

BOOK REVIEW

Schools and the Law

Professor Des Butler and Dr Ben Mathews

The Federation Press, Annandale, NSW

2007, pp 262

ISBN 978-186287-624-8

School principals, teachers and administrators are faced with an ever increasing range of complex legal issues in the school context. Schools operate in an evolving and dynamic legal environment and this requires principals, teachers and administrators to be familiar with an array of law and policy that governs and regulates all facets of school life. *Schools and the Law* is an easy-to-read, informative and accessible book that covers some of the challenging and significant legal issues that principals and teachers deal with on a daily basis. The book does not attempt to cover all areas of the law and schools. It deals comprehensively, and across all jurisdictions, with the following significant themes: children's rights, duty of care, child safety, discipline, equal opportunity, and information and privacy.

The first chapter, *Children's Rights*, provides a concise and interesting overview of the historical development of children's rights, a definition of 'rights', the recognition of children's rights in international law and the influence on law and policy in Australia. This short chapter sets the framework and context for the chapters that follow. As the authors note: 'the proliferation of law and policy concerning children's rights and entitlements ... may quite understandably lead some teachers and parents to feel that children now have too many rights and not enough responsibilities. It may therefore assist to situate this book and the current school context within the historical context of children's rights, or, more accurately their absence. This should show why the recognition of certain rights is significant and necessary, while at the same time maintaining an informed view that children have just as many responsibilities at law as they have rights'.¹

One of the most significant and complex legal principles that relates to schools is the 'duty of care'. The authors note that '[a] school authority owes a duty of care to both the students who attend its school and the teachers and other employees who work there. It may also owe a duty to other persons'.² However, the meaning and scope of duty of care is often in dispute and has been the subject of numerous court cases. Chapter 2, of *Schools and the Law* is a very comprehensive chapter (pp 18–97) in which the meaning, scope and application of duties of care and vicarious liability are explained in plain non-legalese language. The broad topics of the chapter focus on duty to students, liability for intentional acts by teachers, duty to teachers and other staff, and duty to other persons. The authors refer to and analyse relevant case law that not only helps one to understand the law but also serves as interesting examples of incidents that have taken place in school, from which much can be learned. The chapter includes a discussion on bullying against students and teachers, which, with the increase in cyber bullying, is still a major concern for schools. Although this is a lengthy chapter, the structure and headings enable the reader to dip into

different parts of the chapter for information on specific issues, without having to read through the entire chapter.

Chapter 3 provides a very useful overview on statutory requirements for child safety. Two important and recent legislative developments in relation to child safety and schools are the mandatory reporting legislation and the legislation requiring criminal record checks in most jurisdictions. The chapter clearly summarises the legislation requiring criminal history checks across all the jurisdictions (states and territories). The chapter then provides a very detailed explanation of statutory requirements across all jurisdictions relating to mandatory reporting of child abuse and neglect, pointing out the similarities and differences between jurisdictions. The use of the abbreviation CAN for 'child abuse and neglect' is distracting in this chapter. The tables, however, are helpful as a quick reference to and overview of the different jurisdictions. The weight of the chapter is on mandatory reporting as the authors explain this '*is more complex and more significant for teachers and principals than the criminal record checking legislation*'.³

Student discipline is one of the most important areas of responsibility for both principal and teacher. It is also one of the more challenging areas; managing student misconduct and discipline is likely to give rise to most legal disputes and is a major contributor to teacher stress. Chapter 4 deals with the topic student misconduct and discipline. It sets out the various major forms of misconduct and explains the legal principles that relate to various methods of discipline that range from low levels of disciplinary responses to the more serious responses such as suspension and exclusion. The chapter also points out the differences between jurisdictions.

Chapter 5 examines the increasingly important issue of equal opportunity. Equal opportunity and anti-discriminatory legislation in Australia is covered by several different pieces of legislation, with some significant differences between jurisdictions. This chapter clearly explains concepts such as 'direct discrimination' and 'indirect discrimination' and explains when discrimination is lawful or exempted. The comparative table on page 187 provides a very useful summary of the variety of grounds of discrimination that are relevant in the school context.

Chapter 6, the final chapter, considers the issue of information and privacy. It briefly explains what information is protected by law and must be treated confidentially, including what and when a 'communication', such as a conversation or an email, is treated as private. The chapter concludes with a brief explanation of defamation. Given the prolific use by students of technology and social networking sites such as You Tube and MySpace, it would have been useful for this chapter to have dealt with this aspect in terms of information, privacy and potential defamation.

Schools and the Law is a welcome addition to the literature on the law and education. It covers highly relevant issues and is a valuable source of information for principals, teachers, school administrators, school governors and parents and legal practitioners.

ENDNOTES

1. Des Butler and Ben Mathews, *Schools and the Law* (2007) 2.
2. Ibid 18.
3. Ibid 99.

Dr Joan Squelch
Curtin University of Technology