see me I know he would be very proud.

I would like to acknowledge the wonderful guidance and advice of my principal supervisor, Professor Karen Trimmer. Your wisdom and constant availability for advice especially in recent years has been very much appreciated. Before leaving the university, Professor Patrick Danaher who was my initial associate supervisor and sagacious support, I thank you earnestly as you helped me commence this journey and were always there in the first few years with advice, gentle support and constructive consideration. In more recent years, Professor Noeleen McNamara became my associate supervisor whose kind words of support and assistance in dual coding my collected data has been greatly appreciated.

This research has been supported by the Australian Government Research Training Program Scholarship. I am grateful to my employer, University of Southern Queensland, for providing one trimester of teaching relief to assist with seeing this research through to its completion.

I would also like to thank all of my fourth-floor colleagues who have provided support, encouragement, assistance, insightful ideas, constructive criticism along the way. Your help and care have truly spurred me on when times were difficult.

I want to acknowledge my co-authors of the textbook, Noeleen McNamara and Kerrie Anglin. Thanks for your constant belief in the project and for meeting all of those jolly chapter deadlines!

Finally, I thank and acknowledge my immediate family who have provided care and support. In particular, I am grateful to the love of my children, Jacinta and Rochelle and especially to my wife, Janine for her love and unassailable belief in my abilities. I dedicate this thesis to you.

# TABLE OF CONTENTS

|                                                                         |     |
|-------------------------------------------------------------------------|-----|
| ABSTRACT .....                                                          | i   |
| CERTIFICATION OF THESIS .....                                           | ii  |
| STATEMENT OF CONTRIBUTION .....                                         | iii |
| ACKNOWLEDGEMENTS .....                                                  | iv  |
| LIST OF TABLES .....                                                    | ix  |
| LIST OF FIGURES .....                                                   | xi  |
| CHAPTER 1: INTRODUCTION.....                                            | 1   |
| 1.1. Chapter outline.....                                               | 1   |
| 1.2. Identification of the research problem .....                       | 1   |
| 1.3. Personal rationale for undertaking the study.....                  | 4   |
| 1.4. Statement of the research aims and objectives .....                | 6   |
| 1.5. Scope of the research .....                                        | 6   |
| 1.6. Statement of research questions .....                              | 7   |
| 1.7. Research approach.....                                             | 8   |
| 1.8. Definitions of key terms .....                                     | 8   |
| 1.9. Thesis organisation .....                                          | 10  |
| 1.10. Chapter summary.....                                              | 11  |
| CHAPTER 2: LITERATURE REVIEW.....                                       | 13  |
| 2.1. Introduction .....                                                 | 13  |
| 2.2. Education law principles.....                                      | 14  |
| 2.3. The need for teachers to have some legal literacy.....             | 15  |
| 2.4. Progression of education law issues for schools and teachers ..... | 20  |
| 2.5. Teachers' understanding of education law .....                     | 27  |
| 2.6. Education practitioners' fear of legal consequences .....          | 30  |
| 2.7. The suing mentality .....                                          | 32  |
| 2.8. Chapter summary.....                                               | 34  |
| CHAPTER 3: CONCEPTUAL FRAMEWORK .....                                   | 36  |
| 3.1. Introduction .....                                                 | 36  |
| 3.2. What is legal literacy conceptually? .....                         | 36  |
| 3.2.1. Law (or legal) .....                                             | 36  |
| 3.2.2. Literacy .....                                                   | 40  |
| 3.3. Legal literacy .....                                               | 44  |

|                                 |                                                            |    |
|---------------------------------|------------------------------------------------------------|----|
| 3.3.1.                          | Statute law .....                                          | 46 |
| 3.3.2.                          | Common law .....                                           | 54 |
| 3.3.3.                          | Ethical standards .....                                    | 58 |
| 3.3.4.                          | Professional obligations .....                             | 62 |
| 3.4.                            | Chapter summary .....                                      | 64 |
| CHAPTER 4: RESEARCH DESIGN..... |                                                            | 66 |
| 4.1.                            | Introduction .....                                         | 66 |
| 4.2.                            | The research paradigm .....                                | 67 |
| 4.2.1.                          | Introduction .....                                         | 67 |
| 4.2.2.                          | Epistemological assumptions .....                          | 69 |
| 4.2.3.                          | Ontological assumptions .....                              | 71 |
| 4.2.4.                          | Axiological assumptions .....                              | 72 |
| 4.3.                            | The qualitative research approach .....                    | 74 |
| 4.3.1.                          | Introduction .....                                         | 74 |
| 4.3.2.                          | Inductive research .....                                   | 75 |
| 4.3.3.                          | Characteristics of qualitative research .....              | 75 |
| 4.3.4.                          | Steps taken in my qualitative research design .....        | 76 |
| 4.4.                            | Data collection .....                                      | 79 |
| 4.4.1.                          | Introduction .....                                         | 79 |
| 4.4.2.                          | Development of the survey instrument .....                 | 79 |
| 4.4.3.                          | Purpose of scenarios used in survey .....                  | 82 |
| 4.4.4.                          | Scales used in the survey instrument .....                 | 84 |
| 4.5.                            | Participant selection .....                                | 86 |
| 4.5.1.                          | Introduction .....                                         | 86 |
| 4.5.2.                          | Purposive sampling .....                                   | 86 |
| 4.5.3.                          | Challenges in developing a sufficient sample size .....    | 88 |
| 4.6.                            | Data analysis .....                                        | 89 |
| 4.6.1.                          | Introduction .....                                         | 89 |
| 4.6.2.                          | Content analysis as a method .....                         | 90 |
| 4.6.2.1.                        | Description versus interpretation .....                    | 91 |
| 4.6.3.                          | Content analysis methods used in this research study ..... | 92 |
| 4.6.3.1.                        | Basic content analysis .....                               | 93 |
| 4.6.4.                          | Coding .....                                               | 97 |
| 4.6.4.1.                        | Coding used in this study .....                            | 97 |

|                                                                     |                                                                     |     |
|---------------------------------------------------------------------|---------------------------------------------------------------------|-----|
| 4.6.5.                                                              | Credibility of research findings .....                              | 99  |
| 4.6.6.                                                              | Conclusion .....                                                    | 100 |
| 4.7.                                                                | Ethical and political considerations .....                          | 101 |
| 4.8.                                                                | Chapter summary .....                                               | 105 |
| CHAPTER 5: RESULTS .....                                            |                                                                     | 106 |
| 5.1.                                                                | Introduction .....                                                  | 106 |
| 5.2.                                                                | Demographic data responses .....                                    | 106 |
| 5.3.                                                                | Training and participants' affective thoughts on education law .... | 111 |
| 5.4.                                                                | Education law scenario responses.....                               | 122 |
| 5.4.1.                                                              | Duty of care scenarios .....                                        | 123 |
| 5.4.2.                                                              | Student protection and mandatory reporting scenarios.....           | 140 |
| 5.4.3.                                                              | Family law scenario .....                                           | 146 |
| 5.4.4.                                                              | Criminal law scenario .....                                         | 149 |
| 5.4.5.                                                              | Discrimination law scenario.....                                    | 151 |
| 5.4.6.                                                              | Professional conduct scenario .....                                 | 154 |
| 5.4.7.                                                              | Privacy law scenario .....                                          | 157 |
| 5.4.8.                                                              | Consumer law scenario.....                                          | 160 |
| 5.5.                                                                | Overall observations about the data.....                            | 162 |
| 5.6.                                                                | Chapter summary.....                                                | 164 |
| CHAPTER 6: DISCUSSION OF RESULTS AND CREATION OF THE TEXTBOOK ..... |                                                                     | 165 |
| 6.1.                                                                | Introduction .....                                                  | 165 |
| 6.2.                                                                | Content of the textbook .....                                       | 165 |
| 6.2.1.                                                              | Duty of care.....                                                   | 166 |
| 6.2.2.                                                              | Student protection and mandatory reporting .....                    | 172 |
| 6.2.3.                                                              | Family law .....                                                    | 175 |
| 6.2.4.                                                              | Criminal law .....                                                  | 177 |
| 6.2.5.                                                              | Discrimination law .....                                            | 180 |
| 6.2.6.                                                              | Professional conduct.....                                           | 183 |
| 6.2.7.                                                              | Privacy law.....                                                    | 186 |
| 6.2.8.                                                              | Consumer protection law .....                                       | 189 |
| 6.2.9.                                                              | Discipline, suspensions and exclusion decisions .....               | 191 |
| 6.2.10.                                                             | Professional regulation and teacher registration .....              | 194 |
| 6.3.                                                                | Reasons for a textbook .....                                        | 195 |

|                                                                                                   |                                                       |     |
|---------------------------------------------------------------------------------------------------|-------------------------------------------------------|-----|
| 6.4.                                                                                              | Further decisions in relation to the textbook.....    | 197 |
| 6.5.                                                                                              | Further features of the textbook .....                | 198 |
| 6.6.                                                                                              | Chapter summary.....                                  | 200 |
| CHAPTER 7: CONCLUSION .....                                                                       |                                                       | 201 |
| 7.1.                                                                                              | Introduction .....                                    | 201 |
| 7.2.                                                                                              | Overview of the research project .....                | 201 |
| 7.3.                                                                                              | Answers to the three research questions .....         | 202 |
| 7.3.1.                                                                                            | Research question 1 .....                             | 203 |
| 7.3.2.                                                                                            | Research question 2 .....                             | 204 |
| 7.3.3.                                                                                            | Research question 3 .....                             | 208 |
| 7.4.                                                                                              | The study's multiple contributions to knowledge ..... | 209 |
| 7.4.1.                                                                                            | Theoretical knowledge .....                           | 209 |
| 7.4.2.                                                                                            | Methodological knowledge.....                         | 210 |
| 7.4.3.                                                                                            | Policy knowledge .....                                | 211 |
| 7.4.4.                                                                                            | Practice knowledge.....                               | 211 |
| 7.5.                                                                                              | Limitations of the study .....                        | 212 |
| 7.6.                                                                                              | Recommendations for further action .....              | 213 |
| 7.6.1.                                                                                            | Recommendations for practice .....                    | 213 |
| 7.6.2.                                                                                            | Recommendations for future research .....             | 215 |
| 7.7.                                                                                              | Chapter summary.....                                  | 216 |
| REFERENCES.....                                                                                   |                                                       | 217 |
| APPENDIX A: Survey Questions .....                                                                |                                                       | 252 |
| APPENDIX B: Rating Scale/Coding Frame for analysing Survey Scenario<br>Responses .....            |                                                       | 260 |
| APPENDIX C: Participant Information for USQ Research Project Survey .....                         |                                                       | 261 |
| APPENDIX D: Consent Form.....                                                                     |                                                       | 265 |
| APPENDIX E: Letter to Principals asking for their Teachers' Participation .....                   |                                                       | 267 |
| APPENDIX F: Sample Email to Staff Requesting their Participation.....                             |                                                       | 269 |
| APPENDIX G: University of Southern Queensland Research Ethics Application<br>Approval Notice..... |                                                       | 270 |
| APPENDIX H: List of some Preeminent Libraries where the Textbook is Available.....                |                                                       | 272 |

## LIST OF TABLES

|                                                                                                                    |     |
|--------------------------------------------------------------------------------------------------------------------|-----|
| Table 4.1 <i>Type of Legal Issue addressed in Survey Scenario Questions</i> .....                                  | 83  |
| Table 4.2 <i>Measurement Methods used in the second section of the Survey</i> .....                                | 85  |
| Table 5.1 <i>Age of Participants (n=61)</i> .....                                                                  | 106 |
| Table 5.2 <i>Gender of Participants (n=61)</i> .....                                                               | 107 |
| Table 5.3 <i>Participants' Experience in Schools (n=61)</i> .....                                                  | 109 |
| Table 5.4 <i>Position Held at School (n=61)</i> .....                                                              | 110 |
| Table 5.5 <i>Legal Training Received (n=61)</i> .....                                                              | 112 |
| Table 5.6 <i>Types of Training Received (n=25)</i> .....                                                           | 113 |
| Table 5.7 <i>Participants' Self-identified Understanding of Legal Issues (n=61)</i> .....                          | 113 |
| Table 5.8 <i>Confidence in Dealing with Legal Issues in a School (n=61)</i> .....                                  | 116 |
| Table 5.9 <i>Factors Contributing to Participants' Confidence Level in Dealing with Legal Matters (n=61)</i> ..... | 118 |
| Table 5.10 <i>Desire for Training in School Law Matters (in order of importance) (n=61)</i> .....                  | 121 |
| Table 5.11 <i>Scenario One Results (n=45)</i> .....                                                                | 124 |
| Table 5.12 <i>Scenario Ten Results (n=45)</i> .....                                                                | 126 |
| Table 5.13 <i>Scenario Eleven Results (n=45)</i> .....                                                             | 129 |
| Table 5.14 <i>Scenario Twelve Results (n=45)</i> .....                                                             | 132 |
| Table 5.15 <i>Scenario Thirteen Results (n=45)</i> .....                                                           | 135 |
| Table 5.16 <i>Scenario Fourteen Results (n=45)</i> .....                                                           | 138 |
| Table 5.17 <i>Scenario Five Results (n=45)</i> .....                                                               | 141 |
| Table 5.18 <i>Scenario Nine Results (n=45)</i> .....                                                               | 144 |
| Table 5.19 <i>Scenario Two Results (n=45)</i> .....                                                                | 146 |
| Table 5.20 <i>Scenario Three Results (n=45)</i> .....                                                              | 149 |
| Table 5.21 <i>Scenario Four Results (n=45)</i> .....                                                               | 152 |
| Table 5.22 <i>Scenario Six Results (n=45)</i> .....                                                                | 155 |

|                                                                                    |     |
|------------------------------------------------------------------------------------|-----|
| Table 5.23 <i>Scenario Seven Results (n=45)</i> .....                              | 158 |
| Table 5.24 <i>Scenario Eight Results (n=45)</i> .....                              | 161 |
| Table 5.25 <i>Total Number of Coded Responses from all Scenarios (n=630)</i> ..... | 163 |

## LIST OF FIGURES

|                                                                                                              |     |
|--------------------------------------------------------------------------------------------------------------|-----|
| Figure 3.1 <i>Conceptual Framework</i> .....                                                                 | 45  |
| Figure 5.1 <i>Age of Participants (n=61)</i> .....                                                           | 107 |
| Figure 5.2 <i>Gender of Participants (n=61)</i> .....                                                        | 108 |
| Figure 5.3 <i>Participants' Experience in Schools (n=61)</i> .....                                           | 109 |
| Figure 5.4 <i>Position Held at School (n=61)</i> .....                                                       | 111 |
| Figure 5.5 <i>Legal Training Received (n=61)</i> .....                                                       | 112 |
| Figure 5.6 <i>Participants' Self-identified Understanding of Legal Issues (n=61)</i> .....                   | 114 |
| Figure 5.7 <i>Factors Contributing to Participants' Confidence Level in Dealing with Legal Matters</i> ..... | 119 |
| Figure 5.8 <i>Scenario One Results (n=45)</i> .....                                                          | 124 |
| Figure 5.9 <i>Scenario Ten Results (n=45)</i> .....                                                          | 127 |
| Figure 5.10 <i>Scenario Eleven Results (n=45)</i> .....                                                      | 129 |
| Figure 5.11 <i>Scenario Twelve Results (n=45)</i> .....                                                      | 132 |
| Figure 5.12 <i>Scenario Thirteen Results (n=45)</i> .....                                                    | 135 |
| Figure 5.13 <i>Scenario Fourteen Results (n=45)</i> .....                                                    | 138 |
| Figure 5.14 <i>Scenario Five Results (n=45)</i> .....                                                        | 141 |
| Figure 5.15 <i>Scenario Nine Results (n=45)</i> .....                                                        | 144 |
| Figure 5.16 <i>Scenario Two Results (n=45)</i> .....                                                         | 147 |
| Figure 5.17 <i>Scenario Three Results (n=45)</i> .....                                                       | 150 |
| Figure 5.18 <i>Scenario Four Results (n=45)</i> .....                                                        | 152 |
| Figure 5.19 <i>Scenario Six Results (n=45)</i> .....                                                         | 156 |
| Figure 5.20 <i>Scenario Seven Results (n=45)</i> .....                                                       | 159 |
| Figure 5.21 <i>Scenario Eight Results (n=45)</i> .....                                                       | 161 |
| Figure 5.22 <i>Total Number of Coded Responses from all Scenarios (n=630)</i> .....                          | 163 |
| Figure 6.1 <i>Duty of Care Conceptual Model of Research Results</i> .....                                    | 172 |
| Figure 6.2 <i>Student Protection and Mandatory Reporting Conceptual Model of Research Results</i> .....      | 175 |

|                                                                                                          |     |
|----------------------------------------------------------------------------------------------------------|-----|
| Figure 6.3 <i>Family Law Conceptual Model of Research Results.</i>                                       | 177 |
| Figure 6.4 <i>Criminal Law Conceptual Model of Research Results</i>                                      | 180 |
| Figure 6.5 <i>Discrimination Law Conceptual Model of Research Results</i>                                | 183 |
| Figure 6.6 <i>Professional Conduct Conceptual Model of Research Results</i>                              | 186 |
| Figure 6.7 <i>Privacy Law Conceptual Model of Research Results</i>                                       | 189 |
| Figure 6.8 <i>Consumer Protection Law Conceptual Model of Research Results</i>                           | 191 |
| Figure 6.9 <i>Suspensions and Exclusion Law Conceptual Model of Research Results</i>                     | 193 |
| Figure 6.10 <i>Professional Regulation and Teacher Registration Conceptual Model of Research Results</i> | 195 |

# **CHAPTER 1: INTRODUCTION**

## **1.1. Chapter outline**

Chapter 1 provides an overview of the thesis. It begins by presenting a background to the study by identifying the research problem. This is followed by an introduction to my professional background in education law that establishes my personal interest in commencing this study, leading to an inquiry into the level of legal literacy held by Queensland independent school teachers. This includes the creation of a new academic textbook on education law which forms the creative element of this 'thesis with creative works'. Following this a brief exploration into the aims and scope of the research as well as the research approach is given. The chapter concludes with an outline as to how the thesis is organised.

## **1.2. Identification of the research problem**

"The day-to-day operations of schools are becoming progressively influenced by legal decisions which have an overall effect on education and the legal rights afforded to all school stakeholders" (Davis & Williams, 1992; Reglin, 1992, as cited in Petty, 2016, p. 26). Davies (2009) observed that "... educators are developing an increased sensitivity to the legal context that shapes their professional work" (p. 1). He also noted "Schools ... are burdened with the ever-more difficult challenge of navigating themselves through the litigious labyrinth that is modern schooling" (Davies, 2009, p. 1). Indubitably, schools are becoming more litigious mini societies while simultaneously educators are having to increasingly deal with the legalisation of schools (Newlyn, 2006; Stewart, 1998). As a result, educators need to have an awareness and understanding of legal principles effecting education more than ever before (Teh, 2014).

There have been some notable sagacious scholars who have written about education law (Butler & Mathews, 2007; Jackson & Varnham, 2007; Mawdsley, 2012; Orr, 2020; Russo, 2019) and more specifically about legal literacy of educators (Leete, 2022-23; McCann, 2006; Stewart, 1996b; Teh, 2014; Trimble, 2017). However, not a substantial amount has been written about the level of legal understanding captured by educators in this country. Indeed, Teh (2014) stated "Little is known in Australia about the level of legal literacy held by teachers..." (p. 263). This has been an area of study left reasonably unexplored. Stewart (1996b)

conducted a study investigating the level of legal literacy owned by Queensland government school principals. McCann (2006), a decade later, inquired about the legal burdens encountered by Catholic school principals in Queensland. Newlyn (2006) investigated the degree of legal knowledge held by teachers in New South Wales government schools. More recently, Trimble (2017) considered the impact of legal issues affecting Tasmanian school principals. To my knowledge, there has never been a study conducted examining the level of legal knowledge and understanding of teachers working in independent schools. Nor teachers in Queensland. This is exactly where this study lies.

There has been widespread agreement from researchers to date that educators (including principals) possess limited knowledge and understanding of education law (Leete, 2022-23; Pepper, 2021; Trimble, 2017). The studies highlighted above all concur that the educators researched do not have adequate understanding of legal matters pertaining to their roles (McCann, 2006; Newlyn, 2006, Stewart, 1996b; Trimble, 2017). In a more recent study under the auspices of the Australian Research Council, academics inquired about the legal understanding of teachers working in schools specifically about discrimination law and how to apply reasonable adjustment in their assessment (Dickson et al., 2021). They went on to assert:

Because it is teachers who are tasked with the delivery of reasonable adjustment in the classroom, it is clearly important that they understand the scope of their obligation. Implementing their obligation not only advances the interests of students with disability, it also protects teachers and schools from allegations of disability discrimination and the consequential risk of protracted and expensive litigation. (p. 63)

Whilst this is only one aspect within one area of education law, it highlights, by way of example, the low level of understanding demonstrated by teachers concerning their legal obligations.

Not only academics, but teachers themselves have stated that they should have a sound level of legal literacy in order to function in today's schooling environment. Teh (2014) noted "Responses from teachers revealed that there was a need for professional teachers to have some form of legal literacy..." (p. 264). She

further claimed "... the NSW Teachers' Federation (teachers' union) similarly stated the view that it was increasingly essential for teachers to have a knowledge of the law (specific knowledge in some areas and basic in others)" (Teh, 2014, p. 264). Furthermore, principals too are suggesting that teachers need adequate levels of legal understanding (Pepper, 2021).

Teh (2014) explicated the following when discussing reasons why teachers need to have a level of legal literacy:

Educators who have a basic knowledge and understanding of legal issues affecting schools will be in a stronger position to respond appropriately, not be intimidated, and avoid unnecessary litigation. Such knowledge and understanding should also help educators to anticipate legal problems or prevent them from occurring, and when they do occur, to know when to seek professional help. (p. 266)

Educators would also have increased confidence in their decisions concerning legal implications and suffer reduced feelings of pressure by those willing to bring legal actions against them (Pepper, 2021).

The question then that follows is how much knowledge do educators need to have to perform their professional roles? It is my contention that teachers do not need to have law degrees. However, they need to have sufficient understanding that goes beyond simply having an awareness of legal principles. Teachers need to be able to identify and apply legal knowledge to their everyday practice (Leete, 2022). Educators need to have sufficient knowledge to make effective decisions on the run and to be able to respond appropriately to potentially legally inherent or litigious situations (Teh, 2014).

Where do and where can teachers access such knowledge to further their understanding of legal matters affecting schools? The main source of any dissemination of legal knowledge to educators is usually in the form of half day or full day seminars that contain at best, introductory and superficial legal principles that may or may not include the application to their own context (Leete, 2022-23; Teh, 2014). In his study, Newlyn (2006) discovered that there was no one source of information or one model of instruction that was considered best practice to increase this level of legal knowledge and understanding. Teh (2014) suggested that what is

required is a more systematic process of knowledge transfer that is iterative over the various phases of educators' careers. That is why the development of the textbook was initiated so that it can provide a mechanism for the imparting of legal knowledge to those involved or interested in education.

### **1.3. Personal rationale for undertaking the study**

After studying law at university and coinciding with the commencement of my teaching career, I began to develop a keen interest in education law. I did not study this specific area at university; however, it was the intersection of the two disciplines that I did study – law and education, which I subsequently grew very fond of. I became fascinated with how the law regulates the work of teachers in schools. I started to read cases and informed literature written by lawyers who practiced in the field about developments in this area. It was the 1980's where case law and legislation in the education field was burgeoning (Stewart, 1998). This developed into a professional 'hobby' where I could not get enough information about what was happening in the education law space. This passion became so zealous that I subscribed to professional journals and joined the peak professional association in the field in this country – Australia and New Zealand Education Law Association Inc and attended their annual conferences. I became known, in part, due to my knowledge of the law and the fact that I taught it at senior secondary and at Technical and Further Education (TAFE) levels, as someone staff members could contact if they had a question about the law or education law.

This level of expertise grew with the never-ending thirst for more and more knowledge and understanding of the area. This coincided with my teaching of the law and the ability that I developed to advise staff members in an informal and low-key manner on all matters of jurisprudence. During my professional career, I quickly rose to senior management positions in schools and was often called upon to advise staff and those in more senior roles to myself on education law matters.

My experiences in senior leadership working in independent schools in Queensland including the role of principal necessitated me having to make decisions and act using my knowledge and understanding of education law principles. I was compelled to enact in real and sometimes confronting ways the legal position in defending the school or staff members who were the target of legal attacks. In one instance, as principal, I represented the College in court after I injuncted a parent, of

which his son was an enrolled student at the time, from coming on to the campus, in accordance with the discretionary powers afforded to me under the *Education (General Provisions) Act 2006* (Qld).

It was not only the staff that I was working with that sought my advice and legal assistance from time to time. I became known in the city in which I worked and led schools as a source of legal knowledge. I was called upon by other staff – usually principals in other schools to provide advice on professional matters pertaining to education law.

As an academic, I was part of a team who developed the concept of introducing a university course at master's level on education law. I created the course and have taught it since its inception for a number of years. For my own master's major research project, I interviewed a number of principals about their understanding of education law principles and wrote up that research as the lead chapter of an international handbook on education law (Butlin & Trimmer, 2018).

Furthermore, as a pilot study before I commenced this thesis, I surveyed a number of Queensland independent school teachers about their understanding of education law. Due to their low level of understanding of these principles, the need for an up-to-date resource on education law was formed. I then engaged with other scholars to form the writing team of the textbook.

Since its publication, I have been called upon by a number of leading law firms in Australia to provide Expert Law Reports on current cases before the courts and to act as an Expert Witness in such legal proceedings. I have also been the source of legal advice on education law to the Acting Director of Lutheran Education Queensland on a range of matters involving schools and teachers working in those schools. I have been invited to present at a number of conferences here in Australia and in New Zealand on education law. I am also on the Queensland State Executive Committee of Australia and New Zealand Education Law Association Inc.

It is from this personal background and interest in education law that I started this research project. The expertise and experiences gained in this field have helped me develop the confidence and determination to continue this project through to its completion.

#### **1.4. Statement of the research aims and objectives**

The main aim of this study was to develop a deeper understanding of the level of legal understanding held by Queensland independent school teachers. Another main goal of this research project was to produce a textbook on education law in order to help educators, pre-service teachers and leaders working in schools increase their knowledge and understanding of the legal principles that underpin their roles. This study sought to do this specifically by considering a range of legal topics or areas in education law but also more broadly by examining the overall level of legal literacy owned by these educators.

Specific key aims that directed this project were:

- To ascertain the level of legal literacy held by Queensland independent school teachers.
- To examine what topics in education law teachers needed to know more about.
- To create a textbook on such topics to augment this level of legal literacy.

This study involved research with a random group of teachers and middle leaders working in Queensland independent schools where the participants were asked to respond to a series of survey questions on a myriad of education law topics.

#### **1.5. Scope of the research**

For the purposes of this study, I only considered education law (law pertaining to schools and its workers) and not other branches of the law such as administrative, constitutional or property law. Additionally, in the areas of law that interplay with education, it would be impossible to expect that all domains of those areas of law be intertwined in this study. By way of example let us consider the area of family law. When parents break up and end up dissolving the marriage, this then has legal consequences for their children that have ramifications for the school. For example, who is permitted to collect the children from school on certain days of the week. This is very much part of education law that was particularised in this study. However, marriage laws, property settlement, de facto relationship laws, adoption laws, surrogacy, and succession laws that all form part of the wider family law remit, have not been introduced as part of this study as they do not directly impact on education

and the teaching and learning of young people in schools. Some topics such as duty of care and mandatory reporting are very much in the vernacular of education law whilst other areas such as criminal law and privacy law have some semblance of identity in the wider heading of education law. There is overlap of these latter areas in education law as well as other parts that do not fit within the domain of education law.

Furthermore, this study is limited to the state of Queensland. Moreover, it is constrained to those educators working in independent schools. Catholic school teachers and those working in government schools have been excluded. This is in part due to where I performed my professional work coupled with the fact that this sector has not been exclusively examined before now.

This is a different study from others that have been conducted in Australia as this study also informed the writing and content chosen of the accompanying textbook (Butlin et al., 2021) that aims to address some of the deficiencies in legal literacy held by pre-service teachers, teachers and leaders working in Australian schools. The textbook also provides some benefit for administrators who are working at a systemic level or governmental level, advising those working in a variety of school systems. The other inquiries mentioned above have been academic studies without the addition of an artefact, created as a result of the study. They, with the exception of Newlyn's research project, examined principals and leaders in schools and not the teacher working in classrooms teaching young people each and every day. In these ways, this investigation is unique and acts as a point of difference in the contribution of knowledge.

### **1.6. Statement of research questions**

To address the research aims of this inquiry, the following specific research questions have been developed.

- **Research Question 1:** What do independent school teachers in Queensland believe to be their level of understanding concerning education law?
- **Research Question 2:** What are the empirically confirmed understandings of education law held by Queensland independent school educators?

- **Research Question 3:** What do Queensland independent school teachers need to know about education law?

Each of these questions was addressed by examining the responses to the survey questions, used as the data collection tool in this study.

### **1.7. Research approach**

This study employed a survey methodology within the parameters of a qualitative approach. Due to the smaller number of participants chosen for this study, a more open, less structured survey was created (Cohen et al., 2018). A variety of types of questions were used in the survey. These included: Multiple choice questions, rank ordering questions, open ended questions, and rating scales (Cohen et al., 2018). This helped produce a data collection device that enabled participants to respond in a way based on their experience and thoughts around the central topic. Sequencing of questions was also an imperative consideration (Cohen et al., 2018) that will be highlighted in Chapter 7 of this thesis.

Data was analysed adopting a qualitative content analysis methodology. This approach assisted in the creation of the 'categories' or 'coding scale' of the predominant scenario data used in the survey (Maene, 2023). Furthermore, the use of interpretative content analysis adopted as part of this study was important as it helped to code manifest and latent content (Drisko & Maschi, 2016).

### **1.8. Definitions of key terms**

**Education law:** The term used in Australia when referring to how the law regulates and directs schools. (The United States and Canada usually adopt the term "school law" when discussing such issues [Trimble, 2017]). This includes not only the registration of schools in Australia, compulsory schooling, the curriculum that schools follow, which used to be, many decades ago, the only legal regulation of schools (Teh, 2014), but also, and more pertinently, how the two disciplines – law and education - intersect. The intersection of these two separate but strongly intertwined disciplines relate more specifically to such areas as: the physical safety of school children (on and off school grounds) including the law: of negligence; criminal law; work, health and safety; workers' compensation; employment law; family law and court orders; discrimination and the wide range of disability

regulations, including non-physical ailments; mandatory reporting and child protection regulation; privacy and data control (Trimble et al., 2012); the professional regulation of teachers; the discipline and investigation of teachers involved in misconduct (not only sexual misdemeanours involving students); cyber-bullying; and student suspension and exclusion.

**Independent schools:** Refers to primary, secondary, and preparatory to year 12 schools in Australia that are governed by an independent board or council, as opposed to those managed by the State government, often referred to as “State schools”, particularly in Queensland, or “Public schools” in New South Wales. Independent schools also differ from Catholic schools run by various Catholic dioceses in Australia. Independent schools are those who are normally fewer in number and are owned and operated by various churches in Australia (other than the Roman Catholic Church) or established by an Act of Parliament in the case of Grammar schools.

**Legal literacy:** The term that suggests that the person who acquires it has possession of a specific set of understandings related to legal principles and fundamentals. For the purpose of this study, the researcher is referring to someone who possesses legal literacy as being a person having an understanding or working knowledge of the law as it pertains to the schooling environment. A person’s legal literacy then is considered to be somewhere on a continuum from having no legal understanding all the way to the other end of the continuum where a person has a detailed and thorough knowledge of education law matters such as a specialist in this area or a solicitor practicing predominantly in this field (Delaney, 2009, as cited in Naidoo, 2018). Other authors have suggested that legal literacy is more than having an understanding of the law as it applies to schools. They have also included a teacher’s or school administrator’s ability to know when to seek external legal advice in their definition of legal literacy (Walsh & Anderson, 2012, as cited in Naidoo, 2018). This definition is explored in greater detail in Chapter 3 of this thesis.

**Pre-service teachers:** Students who are currently enrolled in an initial teacher education program at a university at either undergraduate or postgraduate level who are studying to be registered teachers.

**School teachers:** Refers to those professionals working in early childhood, primary or secondary school settings, who are, entrusted with the delivery of a program of learning to students in their care. It does not relate to early learning

centres and stand-alone kindergartens, nor does it refer to the further and higher education sectors of TAFE or university teaching. It also does not include teachers working in home schooling situations as these people have different legislation governing the work that they do. School teachers can include those working in classrooms every day and also those in leadership positions in such schools such as Heads of Sub-schools, Assistant Heads, Deputy Principals and Principals. This latter group of educators working in various leadership roles are usually qualified and registered teachers in any event, who are employed to work in leadership positions in their respective schools.

### **1.9. Thesis organisation**

This thesis is separated into seven distinct chapters. Chapter 1 introduces the study and provides a background to it, both from a personal perspective as well as an academic one. It details the aims of the research, scope of the study, research questions to be answered, and the research approach undertaken. Chapter 1 also addresses definitions of key terms that are used throughout the thesis and concludes with an overview of the thesis structure.

Chapter 2 explores the extant literature on my topic. It examines education law principles, provides for why educators need to have some legal understanding around their practice and outlines a history of the progression of education law issues and how this has changed over time. The chapter then goes on to detail what we already know of teachers' understanding of education law which will act as a point of comparison with the data discovered in this study. The chapter concludes with two important cognate issues that will be explored in more detail in later chapters - educators' fear of legal redress and the suing mentality.

Chapter 3 propounds a conceptual model of 'legal literacy'. Firstly, an outline of an understanding of what 'law' and 'literacy' mean is provided at some length. Following this, the chapter incorporates the four dimensions of statute law, common law, ethical considerations, and professional obligations into the broader conception of what it means to have a degree of legal literacy.

Chapter 4 explores research design and methodology used in this inquiry. It outlines the research paradigm, epistemological assumptions, ontological assumptions, and axiological assumptions. It also explicates the qualitative research approach adopted for this study including the eight steps taken to complete the

research, followed by an explanation of the data collection process, the measurement scale used in the survey, participant selection and a larger section on the data analysis undertaken in this research project. Finally ethical and political considerations are provided.

Chapter 5 presents the results from the study. The survey was informally divided into three parts and the findings from each section are provided in both graphical form as well as in table format. Some interpretative comments are made at this stage, but the majority of these remarks are reserved for the following chapter. This chapter concludes with brief, general observations about the overall findings of the study.

Chapter 6 discusses the findings of the research and how it was used to guide the development of the textbook. There is much detail provided as to how the research findings steered the content included in the textbook manuscript. Conceptual models of the results in diagrammatical form are also included for each topic explored in the study that show how the various aspects of the study: conceptual framework dimension, survey question(s), and textbook chapter(s) align and come together neatly under the one topic heading. This is purposeful in stipulating that the various aspects of this project intentionally align by design. Reasons for choosing to create a textbook and its associated decisions are also considered. Finally, the chapter concludes with some of the main features of the textbook.

Chapter 7 provides a summary or overview of the whole project. It then provides answers to each of the three research questions in turn. This chapter also presents the various contributions to knowledge that the project makes, while also providing some comments about the boundaries or limitations of the study. It concludes by suggesting some recommendations for further action, both in terms of practice and possible future research.

### **1.10. Chapter summary**

Chapter 1 provides background context and a statement of the research question or problem to be explored in this thesis. The aims and objectives were then explicitly expressed, followed by a consideration of the scope of the research and the research questions to be answered in this study. The chapter went on to highlight the research approach that was adopted. Definitions of key terms were then outlined

together with how the thesis is organised into the various chapters. Chapter 2 presents a review of the literature relevant to the stated research questions.

## CHAPTER 2: LITERATURE REVIEW

### 2.1. Introduction

There is no doubt that there is more discussion about legal matters in schools now than there was two or three decades ago. Indeed, schools are becoming more complex and there is much evidence pointing to the fact that the role of school teacher is becoming more challenging (Cranston & Ehrich, 2009).

Teh (2014) asserted that there has been a *legalisation of schools*. This is due primarily to three factors. Firstly, over recent decades there has been a growing volume of Australian legislation both at State or Territory, and at Commonwealth levels that regulate the behaviour and guide the decision-making of teachers in schools (Birch & Richter, 1990; Williams, 1994, 1995). (At this point, it is pertinent to note that, whilst there is a dearth of literature on this topic in Australia, some notable seminal authors have been highlighted in this chapter. They are worth including owing to their influential contributions to the debate, even if those contributions dated from some time ago.)

Secondly, there has been an increase in legal actions being brought against schools by students and families. Similar commentators to those listed above have suggested the same and they have gone further to contend that, with this increase in legal proceedings against teachers and schools, there has been a need for teachers and principals to keep abreast of changes in, and an awareness of the developments of, judicial decisions affecting schools (Trimble et al., 2012).

Thirdly, we have become a more litigious society as Tronc (1996) first warned. Additionally, parents and families in general are much more aware of their legal rights; they are more prepared “to take legal action against schools and school staff for decisions and policies with which they disagree and, more than ever before, are willing to pursue their complaints through the courts” (Butler, 2006, as cited in Trimble et al., 2012, p. 49).

This chapter serves to provide a summary of much of the literature on the topic of *legal literacy* held by school teachers in Queensland, and how this knowledge (or lack of) plays out in their roles as professionals in their schools on a daily basis. This literature review aims to frame the whole study and provide for the reader some background understanding as to what has already been discovered in this area, which in turn, informs the current study that makes up this thesis. The

focus of education law literature is briefly highlighted. The need for teachers to have some legal literacy, which is a key focus of this study is then discussed in some detail. A little history of how education law has progressed in Australia is outlined. Teachers' understanding of education law and key studies of this very issue are revealed. Teachers' fears of facing legal ramifications follows this section and the final section of this chapter considers the *suing mentality* of contemporary parents and how this plays a role in today's education law landscape.

## **2.2. Education law principles**

The requirement for educators to be knowledgeable about legal issues is not confined to Australia. Many books, journal articles, specific publications, websites and even annual conferences are focused on education law globally. Publications by Boer and Gleeson (1982), Butler and Mathews (2007), Butlin and colleagues (2021), Edwards and colleagues (1997), Jackson and Varnham (2007), Ramsay and Shorten (1996), Sleigh and Fulton (2001), Stewart and Knott (2002), Tronc (1996) and Tronc and Sleigh (1989) are being used by both educational and legal practitioners to respond to legal questions related to education law. In addition, there are journals about education and the law published in Australia, the United Kingdom, Canada, and Europe that specialise in education law matters in their various jurisdictions (e.g. the Australia and New Zealand Education Law Association [ANZELA] journal – International Journal of Law and Education; Hopkins, 2008; Knott, 2010; Mawdsley & Cumming, 2008; Weegen, 2013), and other professional publications that provide advice to school teachers and principals about their legal responsibilities in relation to managing their educational communities, such as the regular publication of the professional teacher union magazine with legal advice contained therein (Baker et al., 2018).

However, the predominant focus of these publications is that they espouse the position of legal findings based on either common law or legislation. That is, they explain the law or the legal principles that schools and other educational authorities need to follow to be legally compliant, and, in doing so, to avoid having an actionable matter brought against them. However, they do not address the question of the legal knowledge required by teachers to be able to fulfil their roles effectively, nor do they comment on the impact of having, or of not having, such legal literacy on their capacity or effectiveness as school teachers.

There is an increasing requirement included in the registration standards (Australian Institute for Teaching and School Leadership, 2011) for educators for them to have an understanding of legislation in their national context to be able to:

- have an understanding of the personal context of their students' lives.
- meet the regulatory obligations as regards the health and safety of the students in their care.
- be fully aware of the correct procedures to report suspected incidents of child abuse, and
- know whom to contact regarding the emotional health and wellbeing of their students.

### **2.3. The need for teachers to have some legal literacy**

An essential premise of this study and therefore of the rationale for the accompanying textbook written on this subject (Butlin et al., 2021), is the need for school teachers and administrators to have a basic understanding of how the law regulates the everyday activities of schools. This is also referred to as having legal literacy.

Nolan and Spencer (1997), Stewart and Knott (2002) and Teh (2009) all argued that teachers should have some basic legal knowledge and understanding as it relates to their roles in schools. Unfortunately, it has been the researcher's experience that in practice this is simply not the case, and that those in the profession who do sprout some legalese from time to time often do so speciously. This view was supported by Pell (1994, as cited in Stewart, 1996a) when he stated that "not only do most educators have a lack of knowledge of school law but what knowledge they do have is often distorted, inaccurate or based on misinformation" (p. 122). Such knowledge, Pell maintained, not only affects one's understanding of the law but also can be the basis for poor decision-making.

Stewart and Knott (2002) suggested that having an understanding of education law is only one highly specialised area in which teachers and principals are being held more and more accountable. It is mooted therefore that teachers in schools should have a deeper working understanding of how the law protects and regulates their everyday work activities to help to prevent legal matters being brought against them (Trimble, 2017). Rossow (1990, as cited in Stewart, 1996a) advised that teachers should have enough legal understanding to "know initially what questions to ask when confronted with a potential problem" (p. 111). Similarly, Haller

and Strike (1986, as cited in Stewart, 1996a) asserted that school administrators “need a basic sense of what kinds of problems and situations generate litigation and what kinds of actions are more likely to generate legal difficulties” (p. 111). Sungaila (1988, as cited in Stewart, 1996a) summarised this imperative:

... 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 infringes on professional educational practice sufficient to recognise whether a problem which has arisen is one about which professional legal advice should be sought or not. (p. 111)

There is a surfeit of laws with which schools must contend. There is a considerable body of statute, common and criminal law that helps to regulate the everyday activities of school communities. Schools should engage in, and with, these legal provisions in order to ensure compliance and to provide optimal educational outcomes for each student under their care. Consequently, as a result of this involvement, teachers and school leaders should have a knowledge of the areas of the law that they are required to manage (Butlin & Trimmer, 2018; Stewart, 1996a, 1998).

Having a basic understanding of the legal matters that teachers potentially face is not only prudent but also helpful in dispelling possible legal cases early before they gain momentum. Teachers and principals can then fend off potential cases by saying the right things or by garnering the relevant materials early to suggest to would-be parent litigants that their case will not be a one-sided matter. Nolan and Spencer (1997) put it this way by stating that principals and “teachers should be aware of situations and activities where negligence would be difficult to disprove and order their personal behaviour and supervisory role accordingly” (p. 14).

Leschied et al. (2000, as cited in Teh, 2014) argued that the explosion of information technology, changes in domestic living patterns and related values, the fact that children are at risk of physical and sexual abuse, and the escalation in youth crime collectively combine and result in an increased reliance on laws and the courts, all of which have an impact on the role of teachers, and on the education

system as a whole. According to research conducted in the United States, Teh (2014) reported that teachers perceive themselves to be legally illiterate. Another survey indicated that over 75 percent of American school teachers (Teh, 2014) had no exposure to school law courses at all, and that over 50 per cent were either wrong or unsure about questions relating to teachers' rights and responsibilities. Yet another study performed in the United States suggested that 85 per cent of secondary school principals said that they would change their behaviour if they knew more about the rights and responsibilities of teachers and students associated with education law (Teh, 2014). Teh (2014) put forward a similar position in Canada where principals surveyed achieved less than half of the correct responses when tested.

In Australia, the situation is much the same. Teh (2014) considered some research conducted in Australia that revealed the many areas of law with which teachers and principals had to deal but for which they lacked sufficient knowledge or understanding to deal with them. A prominent and authoritative case concerning school bullying was *Oyston v St Patrick's College (2013)* (as cited in Teh, 2014). This case is apposite in this discussion as it was noted from the leading judges who sat on the New South Wales Court of Appeal that many schools in Australia have policies and practices in written form largely as a consequence of mandates from education cases or legislation. When these are complied with, they may well provide a strong defence against legal claims. Conversely, they noted that where schools have written policies but do not take steps to follow them, the defence against a legal claim will be significantly weakened. Teh went on to contend:

What was required of the College was not a system of impractical perfection. Rather, what was required was the practical implementation of its own system, to bring ongoing bullying to an end and to monitor the victim to ensure such behaviour did not continue. That, it failed to do. (Teh, 2014, p. 405)

The example of *Oyston v St Patricks College* illustrated the need for teachers and school leaders to keep abreast of developments, not only of legislation, but also of the decisions arrived at by the courts.

It is expected that teachers and principals have an understanding of, and be knowledgeable participants in, all matters pertaining to schools. “Such expectations, along with a growing movement towards increased accountability in the professions generally, provide compelling reasons for principals [*and teachers*] to be more highly literate in school law than currently appears to be the case” (Stewart, 1996a, p. 112; *emphasis added*).

Stewart (1996a) (although 28 year ago, it is still relevant today) went on to plead:

While there has been a noted increase in both judicial decisions and statute law that may impact on school leadership and management, there has not been a commensurate level of research in Australia to determine schools’ actual involvement with legal matters. As a consequence there has been a dearth of information concerning principals’ need for, and extent of, knowledge of the law that affects the principalship. (p. 115)

Teh (2014) furthermore suggested that experts argue that education has become characterised by legalisation and as a result of this, the implications are that school teachers and school leaders are expected to have some level of legal literacy in order to fulfil their daily responsibilities safely and properly. Teh further explained:

It has been pointed out that teaching has become much more difficult, demanding, and even emotional, with teachers taking on added roles that should be fulfilled by family or other social agencies. However, as society and the education sector become more and more legally complex, there is a need for teachers and administrators to have adequate pre- and in-service education law knowledge if they are to avoid unwelcome encounters with the law. (pp. 258-259)

More recently, Kutsyuruba and colleagues (2019) suggested that all teachers need to develop their understanding of education law owing to the fact that the education system, its functions and operations are all highly regulated by a multifaceted and ever-increasing assemblage of laws. They avowed:

... educators must understand the legal parameters within which they work in order to guide their professional actions and to protect themselves from legal concerns. As professionals, educators must be aware of the law as it relates to professional codes of ethics; conduct and misconduct; standard of care and treatment of pupils; protection of physical, mental and emotional wellbeing of students; confidentiality of information; and education policies, among other areas. (p. 55)

It is worth noting here that all of these areas listed, inter alia, are examined at length in the accompanying textbook (Butlin et al., 2021). Kutsyuruba and colleagues (2019) further enunciated their point by adding: "Overall, the law determines conditions of teaching and guides teaching practices in virtually every aspect, from the treatment of students with exceptionalities to issues pertaining to the curriculum" (p. 55).

Kutsyuruba and colleagues (2019) noted that, while teachers have been reasonably immune from the legal process, as the law becomes increasingly involved with and around education, so too are teachers becoming more and more entwined in legal proceedings. They reminded us that being ignorant of the legal position is no excuse at law, and furthermore of the importance of understanding the laws concerning professional conduct and the appropriate interactions with students, which if not handled in a professional manner may lead to educators being dismissed. There is a whole chapter of the textbook (Butlin et al., 2021) dedicated to this very issue. They summarised by saying:

... legal literacy ... offers educators ways to arm themselves with the appropriate legal knowledge to protect themselves and their students. The law touches virtually every aspect of teachers' professional lives, and, as such, it is crucial that educators develop a working knowledge and understanding of the legal parameters within which they function. (p. 56)

## 2.4. Progression of education law issues for schools and teachers

Early on, when education law was beginning to be spoken about amongst legal professionals and academics (much earlier than school administrators and teachers were considering such issues), the focus was laid solely on the risk of physical injury to students. This meant that, if students were injured in the playground while on a lunch break, or if they suffered an injury, say, while being involved in a science experiment, they could then seek legal advice asking if they could sue the teacher for negligence. There are innumerable examples of where this has occurred (*Australian Capital Territory Schools Authority v El Sheik*, 2000; *Australian Capital Territory Schools Authority v Raczkowski*, 2001; *Ayoub v Downs*, 1982; *Brown v Nelson*, 1971; *Commonwealth v Introvigne*, 1982; *Geyer v Downs*, 1977; *H v Pennell and South Australia*, 1987; *Horne v Queensland*, 1995; *Kretschmar v Queensland*, 1989; *Miller v South Australia*, 1980; *New South Wales v Finnan*, 2004; *Parkin v Australian Capital Territory Schools Authority*, 2005; *Ramsay v Larsen*, 1964; *Richards v Victoria*, 1969; *Trustees of the Roman Catholic Church for the Diocese of Canberra and Goulburn v Hadba*, 2005; *Victoria v Bryar*, 1970; *Warren v Haines*, 1987; *Watson v Haines*, 1987), and these examples paved the way for what some researchers called the “Suing Mentality” (Nolan & Spencer, 1997) that we still have today.

Such cases, and, indeed, many more judicial decisions have clarified the legal position in relation to this notion of a duty of care being owed to school students. This included and helped to define, inter alia: legal liability in and out of the classroom, before and after school, what level or *standard* of care is owed and what constitutes a breach of the duty of care. The duty of care principle has continued and will undoubtedly continue to be shaped by legal cases involving students (and parents/caregivers of such students) who suffer both physical and emotional injury in a variety of ways that are brought before the courts of this land and no doubt internationally as well.

Physically touching or moreover restraining students to stop physical fights and also in the use of discipline became part of the education law dialogue in the 1980s (Williams, 1995). The issue of discrimination followed and became part of the education law vernacular as students and their parents became increasingly aware of their rights under both federal and state law that provides protection for

students being discriminated against on a number of grounds in education. It possibly commenced when schools failed to provide students of one gender with the same entitlements to educational activities as the other gender (*Haines v Leves*, 1987). It moved to treating students with a physical disability such as spina bifida less favourably than students without the disability by denying them school enrolment or access to certain educational opportunities (*CD on behalf of SD v JK*, 1994; *Gregor v Department of Education, Department of Infrastructure, & Hopetown Secondary College Council*, 1997; *Kretschmar v Queensland*, 1989). It then progressed to failing to allow students of a certain gender to participate in activities such as sports predominantly played by the other gender (Salidu, 1994). Indeed, Jackson and Varnham (2007) summarised the position in this way:

The legislation generally prohibits discrimination by educational authorities in different areas of activity. These are:

- Discrimination against students in the admission process. This includes refusing to accept a person's application for admission or only admitting a person on certain terms.
- Discriminatory conduct in relation to students in permitting access to educational benefits. This may encompass such matters as subject offerings and choice of courses. It may also include access to services and facilities, for example, libraries, computer, school excursions, facilities for sports.
- Discriminatory treatment of students in the decision and process of expulsion or exclusion.
- More generally, discriminatory conduct in the provision of "educational services". (pp. 118–119)

Discrimination again surfaced in schools more recently with the changes to industrial laws affecting women with their parental responsibilities, along with the requirement of employers to cater for more flexible work arrangements in terms of

part-time hours and elastic work hours (*Edwards v Hillier & Educang Ltd t/as Forrest Lake College*, 2006).

Workplace health and safety laws (Forlin, 1995) were closely followed by defamation laws in the educational context (Walker, 1995). Wider employment law issues relating to schools and teachers employed in those schools were then debated and trialled in various jurisdictions (Edwards, 1996). Students' rights were the next topic to be introduced into the legal framework concerning schools (Knott, 2010; Rayner, 1996). Criminal law matters have possibly always been a matter for schools and the law, particularly when schools have had to consider how to manage miscreant pupils. Having sound behaviour management policies and techniques has been imperative in the effective administration of educational communities (Stewart & Cope, 1996).

The changes to family law and custody of, and access to, children in the mid 1980s following the significant changes to family law, and in particular the concept of no fault divorce by virtue of the *Family Law Act 1975* (Cth), and later changes in 2006 with the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth), then became an important issue for schools in handling the legal arrangements of children when parents became separated (Christie & Christie, 2008; Conte-Mills, 2010; Davies, 1997). The interpretation of, and understanding how to adhere to parenting plans and parenting court orders are another responsibility placed on schools and their teachers. This has been, and will probably remain, a main fixture on the education law landscape as divorce rates continue to be high (Hewitt et al., 2005). Acrimonious breakups and the legal arguing over children will continue, and often involve, unfortunately and sometimes unnecessarily, the child(ren)'s school.

Discrimination moved to include age discrimination, creating novel grounds for such actions, where students started to accuse schools of unfair and unjust dealings when asking students who turned 18 years of age to leave educational facilities; or refusing to allow more successful students to advance year levels in order to be taught the unfamiliar and, as such, allowing such students only to follow their chronological age development in school years (Lindsay, 1997). Along with this area came the introduction of mandatory reporting and the early legal provisions concerning child protection (Best, 2001; Farrell, 2001; Mathews et al., 2006; Murray, 1997). The implementation of the *Child Protection Act 1999* (Qld)

has clarified, and its further amendments continue to clarify, the position for schools and teachers as to where their duties lie in relation to protecting the young and vulnerable in our society in addition to their mandatory reporting responsibilities.

The next major topic introduced in education law was the whole area of bullying. This later metamorphosed into cyberbullying, using electronic devices and social media to send hurtful messages to others (Bolton, 2002; Campbell et al., 2008; Farrell, 1998; Healy, 1998; Knott, 1998; Slee, 1998; Winram, 2008).

In the latter part of last century, another two areas in regulating the affairs of schools developed. One of these was the notion of “non-delegable duties” where schools and educational authorities are not legally permitted to absolve themselves in law of their tortious liability to take care of students by placing all responsibility onto another authority such as a camp site or a local council. The other area that needs highlighting here is the principle of “vicarious liability” where the school employer is held liable at law and therefore has to pay for the damages and injuries suffered by the student(s) caused by the actions of its agents - in this case, the teachers (Tronc, 1999).

Throughout all this time, further developments into the duty of care owed by teachers to students were being made. The definition of actual foreseeable risks of harm (Williams, 2002) was being framed in the students’ favour, while a clearer understanding of what level of care was owed to students in a playground fight was being clarified (Hamilton & Smith, 2002).

Disability discrimination became part of the education law argot early this century with the development of respective legislation and, more importantly, the interpretation of this legislation in case law before the courts (Dempsey, 2003; Dickson, 2003, 2004, 2006, 2018; Hamilton, 2002; Johnson, 2002; Keeffe, 2003; Lindsay & Keeffe-Martin, 2002; Stafford, 2004; Stewart, 2003; Varnham, 2002). There have been a number of notable cases of disability discrimination in schools that have helped to shape how schools conduct themselves in this area concerning students with a disability that manifests in a myriad of (even sometimes seemingly innocuous) learning or behavioural conditions (*Abela v State of Victoria*, 2013; *I on behalf of BI v State of Queensland*, 2006; *K v N School [No. 3]*, 1996; *Kiefel v State of Victoria*, 2013; *L v Minister for Education for the State of Queensland [No. 2]*, 1995; *Minns v State of New South Wales*, 2002; *P v Director-General, Department of*

*Education*, 1995; *Purvis v New South Wales [Department of Education and Training]*, 2003; *S on behalf of M & C v Director General, Department of Education & Training*, 2001; *Sievwright v State of Victoria*, 2012; *Tyler v Kesser Torah College*, 2006; *Walker v State of Victoria*, 2012).

In New South Wales, there is a requirement for all teachers to be familiar with the *Disability Discrimination Act 1992* (Cth) (DDA), particularly with the *Disability Standards for Education 2005* (Cth), and to be able to apply this on a daily basis in their classroom. The Disability Standards for Education attempted to clarify expectations and legal obligations under the DDA. All teachers in Australia are being encouraged to complete an online module about the Disability Standards for Education (Kilham & Watson, 2014).

Privacy, both in government and in non-government schools, became an issue for most school teachers and educational authorities during the first decade of this century. This came at the time when new legislation was introduced protecting the privacy of individuals. It also coincided with disability discrimination actions where students with disabilities attempted to keep their special needs private (Simmonds, 2005). A more recent wave of privacy law issues has impacted on schools and school teachers with the introduction of the mandatory data breach notification required under the Notifiable Data Breaches Scheme implemented in 2018, by virtue of the new provisions added to the *Privacy Act 1988* (Cth), as amended in 2016. Under the scheme, an eligible data breach arises when there is unauthorised access to, or an unauthorised disclosure of, personal information that is likely to result in serious harm to an individual. An example would be where the identity of a school student is revealed accidentally along with the fact that the student suffers from a significant medical condition that she or he did not ever want to be publicly known. This can then lead to substantial reputational damage, which is not pleasant for the child and her or his family, the teacher or the school involved in the breach (Schreurs, 2019).

One of the more recent issues raised in the law involving schools lay in the area of consumer protection legislation where, in particular, independent or private schools have a duty not to mislead students and their paying parents in the provision of educational services to young people (Squelch & Goldacre, 2009). The repealed Trade Practices legislation and the now codified Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)

established that schools and teachers are not to promise results or outcomes that they then fail to deliver. These promises can come from teachers in classrooms but also in marketing and promotional materials such as school magazines and prospectus documents.

There are emerging legal issues for teachers and schools alike. One such issue is the enrolment and treatment in schools of students who are, or who think themselves to be either lesbian, gay, bisexual, transgender, intersex or queer (LGBTIQ). Discrimination is the obvious area of law that intersects with this issue with respect to how the law protects such individuals (*Anti-Discrimination Act, 1991* [Qld]; *Sex Discrimination Act, 1984* [Cth]). Issues and potential legal questions associated with such students are much broader than those matters connected with the enrolment, or with the decision not to enrol or even terminate the enrolment, of a potential student (*TT and Ors v Lutheran Church of Australia Queensland District and Ors*, 2013), particularly at a single sex school. The given name or the name that the student intends to use and go by is also relevant here. Other issues that have a real impact on teachers and schools in this specific area include: the uniform to be worn by the student; toilets and changerooms for the student (and whether or not separate individual or unisex facilities are provided); participation in school activities such as camps and particular overnight excursions; the ethical position faced by religious schools; privacy concerns; and the vilification and bullying of the student and the associated legal parameters around duty of care owed to the student in question (Longwill, 2016).

Another issue facing teachers at present that may lead to legal action is the adverse effects on teachers' mental health owing to the coronavirus pandemic (Bennett, 2021c). This has led to many teachers being sick and not being able to work, which then leads to pressure on other teachers taking more classes as schools are unable to find teachers to teach students. The pandemic has also stopped interstate teachers moving to various locations such as Queensland that often rely on these teachers to join supply teacher listings to work in schools (Bennett, 2021c). Furthermore, with classes in schools being cancelled owing to the pandemic, teachers have had to teach online or to have the provision of lessons available in alternative formats (often without the necessary training to enable this to occur), working longer hours and being made to be available for students at earlier and later times. All of these factors have amounted to higher

teacher stress levels and to a detrimental effect on the mental health and wellbeing of teachers in our schools (Bennett, 2021b).

The trend of vaping by young people is becoming a problem for teachers working in schools. More and more of them are illegally obtaining such devices and are using them in and around schools. Some schools are working hard with students to try to curb this behaviour in young people and are even locking toilet facilities to stop or restrict vaping (Bennett, 2021a; Delibasic, 2021). Some schools are suspending students for vaping at an alarming rate, some of which boldly occurs in the actual classroom. As it is illegal for students to possess vapes (*Tobacco and Other Smoking Products Act 1998* [Qld]), teachers are confiscating the items and not returning them, which will no doubt lead to litigious activity in the future (Kerr, 2021).

As can be gathered from the developing trends over the years in education law, this discipline has developed significantly, moving from straight forward duty of care claims (which will always be a significant part of the education law backdrop) to include more vexing and complicated areas of the law. Stewart and McCann (1995, as cited in Teh, 2014) observed that education law issues “were not just limited to physical safety of students, but there were increasing legislation as well as common law and equity issues associated with children’s rights” (p. 398). There will indubitably be further nascent problems that will become part of education law where would-be litigants decide to sue to gain redress from school authorities for alleged harms.

The final issue that needs addressing in this section is the one concerning the increasing assaults on teachers. More and more teachers are facing physical and verbal attacks from students, parents and even community members in the course of their employment. Not only is this trend alarming and very destructive of the physical and emotional welfare of teachers, but it also seems that it is not dissipating any time soon (Bennett, 2021d). Authors have mused that teachers, quite rightly, should be able to perform their work responsibilities without the fear of, or actual, violence being inflicted upon them (Huang et al., 2017; Wilson et al., 2010).

## **2.5. Teachers' understanding of education law**

Birch (1990, as cited in Stewart, 1996a) foretold that, although there was a paucity of education law matters before the courts in Australia, there are sufficient matters to suggest that school law in and of itself is an established area of interest for both legal and educational professionals. Moreover, Mr Justice Dorset of the Queensland Supreme Court (1994, as cited in Stewart, 1996a) cautioned that “there is likely to be more consumer litigation in the education field and that this would reflect growing community demands for greater accountability in the professions generally” (p. 114). Stewart (1996a) added that, in particular, novice principals are grossly inadequately prepared for the administrative and management responsibilities that this high-level position requires. Their and that of their fellow teachers' understanding of the law as it applies to the education setting is unacceptably scarce (Stewart, 1996a).

There have been a small number of key studies conducted on this topic. Stewart (1996a) conducted a study of state school principals in Queensland where he examined the level of legal knowledge regarding schools understood by those in leadership positions working in those schools. Similarly, McCann (2006), a decade later, explored the actual understanding of the law impacting on Catholic schools in Queensland by Catholic school principals. In that same year, Newlyn (2006) undertook a research inquiry into the level of legal understanding as it related to teachers in New South Wales government schools. More recently, Trimble (2017) measured the combined understanding of education law principles by those leading schools in Tasmania in the three sectors: namely, government, Catholic and independent schools. This current study by this researcher was designed to fill the gap in the literature by investigating the level of understanding of education law principles of teachers in independent schools in Queensland, and by considering which areas they need further development to help to avoid potentially legally negative situations.

The intention below is to highlight briefly what the above seminal studies have taught us thus far, and to act as a comparative point when considering what findings come from this current exploratory study.

Stewart (1996a) was a pioneer in this area of investigation in Queensland and Australia. His ground-breaking work, while noting that Australian schools were contending with an increasing volume of legal matters while also declaring that

school principals needed to have some awareness and understanding of the law as it pertained to schools and their functions, investigated how much or to what extent Queensland state school principals actually understood education law. His findings demonstrated that his participants did not have a basic understanding of education law concepts and that, if they did have some knowledge, it was often specious (Stewart, 1996a). His research enhanced the already existing premise that all school principals needed to possess a level of legal literacy to implement legal risk management procedures successfully in their schools.

As was indicated above, McCann (2006) undertook a study looking into the level of understanding of aspects of the law impacting on the administration of Catholic schools in Queensland by their school leaders. McCann's inquiry suggested that Queensland Catholic schools were involved in a wide variety of legal matters, and further identified incipient legal areas of concern that were beginning to have a significant impact on their schools. Interestingly, he noted that the principals surveyed in his study did not, overall, show a sound understanding of education law principles. Furthermore, he observed that the participants had a better understanding of statute law as opposed to common law principles. However, their interpretations of the law as it impacted on schools was not of a high standard. He also stated that "... the need for continued personal and professional learning with regard to legal issues was highlighted by this study, especially considering the continued renewal and development of the law, and the stress created by the lack of legal understandings" (p. iv).

Newlyn (2006) conducted a study addressing the level of legal literacy held by teachers in New South Wales government schools. It involved a multimethod approach using both qualitative and quantitative methods, as opposed to the single survey approach used by both Stewart (1996a) and McCann (2006) mentioned above. Newlyn first instigated a focus group, interviewing them about their experiences and knowledge of the law as it related to schools in New South Wales. He found that the vast majority of teachers whom he studied lacked any knowledge of education law. Moreover, he noted that any legal knowledge that the teachers did have was often based on misunderstanding or was incorrect.

So concerned was Newlyn (2006) about this situation that he went further to investigate a course of instruction to correct this lack of knowledge and to correct teachers' views and understandings of legal matters as they pertained to schools. He

considered a number of approaches to remedy this lack of clear knowledge held by New South Wales public school teachers. In the end, he reached the conclusion that no single model of instruction could be used to counter this lack of legal literacy.

Finally, the most recent study of this type undertaken in Australia was that of Trimble (2017), who examined some leaders in Tasmanian schools in government, Catholic and independent sectors to explore what they knew and understood of the law as it applied to their work in their schools. Her study was a mixed method inquiry that utilised both an online survey and a series of semi-structured interviews. These interview participants were both leaders in schools and leaders in school systems working with, or advising, principals in their daily work.

In terms of principals' legal literacy, Trimble's (2017) findings largely reflected those of the previous studies conducted in Australia where those working as teachers in schools or leading schools in prominent administrative roles, did not possess a high level of legal literacy. She also commented on the fact that, while principals were involved in a wide variety of legal matters in their schools, similarly to McCann's (2006) discoveries, their legal engagement was focused on the safety and security of students and school staff members, and not much more. Again, most of the commonly understood beliefs largely relating to available legal shields or defences were not legally accurate. Interestingly, Trimble ventured down the training and preparation of principals path in a similar way to Newlyn (2006). The noteworthy aspect of Trimble's study was that many of the participants practising in schools suggested that initial training for teachers (i.e., a university degree) needed an element of legal education as it was here that they began to understand their responsibilities to both students and fellow staff members.

Interestingly, in the studies carried out in the United States, there seems to be a clear congruence with the findings here in Australia. Whilst there have been many more studies undertaken, and more literature concerning the need for pre-service teachers to receive initial training in legal literacy to enable them to perform their duties in a professional and legally prudent manner, the data show that the majority of teachers working in schools in the United States do not possess an adequate level of legal literacy (Bruner & Bartlett, 2008; Eckes, 2008; Imber, 2008; Karanxha & Zirkel, 2008; McCarthy, 2008; Mead, 2008; Militello & Schimmel, 2008; O'Connor et al., 2016; Wagner, 2008). This is in spite of the fact that education law is growing at

a more rapid rate in the United States than in Australia while also considering the more highly litigious nature of the people living there (Littleton, 2008).

The discoveries in this area have been similar in Canada too (Kutsyruba et al., 2019). Kutsyruba and his fellow researchers undertook an exploratory mixed methods study, building on the previous studies of the level of legal literacy of teachers in Canada by investigating the legal literacy of pre-service candidates who encountered observations or experiences with legal issues whilst on professional experience placements while studying an initial teacher education degree. The study found that many pre-service teachers confronted legal matters whilst on professional experience, but they did not possess sufficient understanding to deal adequately with the situation. Another study was conducted in Ontario, Canada by three eminent researchers (Leschied et al., 2000) looking into the frequency of teachers and administrators encountering legal issues in schools, what their level of legal literacy was and whether or not they believed that there was a need for increased legal knowledge and understanding to carry out their daily responsibilities. Another prominent study was steered by Findlay (2007), who examined the understanding and knowledge held by school administrators and her findings were consistent with the other literature, demonstrating a lack of knowledge of legal matters pertaining to schools.

A recurrent picture exists in the United Kingdom (Teh, 2014). Teh (2014) asserted that while the volume of inquiries into the legal literacy of teachers is not the same as it is in the United States, the situation is much the same where many of the teachers do not have a correct or reasonable knowledge of the processes and procedures of the law.

## **2.6. Education practitioners' fear of legal consequences**

The researcher has observed educators being hesitant about planning or actually committing to school activities that only enhance and further the education of students studying the established curriculum. In recent decades, he has heard teachers and principals alike remark, on many occasions, that they would not participate in an activity such as a school camp or a sporting event because of the fear of being sued (G. Couchman, personal communication, May 25, 2009; R. Fogarty, personal communication, November 18, 2014). This, unfortunately, has become a commonly held view of some members of the teaching profession. They

have expressed (often misguided) professional concerns about being entangled in a legal dispute and therefore declining to be involved in school events, or to allow such events to take place, that they otherwise believe would be educationally beneficial to students. In a review of the Australian curriculum, teachers reported that they were avoiding school excursions and field trips, notwithstanding their inherent educational value and importance in reiterating previous content already taught or in helping to generate new knowledge, because of the threat of being sued (Davies, 2009; Wilson, 2014). Fear of legal liability and litigation risks are too high, and consequently these important co-curricular activities are being shunned, even by more experienced practitioners (Wilson, 2014). In this review, the Australian Federal Education Minister stated that educational standards could “be at risk if kids are bound to their desks” (Wilson, 2014, p. 12). The released report went on to remark that “state and federal governments needed to provide better training and professional support so teachers would feel comfortable exposing pupils to important out-of-classroom lessons” (Wilson, 2014, p. 12). The Australian Education Union president stated “For some subject areas, excursions and field trips are vital in getting a better understanding of the content being covered... But we are living in an increasingly litigious society and schools bear the brunt of that litigiousness” (Wilson, 2014, p. 12). Ford (2004) put it this way:

A balancing act is involved: schools must strike some balance between meticulous supervision of children every moment of the time when they are under their care, and the very desirable object of encouraging the sturdy independence of children as they grow up. Nevertheless, there are cases which suggest that the courts are less likely to find negligence where the activity is intended to develop independence. (p. 1)

There are a number of cases where judges have had to decide whether the law should side with the education provider doing its job or alternatively should an injured student who allegedly falls foul of schools not protecting them whilst under their care (*Ayoub v Downs*, 1982; *Geyer v Downs*, 1977). Sometimes this balance has been very difficult to strike (Butlin & Trimmer, 2018).

## **2.7. The suing mentality**

Undoubtedly, education law provides a clear message to educators to take good care of children's safety and to provide optimal learning experiences for their students.

Considerable education legislation is passed in ... Australia, and other nations, to govern educational activities at state and federal levels. In

Australia, while actions are not common, a considerable case law on a range of matters is in existence and is growing. (Mawdsley & Cumming, 2008, p. 7)

In concurring with Tronc's (1996) viewpoint, Jackson and Varnham (2007) stated that:

It is a reality that all education today operates in a social climate vastly different from that of past generations. This means that, while many of the traditional norms may still guide the education of students, many of the old standards and the philosophies by which they are underpinned are no longer valid. (p. viii)

It is clear that the trend is moving towards increased litigation in the education field. Members of the general populace either are more aware of their legal rights or have a heightened, yet sometimes flawed, understanding of their legal position in relation to the educational service that they receive (or do not receive, as in some cases). Nowadays they are increasingly willing to protect those rights and to consider legal avenues to redress any real or perceived harm or loss suffered at the hands of the schooling authority. Ascribing blame (or liability in law) away from the "victim" to some other party irrespective of any negligence has become the norm in our society (Butler & Mathews, 2007). This is true for local councils, which defend an unending number of claims of uneven walking paths that cause injury (although there were reforms in 2002 that placed a ceiling on claimable damages) (Luntz, 2003), and for schools where students suffer injury arising out of school-sanctioned events (Teh, 2009). This claim for monetary compensation is no doubt going to continue. We are rapidly becoming the suing mentality society (Trimble, 2017).

The researcher has observed that litigious events concerning education law can come in waves. That is to say, in many periods of education law in Australia, potential, and indeed actual, plaintiffs gain momentum off the back of other plaintiffs to pursue legal proceedings against a teacher, a school or a school authority to claim compensation for any loss suffered. There are times when there is a lot of litigious activity involving schools and students, and other periods when there is less so. Australia saw the initial wave of cases in the 1960s that commenced education jurisprudence as an area of law litigated in this country for the first time (*Ramsay v Larsen*, 1964; *Richards v Victoria*, 1969). Again, there was an increase in litigants bringing actionable matters before the various courts when the first cluster appeared in the late 1980s (*Carson v Minister of Education of Queensland*, 1989; *H v Pennell and South Australia*, 1987; *Haines v Leves*, 1987; *Kretschmar v Queensland*, 1989; *Martinovic v Ministry of Education*, 1989; *Warren v Haines*, 1987; *Watson v Haines*, 1987). There was a noticeable upsurge of cases brought before the courts in the late 1990s (*DM v New South Wales*, 1997; *Duncan v Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn*, 1998; *Finney v Hills Grammar School*, 1999; *Gregor v Department of Education, Department of Infrastructure, & Hopetown Secondary College Council*, 1997; *Griffin v The Catholic Education Office*, 1998; *Truffet v Qld*, 1998; *Zechner v Department of School Education*, 1999), and further in the early to mid-2000s (*A obo V and A v NSW Department of School Education*, 2000; *Alex Purvis on behalf of Daniel Hoggan v New South Wales [Department of Education and Training]*, 2003; *Australian Capital Territory Schools Authority v El Sheik*, 2000; *Australian Capital Territory Schools Authority v Raczkowski*, 2001; *Beasley v Victoria Department of Education and Training [Anti-Discrimination]*, 2006; *BI v Board of Studies*, 2000; *Board v Victoria [Department of Education, Employment & Training]*, 2002; *Catholic Education Office v Clarke*, 2004; *CF [by her tutor Joanne Foster] v New South Wales [Department of Education]*, 2003; *Cranbrook School v Stanley*, 2002; *Edwards v Hillier & Educang Ltd t/a Forest Lake College*, 2006; *EM v St Barbara's Parish School*, 2006; *Gray v Queensland*, 2000; *Hills Grammar School v Human Rights and Equal Opportunity Commission*, 2000; *Hurst v Queensland*, 2006; *Hurst and Devlin v Education Queensland*, 2005; *Lisa Eskinazi v Victoria*, 2003; *Lucy Klewer v The Trustees of the Roman Catholic Church for the Diocese of Lismore*, 2005; *MalaxEtxebarria on behalf of MalaxEtxebarria v Queensland*, 2006; *Misfud & New South Wales Department of*

*Education and Training*, 2001; *MT v Director General, NSW Department of Education and Training*, 2004; *Murphy v New South Wales*, 2000; *New South Wales [Department of Education and Training] v Alex Purvis on behalf of Daniel Hoggan*, 2001; *New South Wales v Amery*, 2006; *New South Wales v Finnan*, 2004; *New South Wales v Lepore*, 2003; *Parkin v Australian Capital Territory Schools Authority*, 2005; *Purvis v New South Wales [Department of Education and Training]*, 2003; *S v The Corporation of the Synod of the Diocese of Brisbane*, 2001; *Samin v Queensland and Rich v Queensland*, 2003; *Stephanie Travers by her next friend, Wendy Travers v New South Wales*, 2001; *Trustees of the Roman Catholic Church for the Diocese of Canberra and Goulburn v Hadba*, 2005). There have been, of course, and there will continue to be, other cases in and around these time periods, but it is interesting to note that many of the more authoritative cases do come in clusters.

The researcher has noticed that there has been a decline in authority level precedent cases heard in the higher courts in recent years. This could well be attributed to schools becoming more compliant in following government regulations. Due to their adherence to established legal protocols, schools may have faced fewer actionable claims being brought against them. Furthermore, it is also imputed that schools are doing everything in their power to maintain their notable reputations in the community and agreeing to settle disputes with plaintiffs out of court. This way, if damages payouts are made, they can be conducted in secret, often with insurance companies, and without the need for a lengthy, public, and reputationally damaging trial.

## **2.8. Chapter summary**

The literature review began with an introduction to education law and the main reasons why there has been a legalisation of schools. It then progressed to examining some of the many sources of literature related to the topic of education law. This was followed by considering the need for teachers in schools to have a level of legal literacy. A history or the progression of education law issues relating to schools and how this development impacted on teachers then followed. Teachers' level of understanding of education law garnered from other studies in this field was then summarised, as a background position before revealing the findings of this

study in later chapters. Finally, the last two sections of this chapter highlighted two distinct yet intertwined factors relating to any scholarly discussion on education law in Australia: teachers' fear of facing legal ramifications from their dealings with students, and the notion that we are living in an age where people are more likely to blame, and therefore sue, someone else in order to seek redress for loss suffered.

Chapter 3 examines the scholarship related to my conceptual framework and considers what legal literacy means for contemporary teachers in Queensland.

## CHAPTER 3: CONCEPTUAL FRAMEWORK

### 3.1. Introduction

In this chapter, I explain the key concepts that inform the thesis's theoretical nature. In so doing, I group together a number of concepts to develop a new conceptual framework upon which to position the study's three research questions:

- **Research Question 1:** What do independent school teachers in Queensland believe to be their level of understanding concerning education law?
- **Research Question 2:** What are the empirically confirmed understandings of education law held by Queensland independent school educators?
- **Research Question 3:** What do Queensland independent school teachers need to know about education law?

This chapter begins by considering the concept of *legal literacy* and especially as it applies to Queensland teachers. The next section of this chapter reviews the four dimensions that make up this concept of legal literacy. Part of this explication explores how sometimes these dimensions (particularly the first two) work in parallel and at other times, can be deemed to be in conflict with each other.

### 3.2. What is legal literacy conceptually?

Before answering this question, there is a need to explore both sections of this term separately to better understand them before combining the two to create a new concept or a new understanding of the concept. In doing so, a contribution to knowledge is generated.

#### 3.2.1. *Law (or legal)*

*Law* has a number of different definitions that help to frame and understand the construct as to what *law* truly means as a concept. Many people hold a rather simple understanding of what law is. They see law as a social instrument that is used to guide our behaviour and to apply consequences to people when they step outside the boundaries of that expected behaviour. However, there are a plethora of definitions that are used to describe this notion of law.

Law, as purported by Kelsen (2009) is a system of rules that govern human behaviour. He suggested that law:

... is a set of rules having the kind of unity we understand by a system.

The relations which link together the particular rules of a legal order are also essential to the nature of law. Only on the basis of a clear comprehension of those relations constituting the legal order can the nature of law be fully understood. (p. 3)

Kelsen (2009) went on to suggest that law is not the only set of rules that regulate human behaviour. Other orders such as morals or a person's set of instilled ethics is another example. This is discussed later as part of the third dimension of this conceptual framework. Another such example of an order of human behaviour is religion which include the central tenets that are observed as part of that religion.

Other theorists believe that law can be more succinctly defined by the security it provides for the community. One author who advocated this view was Pound (2010) who defined law as the:

... authority resting upon something more stable than human will and the power of those who govern to impose their will for the time being ... and ... In order to maintain the general security and the security of social institutions. (p. 22)

Another group of commentators take a more 'social engineering' approach to defining law. Tamanaha (2001) is one such example. He suggested that law is "... a mirror to society, which functions to maintain social order" (p. 1). This social engineering notion fits aptly as one could argue that the law changes social behaviour by its limits and guiding provisions. Opponents of this view could propound that the law catches up with social advancements and is 'behind' where society is at. One such example is with the tremendous development in the use of technology in today's world. The law invokes boundaries on human behaviour as more and more people take up the use of such technology and it is evident that such boundaries need to be instilled to ensure the safety of all people (Gibson, 2018; Tamanaha, 2001).

Whilst still other authors follow a more legal doctrinal perspective in helping to describe jurisprudence. A useful example of this proposition comes from Tiller and Cross (2006) where they simply defined the currency of law as emanating from judicial opinions and see it as the way to resolve future disputes. This approach considers judges' rulings on law (as opposed to fact) or legal principles and uses critical analysis methods to either concur or distinguish from current cases before the judicature. They maintain that judicial rulings, irrespective of the actual judge, are neutral legal principles. This viewpoint differed from what Tiller and Cross (2006) call the 'realists' that suggested that legal decisions came from more than simply the legal principle(s) themselves:

... legal language was too indeterminate to answer judicial disputes, and judges had no self-interest in relying on the law rather than their personal preferences when making decisions. The realists maintained that judges first identified their desired resolution of a case, perhaps due to personal ideological preferences, and then manipulated the available legal materials to support that conclusion. (p. 519)

Irrespective of the definition used to help describe the phenomenon that is *law*, and whether we should use a 'natural law' (Finnis, 2011) lens or a 'positivist law' (Ellis, 2013) perspective, there seems to be four distinct features of law that all authors can agree upon. These four features help to distinguish laws from culturally accepted norms or rules that may apply, for example, only to those members of a particular sporting club. Firstly, laws apply to everyone. They apply equally to all notwithstanding a person's particular position or role they play in the community. Secondly, law is made by special authorised bodies enacted to do just that. Essentially, parliaments and courts of law are created with the important task of creating and establishing laws for the people in their respective jurisdictions. This notion will be teased out further in the third section of this chapter in bringing the concepts together to form my new conceptual framework that buttresses this study. Thirdly, law focuses on the important values and issues in life and are not concerned with mundane or less important aspects of community life. Lastly, laws are enforced in special ways that are different in their resolution of any delict of rules or social norms (Currie & Cameron, 1996; Woodgate et al., 2018).

In discussing what laws are while attempting to define what law does, it is valuable to consider the rudimentary functions of law to help frame our understanding of what law is and how it operates in our society (Green, 1998). The first broad function of law is that it attempts to preserve society's stability. The law is said to keep society together and keep it functioning. Without law anarchy would reign and only the 'strongest' or 'largest' entities (including individual citizens) would be successful, or at the very elementary of levels, survive. Secondly, law exists to promote the orderly functioning of society to the very benefit of its citizens it governs. Without such laws property rights, personal safety and the creation of acceptable levels of behaviour would not be possible. The third and final essential function of law is to help society and its members resolve disputes as amicably and constructively as possible. That is to say that when a person feels aggrieved by the actions of another, the first person is able to use the institution of law to help bring a resolution to the situation. For example, when a student is injured whilst at school due to the negligence on the part of the school, they can use the law to shift the loss back on to the party who first caused the injury (the school) by way of compensation (*Gem v State of New South Wales*, 2017). Alternatively, if a person breaks the criminal law, the law then uses its power to bring an adverse action on that person. This promulgates that they have wronged another and/or society in some way and consequently should be punished for that violation.

To conclude this discussion of what is law, it is helpful to perspicuously outline the characteristics of effective law. Firstly, the law should be clear and provide certainty to the citizens it governs (Gibson, 2018; Woodgate et al., 2018). Citizens, including educators, have a duty to know 'the law' or if they do not, they should have channels to find out what the law or legal position is on a particular issue. Ignorance of the law is not a defence at law. One cannot simply say that they did not know that that particular issue was governed by law. Law should be written in such a way that it provides a clear picture of what the legal position is on a specific matter. Sometimes this is not the case and hence why we need courts to help interpret, in a practical sense, what the intention of the law is and how it was meant to apply in society. The law is also meant to provide certainty and security so that people can trust it and the many mechanisms under which it exists.

Secondly, the law should allow for flexibility. This might, *prima facie*, seem in contradiction to the first characteristic highlighted above. How can a law promise

certainty and allow for flexibility at the same time? Effective laws should be acceptable by the majority of the community and also be seen as responsive and adaptable to change (Gibson, 2018). A reasonably recent case that exemplifies this characteristic is the changes to Australia's marriage laws with the passing of the *Marriage Amendment (Definition and Religious Freedoms) Act, 2017* (Cth) that now permits same-sex marriage to occur. After a postal ballot of all voting Australians returned a positive vote, the law was amended. As discussed in the common law section of this chapter below, judge made law is another avenue for the law to express its flexibility in changing 'with the times' to accommodate society's values of the day.

Thirdly, the law should apply equally to all and be administered fairly. Not one person or groups of persons should be exempt from the law due to their standing or the role they play in society. If there is a perceived inequity in the law or how it is enacted, this can lead to a sense of injustice and unacceptability by the community it is established to govern (Gibson, 2018; Woodgate et al., 2018).

Lastly, the law should be accessible to all. As stated above, because ignorance of the law is no defence in law, we all then need to be able to access the law (Gibson, 2018). This is not only in the availability of obtaining copies of the law through the many commonly accessible websites (Australian Legal Information Institute, 2023; Queensland Government, n.d.) but also notwithstanding our financial position in life, we should all be able to access legal support. This comes, for most people, in the form of private practise solicitors in the first instance or by garnering the support of government agencies such as Legal Aid (Legal Aid Queensland, 2023) if our financial situation precludes our accessing a private solicitor.

### **3.2.2. Literacy**

What is *literacy*? What does it mean to be literate? This section of the chapter aims to help define the term *literacy* and help understand what it means in terms of this inquiry. Literacy, it is propounded, is more than simply the ability to read and write, often referred to as basic literacy (Wallendorf, 2001). It also implies understanding of the subject matter about which a person is reading or writing. This skill-based and functional definition has subjugated the educational landscape for some decades. A wide variety of theories are explored below to help explicate literacy in helping to define the salient concept of *legal literacy*.

UNESCO (2008) over half a century ago defined literacy as “A person is literate who can with understanding both read and write a short statement on his (her) everyday life” (as cited in Keefe & Copeland, 2011, p. 93). A further definition provided by UNESCO (2008, as cited in Keefe & Copeland, 2011) distinguished that of the previous definition with the addition that literacy is situated in the very context of the community in which the individual finds themselves:

A person is functionally literate who can engage in all those activities in which literacy is required for effective functioning of his (her) group and community and also for enabling him (her) to continue to use reading, writing and calculation for his (her) own and the community’s development. (p. 93)

Keefe and Copeland (2011) proposed that a definition of literacy is not stagnant but rather changes with time and is also context specific. Furthermore they discussed the notion that there are sociocultural aspects of the definition that “went beyond describing skills and were based on assumptions, ideological dispositions, and political influences” (p. 94). This aligns with Vygotsky’s (1978) sociocultural theory which suggested that we learn and understand concepts through the social interaction with other people. Keefe and Copeland’s (2011) view concurred in their understanding of literacy where they posited that a more credible definition “... is viewing literacy not only as an individual trait but something that occurs in interaction with other members of the linguistic community” (p. 95). They, and other authors such as Street (1984) proposed that literacy occurs in a social environment and therefore a definition of literacy should contain some reference to that context and not only simply to a person’s literacy skills that have been developed. Keefe and Copeland (2011) went on to declare that “any definition of literacy goes beyond skill identification to in fact encoding sociocultural judgements” (p. 96). This consideration is important when considering the definition of *legal literacy* in the next section of this chapter, referring to the school context and other variables at play in which this construct is formed.

Keefe and Copeland (2011) also suggested that literacy exists on a continuum and continues to develop over time. It is not, as others have mentioned a dichotomy of being either literate or illiterate. They concluded with five definitional

principles rather than a clear definition. Two of which are imperative in considering what legal literacy means for the purposes of this inquiry:

Literacy is not a trait that resides solely in the individual person. It requires and creates a connection (relationship) with others. Literacy is the collective responsibility of *every individual in the community*; that is, to develop *meaning making* with all human modes of communication to transmit and receive information. [emphasis added] (p. 97)

The last point or principle espoused in their definition framework is imperious in this study. It coincides with the views of many, highlighted in the literature review chapter, where it was foregrounded that all teachers and leaders have a responsibility to have a degree of legal literacy (*every individual in the education community*) and to develop understanding (*meaning making*) in that community.

Wallendorf (2001) agreed with this overall standpoint. She summed it by stating:

... literacy is not just the dichotomy separating those who can read and those who cannot. More theoretically robust is the conceptualization of literacy as a continuous, multidimensional indicator of proficiency in using written language, with its higher levels reflecting an ability to draw logical inferences and think critically. (p. 506)

Other authors such as Roser and Ortiz-Ospina (2016) saw literacy as a measure of a particular population's level of education. In doing so, they compare, in percentage terms, how many people in a population can read and write with others at different times or in different places. Alternatively, they contrast the level of literacy of those at different ages of the same population or geographical location.

Further, other perspicacious thinkers on this topic take a more anthropological view when considering definitions of literacy. Such thinkers as Goody (1975) and Scribner and Cole (1978) have taken the view that literacy can cause a great divide in human societies. Inferences about cognitive advancements are important but they have suggested that we are not to take what happens in this regard to an individual as being congruent to what occurs to the whole population. "There is no basis for

assuming, without further evidence, that the individual child, born into a society in which uses of literacy have been highly elaborated, must personally engage in writing operations in order to develop “literate modes of thought” (p. 22).

Scribner and Cole (1978) also espoused the notion that the mode in which communication occurs changes over time has an effect on the impact of literacy competence. Notwithstanding the advancements in technology and the use of the internet every day by most people in the civilised world, have not necessarily changed the level of literacy acquired. They stated:

There is no necessary connection between the modality in which new operations come into being and the modality in which they are perpetuated and transmitted in later historical epochs. Forms of discourse initially confined to written text may subsequently come to be transmitted orally through teacher-pupil dialogue, for example, or through particular kinds of “talk” produced on television shows. (p. 22)

Before considering combining these two concepts of law (or legal) and literacy, different aspects of the two concepts are explored, giving consideration to a variety of lenses through which these concepts have been observed. In doing so, these terms have been unpacked, using theory from various writers, to help explain their meaning in a more constructive manner. Having now provided a background of these two separate and distinct terms, it is anticipated that this should help to deliver a more detailed understanding of the combined concept of legal literacy.

Functional literacy, a higher level of literacy, is “... the level of ability to use the written information needed for full functioning in that society” (Wallendorf, 2001, p. 507). This level of literacy is what is being considered in this study as what is required to fulfil a teacher’s duties in their society (school). Teachers are people who have completed at least an undergraduate university degree, and therefore are seen as functionally literate, despite the many criticisms imputed upon them by the mass media (Mockler, 2022). This research project was designed to query their level of legal literacy as it relates to their roles as educational practitioners.

### 3.3. Legal literacy

What then is *legal literacy*? Giving considered attention to the above concepts and their illuminations, legal literacy, in terms of teachers working in schools, is the level of teachers and school leaders' understanding (either in writing, reading or oral discussions) of legal matters that relate to their educational setting. It is probably pertinent to point out at this stage, that some teachers do utter legal knowledge of various aspects of school life, and at times appear quite authoritative, but are erroneous in their understanding. This very point was tested in the survey conducted as part of this study.

Legal literacy is not simply knowing about the law as it applies to a certain issue or topic. It is more opined as a continuum of understanding the law. Accordingly, some people will have a more detailed understanding of the law whilst others will have a less comprehensive, or more superficial understanding of the law.

Some who have completed a law degree as well as practiced law either in private practise or working for a company or government department, will no doubt be on one end of the spectrum of legal literacy. White (1983) considered the other end of the continuum held by those who know little about the law stating:

The other end of the spectrum of "legal literacy" would mean the capacity to recognize words and locutions as foreign to oneself, as part of the world of law. A person literate in this sense would know that there was a world of language and action called "law". (p. 143)

More importantly, and especially for the purposes of this study, White (1983) made this more useful observation when examining the definition of legal literacy:

Between these extremes is another possible meaning of "legal literacy": that degree of competence in legal discourse required for meaningful and active life in our increasingly legalistic and litigious culture. The citizen who was ideally literate in this sense would ... be able not only to follow but to evaluate news reports and periodical literature dealing with legal matters ... to function effectively in positions of responsibility and leadership [say, for example, as an elected member of a school board]. (p. 144)

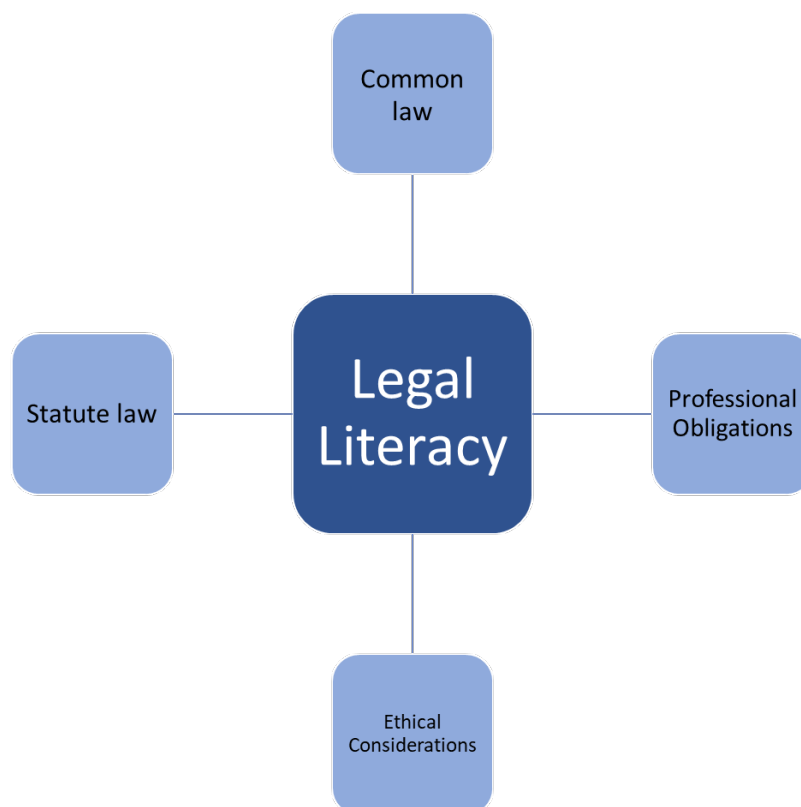
This middle ground is what I, and the other authors highlighted in Chapter 2 in the literature review, understand by the term legal literacy. It is obtaining and utilising an understanding of school law matters in order to be conversant in matters of law as they pertain to the school environment. This is so that the teacher and school administrator can avoid risk and litigious activity and know when to call in external support when a more proficient or comprehensive knowledge base and/or understanding is required.

For the purposes of this study and aligning with the textbook, I have chosen the four dimensions or components, namely statute law, common law, ethical standards and professional obligations, that make up legal literacy to explain what legal literacy is and what it consists of conceptually. Each one of these dimensions will be explored in some detail individually.

The conceptual framework model is depicted in the Figure 3.1. It depicts how the four separate dimensions have been drawn together to frame the model of legal literacy analysed in this thesis.

**Figure 3.1**

*Conceptual Framework*



### **3.3.1. Statute law**

Before considering what statute law is and its function in the law-making process, it is important to consider how and where parliaments receive their powers to actually make laws. The *Commonwealth of Australia Constitution Act 1900* (Cth) (hereafter called the Constitution) established the federal or Commonwealth parliament as well giving power to states and territories to create their own jurisdictional parliaments. In attempting to avoid corruption or giving one person or party (as opposed to a political party) too much power or level of control, the Constitution established the notion of a separation of powers. There are three groups of people who have been allocated specific roles to play in the law-making process. Firstly, the parliament is the body or institution established to carry out the legislative powers in the Australian system of government (Marinac et al., 2018). The legislature has the power to make laws or what is collectively known as legislation or statute law. The second group of people are the ministers in charge of various portfolios and the police to carry out the law. This second group of people have powers given to them to ensure that legislation is enacted in the community. This second conglomeration of powers are referred to as executive powers. The third group of powers are those given to the judicature, or judges to make laws (where there is little or no legislation covering this area, for example, contract law) and also to interpret the legislation, where there is ambiguity that has been created by the legislature. There are strict rules of statutory interpretation that judges must follow in doing so. This final group of judicial powers given to judges in our courts of law has this important role to play in our law-making process in Australia.

The purpose of this section is to help define what is statute law as it relates to school and school staff. This is in order to better acquaint the reader with the concept of legal literacy and how it unfolds in schools. Additionally, there is a considerable nexus between the textbook and this concept of legal literacy and therefore an exploration of the intersection is important here.

Statute law is made by parliaments of the states/territories and the Commonwealth parliament of Australia. Parliaments have powers to make laws as mentioned above. These laws are collectively called legislation or statute law or various acts of parliament. Parliaments can also delegate their powers to make laws with respect with certain matters to subordinate bodies such as local councils or telecommunication organisations. These laws are known as delegated or

subordinate legislation and are often called by-laws or regulations (Gibson, 2018). Statute law exists alongside common law (next dimension discussed in this chapter) and in many cases reaffirms the applicable common law principle. For example, consumer protection legislation and unconscionable contracts. However, sometimes statute law and common law conflict. Where this happens, statute law will prevail over common law to the extent of the conflict (Bant, 2015; Gibson, 2018; Vines, 2013). In this way, parliaments (who are entrusted to make statute law) are often called the supreme law-making bodies in Australia, as they can modify the common law if they see fit to do so. Hinchy (2015) further explains “Furthermore, as statute law overrides common law, the issue of policy development has important ramifications for the modification of the rules of common law in Australia” (p. 355). An example of this has been the introduction of Civil Liability Acts across various jurisdictions in Australia. For example, *Civil Liability Act 2003* (Qld) where they have changed the existing law of negligence by placing limits on the quantum of compensation for which plaintiffs can claim:

It is also possible for a statute to change the common law because the common law principle with which it is concerned no longer meets current social conditions. For example, the common law principle of freedom to contract has been modified by industrial relations legislation ... prohibiting ... both employers and employees from excluding the provisions of the legislation in relation to wages and holidays. (Gibson, 2018, p. 79)

Statute law is normally generated by government ministers, responsible for one or more portfolios, who put forward a bill to be debated in parliament to test the efficacy of what it purports to achieve. These bills are then requested (called bills) to be heard in a sitting of parliament (Hinchy, 2015). These bills are then prioritised on their perceived importance or urgency and then placed in the queue to be debated in their respective parliament. Bills can also be introduced by other parties such as law reform commissions or professional bodies. The passage a bill must go through to become law is quite complicated and lengthy which is outside of the scope of this discussion. Suffice to say that from an original idea or even changing the existing legislation (called legal amendments) can take months if not years before it actually becomes part of our statute law in operation.

The textbook refers to many pieces of statute law as there are many acts that form part of the patchwork of education law in Australia. Indeed, ten of the thirteen chapters of the textbook are essentially regulated by statute law (and the textbook does not cover every aspect of education law). Probably the first piece of statute law that should be highlighted is the *Education (General Provisions) Act 2006* (Qld) which is the principal act that establishes schools in Queensland and makes available, inter alia, the provision of a “high-quality education” (s 6) for all young people in the state. This act not only outlines a number of education and training alternatives for students but also dictates the minimum period of education that young people must undertake in Queensland (s 5 (1)(c)).

The first chapter in the textbook relating to statute law is on privacy. The relevant legislation that addresses privacy is the *Privacy Act 1988* (Cth) – which applies to all non-government schools, and the *Information Privacy Act 2009* (Qld) which applies to all government schools in Queensland. These acts set out the Privacy Principles (Australian Privacy Principles (APPs) in the Commonwealth Act and the Information Privacy Principles (IPPs) in the state Act) that outline how, in this case, schools, are to collect, store and distribute data collected concerning their attending students. They also require all schools to have a Privacy Policy that describes how the school intends to use and secure all student information. The *Privacy Amendment (Notifiable Data Breaches) Act 2017* (Cth) considers data breaches and what happens when there is a notifiable data breach such as when unauthorised personnel obtain, either through negligence or deliberate computer hacking, personal and/or sensitive information about school children.

The next chapter in the textbook that is primarily regulated by legislation concerns discrimination in education. There are a number of acts that prohibit schools discriminating when recruiting staff and also when considering enrolling students into the school. There are a number of grounds or bases upon which schools are not permitted to discriminate. In Queensland, there is the state legislation: the *Anti-Discrimination Act 1991* (Qld) and the various Commonwealth statutes: *Age Discrimination Act 2004* (Cth); *Disability Discrimination Act 1992* (Cth) and the corresponding *Disability Standards for Education 2005* (Cth); *Race Discrimination Act 1975* (Cth); and the *Sex Discrimination Act 1984* (Cth) that all apply. A plaintiff, bringing an action in discrimination, often has a choice as to which

act they wish to claim discrimination and hence the corresponding judicial body that will ultimately decide the matter.

Discrimination is prohibited on the grounds of, inter alia, disability or "...impairment, sex, race, age, breastfeeding, gender identity, family responsibility, trade union activity..." (s 7 of *Anti-Discrimination Act 1991* [Qld]). This means that schools cannot decide to not employ an applicant based on any of these grounds. This is unlawful. In addition, the *Fair Work Act 2009* (Cth) also prohibits discrimination in employment based on a 'protected attribute' such as the grounds mentioned above (s 35(1)).

Further, it is unlawful for schools to refuse a potential student's enrolment based on one or more of these grounds. Moreover, schools are not permitted, once a student is enrolled, to discriminate against a student based on any of stipulated grounds by varying the terms of the enrolment, denying them or limiting access to any benefit of the education provided, excluding the student or treating the student unfavourably in any way in relation to the student's education (ss 38 – 39 of *Anti-Discrimination Act 1991* [Qld]).

There are defences for faith-based schools who have strong adherence to various religious tenets so long as the discrimination is solely based on the religious doctrine and not on other factors. Furthermore, single sex schools are granted permission under the various sex discrimination provisions of the legislation to discriminate on the basis of gender but interestingly, not on gender orientation or gender dysphoria. In recent years, disability discrimination has been the most actioned ground in education with the ever increase in diagnoses of children with autism spectrum disorder and other mental health difficulties such as anxiety and depression (Australian Institute of Health and Welfare, 2022; Williams et al., 2008). It is the author's considered view that gender identity and intersex status under ss 5B, 5C of the *Sex Discrimination Act 1984* (Cth) will become the most litigated area of student discrimination claims along with disability discrimination moving into the next decade.

Another chapter in the textbook dealing almost exclusively with legislation regulation is on work health and safety. This legislation is essentially a codification of the common law (explained later in this chapter) which puts the onus on schools, based on the legislative framework, to take care of students, staff, volunteers, parents and other visitors such as contractors. The relevant legislation that applies in

Queensland is the *Work Health and Safety Act 2011* (Cth) and *Work Health and Safety Act 2011* (Qld). These laws essentially require schools to take care in all of their activities and dealings with all persons to, as far as practicably possible, avoid injury to such persons. The essential difference to the common law position, despite it mirroring the position of the common law, is that the legislation imposes criminal sanctions for serious breaches of the respective legislation. Schools have obligations to be careful with and appropriately label hazardous materials, prevent trips and falls, to ensure electrical equipment is regularly tested and compliant, carry out and maintain risk assessments for any potentially dangerous activities such as school camps or science experiments.

The next section of the textbook that examines statute law as it relates to education is on family law. The main reason this area of social endeavour is significant to schools and those working in our schools, is because many family relationships end up separating. Young people are consequently often left living predominantly with one parent and spending time with the other parent. According to the data highlighted in Chapter 2 of this study, almost half of marriages in Australia end up in divorce (Hewitt et al., 2005). Hence the obvious correlation here between a large number of school students and the respective court orders that direct what happens with respect to who they live with, spend time with, and other important factors that schools need to be aware of. Schools are often used in court orders concerning children of divorced parents as the 'changeover' site where one parent drops them off and the other parent from which picks them up on the day(s) that the (usual) weekly or fortnightly custody changes.

The two main pieces of statute law that apply in these cases are the *Family Law Act 1975* (Cth) and the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth). These two principal acts essentially deal with what happens when a relationship involving children is dissolved and details how the Federal Circuit and Family Court of Australia considers what is in the best interest of the children (*Federal Circuit and Family Court of Australia Act 2021* [Cth]). Consent orders, parenting plans and parenting orders are made by the court and parties in dispute and these have huge ramifications for schools (*Family Law (Reform) Act 1995* [Cth]). For example, if a court order directs that one parent is not to have any contact with a child(ren), what is the school to do if that parent turns up to collect the child(ren) in circumstances where the school has no formal knowledge of the

decision? Or similarly, if they arrive at the school to collect a child when it is not their week to have the child(ren) living with them? What is the school to do if, for example, it is a faith-based school, and one parent wants the child(ren) to be enrolled in the school and the other parent wants a more secular education for the child(ren)? How does the school resolve this tension? As mentioned above, due to the augmenting proportion of school children living under the direction of such plans or court orders, it is vital for schools to have formal notification of such orders so that they are not doing anything that will contravene or, in less likely situations, be in breach of the said orders. Further implications exist when one separated parent wants to move the child(ren) from one school to another. Similarly, when one parent agrees that a child of the previous relationship should be taking a certain prescription medication and the other parent does not agree.

Sometimes, whilst provisions exist in the above legislation to say how the separated parents will care, and share the parental responsibilities for such children, schools are often left with the difficult management of these types of issues when faced with disputing parents. A burgeoning social area affecting schools is the situation where a young person wants to transition from one gender to another and live their life as a member of the opposite sex. Whilst discrimination law and its various statutes that govern this area of school administration has been mentioned above, when a young person wishes to change their name to resemble something more befitting of the opposite gender, this is also governed by s 4 of the *Family Law Act 1975* (Cth) (Christie & Christie, 2008).

Yet a further area of school administration overseen by statute law is the whole area of child protection and mandatory reporting. Most schools have child protection policies operating in their schools. The *Child Protection Act 1999* (Qld) aims to maintain the safety, wellbeing and best interests of children in Queensland as paramount (s 5A of *Child Protection Act, 1999* [Qld]). The Act also directs registrable employees such as teachers who work with children in their daily roles (along with police officers and registered medical doctors) to be above reproach in this area of their professional duties. In Queensland, as in Victoria and South Australia, this is called “Working with Children Checks” (Butlin et al., 2021, p. 114). These checks “...help ensure that these individuals do not pose an unacceptable level of risk to children” (Butlin et al., 2021, p. 114).

The *Child Protection Act 1999* (Qld) also dictates those persons who are engaged in particular work who are required by law to mandatory report incidents of harm and/or suspected harm. School authorities are one such group who are entrusted to do just that (s 13E of *Child Protection Act 1991* [Qld]). There is an onus on schools to report when a reportable suspicion is formed under section 13I of the Act. Section 17 of the Act deals specifically with children at risk of harm in a school or education services environment (s 17 of *Child Protection Act 1991* [Qld]). There are other legal duties such as the general duty of care under common law which puts the obligation on such persons mentioned above to report suspected harm to the proper authorities. Other legal duties can come from professional or industrial instruments or simply the common law contract of employment (Butlin et al., 2021). Importantly, there is a general protection afforded to the reporter making the disclosure to the proper authorities, even if found to be completely unfounded or unsubstantiated, from civil, criminal or administrative proceedings provided such disclosures are made in good faith (Butlin et al., 2021).

There are penalties under criminal law for failing to report a suspected or actual disclosed incident of harm carried out on a child when required under the law to do so. These penalties include prison time and can include dismissal from your employment if stipulated in the contract or relevant industrial obligations.

Another area of legislation governing schools that is highlighted in the textbook is criminal law. Criminal law relates to those matters which are regarded as criminal offences. These are usually classified as offences against a person, for example assault, or against property, for example wilful damage, or against the public interest, for example drug possession or traffic offences.

Criminal law matters in most states and territories in Australia are dealt with under common law principles, mentioned in the next section of this chapter, and are not covered by a code or list of criminal offences typically broken into categories. However, in Queensland, Western Australia and Tasmania legislative frameworks have been enacted to underscore our criminal law in these jurisdictions. The principal piece of legislation in Queensland is the *Criminal Code Act 1899* (Qld) and its many, many amendments. This act covers the majority of criminal matters in this state. There are other pieces of legislation that are worth noting that do have a considerable impact on criminal law in this jurisdiction such as the *Criminal Proceeds*

*Confiscation Act 2002* (Qld); *Domestic and Family Violence Protection Act 2012* (Qld) and the *Penalties and Sentences Act 1992* (Qld).

However, the main ones affecting schools include the following pieces of legislation briefly explained below. The *Drugs Misuse Act 1986* (Qld) lists the criminal offences associated with the possession, use of, supply and trafficking illicit substances. Further, it outlines other offences that are often committed when dealing in illegal drugs such as possession of equipment to use in association with such substances. The *Police Powers and Responsibilities Act 2000* (Qld) establishes, inter alia, what powers members of the Queensland Police Service have in relation to investigating criminal behaviour, making official arrests, and their rights with respect to ensuring the safety of both members of society and their property. For instance, according to s 421(3)(b) of the *Police Powers and Responsibilities Act 2000* (Qld) police are not permitted to interview a school student about a criminal matter without an adult present. This adult, if not the parent/carer of the child, is often the school principal or their delegate.

Another criminal law statute that is utilised with school students is the *Regulatory Offences Act 1985* (Qld) for minor ‘stealing’ offences such as shoplifting goods from retail outlets or failing to pay for a meal. These matters have a reasonably low maximum amount of loss suffered by the vendor. Such offences are described as ‘regulatory’ as they do not lead to a criminal record. The *Weapons Act 1990* (Qld) establishes an offence if a school student possesses a weapon or discharges a weapon illegally and without a proper permit to do so. School students who carry a concealed knife and get into affrays are often charged under this Act. Finally, the *Youth Justice Act 1992* (Qld) is the act which governs how young people are managed under the criminal law. It guides the considerations that magistrates have to take into account when administering punishment. In addition, the various sentencing order options that are available to judicial offices are also outlined in the act.

Other criminal law legislation at Commonwealth level that relate to schools are *Crimes Act 1914* (Cth); *Criminal Code Act 1995* (Cth) and, most exigently when it comes to cyberbullying and the use of mobile devices to send and forward inappropriate messages or images, the *Telecommunications Act 1997* (Cth). These issues are also dealt with in the textbook in its own chapter when discussing cyberbullying and online criminal offences.

There are many, many more statutes that help guide the daily affairs of what occurs in schools from animal rights in relation to offering and teaching subjects such as Agricultural Science (Queensland Government, 2023), to food and hygiene obligations under the *Food Act 2006* (Qld) when offering subjects such as Hospitality and Food and Nutrition (Queensland Government, 2023). Other statutes such as the *Industrial Relations Act 2016* (Qld) and the *Workers' Compensation and Rehabilitation Act 2003* (Qld) direct employers how to manage the employee – employer relationship. Parents seeking student files or behaviour data are allowed to seek such detail on file by virtue of the *Right to Information Act 2009* (Qld). These acts apply to schools and other organisations in our community. However, there are other pieces of legislation that only relate to schools such as the *Education (Work Experience) Act 1996* (Qld) that incorporate what rights and responsibilities schools have when offering their students an experience of workplace learning outside of the usual school environment. Another example is the *Education (Accreditation of Non-State Schools) Act 2017* (Qld) which is an example of delegated or subordinate legislation in education, that creates the Non-state Schools Accreditation Board. This Board has developed prerequisite conditions such as a well-developed curriculum and financial stability that independent schools initially have to meet in order to establish in the first instance; in addition to other annual checks to ensure their continued viability in this sector. Other acts such as the *Public Health (Tobacco and Other Products) Act 2023* (Cth) prohibiting children purchasing vaping and other smoking products without an authorised medical prescription, are also applicable in this discussion.

### **3.3.2. Common law**

In many areas and activities of social life, there is either no or a dearth of legislation governing how those activities are managed. Sometimes, there is existing legislation, but it may be unclear and/or equivocal and it needs to be interpreted to provide clearer and social meaning. Courts are established to carry out this important role in the administration of justice in Australia. When courts (or more correctly, judges) make law on certain areas of social life or when they interpret ambiguous statute law, they are said to be making what is referred to as *common law*. Judges in this important role in developing the law in the process of deciding cases between two or more disputing parties is called judge-made law or common

law, as distinct from legislation (Ellis, 2013; Hinchy, 2015). Judges also, as briefly mentioned above, have the other important task of interpreting the meaning and therefore, importantly, the application of statute law in practice. These two roles and their consequent decisions make up this body of law known as common law.

The doctrine of precedent or the principle of following earlier legal decisions when deciding cases of a similar nature is imperative when examining common law for a variety of reasons. Importantly, courts exist in a hierarchy or order with different courts having jurisdiction in different matters. They operate in a hierarchical arrangement where the higher courts hear the more important, or legally significant cases. The doctrine of precedent maintains that “a court is bound to follow decisions of courts higher than it in the hierarchy of courts” (Gibson, 2018, p. 73). In so doing, following precedents is a way to ensure consistency of the law is applied to all in the community.

The common law can be changed and supplemented by statute law. A case in point is consumer protection legislation. Contract law is largely regulated by common law (case law) but consumer protection legislation “modifies some of the common law of contract” (Ellis, 2013 p. 181).

What happens when there is a conflict between existing statute law and common law? Sometimes this does happen with the law in the same area where the statute position and the common law position appear incongruent with each other. As stated earlier in the chapter, when this does occur, the common law gives way, and the statute law position prevails (Atiyah, 1985; Vines, 2013).

Common law is very important in education law as negligence law, which dictates how duty of care is applied, is very much the nub of common law for schools. Indeed, duty of care is the most litigated event in schools and therefore makes up most of the body of education law existing in Australia today (Australian Legal Information Institute, 2023; Holden, 2008). We have dedicated the first and largest of all chapters in our textbook to negligence law. Negligence is regarded as a ‘tort’ or civil wrong (as compared to a criminal wrong). Schools typically encounter negligence law because the school owes a duty of care to a student and due to some action or omission (failure to take action) by the school or staff working in the school, the school breaches that duty of care and the student suffers some form of loss as a direct result from the breach. This loss can be in the form of physical injuries sustained or psychological/emotional loss suffered. The usual remedy for

such cases where there has been a breach of duty of care is monetary damages commonly called compensation.

There is much common law, emanating from actual legal cases, that direct and guide schools in relation to their duty of care owed to students. This includes what happens at school (*Commonwealth v Introvigne* [1982]; *Evans v Minister for Education* [1984]; *Kretschmar v Queensland* [1989]), in the playground (*Gem v State of New South Wales* [2017]; *St Anthony's Primary School v Hadba* [2005]), off campus (*Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman* [1996]), during more risky activities such as science experiments (*Bartley v Haines* [1989]), physical education classes (*Bills v South Australia* [1985]; *Bujnowicz v Trustees of the Roman Catholic Church of the Archdiocese of Sydney* [2005]; *Watson v Haines* [1987]), industrial design workshops (*Australian Capital Territory Schools Authority v Raczkowski* [2001]; *Parkin v Australian Capital Territory Schools Authority* [2005]), during school hours (*State of Victoria v Bryar* [1970]), outside of school hours (*Geyer v Downs* [1977]), involvement at camps or excursions (*Gugiatti v Servite College Council Inc* [2004]; *Munro v Anglican Church of Australia, Diocese of Bathurst* [1987]), boarding facilities owned or associated with schools (*S v The Corporation of the Synod of the Diocese of Brisbane* [2001]), and the whole area of bullying and cyberbullying (*Cox v New South Wales* [2007]; *Eskinazi v Victoria* (unreported, VCC, 20 June [2003]); *Oyston v St Patrick's College* [2013]; *Warren v Haines* [1986]) where emotional injuries are suffered by students. School administrators often ask where does our liability start and stop? Common law does help answer some of these important practical questions and goes a long way in helping to develop policy and procedural type documents to ensure compliance with this duty.

A duty of care is owed by schools to staff (*Crimmins v Stevedoring Industry Finance Committee* [1999]), parents, visitors and contractors too (Butler & Mathews, 2007). However, the main duty of care is, of course, owed to the more vulnerable members of the school community, its students. There are clearly many, many more common law cases dealing with negligence law in schools, but the above is an indicative list of where and when a school's liability lies in relation to duty of care.

Another area of common law that schools find themselves engaged in is contract law. This is particularly the case with independent schools and Catholic schools where parents/carers enrol their child(ren) at such a school and in so doing

enter into a contract where they promise to pay school fees in return for their child(ren)'s education. Both parties enter into a legally binding relationship at the very point of the acceptance of the enrolment. Without going into a detailed legal explanation as to what contract law is, suffice to say that there are a number of commonly accepted elements that make up a valid and binding contract (Andrews, 2015). The elements are intention to create legal relations, offer and acceptance, consideration, capacity and consent (Gibson, 2018). These elements must exist between a family and the school for there to be a legally valid contract, which is distinct from a simple agreement. A simple agreement between two parties is not meant to be legally enforceable in a court of law.

The common way that a party can breach their side of the contract that exists between a family and a school is failing to pay for the tuition fees or, in less likely circumstances, failure to pay some other costs or fees associated with the child(ren)'s education. Whilst it is common practice that most fee charging schools will afford some grace when families are facing financial adversity and finding it difficult to pay the school fees, they will expect at least some sort of part payment. Otherwise the balance can grow exponentially and soon become too difficult to manage. These schools have a duty to not simply accrue monies that may be too challenging to ever repay.

Another way families can be found to be in breach of their contractual responsibilities is when a child breaches the 'code of conduct' or some such behaviour management guidelines set by the school. Most fee charging schools have a clause in their contracts with families that are signed and agreed to upon enrolment saying that the child(ren) must abide by such behavioural expectations and that the parents agree to enforce this. So when a student behaves in a manner that breaches the expected standards of the school, for example selling drugs to fellow students, the school can then enforce this clause in the contract and argue that the family is in breach. When there is a breach, there are a number of options to remedy the situation. One common remedy at common law is the payment of compensation. However, in schools this is rarely sought. It is usually the termination of the existing contract upon the breach of it. This means in practice that the enrolment between the school and the child is over, and the child is excluded from attending the school.

There are, of course, other areas where contract law is enacted in schools such as the classic contract of employment that governs the employee – employer relationship between the two parties. This is very similar to many employment contracts except that the context (school) is different, and in faith-based schools, there can be a ‘lifestyle clause’ that dictates that the expected behaviour of the staff member should align with the teachings and tenets of the school authority. This is the case even in their private lives outside of school hours and the school environs. Another contract that recently has gained more attention are the ICT contracts where schools contract with external ICT storage and service providers (Pace & Blanco, 2022; Van Staden, 2019). With the changes to how schools must handle data breaches under the *Privacy Amendment (Notifiable Data Breaches) Act 2017* (Cth) in addition to protecting the school from unreasonable price increases are issues that contemporary schools are now facing and need to manage.

### **3.3.3. Ethical standards**

The third dimension or component used to help understand the term legal literacy, for the purposes of this research inquiry, is ethics. Law and ethics overlap but do not always perfectly align. That is to say that one person’s ethics or value system will be different from another’s. This is even so in the teaching profession. The legal position on a matter may or may not ally to one’s ethics or value systems. In the textbook, I wrote a whole chapter dedicated to ethics in the teaching profession. I defined ethics and law as follows:

Ethics and law are seen and intended to be distinct in the application and in the consequences for breach. Ethics are socially constructed and enacted guidelines based on values, whereas laws are externally governed rules and regulations that apply to all people, with specific penalties or ramifications if they are broken. (Butlin et al., 2021, p. 166)

Teachers bring to the role their own set of internal values or principles that they live and act by. These personal ethical principles or values underline how they, upon entering the teaching profession, choose to act and not act in certain ways. For example, the over diagnosis of ADHD Attention Deficit Hyperactivity Disorder has been a concern for some teachers for some time now (Davidovitch, et al., 2017).

Some teachers (G. Heck, personal communication, August 9, 2012) believe that a percentage of students diagnosed with it do not actually have the disorder but instead are more likely to be living in a situation where parental discipline is not as effective as it could be. This lack of parental discipline would then help to explain the negative behaviour often associated with this disorder. Despite the clear legislative position on the way schools need to manage and provide for students with disabilities (*Anti-Discrimination Act 1991* [Qld]; *Disability Discrimination Act 1992* [Cth]; *Disability Standards for Education 2005* [Cth]), some teachers will, according to their own personal ethical position, be reluctant to do so.

There are also a number of externally imposed guideline documents that direct teachers as to their expected standard of behaviour and the manner in which they are to relate and behave with students. In Queensland, the two main documents are the *Code of Ethics for Teachers in Queensland* (Queensland College of Teachers, QCT, 2008) and *Professional Boundaries: A Guideline for Queensland Teachers* (QCT, 2019) that are written and published by the Queensland College of Teachers. There are similar type documents in other states and territories in Australia, produced by similar regulatory teacher bodies that are detailed in the textbook (Butlin et al., 2021). The *Code of Ethics for Teachers in Queensland* is a one-page document that summarises the expected high standard of ethical behaviour from all teachers in Queensland. It provides a framework within which to excogitate how teachers are to professionally deal with students, families, fellow colleagues and the wider community. It focuses on six values that emphasise the expected behaviour of teachers in the state of Queensland by demonstrating: integrity, dignity, responsibility, respect, justice and care.

There is also a longer and more detailed guideline *Code of Conduct for the Queensland Public Service* (State of Queensland, 2010) that applies to all state school teachers as well as all other public servants in the state. Whilst this study only focuses on teachers in independent schools and this code therefore does not apply to them, it is still worth mentioning as a source of ethics for such teachers. It discusses four main principles: “integrity and impartiality; promoting the public good; commitment to the system of government; accountability and transparency” (p. 1). Each main principle has sub-pillars of ethical examples which particularises or provides expectations to teachers as to how they are to behave in an ethical manner. For example, if a teacher receives a gift to the value of \$50.00 or more they are duty

bound by the *Code of Conduct for the Queensland Public Service* to disclose the gift. These principles form part of the government's commitment to the highest ethical standards possible by their teachers.

*Professional Boundaries: A Guideline for Queensland Teachers* (QCT, 2019) is a broader document that establishes how teachers are expected to behave in regard to maintaining professional and appropriate relationships with students. Due to the "power imbalance" between teachers and students, and the teacher position of "trust, authority and influence" over students, the Guideline provides counsel to all Queensland teachers, those working under a 'Permission to Teach' and all pre-service teachers still completing their initial teacher education qualification on the importance of maintaining appropriate relationships with students (p. 3). The Guideline discusses the consequences for breaching professional relationships and establishes four main areas where breaches can occur: "emotional" where a teacher may demonstrate preferential treatment to a student; "relationship" where a teacher instigates or allows a sexual or intimate relationship with a student to exist; "power" where a teacher may give a student a gift or suggest that a student may suffer in some way if they do not comply with the teacher's request; and "communication" where a teacher may discuss highly personal matters or subjects of a sexual nature with a student (p. 5).

The *professional Boundaries* Guideline also highlights the practice of grooming and defines what constitutes grooming behaviour. It also prohibits sexual relationships where a teacher-student relationship once existed. It recognises that managing relationships with students can be challenging for some teachers for a variety of quite valid reasons such as working in a dual capacity with a student, for example, being a coach of the local sporting team of which the student is a member. "The protection of children and their educational wellbeing, along with the reputation of, and the public's trust in, the teaching profession lies at the heart of ..." this ethical document (p. 3).

Lastly, there is the actual employment contract itself between the employing body and the teacher which, for most independent schools, contain clauses found therein that require their teachers (and often other staff as well) to behave in an ethical and professional manner. This is an area where government schools differ from their non-government school counterparts. Government schools do not espouse a religious or faith-based values system; therefore they cannot demand of

their employees that they must follow a particular faith-based system of ethics. Most independent schools come from a church authority and therefore expect their employees to follow the tenets of such a church organisation.

These clauses are often written in a way that requires the teacher to adhere to the religious edicts of the church organisation which operate the school. For example, in a Christian school, the teachers are required to align themselves with the distinct teachings on creation and other fundamental Christian principles espoused by the church which runs the school. Wording from an actual contract stated that “All staff are required to ... support the mission and aims of the College” (Faith Lutheran College, 2011, p. 2). Or a more all-encompassing statement stated, “Duties are to be carried out in accordance with the doctrinal teaching of the Lutheran Church of Australia” (Faith Lutheran College, 2011, p. 2). Some employment contracts also require their teachers to attend regular worship services of a particular religion or denomination. If a teacher decides not to do so, they are in breach of their employment contract and therefore industrial and common law consequences can, and often do, apply.

Some employment contracts also contain what are often referred to as ‘lifestyle clauses’ which require staff working in such schools to adhere to a lifestyle choice in all that they do, in and out of their working environment, in accord with the school’s or school authority’s (church’s) teachings. Examples of such clauses are “Staff are required to be supportive of the ethos of the College by setting an example of personal conduct consistent with a Christian environment” (Faith Lutheran College, 2011, p. 2) and:

All staff members of the College, including the Principal, are required to be seen to conduct themselves in the course of, or in connection with their work, in a manner consistent with these principles and beliefs and in accordance with the Christian ethics of the College ... thus providing a specifically Christian role model and example to all students and families associated with the College. (Christian Outreach College, 2009, pp. 2-3)

Furthermore, some employment contracts make it quite explicit what their staff are not to do, such as in this example:

It is an inherent, genuine occupational requirement that all staff members of the College ... must not act in a way that they know, or ought to know, is contrary to the religious beliefs of the College. Nothing in their deliberate conduct shall be incompatible with the intrinsic character of their position (Christian Outreach College, 2009, p. 3).

If a staff member of such a school was living in a homosexual relationship and did not disclose this at the time of the employment interview, it would be safe to assume that the staff member would potentially face disciplinary action if this was found out. This disciplinary action could include suspension from duties or perhaps even termination of their employment. This living arrangement would be in clear breach of their contract.

#### **3.3.4. Professional obligations**

The fourth and final dimension making up my construct of legal literacy is professional obligations. An important element of working as a teacher and thereby joining the teaching profession is to firstly acknowledge that it is, indeed, a profession and, as such, like most professions, it is highly regulated. Teacher regulation ensures that those who enter the teaching profession are kept to the highest professional standards possible that are expected by the community in which they work. As part of this regulation, teachers are required to be registered with their local state or territory regulatory body. In Queensland, it is the Queensland College of Teachers [*Education (Queensland College of Teachers) Act 2005* (Qld)]. These regulatory bodies in each state and territory in Australia are responsible for the registration of teachers. In order to be employed as a teacher, one must be registered to perform such work under the auspices of the regulatory body and in accordance with the expected codes of conduct that were highlighted in the last section of this chapter. There are a number of obligations that teachers have to meet in order to gain entry into the teaching profession.

The first professional obligation that one must fulfill to be registered as a teacher is to complete a recognised and accredited initial teacher education qualification [s 8 of *Education (Queensland College of Teachers) Act 2005* (Qld)]. This is typically a four-year university degree or alternatively a master's degree if the

person has already completed an undergraduate university degree of some other kind in the first instance.

The second obligation is that such students have to have successfully passed both the Literacy and Numeracy Test for Initial Teacher Education Students (LANTITE) [s 8 *Education (Queensland College of Teachers) Act 2005* (Qld)]. The tests are:

... designed to assess initial teacher education students' personal literacy and numeracy skills to ensure teachers are well equipped to meet the demands of teaching and assist higher education providers, teacher employers and the general public to have increased confidence in the skills of graduating teachers. (Australian Council for Educational Research, 2023, p. 1)

There are professional standards that teachers have to demonstrate commensurate with their status and experience as a teacher. This is the third professional obligation that teachers have to satisfy. The Australian Institute for Teaching and School Leadership (AITSL) introduced Australian Professional Standards for Teachers (APSTs) at the various stages of a teacher's progress throughout their career (Graduate, Proficient, Highly Accomplished and Lead teacher) that they have to be able to demonstrate. These standards increase in complexity and skill as teachers develop and move through the stages (AITSL, 2011).

The fourth professional obligation for teachers is to complete the minimum compulsory professional development hours every year. This aligns with Standard 6 of the APSTs (AITSL, 2011). In so doing, teachers show that they are keeping abreast with changes in educational pedagogy along with particular personal interests that the individual teacher wants to pursue. This can be changes or developments in their subject area, technological advancements, behaviour management techniques, professional expectations such as mandatory reporting and child protection.

The final professional obligation for teachers under their teacher registration is to pay their annual registration fees to their regulatory body.

Periodically, the respective state or territory review teachers' registration to ensure that they are suitable to teach [ss 11 – 12 of *Education (Queensland College of Teachers) Act 2005* (Qld)]. In Queensland it is every five years. The purpose of such renewal is to “maintain a high standard of professional practice and conduct” (Queensland College of Teachers, 2023, p. 1). Part of this review, as signposted above, is to guarantee that all teachers performing their roles in schools are suitable to teach [ss 11 - 12 *Education (Queensland College of Teachers) Act 2005* (Qld)]. For teachers who are regarded as those ‘suitable to teach’ must maintain an unblemished record of any misconduct. An example of this would be where a teacher has breached the *Code of Conduct for the Queensland Public Service* (State of Queensland, 2010) mentioned in the previous section of this chapter or have engaged in sexual relationships with a student or former student. This review includes a police check to determine if teachers have a criminal record such that it would preclude them working with children in a safe and appropriate manner. This renewal also checks to see if teachers have performed their minimum compulsory professional development in that five-year period. It also confirms that teachers have what is known as ‘recency of practice’ to demonstrate that all registered teachers continue to maintain contemporary teaching practices, irrespective of where and for what school system they are employed.

### **3.4. Chapter summary**

The purpose of this chapter is to create a construct of legal literacy and use the four dimensions that I believe make up this concept to help define this important term. It is only when we combine these four dimensions of Statute law, Common law, Ethical standards and Professional obligations can we gain a fuller picture of what this term legal literacy really means for educators.

Commentators such as Teh (2014) and Stewart (1998) have clearly stated that teachers do need to have a level of legal literacy. That was clearly enunciated in Chapter 2 of this thesis. Following an extensive search of the extant literature by the author, I have not been able to locate a clear definition or explication of what this term actually means. This chapter has tried to do that, and in so doing, make meaning, by providing a contribution to knowledge, for teachers in order for them to have a semblance of what this important concept is all about. This way it provides

benefit to both practitioners working in schools and pre-service teachers, but perhaps even more importantly, informs practice in the profession.

It is from this defining position, and following on from the previous literature review chapter, that I now move onto the methodology chapter to discuss how I went about conducting the research.

## CHAPTER 4: RESEARCH DESIGN

### 4.1. Introduction

The purpose of this chapter is to show the interconnection of the various elements of the research design. Each of my methodological decisions have been based on the facets of my research questions presented below:

- **Research Question 1:** What do independent school teachers in Queensland believe to be their level of understanding concerning education law?
- **Research Question 2:** What are the empirically confirmed understandings of education law held by Queensland independent school educators?
- **Research Question 3:** What do Queensland independent school teachers need to know about education law?

There are a number of approaches a researcher can take when deciding on how to progress their research project. Cresswell and Cresswell (2018) when introducing such research projects stated "... research designs are types of inquiry within qualitative, quantitative, and mixed methods approaches that provide specific direction for procedures in a research study" (p. 11). This study is a qualitative inquiry, investigating the level and understanding of legal literacy that Queensland independent teachers possess. There are a number of important considerations and components that frame the research design of this project that are discussed in this chapter. Firstly, an exploration of some of the theoretical underpinnings of the pragmatism paradigm used in this study is provided, including how the study moved from an interpretivist worldview to the more astutely aligned pragmatism worldview. Secondly, consideration of the qualitative approach to research investigations more broadly is given. Following these philosophical underpinnings, the creation of the survey instrument used in the study, the selection of participants and how analysis of the collected data is discussed. Following these sections, the ethics and politics of the inquiry are outlined. Finally, a conclusion is supplied providing a summary of the processes utilised in this research project.

It is pertinent to highlight that in this chapter I have attempted to note the relevant theory or commonly accepted views of the approaches taken in research

methodologies applicable to this research project. This is then followed by detailing how I went about applying it personally to this study.

## **4.2. The research paradigm**

### **4.2.1. Introduction**

The paradigm is the lens through which the research problem is viewed.

A paradigm is a way of looking at or researching phenomena, a world view, a view of what counts as accepted or correct scientific knowledge or way of working, ... a shared belief system or set of principles. ... a way of pursuing knowledge. (Cohen et al., 2018, p. 8)

There are many other definitions of a paradigm: some authors have suggested that it is a philosophical worldview (Creswell & Creswell, 2018; Hesse-Biber, 2017; Opie, 2019; Scaife, 2019; Yin, 2016) whereas Leavy (2017, p. 264) described a paradigm as a "... framework through which knowledge is filtered". Finally, Denzin and Lincoln (1994, as cited in Punch, 2014, p. 15) noted that a paradigm is a "Set of basic beliefs that deals with ultimates or first principles".

Interpretivism is one such paradigm. This worldview concerns itself with the subjective experience of the participants, seeking to make meaning or understanding of their lived experiences. Interpretivism (often combined with constructivism or social constructivism) considers the meanings that people bring to situations and the ways in which they use these meanings to understand their world (Punch & Oancea, 2014). Interpretivists believe that this meaning "... is socially constructed via the interaction between humans or between humans and objects. Therefore, meaning does not exist independent of the human interpretive process" (Hesse-Biber, 2017, p. 23). Hesse-Biber went further in explaining this paradigm asserting that it is "... about seeking deep understanding by interpreting the meaning of interactions, actions, and objects. This perspective posits that the only way to understand social reality is from the perspective of those enmeshed within it" (p. 23).

Initially, this paradigm resonated with me, and was going to be adopted as the lens or window through which the study would be viewed. However, after reflecting on the data collection instrument and the types of questions being asked, it did not neatly align. A different paradigm was needed to connect with the whole inquiry more

intricately. After much consideration, I realised that pragmatism was the more accurately allied paradigm to my study.

Due to the fact I was asking my survey participants to answer questions about legal scenarios in schools, and then justifying their understanding of these legal scenarios, it was decided to follow the pragmatist view of looking at my study. From this perspective, I could more closely align the assumptions that make up the theory behind the paradigm and the purpose and structure of my survey.

The paradigm captures the researcher's philosophy that considers how knowledge is developed and the nature of that knowledge. This philosophy contains imperative assumptions about the key ways the researcher sees the social world. The three main ways that makes up a researcher's philosophy are epistemology, ontology and axiology. Each of these assumptions will be explored separately in the following sub-sections of this chapter.

As stated above, initially an interpretivist paradigm was embraced. This was, in part, due to the belief that I would be considering the participants' responses to my survey and making meaning from their demonstrated understanding. However, the research questions and methods chosen to explore such questions needed to be considered as they form the foundation of the study. This study is inquiring into the level of legal literacy shown by Queensland independent teachers and how they interact with those principles. In deciding these questions, it was vital to ask participants their understanding and to 'test' that understanding of education legal matters pertaining to their daily work. To create an empirical study, it was necessary to be able to make informed judgements about the level of legal understanding these teachers demonstrate in their responses to the survey questions. This is a practical issue. It is a reflection of these teachers' legal understanding in their daily professional practice. Therefore, pragmatism was elected as the paradigm for this inquiry. It is a worldview that arises out of actions and situations. It emphasises applications to real world problems and creating solutions for same (Creswell, 2014). Hence the concomitant creation of the textbook. According to Yin (2016), it is a more adaptable worldview for use in qualitative studies than either the positivist or constructivist poles. He further suggested that "... unless you have to adhere to one of the two extremes as a critical ideological commitment for doing qualitative research, you may assume a worldview in the middle ground" (p. 23).

The pragmatism paradigm comes out of the work of Peirce, James, Mead and Dewey (Creswell & Creswell, 2018). Pragmatists tend to be more focused on the research problem and answering the research questions than the actual research method chosen to garner knowledge about a social science issue. Pragmatists tend to use any research tool at their disposal in following the maxim of 'whatever works' (Hesse-Biber, 2017). She went on to state that this paradigm is often used in mixed methods research quite successfully. It can, however, be used in either qualitative or quantitative research approaches in their own right. As highlighted earlier as a result of the cognitive journey in this study, the paradigmatic view can change over the course of the study. Accordingly, under this paradigm, the methods or tools utilised in any one research project can be changed or more sagaciously managed to better address the research outcomes of such a project (Hesse-Biber, 2017).

Pragmatism has its own set of features that differentiate it from other research paradigms. Creswell and Creswell (2018) summarised these characteristics as follows:

- Pragmatism is not committed to any one system of philosophy and reality.
- Individual researchers have a freedom of choice in terms of methods, techniques and procedures of research that best meet their needs and purposes.
- Pragmatists do not see the world as an absolute unity. There are many approaches for collecting and analysing data.
- Truth is what works at the time. It is not based in a duality between reality independent of the mind or within the mind.
- Pragmatists agree that research always occurs in social, historical, political and other contexts. (pp. 10-11)

#### **4.2.2. *Epistemological assumptions***

Epistemology is about the study of knowledge and how it is formed. Epistemology refers to "The philosophical underpinnings of researchers' beliefs regarding the nature of knowledge and how it is derived and created" (Yin, 2016, p. 335). It concerns itself with how one knows what they know and how the research is

expected to deliver the study's findings (Yin, 2016). It informs the principles of how legal literacy can be known by Queensland independent school teachers and how that knowledge can be demonstrated.

Pragmatists accentuate, as signposted above, that meaning is constructed we by looking at real-life problems and considering ways to overcome them. In a practical way or through "experiential empiricism" (Ruwhiu & Cone, 2010, p. 112) the world is understood. The focus of pragmatism is on contextualised knowledge. Ruwhiu and Cone (2010) went further and noted that understanding "... goes beyond the immediate situated context in which knowledge exists through the continual negotiation of social activity over time" (p. 113). Furthermore, they suggested that "... knowledge is created... according to a set of key insights into the intimate connection between human action and its consequences from ... human experience of the world" (p. 113). Kaushik and Walsh (2019) agreed when discussing pragmatic epistemology affirming that "... all knowledge in this world is socially constructed, but some versions of those social constructions match individuals' experiences more than others" (p. 3). The whole construct of pragmatism is practical in nature, it makes sense that pragmatism as an epistemology considers knowledge as a socially constructed phenomena by the experiences we have as many of these are socially shared experiences (Kaushik & Walsh, 2019). This study was designed to question the level of knowledge of education law principles effecting schools by Queensland independent school teachers. Its aim was therefore to consider the accuracy or otherwise of this socially constructed knowledge through socially shared experiences. The problem-centred nature of this paradigm enables the seeking out of the lived experiences of the participants as they have socially constructed this understanding of education law. In doing so, I am trying to answer some important questions about the level of meaning these teachers possess, and, indeed, if required, to provide a valuable resource for such teachers, in attempting to help deliver an effective solution to this problem. This solution focused approach is at the very core of pragmatism theory.

Pragmatists do not see knowledge as reality. Instead, they see knowledge as created with a purpose to better understand one's own existence and how to better take part in the world (Kaushik & Walsh, 2019). Kaushik and Walsh (2019) referred to Dewey's work, who in many respects underlined the pragmatic approach to research. Dewey affirmed that the primary function of research is to create

knowledge in the interest of change and improvement (Goldkuhl, 2012). Much of the research in this thesis has been formulated to consider the level of legal literacy held by Queensland independent school teachers and to provide a way to improve same by the production of the textbook. “Dewey defined inquiry as the controlled transformation of a problematic situation into one that is sufficiently integrated with knowledge or coherent action” (Kaushik & Walsh, 2019, p. 5). Hence in this case, the action to transform the current social problem under review is to help increase the knowledge of education law to teachers who are facing such issues every day in the workplace. Pragmatist researchers do not place as much importance on method over answering the research questions, therefore such researchers can choose a method and way of data analysis that they see fit in meeting the objectives of the overall research project.

Rather than following the two extreme views of positivism and constructivism, pragmatism sits in the middle of the two in terms of its epistemology. Kaushik & Walsh (2019) “believe that the process of acquiring knowledge is a continuum rather than two opposing and mutually exclusive poles of either objectivity and subjectivity” (p. 6).

#### **4.2.3. Ontological assumptions**

An ontology is another philosophical system that goes together with epistemology to help form a paradigm or worldview. O’Leary (2017) defines ontology as “The study of what exists, and how things that exist are understood and categorized” (p. 5). Other authors such as Hesse-Biber (2017) and Leavy (2017) have referred to ontology as “A philosophical belief system about the nature of the social world (Leary, 2017, p. 12). Our ontological beliefs inform both our understanding of our social reality and how we can learn about it. Hence the connection with epistemology.

Pragmatists do not hold to the view that there is one single view of reality. “Pragmatism is a rich philosophical tradition and is famous for its distinct approach to truth, method and meaning” (Pratt, 2016, p. 512). Put another way: “Pragmatist researchers’ choice of one version of reality over another is governed by how well that choice results in anticipated or desired outcomes” (Kaushik & Walsh, 2019, p. 4).

An ontological assumption has been adopted of numerous realities and manifold truths are possible as part of this research project. Morgan (2007) noted "... that pragmatism implies that pragmatic research is 'intersubjective' which means being subjective and objective at the same time, accepting both the existence of one reality and that individuals have multiple interpretations of this reality" (as cited in Maarouf, 2019, p. 6). Saunders and colleagues (2009) commented that "... pragmatism implies that reality is external and multiple at the same time" (as cited in Maarouf, 2019, p. 6). My personal reality or belief about the truth on education law may be different from those Queensland independent school teachers who participated in my study. I have had a personal stake in this area and have studied this topic for over three decades. Some teachers may not have even heard of, or connected the subject matter of an issue, with the legal position or mandatory obligations required therein. I am fully aware of this and expect there to be a number of realities, or interpretations of the one social reality emanating from my participants' responses.

There are some authors who have suggested that pragmatism as a paradigm has no fundamental philosophical ontological underpinnings (Maarouf, 2019). This is due to the axiom of 'nearly anything goes' with this way of looking at the world. Other authors (Lohse, 2017) have labelled it 'anti-ontological pragmatism'.

From an ontological standpoint, reality depends on the context in which a person finds themselves and at a particular point in time. "Reality depends on the context to exist and continue existing, which means that changing the context changes the reality and the existence of multiple contexts means the existence of multiple realities" (Maarouf, 2019, p. 7). Depending on the context of my participants (years of experience in schools, level of training or professional development in education law, degree of interest in the area, exposure to such legal matters in their professional career as teachers, degree to which they have been in litigiously minded environments) has created multiple realities of their understanding of education law.

#### **4.2.4. *Axiological assumptions***

Somekh and Lewin (2011) defined axiology as referring to "...philosophical questions relating to the nature of values" (p. 320). The construct of 'values' is important in this project for a number of reasons. In the textbook as well as in

Chapter 3 of this thesis when considering the conceptual framework of this study, much has been written much on the topic of ethics or values that one brings to the profession as a teacher, in addition to the externally imposed values that teachers need to live up to. An example of which are the behavioural standards imposed by the Queensland College of Teachers, highlighted in the previous chapter of this thesis. Furthermore, the issue of values and their intersection with the principles of law has been discussed. Some see these as being one and the same. Others see them working in parallel or even, at times, seemingly in contradiction to each other. Some of the responses to the survey scenario questions may have been answered based on the particular values the respondent had and not necessarily based on the legal position on which that particular issue focuses.

Much of the literature on paradigms and their concomitant assumptions suggest that a researcher's values are utilised in every aspect and in every stage of the inquiry process. This includes the creation of research questions, choosing the appropriate paradigm to follow, selection of methods used in the study, and even in the tools used to analyse the data collected in the research. Biddle and Schafft (2015) noted:

Axiology plays an important role in the selection and formation of research questions, driving their interest in certain issues over others.

Depending on the norms of their particular research community and personal commitments, social science researchers demonstrate their engagement with axiological issues to varying degrees. (P. 323)

Commentators such as Maarouf (2019) suggested that all researchers working in the qualitative domain have some unavoidable bias or values they bring to the research journey. A researcher's values, experiences and beliefs should strengthen the research and not be an obstacle in finding the truth. As a consequence, "... a pragmatic researcher should focus his [*sic*] research objectives and use his [*sic*] values and experiences in a way that serve these objectives and enhance his [*sic*] research results" (Maarouf, 2019, pp. 9-10).

Another commentator suggested that values are key for pragmatists in the way, when conducting research, they meet the practical and theoretical challenges that emerge (Skowronski, 2019). Some writers have suggested that it is not

acceptable for any values to be followed in conducting pragmatic research. Whilst it may appear at first glance, that ‘anything goes’ with this worldview and therefore any values-based belief, big or small, will suffice. This is not the case. Esi stated: “... the following of some value principles generates socio-educational paradigms of a pragmatic form through which a certain paradigm can be reevaluated” (2012, p. 77).

In summarising axiology within the pragmatic philosophical framework, Biddle and Schafft (2015) noted:

Pragmatism ... in its concern with knowledge as existing in transaction, resists the privileging of particular abstractions or universal principles as an approach to determining value. Rather, its philosophical approach favours a highly contextualised axiology that recursively asks what practical difference one action makes versus another. ... The question regards the practical difference one versus the other makes toward the social good. (p. 330)

This study’s value is to provide one or more solutions to the possible social problem of Queensland independent school teachers having a lack of understanding of education law. In doing so, it provides a practical difference (textbook) to help augment this legal literacy and consequently advance the social good for these personnel.

### **4.3. The qualitative research approach**

#### **4.3.1. Introduction**

This study is focused on questioning Queensland independent school teachers about their involvement in education law and how that involvement demonstrates an understanding (or otherwise) of same. For this reason, it was a germane choice to elect to follow a qualitative research approach for this investigation. “Qualitative research is an approach for exploring and understanding the meaning individuals or groups ascribe to a social or human problem” (Creswell & Creswell, 2018, p. 4). This approach enabled the establishment of the meaning of a social phenomenon from the perspective of the participants. It is by studying a group of people working in the same context (Queensland independent school teachers) to

identify any shared patterns of behaviour or understanding (Creswell & Creswell, 2018). “Qualitative research is the collection, analysis, and interpretation of comprehensive narrative and visual (ie., non-numerical) data to gain insights into a particular phenomenon of interest” (Mills & Gay, 2019, p. 7).

#### **4.3.2. Inductive research**

Qualitative research is usually inductive. It concerns forming general conclusions based on the collection of a specific set of data. Its aim is to produce a more general understanding of the social topic under review (Hesse-Biber, 2017; Mills & Gay, 2019). It is also important to note at this point that qualitative researchers bring their own understanding of the research problem to the inquiry. It is often quoted in qualitative research that the researcher cannot be kept separate from the researched. That is, their ideas and beliefs form part of the study and are not removed or kept apart from the inquiry itself, as in quantitative approaches. That is why some writers posit the concept of *subjective meaning* where the researcher brings their own views on what constitutes the social construction of reality to the research process (Hesse-Biber, 2017). This was discussed in part in the ontological assumptions section above.

#### **4.3.3. Characteristics of qualitative research**

There are a number of characteristics of qualitative research. Firstly, when the number of observers or participants in surveys or interviews are small, as in this study, it is usually indicative of a qualitative study. When participant numbers are large it would usually suggest a quantitative project (Mills & Gay, 2019; Panke, 2018). Secondly, qualitative research is largely contextual, where data is collected about real-life social phenomena. The data can also be used in situations where little is known about the phenomenon, as in my study, where there is little known about the level of legal literacy of education law held by Queensland independent school teachers. Miles and colleagues (2014) summarised the characteristics of qualitative inquiry:

- It is conducted through intense contact within a ‘field’ or real life setting.
- The researcher’s role is to gain a ‘holistic’ or integrated overview of the study, including the perceptions of participants.

- Themes that emerge from the data are often reviewed with informants for verification.
- The main focus of research is to understand the ways in which people act and account for their actions. (as cited in Gray, 2018, p. 164)

#### **4.3.4. Steps taken in the qualitative research design**

There are a number of commonly agreed to steps of research design in qualitative research. There are many authors that have published detailed explanations of the steps involved (for example: Creswell & Guetterman, 2021; Flick, 2018; Mills & Gay, 2019). For this discussion of the agreed steps in qualitative research design, there was a focus on Hesse-Biber's approach (2017) as it fits with the approach adopted in this study.

The first step she espouses is to reflect upon my own research perspective before commencing such a study as this one. She believes, along with other fellow adroit thinkers that all researchers, whether conscious of it or not, start their projects with a certain set of values and ideas about their area of social reality under review. A researcher's "positionality" (p. 44) is important as it guides their research design process and informs their paradigm (explicated in the previous section of this chapter) adopted for their project. Being able to reflect upon your research position as a researcher is imperative in creating, maintaining and fulfilling a coherent and ethical final project. There are many writers who describe this concept of reflexivity (Creswell & Guetterman, 2021; Creswell & Poth, 2018; Gray, 2018; Leavy, 2017). "Reflexivity is the awareness that all knowledge is affected by the social conditions under which it is produced; it is grounded in both the social location and the social biography of the observer and the observed" (Mann & Kelly, 1997, as cited in Hesse-Biber, 2017, p. 45). This construct is important in foregrounding the research project based upon the background, work experiences, and the cultural understandings of the researcher and how that informs their interpretation of the data collected in the study (Creswell & Poth, 2018). I have explained my positioning in the first chapter of this thesis and have outlined, in an intentional manner, my work experiences and history to provide a clearer picture of this positionality for the reader. I purposefully foreshadowed this up front so that the reader can see how this positioning informed my choices at critical junctures in this project.

The second step in qualitative research is to maintain a strong connection between the research question and the research design (Hesse-Biber, 2017). This is aligning the paradigmatic implications that underscore the study with the research questions and the overall aims of the project. Indeed, it was decided to change the research design from my initial considerations. At the commencement of the project, the intention was to adopt an interpretative phenomenological analysis approach. At a later stage in the research journey, the inclusion of the textbook into the project was added as a way to provide a solution to this perceived lack of legal understanding, (and actual lack if you consider the literature outlined in Chapter 2 of this thesis). The research design that was ultimately used better suited the overall research problem. Other iterations of the research design that were discarded may not have come to the same conclusions and were not as strategically aligned to the polished product as the one finally adopted.

The third step of qualitative research projects that Hesse-Biber (2017) propose is to formulate the research questions with the considered purpose to clearly ask what it is about your participants' social reality that you wish to explore. The research questions are *descriptive* in that they ask questions about my participants' that describe a social phenomenon (understanding of education law principles in their school settings) and look to make meaning that stems from such research. They also flow from the extant literature (see Chapter 2 of this thesis) that state that there is, indeed, a need for teachers to have a level of understanding of legal matters as they pertain to the school environment, but many do not possess this. The research questions also stem from the apparent gap in the literature where Queensland independent school teachers have never been questioned in a research study about their grasp or otherwise of education law issues.

The fourth step of qualitative research is to ascertain the research sample. This is discussed in more depth in a later section of this chapter. As with most qualitative research designs, the focus concentrated on a small sample, as highlighted earlier in this chapter. Again, by adopting a qualitative approach, the aim was to attribute meanings to the social phenomena of my participants' reality.

The fifth step of qualitative research, according to Hesse-Biber (2017) is to decide on the method of data collection. Initially, the intention was to use surveys followed by semi-structured interviews. The interviews were purposive in that I originally wanted to use them to explore in more depth any significant findings from

my survey data in addition to the well-defined purposes of triangulation (Denzin & Lincoln, 2018; Maguire, 2019; Mason, 2018; Silverman, 2017). However, when the textbook was introduced into my study, and I changed programs from a traditional thesis to a *thesis with creative works*, and following advice from my supervisors, it was decided to adopt a more streamlined approach to collecting data by using only one source of data collection. This again, is further elaborated on in the next section of this chapter.

The sixth step of qualitative research is to decide on how the researcher will analyse and interpret the collected data. In this case, *content analysis* was chosen as the way of analysing the data. This helped me create both numerical (descriptive statistics) and narrative descriptions of the textual data from the written surveys. This too, is further explained in more detail in a later section of this chapter.

The seventh step of this approach is to determine how the researcher will write up the study. As stated earlier, the approach was twofold. I wrote chapters in the textbook that has since been published in addition to the seven chapters of this thesis. There were two separate audiences in mind. The textbook was written for teachers and school administrators. This had a more conversational approach to the wording and was explanatory of the legal position of the element under discussion in the respective chapters. This thesis is more academic and is intended for the examiners who will read and evaluate its effectiveness in its contribution to knowledge.

The eighth and final step of qualitative research according to Hesse-Biber (2017) is to outline any issues pertaining to validity of the research and explain the limitations of the study. These two issues will be explored in the concluding chapter of this thesis. Validity concerns matters of credibility and plausibility of the research and its findings. The researcher needs to ensure that the research design that they employ follows a process which maintains the confidence of the reader that they have made reliable interpretations of the phenomenon under review. Lincoln and Guba (1999) summarised it this way by stating: “The basic issue in relation to trustworthiness is simple: how can an inquirer persuade his or her audiences (including self) that the findings of an inquiry are worth paying attention to, worth taking account of?” (as cited in Hesse-Biber, 2017, p. 59). Important limitations of the study will also be discussed in the final chapter of this thesis.

## **4.4. Data collection**

### **4.4.1. Introduction**

Data collection is the acquisition of information from the participants involved in a research study on a specified phenomenon that addresses a social problem which forms the central nub of the study. In doing so, it is imperative to be cognisant of the research questions to choose the best method of collecting the said data. For the purposes of this study, it was decided to use a survey tool to collect my data. In such surveys, a researcher can use both open ended and closed ended questions. The aim of which is to elicit different responses for different purposes (Creswell & Guetterman, 2021). In this section, the use of surveys as a tool to collect research data and the steps followed in creating the survey document are examined. Following this, some peculiarities around using scenarios in the survey are explored.

### **4.4.2. Development of the survey instrument**

It was decided to use a *cross-sectional survey* instrument for my project (see Appendix A for the full list of questions used in my survey). This type of survey uses a cross-section or a sample of respondents. The aim is to be able to represent my target audience and provide generalised findings back to that audience (Mills & Gay, 2019; O'Leary, 2017). I chose to survey a group of Queensland independent school teachers to gain their level of understanding of education law. This was never going to be representative of the complete compilation of all Queensland independent school teachers. However, the sample selected was always intended to provide general conclusions about some Queensland independent school teachers and how they understand and utilise education law in their daily professional work.

The survey can be viewed as one instrument but having three distinct parts or sections, without the use of labels or subheadings to depict same. The first section aimed at collecting demographic data as to the age of the participants, their role in their school, how long they had worked as a teacher etc. The second section are five questions to garner their self-perceived understanding of education law and how they engage with it on an annual basis. It also inquired about how their confidence in dealing with education law matters could be enhanced. Question 4 of the survey (see Appendix A) asks participants to rate, in order of priority from 1 to 6, the most

important education law issues they face in their professional roles. The other questions in this section asked them to reflect on the most important, in their minds, education law matters that they face in their role and to rank in order the most useful ways that they could receive further training and understanding of such education law matters.

In the third and last section of the survey, participants were asked a series of what have been called scenario questions (explained below) that asked them to outline or provide the legal position on the education law issue the particular question was asking. Respondents then had to explain why they gave their particular response they did to be able to demonstrate their deeper understanding of the legal issue the question was asking. This was in contrast to simply providing essentially a 'yes' or 'no' answer, which could have been a guess, without being able to explain why they gave the response they did. These scenario questions were designed to elicit responses from participants to directly answer research question number 2 of this research project.

The use of a survey instrument for the collection of the data was utilised as opposed to an interview, as this suited the type of analysis I intended on performing (Mills & Gay, 2019). The survey participants were provided with a link to the online survey where they completed it via the internet. There are a number of advantages to using online surveys as O'Leary (2017) pointed out. Some of these include relatively low cost, flexibility in the display of questions, use of drop-down menus, automatic creation of some basic statistical analysis.

The survey instrument had to be carefully constructed. Considerations were made as to what I wanted to ask and how to elicit the sort of data that the survey was intending to capture. I was mindful of my biases and careful not to use *leading questions* (Gray, 2018). Assurances also had to be made that my questions were clear to the intended audience. The survey instrument was created myself. Other survey instruments that other authors used were considered, as researchers are encouraged to do so in the literature (for example, O'Leary, 2017) but they did not suit my methodology or specifically the data of this project.

Both structured items and unstructured items were used in the survey instrument (Mills & Gay, 2019). Structured items are ones that require participants to choose among the already provided responses. Examples of these were the early demographic questions as well as the questions that required the respondents to use

numbers to prioritise the order of importance and exposure to, and with, education law matters. Unstructured items are those where participants have freedom of response to more open-ended questions. These were the scenario questions where the participants were posed questions and they were provided with the opportunity to respond in any way that they thought appropriate, demonstrating their level of understanding of education law. Being cognisant of the length of the survey instrument was also an important factor. The intention was not to make it too long and therefore create a reluctance on the part of potential participants to take part in the research (Mills & Gay, 2019). The order of some of the questions was changed to create an easier to follow survey and a more logical sequence of questioning (O'Leary, 2017).

After creating the survey and getting it to the appropriate standard, the survey was piloted on a number of Queensland independent school teachers to gauge what they thought about it and to receive feedback as to how to improve the instrument. The feedback garnered by the pilot sample of ten teachers was invaluable in helping to improve the quality of the final product that was used to collect data for this project. Most of the feedback centred around the clarity of the questions and what was truly meant by some of them. The clarity was improved which made some of them (especially Questions 13 and 19) more reliable. The instructions were also refined to make them clearer and more to the point for the participants to read at the commencement of the survey process. Re-writing of some the questions was conducted to make them as 'right' as possible (O'Leary, 2017, p.229).

The survey was then administered to the sample. The survey was completed by forty-five participants as part of this study. There were more than that number who commenced it but decided for one reason or another that they did not wish to complete the survey. These incomplete attempts were not considered part of the data collected nor analysed for the purposes of this thesis.

It is important to note at this point that I returned to my *positioning* (explained in the previous section of this chapter). All of my history, work experience, study, professional association membership, interest in the topic, obsession to learn more and more led me to where I am today. This was discussed in Chapter 1 of this thesis. My positioning in this topic ensued me choosing this topic for my doctoral study and the finer points of discernment along the journey. Choice after choice, change after change (which is evidently common in doctoral thesis development) all

brought me to my current understanding of the social problem under review in this thesis.

#### **4.4.3. Purpose of scenarios used in survey**

As highlighted above, it was decided to use scenario questions for part of the survey instrument. These were important in the design to ensure that I could effectively and with a rich measure of validity and reliability answer Research Question number 2. There were other questions too that were not scenario based at all, as mentioned in an earlier section in this chapter. There was intent and a deliberate focus on using scenarios in the survey which is the emphasis of this section. Scenarios have been used since the mid 1950's in social science research (Weber, 1992). Scenarios have been "... frequently used by researchers to measure ethical reasoning, to assess ethical judgments [*sic*] or decision-making preferences" (Weber, 1992, p. 141). This was exactly a key goal of my survey creation and therefore, an overall aim of my research project. Cavanagh & Fritzsche (1985) suggested that "... scenarios allow the researcher to frame the research question to incorporate complex, multidimensional issues reflecting decision making in the real world. In addition, scenarios can emphasise critical aspects that are of special interest to the researcher" (as cited in Weber, 1992, p. 143). Again, this is precisely what I set out to achieve in the use of my survey. The legal scenarios in my survey are complex (most law and legal principles are complicated in any event), concern multi-faceted issues and indeed, reflect the real world. This important very last point is outlined further below.

Another advantage of using scenarios in survey design is the demonstration of validity (Weber, 1992). This is explored in more detail in the concluding chapter of this thesis.

The scenarios that were developed in the creation of the survey instrument are based, largely, on real life cases. That is, they question a legal outcome from a number of cases that have been tried in a court of law with the resultant jurisprudence as the key outcome. On the other hand, some of the scenarios are based on the legislative position at law of a particular matter. That is to say that these matters are not simply just made up. They are indicative or based on real life incidents that actually have, or are likely to have, occurred in our independent schools. See Table 4.1 that depicts which type of legal issue is covered in each

scenario used in the survey. In one example, ethical standards are being examined. These areas of legal literacy were highlighted in my conceptual framework in Chapter 3 of this thesis, along with professional obligations that centre around professional teacher registration.

**Table 4.1**

*Type of Legal Issue addressed in Survey Scenario Questions*

| Survey<br>Question<br>Number | Survey<br>Scenario<br>Number | Cases<br>or common<br>law | Legislation | Ethical<br>Standards |
|------------------------------|------------------------------|---------------------------|-------------|----------------------|
| 6                            | 1                            | X                         |             |                      |
| 7                            | 2                            | X                         |             |                      |
| 8                            | 3                            |                           | X           |                      |
| 9                            | 4                            | X                         | X           |                      |
| 10                           | 5                            |                           | X           |                      |
| 11                           | 6                            |                           |             | X                    |
| 12                           | 7                            |                           | X           |                      |
| 13                           | 8                            |                           | X           |                      |
| 14                           | 9                            | X                         | X           |                      |
| 15                           | 10                           | X                         |             |                      |
| 16                           | 11                           | X                         |             |                      |
| 17                           | 12                           | X                         |             |                      |
| 18                           | 13                           | X                         |             |                      |
| 19                           | 14                           | X                         |             |                      |

Scenarios allowed the use of variables in the survey instrument to highlight practical components to the social problem under review, namely understanding of education law. When discussing their own experiences using surveys with scenario questions, Kokkinou & Cranage (2011) noted using "... scenario-based surveys, with previous research on the topic, also allowed us to quickly identify relevant variables ..." (p. 688).

Scenarios allow researchers to question more specific knowledge than just a rudimentary 'yes' or 'no' type response. As in this study, the intention was to examine whether or not the Queensland independent school teachers questioned were able to demonstrate an accurate understanding of education law. It was considered that by using scenarios accompanied with the questions of 'why/why not' allowed participants to show that knowledge. Furthermore, the scenarios permitted the researcher to ask participants to apply any knowledge that they had to the real-life problem to check for a clearer understanding. If a person can apply knowledge correctly in a real-life situation, they can then be more confident of actually possessing that correct knowledge. As stated briefly in the section above, it is much easier to simply state a position without having to explain or defend it. The latter, in the researcher's mind, allows the participant to demonstrate a true and deeper understanding of the issue being considered in the specific question.

#### **4.4.4. Scales used in the survey instrument**

The creation of a measurement scale is an interesting exercise for a reasonably nascent researcher. They are complex and difficult to develop even for more experienced inquirers. "We develop a scale when we seek to measure a phenomenon that we believe to exist, but which we cannot assess directly" (Gray, 2018, p. 362). Much has been written about the advantages of using existing scales. It was decided to use scales both within the survey instrument as well as to aid in the analysis of participant responses.

Within the survey in the second section (between the early demographic type questions [which use *nominal* scales where participants were asked to respond to a gender question or what role they play in their school – with no values or numbers associated with them (Creswell & Guetterman, 2021)], and the scenario questions towards the end), two ways of measuring the respondent's beliefs, feelings or perceptions about themselves in relation to a phenomena have been used (Gray, 2018). Rating scales "... may be used to measure a respondent's attitudes toward self, others, activities, institutions, or situations" (Mills & Gay, 2019, p. 175). Respondents were then asked to rate their perceived level of understanding of education law, from very high to having no understanding.

Rank ordering was also used in the second section of the survey.

This enables a *relative* degree of preference, priority, intensity... Rank ordering requires respondents to *compare* values across variables. ... In a ranking exercise the respondent is required to take account of the other variables, because he/she is being asked to see their *relative* value, weighting or importance. (Cohen et al., 2018, pp. 478-479)

Rank ordering is regarded as *ordinal* or categorical data "... where participants rank from best, or most important, to worst, or least important, some trait, attribute or characteristic" (Creswell & Guetterman, 2021, p. 195). It was decided to use these as suitable questions in my qualitative study as they "... do not enable sophisticated statistical analysis to be conducted as the ranks are inter-dependent rather than independent, and these vary for each respondent, ... there are not equal intervals between each rank ..." (Cohen et al., 2018, p. 479). As a quantitative study was not undertaken, where more highly sophisticated statistics would be required, it was deemed appropriate to use such mechanisms in the research design. Refer to Table 4.2 that lists the measurement methods (scales) used in the second section of the survey that were employed in the data collection.

**Table 4.2**

*Measurement Methods used in the second section of the Survey*

| Survey Question Number | Scale method adopted |
|------------------------|----------------------|
| 1                      | Rating scale         |
| 2                      | Nil                  |
| 3                      | Nil                  |
| 4                      | Rank ordering        |
| 5                      | Rank ordering        |

For the demographic data and the second section of the survey data, I coded the information, and these are shown in Chapter 5 of this thesis. A rating scale was also used for the analysis of the scenario responses each participant provided in their survey. After many iterations of deciding how to analyse the collected scenario question data, it was decided to use a rating scale starting from demonstrating an

extremely high level of understanding of education law principles to a low or no understanding. Five categories were used to classify the participant responses. The premier category was used where the respondent demonstrated a high degree of legal literacy where they presented an appropriate response and could justify their response with a correctly reasoned application of the law. The second category of responses showed some degree of legal literacy. In these instances, respondents gave an appropriate response to the scenario without being able to show legally why it was or was not the case in the particular question. The next category presented a level of confusion of legal literacy. These respondents presented an appropriate answer to the scenario but in their justification, however, provided incorrect or inapplicable legal principles. The fourth group exhibited an incorrect legal understanding of the question under review, where the respondent provided the incorrect application of the law to the scenario altogether. The final category was either for respondents who left the question blank or no reasonable answer was given. See Appendix B for the rating scale used in analysing the participant responses to the scenario questions in the survey.

## **4.5. Participant selection**

### **4.5.1. Introduction**

In qualitative research, sampling, or the process of selecting a usually smaller number of people who participate in the research project, is an important consideration in the research design. The aim of this type of research is to describe a particular phenomenon in context and in depth; not to make generalisations about the population in that context (Mills & Gay, 2019). The goal is to choose participants who can add to the understanding of the phenomenon under review. “The participants’ perspectives, as described by the researcher, form the very core of the qualitative research study” (Mills & Gay, 2019, p. 160).

### **4.5.2. Purposive sampling**

In qualitative research design, researchers usually use *purposive sampling* (Cohen et al., 2018; Gray, 2018; Hesse-Biber, 2017; Lewin, 2011; Mason, 2018; Miles et al., 2014; Mills & Gay, 2019; O’Leary, 2017; Silverman, 2017; Yin, 2016), sometimes referred to as *purposeful sampling* techniques (Creswell & Guetterman,

2017; Creswell & Poth, 2018; Leavy, 2017) as opposed to random sampling which is often used in quantitative research. Purposive sampling occurs where the researcher selects individuals for their study so that they can provide “information rich” (Creswell & Guetterman, 2021, p. 240) data. These are the potential participants that have experience with, or knowledge of, the phenomenon under review. Because the study was limited to only teachers in the state of Queensland and only those working in independent schools (and not in Catholic or government schools), I had to choose carefully where the selection of potential participants would start. *Convenience sampling* (Leavy, 2017) is where a researcher identifies participants that they have access to. This type of purposive sampling was used initially to garner some participants for the study. Contact was made with teachers I knew working in Queensland independent schools and asked them to participate in this study. Some replied in a positive manner; some did not.

Because the numbers of positive responses were low, the concept of *snowball sampling* (Creswell & Guetterman, 2021) was then employed which is where one participant who agrees to be part of the sample population for the study leads to fellow participants being involved. Dattalo (2008) noted that “Snowball sampling is sampling from a known network. Snowball sampling is used to identify participants when appropriate candidates for a study are difficult to locate” (as cited in Hesse-Biber, 2017, p. 57). This proved to be more profitable in gathering further suitable participants as those who had already agreed to take part knew of others and they too knew of others. This snowballing effect helped me find other appropriate teachers working in Queensland independent schools to take part in my study. Due to connections that were established in my career as a teacher working in a number of Queensland independent schools, these relationships were drawn upon to increase my sample size. The final number was forty-five participants who completed the survey. There were more who commenced it but did not complete the survey. The total number was seventy-four. Following advice from my supervisors, data was taken from the forty-five who completed the survey. Whilst this number would not produce generalisations that could be made about the population, it could provide what the study aimed to do in the first place and that was to provide some interesting comments about a social phenomenon effecting Queensland independent school teachers about their level of understanding of education law. After an initial review of the forty-five completed survey responses, it was clear that *data saturation*

(Hesse-Biber, 2017; Mills & Gay, 2019) was reached and nothing new was to be found by sampling further participants.

How many participants in a qualitative study is enough? There are no apparent fixed rules about this. There are a number of factors such as participant availability (described and explained below), time, participant interest that can impact the final number of participants involved in a research sample (Mills & Gay, 2019).

All survey participants were given a Participation Information Sheet that outlined the aim of the study and what their involvement would entail (please see Appendix C for a copy of the Participation Information Sheet). It also clearly outlined that the study promised anonymity and complete confidentiality in the whole research process. It was a voluntary study and participants were informed that they could withdraw from the research process at any time. Information gained would be kept in secret and locked away in electronic form, protected with fire walls and from data breaches.

#### **4.5.3. *Challenges in developing a sufficient sample size***

There are a number of reasons why it was challenging to gather candidates for this study. Firstly, independent schools are smaller in number compared to their government school and Catholic school counterparts. The actual size of the population in this instance was always going to be smaller. It is obviously more difficult to find sufficient participants if the population pool is smaller in number in the first place.

The second reason it was difficult in gathering necessary numbers were that teachers generally (notwithstanding what school system in which they are working) are so busy, stressed and therefore reluctant to undertake any activities that they do not have to or are not employed to do. Teachers want to spend their time on teaching and not on all the administration to which they have to attend, let alone an external party asking to take part in a voluntary survey (Carroll et al., 2022).

The third factor in explaining smaller numbers for this study is the period of data collection. It occurred just after the second big wave of COVID-19 pandemic. Many teachers were returning to normal classrooms, usual school settings and not having the extra burden of preparing lessons for students in an online environment. Some teachers were having to juggle the two: preparing lessons for students who

did attend their school and also for those students who stayed at home and conducted their lessons in an online format (An et al., 2021).

The fourth consideration of gaining satisfactory participant numbers is survey burnout generally. People can easily become frustrated with being asked to be involved in surveys of any kind. Not only teachers, but people in all roles, are tired of being approached to undertake surveys either in person, via electronic means or in writing (Goyder, 1986).

Lastly, the final factor in gaining sufficient participant numbers for my survey is the nature of the topic of my research design. My research aimed at questioning participants' level of understanding of education law principles as they applied to the school setting. The very nature of the survey was going to 'test' or gain an understanding of the individual participant's level of legal literacy, and as such there would be many teachers who teach in Queensland independent schools who feel as though their understanding would be perceived as being low and therefore would not want to expose that limitation to anyone. Not only on a personal level, but some teachers would also not want to reveal their school as being one where some, or all, of the teachers working there possess a low level of education law knowledge. This protective standpoint is understandable in professional environments, despite all surveys being anonymous.

## **4.6. Data analysis**

### **4.6.1. Introduction**

This section of this chapter examines the theory and practice of data analysis that was undertaken as part of this research study. After much musing, the method employed to conduct the analysis of my collected data was content analysis. This section explains what content analysis is and how I went about investigating my data. The model offered by Drisko and Maschi (2016) was the technique followed for scrutinising my data set. There are three types of content analysis outlined in their publication: basic content analysis, interpretive content analysis and qualitative content analysis (Drisko & Maschi, 2016) with the first two methods adopted in my research project.

#### **4.6.2. Content analysis as a method**

Many authors have described content analysis as a method to dive deeply into a set of either primary (as in my case) or secondary data. It is a useful method “... to **identify categories** present within textual data by following a **systematic coding process** that leads to a thorough contextual **description** and limited **quantification** of the research phenomenon” (Maene, 2023, p. 239). In a similar definition, it has been labelled as “... a method for analysing and interpreting textual data, using coding and categorisation to identify the presence and frequency of trends and patterns” (Brown & Scaife, 2019, p. 222). This definition was employed in the analysis of the collected data. My consideration of the data looked into the level of the participants’ understanding of education law principles as they applied in the school context. My analysis, following a content analysis method, looked at the frequency and pattern of the participants’ responses to identify any trends or patterns. Therefore, a structured coding approach was utilised in considering the level of understanding demonstrated in the participants’ responses to the scenario questions in the survey. This “... **development of a coding frame**” (Maene, 2023, p. 241) was instrumental in the analysis of the data in my study. “The coding frame is the result of structuring (which means developing its main categories)” (Flick, 2018, p. 483). Flick (2018) also noted when describing content analysis that “An essential feature is the use of categories” (p. 482). Schreier (2014) further noted that “... content analysis is a method for systematically describing the meaning of qualitative data. ... This is done by assigning successive parts of the material to the categories of a coding frame” (as cited in Flick, 2018, p. 482). The coding frame used in this project was analogous to a continuum from demonstrating a high level of understanding of education law principles to a position of demonstrating no understanding of the education law issues studied (see Appendix B for the coding frame used in this study, and section 4.6.4. below for a more detailed explanation).

There are some writers who advocate for qualitative data analysis to be conducted by computer technology programs specifically designed for this very purpose (Bazeley & Jackson, 2013; Gibbs, 2018; Harding, 2019; Kumar, 2019; Silverman & Marvasti, 2008). Such proponents employ such technical assistance particularly when there is a large volume of data to be analysed. In this study, there were forty-five participants and I deliberately wanted to immerse myself in the data, therefore, it was decided to analyse the data manually (Adu, 2019).

Content analysis is a method that can be operated by researchers to confirm already considered theories, where the researcher knows what they are looking for in the collected data (Brown & Scaife, 2019). This was very much the case in this thesis. Due to my background and zealous interest in this area of study (see Chapter 1 of this thesis), I was keen to investigate and analyse the data to answer my research questions. Content analysis is a method of analysing data that is a non-linear, iterative process which ostensibly allows qualitative analysis to be undertaken by creating patterns. The goal then, is to generate a narrative of understanding of the data in direct response to the research aims of the study (Brown & Scaife, 2019).

One of the most cited authors of content analysis, Krippendorff (2013) suggested that content analysis is an analysis method for making repeatable and endorsed inferences from textual data to the contexts of their intended study. Content analysis is a useful technique to "... identify and document the attitudes, views, and interests of individuals, small groups" (Drisko & Maschi, 2016, p. 2). The aim in employing content analysis as the chosen method of analysing data is to generate narrative summaries that expose and highlight important social problems (Drisko & Maschi, 2016). This is precisely the intention of Chapters 5 and 6 of this thesis when discussing the data more closely and conferring its findings.

An important distinction used in content analysis is exploring both manifest data and latent data. Manifest data is the literal data that can be easily seen from the communication gathered whereas latent data is the more hidden messages that need careful interpretation to unlock the covert meanings (Bernard & Ryan, 2010). This will be explored more in section 4.6.3. when discussing the two techniques used in adopting a content analysis approach to the recorded data in this study.

#### **4.6.2.1. *Description versus interpretation***

Much of content analysis is descriptive or exploratory in nature. Whilst content analysis is used in explanatory projects, the literature clearly suggests that descriptive uses of content analysis predominate (Drisko & Maschi, 2016). There are other authors who suggest that the context of text is impossible to analyse as the information studied can be viewed and understood from a variety of perspectives. Therefore, content analysis, according to some, would suggest that it is only suitable for considering manifest data and relied on for frequency counts in concord with its traditional adoption (Brown & Scaife, 2019). Silverman (1993) noted that by its very

nature, content analysis removes data from its context and reports on only the categorised sections of the captured data (as cited in Brown & Scaife, 2019). In so doing, often the contextual complexities underpinning the research study can be lost.

According to Krippendorff (2013), meaning is not simply ascribed to the data itself. For a fuller and “richer understanding” (Baxter, 1991, as cited in Drisko & Maschi, 2016, p. 59) of the data surrounding the social problem, the content analyst should go beyond more simple, descriptive questions of “what” and “how”. This is why he is a proponent of interpretive content analysis where it moves past the descriptive narrative to “... inferences about “why”, “for whom” and “to what effect”. It is neither merely literal nor necessarily solely descriptive in purpose” (as cited in Drisko & Maschi, 2016, p. 58).

My data analysis is qualitative in nature. It was not simply a matter of counting up how many times participants used a certain word or phrase in their responses to the survey questions. Yes, there are “descriptive statistics” (Opie, 2019, p. 17) in the Results chapter of this thesis, however, in the main, there have been many considerations of the written responses, and interpretations of same have been made. The wording had to be carefully examined in an endeavour to understand the meaning of the response before allocating a code to it. Each response from each participant of the scenario questions had to be studied. This took much time and concentration, and expertise on the part of the person making such judgements. This was based on much more than a frequency table or word count. Meanings had to be made of the responses (some of which are based on very intricate issues and legal complexities) before assigning the response to a category or code that was designed specifically for this purpose. Without a doubt, “... interpretive content analysis is specially designed for latent content analysis, in which researchers go beyond quantifying the most straightforward denotative elements in a text” (Ahuvia, 2001, as cited in Drisko & Maschi, 2016, p. 59). In doing so, the attention to interpretation and making meaning of the data ensures that interpretive content analysis is very much the focus of qualitative research (Drisko & Maschi, 2016).

#### **4.6.3. *Content analysis methods used in this research study***

In this section, the two methods of content analysis that were employed in this study will be outlined, together with my approach in exercising both techniques.

Much of the theory and processes emanating from these methods come from the work of Drisko and Maschi (2016).

#### **4.6.3.1. Basic content analysis**

The first and most straight forward way to consider content analysis is using the method of basic content analysis. It is the most common form of content analysis used in social work research. The results of which are often used to empirically record an identified social problem and use it to formulate a plan of action to address the said problem. “These are essentially descriptive research uses of content analysis” (Drisko & Maschi, 2016, p. 26).

It has been noted that methodologists of:

... content analysis often use study findings as an evidence base for making abductive arguments. An *abductive argument* links an observation with a hypothesis that accounts for or explains the observation. In abductive reasoning the premises do not guarantee the validity of the conclusion. It is an inference only to a plausible explanation. (Drisko & Maschi, 2016, p. 26)

This is exactly from where this research journey began. From the extant literature, highlighted in Chapter 2 of this thesis, it has already been noted that other jurisdictions such as Tasmania and New South Wales, and other contexts such as Catholic schools have already been studied. These are to be compared to independent school teachers in Queensland who are studied in this thesis. In these earlier studies, the level of legal literacy held by staff working in such schools was low. The observation, therefore, is that using my sampling group of Queensland independent school teachers, the same *may* be the case for this group. If so, the hypothesis would then be if I, together with my fellow textbook authors, could create a useful resource in the form of a textbook for ready reference, it may well assist in augmenting the level of understanding of education law held by such school employees.

Basic content analysis can be used to inform audiences from a variety of disciplines about a social issue or problem. It can be further used in:

... evaluating the implementation of practices, policies, and regulations.

It can also be used to describe the presence, absence, or prevalence of topics

in any form of communication material. ... Basic content analyses are used to raise awareness and consciousness as well as to inform and educate. (Drisko & Maschi, 2016, p. 28)

The aim from the outset was to study if there was a presence or an absence of understanding of education law held by the participants studied and to raise knowledge about this issue. The creation of the textbook further helps to enhance this discussion and to advise its readers. This educative approach sits neatly and fittingly within the basic content analysis method chosen.

A research design such as this one often engages a small number of participants “in order to discover new knowledge or to gain access to new or unfamiliar information” (Drisko & Maschi, 2016, p. 33). This is what I have attempted to do by considering a new group of social participants who have not been studied before to learn more about their understanding of education law. In so doing, it offers data that is useful about specific characteristics of the sampled population. This descriptive analysis does just that. It provides a description of the statistics of the collected data. The next section of this chapter details how interpretive content analysis was utilised to make inferences from the data and in providing answers to the research questions in this study.

It is pertinent to note here the approach that was adopted when actually doing the data analysis. As mentioned earlier, there are three sections of the survey instrument without having part numbers or sub-headings attributed to them. The first section is simply demographic data about the participants’ role in their school, their age, how long they have been teaching for and if they have received any training in education law. The second section asks participants to rate their level of understanding of education law. This was an interesting and deliberate question in order for comparisons to be made with their actual or demonstrated understanding later in the scenario questions. It also addresses the impact or engagement with education law in their various capacities working in Queensland independent schools. Question 4, importantly, enquires about participants’ most important education law issues they face in their role. Much of this data will be displayed diagrammatically using pie charts to visually see comparisons made amongst the participants. There is a brief discussion about these descriptive statistics periodically to help explain and describe the findings.

The third and last section of the survey contained the scenario questions. These scenarios or real-world practical examples, as explained earlier in this chapter, are based on actual cases that have been tried, or legislative provisions in relevant statute law or from positions of policy. Initially, following basic content analysis methods, these responses to the given scenarios were coded against the rating scale (see Appendix B) that categorised them from having a high level of understanding of education law all the way to very low/no demonstrated understanding. These descriptive statistics are provided, along with the information above, in pie charts in the first section of the next chapter of this thesis, in addition to comments that provide a description of these figures. This is despite having to make inferences and interpret the wording/meaning of the participants' responses to enable a 'correct categorisation' to take place. It is the researcher's opinion that this is still the domain of basic content analysis. As stated earlier on in this section, the role here is to provide communication and inform about a social issue.

#### **4.6.3.2. Interpretive content analysis**

The second type of analysis applied to this study is known as interpretive content analysis. It is defined as a method of looking at information and making inferences from that information by identifying particular characteristics from the data (Drisko & Maschi, 2016). "In this interpretive or inferential view of content analysis, both manifest and latent content may be considered..." (Drisko & Maschi, 2016, p. 3). In this context, *latent content* refers to information that may not be overtly present in the data, but that which can be implied when considering the overall meaning of the information provided in the participants' responses. Drisko and Maschi (2016) when discussing interpretive content analysis as a method, further noted that analysts usually use generated code lists to code both manifest and latent content. In doing so, researchers usually produce "descriptive narrative summaries" (p. 5). In employing this strategy, the researcher goes beyond the recording of descriptive statistics about the data to making more considered comments about the sample's "... reactions to policies in order to identify those that are clear and appealing from those that are not" (Ginger, 2006, as cited in Drisko & Maschi, 2016, p. 65).

In further argument of the need for the textbook emanating from the data, proponents of interpretive content analysis have suggested that it can be used "to make judgements about intentions, needs, and potential actions" (Drisko & Maschi,

2016, p. 66). This element of the analysis is still considered descriptive in nature, but it will focus more on the narrative of the conveyed data as opposed to statistics, as in basic content analysis. In other words, interpretive content analysis is deployed to describe and summarise the views expressed by the research participants.

Furthermore, if a reader needed additional proof of the need for the textbook that was created as part of this project, content analysis is sometimes used to explore the dearth of knowledge or assessments of certain issues. "... the research questions guiding content analysis may seek to describe the lack of specific content or perspectives ..." (Drisko & Maschi, 2016, p. 68). Rather than adopting a more critical theory perspective by considering the interests or views of a particular group of people, content analysts use these descriptive narratives to "... abductively advocate for a given purpose or position ..." (Drisko & Maschi, 2016, p. 68).

After the basic content analysis was completed, an interpretive content analysis approach was employed with the scenario questions used in the survey. The scenarios were first grouped (where there was more than one scenario on the issue) into topics. The intention also was to portray visually how all the research elements fitted intentionally together, bringing the various components of the project into the one collective. Hence my diagrams used in Chapter 6 of this thesis when discussing the data generated from this research study. I wanted to demonstrate that the textbook, the survey scenarios, the conceptual framework theory all worked together around each of the topics. This was more than a visually pleasing grouping of the project parts. Rather, it is meant to indicate that each element of the project did not just happen by chance or good fortune. They are intrinsically linked and have their role to play both as individual elements of this project but also making up the collective whole. It also shows that the survey questions were not simply randomly selected but rather, came from legal and policy positions framed very much within this research project.

By adopting an interpretive content analysis methodological approach, making inferences about the data was possible. Reasoned conclusions, implications and suggestions flowed from the basic content analysis conducted in the earlier analysis section. These interpretations were offered in an attempt to substantiate the messages found in the collected data and give further weight to the need of the textbook for such teachers working in Queensland independent schools.

#### **4.6.4. Coding**

When considering coding of my research data, following a qualitative approach, and utilising a content analysis methodology, the following steps recommended by Mayring (2007, as cited in Panke, 2018) were pursued. Firstly, specifications for each parameter value or category were developed (see Appendix B for each code used in my analysis). These measures were then defined further to help indicate "... how one conceptually and empirically distinguishes between" (Panke, 2018, p. 234) each measure. Secondly, this draft coding or *trial coding* (Maene, 2023) scheme was then applied to a sample set of the text corpus to gauge whether or not it would operate effectively with the whole data set (Panke, 2018). Thirdly, adjustments were made to the coding scheme to ensure it would work with the entire group of survey participants. Panke suggested:

Adjust the coding rules according to whether there are too many or too few entries, and based on the inductively gained insight whether the initial buzzword list is too exhaustive or too short, in order, capture the phenomenon of interest as well as precisely as possible. (Panke, 2018, p. 234)

##### **4.6.4.1. Coding used in this study**

It was initially discovered that there were too many categories or codes in the original scheme. Accordingly, and following the above guidelines, the number was adjusted from seven to five in order to have a 'better fit' for the collected data of this study. This iterative process (Maene, 2023) is common in qualitative content analyses. These categories can be developed before the initial deep dive into the data as these are the dimensions on which I wanted to concentrate on during the analysis (Maene, 2023).

Locating a suitable coding scheme within the extant literature was not evident, so I developed one myself for use in this study (Drisko & Maschi, 2016; Trimmer, 2017). The intention was to address the research aims of this project specifically and to be able to target the research questions in a qualitative fashion as opposed to assuming a quantitative approach. As mentioned above, a definition of each category within the coding frame was then developed (Maene, 2023).

Five categories or codes used in the analysis of the scenario questions contained in the survey were created. As mentioned above, these codes were similar

to a continuum starting from a very high level of legal understanding to a position of demonstrating no legal understanding of the scenario. The first code labelled as having a “high degree of legal literacy: Demonstrates a high level of legal literacy ie presents correct answer and demonstrates correct legal understanding” was used when participants were able to provide the correct answer to the scenario and a clear explanation based on legal principles in practice, with or without links to relevant case law or legislation. In this instance, the provided response clearly showed that they knew what they were talking about and could well articulate the legal position of the particular situation under review. The second code “some degree of legal literacy: Knows a little without demonstrating legal understanding ie presents correct answer but does not show legally why or why not” was utilised when participants gave the correct answer to the scenario but could not explain legally the reasons for it. Some of this was difficult to judge as most of the scenarios asked a ‘yes’ or ‘no’ question first, before asking “why/why not?”. It was difficult as they could have ‘guessed’ correctly the answer without really knowing or understanding the legal position posed in the scenario. The third code characterised as demonstrating a “confused legal literacy: Participant presents correct answer but provides an incorrect legal understanding of the issue” was used when the participant provided the correct answer but in explaining why or why not the situation is as it is mixed up the legal explanation which either did not match the first aspect of the answer supplied or the content of the scenario under review. The fourth code “incorrect legal understanding: Incorrect application of a legal principle to the scenario” was used where participants answered the scenario question inaccurately and/or attempted to apply some legal element of education law to the practice speciously. For example, some participants attempted to apply duty of care principles to a professional conduct matter, where the behaviour of the teacher must be reported to the appropriate teacher regulatory body. The fifth and final code used in the analysis of the collected data was “no understanding/left blank: No reasonable answer provided or left blank”. This code, as its title suggests, was used when respondents failed to answer the scenario question or responded with something completely immaterial to the topic under review. One respondent used “as” in many of their responses which did not give much meaning to the scenario whatsoever and fell in this last category.

An inter-rater method was employed (Drisko & Maschi, 2016; Gisev et al., 2013) to further provide a level of “... trustworthiness to the overall analysis” (Maene,

2023, p. 258). This method allowed for two rounds of coding on the same survey scenario questions to increase the reliability of the analysis undertaken. After this was completed, it was important to check the reliability of the completed coding (Drisko & Maschi, 2016).

When using an interpretive content analysis method of interpreting the collected data, coding is largely descriptive. This was true in my case as can be seen in the next chapter of this thesis. This form of analysis "... allows for the use of connotative categories in the coding process and in the analysis of results. *Connotative codes* are those based not on explicit words but on the overall or symbolic meaning of phrases ..." (Drisko & Maschi, 2016, p. 73). These categories that I have developed for this coding process should be clear and easy to understand, and distinct from each other code. They have been "... assigned on the basis on the researcher's specialised knowledge, or the details of a specific context" (Drisko & Maschi, 2016, p. 73).

#### **4.6.5. Credibility of research findings**

There is much a researcher can do to ensure that their research is strengthened through credible practices where the researcher makes deliberate decisions to establish confidence in the accuracy and interpretation of their findings (Gray, 2018). This 'trustworthiness' (Mills & Gay, 2019) of my research findings was imperative because the nature of this study could easily have been subjective in attempting to prove a point – in this case that independent school teachers in Queensland fail to understand much about education law as it applies to their daily work.

Writers in this space discuss terms such as 'member checking' where researchers take the final report of the findings back to the participants to determine the accuracy of such findings (Creswell & Creswell, 2018). This strategy was not employed but instead a parallel one known as 'inter-rater reliability' which considers whether different coders code the same data in the same or similar way (Drisko & Maschi, 2016). One of my supervisors independently coded all data without seeing my coded data. After comparing her individual coding against mine, very close alignment was confirmed. There were only very minimal responses that were coded one level higher or lower using the generated scale. The level of trustworthiness of the findings were increased by employing this practice of inter-rater reliability,

sometimes known as ‘intercoder agreement’ or ‘cross-checking’ (Creswell & Creswell, 2018). This helped produce findings that suggested a strong element of ‘confirmability’ about them (Mills & Gay 2019).

Authenticity or ‘understanding’ (Cohen et al., 2018) concerns whether or not what the respondents wrote in their responses was a true reflection of their knowledge and awareness of the education law topic under discussion. The nature of how the scenarios were initially developed assisted in augmenting this level of authenticity in the study. Participants were not simply able to guess the correct answer but rather instead had to justify their responses. The genuine engagement and detail provided by respondents contributed to authenticity being met.

This process also worked to check any ‘bias’ that I, as researcher, may have brought to the study (Creswell & Creswell, 2018). I also undertook a process of self-reflection that considered my background and beliefs about this topic and acknowledge that the interpretation of my findings is shaped by them.

I was furthermore conscious of ensuring that there was not a “... drift in the definition of the codes, a shift in the meaning of the codes during the process of coding” (Creswell & Creswell, 2018, p. 202). Both independent coders met frequently to ensure consistency in our shared understanding of what each code meant and how we were to interpret each participant’s response in relation to the codes. This again ensured a more accurate representation of the data analysis conducted in this study.

#### **4.6.6. Conclusion**

This large and important section of this chapter has explicated the theoretical underpinnings of employing content analysis as the method used to analyse my captured data. It also has shown the processes involved in a practical sense of how I went about considering my data. Both basic content analysis and interpretive content analysis methods were utilised. It explained how imperative descriptive statistics were generated from the survey results in the first section using the connotative categories as explained above. This was followed with critical inferences being made in the second section of the analysis, with significant conclusions being reached. All of these results of the analysis are detailed in the following two chapters of the thesis.

#### **4.7. Ethical and political considerations**

Ethical considerations are crucial factors researchers should excogitate upon when conducting research projects. Research is not performed in isolation without risk or cost to either the researcher, or, and more importantly, to participants involved in the study. Ethics are a useful tool in trying to mitigate against such risks. As was outlined in the Ethical Considerations dimension in Chapter 3 of this thesis, where teachers have to follow ethical guidelines in their professional behaviour, we too, as researchers, have to do likewise. There are codes and professional guidelines that have to be followed to ensure that ethical research transpires. It is important to note that ethical considerations were adhered to in the planning, conducting, communicating about my research project (Punch, 2014).

Ethical challenges in research arise in all designs and approaches and at all stages of a project, from the choice of research topic, which raises questions about the worthwhileness of the research, through to the reporting and publication stage, and beyond it, to further uses and outcomes. (Punch and Oancea, 2014, p. 58)

The topic of my research study is, by its very nature, sensitive and therefore has inherent challenges. For the most part, people going about their lives do not like being questioned about what they do and how they engage with the instruments at play in their work environment. Moreover, most of those willing to discuss these social habits or behaviours are hesitant to do so when the crux of the conversation is around legal matters. Again, it is by its very nature, a more provocative subject matter to review, particularly by a complete stranger which was predominately the case in this study.

The first consideration is that of informed consent. "Informed consent should take the form of a dialogue that mutually shapes the research and the results" (Mills & Gay, 2019, p. 65). There were many documents provided to potential participants about the research project. These consisted of the Participant Information Statement, consent form, letters to principals asking for their teachers' involvement, sample email letters to staff, my University of Southern Queensland Ethics Application Approval Notice. (Please find copies of these information documents to potential participants in Appendices C – G). Full disclosure was employed in this

qualitative study (Hesse-Biber, 2017). The actual electronic version of the survey further mentioned consent whereby the potential participant chose to elect to continue to complete the survey thereby providing their consent or alternatively, chose not to complete the survey. In the information provided to participants it was made clear that all information collected would be kept confidential and that all surveys were anonymous in any event. Participants were intentionally not asked to provide their school's or college's name; in doing so, providing a further layer of anonymity.

This was followed in trying to avoid problems with context, which is often a problem in qualitative research (Flick, 2018). This consideration was advanced with the design of the incentive of a 'lucky draw' of two \$50.00 credit card vouchers. This was completed in another survey instrument at the conclusion of the first survey. This was managed by asking willing participants who wanted to take part in the 'lucky draw' could then indicate their contact details in the second survey, in order to keep their first (primary) survey responses separate and apart from their contact details. The information provided to participants mentioned what the data collected was clearly going to be used for and who would have access to that information. Informed consent is an essential human right and only fair in undertaking a research project such as this one (Hesse-Biber, 2017). "... it is intended to safeguard participants from any mental or physical harm that might befall them as a result of their participation. Participants are made aware of any potential risks that come with participation ..." (Hesse-Biber, 2017, p. 74).

Other writers such as Mills and Gay (2019) contended that researchers following a qualitative approach should adopt a set of behaviours that minimize potential harm to those involved in the study. They went on to say that even if the project produces positive results, it is not ethical unless the standards under which the study was designed and approved, are indeed followed.

Another area of ethical behaviour in research is doing justice to participants in analysing data. When writing about my data, it was important not to expose any particular individual response, so that comments could not be traced back to individual participants. That is to say that the interpretations made by the researcher about the data, are really grounded in the data. No personal judgements about the respondents were made (Flick, 2018). No comments about their personalities or cognitive abilities were reflected in the analysis of the data in this study.

All participants who wanted a copy of the final collection of data were told that a copy would be freely made available for them. This, at the time of writing, has not been taken up by any participant.

According to Punch and Oancea (2014), there are three main ethical perspectives that a researcher can bring to the research assignment. The first and most rudimentary perspective is ensuring that the researcher does the right thing and follows the right course of action in the research process. This is known as “... deontological ethics which emphasises acting out of duty, as opposed to pleasure, inclination or interest” (p. 61). In my research vagabondage, the University of Southern Queensland policies and procedures and the cognate externally imposed guidelines were followed (National Health and Medical Research Council et al., 2007, updated 2018, 2018a, 2018b). There are many steps and ‘hoops’ a researcher must ‘jump through’ to have their research design and enactment approved.

The second ethical standpoint that Punch and Oancea (2014) highlighted is one of following the “... best course of action, that is, the one that is likely to result in the greatest good for all concerned. In teleological ethics, the focus shifts from duty and universals, to the outcomes or results of actions” (p. 61). The focus in creating the entire survey and particularly the scenario questions, was to frame them in such a way as to cause the least potential harm to participants. This was in order to deliver the best possible outcomes for this study.

The third ethical perspective discussed is that of virtues. This perspective “... moves away from the emphasis on universal principles and consequences towards actions arising out of particular dispositions in particular situations” (Punch & Oancea, 2014, p. 61). This stance considers following a “moral excellence” (p. 61) which is often difficult to describe but more easily able to ‘be seen’ in action. I followed morally appropriate actions in the planning, design, conducting and writing up of the research. Having two supervisors to ensure that my behaviour was above reproach was instrumental in safeguarding this.

Virtuous action is based on moral wisdom and discernment, which includes an appreciation of the situation – that is, the capacity to understand the situation and discern its morally salient issues. It is also an exercise of

virtuosity – the skilful transposition of these dispositions into morally appropriate action. (Punch & Oancea, 2014, pp. 61-62)

Another way at looking at behaving in an ethical manner when conducting research was penned by Seedhouse (2008, as cited in Brown, 2019). He noted four perspectives in looking at ethical research design and summarised them as follows: “Create autonomy; serve needs first; respect persons equally; and respect autonomy” (p. 78). ‘Create autonomy’ considers doing the ‘most good’ which has been explained above. Similarly, ‘serve the needs first’ stipulates minimising harm, which again, has been described above. The final two lenses noted are about keeping promises and telling the truth. Part of the ethical journey in this study has always been prepared to stick to the truth even if the truth caused me difficulties or challenges. This has been from the outset in trying to maintain the same thinking and concept for my research from start to finish. This was not possible, as predictably my cognitions developed and with greater thought and supervisor guidance, the focus of the study did change. Brown (2019, p. 78) noted that we must contemplate “the inevitable complications and potential consequences resulting from the differences in the way people perceive and react to situations”.

It also was challenging when considering the divergence between what the collected data evidenced and what I thought it might potentially highlight. With an appropriately moral ethical stance, the data is the data, and it is important in a study such as this, reflect the tone of the data without the temptation of including our own agendas or constructs to the collected data. In maintaining this ethical position, I asked one of my supervisors to look at the data and reflect on how they would comment on each participant’s level of understanding of education law. In this way, it was not solely up to me to independently judge the level of understanding of education law by the participants, but rather a pairing of minds in producing these decisions. If not, I could have easily skewed the data to make it reveal manifestly just how I anticipated or wanted it to divulge.

There are four commonly agreed to considerations or actions on behalf of the researcher that lead to ethical practice in their research (Brown, 2019). These are: “Voluntary informed consent; obtaining ethical approval; integrity of research; and rights of participants” (p. 80). The first three issues have all been clearly covered above. Rights of participants has also been noted above in my actions of providing

the full disclosure of the purpose of the study prior to their involvement, giving participants the right to withdraw at any time, ensuring the right of privacy and confidentiality, providing safe storage of the data, providing the right to a copy of the collected deidentified data, and clearly outlining any potential risks of harm to the participants (Brown, 2019).

#### **4.8. Chapter summary**

This chapter has been important as it has detailed the theory and philosophical foundation that the entire research project emanates from. It is only from this philosophical lens that I now can look at the actual data itself to analyse. In the previous chapters, including this one, a solid basis for the study has been provided. The literature stating that all school teachers (including those in middle and senior management working in schools) should have a modicum of understanding of education law sets the scene for the whole study. The conceptual framework which follows establishes the four dimensions of legal literacy and provides the theoretical position of the context of this research study. This chapter considers the theory and practice of how the study has been viewed and conducted in answering the research questions. The next chapter addresses each of the research questions in turn and looks closely at the data collected in the study's survey. Finally inferences made from the overall messages of the data and key conclusions are provided.

## CHAPTER 5: RESULTS

### 5.1. Introduction

This chapter is designed to describe the data collected as part of this research project. Whilst some observations will be made along the way, the purpose is more descriptive in nature. These descriptive statistics are meant to help describe what the data is saying. Chapter 6 in this thesis will discuss my interpretations of the results of the scenario questions and link the results to the formation of the creative work, the textbook.

As highlighted in Chapter 4 of this thesis, I conducted an online survey to collect data for this study. This included questions that can be broken down into three separate categories or sections. Firstly, there were some general demographic questions and general questions about the background of the participants. Secondly, there were questions specifically designed to elicit responses from participants about their views on their understanding of education law principles and what they considered important in this space. Thirdly, and probably most importantly, as they focus on the very hub of the research question, are the scenario questions which allow the participants to demonstrate their level of legal literacy. From here, I was able to determine and make some considered judgments about the level of legal literacy that these Queensland independent school teachers possess.

### 5.2. Demographic data responses

The first of the demographic data questions asked the participants to indicate in which age bracket they belong.

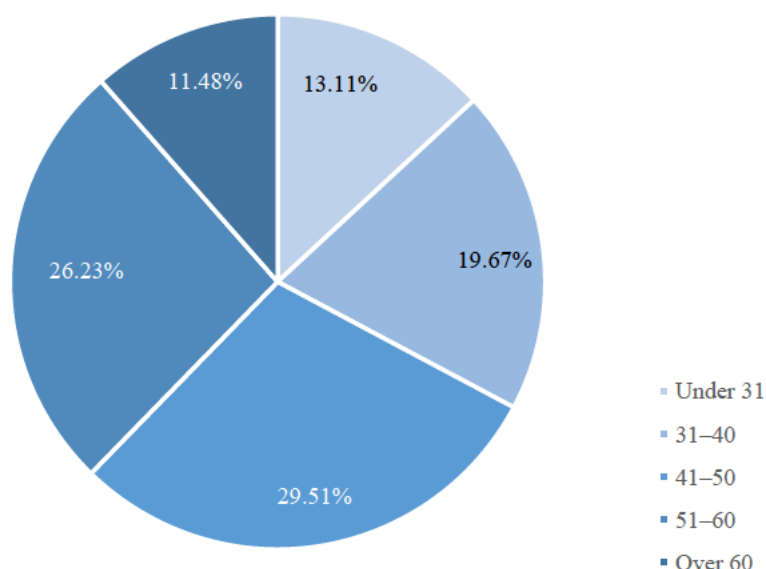
**Table 5.1**

*Age of Participants (n=61)*

| Age      | <i>n</i> | Frequency (%) |
|----------|----------|---------------|
| Under 31 | 8        | 13.11         |
| 31–40    | 12       | 19.67         |
| 41–50    | 18       | 29.51         |
| 51–60    | 16       | 26.23         |
| Over 60  | 7        | 11.48         |

**Figure 5.1**

*Age of Participants (n=61)*



The two largest groups, accounting for over 55% of respondents fell within the 41 – 50-year-old and 51 – 60-year-old bands. Table 5.1 and Figure 5.1 depict the ages of the participants and their percentages that make up the total group surveyed. Interestingly, it seems that the teachers with more life experience probably felt more comfortable or perhaps less threatened responding to a survey that asked about their level of understanding of education law matters.

The second question inquired about the gender of the participants.

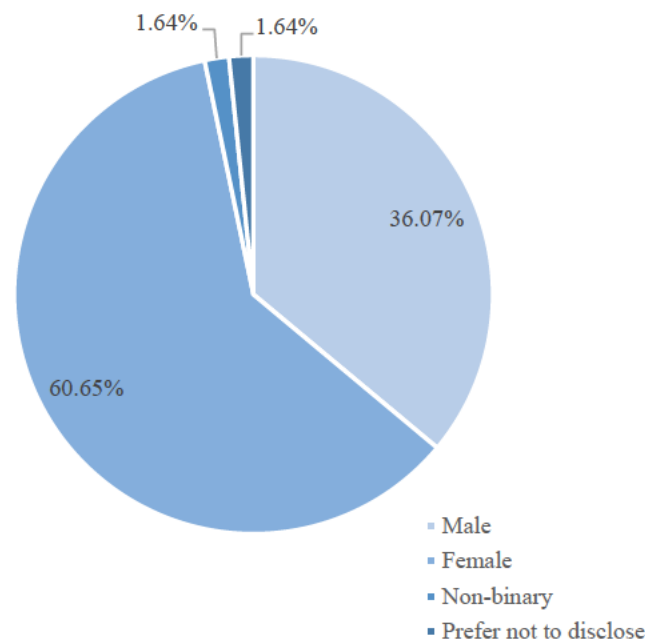
**Table 5.2**

*Gender of Participants (n=61)*

| Gender                 | <i>n</i> | Frequency (%) |
|------------------------|----------|---------------|
| Male                   | 22       | 36.07         |
| Female                 | 37       | 60.65         |
| Non-binary             | 1        | 1.64          |
| Prefer not to disclose | 1        | 1.64          |

**Figure 5.2**

*Gender of Participants (n=61)*

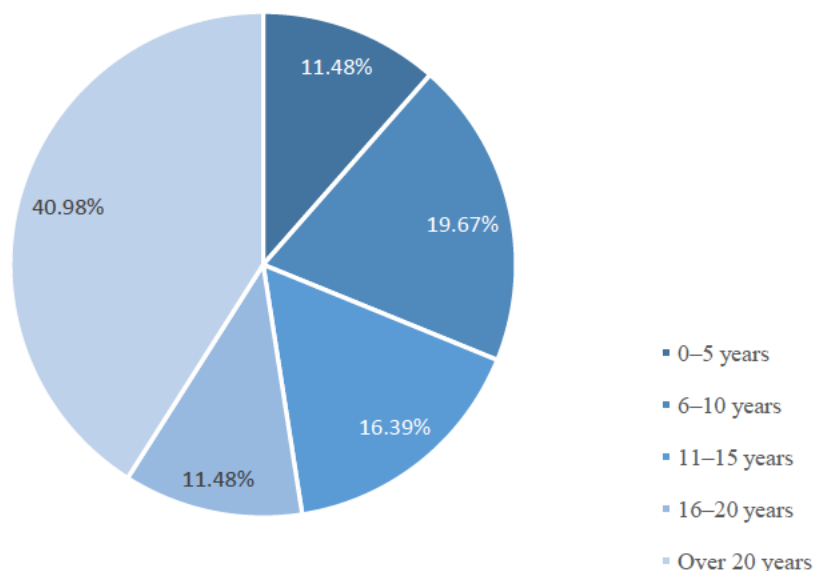


Not unsurprisingly, with the well-known and accepted fact that teaching as a profession is taken up by more women than men (Queensland College of Teachers, 2022), over 60% of the participants of my survey were female. Almost twice as many women to men participated in this survey. Refer to Table 5.2 and Figure 5.2 for further details. What is perhaps more interesting is that bearing in mind the vast majority of, if not all, schools from where participants emanated are Christian faith-based schools of some denomination, which to varying degrees adhere to strict doctrinal positions on gender and gender identity issues, one participant each chose to indicate “non-binary” and preferred not to disclose their gender.

The next question centred on years of teaching experience. Refer to Table 5.3 for the years of experience in schools completed by those surveyed and Figure 5.3 which illustrates this in percentage terms.

**Table 5.3***Participants' Experience in Schools (n=61)*

| Experience (years) | <i>n</i> | Frequency (%) |
|--------------------|----------|---------------|
| 0–5                | 7        | 11.48         |
| 6–10               | 12       | 19.67         |
| 11–15              | 10       | 16.39         |
| 16–20              | 7        | 11.48         |
| Over 20            | 25       | 40.98         |

**Figure 5.3***Participants' Experience in Schools (n=61)*

Not dissimilar to question one in the survey, those with more experience who chose to respond to the survey with 20 years or more in the classroom amounted to almost 41%. However, the next largest group of respondents indicated having only six – ten years' experience. There are many possible reasons for this and therefore it cannot be automatically assumed that the second largest group would be those with between 16- and 20-years' experience. One such explanation is that we know that there are many older people turning to teaching now than what there were 20 – 30 years ago when by far the majority of education university students were school leavers (Roksa & Velez, 2012). Therefore, they may be a little older without necessarily the corresponding years of teaching experience. Other plausible

explanations may be that they may have taken time off to have a family or chosen teaching after an initial career in some other field.

The final item in this first section of the survey questioned what position the participant holds in the school in which they are employed.

**Table 5.4**

*Position Held at School (n=61)*

| Position                                   | <i>n</i> | Frequency (%) |
|--------------------------------------------|----------|---------------|
| Teacher                                    | 32       | 52.46         |
| Year Level Coordinator                     | 2        | 3.28          |
| Head of Department                         | 9        | 14.75         |
| Head of Senior Schooling                   | 2        | 3.28          |
| Dean of Students/Director of Pastoral Care | 1        | 1.64          |
| Director of Studies/Head of Curriculum     | 2        | 3.28          |
| Head of Sub-School                         | 1        | 1.64          |
| Deputy Principal                           | 0        | 0.00          |
| Principal                                  | 5        | 8.20          |
| Other                                      | 7        | 11.47         |

**Figure 5.4**

*Position Held at School (n=61)*

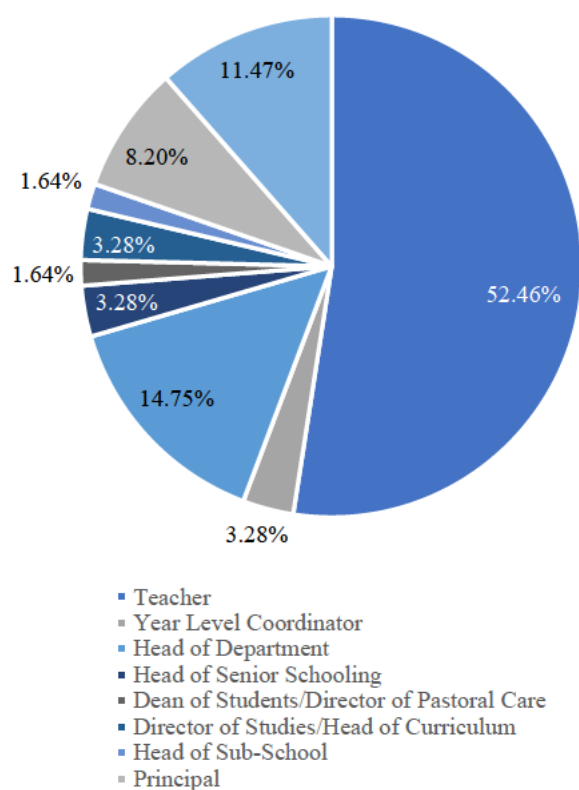


Table 5.4 and Figure 5.4 indicate that by far and away the most prominent position held was that of teacher. Therefore it is salutary that the textbook is written primarily for teachers and pre-service teachers. Whilst the textbook is of value for leaders and those in managerial roles working in schools, and indeed, in school systems, the focus of this study is about teachers and the textbook is also focused for use by teachers.

The position of teacher accounted for over 50% of participants. The next largest group were Heads of Department, but only amounted to 14.75%.

### **5.3. Training and participants' affective thoughts on education law**

The second section of the survey inquired whether or not participants had any training in education law and their considerations as to which areas of education law they thought were most important in seeking more training in. It also investigated some of the affective domains of participants' understanding of education law.

The first question in this section asked if participants had had any legal training. Table 5.5 and Figure 5.5 clearly show that just under half of the respondents questioned answered in the affirmative.

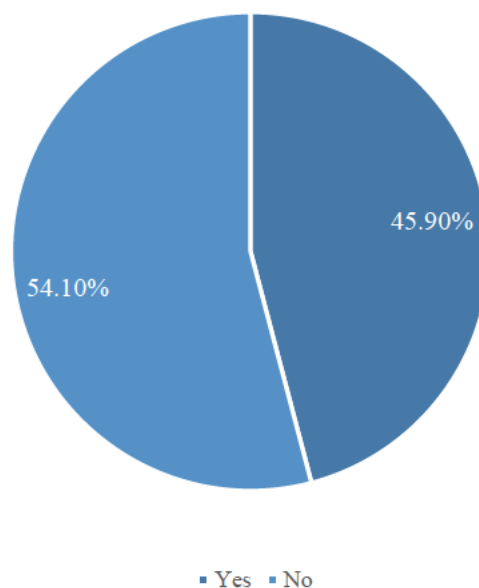
**Table 5.5**

*Legal Training Received (n=61)*

| Response | <i>n</i> | Frequency (%) |
|----------|----------|---------------|
| Yes      | 28       | 45.90         |
| No       | 33       | 54.10         |

**Figure 5.5**

*Legal Training Received (n=61)*



What is more interesting to note is the type of training they had experienced. Please see Table 5.6 for a breakdown of the various types of training.

**Table 5.6***Types of Training Received (n=25)*

| Types of Training                                                               | <i>n</i> |
|---------------------------------------------------------------------------------|----------|
| Professional development (excluding annual child protection mandatory training) | 10       |
| Postgraduate study                                                              | 3        |
| Informal study (e.g. subscription to emails or professional reading)            | 3        |
| Annual child protection mandatory training                                      | 9        |

What most participants mentioned when referring to education law training were professional development sessions in a variety of areas and, in particular, most notably annual child protection training. This, of course, is conducted annually in most schools as a regular, compulsory professional development session typically either after school one day or in a session during pre-service days (Butlin, 2023).

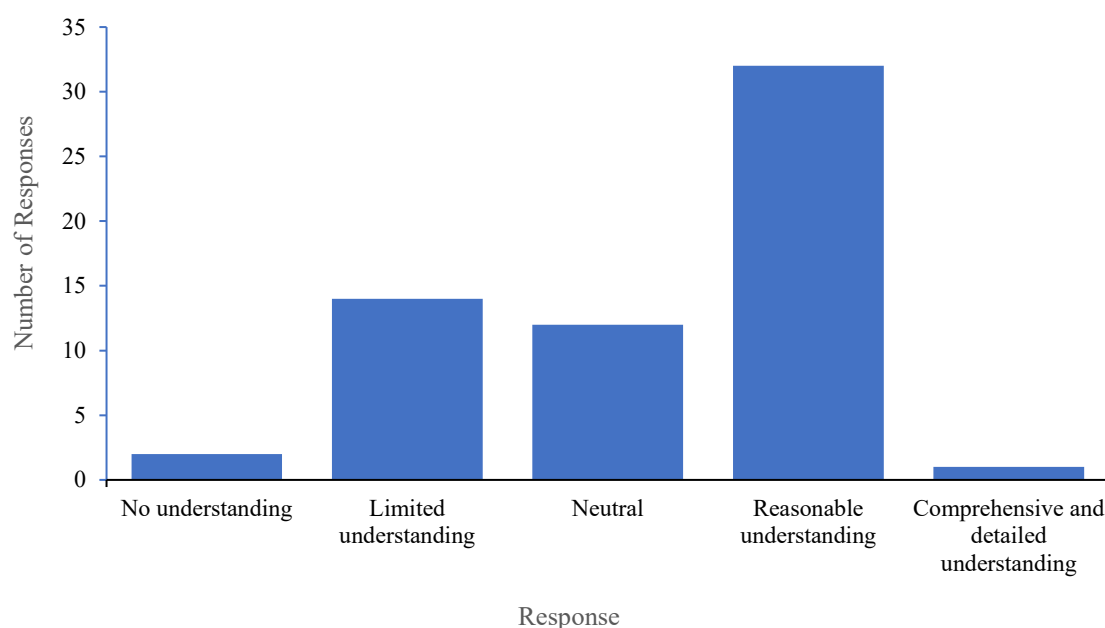
Participants' self-belief about their personally held understanding of school legal issues was the focus of the next question. Participants were asked to nominate on a scale from having a comprehensive and detailed understanding to having no understanding, where they felt they belonged along that continuum. Table 5.7 and Figure 5.6 summarise their placement along that spectrum.

**Table 5.7***Participants' Self-identified Understanding of Legal Issues (n=61)*

| Response                                 | <i>n</i> | Frequency (%) |
|------------------------------------------|----------|---------------|
| No understanding                         | 2        | 3.28          |
| Limited understanding                    | 14       | 22.95         |
| Neutral                                  | 12       | 19.67         |
| Reasonable understanding                 | 32       | 52.46         |
| Comprehensive and detailed understanding | 1        | 1.64          |

**Figure 5.6**

*Participants' Self-identified Understanding of Legal Issues (n=61)*



Over half of the participants surveyed believed that they possessed a “reasonable understanding” of school legal issues. Only one and two participants respectively suggested that they held a “comprehensive understanding” and “no understanding”. The majority of the participants believed that they belonged along the middle of the spectrum and not on the outer extremes. 22.95% placed themselves in the “limited understanding” bracket while nearly 20% chose “neutral” as their position, not committing to either a “limited” or “reasonable understanding” of education law.

This was followed up by questioning the participants’ level of confidence in dealing with education law matters. Again, this was asked using a scale from “not confident” to “very confident” or alternatively with another separate response option being that they had not yet dealt with that issue in their professional lives. Table 5.8 lists the legal issues faced by teachers in their daily work and the responding levels of confidence that the participants have in dealing with such issues.

Twenty-one participants identified that they were “very confident” dealing with duty of care issues and 20 participants declared that they were “very confident” dealing in the work health and safety area of schools. Combining “confident” and

“very confident” scales together to establish a gauge on what legal areas teachers felt comfortable dealing in, 46 responded to duty of care, with the second highest being child protection with 42 respondents. These were followed closely by work health and safety (41) and mandatory reporting (40).

On the other end of the spectrum, 25 participants said that they were “not confident” in dealing with criminal law matters and 21 responded with “not confident” when asked about consumer protection laws. Again when combining “not confident” and “somewhat confident” to gain a sense of what participants were less assured in, 37 responded to right of information, while 35 each highlighted Disability Standards in education and Federal Circuit and Family Court orders.

Of interest, 19 participants stated that they “have not dealt with” consumer protection laws. There are some notable reflections and implications from this data which will be explored in the next chapter of this thesis

**Table 5.8***Confidence in Dealing with Legal Issues in a School (n=61)*

| Legal Issue                                   | Not<br>Confident | Somewhat<br>Confident | Confident | Very<br>Confident | Have<br>not Dealt<br>with |
|-----------------------------------------------|------------------|-----------------------|-----------|-------------------|---------------------------|
| Bullying/Cyberbullying                        | 8                | 22                    | 13        | 10                | 8                         |
| Child protection                              | 1                | 10                    | 25        | 17                | 8                         |
| Compliance                                    | 3                | 19                    | 20        | 11                | 8                         |
| Conducting investigations                     | 13               | 11                    | 17        | 6                 | 14                        |
| Consumer protection/Consumer law              | 21               | 12                    | 7         | 2                 | 19                        |
| Contracts and obligations                     | 18               | 13                    | 13        | 6                 | 11                        |
| Criminal law                                  | 25               | 8                     | 9         | 3                 | 16                        |
| Disability Standards in Australia             | 9                | 26                    | 11        | 10                | 5                         |
| Discipline and Behaviour Management<br>policy | 6                | 13                    | 24        | 11                | 7                         |
| Discrimination                                | 6                | 13                    | 19        | 13                | 10                        |
| Duty of care                                  | 0                | 10                    | 25        | 21                | 5                         |
| Ethics and ethical considerations             | 7                | 19                    | 18        | 12                | 5                         |
| Excursions and permission forms               | 2                | 18                    | 21        | 14                | 6                         |
| Family Court orders or related                | 18               | 17                    | 9         | 6                 | 11                        |
| Mandatory reporting                           | 1                | 13                    | 21        | 19                | 7                         |

| Legal Issue                          | Not<br>Confident | Somewhat<br>Confident | Confident | Very<br>Confident | Have<br>not Dealt<br>with |
|--------------------------------------|------------------|-----------------------|-----------|-------------------|---------------------------|
| Negligence                           | 11               | 15                    | 16        | 8                 | 11                        |
| Privacy                              | 6                | 18                    | 18        | 12                | 7                         |
| QCAA or Curriculum Authority matters | 5                | 12                    | 21        | 16                | 7                         |
| QCT matters                          | 6                | 17                    | 23        | 8                 | 7                         |
| Responding to court orders           | 22               | 10                    | 13        | 3                 | 13                        |
| Right to information                 | 20               | 17                    | 9         | 3                 | 12                        |
| Staffing issues/Industrial matters   | 14               | 16                    | 17        | 3                 | 11                        |
| Suspensions/Expulsions               | 19               | 14                    | 11        | 6                 | 11                        |
| Teacher liability                    | 14               | 16                    | 15        | 8                 | 8                         |
| Work health and safety               | 3                | 11                    | 21        | 20                | 6                         |

There were a number of contributing factors that led to this level or lack thereof of confidence in dealing with such school legal matters (see Table 5.9 and Figure 5.7).

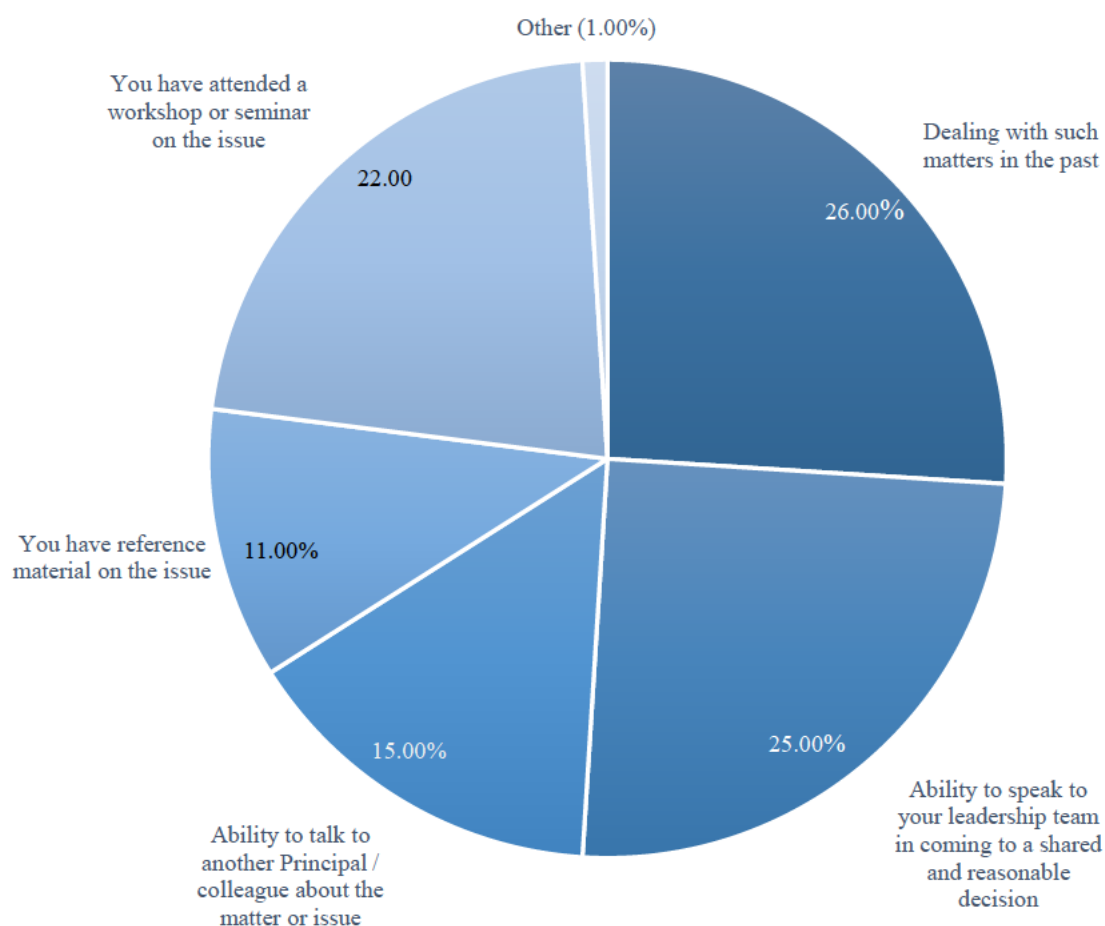
**Table 5.9**

*Factors Contributing to Participants' Confidence Level in Dealing with Legal Matters (n=61)*

| Factor                                                                                 | <i>n</i> | Frequency (%) |
|----------------------------------------------------------------------------------------|----------|---------------|
| Dealing with such matters in the past                                                  | 16       | 26.00         |
| Ability to speak to your leadership team in coming to a shared and reasonable decision | 15       | 25.00         |
| Ability to talk to another Principal / colleague about the matter or issue             | 9        | 15.00         |
| You have reference material on the issue                                               | 7        | 11.00         |
| You have attended a workshop or seminar on the issue                                   | 13       | 22.00         |
| Other                                                                                  | 1        | 1.00          |

**Figure 5.7**

*Factors Contributing to Participants' Confidence Level in Dealing with Legal Matters (n=61)*



Considering the factors leading to having a sense of confidence when dealing with education law matters, 26% of participants mentioned that having past experience in dealing with such matters was a key factor, while 25% of respondents outlined that having the opportunity to speak to their leadership team in coming to a reasonable resolution was important. Twenty-two percent of participants suggested that having attended a workshop or professional development seminar on the issue assured them a level of confidence in dealing with the issue.

Looking at the desire for training in education law matters, 22 participants highlighted cyberbullying while 22 participants also suggested staffing issues/industrial matters as the equal top issue that they wanted training in. Table

5.10 lists, in order of priority of importance, the areas that the survey respondents thought they wanted or needed training in.

**Table 5.10***Desire for Training in School Law Matters (in order of importance) (n=61)*

| Legal Issue                                          | <i>n</i> | Frequency (%) |
|------------------------------------------------------|----------|---------------|
| Cyberbullying                                        | 22       | 7.21%         |
| Staffing issues/Industrial matters                   | 22       | 7.21%         |
| Child protection                                     | 21       | 6.89%         |
| Discipline and Behaviour Management policy decisions | 21       | 6.89%         |
| Duty of care                                         | 19       | 6.23%         |
| Ethics and ethical considerations in schools         | 19       | 6.23%         |
| Disability Standards in Australia                    | 17       | 5.57%         |
| Teacher liability                                    | 17       | 5.57%         |
| Conducting investigations                            | 15       | 4.92%         |
| Compliance                                           | 13       | 4.26%         |
| Discrimination                                       | 12       | 3.93%         |
| Family Court orders and related matters              | 12       | 3.93%         |
| Mandatory reporting                                  | 12       | 3.93%         |
| Bullying (physical)                                  | 10       | 3.28%         |
| Excursions and permission forms                      | 9        | 2.95%         |
| QCAA or Curriculum Authority matters                 | 9        | 2.95%         |
| Work health and safety                               | 9        | 2.95%         |
| Contracts and obligations                            | 7        | 2.30%         |
| QCT Issues                                           | 7        | 2.30%         |
| Responding to court orders                           | 6        | 1.97%         |
| Right to information                                 | 6        | 1.97%         |
| Suspensions/Expulsions                               | 6        | 1.97%         |
| Criminal law                                         | 5        | 1.64%         |
| Negligence                                           | 5        | 1.64%         |
| Privacy                                              | 4        | 1.31%         |
| Consumer protection/Consumer law matters             | 0        | 0.00%         |

Coming in equal second in the list of priority areas for training were child protection and discipline and behaviour management policy decisions with 21 responses each. Duty of care and ethics/ethical considerations in schools were the third most commonly chosen area for either initial or further training in with 19 responses each. The two least considered areas of training for teachers surveyed in relation to education law were privacy and consumer protection law respectively.

#### **5.4. Education law scenario responses**

As mentioned in the introduction of this chapter, the third and final section of the survey instrument used to collect data for this project were education law scenarios. These scenarios, based on real life case law or legislative provisions enacted in schools, asked the participants for a short response about various aspects of education law as to what the legal position is in the specific issue under review and to explain why it is the case. This was so that a more accurate and true understanding of the level of legal literacy could be garnered. If participants could easily say either “yes” or “no” without having to demonstrate knowledge, it is impossible to say with any level of certainty that they have or do not hold a legal understanding of the issue. There was a total of 14 scenarios used in the survey instrument. Whilst 61 participants completed the first two sections of the survey, only forty-five managed to complete the scenarios section.

All participant responses were coded according to the established created codes, discussed in Chapter 4 of this thesis when considering my data analysis approach within the research design. They ranged from demonstrating a “high degree of legal literacy” to displaying “no understanding” or the answer was “left blank”. This same continuum was used to code all 14 scenarios. As a timely reminder, the five codes used in this study were as follows: The first one was “high degree of legal literacy: Demonstrates a high level of legal literacy ie presents correct answer and demonstrates correct legal understanding”. Secondly, “some degree of legal literacy: Knows a little without demonstrating legal understanding ie presents correct answer but does not show legally why or why not”. Thirdly, “confused legal literacy: Participant presents correct answer but provides an incorrect legal understanding of the issue”. Fourthly, “incorrect legal understanding: Incorrect application of a legal principle to the scenario”. And finally, “no understanding/left blank: No reasonable answer provided or left blank”.

Some of the more interesting or notable responses are included below. These will help the reader see the types of responses that fall into the various categories but more importantly, are highlighted as some will be reflected upon in the next chapter of this thesis.

#### **5.4.1. Duty of care scenarios**

Due to the fact that duty of care covers such a wide array of topics and sub-topics, in addition to being the most litigious area in education law, there were more scenarios dedicated to this topic. Scenarios 1, 10, 11, 12, 13 and 14 covered various aspects of duty of care.

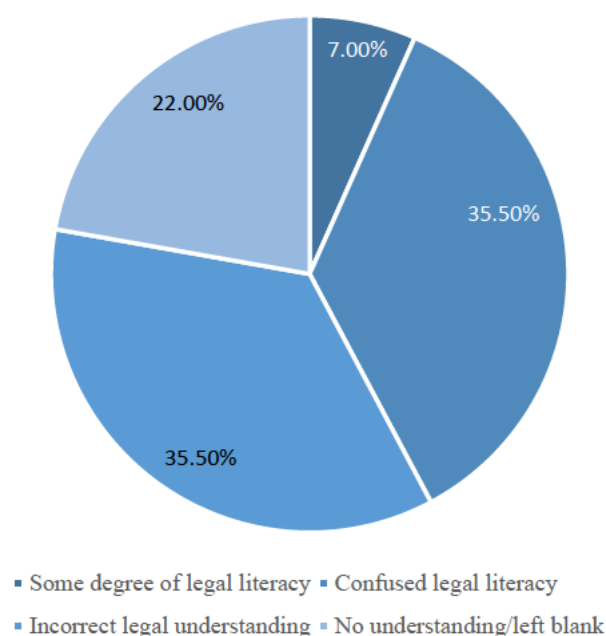
Scenario 1 focused on a duty of care situation where two teachers were supposed to cross over their yard duty responsibilities half way through their lunch break. During this change over period, a student was injured, and participants were questioned as to who would be liable in such a case.

*Scenario 1: Teacher Bill finishes his yard duty half way through lunch. While June is still coming out to start her duty in the same area, a student is injured on the play equipment. Who is likely to be sued for the injuries?*

Table 5.11 and Figure 5.8 portray the results of the coded data from scenario 1. As with most of the scenario responses, there was a range of results evident. In this first case there were over 57% of responses indicating either an “incorrect legal understanding” or “no understanding”.

**Table 5.11***Scenario One Results (n=45)*

| Result                        | <i>n</i> | Frequency % |
|-------------------------------|----------|-------------|
| High degree of legal literacy | 0        | 0.00%       |
| Some degree of legal literacy | 3        | 7.00%       |
| Confused legal literacy       | 16       | 35.50%      |
| Incorrect legal understanding | 16       | 35.50%      |
| No understanding/left blank   | 10       | 22.00%      |

**Figure 5.8***Scenario One Results (n=45)*

Indeed, in this first and relatively straight forward and commonly occurring in schools situation, 93% of respondents indicated either a “confused legal literacy”, an

“incorrect legal understanding” or “no understanding/left blank”. No participant was able to demonstrate a “high degree of legal literacy” in this first practical example.

Some notable examples of “confused legal literacy” included:

*“Bill - because he is technically still on duty until he is relieved, so the duty of care falls to him.”*

*“If Bill left prior to another teacher arriving on duty, he is liable as this is a duty of care issue.”*

*“Bill should be still there to pass the duty of care onto the next teacher. As he has not passed the duty of care over to the next teacher yet [sic]. The teacher late for her duty also should be spoken to- as it was her responsibility to take over. However if it was due to a faulty play equipment the school maintenance crew- for not fixing it”*

*“Bill as he left before June came [sic] The School if their playground is not safe and safety reports haven't been maintained [sic] Nobody - depending on how the injury occurred. It may be that the student was using the safe equipment as expected and had an accidental fall causing the injury.”*

*“Bill - he didn't wait for June to commence her duty before he left the students unattended.”*

*“The school as a whole, but if June is late, she is at fault. However, you would hope that Bill stays on duty until June comes to ensure students are supervised at all times.”*

These responses above are “confused” as they are partly correct in their answer but fail to provide a correct legal understanding of the issue.

Examples of “incorrect legal understanding” where there was an incorrect application of the law to the situation included the following:

*“Neither teacher is likely to be sued; each has completed/is completing her/his yard duty appropriately.”*

*“Depends on the time of the injury and who was responsible at that time”*

*“Teacher Bill”*

*“If Bill is still there and has not swapped out yet with June (which is not made clear) then Bill, but it is the school who cops the bill.”*

*“Nobody is likely to be sued as it is not the responsibility of the duty teacher to prevent injuries. They are there to supervise so if injuries do happen, they can act appropriately.”*

22% of responses demonstrated “no understanding”. Some of these included:

*“jokes around too mch [sic]”*

*“June? Unsure”*

*“n/a”*

*“unsure - should Bill have waited for June to ensure there was a teacher on duty as it is reasonably foreseeable that an issue could arise without any supervision.”*

Scenario 10 also focused on duty of care and in this particular instance the scenario asked respondents to comment on whether or not small, in stature, female teachers should actively attempt to stop older, larger boys physically fighting.

*Scenario 10: Should teachers, even slightly built female teachers, intervene to stop playground fights, even if the combatants are large Year 12 male students? Why/Why not?*

Results depicted in Table 5.12 and Figure 5.9 again show that the participants clearly are either not sure or have no understanding of the legal position in relation to this area with 93% of participants falling into the categories of either “confused legal literacy”, “incorrect legal understanding” or “no understanding/left blank”. Over 50% of respondents alone were “incorrect” in their understanding of this scenario.

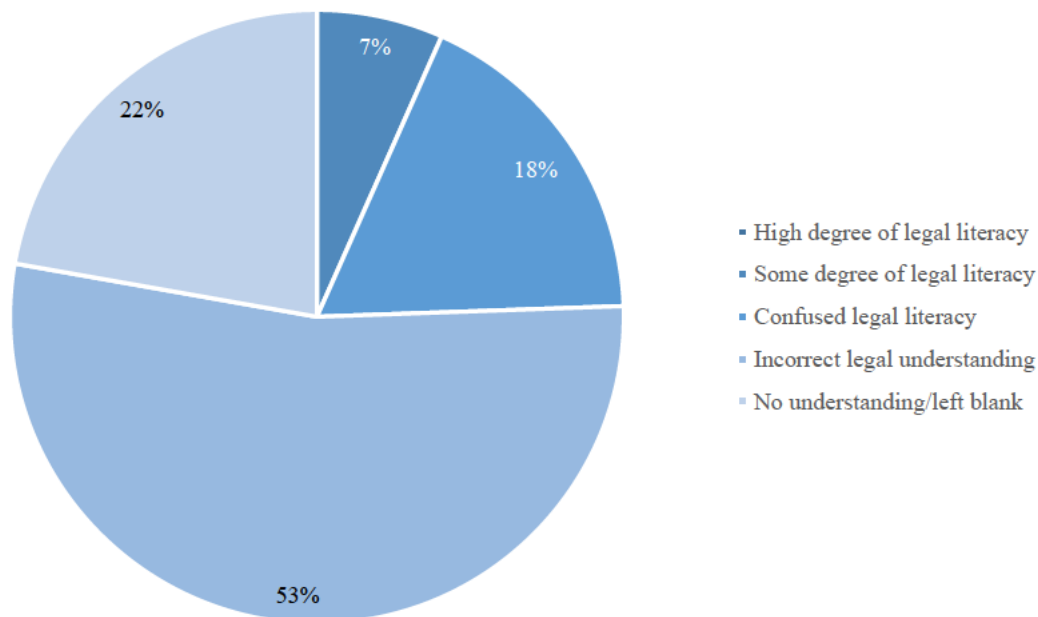
**Table 5.12**

*Scenario Ten Results (n=45)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 0        | 0.00%         |
| Some degree of legal literacy | 3        | 7.00%         |
| Confused legal literacy       | 8        | 18.00%        |
| Incorrect legal understanding | 24       | 53.00%        |
| No understanding/left blank   | 10       | 22.00%        |

**Figure 5.9**

*Scenario Ten Results (n=45)*



Examples of notable responses that were regarded as “incorrect legal literacy” are presented below:

*“Not if they believe there is a reasonable risk to their own safety.”*

*“no way”*

*“No; teachers are not required to place themselves at physical risk in such circumstances.”*

*“No. Too much risk of potential injury.”*

*“No - only if it is safe to do so, and without physical harm”*

*“Not really, duty of care to themselves”*

*“No. You do not have to put yourself in a dangerous situation where you maybe harmed”*

*“No. Teachers should be trained for this.”*

*“No. A teacher is not required to put themselves in harms [sic] way.”*

*“No, this isnit [sic] an expectation due to potential danger to staff member”*

*“Personal safety of teachers takes precedence.”*

*“No. As with all situations, Danger is the first rule applied to any situation of help. This includes danger to self.”*

*“No, they may be accused of harming a student with their actions”*

*“No they may get hurt, they need to call for back up and if needed police”*

*“Only if the teacher is comfortable and safe to do so”*

*“Teacher needs to consider their own safety. They can use their phone, find another teacher etc instead”*

*“No. This should be reported to senior administration staff. Such intervention poses a risk to teachers.”*

*“No, the teacher would be putting themselves at risk.”*

*“no there should be a policy and procedure that resolves this without physical intervention”*

*“No - if the risk to personal safety is too high, then ensure surrounding students are safe and request for assistance.”*

Many of the teachers have commented that their safety takes priority over that of the students under their care, where legally this is not the case (*Richards v State of Victoria*, 1969). Yes, staff safety is of concern and should not be downplayed, however, the students and their safety are or should be of the utmost importance for professional teachers.

Examples of interesting “confused legal literacy” coded responses included:

*“Depends. If a child is in imminent danger and the teacher feels comfortable, he/she can intervene.”*

*“Teachers should not physically intervene with playground fights. They should use their words and seek help.”*

*“Where it is safe to do so, teachers can attempt to stop a playground fight, however, it is often not. Then the responsibility is to reduce harm to others and get help.”*

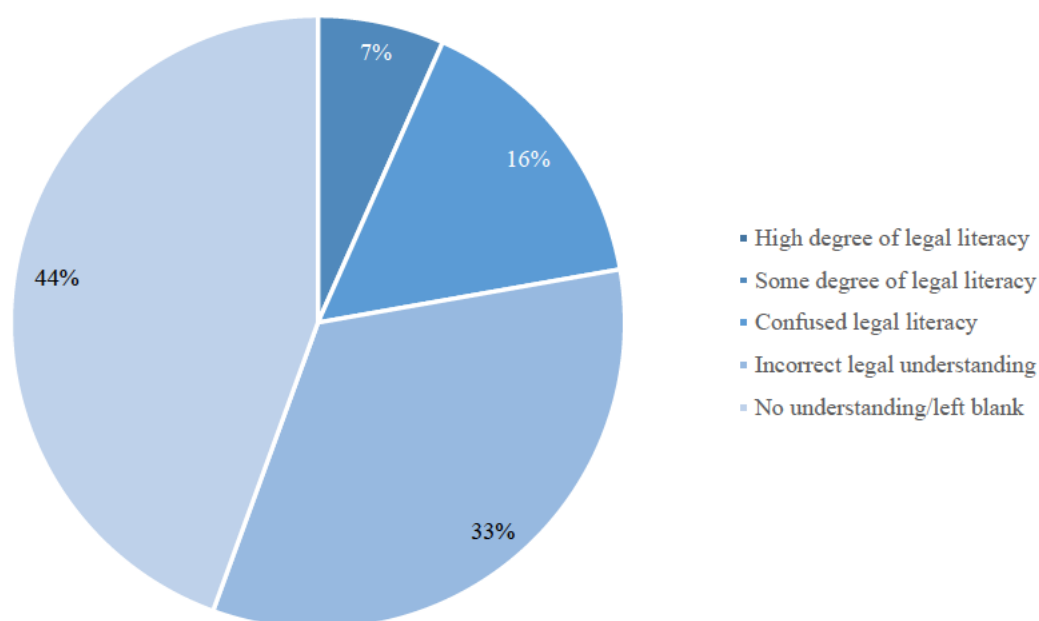
Scenario 11 asked the participants about whether or not they can find themselves in the position of being held personally liable for unsuccessful professional practice.

*Scenario 11: Can you be sued personally for ineffective teaching? Why/Why not?*

The results emanating from this scenario mirror that of the previous two situations. Table 5.13 and Figure 5.10 state that the number of somewhat correct responses to this legal scenario is 23% of answers at best. 44% of responses were coded as showing “no understanding/left blank” and a further 33% were regarded as demonstrating an “incorrect legal understanding” of the situation.

**Table 5.13***Scenario Eleven Results (n=45)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 0        | 0.00%         |
| Some degree of legal literacy | 3        | 7.00%         |
| Confused legal literacy       | 7        | 16.00%        |
| Incorrect legal understanding | 15       | 33.00%        |
| No understanding/left blank   | 20       | 44.00%        |

**Figure 5.10***Scenario Eleven Results (n=45)*

Some responses coded as “no understanding/left blank” included:

*“Not sure - how bad were they?”*

*“No - I am unsure as to why. I have never thought of this before.”*

*“Hope not. Not sure. I think being made aware of legal liability may make people afraid. I would be better to know how we can protect ourselves in these situations.”*

*“Not sure”*

What to me is more interesting are the responses that are coded as having an “incorrect legal understanding”. Some of these are listed below:

*“Nope. Like every other profession there are good and bad but the majority of teachers are doing their best. Having said that it is the [sic] primarily the responsibility of the parent to educate their child.”*

*“Yes. You are not doing your job and putting students at a disadvantage.”*

*“It would surprise me now with our pathetic law here (getting like America) No wonder teachers are wanting out. With 60% of teachers wanting to leave. There is NEVER a day that the word "EVIDENCE" is required it [sic] not spoken from someones [sic] lips. It is ridiculous. When we as teachers are told we have to apologise [sic] to a child who has lied to us. When we have to apologise to a parent who feels we didnt [sic] inform them of an event (even though we send 5 emails leading up to it). It is getting absolutely ridiculous”*

*“I am confident you can sue, technically you can sue for anything these days. However, is this question asking if someone suing for this reason will find merit in the court of law or would it be summarily tossed out?? If so, I do not think it would hold up in a court.”*

*“No we are covered by the school and our legality of submitting planning.”*

*“No”*

*“Perhaps. It is ideal to keep planning and assessments (copies).”*

*“I don't think so - it would need to be malicious negligence [sic] not simply ineffective teaching”*

*“No - we have personal indemnity insurance and are also required to be supported by the school to become an effective teacher.”*

On the other hand, there were three responses that were certainly correct and presented some degree, if not a complete understanding, of the legal complexities in this situation. These three are stated below:

*“Of course you could be sued - but I don't think it's likely this legal action would succeed. There are many factors to educating an individual and I don't think it's likely that an individual teacher would be held liable for failure to educate...”*

*“No; the employing education system carries liability for any such claims.”*

*“A school must assume the vicarious responsibility of ensuring that all teachers conduct themselves as competent educators. Employers are obliged to*

*accept the responsibility for the conduct of their employees, and therefore in this case they must establish procedures and processes whereby all teachers are supervised, supported, provided with professional development and otherwise equipped to be effective teachers. Therefore unless the teacher has been grossly negligent, there is little chance that a teacher could be sued personally for ineffective teaching.”*

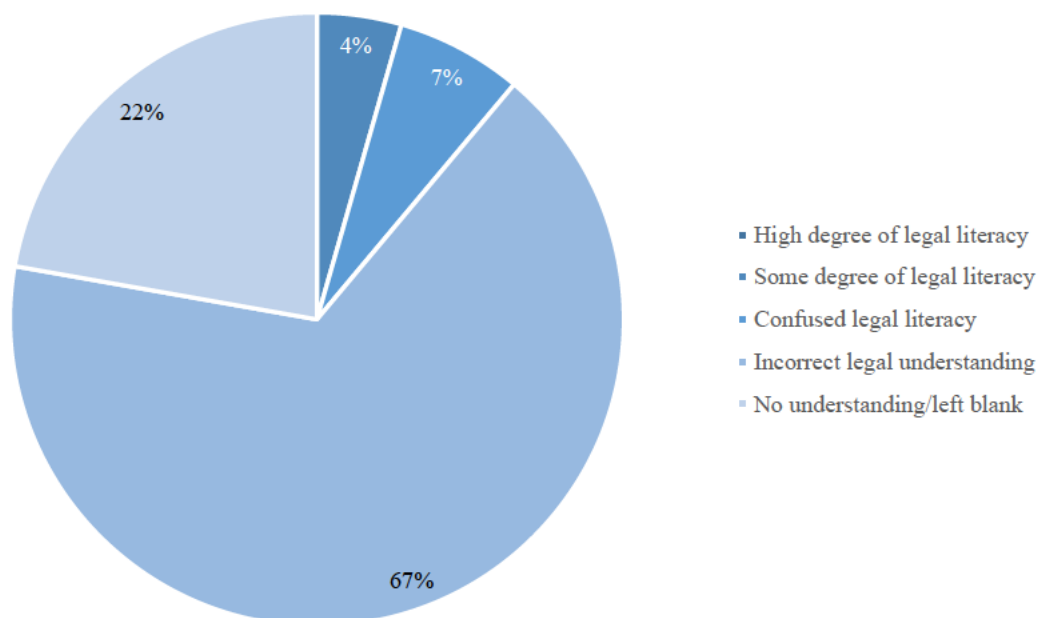
The next scenario that centred on a duty of care issue was scenario 12. Scenario 12 asked participants if a Design Technology teacher provided clear safety instructions and offered student safety equipment to use in class activities, would the school be meeting its responsibilities if a student was injured because the students had been instructed to follow the safety guidelines?

*Scenario 12: If the Design Technology teacher lays down clear safety instructions as to the use of the machinery and provides students with safety equipment, is the school covered if a student ignores the rules and injures himself, because he has been warned? Why/Why not?*

Results from scenario 12 are presented below in Table 5.14 and in Figure 5.11. By far and away the largest group of coded results for this scenario fall into the “incorrect legal understanding” category with 67% of responses. This was the largest percentage of any category in any of the scenarios used in this study. The next sizable group fell in the “no understanding/left blank” code, accounting for 22% of responses.

**Table 5.14***Scenario Twelve Results (n=45)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 0        | 0.00%         |
| Some degree of legal literacy | 2        | 4.00%         |
| Confused legal literacy       | 3        | 7.00%         |
| Incorrect legal understanding | 30       | 67.00%        |
| No understanding/left blank   | 10       | 22.00%        |

**Figure 5.11***Scenario Twelve Results (n=45)*

Four percent of respondents were coded as demonstrating “some degree of legal literacy” while another 7% indicated “confused legal literacy”. The two

responses that were judged as demonstrating “some degree of legal literacy” included:

*“The teacher has a duty of care to issue instructions AND ensure that students comply with relevant safety requirements. The degree of responsibility assumed by the teacher is dependent on the age and capabilities of students (ie more responsibility for younger or disabled students and less for mature and therefore more responsible students.) As long as the teacher's level of supervision was reasonable in the circumstances, and the equipment involved in the accident had been maintained effectively, it is unlikely that the school would be held responsible for the injury.”*

*“No, teachers have a legal responsibility to provide duty of care.”*

Some noteworthy examples of responses coded as “incorrect legal understanding” included:

*“I would like to think so. There's no way you can protect against all aspects of individual behaviour.”*

*“Yes; the school has discharged its responsibilities to the student, although a prudent teacher will still monitor students closely in situations of potential safety risks.”*

*“Yes. Safety procedures and PPE has been put in place. If the kid is a complete wombat and decides to jam his doodle [sic] into the end of a running metal lathe... well... he's definitely up the shallow end of the gene pool.”*

*“Yes - as the instructions and how to use the equipment has been provided. As long as the teacher is supervising the class at the time of injury”*

*“Yes. They breached the code of conduct”*

*“Yes, as long as there is evidence of the demonstration by the teacher, clear instructions and supervision as the student uses the equipment”*

*“The teacher has done everything 'reasonable' to prevent injury.”*

*“Yes. The teacher has done what can be done.”*

*“Ues [sic] as long as all safety procedures have been followed appropriately by the teacher”*

*“Yes Full risk assessment. Instructions to student.”*

*“No, because they performed their legal obligation by instructing on safety”*

*“If the school has followed proper process, followed all heath [sic] and safety protocols, gained permission from parents (which they would have if the student is*

*doing tech.), and the student is being supervised and still manages to do something stupid - yes, the school is covered.”*

*“Design Technologies along with other practical areas of the curriculum that might involved [sic] dangerous equipment need risk assessments. Those risk assessments outline the protocols for using equipment, safety, supervision, age of children etc. If the protocols are followed and an accident occurs, this will be investigated and decisions made regarding risk.”*

*“The teacher should have the students sign a document that they are aware of the safety equipment and instructions. If students then ignore the rules and becomes injured this is hisbown [sic] fault.”*

*“If they have completed a safety induction course appropriately”*

*“Yes, the school is covered because the teacher has provided the necessary instructions.”*

*“Yes, the school is covered, particularly if other students verify what happened.”*

*“If it could be proven that the student was warned and the school and teacher followed all safety and supervision protocols, the school should be covered yes.”*

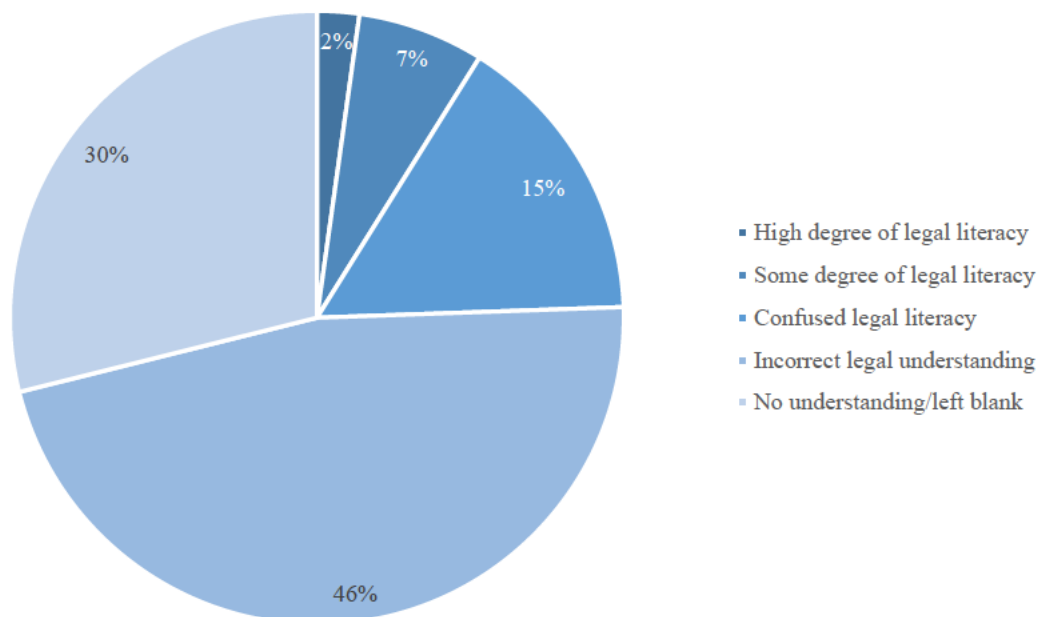
Scenario 13 also focused on duty of care and in this case, it involved a female student injuring herself when falling off her chair in the classroom that just so happened to coincide with the teacher being temporarily absent from the room. It asked participants to comment on the liability or otherwise of the teacher in this situation.

*Scenario 13: A student, Tammy (13 years old), in her first year of high school, fell off her chair in the classroom and hurt the base of her spine. At the time of the incident, the teacher had temporarily left the room for a few minutes. However, the teacher had left some work on the board for the students to do in her absence. Was the teacher liable for any injuries suffered?*

The results from responses of participants in this scenario are similar to those in the other duty of care scenarios (see Table 5.15 and Figure 5.12 for details). It was noticeable that one participant responded with a coded “high degree of legal literacy”. However, 46% of respondents were coded as “incorrect legal literacy” in relation to their given answers to the scenario question.

**Table 5.15***Scenario Thirteen Results (n=45)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 1        | 2.00%         |
| Some degree of legal literacy | 3        | 7.00%         |
| Confused legal literacy       | 7        | 15.00%        |
| Incorrect legal understanding | 21       | 46.00%        |
| No understanding/left blank   | 13       | 30.00%        |

**Figure 5.12***Scenario Thirteen Results (n=45)*

The participant who coded as showing a “high degree of legal literacy” provided this response:

*“At high school, it is likely that all students have been advised of the dangers of swinging on chairs, and the teacher would probably have instructed this particular class about such dangers. The assumption is that the student was swinging on the*

*chair, and that no other student caused the accident. Depending on the usual behaviour of the class, it might have been reasonable for the teacher to be absent from the class for a 'few minutes', especially if the class was always well-behaved and engaged in their learning activities. The question might be: could the accident have been prevented by the teacher's presence in the class, or would it have happened despite the teacher's active supervision. It is expected that a teacher maintain active supervision for the entire time of the lesson, however if an emergency arose, then it might be reasonable to expect the class would continue with their usual behaviour during her absence."*

On the other end of the continuum, some examples of note that coded as "incorrect legal understanding" include:

*"The teacher may not be directly responsible for the injury but they may cop flack for not being in the room."*

*"Yes - adequate supervision was not being provided"*

*"Yes. Students are never allowed to be left unsupervised"*

*"Yes, neglected duty of care occurred"*

*"Yes - because you are not allowed to leave the students unsupervised in a classroom for any amount of time."*

*"Yes, never to leave students unattended"*

*"Hope not - surely an individuals [sic] actions are their responsibility - a teacher being in the room wouldn't have stopped it"*

*"Yes they would be. But again this is where it is getting so hard and ridiculous for teachers- how many times teachers tell students to STOP SWINGING ON YOUR chair. I had a work colleague who warned and warned a child, eventually he told the child to stand at their desk for the remainder of the lesson. The parent came in and complained. The teacher was introuble [sic] and recieved [sic] a warning for signalling out and embarrassing the student. Then the issue about leaving the room. I have had kidney stones due to not drinking enough water. The doctor has warned me that I should be drinking more. But I cant [sic] as I would need to go to the toilet - AND I CANT LEAVE THE CLASSROOM. During the so called breaks we are in meetings or on yard duty. No time for a toilet. Yet again the wonderful life of a teacher"*

*"Yes"*

*"Yes. Duty of care. Students should not be left unattended"*

*“unsure, but teachers must ensure students are supervised at all times.”*

*“Yes - duty of care. Teacher should be in the room and it could be prevented.”*

*“yes. It is expected that students would be in the care of a qualified teacher at all times.”*

Three participants' responses were coded as having “some degree of legal literacy”. These included:

*“A number of factors would need to be considered. Was the furniture in the room safe? Did the student have a predisposition to such injury? Was the injury caused by another student's actions? What are the general characteristics of this group of students? The teacher could be held liable.”*

*“The teacher was no longer fulfilling their duty of care in providing supervision for the student. The 'reasonable person's' test would probably suggest that arranging for supervision would be the right thing to do.”*

*“Yes - she [sic] has a duty of care to be with the students. She could have intervened if she was present and requested the student stop rocking on her chair?”*

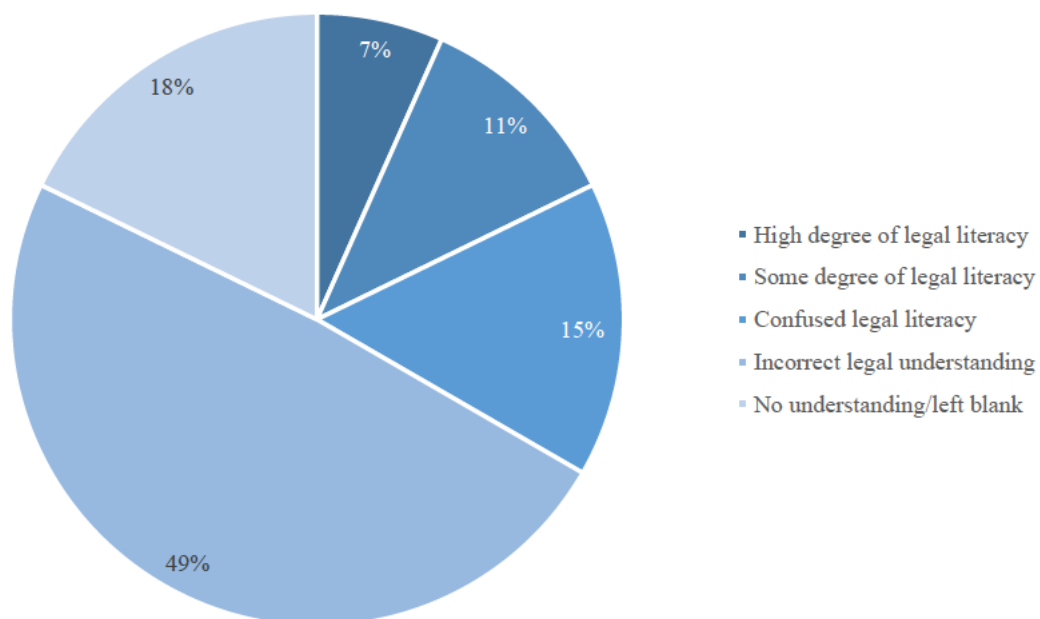
The final scenario concerning duty of care used in the survey instrument in my study was scenario 14. It inquired about the considerations that make up or have an effect on the standard or level of care that is owed to students in classroom settings.

*Scenario 14: What factors do you think affect the level or standard of care that is owed to students in classroom settings?*

This scenario was coded more favourably for the participants with 3 showing a “high degree of legal literacy” and 5 participants demonstrating “some degree of legal literacy”. There was still a large percentage that provided an “incorrect legal understanding” of the question, amounting to 49% of respondents. Table 5.16 and Figure 5.13 display the resulting numbers and/or percentages of participants in each code.

**Table 5.16***Scenario Fourteen Results (n=45)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 3        | 7.00%         |
| Some degree of legal literacy | 5        | 11.00%        |
| Confused legal literacy       | 7        | 15.00%        |
| Incorrect legal understanding | 22       | 49.00%        |
| No understanding/left blank   | 8        | 18.00%        |

**Figure 5.13***Scenario Fourteen Results (n=45)*

The three responses coded as having a “high degree of legal literacy” are provided below:

*“Nature of the activity; age of the students; previous experience with any equipment, etc.”*

*“danger of activity (eg science experiment, javelin practice, humanities class likelihood of an accident seriousness of injury in the event of an accident ability of*

*students (ie intellectually impaired, disabled, ) [sic] age of students usual behaviour of students”*

*“Their age and the activities being undertaken. Physical activity or high risk activities like chemical experiments pose a greater risk, and younger students are less able to make safe decisions. However, there is a standard of care applicable to all students - a right to a safe learning enviroment, [sic] which the teacher must maintain regardless of age or activity.”*

Responses that were coded as exhibiting “some degree of legal literacy” included:

*“age of students, gender, ability, disabilities and/or capabilities of students, subject (e.g. PE vs English[sic] ), type of activity”*

*“Age; intellectual capability; general behaviour patterns.”*

*“Age of students, type of class, ability of learners.”*

*“The age and characteristics of the students, the nature of the physical classroom setting, the age and experience of the teacher.”*

However, almost half of responses received were coded as showing “incorrect legal understanding”. Some of the notable responses included:

*“Teachers' work intensification; perceived complexity and overload of teachers' responsibilities; diverse understandings of what constitutes appropriate and reasonable care of students in such settings.”*

*“All students need to be treated equitably.”*

*“sound, lighting, proximity to visual items, comfortable seating etc”*

*“Adequate ongoing professional learning for staff. High expectations of staff. Quality support for staff.”*

*“Teacher's health”*

*“Safety, productivity, teacher student relationship.”*

*“Resources available to teachers [sic] Support from management [sic] Funding available to schools to support all students”*

*“risk assessment must be conducted for each class”*

*“I think teacher [sic] do above and beyond what is required of them. It is never enough in most parents eyes [sic] Teachers are at parents disposal 24/7 now with emails and it is getting ridiculous. When teachers try to discipline they receive a wrap over the knuckles”*

*“lack of assistant teachers to monitor and observe – witness”*

*“student to teacher ratios student needs experience”*

*“Other demanding priorities. Pressure and stress that comes with the job [sic]  
Paperwork and excessive documentation”*

*“At all times students are entitled to a safe learning environment regardless of external factors.”*

That is the final scenario dedicated to the legal issue of duty of care or negligence as it is more formally or legally known. The next group of scenarios covers the often-linked areas of student protection and mandatory reporting.

#### **5.4.2. Student protection and mandatory reporting scenarios**

Student protection and mandatory reporting are often combined into the one area of education law as there is considerable overlap between the two. The obligations in relation to mandatory reporting stem from the provisions of the *Child Protection Act 1999* (Qld). Teachers and school principals are deemed ‘mandatory reporters’ along with other particular professionals who have certain responsibilities to report suspected or actual child abuse and neglect to Child Safety.

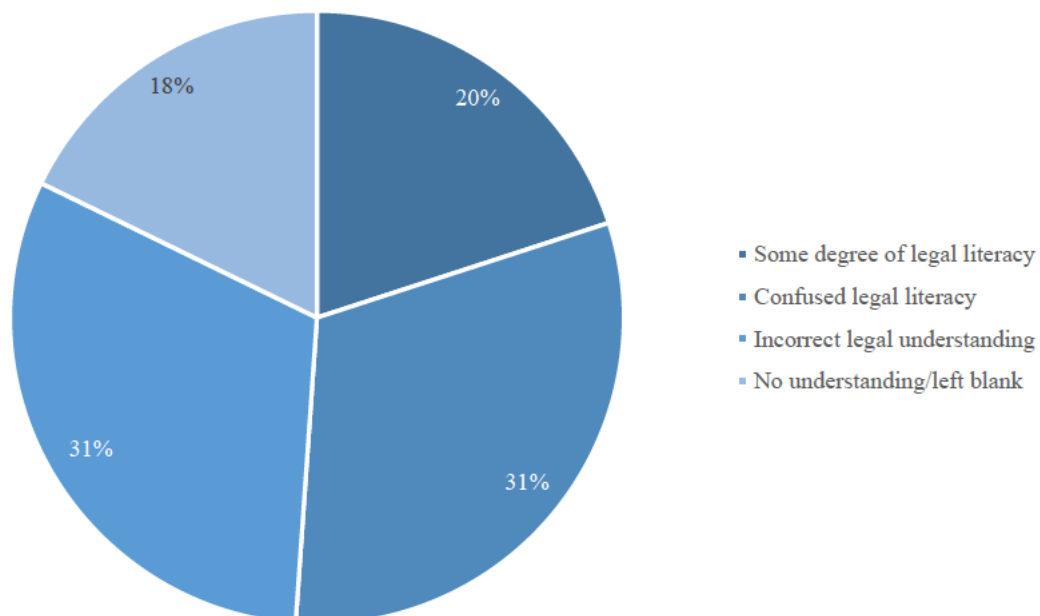
The first scenario that dealt with student protection and mandatory reporting obligations was scenario 5. It presented an often-difficult decision for schools when faced with a possible children neglect issue. Does the school believe the children or believe the mother who mentions that the children could be lying. Obviously if the children are telling the truth and the schools fails to act, the school can face difficulties down the track.

*Scenario 5: For the past month, three children in a single parent home have been coming to school at 7.00 am each day, and today they tell their friends that their mother has not been home all night again. However, the mother turns up at the school and tells you that she is concerned about the children being compulsive liars. Do you believe the mother? Why/Why not?*

20% of respondents demonstrated “some degree of legal literacy” while another 31% were confused with the justification or explanation provided, with these coded as having “confused legal literacy” from their response. Table 5.17 and Figure 5.14 provide more details of the overall responses to this scenario.

**Table 5.17***Scenario Five Results (n=45)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 0        | 0.00%         |
| Some degree of legal literacy | 9        | 20.00%        |
| Confused legal literacy       | 14       | 31.00%        |
| Incorrect legal understanding | 14       | 31.00%        |
| No understanding/left blank   | 8        | 18.00%        |

**Figure 5.14***Scenario Five Results (n=45)*

Interestingly, while there were some significantly more correct responses, there were still almost half of all responses that indicated either an “incorrect legal understanding” or “no understanding” to the scenario. Some responses that presented “some degree of legal literacy” were:

*“If the teacher has noticed signs of neglect during the past month, or suspects that there is something wrong at home, then the teacher, no matter how plausible the*

*mother's words and actions are, must refer the incident to the school Principle [sic]. It is not a matter of believing either the students OR the mother. It should be a matter of investigating the situation to find the facts. A teacher has a legal obligation to report suspicion of neglect or harm to every student in his/her care."*

*"It doesn't matter whether or not I believe the mother. I would report to child safety and let them investigate."*

*"I don't think I would believe the mother, as the children have been at school so early for multiple days in a row. Also, there are multiple children telling the same story. I would put in a child safety report, and the issue would be dealt with that way, rather than just my opinion of the situation."*

*"It is irrelevant whether I believe the parent or not. If there is an indication of neglect and after applying the significant harm test, in consultation with the principal and the parent test (if applicable) then depending out [sic] the outcome of these two tests we would either submit a report to Child Safety or a recommendation is made to the mother to seek support at Child and Families Connect"*

*"This appears like a case that would require us to report for neglect. It is then up to the agency to investigate."*

*"It would depend on what you know of the children at school. However, I think if there is any suspicion of neglect (whether it is actual or not), this is more important than lying. Therefore I think it's not about believing the mother or children, it is vital to investigate suspicion of neglect (mandatory reporting)"*

Some of the responses that provided "confused legal literacy" included:

*"As your duty of care, you need to report it to the principal as a possible case of neglect."*

*"No - believe the students and investigate further"*

*"Not necessarily about belief - an investigation might need to happen"*

*"Investigate the children's claims [sic] there seems to be reasonable suspicion of neglect."*

*"Based on the information above I would be suspicious of the mother. This is because for a month these students have been repeatedly coming to school earlier without explanation and the moment they mention something the mother comes along and says they are lying. This would require further investigation."*

*"A further investigation would need to take place to ensure the safety of the students"*

*“Believing the mother is not the right question. Staff need to document what the students say and what the parent says when making a report.”*

*“No, further investigation is needed.”*

There were also a substantial percentage (31%) of responses that were coded as having an “incorrect legal understanding”. Some of these included:

*“One would need to speak thoroughly and carefully to both the mother and the children to try to understand the situation.”*

*“I would believe the students until evidence proves them wrong. Three students cannot all be compulsive liars and why are they at school so early every morning.”*

*“Need further evidence before making decision.”*

*“A parent test would need to be determined - what are other factors that have been present in the lead up to this event. What is the history of how this parent has dealt with things at school in the past. There is not enough information provided for a decision to be made either way in the belief of the parent. It is also not a consideration of belief of the parent - the children have been at school much earlier than they should be over a long period of time. This is the issue to focus on in this scenario.”*

*“No, all children tell the same story”*

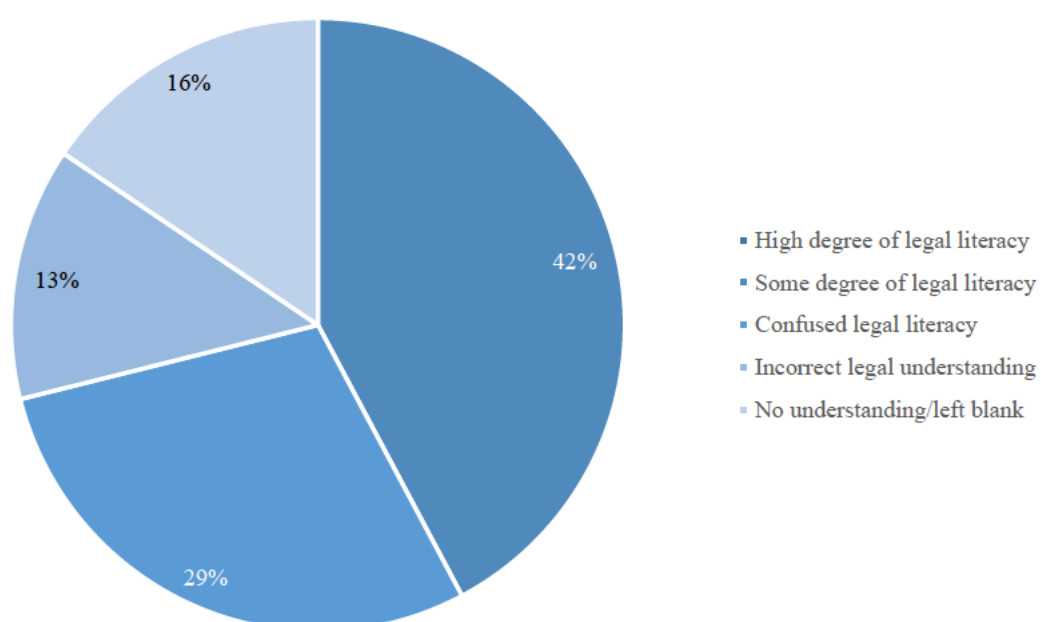
*“No - adults have more ability to manipulate the truth and knowledge about how to do so”*

Scenario 9 is the second and last case study under this area of education law. It centres around whether or not teachers can be held liable for defamation if the suspected child abuse that they report is later held to be unfounded. It was interesting to note, as Table 5.18 and Figure 5.15 indicate, that there were a higher percentage of responses in this scenario that presented “some degree of legal literacy” with 42%, even though there were none demonstrating a “high degree of legal literacy”. The second largest proportion of respondents with 29% were found to be in the “confused legal literacy” category.

*Scenario 9: Can a teacher’s discussion with the Deputy Principal about suspected child abuse of one of his/her students lead to legal action against the teacher for defamation if the suspicion is found to be untrue? Why/Why not?*

**Table 5.18***Scenario Nine Results (n=45)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 0        | 0.00%         |
| Some degree of legal literacy | 19       | 42.00%        |
| Confused legal literacy       | 13       | 29.00%        |
| Incorrect legal understanding | 6        | 13.00%        |
| No understanding/left blank   | 7        | 16.00%        |

**Figure 5.15***Scenario Nine Results (n=45)*

A number of noted responses coded as having “some degree of legal literacy” included:

*“No; the teacher is required under legislation to report any suspected child abuse, regardless of the outcome of an investigation into such a report.No [sic]”*

*"No. It could be an element of mandatory reporting that the teacher is legally required to do."*

*"Teachers have a duty of care to report a reasonable suspicion of harm or neglect. Such reporting is a legal obligation, not a judgment call. The teacher might be found to be negligent if he/she FAILED to have the conversation when there was a reasonable suspicion that all was not well. There would never be cause for a defamation case in this instance."*

*"No. Teacher is following the correct procedure to report any concerns of child abuse to their senior admin personal [sic]."*

*"No - the teacher is a mandatory reporter. They just have to report a reasonable suspicion, they are not expected to investigate to find out whether it is correct or not."*

*"No, teacher's duty to report all suspected child abuse"*

*"I believe the teacher would be covered under mandatory reporting and therefore not be subject to legal action"*

*"No teachers should report up if there are such suspicions"*

*"No because as a concern for the student and protection act [sic] if you are suspicious of child abuse it needs to be reported and [sic] investigated."*

*"If the conversation was in relation to the reporting of the suspected sexual abuse, then no, particularly if (as should be done) conducted in private."*

*"No - not if reasonable concerns exists. They have a duty to report"*

*"No - we are legally required to report any reasonable suspicions. It just has to be reported to the right person."*

Some of the responses representing "confused legal literacy" indicating a correct answer but failed to provide the correct legal explanation to the scenario included:

*"No. Required as a teacher to pass on information such as this as a duty of care,"*

*"No as long as it was done correctly and it was evident that the teacher was genuinely concerned"*

*"No"*

*"No, as long as there was reasonable and justified concern"*

*"no, as long as the Deputy Principal is the person allocated by the school. I'm pretty sure legally the buck stops with the principal, but possibly teachers are told to*

*speak to the deputy in the first instance? If [sic] the teacher is following protocol, I wouldn't think they could be sued for defamation."*

### **5.4.3. Family law scenario**

As highlighted earlier in this thesis, due to the increasing divorce rates in this country (Hewitt et al., 2005), family law and its associated education law matters are also on the rise. Therefore, it is considered important that educators are kept abreast of the changes and legal obligations in this area. Scenario 2 focused on what happens when divorced parents disagree about which school or even which type of school they wish their child to attend.

*Scenario 2: The divorced parents of Tom are fighting over where Tom should go to school, with the Mum wanting him to attend your faith-based school, and the Dad strongly opposed. Would you accept Tom's enrolment at your school? Why/Why not?*

It is usual in family law type matters, to first establish if there are any court orders or family plans in place. If so, it is prudent for the school to follow such orders/plans. However, this situation was asking more than that standard response. Table 5.19 and Figure 5.16 summarise the coded results from this scenario question of survey participants.

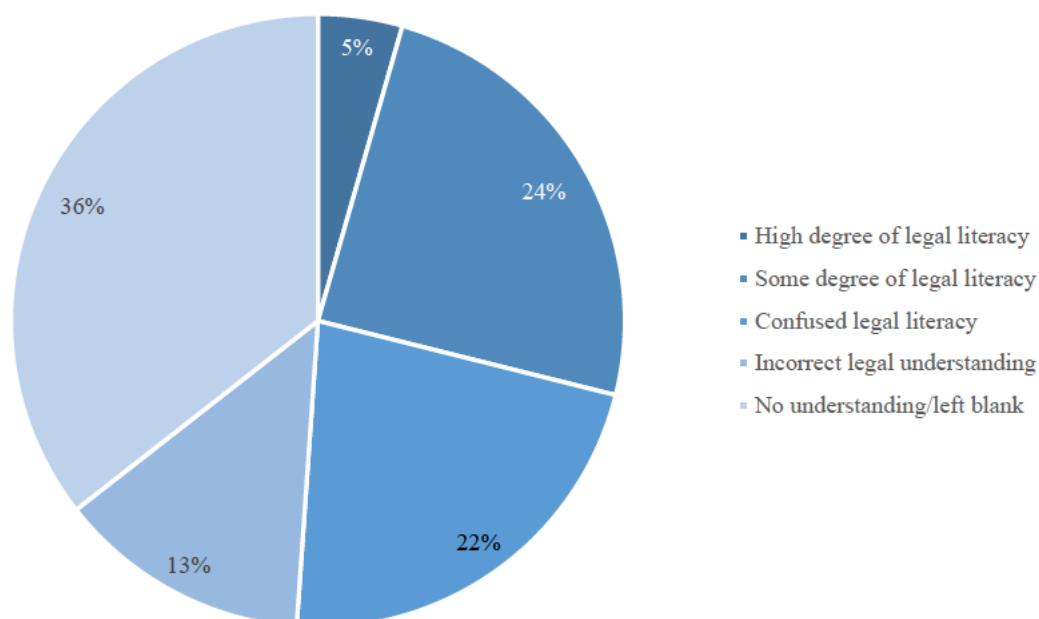
**Table 5.19**

*Scenario Two Results (n=45)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 2        | 5.00%         |
| Some degree of legal literacy | 11       | 24.00%        |
| Confused legal literacy       | 10       | 22.00%        |
| Incorrect legal understanding | 6        | 13.00%        |
| No understanding/left blank   | 16       | 36.00%        |

**Figure 5.16**

*Scenario Two Results (n=45)*



It was positive to see that two respondents (5%) presented responses that showed a “high degree of legal literacy”. A further 24% of participants demonstrated “some degree of legal literacy”. Twenty-two percent were coded as presenting “confused legal literacy” which overall, indicated that this scenario was the one that was ‘better answered’. Despite this, 36% of participants had “no understanding” of the scenario. The responses from the two independent school educators that coded as showing a “high degree of legal literacy”, indicating that they are clearly aware of the legal requirements in this situation were:

*“No, both parents need to give permission unless court orders indicate otherwise”*

*“Our school requires both parents to be in support of the enrolment unless parenting / family court orders are in place providing one party with the authority to make those decisions. Unless that is the case, both parents have the responsibility and are able to stipulate schooling.”*

As highlighted above, 24% of participants responded demonstrating that they possess “some degree of legal literacy” when it came to this question. Some of their responses included:

*“No, because we require both parents/carers to sign that they are supportive of the school and its values”*

*“Would have to assess court order documentation first before decision can be made.”*

*“Depends who is the fee-paying parent. If Mum is willing to take responsibility for full fees, then there should be flexibility to offer enrolment. Challenge would be court orders in place preventing one parent from making this decision on their own, then an offer could not be made.”*

*“Depends if there is a custody order in place and/or who has custody.”*

*“Not without a court order indicating that Mum has complete decision-making power in Tom's education”*

Some of the responses coded as evidencing “confused legal literacy” included:

*“No not until they have come to an agreement as it will allow the student to have a smooth transition. His well-being is more important.”*

*“Not in my area of experience - but seeing as both parents are involved in the student's life, I would think you would need both on board, or at least accepting of the situation.”*

*“Yes. With signed enrollment [sic] from mum. Final decision by court could take years. The student needs schooling while the court process is ongoing”*

*“If there are no court documents around these decisions, then yes we could and would accept Tom's enrolment provided that the parent was able to agree to all aspects of our Enrolment policy, including responsibility for fees and student behaviour”*

*“I would accept if both parents agreed, but since that is not the case, only if the mother had the sole right to choose. I do not want students to be worried that their parent or a parent will be storming on campus upset about a decision that they were not included in.”*

*“It would depend if there was a court order and then if not who would be responsible for paying and who the child resides with”*

#### 5.4.4. Criminal law scenario

Scenario 3 focused on aspects of criminal law and what educators can, in fact, legally ask students to show them or to search. In this case, it asked about their pockets and school lockers.

*Scenario 3: Is it legally wrong for a school teacher to order students to turn out their pockets or to show the contents of their lockers? Why/Why not?*

Table 5.20 and Figure 5.17 outline the results from scenario 3. Eighteen percent of respondents coded as having “some degree of legal literacy” while a further 40% were considered as demonstrating “incorrect legal understanding” of this matter.

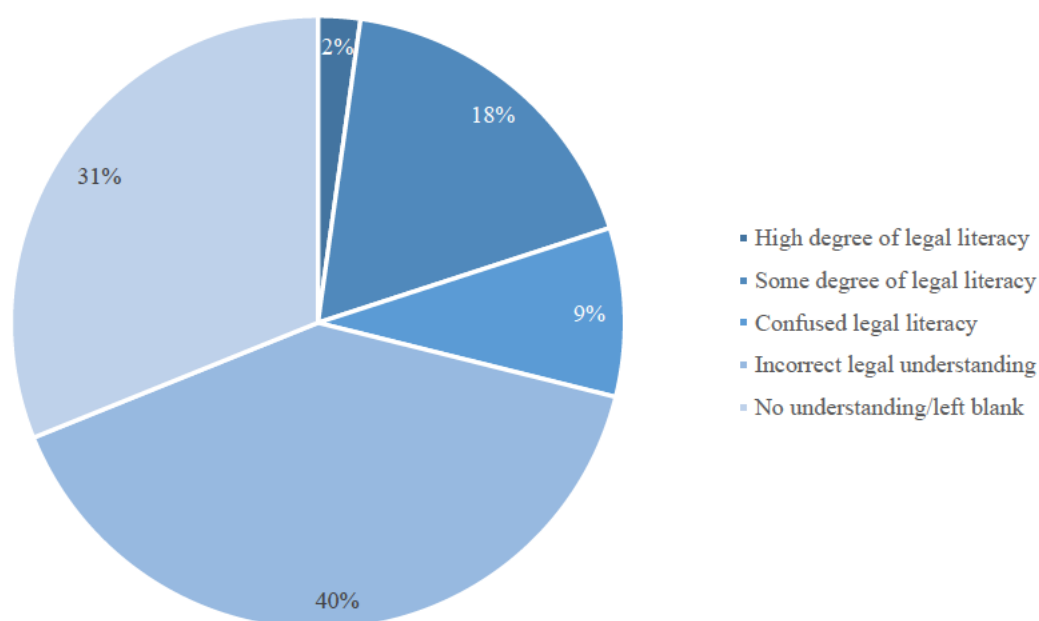
**Table 5.20**

*Scenario Three Results (n=45)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 1        | 2.00%         |
| Some degree of legal literacy | 8        | 18.00%        |
| Confused legal literacy       | 4        | 9.00%         |
| Incorrect legal understanding | 18       | 40.00%        |
| No understanding/left blank   | 14       | 31.00%        |

**Figure 5.17**

*Scenario Three Results (n=45)*



Some of the notable responses showing “some degree of legal literacy” were:

*“No, this is not legally wrong if the teacher has a suspicion of banned or illegal items being on school property.”*

*“I would think the pockets would be off limits as it is their own personal space However I thought the locker yes- as it is the school property”*

*“Yes for pockets as this personal property [sic] No for lockers as this is School property that the student is using.”*

*“The method I have seen used in the past involves asking a student to do so (with another staff member in the room), away from the observation of other students. If a student refuses to, they can be sent home for not following instructions. Generally, students will voluntarily do so. At no point should a member of staff be touching the student or their items.”*

Notable entries coded as showing “incorrect legal understanding” included:

*“Yes as it is invasion of privacy”*

*“Wrong. Personal spaces that need authority higher up eg. principal or police”*

*“Yes, invasion of privacy without parental consent”*

*“Yes - As far as I know, you can ask, but the student can choose to refuse and we can't force them.”*

*“Yes, against privacy law”*

*“No, because we have a duty of care for all students”*

*“This is wrong, it is breaching the students privacy.”*

*“The lockers can be seen as school property. However, it could impinge on privacy.”*

*“Yes - personal space of students. They have the right to refuse.”*

#### **5.4.5. Discrimination law scenario**

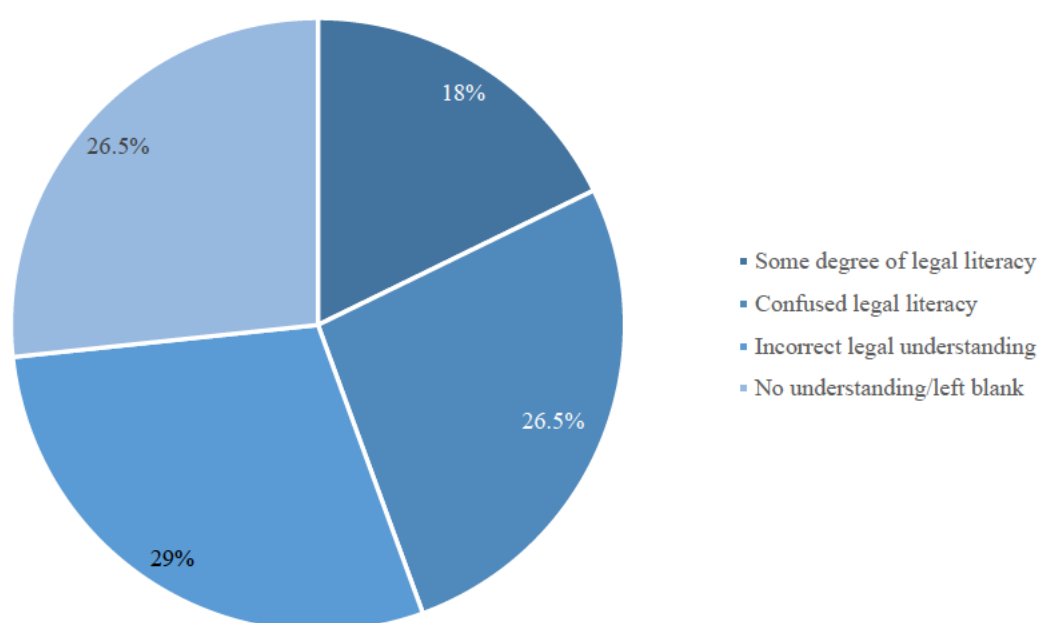
In the often-acrimonious area of discrimination law, education is a keen player in this space as schools are often tasked with making key decisions about a child's education that can appear as being detrimental in achieving their long-term aspirations. Education is an 'area' under each piece of legislation in this country, at both state and federal level, making it illegal to discriminate in the provision of this service (educating children) under the prescribed grounds (for example, sex or impairment) that are covered in the various enactments. Scenario 4 asked the survey participants whether or not it is regarded as discrimination if an impaired student is expelled from the school who acts in a dangerous manner due to his disability in and around other students.

*Scenario 4: Is it discrimination if a principal excludes a student with a disability who acts up and is dangerous to other students owing to his actions and behaviours that arise out of his disability? Why/Why not?*

Scenario 4 results are captured in Table 5.21 and in Figure 5.18. Out of all the scenarios used in the survey for this study, these outcomes are the most 'balanced' or evenly spread across all of the categories in the coded results. Leaving aside "high degree of legal literacy" the other four categories received a more even spread of responses than in all other scenarios. "Incorrect legal understanding" was the largest group with 29% of respondents but only just with "confused legal literacy" and "no understanding" both close with 26.5%.

**Table 5.21***Scenario Four Results (n=45)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 0        | 0.00%         |
| Some degree of legal literacy | 8        | 18.00%        |
| Confused legal literacy       | 12       | 26.50%        |
| Incorrect legal understanding | 13       | 29.00%        |
| No understanding/left blank   | 12       | 26.50%        |

**Figure 5.18***Scenario Four Results (n=45)*

A few of the responses arising from the “some degree of legal literacy” category included:

*“If the exclusion is justified by inappropriate and dangerous behaviour, and not related in any way to the student’s disability then it is not discriminatory: a standard has been breached and the safety of others has been breached. If the*

*behaviours and actions ARE related to the disability, then this should have been known, and precautions taken to prevent inappropriate and dangerous behaviour from impacting on others. If these precautions were not taken, and therefore the actions and behaviours were not prevented but should have been prevented (because of comprehensive knowledge of likely behaviours which are linked to the disability) then the student should not be excluded. there would need to be a review of necessary procedures and requirements to ensure that all students can remain safe while that students with a disability is [sic] also able to obtain an education.”*

*“Under the Disability Standards, the safety of other students and staff is still important. And so if reasonable adjustments cannot prevent the dangerous behaviour then, yes, the student can be excluded.”*

*“No - the safety of the other students has to come first. But you would need to show that you have provided adequate support and intervention for that student.”*

*“It would depend upon the steps / actions that have been taken to accommodate and manage that student's needs. If it would be an unreasonable burden upon the school to manage the behaviours in order to keep other students safe, then it will probably not be discriminatory.”*

Some noteworthy responses displaying “confused legal literacy” included:

*“No, this is not discriminatory, although presumably the school has explored alternative options to try to accommodate the student's behaviour.”*

*“No. the student is demonstrating dangerous behaviour that could cause harm to other students. As long as there is clear documentation of all the past behaviours to support this claim”*

*“No. Safety of all students is paramount.”*

*“No. If it is impacting the safety of others.”*

*“Principals need to ensure that the school is a safe place. Safe behaviour plans and other structures need to be put in place to assist the student with a disability so that they can be safe in the community. If danger persists and other students are still being harmed then yes a principal can exclude a student.”*

*“No. Principal is looking at safety of others in this situation.”*

Some notable responses that were graded as displaying “incorrect legal understanding” included:

*“I would think yes, as adjustments may be made to work with the student independently of others.”*

*“No. The school has to be set up well enough to cater for a student like that.”*

*“Yes, need to find alternative [sic] within parameters to support student with disability”*

*“Yes - safety risk assessment form must be conducted first, plus parental permission is required.”*

*“No, it is not discrimination as we have a duty of care to protect all students in our care.”*

*“Yes. Whilst his disability may cause him to act dangerously he can not be excluded. There should be measures in place to ensure he can participate safely.”*

*“The principal has a duty of care to all students to provide a safe learning environment. If the school is not suitably resourced (staff and space) to safely manage the needs of the disabled students they can exclude that student without it being discrimination. If they have the means to cater to the student and ensure the safety of others, it would be discrimination to exclude them”*

*“Yes, if the behaviour can be proven to be a result of the disability. Having enrolled the student, the principal has a duty to make reasonable adjustments, which would take into account the disability.”*

#### **5.4.6. Professional conduct scenario**

All teachers have to meet professional expectations of behaviour both inside and outside of their school environment. These are, to a large extent, as outlined in Chapter 3 of this thesis, externally imposed by the respective teacher regulatory authority in the state or territory in which the teacher is working. A teacher has to be considered a person ‘fit and suitable to teach’ (Queensland College of Teachers, 2019) and not be an unacceptable risk of harm to children (Queensland College of Teachers, n.d.), while not exhibiting behaviour below the standard expected of a teacher (Queensland College of Teachers, 2017). These professional behavioural expectations also often form part of the contract of employment when agreeing to work in an independent and/or faith-based school, just as the participants in this study are. These matters were examined in much detail in the Conceptual Framework chapter of this study and hence do not need to go into much more detail here.

Scenario 6 deals with this issue of professional conduct of teachers. This situation puts the teacher in the precarious position of questioning whether or not a

teacher friend, who is also a fellow colleague working in their school, engaging in unprofessional conduct can be taken at his word, who is denying any inappropriate behaviour.

*Scenario 6: John, your best friend who works at your High School, is texting a senior female student about catching up on weekends at his place, yet he denies any inappropriate conduct. Can you trust him as he is a most valuable and honest colleague? Why/Why not?*

In this scenario, there were again a mix of outcomes from the responses. However, a massive 60% of respondents were coded as “incorrect legal understanding” (see Table 5.22 and Figure 5.19). There was one response who showed a “high degree of legal literacy” with a further three participants demonstrating “some degree of legal literacy”.

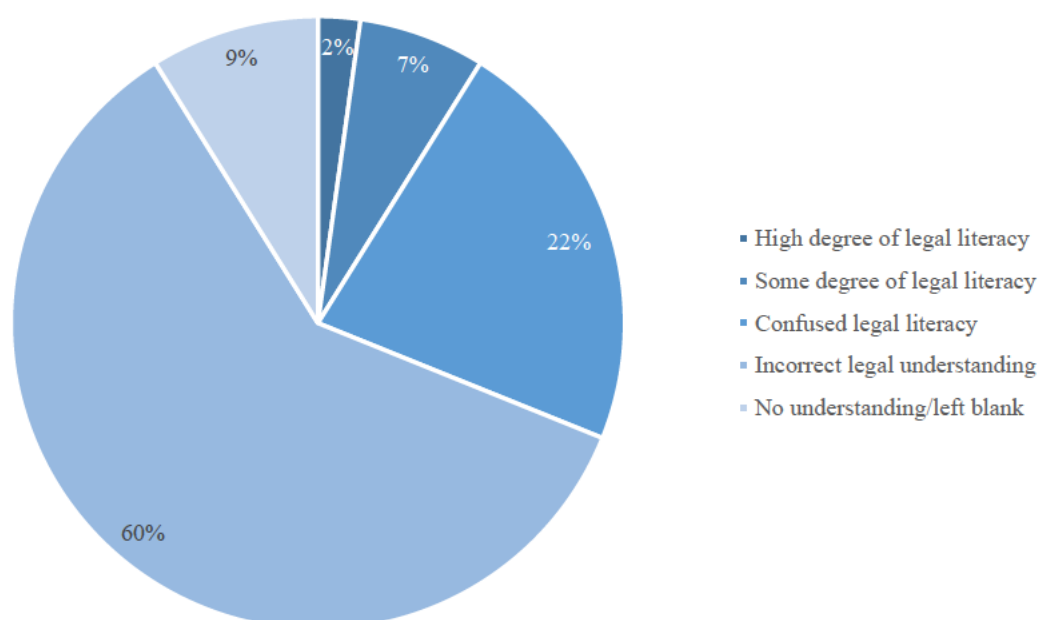
**Table 5.22**

*Scenario Six Results (n=45)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 1        | 2.00%         |
| Some degree of legal literacy | 3        | 7.00%         |
| Confused legal literacy       | 10       | 22.00%        |
| Incorrect legal understanding | 27       | 60.00%        |
| No understanding/left blank   | 4        | 9.00%         |

**Figure 5.19**

*Scenario Six Results (n=45)*



The participant who presented a “high degree of legal literacy” answered it this way:

*“Regardless of the level of trust, this breaches the QCT’s standards for professional boundaries and ethics and lends itself to grooming. It needs to be acted upon immediately.”*

Some responses that were noted as having “confused legal literacy” included:

*“There is to be no contact between teacher and student outside of the school context. Appropriate contact could include using the school communication system (email, laptop) relating to school tasks, events, communication with parents/students about issues relating to behaviour, academic/cultural/sporting achievement etc) [sic] At no stage should personal contact relating to social activities (especially ‘catching up on weekends at his place’) ever take place. It is not a matter of trust. His behaviour is not appropriate, and you have a duty of care to the student to advise the school principle [sic] of this behaviour. There might be a discussion with the teacher to that end, but a report to the school principal must be made, to ensure that the school’s duty of care is enacted.”*

*“Reasonable suspicion must be based upon some evidence. If that evidence is available it is the duty of that person to report that to line manager”*

*“No. This is questionable behaviour. Regardless of whether anything inappropriate [sic] is occurring [sic] it is not appropriate and ethical choices for a teacher. Concerns would need to be shared with the Child Protection Officers at the school”*

*“Report to the Principal, suspicion of student harm.”*

Some examples of the many responses regarded as showing “incorrect legal understanding” comprised:

*“John's behaviour is in breach of school policies regarding staff-student relationships.”*

*“No, the situation should be checked out.”*

*“This IS inappropriate conduct in itself. There should be no relationship with a student outside of the school environment, platonic or not.”*

*“This is stated as a fact - that he is texting the female student to catch up. It is not a matter of trust for me but a matter of professionalism, not to mention it is already inappropriate conduct if you have a student over at your house on the weekends for a catch up.”*

*“Our duty of care is always to the students and this needs to be reported so a proper investigation can take place”*

*“Such a relationship would be seen to be unethical. The ages of the friend and student would be a factor to consider. Such a relationship may not be illegal however it is likely to be not acceptable in the school's Code of Conduct. You may be able to trust him as a colleague however you should advise him against this type of contact.”*

#### **5.4.7. Privacy law scenario**

Privacy and its concomitant mandatory data breach notification laws have been in the public vernacular in recent years with the substantial data breaches of privacy. Some of these concerned a major telecommunications company, a medical insurance company here in Australia, along with schools such as Fairholme College, Toowoomba being caught up in data breaches. Privacy is perhaps not the most awakening area of education law but the penalties and consequences for breaches can be gigantic, of up to \$1.8 million (Butlin, 2022), not only in terms of financial loss but also in reputational damage caused. Scenario 7 asked the survey participants if

sharing of personal information to another school, despite it being part of the usual educational program amounted to a breach of privacy.

*Scenario 7: If a school provides a list of student names and student numbers to a nearby school that is hosting a dance for all local Year 10 students as part of the schooling program, is that a breach of their legislative privacy obligations? Why/Why not?*

The majority of respondents got this scenario wrong with 60% of responses amounted to an “incorrect legal understanding” of the issue. However, nine percent of participants showed some true understanding of the issue and were coded as having “some legal literacy” concerning this question. Table 5.23 and Figure 5.20 break the results down in more detail.

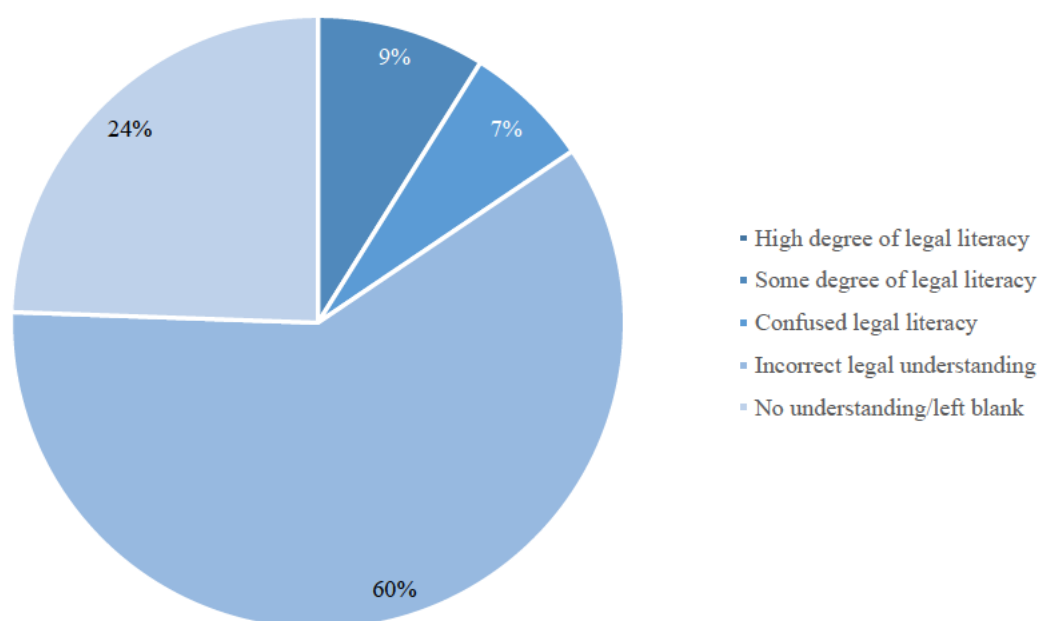
**Table 5.23**

*Scenario Seven Results (n=45)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 0        | 0.00%         |
| Some degree of legal literacy | 4        | 9.00%         |
| Confused legal literacy       | 3        | 7.00%         |
| Incorrect legal understanding | 27       | 60.00%        |
| No understanding/left blank   | 11       | 24.00%        |

**Figure 5.20**

*Scenario Seven Results (n=45)*



A few of the responses indicating “some degree of legal literacy” involved:

*“There is prevision [sic] to share data between schools for schooling programs. Only the relevant data required for the activity should be shared. Student address and contact details should not be shared.”*

*“No, it is a part of the schooling program.”*

*“No, as this information would be required to monitor attendance and contact parents in the event of a student being missing or having a medical incident. As long as the information is communicated in confidence and not passed on to other parties, this is a suitable use of student information.”*

Some of the replies coded as “incorrect legal understanding” included:

*“yes”*

*“Yes; such information should be provided only with the students' and their parents'/carers' knowledge and consent.”*

*“Yes. Parental permission hasn't been given.”*

*“Not if a project consent form has been given to parents indicating that there will be information sharing”*

*“I would think it is. You would need parent consent to share their students information”*

*“Yes. That information is not to be shared without consent of the parent/guardian.”*

*“Yes, this is confidential to the school”*

*“Yes - the parents have not consented to this information being shared to another school.”*

*“If permission was sought from parents prior to providing the information, then this would be ok. Without express permission of parents/carers, this is against privacy obligations.”*

*“Yes, you can't make contact details public”*

*“No because the children are under the care of the other school during this time. Teachers may need to conduct [sic] parents”*

#### **5.4.8. Consumer law scenario**

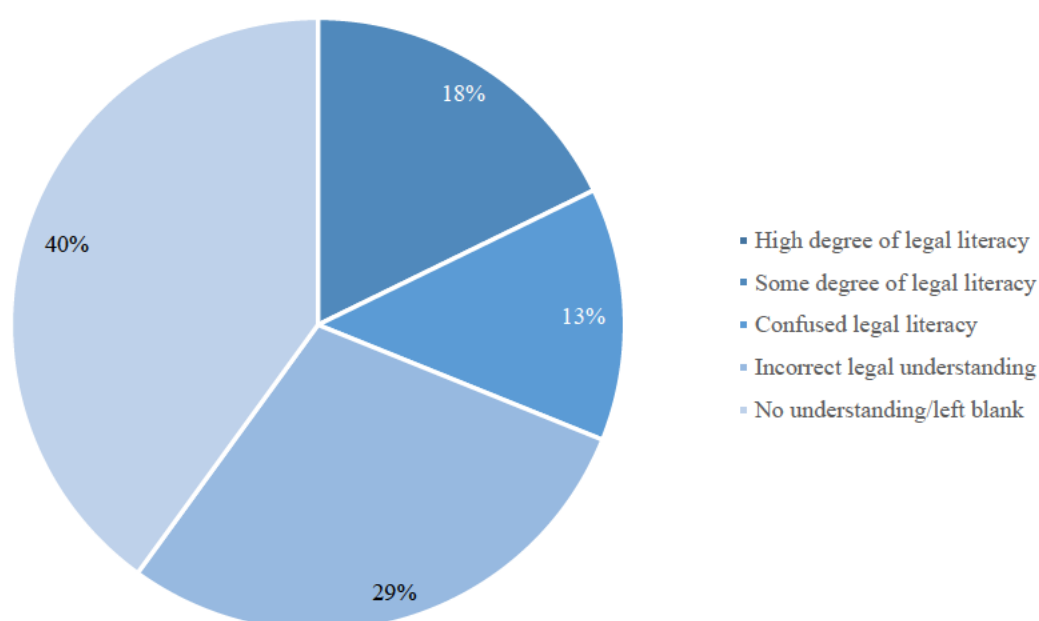
The final scenario used in this survey centred around the legal obligations and protections of the federal consumer law. It asked the survey participants whether or not making promises in school statements and then not living up to them can be legally treacherous.

*Scenario 8: Can a curriculum statement that presents the course outcome as “At the end of this unit, all students will understand the principles of basic safety procedures” be, in itself, legally unsafe? Why/Why not?*

The responses were shared amongst the usual four categories with the largest number in the “no understanding/left blank” code at 40%. The second prominent group were “incorrect legal understanding” accounting for 29% of responses. Table 5.24 and Figure 5.21 display the results from this final scenario.

**Table 5.24***Scenario Eight Results (n=45)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 0        | 0.00%         |
| Some degree of legal literacy | 8        | 18.00%        |
| Confused legal literacy       | 6        | 13.00%        |
| Incorrect legal understanding | 13       | 29.00%        |
| No understanding/left blank   | 18       | 40.00%        |

**Figure 5.21***Scenario Eight Results (n=45)*

A few of the rejoinders coded as “some degree of legal literacy” consisted of:

*“Yes. I’m not comfortable with the “will” understand.”*

*“It’s legally unsafe. Remove the word ‘all’ and then the preferred wording is ‘At the end of this unit, student will HAVE BEEN EXPOSED TO the basic principals [sic] ...’. One can’t guarantee ‘all’ students will ‘understand.’”*

*"Yes, you cannot assume student learning, only content covered"*

*"yes, the term "will" should not be used"*

*"Yes, impossible to ensure ALL students will understand so may put them in danger"*

*"It is unsafe. It is a definitive statement meaning that all students will understand, with no exception. That is not possible as there needs to be accommodation for the possibility that some of the students will not reach this level. It is better to just mention the practical side of whatever students are looking to use/complete. e.g. solve problems involving simple interest"*

Some of the responses matched with "confused legal literacy" were:

*"Yes - too definitive and not catering for student diversity"*

*"To expect all students will have achieved this outcome when it pertains to a safety risk, does make this legally unsafe."*

*"It is assuming that students will gain the knowledge? Some may not, despite their engagement in the course?"*

*"Possibly. What about the student who lacks the intellectual capacity to understand the safety procedures."*

And finally some of the responses that demonstrated an "incorrect legal understanding" of this scenario included:

*"Course outlines set out the intended learning outcomes from each unit, including content areas, teaching and learning strategies. It is a learning intention, not a legally binding contract that guarantees every student will achieve that standard. Therefore there is no legally safe or unsafe considerations."*

*"All students is a big call, however it is a safety procedure so if they haven't passed they can move on"*

*"No, as all students may not."*

*"It would not be legally unsafe if the student has been required to demonstrate this understanding in a formal oral or written setting and he/she has been assessed to be competent."*

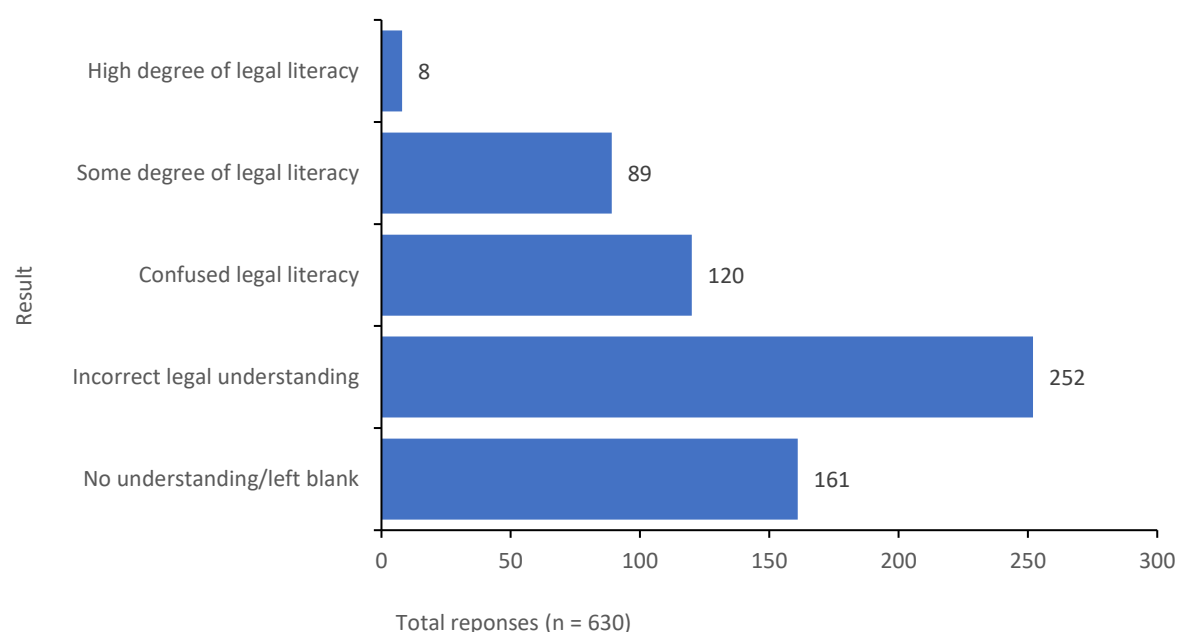
*"No, as it ensures that the teaching of safety procedures takes place."*

## **5.5. Overall observations about the data**

Table 5.25 and Figure 5.22 show the total number of each coded response across the 14 scenarios.

**Table 5.25***Total Number of Coded Responses from all Scenarios (n=630)*

| Result                        | <i>n</i> | Frequency (%) |
|-------------------------------|----------|---------------|
| High degree of legal literacy | 8        | 1.28%         |
| Some degree of legal literacy | 89       | 14.14%        |
| Confused legal literacy       | 120      | 19.01%        |
| Incorrect legal understanding | 252      | 40.00%        |
| No understanding/left blank   | 161      | 25.57%        |

**Figure 5.22***Total Number of Coded Responses from all Scenarios (n=630)*

It is to be noted that these totals have been used to determine the content of the textbook in this context only, rather than implying replicability or indeed generalisability of the total population. The overall trend of the data would suggest that overwhelmingly, Queensland independent school teachers have, at best, a confused understanding of education law for their everyday jobs. Remembering that “confused legal literacy” meant that teachers got the ‘yes/no’ aspect of the scenario question correct but could not correctly identify, with any deal of certainty, the legal

justification. Perhaps more accurately, it may be deduced from this table and figure that Queensland independent school teachers have more of an incorrect understanding of the law as it pertains to their roles in schools. This, according to the literature discussed in Chapter 2 of this thesis is, at best, problematic, as it is incumbent on us, as educators, to have some correct understanding of education law matters. This is to help in risk minimisation while also attempting to avoid expensive litigation, both in terms of financial implications and reputational damage.

## **5.6. Chapter summary**

The results from the data collected from the survey used in this study have been presented in this chapter. This has been done in summary form, using tables and figures to outline the results, without the addition of much further explanation or interpretation of same. Examples of participant responses from the survey in answering the scenario questions that have been coded in the different categories mentioned earlier in this chapter have also been included. It was pleasing to note that participants genuinely engaged in the scenario questions and were forthright in their responses.

The next chapter will discuss this data in more detail and link it to the creation of the textbook. This is to not only provide an analysis of the data, but more importantly and with increased complexity, to align the research conducted to the formation of the creative work.

# **CHAPTER 6: DISCUSSION OF RESULTS AND CREATION OF THE TEXTBOOK**

## **6.1. Introduction**

This chapter is about drawing together the research conducted as part of this study into the decisions made for the creation of the textbook. The content chosen to include in the textbook will be examined, while simultaneously interpreting and considering the implications of the results of the scenarios used in the survey. Why certain chapters were chosen for inclusion in the textbook will be evaluated. Figures will also be presented to show how all the major components of the study fit together. That is, the various chapters of the textbook, dimensions of the conceptual framework along with the relevant survey scenario questions will be drawn together under the various topics chosen to show cohesion and alignment of the whole study.

Reasons for choosing the textbook as the medium upon which further information sharing and (for the purposes of) delivering education law understanding will then be discussed. Other considerations as to the make-up and particular features of the textbook will also be addressed.

## **6.2. Content of the textbook**

After it was decided to write the textbook and the contributors of the book, the next decision concerned the main content to be included in the 'creative work'. This took a number of iterations to polish and to firm up in the final draft. The content for the textbook was chosen based on the results of the survey, along with the most prevalent and litigious aspects of education, drawn from existing research, legislation, cases, and also my personal experience and knowledge. This section of the chapter explores the content chapters of the textbook while simultaneously discussing the data results in more detail.

It was interesting to note that 61 participants completed the first two sections of the survey, however, only forty-five chose to attempt the scenario questions. There are a number of possible reasons for this. One plausible explanation could be that approximately a quarter of all participants got tired of completing the survey and felt that they had done enough by the time they reached the scenarios. Another reason could be that they did not feel that they knew enough about education law and hence did not want to attempt the questions to demonstrate a lack of

understanding on the topic, despite all participants remaining anonymous. It is again pertinent to note at this early stage of this chapter that each of the scenarios asked for an explanation or justification as to the response provided by the participants. This is because it is easy to answer either 'yes' or 'no' (or even guess) without demonstrating understanding. However, having to justify why the participant responded with 'yes' or 'no' really does show whether or not they truly understand a principle or position on the related issue under review. This was included in the scenarios intentionally.

### **6.2.1. *Duty of care***

The duty of care of students by their teachers is a key aspect of education law. As such, six scenario questions were dedicated to this topic in the survey.

The first scenario (see Appendix A) focused on a playground duty supervision situation, something that all teachers in Australia find themselves doing, usually on a weekly basis, if not a daily basis in schools. In carrying out this duty responsibly, teachers have to arrive on time, be seen to actually supervise students and intervene from time to time where necessary. They are not to be on their mobile phones or be distracted by any other means. Over half of participants of this scenario managed this one either incorrectly or were not able to provide an answer. Only three participants were somewhat correct in their response (see Table 5.11, p. 124). Many of the participants incorrectly suggested that Bill would be held liable. Not one participant correctly identified that under the principle of vicarious liability (even without mentioning the correct legal term), the school authority is ultimately responsible for the actions of its staff. This shows that most teachers surveyed do not understand the basic legal requirements around their duty obligations and who is liable if a student is injured. This only reiterates the need for duty of care to be included in the textbook.

Therefore, considering the constancy of this situation in a teacher's day to day operations, as well as the clear lack of understanding of their legal responsibilities while carrying out this duty, it was determined that this precise example be addressed in the textbook. Chapter 1 of the textbook includes a section on vicarious liability which explains that the school authority is the organisation who is ultimately liable in matters such as playground duty obligations. An example where a student is injured whilst out in the playground while a teacher is on duty is provided on page

19, whilst an important precedent case that explains the legalities in the scenario situation is given on pages 21-22 of the textbook.

Scenario 10 concentrated on whether or not teachers have a legal duty to intervene in an attempt to stop two students fighting. Sometimes it is frightening or even physically threatening to step in between two combatants who are physically pushing and punching one another, especially if you are slightly built yourself as the teacher. This was the focus of this scenario. However, the law requires, despite all of this, to at least act in a way to desist the escalation of the situation. Even to yell or use a 'teacher voice' to command the fighters to stop is the minimum the teacher needs to do in such a circumstance. Over 50% of respondents were incorrect in their understanding of this position. In fact, 75% were either wrong or did not provide a response (see Table 5.12, p. 126). Again, this showed a lack of understanding of the legal principles at play in this situation. By far and away the majority of participants mentioned that they do not need to intervene if they are concerned about their own safety. Case law clearly disagrees with this view.

Because of the significant number of participants who answered this scenario incorrectly, and the fact that teachers are potentially going to experience this situation many times in their careers, I chose to include the actual precedent case that discusses this point in the textbook. The case of *Richards v State of Victoria* (1969) is explained on page 22 of Chapter 1 of the textbook. Teachers need to be aware of their legal obligations when faced with such a scenario. Yes, they need to care for themselves, but the court in this case made a clear decree that teachers have a higher duty to care for the students' safety.

Scenario 11 asked the question if teachers can be sued for ineffective teaching. This scenario is a duty of care issue or more accurately called a negligence issue. It is interesting to ask the legal question whether or not the liability of school authorities extend beyond physical injuries to also include future economic loss for perhaps not gaining entry into a profession that the child wishes to join. These actions arguing that a teacher has been negligent in their teaching has been attempted here in Australia on a very small number of occasions without success. Not one case, that I am aware of, has been successful in finding a teacher liable for negligent teaching as has happened in the medical profession for medical negligence.

Yes, there have been rare cases where students have brought successful claims against a school where they received inaccurate and negligent advice as to which subjects to study in their senior secondary years at high school in order to gain entry into particular university degrees. However, courts have said that there are so many variables that make up the education of a student such as their home life, parenting influence, study habits, level of industry, hours of homework conducted, level of natural ability, school culture and expectations and so on. Because of all these complex variables at play, courts (to date) have been reluctant to state that it is due to a teacher's negligent teaching that a student achieved say, for example, a B result in a subject instead of an A result.

The results of this survey question were interesting. Over 75% of the participants offered either incorrect responses or no response at all (see Table 5.13, p. 129). Many teachers are concerned about this issue and are indeed, professionally reluctant to offer and engage in extra-curricular or co-curricular activities at their school. This is largely, from my experience, based upon their concern about being sued and being found liable if a student is injured – please see the section on the suing mentality that I uncovered in the Literature Review in Chapter 2 of this thesis, and anecdotally from my own experience working in schools.

I personally believe that this is depriving students of activities and learning opportunities that would otherwise enhance their education journey. Students are not being exposed to additional learning activities both inside and outside of the traditional classroom which for some, are possibly better mediums for students to learn such content. In the author's opinion, this is happening in too many schools today, and due to the falsely held fear of being sued, good teachers are choosing not to offer such alternative learning opportunities.

The legal issue raised in scenario 11 is also a vicarious liability matter where the school authority (government department, church body, board of directors) is ultimately liable for the legal actions of their staff. Teachers surveyed also failed to mention this. That is another reason, in addition to the ones articulated above in the discussion on scenario 1 results, why this important principle was included in Chapter 1 of the textbook.

Scenario 12 asked the question as to how much care (or what level of care) does a teacher owe students in the particular set of circumstances. In this case, the

scenario involved a student in a Design Technology class. The teacher did the right thing by explaining safety guidelines and provided personal safety equipment for students to use, and still a student was injured. Most teachers believe that this is enough. There is nothing more the teacher could have done. However, the courts have stated that the teacher has to do more. Repeated intervention is required, and they have to insist on the students using the safety equipment and also ensure that they are using the machinery in those facilities safely and in accordance with instructed safety protocols.

A large percentage of teachers surveyed (67%) answered this scenario incorrectly and believed that the teacher had done enough to avoid litigation. In fact, this was the highest of all percentages in any code across the entire group of scenarios (see Table 5.14, p. 132). 89% of respondents did not get this scenario question correct. The level of care owed in these sorts of educational environments is incredibly high due to the nature of the activities occurring therein. This percentage is particularly alarming with the many activities that contain an inherent higher element of risk occurring in schools, both in and out of the classroom, in which most teachers are involved.

“Schools are complex, high-risk environments. This is particularly true when you consider the many camps, excursions and extra-curricular activities that schools offer their students which involve the potential for serious injury” (School Governance, 2023, para. 1). Due to the fact that many teachers are involved in inherently dangerous activities such as in Physical Education lessons and sport, Hospitality, Science experiments, Design Technology, camps and outdoor education pursuits, teachers need to be aware of the work health and safety requirements of their roles and what implications that these have in the subjects that they teach (or camps in which they are involved), for the students under their care. This noted need, in addition to their clear lack of understanding of what level of care is owed in the circumstances, led to the decision to write an entire chapter on work health and safety. Chapter 4 of the textbook outlines how teachers are to identify risks, manage risks and control them in their running of such activities. School excursions are also included in this textbook chapter.

As outlined in Chapter 3 of this thesis, work health and safety is the codification (written into formal legislation) of the legal position at common law of the

duty of care. Hence the alignment of this topic to two of the dimensions in the conceptual framework, being common law and legislation.

Scenario 13 challenged survey participants to question whether or not a teacher is permitted to leave the room temporarily and if during such an absence, a student is injured, would that teacher be held liable. Most of the participants held the erroneous belief that teachers are not to leave the classroom at any time, for any reason. This was reflected in their responses to this scenario in the survey. Courts have been clear especially when considering post primary aged children that teachers need to provide reasonable care in the circumstances rather than complete or total care. This includes a temporary absence of a teacher from their classroom will not in of itself amount to a breach of duty of care (*Barker v State of South Australia*, 1978; Butler & Mathews, 2007).

As stated above, most of the participants (76%) answered this one either incorrectly or not at all (see Table 5.15, p. 135). This again shows the clear lack of legal understanding when it comes to what happens when a student is injured in the classroom of a school. When a court of law is given the difficult task of having to decide on a case such as the one presented in the scenario, all of the facts of the case are important. The antecedents, the age of the students, the nature of the students, the known history of the students, the type of activity the students are engaged in, and other circumstances surrounding the incident are all important and pivotal in deciding liability. All of these factors make up what is legally called the standard of care, or put more simply, the level of care owed to students in the circumstances.

Because these cases at law are based on all of these factors, it is difficult to dictate what the appropriate standard of care is in any given circumstances until courts are faced with them all to consider together in their entirety. Scenario 14 asked the survey participants to consider what factors make up the required standard of care in a classroom setting. Again, nearly 50% of participants managed this scenario mistakenly (see Table 5.16, p. 138). A significant number of the respondents to this scenario made mention of risk assessments equalling the standard of care. They are not the same and are not aimed at producing the same thing. One is a document that is often required to be completed by teachers when planning an event or activity involving students. The other is something that needs to be considered in meeting the teacher's duty of care in the given circumstances.

Completing a risk assessment form is not meeting the standard of care. Completing a school document, does not legally mean that the standard of care is being exercised in the circumstances. Hopefully, by completing the risk assessment documentation, the teacher(s) consider all the factors that make up the standard of care and plan accordingly to ensure that the requisite standard is going to be met.

Due to the difficulty of accurately arriving at the required standard of care that is owed, I decided to include a section on standard of care (pages 13-14) in Chapter 1 of the textbook. It is also highlighted in a number of cases that I referred to later in that chapter, to provide a more practical guide as to how the court considers standard.

As has been foreshadowed earlier in this thesis, duty of care or negligence tort law, as it is more formally or legally correctly known, is the most litigious activity in education law. Axiomatically, it stands on its own as a very important topic in its own right, but also is the foundation for other education law matters such as cyberbullying, work health and safety, child protection and mandatory reporting, and ethical responsibilities of teachers. These reasons are why it is the largest of all chapters in the textbook and indeed, is the leading chapter.

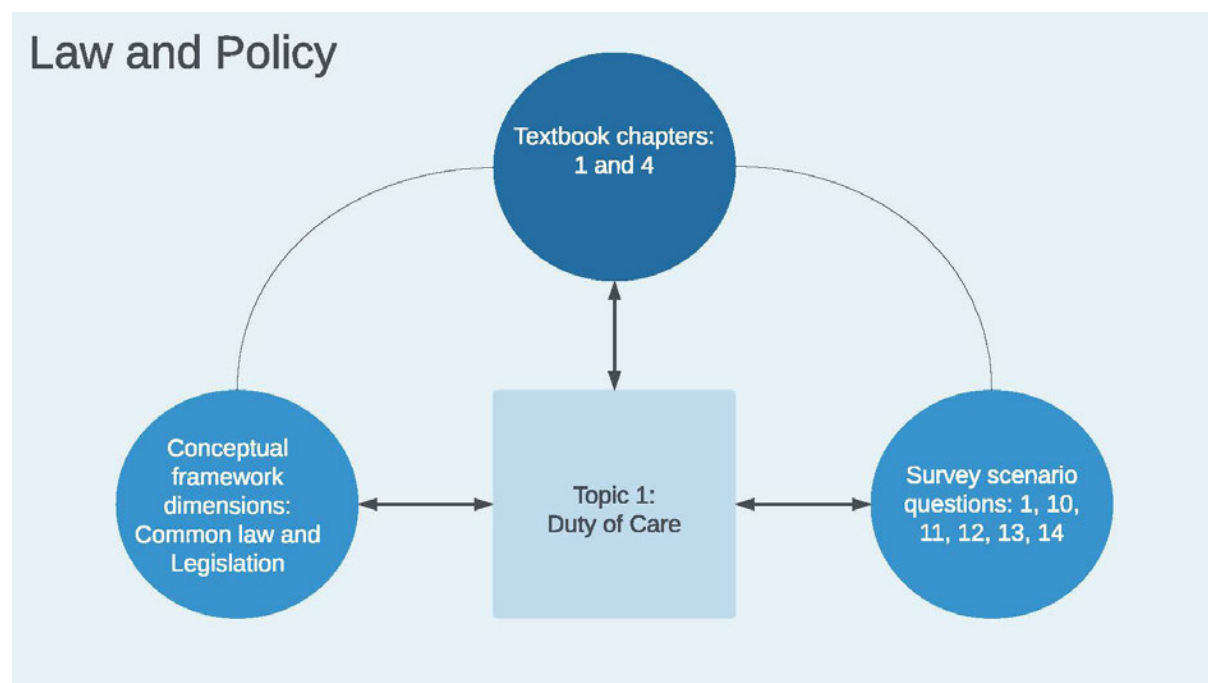
As I conclude my comments on the first issue of duty of care, I will introduce what I have called the conceptual model of research results (see Figure 6.1). This model brings together many aspects of the research study and shows diagrammatically how they align into the one inquiry. Firstly, the components of the model all fit within the wider discussion of law and policy in our society. That is, the components of the model are taken overall from the wider argot of the broader topic of law and policy within our community. Hence the diagram fits within the broader shaded area of 'law and policy'. Secondly, the model illustrates both the 'elements' and 'relationships' between those elements. The elements are the circles that work together around the central theme or topic. The relationships show how these elements are connected. The reader will notice that the elements (chapter(s) of the textbook; dimension(s) of the conceptual framework; and the scenario question(s) used in the survey) have bi-directional arrows between them and the topic. This is intentional as the topic in itself leads to the outer elements. That is to say, for example, Topic 1 Duty of Care is part of the conceptual framework (particularly in the common law dimension), included in the scenario questions and also in the textbook, as it is clearly an important topic that should be included. However, the arrows are

double headed as these surrounding elements around the topic have also influenced the discussion of duty of care in the thesis. They are influenced and informed by each other.

Thirdly, there are also lines from the conceptual framework and the scenario questions to the respective chapters of the textbook. This is because both the conceptual framework of what legal literacy is about and the data from the scenario questions have influenced the writing of the text. This last point should be relatively clear particularly in this current chapter of this thesis. See Figure 6.1 for the first conceptual model of the research results of the first topic: Duty of care.

**Figure 6.1**

*Duty of Care Conceptual Model of Research Results*



### **6.2.2. Student protection and mandatory reporting**

Student protection and mandatory reporting are integral aspects of education law in today's patois. I doubt that any current practicing teacher has not heard these terms in their professional capacities. As noted in Chapter 5 of this thesis, every school runs an annual professional development session on these topics for their teachers if not their entire staff. Teachers need to be aware of what the law says

about this issue and what their statutory obligations are under the respective child protection legislation in their jurisdiction.

The first survey scenario on this topic concerned the apparent neglect of three children who submit that they have been left alone without their single mother overnight and who have been arriving at school at 7.00 am each morning for the past month. The mother comes to the school and suggests that the children may be lying to others in the school.

Many of the participants in the survey were either confused or wrong in their written response to this question, with 31% of responses under both codes (see Table 5.17, p. 141). A good percentage of respondents mentioned that this case was something that was worth investigating. They missed the very important and legally obligatory point that they have to report this sort of suspicion to the principal. They do not have a choice. Legislation requires them to do so and there are penalties if they choose not to report such suspicions (*Child Protection Act 1999* [Qld]).

It is interesting to note, however, that 20% who demonstrated “some degree of legal literacy” were correct in their thinking in answering this scenario without being able to articulate the full legal position. This is the best result so far in terms of having the most correct responses, but not as ‘good’ as the next scenario. This is probably because of the annual professional development that teachers receive and the regular reminders that they receive during these learning sessions.

Teachers are often the first people to suspect that something may be infelicitous with a child or children due to their regular and repeated contact with them, and as such it is important that all teachers are aware of their obligations under this area of education law. They are often the first group of professionals who are in the position to report suspected child abuse or neglect when a parent/parents are not either “able” or “willing” (*Child Protection Act 1999* [Qld]), to adequately protect and care for the child(ren). Due to these factors, a whole chapter on this topic is included in the textbook. It includes a summary of the types of child abuse, grooming, keeping children safe in schools, working with children checks and the current child protection schemes. This chapter in the textbook also provides the mandatory reporting duties of teachers and the penalties that apply if they decide not to do so.

The next scenario under this topic asked participants about whether or not a conversation with a deputy principal about suspected child abuse could lead to a

defamation law suit. Teachers need to know what to do when they are confronted with a disclosure of child abuse by a student in their school, or alternatively, if they suspect that a child is suffering some sort of child abuse or neglect. Obviously, these are very serious concerns. Because of this, parents can become, and some would argue quite rightly, agitated about having a suspicion being made about them particularly if those suspicions are later found to be false. What is important in these cases is not how the parent is going to feel or how they might react. They simply have to be reported. Teachers must report these suspicions and/or disclosures to a deputy principal or directly to the principal, depending on how the protocols work in their particular school. Mandatory reporting obligations under the *Child Protection Act 1999* (Qld) make it compulsory to do so. They have to be made bona fide (in good faith) without malice or vindictiveness and only disclosed to certain people in particular positions or roles within the school. Suspicions such as these should not be spoken about around the lunch table with many staff in ear shot. Importantly, this scenario was asking about the protections provided to teachers. That is, if the reporting is made in good faith, a teacher or principal cannot be sued for defamation or be held criminally responsible for any criminal offence related to the reporting of suspected harm. Furthermore, they cannot be subject to administrative proceedings by their employer either. These safeguards are in place to help promote the act of reporting suspected or actual harm in the ever-increasing aim of protecting our young vulnerable students.

The participants did better in this scenario in that there were more responses coded as showing “some degree of legal literacy” than any other scenario used in the survey (see Table 5.18, p. 144). This may indicate that because teachers receive mandatory annual training in this area they hold a higher legal understanding of these situations. Many in the “confused legal literacy” code knew and stated as such that the matter had to be reported, but they did not stipulate the legal protections afforded to teachers for reporting even if the suspicion is found to be untrue.

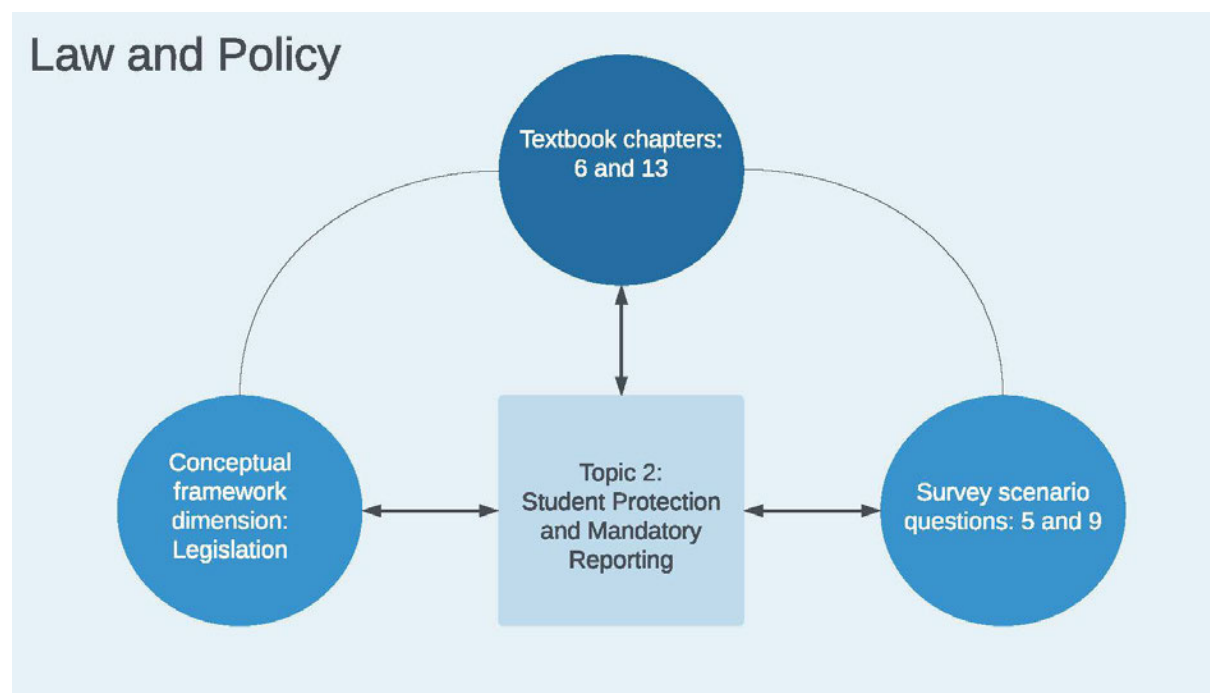
Due to the seriousness of such matters, and the substantial physical and emotional damage that can be done if reporting does not occur, a chapter was included in the textbook on this issue of harm and mandatory reporting. However, it would seem that the majority of the teachers surveyed did not know or failed to mention these protections given to ‘mandatory reporters’ such as teachers. As a result of this research data, it was decided to include a discussion about immunity in

this chapter in the textbook (on page 119) but is also repeated in the final chapter on protections afforded to teachers on page 227 of the textbook. It is believed that teachers need to feel safe in reporting such difficult matters to the proper authorities and should be offered some security in doing so. This is even more pertinent when the suspicion is later found to be unsubstantiated.

See Figure 6.2 that depicts the student protection and mandatory reporting conceptual model of research results.

**Figure 6.2**

*Student Protection and Mandatory Reporting Conceptual Model of Research Results*



### 6.2.3. *Family law*

Family law matters affect schools as all children are members of a family. When families face hardship or relationship battles, children are inextricably intertwined in such difficulties. Rightly, the Federal Circuit and Family Court considers the interests of the children affected in such disputes as paramount and everyone else's needs or wants are secondary (*Family Law Act 1975* [Cth]). The family law scenario used in the survey challenged participants to consider what schools have to do when one divorced parent wants their child to attend one type of school and the other parent seeks enrolment in another. This is often a difficult

situation schools face as they are keen to accept the enrolment (especially fee charging schools – as was the case for all of my participants). However, it is troublesome in doing so when both disputing parents do not concord. This is so for a number of reasons, but especially, legally, in the contract of enrolment. Essentially, the school must send the often-discordant parents away to come to a resolution as to which school they both agree to send their child. It may be prudent to offer the parents suggestions of external agencies like mediation organisations or places such as Relationships Australia to help them come to an agreed position on this issue (Relationships Australia, n.d.). If both parents can agree, it is only then that the school should accept the enrolment. This, of course, is contingent on any court order in place dictating who makes these decisions and indeed, sometimes will even stipulate which type of school the child is to attend. However, with most court orders affecting children of a split family, it will be left to both parents to decide according to provisions of equal shared parental responsibility (*Family Law Amendment (Shared Parental Responsibility) Act 2006* [Cth]).

It was pleasing to note that in this scenario, 5% of all participants responded with a “high degree of legal literacy” (see Table 5.19, p. 146). This was the second highest attainment of this code from all scenarios. This may be explained by the fact that it is not a ‘legal’ question as such but more of a practical or social question, with many respondents applying their common sense to address this dilemma. There were more in the “some degree of legal literacy” code too, which was positive to document. However, there were over a third (36%) that had no idea and left the answer blank or failed to demonstrate any understanding of the question at all.

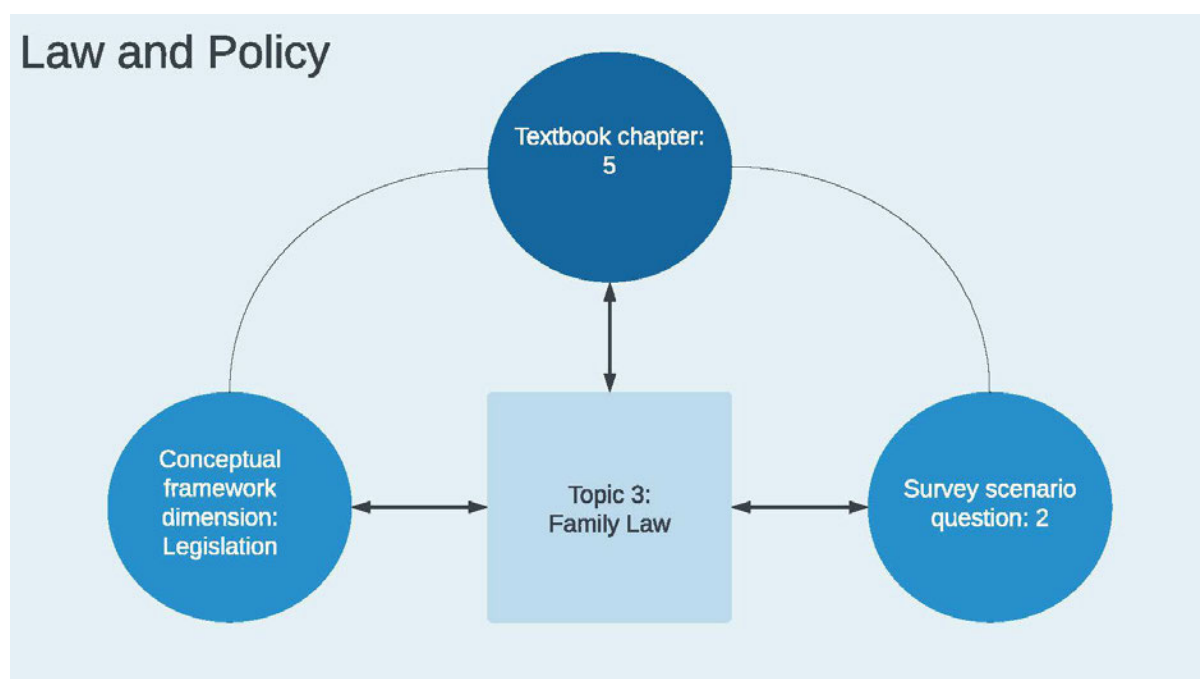
As has already been highlighted, due to the high divorce rate in Australia and the many court orders and parenting plans that emanate from such ‘decree absolutes’ (dissolution of marriages), it was considered essential to include a chapter on family law in the textbook. In Chapter 5 of the textbook, there is a discussion on what it actually means when the Family Law Act and Federal Circuit and Family Court refer to the ‘best interests of the child’. It also outlines shared parental responsibility and the court orders and parenting plans that are accessible in such cases. This textbook chapter applies family law issues to the school context. It concludes with information about subpoenas and what are the schools’ obligations when faced with general court orders. This was not an aspect of the survey used in this study, but it was decided that it needed to be included as it is a situation faced

by many schools and most teachers, in my experience, do not know what their duties are in relation to these.

See Figure 6.3 that shows the alignment of facets of the study concerning family law in the family law conceptual model of research results.

**Figure 6.3**

*Family Law Conceptual Model of Research Results*



#### **6.2.4. Criminal law**

There are a number of ways criminal law can become an issue in schools. Obviously, there are the destruction of property type matters along with physical assaults that students can inflict upon other students or even staff members. Stealing can also be dealt with at schools where students take items from other students or school property. In addition, there is the distribution or even selling of illegal substances on school grounds. Most of these issues are dealt with under the respective student code of conduct in the school. At times, it may be prudent to ask the police to become involved and deal with the 'offenders' in terms of both internal school sanctioned behaviour policies and those encroachments external to the school.

Other matters such as truancy, sexual offences, firearms and weapons issues, telecommunications instances (sexting and the like) also fall within the ambit

of criminal law matters. In terms of the survey, scenario 3 questioned participants about 'search and seizure' type issues by asking if it is legally acceptable to ask students to show the contents of their pockets and lockers to a school teacher. This has been a long-standing problem facing schools, particularly with regard to the students' own property such as the content of the pockets of their school uniform. Can schools intrude on what could be regarded as personal space? Most schools have it as part of their behaviour management policies that students are not allowed to bring onto school grounds items such as pornographic material, illegal substances, for example alcohol or prohibited drugs, weapons or other contraband. What schools can do and how far reaching is their power to search and seize such items?

Essentially if schools have a reasonable suspicion that a student is carrying something considered to be against the school rules, a teacher can ask that student to show them the contents of their pockets. This reasonable suspicion has to be based on some substantial information, for example, a tip off from another student or unusual behaviour exhibited by the student to warrant further investigation. In general terms, it is not best practice for any teacher to simply ask a student at their whim to show them the contents of their pockets. This is usually referred to a senior leader within the school such as a deputy principal and also to be conducted behind closed doors. This is necessary for confidentiality purposes and also to keep any prohibited item out of sight of the school community. It is also prudent to have another staff member present as a witness to protect all parties involved. If the student does not agree to show the contents of their pockets to a teacher, the school may contact the parents/caregivers of the student concerned to attend the meeting at the school. Alternatively, they can contact the police to conduct a physical search of the student, providing they are of the same gender (*Police Powers and Responsibilities Act 2000* [Qld]). Either way, if a student fails to agree to the search, it can incriminate them and may make them appear guilty (even if they are not) of breaches of the school rules.

With respect to showing the contents of the locker used by the student, because the locker is, in the ordinary course of events, owned by the school and is therefore deemed school property, it is legally safe to open and inspect the contents found therein. No actual permission by the student is legally required. Again, this is

normally conducted in the presence of the student concerned, and with another adult witness present.

The results of this scenario were mixed (see Table 5.20, p. 149). There were a percentage of participants (18%) who verified “some degree of legal literacy”. However, a substantial proportion showed “incorrect legal understanding” at 40%, while another 31% failed to provide any understanding at all. This was significant in the large volume of incorrect responses, or no response given at all. Many of the participants erroneously suggested that permission had to be sought first from the student. Yes, it is probably regarded as common courtesy to ask the students first before showing the contents of their pockets of their school uniform. However, if they said no, they should not be permitted to leave the investigation room before parents are called and have arrived to assist in the search of the student’s pockets. However, not many of the respondents mentioned that the lockers are part of the school property and therefore could be inspected at any time, especially when the school believed, on reasonable grounds, that the particular student may have hidden prohibited items that they should not have had in their possession whilst at school.

Another factor signifying their responses incorrect were the many references to privacy law in this scenario. A significant number of participants suggested that this action would be regarded as a breach of privacy. This is a wrong area of education law in this question and does not relate legally to it whatsoever. Privacy law (in a school context) has to do with the collection, storage, use and sharing of information about students. This is both in terms of their personal information such as names, dates of birth and addresses and also their academic progress records in addition to any sensitive information relating to the health or learning disabilities that they may be experiencing (*Information Privacy Act 2009* [Qld]; *Privacy Act 1988* [Cth]).

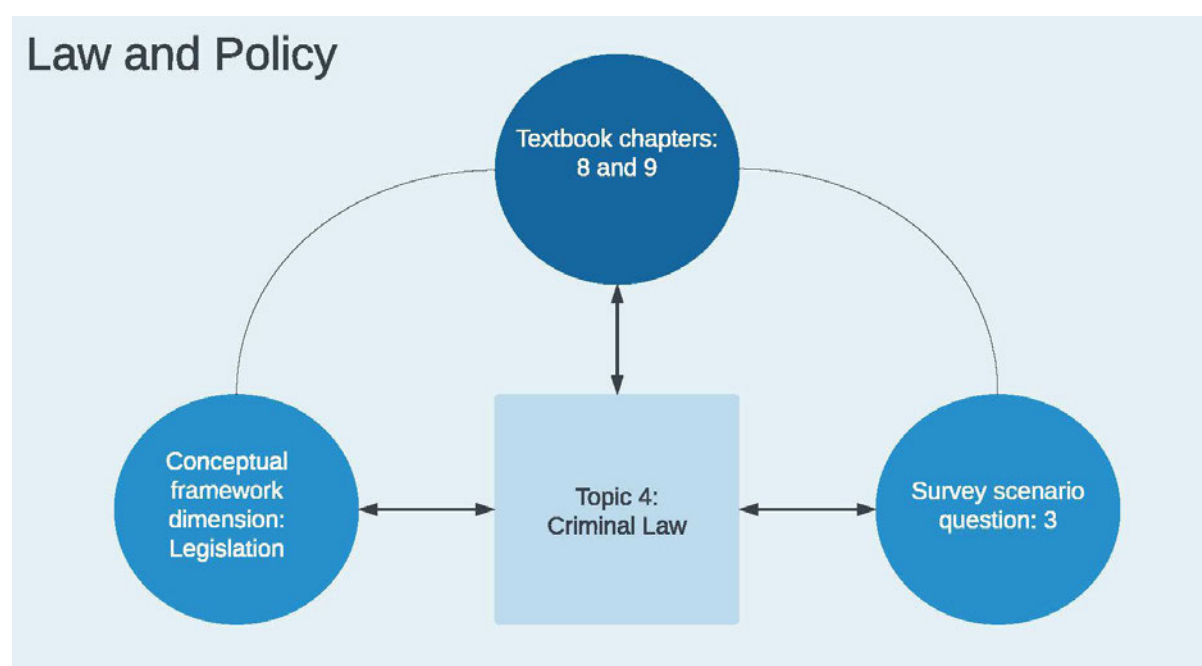
Therefore, due to the clear lack of understanding of this issue by the participants and the perceived (by many) thinking that this situation was a breach of privacy legislation, it was considered imperative to include this issue in the textbook. Chapter 8 of the textbook deals with the key aspects of criminal law for schools. It includes a section on searching students’ possessions on page 142 and the power to search students themselves is noted on page 144. The power to remove students’ property is also covered in this chapter. Corporal punishment and assault were further included to explain the law in relation to these areas of criminal law.

It was further decided to include a chapter in the textbook on cyberbullying due to increasing numbers of these types of matters being reported in schools (Zhu et al., 2021). Chapter 9 of the textbook details the criminal liability of cyberbullying and the role the school needs to play in such cases. Schools have a duty, even if not a legal one (which is a vexed point in itself), to educate students about the whole issue of cyberbullying and the deleterious effects that this can have on students in the school, both now and into the future. “Sexting” and other criminal offences arising from such patterns of behaviours were also included in this chapter, by way of education for teachers and pre-service teachers.

See Figure 6.4 that illustrates the cohesion of various elements of the study involving criminal law in the criminal law conceptual model of research results.

**Figure 6.4**

*Criminal Law Conceptual Model of Research Results*



### **6.2.5. Discrimination law**

Not all discrimination is illegal. Discrimination becomes an issue in the school context usually in the employment of staff and in the enrolment or expulsion of students, or the subsequent management of a student’s education after they have been enrolled. Discrimination becomes an issue when someone is treated less favourably than another because of a protected attribute or ground that is stipulated

in the various anti-discrimination laws in Australia (both at federal and state/territory level). Some of these grounds or attributes that are usually highlighted in school discrimination law cases are: gender; disability; religion; race; sexuality; age; and more recently gender orientation. Disability (or “impairment” as it is referred to in the Queensland state legislation) has become, in more recent years, the most common ground that is litigated in discrimination cases in schools (Australian Legal Information Institute, 2024). This is based on the very broad definition the legislation ascribes to these attributes, encompassing all disabilities not limited to physical, emotional, behavioural, psychological impairments (*Anti-discrimination Act 1991* [Qld]; *Disability Discrimination Act 1992* [Cth]).

The scenario that concentrated on discrimination law in a school context questioned participants whether or not it was lawful to exclude a student with a disability who is dangerous to others because of the behaviours they exhibit due to the disability. On the surface, it may appear a clear-cut case of discrimination. A student is treated less favourably (being excluded) because of an attribute that they hold (disability). The legislation says exactly that. However, we must look deeper at the problem and ask further questions. This is exactly what the court did. Discrimination cases are very often emotional cases (particularly in disability matters) where plaintiff's (or usually their parents) get reasonably defensive and push their claim to ensure that they are treated just like everybody else, without the disability. An authoritative case in this area went on appeal a number of times and went all the way to the High Court of Australia. It was there, that the majority of judges decided that it was also important to consider the risk of injury to the other students and staff involved in the education of this student. They stated that it was not discrimination as the particular school involved essentially proved that they treated the student with the disability in the same way that they would treat another student without the disability. There is much background to the case and the events leading up to the exclusion including the continual assaults to both other students and staff and much school intervention that occurred along the way. It was not simply an overnight decision. However, the key factor was that they did not discriminate against the student with the disability as he was treated in the same way as all other students in the school (*Purvis v New South Wales (Department of Education and Training)*, 2003).

As augured in Chapter 5 of this thesis, this scenario had quite a balanced outcome with a reasonably even spread across the coded responses, except for “high degree of legal literacy” (see Table 5.21, p. 152). Whilst there were no participants coded showing a high level of legal understanding in this question, there were a stronger percentage that displayed some degree or even a confused level of legal understanding. It was not the majority of participants that simply stated that it was a discrimination matter and therefore the school was not legally entitled to carry out the expulsion.

Those who were more legally accurate with their response did in fact consider the danger outlined in the scenario to other students. However, they did not weigh up the imperative legal balance that the school needs to make, and question whether or not they would treat the student with the disability in exactly the same way as they would another student exhibiting those same anti-social behaviours without the disability. When this is so, it is not regarded as discrimination.

This area of the law is very much governed by legislation as can be seen in Chapter 3 of this thesis. However, it is an area where case law is critical as it unpacks the ‘spirit’ or intention of the legislation and applies it in real life situations that help to define and outline the legal position. There are some important legal defences that apply in discrimination cases, especially for independent, faith-based schools due to their religious beliefs. There are also questions of ‘reasonable adjustments’ and ‘unjustifiable hardship’ that are argued in cases such as these. In this leading case it was a matter of the High Court of Australia to decide, after these considerations were exercised, whether or not there was direct discrimination of this child.

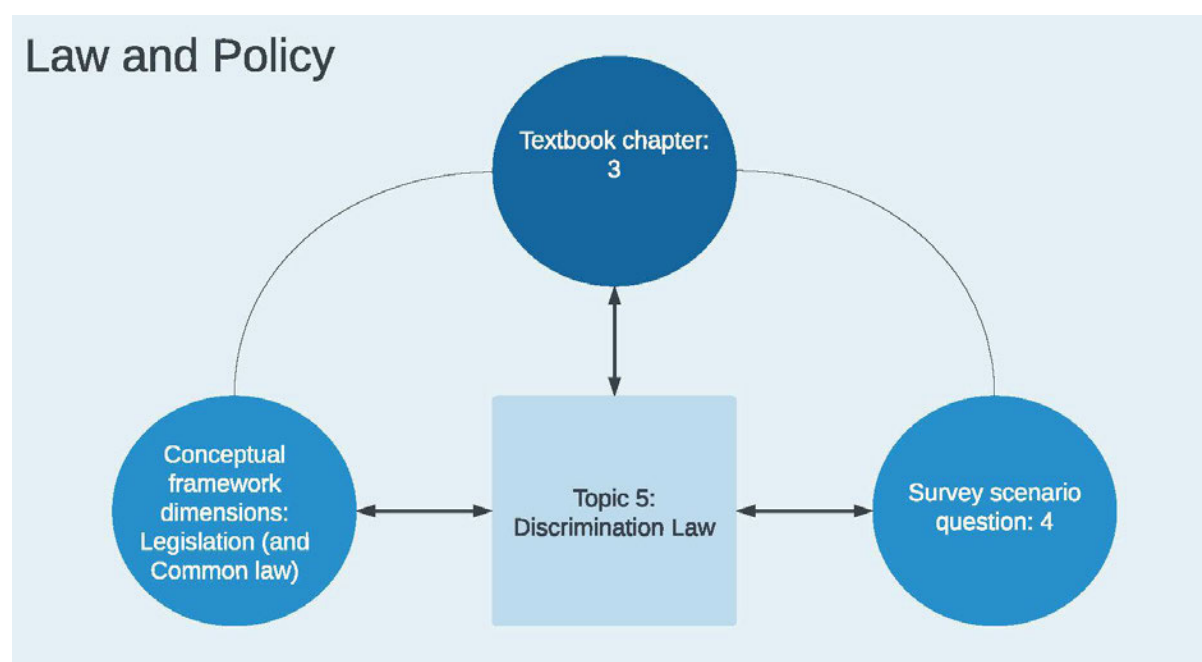
Due to the increasing number of diagnosed neurodevelopmental disorders and mental health conditions such as anxiety in children and adolescents (Davidovitch et al., 2017; Fombonne, 2018; Parodi et al., 2022) and therefore the subsequent swelling of discrimination cases being brought against schools, in addition to the lack of understanding of the wider issues at play in this area of school law as evidenced in the study’s data results, it was decided to include this important area in the textbook. Chapter 3 of the textbook discusses discrimination law within the school context and includes a special section on disability discrimination starting on page 59 of the textbook. It also provides an explanation as to the Disability Standards for Education that provide clarification on disability discrimination law to

students and schools (and school systems) and how the law is to be applied, weighing up the often-competing interests of key stakeholders (*Disability Standards for Education 2005* [Cth]). This chapter of the textbook also addresses other types of discrimination faced by schools including on the grounds of race, gender (or sex), religion, and age. In addition to this, it was decided to add a small section on discrimination in religious schools in the chapter on Ethics (to be discussed in the next section of this chapter). This was to deliberately highlight the very nature of discrimination matters as they tend to pull at the very ethical considerations and ultimately decisions that teachers and schools have to make on a regular basis.

See Figure 6.5 that illuminates the unity of the various aspects of this study involving discrimination law in the discrimination law conceptual model of research results.

**Figure 6.5**

*Discrimination Law Conceptual Model of Research Results*



#### **6.2.6. Professional conduct**

Like most professions, teaching is one where there is a high standard of behaviour expected of teachers. This is, in part, due to the very nature of the profession, working with children every day and the society's charter (including the law's role in this remit) in trying to ensure that our vulnerable are kept safe at all

times. These high levels of expected conduct are both intrinsically and extrinsically imposed. The vast majority of teachers only join the teaching profession with the laudable intention to make a difference in the lives of the children that are under their care each day. In addition, there are many externally levied standards that are cast on teachers both by professional bodies such as the respective state or territory regulatory body, and also in some contracts of employment, particularly those working in the non-government sector like those that participated in this study. These externally insisted standards are discussed in more detail in Chapter 3 (conceptual framework) of this thesis.

The scenario that targeted professional conduct asked participants of the survey to consider whether or not they trusted their collegial friend, engaging in infelicitous behaviour in having a senior female student at his house on weekends. This scenario was not intended to be a moral or values-based question, but rather what you should do as a colleague of a teacher engaged in this questionable conduct. Despite morals and value judgements having to be made by teachers everyday of their professional lives, some aspects of their professional judgement require external intervention as is the case in this scenario. Notwithstanding the collegial relationship that you may enjoy with a fellow teacher, if a teacher is aware that another teacher is engaging in unprofessional conduct or behaviour that may, at best, be regarded as suspicious at the very least, a duty is present to report that behaviour. The school then has a further duty to report to the state regulatory body (Queensland College of Teachers here in Queensland) and they then decide if official proceedings against the teacher will be commenced. This will involve an initial investigation followed by, if necessary, a more comprehensive investigation and questioning of the teacher concerned. If deemed appropriate, formal disciplinary proceedings will be brought against the teacher where they will have to account at a judicial tribunal for any 'harm' caused and face the real prospect of having their teacher registration suspended or even cancelled.

As with all the other scenarios, the responses were coded as varied. However, there was a massive 60% of participants who were incorrect in this question (see Table 5.22, p. 155). This may, in part, be due to the fact that the majority of respondents were not in senior management and may not have known the legal obligation on principals to report this type of behaviour to their respective professional regulatory body. However, many of the participants acknowledged that

the exhibited behaviour by teacher John was injudicious, with over 30% getting the question at least correct, even if they could not justify why with any legal understanding of the principles involved in this situation. However, most participants did not address their own ethical and legal obligation to report this to the principal, who subsequently has a legal duty, in Queensland, under the *Education (Queensland College of Teachers) Act 2005* (Qld) to report the conduct to the College for them to investigate.

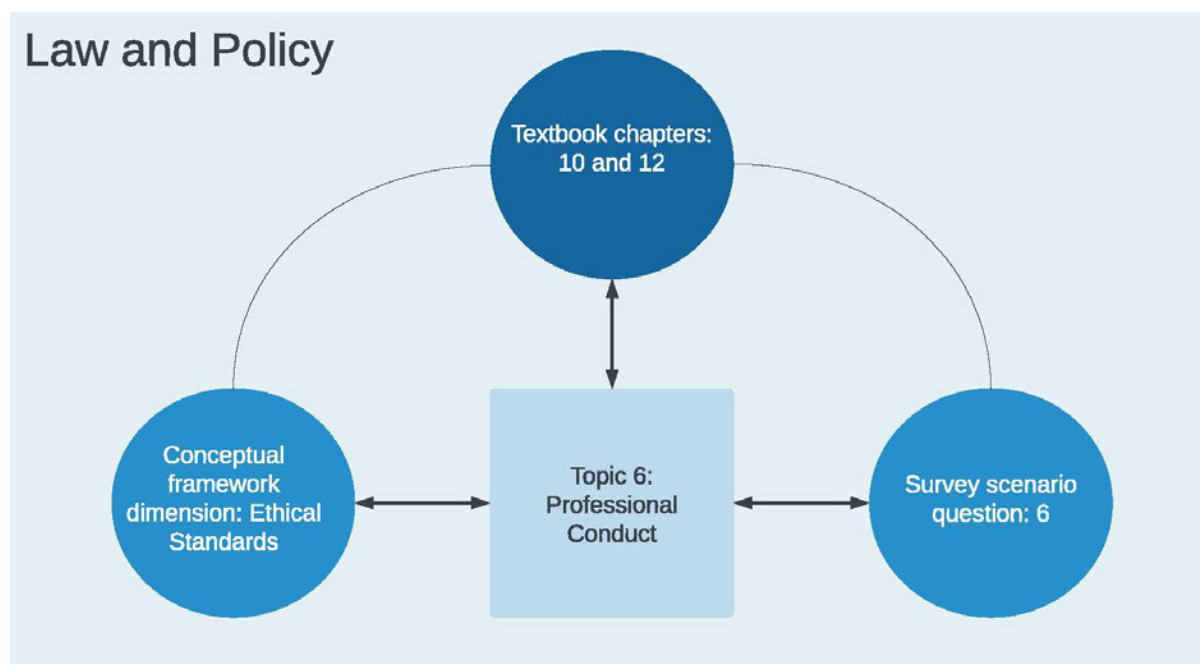
Due to their ethical and legal duty to report questionable behaviour to their leadership team (usually the school principal), and the fact that the majority of participants managed this scenario incorrectly, it was deemed necessary to include a chapter on the ethical obligations of teachers in the textbook. This included some preliminary remarks on ethics in Chapter 10 of the textbook followed by a discussion of where some of these externally governed responsibilities stem from. It was decided to highlight the difference between teachers working in government schools compared to their contemporaries working in non-government schools. A consideration of social media mixed with ethical consequences and an application of ethical practice in the school context were also added.

It was considered imperative to include a discussion of the consequences of unprofessional conduct by teachers in the textbook. Chapter 12 of the textbook considers disciplinary proceedings against teachers. It examines what types of matters, in their various forms, give rise to a disciplinary proceeding against a registered teacher. This textbook chapter also explores the formal processes involved in such proceedings and how teachers can, in the first instance, obviate their involvement in such difficulties.

See Figure 6.6 that shows the unity of various elements of the study involving professional conduct in the professional conduct conceptual model of research results.

**Figure 6.6**

*Professional Conduct Conceptual Model of Research Results*



### **6.2.7. Privacy law**

Most schools have a privacy policy. These policies outline how the school collects, stores, uses (discloses) and disposes of information concerning students and families connected with the school. This is particularly important when dealing with personal and sensitive information about students. Personal information is defined as “information or an opinion about an identified individual, or an individual who is reasonably identifiable” (*Privacy Act 1988* [Cth]). This would obviously include such information as the name, date of birth, address of an individual. Sensitive information, which is afforded greater protections includes (but not limited to) information about an individual’s: “racial or ethnic origin, religious beliefs or affiliations, philosophical beliefs, sexual orientation or practices, criminal record, health information, genetic information or biometric information” (*Privacy Act 1988* [Cth]).

Regulation of privacy occurs via the adherence to the Australian Privacy Principles under the *Privacy Act 1988* (Cth) that cover independent and other non-government schools (such as those that my participants were all working in at the time of the survey), and the Information Privacy Principles under the *Information Privacy Act 2009* (Qld) that applies to all state schools in Queensland.

The *Privacy Act 1988* (Cth) also established the mandatory data breach notification that introduced an obligation to notify an individual whose personal information is involved in a data breach which is likely to result in serious harm. This also includes notifying the Australian Information Commissioner. These data breaches occur when there has been unauthorised access to or unauthorised disclosure of personal information, or a loss of personal information that a school (in our case) holds, and where the school has not been able to prevent the likely risk of serious harm with remedial action. The resultant reputational damage that these breaches can cause is enormous, let alone the mammoth financial penalties that can be imposed in data breach cases.

The scenario that involved privacy law asked the survey participants whether or not a school, by disclosing personal information about a group of involved students to another school for a dance gathering as part of the schooling program, would be deemed a breach of their privacy obligations under the relevant legislation. It is pertinent to note that schools, indeed, are permitted to share personal data between themselves provided that it is part of the education program of the school. That is to assume that parents are aware of this activity being planned and scheduled and no doubt would have been informed that the names of their children would be provided to the host school for the purposes of the educational activity. Provided that all other privacy obligations are being met, this is not considered a breach of the privacy legislative provisions.

The results from this scenario again were disappointing with a substantial 60% coded as having an “incorrect legal understanding” of this issue. A large majority of such participants mentioned something akin to having to seek parental permission before disclosing such information. That is legally incorrect. A school does not need to do so. If the disclosure of information is for a school sanctioned event such as in this case, parental permission does not need to be sought. Parents would have, in the normal management of such events, been sent permission notes for their children to be involved as part of the school’s protocol. That information would have been passed on to the respective parents so that they would have been informed. Even if this did not occur, parental permission does not need to be acquired before disclosing personal information if it is for a school event.

A smaller number of responses coded as demonstrating “incorrect legal understanding” suggested that it was a confidentiality matter. Again, this is incorrect.

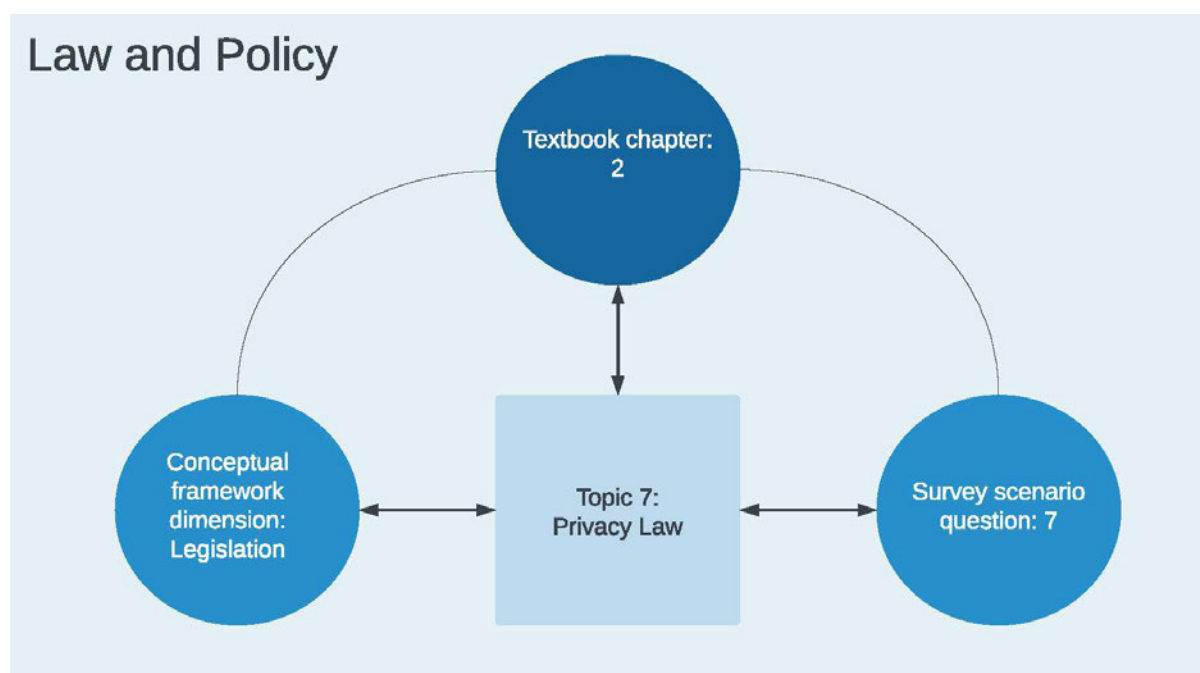
This scenario has nothing to do with the legal tort of confidentiality at common law. Many people mix up confidentiality and privacy and are confused legally as to why or why not some particular action may be regarded as being against the law. In my professional life, I have repeatedly heard educators (often in middle to senior management) confuse these two areas of law and use them erroneously. These terms are certainly not to be used interchangeably. The next highest group of responses fell in the “no understanding/left blank” accounting for 24% of participants (see Table 5.23, p. 158). However, it was pleasing to note that 9% of participants showed some understanding when addressing this legal quandary. In most of these cases, they mentioned that schools are allowed to disclose personal information to another if it is part of the regular educational program offered by the school.

Due to the high percentage of participants who were coded as incorrect, indicating a clear lack of understanding of the legal principles at play in this scenario, it was decided to add in a chapter on privacy law into the textbook. In addition, there were many participants who were mistaken in their response to the criminal law scenario (mentioned above) confusing it with a privacy law matter. Chapter 2 of the textbook deals with privacy issues effecting schools. It covers the relevant legislation and the Australian Privacy Principles for non-government schools as well as the Information Privacy Principles under which government schools in Queensland are regulated. This chapter also addresses the difference between the duty of confidentiality and privacy on page 35 of the textbook, as mentioned above, with a significant number of participants having this confused. It also addresses the difference between personal information and sensitive information, as has been briefly explained above in this section. In addition, the textbook chapter concludes with an outline of mandatory notification of data breaches, for both government and non-government schools and how these are managed under the separate legislation.

See Figure 6.7 that illustrates the connection of the various elements of the study involving privacy law in the privacy law conceptual model of research results.

**Figure 6.7**

*Privacy Law Conceptual Model of Research Results*



#### **6.2.8. Consumer protection law**

Consumer protection law has undergone sizable changes in the past 15 years. It has transmuted from the old *Trade Practices Act 1974* (Cth) and numerous state and territory acts, for example, *Unordered Goods and Services Act 1973* (Qld), *Door to Door Sales Act 1966* (Qld) into the universal Australian Consumer Law (*Competition and Consumer Act 2010* [Cth]). This more recent law is uniform legislation for consumer protection applying to all of Australia, covering consumer contracts, consumer rights and product safety.

Enrolment contracts which are a key element of the independent school and family relationship are captured under this piece of legislation. Misleading advertising and misleading conduct are also incorporated into this Australian legislation, regulating the conduct of businesses including schools. These behaviours are ones that businesses use either deliberately or unintentionally to deceive their customers; in our context these are parents who are charged school fees in return for the provision of the educational service.

The scenario used in the survey that depicted an aspect of consumer protection law was scenario 8. It asked the participants to check whether or not by

making a promise that all students would understand the safety principles by the end of the unit is legally treacherous. Yes is the obvious answer. If schools make promises such as these in their advertising or glossy brochures, and then fail to live up to these statements, they can be found wanting due to breaches of the Australian Consumer law. Schools are in a much safer position by using words such as “should” or “may” rather than “will” as this last term is so definitive. It only takes one student who does not assume all understandings from the unit and this statement is then regarded as misleading. Misleading statements made by schools can earn the indignation of Australian judges particularly when parents are persuaded by them in making affirming decisions about the education of their child.

Results from this scenario again were mixed. There was a bigger percentage than most other scenarios where participants showed “some degree of legal literacy” amounting to 18%. However, on the other end of the spectrum there was a larger group of 29% of respondents who were incorrect in their response. Yet again, there was a massive 40% who failed to demonstrate any understanding in this question or left it blank without leaving a response (see Table 5.24, p. 161 for a full breakdown of coded results).

Due to the large penalties under the Australian Consumer Law that can be imposed on businesses (schools, in our context) for breaching the legislation, and the high number of responses that were deemed as incorrect or failed to contain any real substance, it would be reasonably safe to assume that we would have included a chapter on consumer protection obligations in the textbook. However, we did not. There are three main reasons for this decision. Firstly, based on the data, not one survey participant said that they wanted to learn more about this issue in education law. Not one other area scored 0% for this question in the survey – see Table 5.10. Participants were not interested in learning more about this topic. Since this sample, albeit small, of participants showed no desire to learn more about consumer law or its protections, it was decided not to include it in the textbook. Together with the relatively high level of participants who were coded as having “some degree of legal literacy”, it was decided to leave it out of the textbook.

Secondly, the textbook is for all teachers, pre-service teachers and leaders working in all sectors. Consumer protection, by its very nature really only applies to non-government schools due to the fact of the fee charging contract that the school and families enter into. Therefore, we would be writing to only a small percentage of

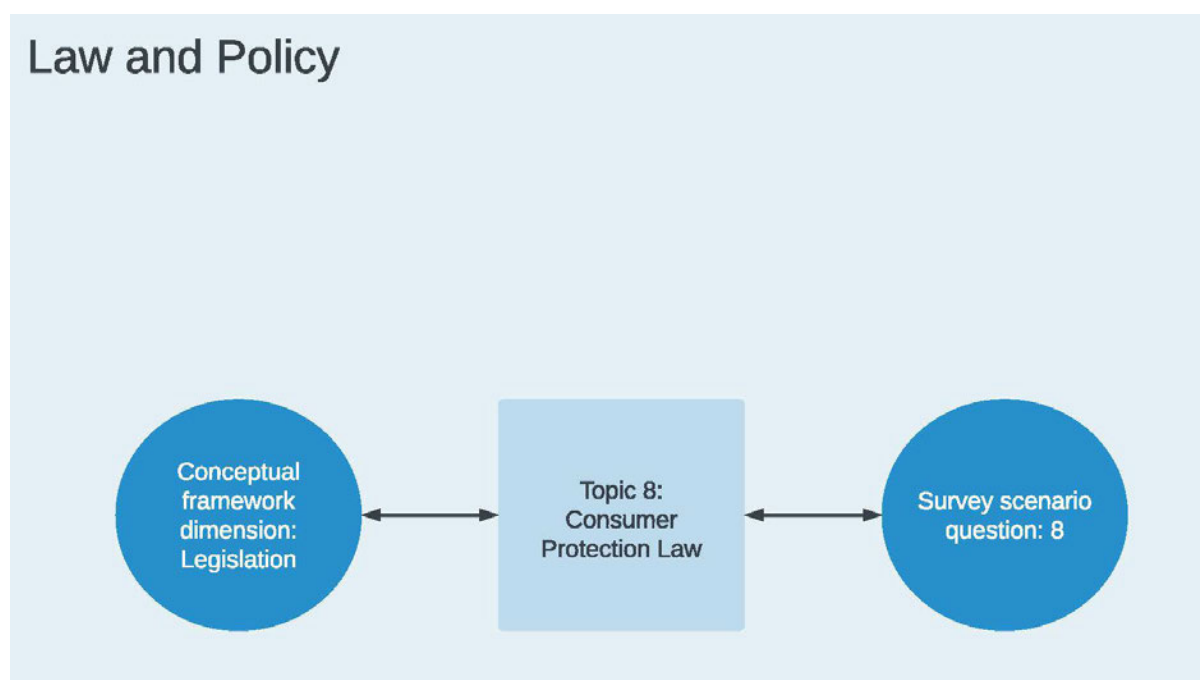
practitioners. We wanted to cater for as wide an audience as possible with the publication and not narrow the focus to a smaller group of stakeholders.

Thirdly, we were bound by Cambridge University Press, under the publishing agreement, to limit the word count of the textbook to a maximum of 100 000 words. Cambridge University Press provided us with their expectations regarding the textbook, and we were contracted with them to meet those expectations. Therefore, we could not include every facet of education law and ethics into the textbook, as we would have exceeded their prescribed word count.

The reader will notice that Figure 6.8 that shows the alignment of facets of the study concerning consumer protection law in the consumer protection law conceptual model of research results does not have a top concentric circle, indicating that there is no textbook chapter reference to this topic. Please see Figure 6.8 below.

**Figure 6.8**

*Consumer Protection Law Conceptual Model of Research Results*



#### **6.2.9. Discipline, suspensions and exclusion decisions**

Most teachers have to make discipline decisions when students in their care choose to misbehave or fail to meet the stipulated expectations of the school. If

students breach these guidelines, a natural consequence follows. These consequences can be minor amounting to such things as spending lunch times away from other students or even the writing out of the school 'code of conduct'. Detentions, letters home detailing the troublesome behaviour, official recorded details of such behaviours on school databases are all logical consequences for negative behaviour whilst at school. There are more serious outcomes for more significant breaches of the standard of behaviour set by the school including after school detentions, weekend detentions, suspensions (both internal and external) and lastly expulsion or exclusion from the school altogether. These last options are only used for the very worst of behaviours or where the school has offered many chances and the student fails to comply with those repeated opportunities to turn the anti-social behaviour around.

It was decided not to include a scenario question on behaviour consequences in the survey. The first main reason for this is because every school (remembering that all participants in this study came from independent schools) have their own policies and procedures on behaviour. Therefore, it would always depend on their own specific school behaviour management policies that would dictate the outcome of the miscreant conduct of the student. It would be almost impossible to code these responses. The other main reason is that many teachers see this as a procedural matter and not an educational law one. I, to a certain extent, concur with this thinking. Many practitioners working in schools see that the subsequent consequence follows the negative behaviour and is regarded as a routine matter. Therefore there is no discussion about a scenario based on this topic as it was intentionally left out of the survey.

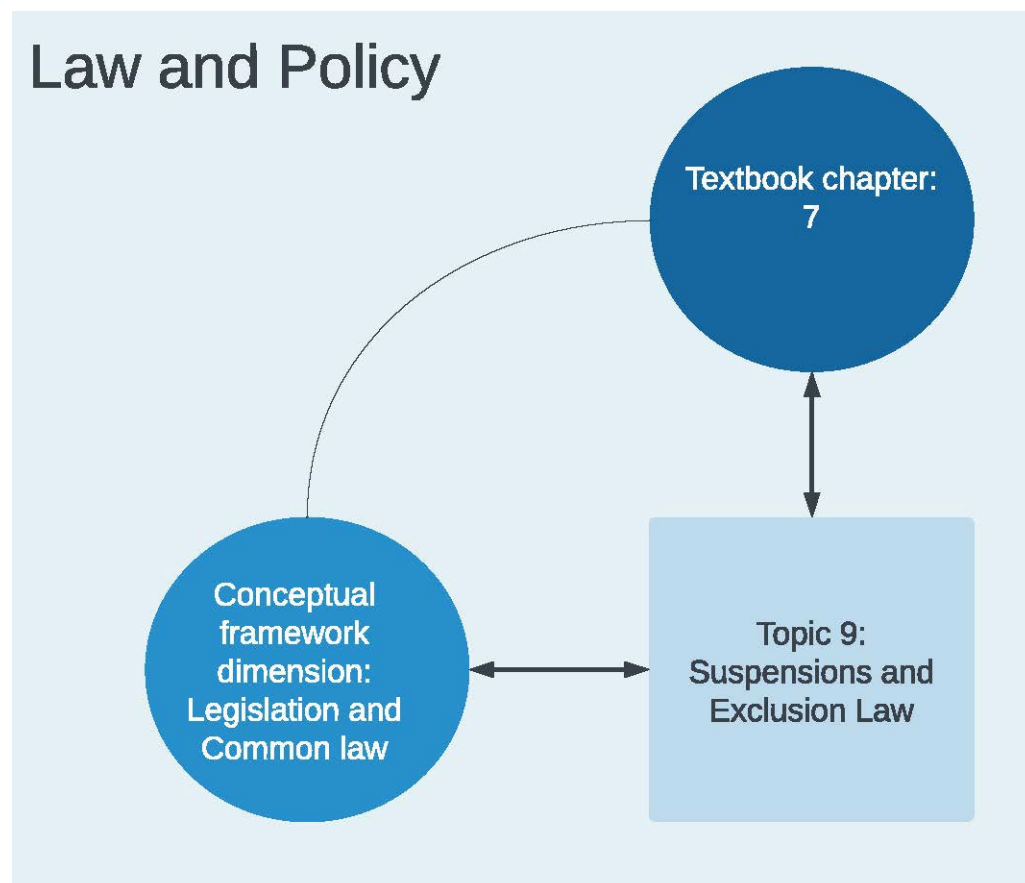
However, due to the topic 'discipline and behaviour management policy decisions' being the equal second highest topic the participants wanted to learn further about (see Table 5.10, p. 121), it was decided to include the law on the more serious breaches of school codes of conduct and include a chapter on suspensions and exclusions into the textbook. These consequences, applied in both government and non-government schools, have been included. The particulars relating to the law of contract for non-government schools has been an important addition to this section. The concept of excluding parents from school premises has also been added, at my request, as I have had to enact these provisions of the legislation when I was in the position of principal of an independent school. Furthermore, there has

been much written about the increase in violence directed towards teachers and leaders in schools by disgruntled parents in recent years (Badenes-Ribera et al., 2022; Earp, 2024; Lang, 2024). This is only one reason why parents are asked not to physically attend their child's school. There are other reasons such as when the parent disrupts the orderly running of the school day, or where they may upset a staff member by being present on campus.

The reader will observe that Figure 6.9 that shows the organisation of aspects of the study concerning suspensions and exclusion law in the suspensions and exclusion law conceptual model of research results does not have a right-hand side concentric circle, indicating that there was no survey scenario on this topic. Please see Figure 6.9 below.

**Figure 6.9**

*Suspensions and Exclusion Law Conceptual Model of Research Results*



### **6.2.10. Professional regulation and teacher registration**

The teaching profession is highly regulated (Voisin & Dumay, 2020). There are many aspects to this regulation not least of all are the strict requirements of teacher registration. Teachers, like other professionals such as solicitors and medical practitioners have to be registered with their professional organisation bodies to work in their capacity as teachers. Teachers have to meet particular criteria and be 'fit to teach' to remain registered. Without this registration, a teacher is not permitted to work in schools as a registered teacher.

Generally speaking, teachers are well aware of the highly regulated environment in which they work. They are all initially qualified, must maintain their teacher registration, are subject to police checks, and must carry out their daily work in a professional and responsible manner. Due to this awareness, and to a lesser extent, the fact that teacher registration and regulation is not seen as a legal issue in the eyes of many teachers, it was decided not to include a scenario on this topic in the education law survey. It was decided that it was not worth inquiring about something that all participants have had to do previously to be working in schools in a myriad of capacities.

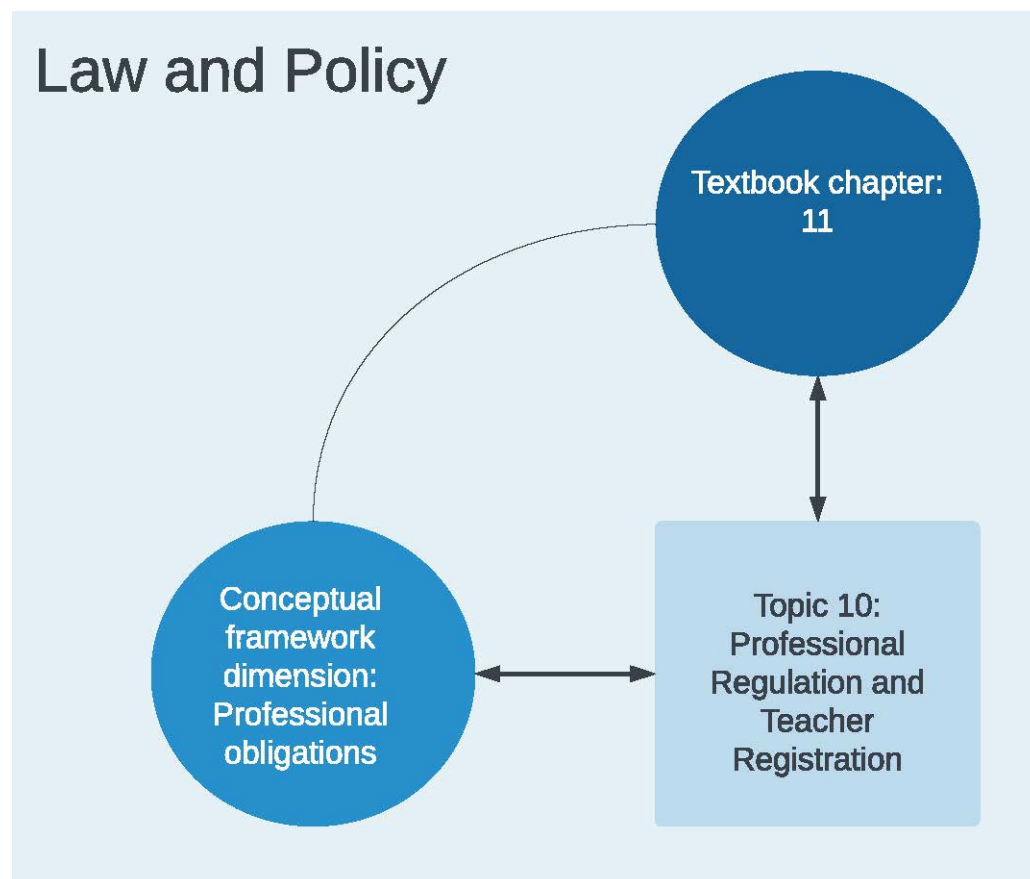
However, it was decided to include a chapter on this topic in the textbook. (Therefore, I have not discussed professional regulation and teacher registration in any detail here as that would simply be repetitive.) There are a couple of main reasons for this inclusion. Firstly, the textbook is part of a series of books on both the law *and* ethics of the profession. A further example is nursing by the same publisher, Cambridge University Press. Cambridge was insistent that we, as authors, covered not only the law but also the ethics involved in our chosen profession. Hence, the stand-alone chapter on ethics for teachers that I wrote has been included. It was considered salient, as part of the study on ethics, that some remarks on the teaching profession and how they are regulated be added. This ended up being a chapter on its own and follows immediately after the chapter on teacher ethics in the textbook (Chapters 10 and 11 respectively). Secondly, remembering that the intended audience of the textbook were both teachers and pre-service teachers, it was considered judicious to include a chapter on teacher registration to inform pre-service teachers on all of the requirements that they need to meet both whilst studying their initial teacher education degree, but also ensuring that they meet their professional obligations following their study. Therefore a chapter that discussed all

of this was added in to the ultimate manuscript draft, and subsequently included in the publication.

You will again see that Figure 6.10 that shows the alignment of elements of the study concerning professional regulation and teacher registration in the professional regulation and teacher registration conceptual model of research results does not have a right-hand side concentric circle, indicating that there was no survey scenario on this topic, as discussed above. Please see Figure 6.10 below.

**Figure 6.10**

*Professional Regulation and Teacher Registration Conceptual Model of Research Results*



### 6.3. Reasons for a textbook

There were many reasons why a textbook was written instead of pursuing other means of training or mass communication. Firstly, there are the academic ones. As academics, it is essential to publish as part of your role in the academy. It is important to be seen as an expert, writing on, and in, your subject area not only for

other academics, but also those in the wider general community who may be interested in the particular subject area.

Secondly, the study confirmed the need for a tangible product that was easy to access, relatively inexpensive, that was also at 'arms reach' whenever a teacher, pre-service teacher or leader needed to look up a specific topic in education law. Hence this textbook is aimed to be used as a reference book whenever a reader wants to know more on a certain topic or issue.

Other forms of professional development for teachers were considered. These options tend to be expensive for schools to outlay and only those present receive the benefit. By having a textbook, for example in a professional library at a school, it can be accessed by many at timely intervals where the issue at hand is real and topical. Teachers do compulsory annual professional development on student protection and mandatory reporting. As can be seen in Tables 5.17 (p. 141) and 5.18 (p. 144) in Chapter 5 of this thesis, it fails to teach everyone a satisfactory understanding of the issues involved in this area of education law. It is acknowledged that overall the level of understanding was better in this area. However, it is in part due to a yearly reminder and therefore you would expect that teachers would have more understanding of the legal implications in this area. It does not, however, deliver an understanding of the legal elements of this topic to all teachers, as the survey data indicates.

Thirdly, online versions of training can be hard to navigate or confusing to find the specific area of education law that you may be looking for. They tend not to be written with teachers in mind and there is a plethora of material online already. However, as we can see from the above discussion on the clear lack of understanding of education law held by many teachers, they are either not accessing this material or not gleaning much benefit from it. I have found that these options essentially summarise the law from cases and relevant legislation but fail to provide the application of the law to the various situations and contexts found in schools. This is what writing the textbook aimed to achieve. This application helps to flesh out and more practically explain the outworking of the legal principles involved and therefore provide a fuller understanding of the relevant legal position.

Fourthly, legislation and authoritative case law in education law does not tend to change rapidly or readily. The textbook should provide a reliable and accurate

representation of the current law for some years to come. This is another reason why a resource such as this one does not need to be online.

Fifthly, as teachers and university lecturers, it is our job to teach those in front of us. Two of the co-authors of the textbook have taught law in secondary contexts for many, many years. Two of us have taught law in the tertiary domain for years also. We are trained and well versed in explaining legal concepts (sometimes quite complex) to people who do not know about such notions. It has been this experience that we have drawn upon as a writing team to produce a book that is user friendly and easy to follow for non-legal thinkers. The intention has always been that the textbook be written for teachers, by teachers about teachers/teaching, so that they can more easily engage with its content. Teachers do not need to access academic journals, nor go to the trouble (especially if not trained in law) to discover where to find various pieces of legislation and precedent case law to gain more insights into education law.

#### **6.4. Further decisions in relation to the textbook**

It was decided to publish with Cambridge University Press. Not only are they world renown and enjoy a superior reputation, but they were also easy to work with and happy for us, as authors, to have significant input into the writing of the textbook. By choosing a highly respected and universally recognised publisher, we felt it should increase the reputation of the content and therefore increase the level of trust afforded to the content found in the textbook; essentially giving the work credibility and authority. It can be heralded as an authoritative text as opposed to an average publication that may have occurred with a less respected publishing company.

We endured a comprehensive editing process prior to publishing the textbook. Not only did we have two blind peer reviews of the textbook, but I also acted as internal editor and read and re-read each chapter ensuring it was exactly what we wanted to say in the final version of the manuscript. The manuscript also was sent to a professional external copy editor that was remunerated for the work completed. This was an extensive process which took time and many iteration controls to ensure that the final product was polished.

Selecting the writing team was also an important decision in the early stages of the textbook's conceptual thinking. One of the co-authors has had a background in law and as an academic for a number of decades. Indeed, she has earned the

position of Professor of law. Another is a teacher of Legal Studies and has taught in a number of schools in various locations, while also having a strong interest in education law. She has been an elected member of the Queensland state executive committee of Australia and New Zealand Education Law Association. My professional background involves both aspects and bridges the gap between the two. I have taught Legal Studies for over 20 years at senior secondary level and been an academic for the past 10 years. I have been a member of Australia and New Zealand Education Law Association since its inception in the early 1990's. I too am an elected member of the Queensland state executive committee of Australia and New Zealand Education Law Association.

Lastly, we purposefully included Commonwealth and each jurisdiction's law where possible in the development of the textbook. It is not restricted to only Queensland state law. We undertook this project with the clear intention in mind to make the textbook as useful as possible for all Australian teachers and pre-service teachers. When the chapter of the textbook dealt with local jurisdictional legislation, we considered all states and territories of the Commonwealth so that the chapter is relevant to all Australian educators. See Table 10.2 on pages 178-179 of the textbook for an example that considers the respective Code of Ethics/Conduct of all Australian states and territories. This concept has been adopted by all co-authors in the various chapters of the textbook.

Government schools have written state or territory policy and procedural documents that they must follow. These are all based on the applicable law on that issue. Non-government schools do not have such an extensive documentation portfolio but are more reliant on the primary source (legislation and case law) to guide them in ensuring compliance with the legal position in their state or territory.

### **6.5. Further features of the textbook**

There are a number of additional features of the textbook that have not been outlined above but were important considerations when deciding on what we wanted in the final product.

Firstly, when I was asked to come up with a suitable cover design for the textbook, it was difficult to choose something that denoted both law and ethics as well as teachers or schools. I ended up choosing the picture of the two people walking on the 'pink lines' that intersect. Because we were tasked with the inclusion

of ethics *and* law for teachers, I liked this cover design as the two lines do not meet in the middle, indicating that law and ethics do not always line up (intersect) perfectly for all people. It is often dependent on your viewpoint or perspective on a particular issue. As the two people are walking away from each other, it reveals the complex and sometimes acrimonious nature of education law in contemporary society. The lines that the two people are walking along represent the paths that we, as educators, are all on, often at different stages along the journey.

Secondly, I wanted someone held in high esteem to write the Foreword to the textbook. I approached the then President of the Australian Secondary Principals' Association Mr Andrew Pierpoint to write it. He has authority and good standing in the education community to introduce and commend the book to its readers. Andrew was happy to write the Foreword as he saw the value of such a publication and indeed, his experience in education underlined the need for teachers, leaders and potential leaders working in schools to have their own copy.

Thirdly, each textbook chapter features *learning objectives* at the beginning and definitions of *key terms* for that chapter used throughout. All chapters include *case studies* to further apply the law to the school context, as explained above. Use of *scenarios with associated questions* at the conclusion of each chapter were also added to support the readers' understanding of the wide range of professional education law issues at work.

Fourthly, it was decided to include an introductory chapter in the textbook on the overview of the Australian legal system which one of the co-authors wrote. This was primarily aimed at those without a legal background to help them understand more fully how the Australian legal system works in practice. There are many essential legal terms and processes about the Australian legal system that we used in our writing of the textbook and wanted readers to have a point of reference in the text to find out their full meaning if they were not exactly sure.

Lastly, the decision was made to include a subject index at the end of the textbook in order for easier location of relevant information on any given topic or issue contained within the text. This was an option offered to us as authors and we considered it necessary to include such a valuable resource.

## **6.6. Chapter summary**

This chapter has brought together various components of the study whilst also discussing the results of the data collected in this research project. In discussing the results, I first concentrated on what the results were saying and how that influenced the content chosen for the textbook. This section examined a discussion of the results and then showed how the data from the survey led to the writing of the textbook. Overall, the survey data shows that teachers in Queensland independent schools do not possess a satisfactory understanding of education law. There is a clear lack of understanding of the topics explored in this study by the participants. This will be further explored in responding to the research questions, in particular Research Question 2, in the final chapter of this thesis. It also included the conceptual models of research results showing the alignment of the various aspects of the project (textbook chapters, conceptual framework dimensions, and survey scenario questions) to the specific topics studied in this inquiry.

Following this the reasons for choosing a textbook as the creative work were outlined, trailed by some of the key decisions made in relation to writing the textbook. Finally, further positive features of the textbook were explored in the examination of some of the initial thinking of the writing project.

While this chapter was designed to connect all pieces of the study together and discuss the results of the survey, I will be addressing the three research questions in turn in summarising the outcomes of this research in the next chapter of this thesis.

## **CHAPTER 7: CONCLUSION**

### **7.1. Introduction**

This chapter serves to elucidate the answers to the research questions posed in Chapter 1 of this thesis. Whilst the previous narrative has implicitly addressed the research questions, particularly in Chapters 5 and 6 of this thesis, it is the intention here to specifically respond to each research question in turn in bringing together the entire study. This is then followed by considering the contributions to knowledge that this study makes before examining some of the limitations of this research project. The final section explores some recommendations for further actions that may be considered in the future.

### **7.2. Overview of the research project**

Education law has always been a zealous professional interest of mine. After studying law at university in preparing to be a teacher of it at senior secondary level, I was employed to teach Senior Legal Studies at a number of schools for over twenty years. I have also been a member of the Australia and New Zealand Education Law Association and attended their annual conferences and twilight seminars both here in Australia and in New Zealand since its inception in the early 1990s. In affirming why I chose to devote myself to this topic in the first instance and not to another area of law such as family law or criminal law, it comprises the two subjects: education (or schools) and law in both of which I have a dedicated interest. It is from here that my confidence and expertise in this area has developed, so much so, that I have been called upon, on many occasions to advise leaders and middle managers in a variety of schools on matters pertaining to education law.

The decision to explore the level of understanding of education law held by independent school teachers in Queensland was taken as I undertook all of my professional school teaching and leadership in four independent schools here in Queensland. This focus on Queensland teachers has also been left undiscovered until this research project commenced.

After much rumination it was decided to undertake a PhD study with creative works. This was in order to co-write a textbook on education law for Australian teachers, pre-service teachers and leaders working in schools. At the time of writing

the textbook, there existed no other contemporary publication in Australia on this subject.

The survey was implemented in questioning forty-five Queensland independent school teachers to ascertain their working understanding of education law matters. This was conducted in order to address the research questions of this research study in addition to focusing on what specific content to include in the textbook.

After the textbook writing team received the approval to proceed with this writing project, we spent approximately 18 months in completing this work. I led the writing project and was the contact person for all matters relating to it with our publisher, Cambridge University Press. I wrote my chapters and sections of the publication, along with the other co-authors, based on my research data collected in the research project. The final five chapters of the thesis were completed post publication of the textbook.

### **7.3. Answers to the three research questions**

Each of the research questions will now be answered in turn to deliberately tie the assertions already provided in a clear and focused response to each question. Most of the answers to the research questions below reside in the understanding of the construct of 'legal literacy' as described in Chapter 3 on the conceptual framework of this research project. It is a timely reminder to enumerate the research questions again below:

- **Research Question 1:** What do independent school teachers in Queensland believe to be their level of understanding concerning education law?
- **Research Question 2:** What are the empirically confirmed understandings of education law held by Queensland independent school educators?
- **Research Question 3:** What do Queensland independent school teachers need to know about education law?

### **7.3.1. Research question 1**

- **Research Question 1:** What do independent school teachers in Queensland believe to be their level of understanding concerning education law?

A key question of the survey asked participants about their self-identified levels of understanding of education law principles. Critically, this question was deliberately housed early in the survey, prior to the decisive scenario questions. This was in order for the participants to give a true reflection of their self-efficacy in responding to issues on education law. The data collected on this question was summarised in Table 5.7 (p. 113) and in Figure 5.6 (p. 114) in Chapter 5 of this thesis. Sixty-one participants responded to this question on the survey instrument. In answering this question, participants had a single choice on a sliding scale from having a “comprehensive and detailed understanding” to holding “no understanding” of education law issues.

Only one person (1.64% of people surveyed) responded as believing they had a “comprehensive and detailed understanding” of education law matters. Thirty-two participants, amounting to just over half of all respondents, believed that they had a “reasonable understanding” of education law issues. Approximately 52% of participants were therefore reasonably confident proceeding to the scenario questions believing that they were in a comfortable position to respond to education law questions. Those participants who felt that they neither held a “reasonable understanding” or a “limited understanding” but rather were not able to commit to one or the other amounted to 12 educators. There were a further 14 participants, representing 22.95% of all surveyed who positioned themselves in the “limited understanding” category. Finally, the remaining two participants suggested that they had “no understanding” of education law issues, accounting for 3.28% of the educators surveyed.

Overall, it can be asserted, based on the data, that the majority of participants surveyed held a positive self-belief about their understanding of education law matters. This is important when compared with the data emanating from Research Question 2, which immediately follows this section.

In summary, it is important to reiterate that only approximately 25% of those educators surveyed felt that they did not have sufficient understanding of education

law issues. A majority of the participants believe that they have an adequate understanding of education law principles. As will be discovered when examining the next research question, the participants, for the most part, were misguided in judging their level of understanding of education law. A vast majority of them have an inflated self-belief of their level of this understanding and do, in fact, need further training in how the law regulates their work as educators in schools.

### **7.3.2. Research question 2**

- **Research Question 2:** What are the empirically confirmed understandings of education law held by Queensland independent school educators?

This pivotal research question concerns the core of what this research is fundamentally about. Notwithstanding the participants' self-belief about their understanding of education law, the scenario questions were utilised to confirm their currently held understanding of education law principles. The data results from the scenario questions help answer this imperative question in this research. It is not the intention here to go through each scenario individually as that has been performed already in earlier chapters of this thesis. Instead, each topic is considered in deriving answers to this important research question.

The first education law topic captured in the survey was duty of care. This consisted of six scenarios, the most of all topics. As was explained in Chapter 6 of this thesis, it is regarded as the most important topic. While it stands on its own as an imperative topic in its own right, it also underpins other topics of education law. Almost 200 of the possible 270 coded responses for duty of care were either regarded as demonstrating "incorrect legal understanding" or having "no understanding". This equated to nearly 75% of all responses for this topic. Therefore, it can be affirmed that most participants, according to the data, do not have an adequate grasp of this area of education law. This is in contrast to the data presented in Table 5.8, where only approximately 16% said that they did not have confidence in dealing with duty of care matters in schools. Just over 75% of participants stated that they were either "confident" or "very confident" in dealing with this topic. It can be gathered by examining this data that the teachers surveyed, on the whole, do not have a satisfactory understanding of duty of care as it relates to

the school context. Furthermore, they have a highly inflated sense of their understanding of this topic compared to the empirically confirmed understandings shown in the scenario responses.

Another listed topic in Table 5.8 (p. 116) was negligence. This is the legally accurate name for duty of care. They are the same legal issue, as espoused earlier in this thesis. Interestingly, the data for the same issue of education law had very different results, further suggesting that the participants surveyed do not really understand the topic. If they did, you would assume that the figures presented for the two separate topics would be similar, if not identical.

A further topic explored in the survey was student protection and mandatory reporting. This topic is the one area where participants showed more understanding than in any other topic. It was interesting to note that 31% of participants demonstrated some legal understanding of this topic. This is possibly due to the fact, as highlighted in Chapter 6 of this thesis, that staff undergo annual compulsory training in this area, and it is therefore reasonable to expect that they hold a higher understanding of this area of education law. Despite this data, almost a further 40% of respondents presented incorrect or no understanding of this topic. That is surprising for no other reason than participants (it is assumed) hear this topic reviewed annually in their schools. This could plausibly be excused for those educators with very little experience. However, 88.5% of participants suggested that they have had over 5 years' experience working in schools, with over 50% of all respondents stating that they have had over 16 years' practitioner experience in schools. This makes that 40% of respondents who exhibited incorrect or no understanding even more incredulous.

This data is enlightening when compared with data presented in Table 5.8 (p. 116) which shows that 69% of survey participants stated that they were either "very confident" or "confident" in dealing with this issue of education law. Again, participants have an escalated level of belief of their understanding when compared with the research data that confirms otherwise.

The next topic examined was family law. It was interesting to note that 5% (two participants) presented responses that were coded as having a "high degree of legal understanding" (see Table 5.19, p. 146). Further, 24% (11 participants) responded with "some degree of legal literacy" in their answers to the scenario question. In addition, there were 22% of respondents who coded as having

“confused legal literacy”. Overall, these results were reasonably high when compared with some of the other scenarios used in the survey. These results mirror to a large extent the data for this topic reported in Table 5.8 (p. 116), which depicts 15 respondents being either “confident” or “very confident” in dealing with family law matters in their schools. This was one of only two topics that displayed similitude between what the teachers stated was their level of understanding and the actual confirmed data arising from the scenario, testing this level of legal literacy.

Following family law, criminal law was ventured in the survey. Results from this scenario produced only 29% of participants in the ‘top’ three categories or codes with the remaining 71% in the ‘lower’ two codes (see Table 5.20, p. 149). Within this topic there was some correlation between what participants asserted their level of legal understanding was with that of the confirmed understandings in the scenario answers. However, there was a longer tail in the confirmed scenario data, substantially more than what was indicated in their initial thinking on their level of confidence (see Table 5.8) in dealing with criminal law matters.

Discrimination was the next topic explored in the survey instrument. While 20 participants, representing nearly 45% were coded as either having “some degree of legal literacy” or “confused legal literacy”, there was a majority of respondents showing less legal literacy in this topic (see Table 5.21, p. 152). In a similar vein to the last topic, however, results showed approximately 31% initially indicated as having no or little confidence with this education law topic (see Table 5.8, p. 116). However, the confirmed data from the results showed approximately 56% had no or little understanding of this topic. Again, the participants indicated an exaggerated self-held level of legal understanding of discrimination law as it pertains to schools.

The results for professional conduct and the cognate topic of ethics were again similar to that above. Almost 50% of participants submitted that they felt “confident” or indeed, “very confident” in dealing with these matters of education law (see Table 5.8, p. 116). Although the confirmed data from the scenario question highlighted that only 9% had either a “high degree of legal literacy” or “some degree of legal literacy” (see Table 5.22, p. 155). Thereby, yet again, participants holding a substantively escalated view of their level of legal literacy compared with their actual confirmed levels.

Results for the next topic, of privacy law in schools, portrayed a comparable picture when considering the evident data. Half (50%) of participants proposed that

they were “very confident” or “confident” when dealing with privacy matters in schools (see Table 5.8, p. 116). Whereas the confirmed data from the scenario employed in the survey portrayed a different image. Only 9% of participants surveyed demonstrated “some degree of legal literacy” and even if one were to include the responses coded as “confused legal literacy” (where essentially participants could have simply guessed the correct response without the ability to provide a clear justification of the legal position) of 7% (see Table 5.23, p. 158), it only adds up to a total of 16% having some understanding of the education law topic in general. This is considerably lower than the 50% highlighted above. This would only indicate that the participants have an inflated self-held view of their own level of legal literacy concerning privacy law.

The final topic deployed in the survey was consumer protection. Results for this final topic in the scenario reflected those of the self-identified views of the participants. Only nine participants stated that they were either “very confident” or “confident” in working with consumer protection matters in schools (see Table 5.8, p. 116). A similar eight participants were noted as establishing “some degree of legal literacy” in the survey response (see Table 5.24, p. 161). This was only the second area of education law that depicted similar results between the two sources.

Overall, in summarising the answer to this second research question, it can be substantively asserted, that the participants of the survey, did, to a large extent, inflate their self-assessed level of understanding of education law. This is primarily due to the heightened sense of legal literacy that they felt they had as compared with the empirically confirmed understandings as evidenced in the scenario response data. There exists a perspicuous divide between the level of understanding of education law that the participants felt that they held at the time of completing the survey with that of the actual level of understanding demonstrated when responding to the scenario questions. The empirical data emanating from this research project confirms that the empirically confirmed level of understanding of education law held by the participants is low, and indeed, lower than their own self-held beliefs of same.

By gleaning analyses from the overall data (please refer to Table 5.25, p. 163, and Figure 5.22, p. 163), with nearly 66% or almost two-thirds of all responses to the scenario questions amounting to demonstrating either “incorrect legal understanding” or “no understanding”, it can be safely asserted again, that the level of education

legal literacy held by this group of independent school educators in Queensland is below satisfactory.

### **7.3.3. Research question 3**

- **Research Question 3:** What do Queensland independent school teachers need to know about education law?

The answers provided to Research Question 2 may elicit responses to this question by suggesting all areas of education law. Because of their low legal literacy evidenced in their survey responses, it would be simple to state that Queensland independent school teachers need to know about all topics covered under the heading of education law. However, such a sweeping representation is not sufficiently assistive in answering this question.

It is fair to state that these teachers need to know much more about education law than what they have demonstrated in their survey responses. Although, there are some areas of education law that they have been able to display an increased level of understanding. Such topics included: child protection and mandatory reporting; and family law. The data suggests that they know more about these two topics than they do the others. As was highlighted in Chapter 6 of this thesis, all of the main topics employed in the survey were covered in the textbook, as part of this study.

Consumer protection was a clear example in point of the exclusion of some topics. This was due to the fact that according to the data collected from participants (see Table 5.10, p. 121), this area of education law was the only topic that they were not interested in receiving any training in. A further example was right to information. This topic did not receive much interest from the survey participants in learning more about. Therefore, these two topics were not included in the textbook.

In considering the data depicted in Table 5.10 (p. 121), 13 out of the top 15 areas of education law that the survey participants showed interest in gaining further understanding in have been covered in the textbook. Parenthetically, the two topics not explored in the textbook were staffing or industrial matters and conducting investigations. Staffing issues is a mammoth topic in and of itself and it would be easy to write numerous volumes to cover all of the applicable employment law relating to schools and their staffs. It is an area that is more pertinent to senior leaders or indeed only school principals. Again, as signposted earlier, the co-author team did not intend to limit the scope of the audience of the textbook, by narrowing

the topics exclusively for school principals. The second topic of conducting investigations is again the remit of very few educators (often only at principal or deputy level working in schools) and therefore again, the co-authors did not want to taper the focus of the readers of the textbook. As set out in a later section of this chapter when considering limitations of this study, it is explained that one volume simply cannot include all facets of education law inherent to schools.

#### **7.4. The study's multiple contributions to knowledge**

"The role of the doctoral thesis as an original contribution to knowledge has traditionally signalled a high level of intellectual output within the academic discipline" (Baptista et al., 2015, p. 56). This section seeks to identify the various contributions to knowledge that this thesis makes. In particular, the following contributions are highlighted: theoretical knowledge; methodological knowledge; policy knowledge; and practice knowledge.

##### **7.4.1. *Theoretical knowledge***

The compulsion to make a contribution to theoretical knowledge in a qualitative thesis such as this is paramount. As Boer and colleagues (2015) stated "The need to make a "theoretical contribution" is a presumed mandate that permeates any researcher's career in the social sciences" (p. 1231). In this qualitative research project the goal was to ascertain the level of understanding of education law alleged by Queensland independent school teachers. The level of legal literacy owned by Queensland educators is an area of scholarship left largely undiscovered. To my knowledge, this narrow group of participants have not been studied before.

The contribution to theoretical knowledge that this study makes can be found in the collection of data by exercising a survey instrument aimed at educators in the state of Queensland, working in independent schools about their level of legal literacy. Furthermore, it is the conceptualisation of this construct 'legal literacy' and the framework that surrounds it, including the four related but distinct dimensions that cause its make-up. The conceptual framework presented provides new insights into the meaning and understanding of this concept. It follows then that it assists in helping to understand how, in one way, to gauge or to judge the level of understanding of education law held by a particular group of individuals. This

framework also proposes new theoretical knowledge that can be explored in identifying gaps in educators' understanding of education law and discovering ways in which those gaps may be filled.

Another unique contribution to theory that has been made is helping to define what it is that should be known about education law. Many authors (Knott, 2010; Stewart, 1996a; Teh 2014) have already stated that educators need to have some knowledge of education law. This study actually goes one step further and provides a definitive list of exactly what topics within the broader heading of education law that need or should be known by educators. These topics indeed have been included into the writing of the textbook that forms a key element of this research project.

It is in the unique study of independent school teachers in Queensland, together with a new understanding of the concept of 'legal literacy' (see Chapter 3 of this thesis) that makes a new contribution to theoretical knowledge. This study also contributes to the knowledge narrative by suggesting exactly which of education law educators need to know more about, as evidenced by their inclusion in the textbook.

#### **7.4.2. *Methodological knowledge***

It appears from the extant literature that this research is the first study examining the level of legal literacy retained by Queensland independent school teachers. This study highlights the methodology chosen (qualitative inquiry using surveys) in addition to utilising content analysis as a method to analyse the collected data. It is my understanding that this contemporaneous utility of methodological approaches has not been enacted before now.

Furthermore, the completion of a doctoral study with 'creative works' is also a relatively new concept in the academy. Whilst there are components herein that form part of a traditional thesis, the combination of these methodological approaches in addition to the central focus of the writing of a textbook on education law is a unique methodological contribution.

Research is a process of organised inquiry. Indeed, it involves the dynamic collaboration between the researcher and the participants that should be favourable for all stakeholders. It was important in the design of the survey that participants developed trust and faith in this process and could engage with the questions in a truthful and meaningful way. It is believed that this was achieved. Participants were happy to express their thoughts and understandings of the topics reviewed in the

survey. In particular, scenario questions were created in such a manner to elicit responses that not only answered the questions on face value, but more importantly, required participants to provide a justification to their answer. Responses received were such that it was clear to an informed observer that an assessment on whether or not the particular participant possessed an understanding or otherwise of the education law matter questioned could be made.

In summary, this study makes a contribution to methodological knowledge by combining the use of surveys in a qualitative study while adopting content analysis as the method used to analyse the collected data. Moreover, it further raises awareness of, and contributes to the public debate about, the option of completing a doctoral qualification with creative works as a key component, as opposed to the more traditional thesis approach.

#### **7.4.3. *Policy knowledge***

This study also contributes to the public policy narrative on the importance or otherwise of education law for educators in contemporary schooling. One could easily glean from this study that education law should be included as a subject, or at the very least, a large component of one in every initial teacher education degree in Australia. Authoritative bodies such as the Queensland College of Teachers whose remit it is to accredit all initial teacher education qualifications in this state would find the results from this piece of research informative and could introduce it into the wider debate about what should be included in a teaching degree qualification. Research such as that presented in this thesis is pivotal in making recommendations to prioritise the inclusion of such subject matter to all those studying to be professional teachers. Alternatively, it could pose an addition to further study, for example, at masters level, for teaching practitioners who wish to extend their working knowledge of the profession in meeting the needs of contemporary schooling. This method of equipping our future educational leaders forms part of the narrative around the magnitude of education law and its implications for schools.

#### **7.4.4. *Practice knowledge***

Broadly speaking, this thesis adds new knowledge to the discourse around education law. This research has sought, more specifically, to investigate the level of which educators working in Queensland independent schools understand education

law principles on a number of pertinent topics effecting their daily professional work. In conducting this investigation it has been revealed that Queensland independent school teachers only possess a limited understanding of these principles. A crucial inclusion to this study was the development and writing of a textbook on education law. The thinking behind this creation was to provide these teachers and other teachers working in other sectors, along with pre-service teachers and leaders working in schools, with an accessible resource to help augment this level of understanding. Since its publication, the textbook has now been placed in many notable libraries as a valuable resource (see Appendix H for the list of preeminent libraries where the textbook can be found).

Perspicacious thinkers have noted the increasing level of litigation involving schools in recent decades, both here in Australia and elsewhere (Davies, 2009; Teh, 2014). This trend is no doubt going to continue with our ever-increasing litigious society in which we live. Parents are now more prepared to press their views onto schools and if they remain unhappy with the outcomes emanating from such school decisions, they are now more ready to engage in lawsuits to claim what they believe is rightfully theirs (or that of their children). The creation of the textbook was always intended to obviate baseless fears (explained in Chapter 2 of this thesis) by increasing legal risk management while simultaneously arming educators with further knowledge about their rights and responsibilities concerning work endeavours. It is believed that in increasing this level of legal literacy among school actors, the fear of being embroiled in legal cases may be abated (Davies, 2009).

### **7.5. Limitations of the study**

As with all research studies of this magnitude, there are always apparent limitations. The first limitation of this study is in the scope of the creative work – the textbook. It was impossible to include all significant legal issues affecting educators, students or schools. There are other areas of education law, as discussed in Chapter 6 of this thesis, that were not incorporated due to space restrictions. Only those areas considered absolutely mandatory and/or based on the data collected were included in the final manuscript.

The second limitation is that of potential bias of participants. This is due primarily because participants of the survey had the choice whether or not to take part in the survey. It could be postulated that after reading the initial brief of the

survey instrument about educators' knowledge of education law, more of the participating respondents would have affirmed their choice if they had a prevailing interest in, or if they had an existing understanding of, education law. It therefore may not be fully reflective of another group of Queensland independent school teachers. That is the essential difference between using 'volunteers' compared to a completely random sample of participants.

The third limitation concerns the coding of the scenario responses. Because this was manually conducted by myself and a fellow supervisor of this inquiry, it is naturally open to interpretation. People do make mistakes of judgement, even when turning their minds to paying particular attention and applying due diligence to the job at hand. It is fathomable that another researcher may have coded one or more participant responses slightly differently using the codes provided. That is precisely why there were two people (and not just me) who coded the responses to ensure that there existed a strong correlation between the two sets of coded results.

The fourth and final limitation centres on the constructed definition of legal literacy that forms the premise of the conceptual framework of this study. Chapter 3 of this thesis discusses the concept of legal literacy and how the four dimensions identified help to frame this important construct for the purposes of this research. Definitions of concepts are rarely universally agreed upon. It could have been decided to include other dimensions such as administrative law decisions. These may not be as authoritative as common law, but are still used, to a lesser or greater extent, to guide policy.

## **7.6. Recommendations for further action**

### ***7.6.1. Recommendations for practice***

This research project provided the opportunity to ascertain the level of understanding of education law Queensland independent school teachers possess. Ultimately, the results posited quite a low level of legal literacy held by such educators. A number of recommendations have emanated from this study.

***Recommendation 1: Training for all teachers in their initial teacher education.***

Due to the clear identified need in this study for further enhancement of education law understanding, it is recommended that all initial teacher education programs have training in education law as a core component of the qualification. This may involve a whole subject devoted to the many complexities of this discipline or at least a weighty component of a subject dedicated to its content.

***Recommendation 2: Continual professional development for teachers.***

The law changes with time and advancements in technology. Cyberbullying is one example. To keep pace with these changes and abreast of law reform, it is recommended that teachers avail themselves of the professional development opportunities that are offered by reputable organisations. These opportunities can include those where an expert visits the school campus for all teachers/staff, or those that are offered off campus for that particular target audience, for example physical education teachers. This study has reprised the need for further training in education law and self-paced online courses could be an option in this regard. Considering child protection and mandatory reporting was one area identified in this research project as having a higher level of understanding, by virtue of the fact that teachers receive annual training in this area, this annual training could be expanded to include other areas of education law.

***Recommendation 3: Professional learning for school leaders.***

Another area for practice change is in the area of development for leaders and aspiring leaders in schools. There are many aspiring principal programs and dedicated professional development courses (Leete, 2022-23) for imparting education law knowledge. The textbook has already been used as part of the readings for such programs (Australia and New Zealand Education Law Association, 2023) but should be utilised as a resource for other said courses. These programs could be specifically targeted for leaders outlining the education law principles, as identified in this study, that they need to have an, or a deeper, understanding of.

This may also include a compulsory unit or significant component of one of a postgraduate degree in education dedicated to education law. Some educators choose to undertake further study at university level. This study has shown that there is a clear need that any advanced university degree must contain further education of the intersection of schools and the law. Legal literacy needs to be maintained and strengthened by all those working in schools, especially those in managerial positions.

***Recommendation 4: A formal process that provides copies of Federal Circuit and Family Court of Australia orders to respective schools.***

As identified earlier in Chapter 3 of this thesis (pp. 50-51), of the importance schools being made aware of any court orders and parenting plans, it is recommended that the Federal Circuit and Family Court, in particular, develops a formal process whereby the notification of such orders can be provided to the relevant school(s) of the children involved in such cases. This would be dependent on the court being made aware of the relevant schools at the time of the hearing. This would clearly assist the school in abiding by such orders, or more importantly legally, not breaching an order by say, for example, allowing a child to go home with Dad on Fridays where the order clearly instructs that Mum should collect the child on Fridays.

Any scholarly work attracts attention and should form part of the wider narrative on the topic. This study's results could be used to influence the policies and procedures of different schools and in different sectors. Furthermore, it may be viewed and interpreted more broadly to consider implications for the government school sector, both here in Queensland and also in other jurisdictions.

#### **7.6.2. Recommendations for future research**

***Recommendation 1: Compare other states and territories of Australia.***

The first recommendation for future research is to consider comparatively other jurisdictions within Australia to discover the differences, if any, of their level of legal literacy. The scope of this project was limited to Queensland. It would be interesting to ascertain if other jurisdictions had similar or higher levels of legal literacy held by their independent school teachers.

***Recommendation 2: Consider and compare other sectors within Queensland.***

Furthermore, it would be useful to research government school teachers or Catholic school teachers in Queensland and perform a comparative study between the sectors. Is the level of legal literacy of all teachers in Queensland reasonable similar or are there notable differences between the sectors? If there were discernible differences, further inquiry as to why that was the case would be a worthwhile study.

***Recommendation 3: Reviewing the effectiveness of the textbook as a learning tool.***

Thirdly, it would be worth investigating the effectiveness of the textbook in increasing the level of legal literacy. After some exposure to its content, it would be valuable in determining whether or not the introduction of the textbook actually does enhance the level of understanding of education law by its readers. Moreover, an inquiry into its effectiveness as a scholarly resource and/or preferred method of discovering new learnings would also prove to be a worthy academic exercise.

### **7.7. Chapter summary**

This chapter attempts to bring the entire research project together and based on the results and discussion already captured in Chapters 5 and 6 respectively of this thesis, purposely answers the three research questions of this study. It was conclusively discovered after considering the data in totality, that teachers working in Queensland independent schools reveal only a limited understanding of education law issues affecting schools. The various contributions to knowledge that this inquiry makes namely theoretical, methodological, policy and practice knowledge were then outlined. Limitations or boundaries of this research project were then provided. Finally, a discussion of the recommendations for future action both in terms of practical changes and further research has been explored.

## REFERENCES

- A obo V and A v NSW Department of School Education* (2000) NSW ADTAP 14 (Austl.).
- Abela v State of Victoria* (2013) FCA 832 (Austl.).
- Adu, P. (2019). *A step-by-step guide to qualitative data coding*. Routledge.
- Age Discrimination Act 2004* (Cth) (Austl.).
- Alex Purvis on behalf of Daniel Hoggan v New South Wales (Department of Education and Training)* (2003) HCA 62 (Austl.).
- An, Y., Kaplan-Rakowski, R., Yang, J., Conan, J., Kinard, W., & Daughrity, L. (2021). Examining K-12 teachers' feelings, experiences, and perspectives regarding online teaching during the early stage of COVID-19 pandemic. *Educational Technology Research and Development*, 69, 2589-2613.  
<https://doi.org/10.1007/s11423-021-10008-5>
- Andrews, N. (2015) *Contract law* (2nd ed.). Cambridge University Press.
- Anti-Discrimination Act 1991* (Qld) (Austl.).
- Atiyah, P. P. (1985). Common law and statute law. *Modern Law Review*, 48(1), 1-28.  
<http://dx.doi.org/10.1111/j.1468-2230.1985.tb00823.x>
- Australia and New Zealand Education Law Association. (2023). *Education law course shared documents: Google Drive*.  
[https://drive.google.com/drive/folders/17AIAYKHQKJDL4nPxj0SOn40xrrssSeUs?usp=drive\\_link](https://drive.google.com/drive/folders/17AIAYKHQKJDL4nPxj0SOn40xrrssSeUs?usp=drive_link)
- Australian Capital Territory Schools Authority v El Sheik* (2000) FCA 931 (Austl.).
- Australian Capital Territory Schools Authority v Raczkowski* (2001) ACTSC 61 (Austl.).

Australian Council for Educational Research. (2023). *Literacy and numeracy test for initial teacher education students*. Retrieved June 8, 2023,

<https://teacheredtest.acer.edu.au>

Australian Institute of Health and Welfare. (2022). *Mental health of young Australians 2022: Data insights*. <https://doi.org/10.25816/ggvz-vr80>

Australian Institute for Teaching and School Leadership. (2011). *Australian professional standards for teachers*. <https://www.aitsl.edu.au/standards>

Australian Legal Information Institute. (2023). *Cases and legislation*.

<https://www.austlii.edu.au>

*Ayoub v Downs* (1982) (SC(NSW) Common Law Division, unreported (Austl.).

Badenes-Ribera, L., Angelo Fabris, M., Martinez, A., McMahon, S., & Longobardi, C. (2022). Prevalence of parental violence toward teachers: A meta-analysis.

*Violence and Victims*, 37(3), 348-66. <https://doi.org/10.1891/vv-d-20-00230>

Baker, C., Deutsch, L., Endicott, C., Longwill, T., Stewart, J., & Wilson, W. (2018).

*The hands on guide: School principals legal guide*. Commerce Clearing House.

Bant, E. (2015). Statute and common law: Interaction and influence in light of the principle of coherence. *University of New South Wales Law Journal*, 38(1), 367-391.

[https://heinonline.org/HOL/Page?handle=hein.journals/swales38&div=17&gent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/swales38&div=17&gent=1&casa_token=&collection=journals)

Baptista, A., Frick, L., Holley, K., Remmik, M., Tesch, J., & Akerlind, G. (2015). The doctorate as an original contribution to knowledge: Considering relationships

- between originality, creativity, and innovation. *Frontline Learning Research*, 3(3), 55-67. <http://dx.doi.org/10.14786/flr.v3i3.147>
- Barker v State of South Australia* (1978) 19 SASR 83 (Austl.).
- Bartley v Haines* (1989) NSWSC, 15 March 1989, unreported (Austl.).
- Bazeley, P., & Jackson, K. (2013). *Qualitative data analysis with NVIVO* (2nd ed.). Sage.
- Beasley v Victoria Department of Education and Training (Anti-Discrimination)* (2006) VCAT 1050 (Austl.).
- Bennett, S. (2021a, June 23). Vaping trend among teens sweeps Qld high schools. *The Courier Mail*.
- Bennett, S. (2021b, July 2). Union confirms teacher sick leave up 20 per cent in two years, uni students rushed into roles. *The Courier Mail*.
- Bennett, S. (2021c, July 19). Border closures, nervous staff blamed for teacher shortages. *The Courier Mail*.
- Bennett, S. (2021d, July 29). Teachers at risk as assaults run wild. *The Courier Mail*, p. 3.
- Bernard, H. R., & Ryan, G. W. (2010). *Analzing qualitative data: Systematic approaches*. Sage.
- Best, R. (2001). Where child protection systems and schools meet. *Australia and New Zealand Journal of Law and Education*, 6(1 & 2), 3-14.  
[https://heinonline.org/HOL/Page?handle=hein.journals/anzled6&div=5&g\\_sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/anzled6&div=5&g_sent=1&casa_token=&collection=journals)
- BI v Board of Studies* (2000) NSWSC 921 (Austl.).

- Biddle, C., & Schafft, K. A. (2015). Axiology and anomaly in the practice of mixed methods work: Pragmatism, valuation, and the transformative paradigm. *Journal of Mixed Methods Research*, 94(4), 320-334.  
<https://doi.org/10.1177/1558689814533157>
- Bills v South Australia* (1985) 38 SASR 80 (Austl.).
- Birch, I., & Richter, I. (Eds). (1990). *Comparative school law*. Pergamon.
- Board v Victoria (Department of Education, Employment & Training)* (2002) VCAT 1097 (Austl.).
- Boer, B., & Gleeson, V. (1982). *The law of education*. Butterworths.
- Boer, H., Holweg, M., Kilduff, M., Pagell., Schmenner, R., & Voss, C. (2015). Making a meaningful contribution to theory. *International Journal of Operations and Production Management*, 35(9), 1231-1252. <https://doi.org/10.1108/IJOPM-03-2015-0199>
- Bolton, B. (2002). Schools, the internet and the law. *ANZELA Reporter*, 8(1), 29-52.
- Brown v Nelson* (1971) 69 LGR 20 (U.K.).
- Brown, D. (2019). Ethics. In C. Opie & D. Brown (Eds.), *Getting started in your educational research: Design, data production and analysis* (pp. 77-94). Sage.
- Brown, D., & Scaife, H. (2019). Understanding and applying qualitative data analysis. In C. Opie & D. Brown (Eds.), *Getting started in your educational research: Design, data production and analysis* (pp. 221-241). Sage.
- Bruner, D. Y., & Bartlett, M. J. (2008). Effective methods and materials for teaching law to preservice teachers. *Action in Teacher Education*, 30(2), 36-45.  
<http://dx.doi.org/10.1080/01626620.2008.10463490>

*Bujnowicz v Trustees of the Roman Catholic Church for the Archdiocese of Sydney*  
(2005) NSWCA 457 (Austl.).

Butler, D., & Mathews, B. (2007). *Schools and the law*. Federation Press.

Butlin, M. (2022, August, 11-12). *Legal obligations for principals (and teachers)*  
[Paper presentation]. EduTECH International Congress and Expo, Melbourne,  
Australia.

Butlin, M. (2023, August, 24-25). *Legal obligations for schools for business  
managers* [Paper presentation]. EduTECH International Congress and Expo,  
Melbourne, Australia.

Butlin, M., McNamara, N., & Anglin, K. (2021). *Law and ethics for Australian  
teachers*. Cambridge University Press.

Butlin, M., & Trimmer, K. (2018). The need for an understanding of education law  
principles by school principals. In K. Trimmer, R. Dixon, & Y. Findlay (Eds.),  
*The Palgrave handbook of education law for schools* (pp. 3-22). Palgrave  
Macmillan. [http://dx.doi.org/10.1007/978-3-319-77751-1\\_1](http://dx.doi.org/10.1007/978-3-319-77751-1_1)

Campbell, M., Butler, D., & Kift, S. (2008). A school's duty to provide a safe learning  
environment: Does this include cyberbullying? *Australia and New Zealand  
Journal of Law and Education*, 13(2), 21-32.

[https://heinonline.org/HOL/Page?handle=hein.journals/anzled13&div=16&g\\_s  
ent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/anzled13&div=16&g_s<br/>ent=1&casa_token=&collection=journals)

Carroll, A., Forrest, K., Sanders-O'Connor, E., Flynn, L., Bower, J. M., Fynes-Clinton,  
S., York, A., & Ziaei, M. (2022). Teacher stress and burnout in Australia:  
Examining the role of intrapersonal and environmental factors. *Social*

*Psychology of Education*, 25, 441-469. <https://doi.org/10.1007/s11218-022-09686-7>

*Carson v Minister of Education* (1989) 88 ALR 467 (Austl.).

*Catholic Education Office v Clarke* (2004) FCAFC 197 (Austl.).

*CD on behalf of SD v JK* (1994) EOC 92 (Austl.).

*CF (by her tutor Joanne Foster) v New South Wales (Department of Education)*  
(2003) (SC(NSW) No 11424/03, June 12, 2003, unreported (Austl.).

*Child Protection Act 1999* (Qld) s 59(6) (Austl.).

Christian Outreach College. (2009). *Contract of employment*. Available upon request from the author.

Christie, P., & Christie, S. (2008). Family law in the school. In Australia New Zealand Education Law Association, *Achieving Excellence: Lawyers and Educators Working Together* (pp. 375-388). Australia and New Zealand Education Law Association.

*Civil Liability Act 2003* (Qld) (Austl.).

Cohen, L., Manion, L., & Morrison, K. (2018). *Research methods in education* (8th ed.). Routledge.

*Commonwealth of Australia Constitution Act 1900* (Cth) (Austl.).

*Commonwealth v Introvigne* (1982) 150 CLR 258 (Austl.).

*Competition and Consumer Act 2010* (Cth) (Austl.).

Conte-Mills, K. (2010). Family law issues and the school: Views from the school and court. In *The Teaching Profession: Over Regulated?* (pp. 29-30). Australia and New Zealand Education Law Association (Inc.).

- Cox v New South Wales* (2007) NSWSC 471 (Austl.).
- Cranbrook School v Stanley* (2002) NSWCA 290 (Austl.).
- Cranston, N., & Ehrich, L. C. (Eds.). (2009). *Australian school leadership today*. Australian Academic Press.
- Creswell, J. W. (2014). *Research design: Qualitative, quantitative and mixed methods approaches* (4th ed., International Student Edition). Sage.
- Creswell, J. W., & Creswell, J. D. (2018). *Research design: Qualitative, quantitative and mixed methods approaches* (5th ed., Global Edition). Sage.
- Creswell, J. W., & Guetterman, T. C. (2021). *Educational research: Planning, conducting, and evaluating quantitative and qualitative research* (6th ed.). Pearson.
- Creswell, J. W., & Poth, C. N. (2018). *Qualitative inquiry and research design: Choosing among five approaches* (4th ed.). Sage.
- Crimes Act 1914* (Cth) (Austl.).
- Criminal Code Act 1995* (Cth) (Austl.).
- Criminal Code Act 1899* (Qld) (Austl.).
- Criminal Proceeds Confiscation Act 2002* (Qld) (Austl.).
- Crimmins v Stevedoring Industry Finance Committee* (1999) 200 CLR 1; 167 ALR 1 (Austl.).
- Currie, S., & Cameron, D. (1996). *Your law: A course in legal studies* (2nd ed.). Moreton Bay Publishing.
- Davidovitch, M., Koren, G., Fund, N., Shrem, M., & Porath, A. (2017). Challenges in defining the rates of ADHD diagnosis and treatment: Trends over the last decade. *BMC Pediatrics*, 17(1), 1–9. <https://doi.org/10.1186/s12887-017-0971-0>

Davies, A. (1997). Family Law Reform Act, 1995. *ANZELA Reporter*, 4(1), 3-20.

Davies, T. A. (2009). The worrisome state of legal literacy among teachers and administrators. *Canadian Journal for New Scholars in Education*, 2(1), 1-9.

Delibasic, S. (2021, July 19). Teens risk lives for TikTok vape vids. *The Courier Mail*.

Dempsey, I. (2003). The impact of the Disability Discrimination Act on school students with a disability in Australia. *Australia and New Zealand Journal of Law and Education*, 8(1), 35-44.

[https://heinonline.org/HOL/Page?handle=hein.journals/anzled8&div=9&sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/anzled8&div=9&sent=1&casa_token=&collection=journals)

Denzin, N. K., & Lincoln, Y. S. (2018). Part 3: Strategies of inquiry. In N. K. Denzin & Y. S. Lincoln (Eds.), *The Sage handbook of qualitative research* (5th ed., pp. 309-515). Sage.

Dickson, E. (2003). Understanding disability: An analysis of the influence of the social model of disability in the drafting of the Anti-Discrimination Act 1991 (Qld) and in its interpretation and application. *Australia and New Zealand Journal of Law and Education*, 8(1), 45-68.

[https://heinonline.org/HOL/Page?handle=hein.journals/anzled8&div=10&sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/anzled8&div=10&sent=1&casa_token=&collection=journals)

Dickson, E. (2004). Disability discrimination, unjustifiable hardship and students with disability-induced problem behaviour. *Australia and New Zealand Journal of Law and Education*, 9(2), 37-52.

[https://heinonline.org/HOL/Page?handle=hein.journals/anzled9&div=17&sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/anzled9&div=17&sent=1&casa_token=&collection=journals)

- Dickson, E. (2006). Disability standards for education and the obligations of reasonable adjustment. *Australia and New Zealand Journal of Law and Education*, 11(2), 23-42.  
<https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=c3b284fd46b22cff89ef3c550d28eba377ba3268>
- Dickson, E. (2018). The inclusion and exclusion of students with disability related problem behaviour in mainstream Australian schools. In K. Trimmer, R. Dixon, & Y. Findlay (Eds.), *The Palgrave handbook of education law for schools* (pp. 353-372). Palgrave Macmillan. [http://dx.doi.org/10.1007/978-3-319-77751-1\\_16](http://dx.doi.org/10.1007/978-3-319-77751-1_16)
- Dickson, E., Cumming, J., Wyatt-Smith, C., & Webster, A. (2021). Reasonable adjustment to assessment: What do Australian teachers need to know and consider? *International Journal of Law and Education*, 24, 62-79.
- Disability Discrimination Act 1992* (Cth) (Austl.).
- Disability Standards for Education 2005* (Cth) (Austl.).
- DM v New South Wales* (SC(NSW) No 30066, September 16, 1997, unreported (Austl.).
- Domestic and Family Violence Protection Act 2012* (Qld) (Austl.).
- Door to Door Sales Act 1966* (Qld) (Austl.).
- Drisko, J. M., & Maschi, T. (2016). *Content analysis*. Oxford University Press.
- Drugs Misuse Act 1986* (Qld) (Austl.).
- Duncan v Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn* (SC(ACT) SC101, October 14, 1998, unreported (Austl.).

- Earp, J. (2024, March 26). Record levels of offensive behaviour against school leaders [Short articles]. *Teacher*.  
[https://www.teachermagazine.com/au\\_en/articles/record-levels-of-offensive-behaviour-against-school-leaders?utm\\_source=CM&utm\\_medium=Bulletin&utm\\_campaign=2April](https://www.teachermagazine.com/au_en/articles/record-levels-of-offensive-behaviour-against-school-leaders?utm_source=CM&utm_medium=Bulletin&utm_campaign=2April)
- Eckes, S. E. (2008). Significant legal issues for inclusion in preservice teacher preparation. *Action in Teacher Education*, 30(2), 25-35.  
<http://dx.doi.org/10.1080/01626620.2008.10463489>
- Education (Accreditation of Non-State Schools) Act 2017* (Qld) (Austl.).
- Education (General Provisions) Act 2006* (Qld) (Austl.).
- Education (Queensland College of Teachers) Act 2005* (Qld) (Austl.).
- Education (Work Experience) Act 1996* (Qld) (Austl.).
- Edwards, J. (1996). Swings and roundabouts: Changing state and federal laws regulating employment and its termination. In *Education, Law and the Future: Proceedings of the Fifth ANZELA National Conference* (pp. 73-84). Australia and New Zealand Education Law Association (Inc.).
- Edwards v Hillier & Educang Ltd t/as Forrest Lake College* (2006) QADT 34 (Austl.).
- Edwards, J., Knott, A., & Riley, D. (Eds). (1997). *Australian schools and the law*. Law Book Company.
- Ellis, E. (2013). *Principles and practice of Australian law* (3rd ed.). Thomson Reuters.
- EM v St Barbara's Parish School* (2006) SAIRC 1 (Austl.).
- Esi, M. C. (2012). Axiological dimensions in the educational process. *Logos, Universality, Mentality, Education, Novelty, Section: Social Sciences*, 1(1), 73-

83. [http://lumenjournals.com/social-sciences/wp-content/uploads/2015/12/RLUMEN\\_Social\\_Sciences\\_2012\\_73-83.pdf](http://lumenjournals.com/social-sciences/wp-content/uploads/2015/12/RLUMEN_Social_Sciences_2012_73-83.pdf)

*Eskinazi v Victoria* (2003) VCC, 20 June 2003, unreported (Austl.).

*Evans v Minister for Education* (1984) WASC 374 (Austl.).

*Fair Work Act 2009* (Cth) (Austl.).

Faith Lutheran College. (2011). *Contract of employment*. Available upon request from the author.

*Family Law Act 1975* (Cth) (Austl.).

*Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) (Austl.).

*Family Law (Reform) Act 1995* (Cth) (Austl.).

Farrell, A. (1998). Bullying in early childhood settings. *ANZELA Reporter*, 5(1), 14-17.

Farrell, A. (2001). Legislative responsibility for child protection and human rights in Queensland. *Australia and New Zealand Journal of Law and Education*, 6(1 & 2), 15-24.

[https://heinonline.org/HOL/Page?handle=hein.journals/anzled6&div=6&g\\_sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/anzled6&div=6&g_sent=1&casa_token=&collection=journals)

*Federal Circuit and Family Court of Australia Act 2021* (Cth) (Austl.).

Findlay, N. M. (2007). In-school administrators' knowledge of education law.

*Education and Law Journal*, 17(2), 177-202.

<https://www.proquest.com/scholarly-journals/school-administrators-knowledge-education-law/docview/212958424/se-2>.

*Finney v Hills Grammar School* (1999) HREOCA 14 (Austl.).

- Finnis, J. (2011), *Natural law and natural rights* (2nd ed.). Oxford University Press.
- Flick, U. (2018). *An introduction to qualitative research* (6th ed.). Sage.
- Fombonne, E. (2018). The rising prevalence of autism. *The Journal of Child Psychology and Psychiatry*, 59(7), 717-720.  
<https://doi.org/10.1111/jcpp.12941>
- Food Act 2006* (Qld) (Austl.).
- Ford, D. (2004, December 1). School excursions: are they worth the risk? *Emil Ford & Co.*  
<http://www.emilford.com.au/imagesDB/wysiwyg/Excursions%20Article.pdf>
- Forlin, P. (1995). Health and safety law in Australia: Identifying a standard of liability in Australia from an international perspective. In D. Hopkins (Ed.), *Fourth national conference of the Australian and New Zealand Education Law Association* (pp. 120-132). Australian and New Zealand Education Law Association (Inc.).
- Gem v State of New South Wales* (2017) NSWDC 108 (Austl.).
- Geyer v Downs* (1977) 138 CLR 16 (Austl.).
- Gibbs, G. R. (2018). *Analysing qualitative data*. Sage.
- Gibson, A. (2018). *Introduction to Law – Law1101* (Vol. 1). Pearson Australia.
- Gisev, N., Bell, J. S., & Chen, T. F. (2013). Interrater agreement and interrater reliability: Key concepts, approaches, and applications. *Research in Social and Administrative Pharmacy*, 9(3), 330-338.  
<https://doi.org/10.1016/j.sapharm.2012.04.004>

Goldkuhl, G. (2012). Pragmatism vs interpretivism in qualitative information systems research. *European Journal of Information Systems*, 21(2), 135-146.

<https://doi.org/10.1057/ejis.2011.54>

Goody, J. (1975). *Literacies in traditional societies*. Cambridge University Press.

Goyder, J. (1986). Surveys on surveys: Limitations and potentialities. *Public Opinion Quarterly*, 50(1), 27-41. <https://doi.org/10.1086/268957>

*Gray v Queensland* (SC(Qld) No 1993/2000, December 15, 2000, unreported (Austl.).

Gray, D. E. (2018). *Doing research in the real world* (4th ed.). Sage.

Green, L. (1998). The functions of law. *Cogito*, 12(2), 117-124.

<https://doi.org/10.5840/cogito19981227>

*Gregor v Department of Education, Department of Infrastructure, & Hopetown Secondary College Council* (1997) VADT 23 (Austl.).

*Griffin v The Catholic Education Office* (1998) EOC 92-928 (Austl.).

*Gugiatti v Servite College Inc* (2004) WASCA 5 (Austl.).

*H v Pennell and South Australia* (1987) 46 SASR 158 (Austl.).

*Haines v Leves* (1987) 8 NSWLR 467 (Austl.).

Hamilton, J. (2002). Discrimination and the enrolment process - who is in the wrong?

In D. Stewart (Ed.), *Legal Risk Management Safety, Security and Success in Education: Proceedings of the 11th Annual Conference of the Australia and New Zealand Education Law Association* (pp. 329-350). GSM Press.

Hamilton, J., & Smith, F. (2002). The schoolyard fight: Duty of care owed by

teachers. *Australia and New Zealand Journal of Law and Education*, 7(1), 88-90.

Harding, J. (2019). *Qualitative data analysis: From start to finish* (2nd ed.). Sage.

Haung, F. L., Lloyd Eddy, C., & Camp, E. (2017). The role of the perceptions of school climate and teacher victimization by students. *Journal of Interpersonal Violence*, 35(23-24), 5526-5551.

<https://doi.org/10.1177%2F0886260517721898>

Healy, K. (1998). Addressing bullying at the school level through multiple systems. *ANZELA Reporter*, 5(1), 18-22.

Hesse-Biber, S. N. (2017). *The practice of qualitative research* (3rd ed.). Sage.

Hewitt, B., Baxter, J., & Western, M. (2005). Marriage breakdown in Australia: The social correlates of separation and divorce. *Journal of Sociology*, 41(2), 163-183. <http://dx.doi.org/10.1177/1440783305053235>

*Hills Grammar School v Human Rights and Equal Opportunity Commission* (2000) FCA 658 (Austl.).

Hinchy, R. (2015). *The Australian legal system: History, institutions and method* (2nd ed.). Thomson Reuters.

Holden, S. (2008). Duty of care. *Professional Educator*, 7(1), 18-21.

<https://search.informit.org/doi/10.3316/aeipt.167450>

Hopkins, D. (2008, April). *The legal obligations of a teacher*.

<http://www.vit.vic.edu.au/SiteCollectionDocuments/PDF/Legal-obligations-of-a-teacher.pdf>

*Horne v Queensland* (1995) ATR 81-343 (Austl.).

*Hurst v Queensland* (2006) FCAFC 100 (Austl.).

*Hurst and Devlin v Education Queensland* (2005) FCA 405 (Austl.).

*I on behalf of of BI v State of Queensland* (2006) QADT 19 (Austl.).

Imber, M. (2008). Pervasive myths in teacher beliefs about education law. *Action in Teacher Education*, 30(2), 88-97.

<http://dx.doi.org/10.1080/01626620.2008.10463495>

*Industrial Relations Act 2016* (Qld) (Austl.).

*Information Privacy Act 2009* (Qld) (Austl.).

Jackson, J., & Varnham, S. (2007). *Law for educators: School and university law in Australia*. LexisNexis Butterworths.

Johnson, P. (2002). Disability discrimination law and occupational health and safety law: How to reconcile the two? In D. Stewart (Ed.), *Legal Risk Management Safety, Security and Success in Education: Proceedings of the 11th Annual Conference of the Australia and New Zealand Education Law Association* (pp. 277-286). GSM Press.

*K v N School (No. 3)* (1996) 1 QADR 620 (Austl.).

Karanxha, Z., & Zirkel, P. A. (2008). The case law on student teachers' rights. *Action in Teacher Education*, 30(2), 46-58.

<http://dx.doi.org/10.1080/01626620.2008.10463491>

Kaushik, V., & Walsh, C. (2019). Pragmatism as a research paradigm and its implications for social work research. *Social Sciences*, 8(9), 255.

<https://doi.org/10.3390/socsci8090255>

Keefe, E. B., & Copeland, S. R. (2011). What is literacy? The power of a definition.

*Research and Practice for Persons with Severe Disabilities*, 36(3-4), 92-99.

<http://doi.org/10.2511/0274948118000824507>

Keefe, M. (2003). The principal's governance of inclusion and the requirements of the disability discrimination legislation: Are they worlds apart? *Australia and New Zealand Journal of Law and Education*, 8(1), 69-76.

[https://heinonline.org/HOL/Page?handle=hein.journals/anzled8&div=11&g\\_se nt=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/anzled8&div=11&g_se nt=1&casa_token=&collection=journals)

Kelsen, H. (2009). *General theory of law and state*. The Lawbook Exchange.

Kerr, J. (2021, June 23). Beenleigh High students suspended for using sneaky pen-like devices. *The Courier Mail*.

*Kiefel v State of Victoria* (2013) FCA 1398 (Austl.).

Kilham, C., & Watson, L. (2014, December). *The impact of online learning about the disability standards for education on Australian school staff*. Paper presented at the Annual Conference of the Australian Association for Research in Education, Brisbane, Qld, Australia.

Knott, A. (1998). Bullying, harassment and violence in schools - legal options for victims. *ANZELA Reporter*, 5(1), 23-31.

Knott, A. (2010). Regulation of the school teaching profession 1970-2010 (Mid-career reflections). In *Australian & New Zealand Education Law Association 19th Annual Conference* (pp. 51-52). Australia and New Zealand Education Law Association (Inc.).

Kokkinou, A., & Cranage, D. A. (2011). Modeling human behavior in customer-based processes: The use of scenario-based surveys. *Proceedings of the 2011*

*Winter Simulation Conference (WSC)*, (pp. 683-689).

<https://doi.org/10.1109/WSC.2011.6147796>

*Kretschmar v Queensland* (1989) ATR 80 (Austl.).

Krippendorff, K. (2013). *Content analysis: An introduction to its methodology* (3rd ed.). Sage.

Kumar, R. (2019). *Research methodology: A step-by-step guide for beginners* (5th ed.). Sage.

Kutsyuruba, B., Murray, J., & Hogenkamp, S. (2019). Understanding pre-service teachers' legal literacy and experiences with legal issues in practicum settings: An exploratory study. *Canadian Journal of Educational Administration and Policy*, 191, 54-71.

<https://journalhosting.ucalgary.ca/index.php/cjeap/article/view/61770>

*L v Minister for Education for the State of Queensland (No. 2)* (1995) 1 QADR 207 (Austl.).

Lang, K. (2024, March 22). Just sick of being target of violence: School principals under stress. *The Courier Mail*, p. 3.

Leavy, P. (2017). *Research design: Quantitative, qualitative, mixed methods, arts-based, and community-based participatory research approaches*. The Guilford Press.

Leete, N. S. (2022). *New Zealand secondary school principals' understanding and application of laws relating to student discipline: A socio-legal mixed methods study* [Doctoral Dissertation, University of Canterbury].

<https://ir.canterbury.ac.nz/server/api/core/bitstreams/8d3a5fb1-48d5-4581-b6bd-229b4b33488c/content>

Leete, N. S. (2022-23). Exploring principals' experiences of legal learning in relation

to student discipline. *International Journal of Law and Education*, 25, 24-42.

Legal Aid Queensland. (2023). *Get legal help*. Retrieved June 29, 2023,

<https://www.legalaid.qld.gov.au/Get-legal-help/Legal-problems-we-can-help-with>

Leschied, A. W., Lewis, W. J., & Dickinson, G. (2000). Assessing educators' self-reported levels of legal knowledge, law-related areas of concern and patterns of accessing legal information: Implications for training and practice. *Journal of Educational Administration and Foundations*, 15(1), 38.

<https://www.proquest.com/docview/214080813?pq-origsite=gscholar&fromopenview=true&sourcetype=Scholarly%20Journals>

Lewin, C. (2011). Understanding and describing quantitative data. In B. Somekh & C. Lewin (Eds.), *Theory and methods in social research* (2nd ed., pp. 220-255). Sage.

Lindsay, K. (1997). Age discrimination in education: A critique of law and policy. *Australia and New Zealand Journal of Law and Education*, 2(1), 59-68.

Lindsay, K., & Keeffe-Martin, M. (2002). Issues in Australian disability discrimination case law and strategic approaches for the lawful management of inclusion. *Australia and New Zealand Journal of Law and Education*, 7(2), 141-160.

*Lisa Eskinazi v Victoria* (County Court(Vic), No 06471, June 20, 2003, unreported (Austl.).

Littleton, M. (2008). Teacher's knowledge of education law. *Action in Teacher Education*, 30(2), 71-78. <https://doi.org/10.1080/01626620.2008.10463493>

Lohse, S. (2017). Pragmatism, ontology, and philosophy of the social sciences in practice. *Philosophy of the Social Sciences*, 47(1), 3-27.

<https://doi.org/10.1177/0048393116654869>

Longwill, T. (2016, October, 13). Legal issues concerning transgender students.

Paper presented at annual LawSense School Law Queensland conference, Brisbane, Qld, Australia.

*Lucy Klewer v The Trustees of the Roman Catholic Church for the Diocese of Lismore* (2005) NSWSC 773 (Austl.).

Luntz, H. (2003). Looking back at accident compensation: An Australian perspective.

*Victoria University of Wellington Law Review*, 34(2), 279-292.

<http://dx.doi.org/10.26686/vuwlr.v34i2.5786>

Maarouf, H. (2019). Pragmatism as a supportive paradigm for the mixed research approach: Conceptualising the ontological, epistemological, and axiological stances of pragmatism. *International Business Research*, 12(9), 1-12.

<https://doi.org/10.5539/ibr.v12n9p1>

Maene, C. (2023). Qualitative content analysis: A practical introduction. In P. A. J. Stevens (Ed.), *Qualitative data analysis: Key approaches* (pp. 239-270). Sage.

Maguire, K. (2019). Methodology as personal and professional integrity: research design for practitioner doctorates. In C. Costley & J. Fulton (Eds.), *Methodologies for practice research: Approaches for professional doctorates* (pp. 95-115). Sage.

*MalaxEtxebarria on behalf of MalaxEtxebarria v Queensland* (2006) QSC 286 (Austl.).

Marinac, A., Simpson, B., Hart, C., Chisholm, R., Nielson, J., & Brogan, M. (2018).

The ethical lawyer. In *Learning Law* (pp. 225-252). Cambridge University Press.

<https://researchdirect.westernsydney.edu.au/islandora/object/uws:53523>

*Marriage Amendment (Definition and Religious Freedoms) Act, 2017* (Cth) (Austl.).

*Martinovic v Ministry of Education* (1989) EOC 92-264 (Austl.).

Mason, J. (2018). *Qualitative researching* (3rd ed.). Sage.

Mathews, B., Walsh, K., Butler, D., & Farrell, A. (2006). Mandatory reporting by

Australian teachers of suspected child abuse and neglect: Legislative requirements and questions for future direction. *Australia and New Zealand Journal of Law and Education*, 11(2), 7-22.

<https://eprints.qut.edu.au/224939/1/6416.pdf>

Mawdsley, R. D. (2012). *Legal problems of religious and private schools* (6th ed.).

Education Law Association.

Mawdsley, R. D., & Cumming, J. J. (2008). The origins and development of

education law as a separate field of law in the United States and Australia.

*Australia & New Zealand Journal of Law & Education*, 13(2), 7-20.

[https://heinonline.org/HOL/Page?handle=hein.journals/anzled13&div=15&g\\_s ent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/anzled13&div=15&g_s ent=1&casa_token=&collection=journals)

McCann, P. (2006). *Principals' understanding of aspects of the law impacting on the administration of Catholic schools: Some implications for leadership* [Doctoral Dissertation, Australian Catholic University].

<https://doi.org/10.4226/66/5a94b9815e4d5>

McCarthy, M. (2008). One model to infuse the law in teacher education. *Action in Teacher Education*, 30(2), 59-70.

<http://dx.doi.org/10.1080/01626620.2008.10463492>

Mead, J. F. (2008). Teacher litigation and its implications for teachers legal literacy. *Action in Teacher Education*, 30(2), 79-87.

<http://dx.doi.org/10.1080/01626620.2008.10463494>

Miles, M., Huberman, A. M., & Saldana, J. (2014). *Qualitative data analysis: A methods sourcebook* (3rd ed.). Sage.

Militello, M., & Schimmel, D. (2008). Toward universal legal literacy in American schools. *Action in Teacher Education*, 30(2), 98-106.

<http://dx.doi.org/10.1080/01626620.2008.10463496>

*Miller v South Australia* (1980) 24 SASR 416 (Austl.).

Mills, G. E., & Gay, L. R. (2019). *Educational research: Competencies for analysis and applications* (12th ed.). Pearson.

*Minns v State of New South Wales* (2002) FMCA 60 (Austl.).

*Misfud & New South Wales Department of Education and Training* (2001) NSWIRC 1047 (Austl.).

Mockler, N. (2022). *Constructing teacher identities: How the print media define and represent teachers and their work*. Bloomsbury Publishing.

*MT v Director General, NSW Department of Education and Training* (2004) NSWADT 194 (Austl.).

*Munro v Anglican Church of Australia, Diocese of Bathurst* (1987) NSWCA, 14 May 1987, unreported (Austl.).

*Murphy v New South Wales* (2000) HREOC (Austl.).

Murray, B. (1997). Failing to report: Potential action for breach of the statutory duty to report child abuse in Victoria. *Australia and New Zealand Journal of Law and Education*, 2(1), 89-100.

Naidoo, P. (2018). *Legal literacy: Auckland secondary school principals' understanding of education law* [Master's thesis, Auckland University of Technology].  
<https://openrepository.aut.ac.nz/bitstream/handle/10292/11627/NaidooP.pdf?sequence=4&isAllowed=y>

National Health and Medical Research Council, Australian Research Council, Universities Australia. (2007, updated 2018). *National statement on ethical conduct in human research*. Commonwealth of Australia.  
<https://www.nhmrc.gov.au/about-us/publications/national-statement-ethical-conduct-human-research-2007-updated-2018#block-views-block-file-attachments-content-block-1>

National Health and Medical Research Council, Australian Research Council, Universities Australia. (2018a). *Australian code for the responsible conduct of research*. Commonwealth of Australia. <https://www.nhmrc.gov.au/about-us/publications/australian-code-responsible-conduct-research-2018#block-views-block-file-attachments-content-block-1>

National Health and Medical Research Council, Australian Research Council, Universities Australia. (2018b). *Guide to managing and investigating potential breaches of the Australian code for the responsible conduct of research*. Commonwealth of Australia. <https://www.nhmrc.gov.au/about->

[us/publications/australian-code-responsible-conduct-research-2018#block-views-block-file-attachments-content-block-1](https://publications.australian-code-responsible-conduct-research-2018#block-views-block-file-attachments-content-block-1)

*New South Wales v Amery* (2006) HCA 14 (Austl.).

*New South Wales (Department of Education and Training) v Alex Purvis on behalf of Daniel Hoggan* (2001) 186 ALR 69 (Austl.).

*New South Wales v Finnan* (2004) NSWCA 314 (Austl.).

*New South Wales v Lepore* (2003) 212 CLR 511 (Austl.).

Newlyn, D. J. (2006). *The legalisation of education: A study of New South Wales teachers and their professional development in the area of law* [Doctoral Dissertation, University of Wollongong]. <https://ro.uow.edu.au/theses/697/>

Nolan, B. C., & Spencer, J. D. (Eds.). (1997). *Schools and litigation: Developing legal policies*. P.C.S. Publications.

O'Connor, E. A., Yasik, A. E., & Horner, S. L. (2016). Teachers' knowledge of special education laws: What do they know? *Insights into Learning Disabilities*, 13(1), 7-18. <https://files.eric.ed.gov/fulltext/EJ1103671.pdf>

O'Leary, Z. (2017). *The essential guide to doing your research project* (3rd ed.). Sage.

Opie, C. (2019). Carrying out educational research – The start of your journey. In C. Opie & D. Brown (Eds.), *Getting started in your educational research: Design, data production and analysis* (pp. 1-22). Sage.

Orr, J. L. (2020). *University law: Pursuing fruits of knowledge* [Doctoral Dissertation, Queensland University of Technology].

[https://eprints.qut.edu.au/200455/1/John\\_Orr\\_Thesis.pdf](https://eprints.qut.edu.au/200455/1/John_Orr_Thesis.pdf)

*Oyston v St Patricks College* (2013) NSWCA 324 (Austl.).

*P v Director-General, Department of Education* (1995) 1 QADR 755 (Austl.).

Pace, A., & Blanco, R. (2022). ICT contracts in 2022: Key matters for school ICT managers to consider in the current risk environment. *Proceedings of the LawSense School ICT Law Conference: Balancing Your Obligations and Rights in Supporting Students and Mitigating Your Risk*. LawSense.

Panke, D. (2018). *Research design and method selection: Making good choices in the social sciences*. Sage.

*Parkin v Australian Capital Territory Schools Authority* (2005) ACTSC 3 (Austl.).

Parodi, K. B., Holt, M. K., Green, J. G., Porche, M. V., Koenig, B., & Xuan, Z. (2022). Time trends and disparities in anxiety among adolescents, 2012-2018. *Social Psychiatry and Psychiatry Epidemiology*, 57, 127-137.

<https://doi.org/10.1007/s00127-021-02122-9>

*Penalties and Sentences Act 1992* (Qld) (Austl.).

Pepper, R. (2021). Understanding 'duty of care' – building teacher confidence in the 'risk society'. *International Journal of Law and Education*, 24, 44-61.

Petty, T. (2016). The significance of principal preparation and education law: Principals' perceptions of students' rights. *National Teacher Education Journal*, 9(1), 25-38.

*Police Powers and Responsibilities Act 2000* (Qld) (Austl.).

Pound, R. (2010). *An introduction to the philosophy of law* [eBook]. The Online Distributed Proofreading Team. <http://www.pgdp.net>

Pratt, S. F. (2016). Pragmatism as ontology, not (just) epistemology: Exploring the full horizon of pragmatism as an approach to IR theory. *International Studies Review*, 18(3), 508-527. <https://doi.org/10.1093/isr/viv003>

*Privacy Act 1988* (Cth) s 6 (Austl.).

*Privacy Amendment (Notifiable Data Breaches) Act 2017* (Cth) (Austl.).

*Public Health (Tobacco and Other Products) Act 2023* (Cth) (Austl.).

Punch, K. F. (2014). *Introduction to social research: Quantitative and qualitative approaches* (3rd ed.). Sage.

Punch, K. F., & Oancea, A. (2014). *Introduction to research methods in education* (2nd ed.). Sage.

*Purvis v State of New South Wales (Department of Education and Training)* (2003) 202 ALR 133; 217 CLR 92 (Austl.).

Queensland College of Teachers. (n.d.). *Suspension of registration or permission to teach for unacceptable risk of harm*. Queensland Government Department of Education.

[https://cdn.qct.edu.au/pdf/Suspension\\_of\\_registration\\_or\\_PTT\\_Guideline.pdf](https://cdn.qct.edu.au/pdf/Suspension_of_registration_or_PTT_Guideline.pdf)

Queensland College of Teachers. (2008). *Code of ethics for teachers*. Queensland Government Department of Education.

<https://cdn.qct.edu.au/pdf/CodeOfEthicsPoster20081215.pdf>

Queensland College of Teachers. (2017). *Discipline of teachers for behaviour below the standard expected of a teacher*. Queensland Government Department of Education.

[https://cdn.qct.edu.au/pdf/Suspension\\_of\\_registration\\_or\\_PTT\\_Policy.pdf](https://cdn.qct.edu.au/pdf/Suspension_of_registration_or_PTT_Policy.pdf)

Queensland College of Teachers. (2019). *Professional boundaries: A guideline for Queensland teachers*. Queensland Government Department of Education.

<https://cdn.qct.edu.au/pdf/Professional%20Boundaries%20-%20A%20Guideline%20for%20Queensland%20Teachers.pdf>

Queensland College of Teachers. (2022). *Registration summary – 2022*.

Queensland Government Department of Education.

<https://cdn.qct.edu.au/pdf/registration/RegistrationSummary2022.pdf>

Queensland College of Teachers. (2023). *What is renewal?* Registration.

Queensland Government Department of Education. Retrieved June 8, 2023,

<https://www.qct.edu.au/registration/what-is-renewal>

Queensland Government. (n.d.). *Queensland legislation*. Office of the Queensland

Parliamentary Counsel. Retrieved June 14, 2023,

<https://www.legislation.qld.gov.au>

Queensland Government. (2023). *Senior subjects*. Queensland Curriculum and

Assessment Authority. Retrieved July 4, 2023,

<https://www.qcaa.qld.edu.au/senior/senior-subjects>

*Race Discrimination Act 1975* (Cth) (Austl.).

*Ramsay v Larsen* (1964) 111 CLR 16 (Austl.).

Ramsay, I., & Shorten, A. (1996). *Education and the law*. Butterworths.

Rayner, M. (1996). Student's rights. *Education, law and the future: Proceedings of the Fifth ANZELA National Conference* (pp. 19-30). Australia and New Zealand Education Law Association (Inc.).

*Regulatory Offences Act 1985* (Qld) (Austl.).

Relationships Australia. (n.d.). *Support services*.

<https://www.relationships.org.au/what-we-do/#support-services>

*Richards v Victoria* (1969) VR 136 (Austl.).

*Right to Information Act 2009* (Qld) (Austl.).

Roksa, J., & Velez, M. (2012). A late start: Delayed entry, life course transitions and bachelor's degree completion. *Social forces*, 90(3), 769-794.

<https://doi.org/10.1093/sf/sor018>

Roser, M., & Ortiz-Ospina, E. (2016). Literacy. *Our World in Data*.

<https://ourworldindata.org/literacy>

Russo, C. J. (2019). The rights to educational self-determination under the Individuals with Disabilities Education Act. *International Journal of Inclusive Education*, 23(5), 546-558. <https://doi.org/10.1080/13603116.2019.1580926>

Ruwhiu, D., & Cone, M. (2010). Advancing a pragmatist epistemology in organisational research. *Qualitative Research in Organisations and Management: An International Journal*, 5(2), 108-126.

<https://doi.org/10.1108/17465641011068884>

*S on behalf of M & C v Director General, Department of Education & Training* (2001) NSWADT 43 (Austl.).

*S v The Corporation of the Synod of the Diocese of Brisbane* (2001) QSC 473 (Austl.).

Salidu, M. (1994). Discrimination and schools: The legislation and its effects. In D. Stewart (Ed.), *Third Annual Conference of The Australian and New Zealand Education Law Association* (pp. 173-193). Queensland University of Technology Press.

*Samin v Queensland and Rich v Queensland* (2003) 195 ALR 412 (Austl.).

Scaife, J. (2019). Research, theory and worldviews. In C. Opie & D. Brown (Eds.), *Getting started in your educational research: Design, data production and analysis* (pp. 23-54). Sage.

School Governance. (2023). *Waivers and risk warnings in the school context*.

[https://www.schoolgovernance.net.au/news/waivers-and-risk-warnings-in-the-school-context?utm\\_campaign=EDU%20Marketing%20Campaign%20Q2%20FY22&utm\\_medium=email&hsenc=p2ANqtz-9d7lluJzHXOCBtzqAKbmzNFbJOlpNNuxNVWXZbTJ1l8c9n7Q5WMaWp1n1gKicda8v4XcKqpDPT1RVpSuPKOlBkZ8lbA&hsmi=284616886&utm\\_content=284616886&utm\\_source=hs\\_email](https://www.schoolgovernance.net.au/news/waivers-and-risk-warnings-in-the-school-context?utm_campaign=EDU%20Marketing%20Campaign%20Q2%20FY22&utm_medium=email&hsenc=p2ANqtz-9d7lluJzHXOCBtzqAKbmzNFbJOlpNNuxNVWXZbTJ1l8c9n7Q5WMaWp1n1gKicda8v4XcKqpDPT1RVpSuPKOlBkZ8lbA&hsmi=284616886&utm_content=284616886&utm_source=hs_email)

Schreurs, T. (2019, October, 15). *Privacy, school data and student information*.

Paper presented at the annual LawSense School Law Queensland conference, Brisbane, Qld, Australia.

Scribner, S., & Cole, M. (1978). Unpacking literacy. *Social Science Information*, 17(1), 19-40. <https://doi.org/10.1177/053901847801700102>

*Sex Discrimination Act 1984* (Cth) (Austl.).

*Sievwright v State of Victoria* (2012) FCA 118 (Austl.).

Silverman, D. (2017). *Doing qualitative research* (5th ed.). Sage.

Silverman, D., & Marvasti, A. (2008). *Doing qualitative research: A comprehensive guide*. Sage.

Simmonds, R. (2005). Is our right to privacy at risk in a technology world? In *Free Speech, Privacy and Property Rights in Education* (pp. 11-35). Promaco Conventions Pty Ltd.

- Skowronski, K. P. (2019). Does the pragmatist reflection on the ethical and aesthetic values need the Kantian axiology for its (pragmatist) future developments? In K. P. Skowronski & S. Pihlstrom (Eds.), *Pragmatist Kant-Pragmatism, Kant, and Kantianism in the Twenty-first Century* (pp. 251-271). Nordic Pragmatism Network. [https://nordprag.org/wp-content/uploads/2019/01/NSP4\\_Skowronski.pdf](https://nordprag.org/wp-content/uploads/2019/01/NSP4_Skowronski.pdf)
- Slee, P. (1998). Bullying in Australian schools. *ANZELA Reporter*, 5(1), 3-6.
- Sleigh, D., & Fulton, F. (2001). *The professional principal's guide to the law in the 21<sup>st</sup> century*. The Professional Reading Guide for Educational Administrators.
- Somekh, B., & Lewin, C. (2011). The glossary. In B. Somekh & C. Lewin (Eds.), *Theory and methods in social research* (2nd ed., pp. 320-331). Sage.
- Squelch, J., & Goldacre, L. (2009). School prospectuses and the potential liability of private schools under section 52 of the Trade Practices Act 1974 (Cth). *International Journal of Law and Education*, 14(1), 39-50. [https://heinonline.org/HOL/Page?handle=hein.journals/anzled14&div=7&q\\_se nt=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/anzled14&div=7&q_se nt=1&casa_token=&collection=journals)
- St Anthony's Primary School v Hadba* (2005) 216 ALR 415 (Austl.).
- Stafford, N. (2004). What can a school do to ensure student and staff wellbeing and safety in schools in light of the Australian High Court's decision in *Purvis v State of NSW*. In *Innovation and Internationalisation: Pushing the Boundaries of Education Law* (pp. 451-466). Australia and New Zealand Education Law Association (Inc.).
- State of Queensland. (2010). *Code of conduct for the Queensland public service*. Queensland Public Service Commission.

[https://www.forgov.qld.gov.au/\\_data/assets/pdf\\_file/0024/182292/code-of-conduct.pdf](https://www.forgov.qld.gov.au/_data/assets/pdf_file/0024/182292/code-of-conduct.pdf)

*State of Victoria v Bryar* (1970) ALR 809 (Austl.).

*Stephanie Travers by her next friend, Wendy Travers v New South Wales* (2001) FMCA 18 (Austl.).

Stewart, D. (1996a). Principals' knowledge of law affecting schools. *Australia and New Zealand Journal of Law and Education*, 1(1), 111-129.

Stewart, D. (1996b). *School principals and the law: A study of the legal knowledge needed and held by principals in government schools in Queensland* [Doctoral Dissertation, Queensland University of Technology]. QUT ePrints.  
<https://eprints.qut.edu.au/36533/>

Stewart, D. (1998). Legalisation of education: Implications for principals' professional knowledge. *Journal of Educational Administration*, 36(2), 129-145.  
<http://dx.doi.org/10.1108/09578239810204354>

Stewart, D. (2003). Inclusion: How far does a school have to go? Ensuring best practice: The case of 'I'. *Australia and New Zealand Journal of Law and Education*, 8(1), 77-86.  
[https://heinonline.org/HOL/Page?handle=hein.journals/anzled8&div=12&gent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/anzled8&div=12&gent=1&casa_token=&collection=journals)

Stewart, D., & Cope, B. (1996). Judicial behaviour management. In *Education, Law and the Future: Proceedings of the Fifth ANZELA National Conference* (pp. 173-180). Australia and New Zealand Education Law Association (Inc.).

Stewart, D., & Knott, A. (2002). *Schools, courts and the law: Managing student*

welfare. Pearson Education Australia.

Street, B. V. (1984). *Literacy in theory and practice*. Cambridge University Press.

Tamanaha, B. (2001). *A general jurisprudence of law and society*. Oxford University Press.

Teh, K. (2014). The case for legal literacy for educators. *Education Law Journal*, 15(4), 252-268.

[https://heinonline.org/HOL/Page?handle=hein.journals/edulj2014&div=61&g\\_s ent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/edulj2014&div=61&g_s ent=1&casa_token=&collection=journals)

Teh, M. (2009). Principals and legal risk: Complacency or concern? In *Education: A risky business?: The 18th Annual Conference of the Australia and New Zealand Education Law Association* (pp. 37-47). Australia and New Zealand Education Law Association (Inc.).

*Telecommunications Act 1997* (Cth) (Austl.).

Tiller, E. H., & Cross, F. B. (2006). What is legal doctrine? *Northwestern University Law Review*, 100(1), 517-534. <http://dx.doi.org/10.2139/ssrn.730284>

*Tobacco and Other Smoking Products Act 1998* (Qld) s 82 (Austl.).

*Trade Practices Act 1974* (Cth) (Austl.).

Trimble, A. (2017). *Education Law, schools, and school principals: A mixed methods study of the impact of law on Tasmanian school principals* [Doctoral Dissertation, University of Tasmania].

[https://figshare.utas.edu.au/articles/thesis/Education\\_law\\_schools\\_and\\_school\\_principals\\_a\\_mixed\\_methods\\_study\\_of\\_the\\_impact\\_of\\_law\\_on\\_Tasmanian\\_school\\_principals/23239781](https://figshare.utas.edu.au/articles/thesis/Education_law_schools_and_school_principals_a_mixed_methods_study_of_the_impact_of_law_on_Tasmanian_school_principals/23239781)

- Trimble, A., Cranston, N. & Allen, J. (2012). School principals and education law: What do they know, what do they need to know? *Leading & Managing*, 18(2), 46-51. <https://search.informit.org/doi/pdf/10.3316/ielapa.199412614420132>
- Trimmer, K. (2017). Development of a questionnaire to measure risk-taking in decision-making by school principals. *Athens Journal of Education*, 4(3), 223-251. <http://dx.doi.org/10.30958/aje.4-3-3>
- Tronc, K. (1996). *You, your school and the law*. Fernfawn Publications.
- Tronc, K. (1999). Schools and the law: Some backdates, updates and mandates. *Australia and New Zealand Education Law Association* (pp. 1-27). Australia and New Zealand Education Law Association (Inc.).
- Tronc, K., & Sleigh, D. (1989). *Australian teachers and the law*. Butterworths.
- Truffet v Qld* (1998) QCA 160 (Austl.).
- Trustees of Roman Catholic Church for Diocese of Bathurst v Koffman* (1996) Aust Torts Reports 81 (Austl.).
- Trustees of the Roman Catholic Church for the Diocese of Canberra and Goulburn v Hadba* (2005) HCA 31 (Austl.).
- TT and Ors v Lutheran Church of Australia Queensland District and Ors* (2013) QCAT 48 (Austl.).
- Tyler v Kesser Torah College* (2006) FMCA 1 (Austl.).
- Unordered Goods and Services Act 1973* (Qld) (Austl.).
- Van Staden, B. (2019, October, 15). *ICT contracts and dealing with external contractors: Examining key matters for school ICT managers to consider in the current risk environment*. [Paper presentation]. 2019 LawSense School

Law Queensland Conference: Addressing Challenging Issues and Mitigating the Risk at the Coalface. Brisbane, Australia.

Varnham, S. (2002). Mainstreaming or mindumping? Daniels v the Attorney General. Equality of access to education for children with special needs in New Zealand. In D. Stewart (Ed.), *Legal Risk Management Safety, Security and Success in Education: Proceedings of the 11th Annual Conference of the Australia and New Zealand Education Law Association* (pp. 239-254). GSM Press.

*Victoria v Bryar* (1970) ALR 809 (Austl.).

Vines, P. (2013). *Law and justice in Australia: Foundations of the legal system* (3rd ed.). Oxford University Press.

Voisin, A., & Dumay, X. (2020). How do educational systems regulate the teaching profession and teachers' work? A typological approach to institutional foundations and models of regulation. *Teaching and Teacher Education*, 96, 1-16. <https://doi.org/10.1016/j.tate.2020.103144>

Vygotsky, L. S. (1978). *Mind in society: The development of higher psychological processes*. Harvard University Press.

Wagner, P. H. (2008). The legal preparedness of preservice teachers. *Action in Teacher Education*, 30(2), 4-14.  
<http://dx.doi.org/10.1080/01626620.2008.10463487>

*Walker v State of Victoria* (2012) FCAFC 38 (Austl.).

Walker, S. (1995). Schools and defamation. In D. Hopkins (Ed.), *Fourth National Conference of the Australian and New Zealand Education Law Association* (pp. 15-25). Australian and New Zealand Education Law Association (Inc.).

- Wallendorf, M. (2001). Literally literacy. *Journal of Consumer Research*, 27(4), 505-511. <https://doi.org/10.1086/319625>
- Warren v Haines* (1987) ATR 80-115 (Austl.).
- Watson v Haines* (1987) ATR 80-094 (Austl.).
- Weapons Act 1990* (Qld) (Austl.).
- Weber, J. (1992). Scenarios in business ethics research: Review, critical assessment, and recommendations. *Business Ethics Quarterly*, 2(2), 137-160. <https://doi.org/10.2307/3857568>
- Weegen, C. (2013). Defining "reasonable force" in the modern school environment. *International Journal of Law & Education*, 18(1), 83-97.
- White, J. B. (1983). The invisible discourse of the law: Reflections on legal literacy and general education. *University of Colorado Law Review*, 54(2), 143-160. [https://heinonline.org/HOL/Page?handle=hein.journals/ucollr54&div=17&g\\_se nt=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/ucollr54&div=17&g_se nt=1&casa_token=&collection=journals)
- Williams, K., MacDermott, S., Ridley, G., Glasson, E. J., & Wray, J. A. (2008). The prevalence of autism in Australia. Can it be established from existing data? *Journal of Paediatrics and Child Health*, 44(9), 504-510. <https://doi.org/10.1111/j.1440-1754.2008.01331.x>
- Williams, P. (1994). Saying things about students: The legal implications for educators. *The Practicing Administrator*, 16(4), 4-6.
- Williams, P. (1995). Touching students: A legal dilemma for teachers. *ANZELA Reporter*, 3(1), 17-23.
- Williams, P. (2002). Educational employers and foreseeable risks of harm. *Australia*

*and New Zealand Journal of Law and Education*, 7(1), 81-83.

- Wilson, C. M., Douglas, K. S., & Lyon, D. R. (2010). Violence against teachers: Prevalence and consequences. *Journal of Interpersonal Violence*, 26(12), 2353-2371. <https://doi.org/10.1177%2F0886260510383027>
- Wilson, L. (2014, October 14). Frightened teachers avoiding excursions. *The Courier Mail*.
- Winram, M. (2008). Lawyers and educators working together to protect schools, teachers and students from You-Tube and other websites that malign them. In *Achieving Excellence: Lawyers and Educators Working Together* (pp. 133-150). Australia and New Zealand Education Law Association (Inc.).  
<https://www.emilford.com.au/imagesdb/wysiwyg/anzelapaper2008.pdf>
- Woodgate, R., Biggs, J., & Owens, D. (2018). *Legal studies for Queensland* (2nd ed., Vol. 1). Legal Eagle Publications.
- Workers' Compensation and Rehabilitation Act 2003* (Qld) (Austl.).
- Work Health and Safety Act 2011* (Cth) (Austl.).
- Work Health and Safety Act 2011* (Qld) (Austl.).
- Yin, R. (2016). *Qualitative research from start to finish* (2nd ed.). The Guilford Press.
- Youth Justice Act 1992* (Qld) (Austl.).
- Zechner v Department of School Education* (1999) FCA 445 (Austl.).
- Zhu, C., Shiqing, H., Evans, R., & Zhang, W. (2021). Cyberbullying among adolescents and children: A comprehensive review of the global situation, risk factors, and preventative measures. *Frontiers in Public Health*, 9, 1-12.  
<https://doi.org/10.3389/fpubh.2021.634909>

## APPENDIX A: Survey Questions

### Legal Principles for Educators: An Investigation into the Implications of Education Law for Educators in Independent schools in Queensland

Position

- ☐ Teacher
  - ☐ Year Level Coordinator
  - ☐ Head of Department
  - ☐ Head of Senior Schooling
  - ☐ Dean of Students / Director of Pastoral Care
  - ☐ Director of Studies / Head of Curriculum
  - ☐ Head of Sub-School
  - ☐ Deputy Principal
  - ☐ Principal
  - ☐ Other:
- 

Age

- ☐ Under 31 years
- ☐ 31 – 40 years
- ☐ 41 – 50 years
- ☐ 51 – 60 years
- ☐ Over 60 years

How long have you been a teacher in schools?

- ☐ 0 – 5 years
- ☐ 6 – 10 years
- ☐ 11 – 15 years
- ☐ 16 – 20 years
- ☐ Over 20 years

Have you ever had any training in school law? If so, what?

1. Overall, how would you rate your understanding of legal issues as they relate and apply to the school environment?

- ☐ Comprehensive and detailed understanding
- ☐ Reasonable understanding
- ☐ Neutral
- ☐ Limited understanding
- ☐ No understanding

2. In a typical year please identify the types of legal issues/questions that you encounter in your role working in a school.

In **Column A** please indicate (*with a ✓*) which issues you typically encounter in a year.

In **Column B** indicate how confident you are in having the required knowledge to deal with such matters.

(In **Column B**, please do this by indicating with a ✓ if you are confident; a ? if you are somewhat confident; or a ✗ if you are not confident).

(you may indicate more than one)

| Column A                 | Legal Issue                                                             | Column B                 |
|--------------------------|-------------------------------------------------------------------------|--------------------------|
| <input type="checkbox"/> | Bullying / Cyberbullying                                                | <input type="checkbox"/> |
| <input type="checkbox"/> | Child protection                                                        | <input type="checkbox"/> |
| <input type="checkbox"/> | Compliance                                                              | <input type="checkbox"/> |
| <input type="checkbox"/> | Conducting investigations                                               | <input type="checkbox"/> |
| <input type="checkbox"/> | Consumer protection / Consumer law matters                              | <input type="checkbox"/> |
| <input type="checkbox"/> | Contracts and obligations                                               | <input type="checkbox"/> |
| <input type="checkbox"/> | Criminal law                                                            | <input type="checkbox"/> |
| <input type="checkbox"/> | Disability standards in Australia                                       | <input type="checkbox"/> |
| <input type="checkbox"/> | Discipline and behaviour management policy decisions                    | <input type="checkbox"/> |
| <input type="checkbox"/> | Discrimination                                                          | <input type="checkbox"/> |
| <input type="checkbox"/> | Duty of care                                                            | <input type="checkbox"/> |
| <input type="checkbox"/> | Ethics and ethical considerations in schools                            | <input type="checkbox"/> |
| <input type="checkbox"/> | Excursions and permission forms                                         | <input type="checkbox"/> |
| <input type="checkbox"/> | Family Court orders or related matters                                  | <input type="checkbox"/> |
| <input type="checkbox"/> | Mandatory reporting                                                     | <input type="checkbox"/> |
| <input type="checkbox"/> | Negligence                                                              | <input type="checkbox"/> |
| <input type="checkbox"/> | Privacy                                                                 | <input type="checkbox"/> |
| <input type="checkbox"/> | QCAA or Curriculum Authority matters                                    | <input type="checkbox"/> |
| <input type="checkbox"/> | QCT Issues (registration; professional conduct; regulation of teachers) | <input type="checkbox"/> |
| <input type="checkbox"/> | Responding to Court Orders                                              | <input type="checkbox"/> |
| <input type="checkbox"/> | Right to information                                                    | <input type="checkbox"/> |
| <input type="checkbox"/> | Staffing issue / Industrial matter                                      | <input type="checkbox"/> |
| <input type="checkbox"/> | Suspensions / Expulsions                                                | <input type="checkbox"/> |
| <input type="checkbox"/> | Teacher liability                                                       | <input type="checkbox"/> |
| <input type="checkbox"/> | Work Health and Safety                                                  | <input type="checkbox"/> |
| <input type="checkbox"/> | Other: (Please specify)                                                 | <input type="checkbox"/> |

---

3. What are some of the factors that contribute to your confidence level in dealing with such matters?

(you may indicate more than one)

- ☐ Dealing with such matters in the past
- ☐ Ability to speak to your leadership team in coming to a shared and reasonable decision
- ☐ Ability to talk to another Principal / colleague about the matter or issue
- ☐ You have reference material on the issue
- ☐ You have attended a workshop or seminar on the issue
- ☐ Other: (please specify):

---

4. If you were offered training in school law matters, please rank from one (1) to six (6) the six most important issues you face in your role.

- ☐ Bullying / Cyberbullying
- ☐ Child protection
- ☐ Compliance
- ☐ Conducting investigations
- ☐ Consumer protection / Consumer law matters
- ☐ Contracts and obligations
- ☐ Criminal law
- ☐ Disability Standards in Australia
- ☐ Discipline/behaviour management policy decisions
- ☐ Discrimination
- ☐ Duty of care
- ☐ Ethics and ethical considerations in schools
- ☐ Excursions and permission forms
- ☐ Family Court orders or related matters

- ☐ Mandatory reporting
- ☐ Negligence
- ☐ Privacy
- ☐ QCAA or Curriculum Authority matters
- ☐ QCT Issues (registration; professional conduct; regulation of teachers)
- ☐ Responding to Court Orders
- ☐ Right to information
- ☐ Staffing issue / Industrial matter
- ☐ Suspensions / Expulsions
- ☐ Teacher liability
- ☐ Work Health and Safety
- ☐ Other: (Please specify):

---



---

5. If you wanted to pursue this training in school law, please indicate by numbering 1 – 6 from the most useful to the least useful formats for this training:

- ☐ Monthly newsletter
- ☐ One day / half-day in-service for you and your fellow teachers
- ☐ One-on-one session
- ☐ University postgraduate subject
- ☐ Reference text at your fingertips

☐ Other: (please specify):

---

### **SCENARIOS:**

Please respond to the following scenarios using your understanding of your legal rights and responsibilities as a school teacher:

6. Teacher Bill finishes his yard duty half way through lunch. While June is still coming out to start her duty in the same area, a student is injured on the play equipment. Who is likely to be sued for the injuries?
7. The divorced parents of Tom are fighting over where Tom should go to school, with the Mum wanting him to attend your faith-based school, and the Dad strongly opposed. Would you accept Tom's enrolment at your school? Why/Why not?
8. Is it legally wrong for a school teacher to order students to turn out their pockets or to show the contents of their lockers? Why/Why not?
9. Is it discrimination if a principal excludes a student with a disability who acts up and is dangerous to other students owing to his actions and behaviours that arise out of his disability? Why/Why not?
10. For the past month, three children in a single parent home have been coming to school at 7.00 am each day, and today they tell their friends that their mother has not been home all night again. However, the mother turns up at the school and tells you that she is concerned about the children being compulsive liars. Do you believe the mother? Why/Why not?

11. John, your best friend who works at your High School, is texting a Senior female student about catching up on weekends at his place, yet he denies any inappropriate conduct. Can you trust him as he is a most valuable and honest colleague? Why/Why not?
12. If a school provides a list of student names and student numbers to a nearby school that is hosting a dance for all local Year 10 students as part of the schooling program, is that a breach of their legislative privacy obligations? Why/Why not?
13. Can a curriculum statement that presents the course outcome as "At the end of this unit, all students will understand the principles of basic safety procedures" be, in itself, legally unsafe? Why/Why not?
14. Can a teacher's discussion with the Deputy Principal about suspected child abuse of one of his/her students lead to legal action against the teacher for defamation if the suspicion is found to be untrue? Why/Why not?
15. Should teachers, even slightly built female teachers, intervene to stop playground fights, even if the combatants are large Year 12 male students? Why/Why not?
16. Can you be sued personally for ineffective teaching? Why/Why not?
17. If the Technology Design teacher lays down clear safety instructions as to the use of the machinery and provides students with safety equipment, is the school covered if a student ignores the rules and injures himself, because he has been warned? Why/Why not?

18. A student, Tammy, 13 and in her first year of high school, fell off her chair in the classroom and hurt the base of her spine. At the time of the incident, the teacher had temporarily left the room for a few minutes. However, the teacher had left some work on the board for the students to do in her absence. Was the teacher liable for any injuries suffered?
19. What factors do you think affect the level or standard of care that is owed to students in classroom settings?

## APPENDIX B: Rating Scale/Coding Frame for analysing Survey Scenario Responses

| High degree of legal literacy                                                                                        | Some degree of legal literacy                                                                                                 | Confused legal literacy                                                                         | Incorrect legal understanding                               | No understanding / left blank                |
|----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------|----------------------------------------------|
| Demonstrates a high level of legal literacy ie presents correct answer and demonstrates correct legal understanding. | Knows a little without demonstrating legal understanding ie presents correct answer but does not show legally why or why not. | Participant presents correct answer but provides an incorrect legal understanding of the issue. | Incorrect application of a legal principle to the scenario. | No reasonable answer provided or left blank. |

## APPENDIX C: Participant Information for USQ Research Project Survey

### Project Details

Title of Project: **Legal Principles for Educators: An investigation into the implications of Education Law for Educators in Independent Schools in Queensland.**

Human Research

Ethics Approval H18REA183

Number:

### Research Team Contact Details

#### Principal Investigator Details

Mr Mark Butlin

Email: [REDACTED]

Telephone: [REDACTED]

Mobile: [REDACTED]

#### Supervisor Details

Professor Karen Trimmer

Email: [REDACTED]

Telephone: [REDACTED]

### Description

This project is being undertaken as part of a PhD Project.

The purpose of this project is to understand how school educators in Independent schools interact with and engage in education law matters in their everyday work. It also

intends to consider what implications can be drawn from this engagement to better inform school educators both now and in the future.

The research team requests your assistance because of your experience as a school teacher or leader working in schools who may have engaged in these sort of matters. Your opinions are being sought in a research study undertaken for the completion of a PhD study.

By participating in this project, you will be providing us with valuable information to help the researcher understand how school educators engage with legal literacy in their work environments. Potential benefits of the study include the development and implementation of a university course at post graduate level for school educators and potential school leaders to help them better understand their rights and responsibilities in relation to this area of their leadership. Furthermore, a Textbook is being written on this very subject that will be available in Australia for all school teachers and pre-service teachers.

### **Participation**

Your participation will involve completion of a survey questionnaire that will take approximately 30 – 45 minutes of your time. Your identity (and school) will be known only by the researcher in order to determine who could be contacted for a later interview (if the project suggests that semi structured interviews are required). All responses will be de-identified for the analysis and for the final thesis.

Questions will include questions like the following:

1. How do you know if a duty of care exists in a specific school context?
2. What factors affect the level of care that is owed to students?

Your participation in this project is entirely voluntary. If you do not wish to take part you are not obliged to. If you decide to take part and later change your mind, you are free to withdraw from the project at any stage. You will be unable to withdraw data collected about yourself after the data has been analysed. If you do wish to withdraw from this

project or withdraw data collected about you, please contact the Research Team (contact details at the top of this form).

Your decision whether you take part, do not take part, or to take part and then withdraw, will in no way impact your current or future relationship with the University of Southern Queensland.

### **Expected Benefits**

It is expected that this project will not directly benefit you, except for the fact that you know that you have personally contributed to the generation of new knowledge and greater understanding in this area.

### **Risks**

In participating in the questionnaire, there are minimal risks such as you may be exposed to questions that may reveal situations where short-coming in your understanding of the technical implications of education law is evident. This may result in a social risk of embarrassment. No physical, psychological, economic or legal risks are anticipated. These risks will be minimized as the questions that are anticipated to be asked are primarily derived from the literature and relevant technical legal documentation associated with Education Law. While most educators may be familiar with the laws associated with the study, you will be given the opportunity to ask for clarification or to skip the question. You will also be allowed to withdraw your participation and data at any time before the data is de-identified.

### **Privacy and Confidentiality**

All comments and responses will be treated confidentially unless required by law.

All data will be non-identifiable and will be securely stored in accordance with University of Southern Queensland policy and the Australian Code for the Responsible Conduct of Research. The data may be used in the future for future research purposes.

You will, upon request, be able to access a summary of the research results or a copy of the completed dissertation.

Any data collected as a part of this project will be stored securely as per University of Southern Queensland's [Research Data Management policy](#).

### **Consent to Participate**

By ticking the box next to 'I consent to participate in this survey' on the front page of the survey instrument, this will be accepted as an indication of your consent to participate in this project.

### **Questions or Further Information about the Project**

Please refer to the Research Team Contact Details at the top of the form to have any questions answered or to request further information about this project.

### **Concerns or Complaints Regarding the Conduct of the Project**

If you have any concerns or complaints about the ethical conduct of the project you may contact the University of Southern Queensland Manager of Research Integrity and Ethics on +61 7 4631 2214 or email [researchintegrity@usq.edu.au](mailto:researchintegrity@usq.edu.au). The Manager of Research Integrity and Ethics is not connected with the research project and can facilitate a resolution to your concern in an unbiased manner.

**Thank you for taking the time to help with this research project. Please keep this sheet for your information.**

## APPENDIX D: Consent Form



### Independent School Teachers' Views and Understanding of Education Law

**Legal principles for educators: An investigation into the implications of education law for educators in independent schools in Queensland.**

**Human Research Ethics Approval Number: H18REA183**

The purpose of this online questionnaire is to develop an understanding as to how school educators in independent schools interact with and engage in education law matters in their everyday work. It also intends to consider what implications can be drawn from this engagement to better inform school educators both now and in the future.

By participating in this project, you will be providing valuable information to help the researcher understand how school educators engage with legal literacy in their work environments. Potential benefits of the study include the development and implementation of a university course at post graduate level for school educators and potential school leaders to help them better understand their rights and responsibilities in relation to this area of their

leadership. Furthermore, a Textbook is being written on this very subject that will be available in Australia for all school teachers and pre-service teachers.

Your participation will involve completion of this anonymous online questionnaire that will take approximately 30 minutes of your time. All responses will be de-identified for the analysis and for the final thesis.

Your participation in this project is entirely voluntary. If you do not wish to take part, you are not obliged to do so. By clicking on the 'I agree' button at the bottom of this page, you indicate your consent to participate in this project.

Your decision whether you take part or do not take part will in no way impact your current or future relationship with the University of Southern Queensland. Your name nor personally identifiable details are not required in any of the responses.

All data is anonymous and non-identifiable and will be securely stored in accordance with University of Southern Queensland's Research Data Management policy and the Australian Code for the Responsible Conduct of Research. The data may be used in the future by the principal researcher for prospective research purposes.

**Principal Researcher Details:**

Mr Mark Butlin

Email: [REDACTED]

Telephone: [REDACTED]

Mobile: [REDACTED]

☐ I Agree

## **APPENDIX E: Letter to Principals asking for their Teachers' Participation**

Dear Principal

I am writing seeking your teaching staff's involvement in an online survey that is part of a study into education law and particularly how independent school teachers and leaders interact with education law in their daily work.

I am seeking only independent school teachers and leaders (at all levels) in Queensland and therefore your teaching staff's involvement is vitally important to this work.

I have sought and gained the approval of Lutheran Education Queensland to engage you and your staff in this significant research (see approval letter attached). Every participant's response is completely anonymous and at no time is the name of any School or College required. Indeed, no identifying information of the teacher/leader or the school will be collected.

If you are happy for your staff to be given this opportunity to impact this leading research on education law, please simply share the below link with your teaching staff. It should only take them approximately 20 – 30 minutes to complete. There are two \$50 vouchers available to those who choose to complete the survey. If a participant would like to be considered in this random draw, they will be offered the option to provide their contact details separately to their survey response. This random draw will not be conducted by myself but rather by another senior academic in the School of Education at the University of Southern Queensland. This is in keeping with the high ethical standards required in conducting professional research in Australia. The Human Research Ethics Approval Number for this study is H18REA183.

As a previous teacher and leader in three Queensland Lutheran Schools for 14 years myself, I understand the importance of garnering the voices of teachers and leaders working in schools to help frame the future of the educational landscape in this state. Your involvement is highly valued and respected, and extremely appreciated. To that end, I would be so grateful if you, yourself would consider completing the survey too.

If you have any questions about the conduct of this research or about the survey instrument itself, please feel free to contact me (see below for details).

Survey Link: <https://educationlawforteachers.questionpro.com>

Attached in this email is the formal approval letter from Lutheran Education Queensland, the Participant Information Statement, the Ethics approval to conduct this study, and a sample email (for your convenience) that you may wish to use or modify to send to your teaching staff.

Yours sincerely  
Mark Butlin  
PhD Confirmed Candidate  
Lecturer (Education law and Assessment)  
School of Education  
University of Southern Queensland

Phone: [REDACTED]  
Email: [REDACTED]

## **APPENDIX F: Sample Email to Staff Requesting their Participation**

Dear Teaching Staff

I have been approached by a researcher at University of Southern Queensland to invite all teaching staff (teachers, middle management, deputies etc, myself) to participate in an online survey. This is on education law and how we as teachers and leaders in independent schools interact with this area in our work. It also aims to discover how much we know about this topic as educators.

It is completely anonymous. No names or school names are collected whatsoever. It should only take you 20 mins to fill in and it can be done at any time in the next few months. It has been approved by the University Ethics Committee to undertake such a study. The person conducting the survey has worked in Christian schooling and indeed was a Principal of a large Christian school in regional Queensland.

This survey is voluntary. There is a draw for 2 teachers to be randomly chosen by the university to be awarded \$50 Visa Pre-paid gift vouchers after you complete the survey.

Please click on the following link if you wish to take part.

Survey Link: <https://educationlawforteachers.questionpro.com>

I thank you for your consideration of this request. This is important as we help frame the education law landscape of the future.

Yours in Christ,

Name of Principal

# **APPENDIX G: University of Southern Queensland**

## **Research Ethics Application Approval Notice**

Dear Mark

I am pleased to confirm your Human Research Ethics (HRE) application has now been reviewed by the University's Expedited Review process. As your research proposal has been deemed to meet the requirements of the National Statement on Ethical Conduct in Human Research (2007), ethical approval is granted as follows.

Project Title: H18REA183 - Legal principles for School Principals: An investigation into the implications of Education Law for leaders of independent schools in Australia  
Approval date: 19/09/2018  
Expiry date: 19/09/2023  
USQ HREC status: Approved with conditions

- (a) responsibly conduct the project strictly in accordance with the proposal submitted and granted ethics approval, including any amendments made to the proposal;
- (b) advise the University (email: [ResearchIntegrity@usq.edu.au](mailto:ResearchIntegrity@usq.edu.au)) immediately of any complaint pertaining to the conduct of the research or any other issues in relation to this project which may warrant review of the ethical approval of this project;
- (c) promptly report any adverse events or unexpected outcomes to the University (email: [ResearchIntegrity@usq.edu.au](mailto:ResearchIntegrity@usq.edu.au)) and take prompt action to deal with any unexpected risks;
- (d) make submission for any amendments to the project and obtain approval prior to implementing such changes;
- (e) provide a progress 'milestone report' when requested and at least for every year of approval;
- (f) provide a final 'milestone report' when the project is complete.
- (g) promptly advise the University if the project has been discontinued, using a final 'milestone report'.

Additional conditionals of approval for this project are:

- (a) Nil.

Please note that failure to comply with the conditions of this approval or requirements of the Australian Code for the Responsible Conduct of Research, 2018, and the National Statement on Ethical Conduct in Human Research, 2007 may result in withdrawal of approval for the project.

If you have any questions or concerns, please don't hesitate to make contact with an Ethics Officer.

Congratulations on your ethical approval! Wishing you all the best for success!

Kind regards,

Human Research Ethics

University of Southern Queensland

Toowoomba – Queensland – 4350 – Australia

Ph: 07 4687 5703 – Ph: 07 4631 2690 – Email: [human.ethics@usq.edu.au](mailto:human.ethics@usq.edu.au)

## **APPENDIX H: List of some Preeminent Libraries where the Textbook is Available**

- Auburn University
- Australian Catholic University Library
- Brigham Young University-Hawaii
- British Library of Political & Economic Science
- Cambridge University Press
- Cardiff University
- Duke University Libraries
- Eindhoven University of Technology Sandbox
- European University Institute
- Harvard Law School Library
- Imperial College London
- La Trobe University
- London Metropolitan University
- Macquarie University
- Monash University Library
- National Library of Australia
- Queensland University of Technology
- Rice University
- State Library Victoria
- The British Library, St. Pancras
- Tilburg University Library
- University College Dublin, James Joyce Library
- University College London
- University of Bristol Library
- University of East Anglia
- University of Iowa, Law Library
- University of Johannesburg – Auckland Park Kingsway Campus
- University of Liverpool, Sydney Jones Library
- University of Oxford
- University of Queensland

- University of Technology Sydney
- University of Westminster Library
- Wake Forest University – ZSR Library