

Teachers working in the era of risk management – A proposed investigation into the relationship between knowledge of education law and teacher self-efficacy

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In an era of ever increasing awareness of risk, are teacher-held understandings about education law impacting on their professional practice? My proposed research aims to investigate a possible link between Australian teachers' knowledge of education law, and professional confidence with regards to risk management. My hypothesis is that teachers hold serious misconceptions about the law and a teacher's duty to manage risk, which is impacting on their ability to provide innovative and engaging curriculum. My proposed study will investigate whether teachers are over-reacting to perceived risks, thereby giving rise to the unforeseen risk of pedagogical outcomes being altered, without effective oversight. The originality of this thesis is twofold - firstly in the use it makes of sociology's risk society theory, in identifying a possible impediment to successful educational outcomes and secondly, in providing the first exploration into whether teachers' misconceptions about the law, are resulting in the type of 'reflexive spiral' described in risk society theory.

Keywords: risk society theory, teachers' knowledge of education law, approaches to risk management.

Introduction and Significance

In an era of ever increasing awareness of risk, are teacher-held understandings about education law impacting on their professional practice? My proposed research aims to investigate a possible link between Australian teachers' knowledge of education law, and professional confidence with regards to risk management. My hypothesis is that teachers hold serious misconceptions about the law and a teacher's duty to manage risk, which is impacting on their ability to provide innovative and engaging curriculum. My proposed study will investigate whether teachers are over-reacting to perceived risks, thereby giving rise to the unforeseen risk of pedagogical outcomes being altered, without effective oversight. The originality of this thesis is twofold - firstly in the use it makes of sociology's risk society theory, in identifying a possible impediment to successful educational outcomes and secondly, in providing the first exploration into whether teachers' misconceptions about the law, are resulting in the type of 'reflexive spiral'¹ described in risk society theory.

Very little is known in Australia about teachers' knowledge of the law impacting on their practice.² This area of law is considered a separate field on law in England, the US and

¹ Ulrich Beck, Anthony Giddens and Scott Lash, *Reflexive modernization: Politics, tradition and aesthetics in the modern social order* (Stanford University Press, 1994) 5.

² Mui Kim Teh, 'The Case for Legal Literacy for Educators' (2014) 15(4) *Education Law Journal* 252.

Canada and the label 'education law'³ as used in these countries, will be adopted in this proposal. The term 'teacher legal literacy' is used in Australia to describe teachers' level of knowledge about education law,⁴ however there is no clear definition of 'legal literacy', nor clarity with regards to what a 'legally literate' teacher needs to understand about the law. Equally unclear is what effect 'good levels legal literacy' may have on teacher practice. Although there are a handful of studies that have investigated Australian principals'⁵ and teachers'⁶ understanding of education law and some that look at how these educators are responding to the new risk aware era,⁷ there are no studies that examine the relationship between educators' legal knowledge, their confidence levels and possible impacts on curriculum delivery.

There are just two Australian studies on teacher legal literacy.⁸ One relies on data collected at the turn of this century,⁹ prior to the full development of the risk management era and the second focuses on pre-service teachers and their knowledge of ICT law.¹⁰ Neither of these studies, nor US or Canadian studies on teacher legal literacy,¹¹ have investigated possible links between teachers' legal literacy, professional confidence levels and impacts on teacher practice. Similarly, Australian and overseas studies on teachers' approaches to risk

³ Ralph D Mawdsley and J Joy Cumming, 'The origins and development of education law as a separate field of law in the United States and Australia' (2008) 13 *Austl. & NZJL & Educ.* 7; Teh, above n 2.

⁴ Teh, above, n 2; LJ York, 'Preservice Teachers: What do They Know about Cyberlaw?' (Paper presented at the International Symposium: Future Focussed Teacher Education, University of Canterbury, Christchurch New Zealand.

⁵ P McCann, *Principals' understandings of aspects of the law impacting on the administration of catholic schools: some implications for leadership* Australian Catholic University, 2006); Douglas J Stewart, 'Principals' knowledge of law affecting schools' (1996) 1 *Australia and New Zealand Journal of law and Education* 111; Allison J Trimble, Neil Cranston and Jeanne M. Allen, 'School Principals and Education Law: What do they know, what do they need to know?' (Pt The Council) (2012) 18(2) *Leading & managing* 46.

⁶ York, above, n. 4; David J Newlyn, 'The 'legalisation' of education: a study of New South Wales teachers and their professional development needs in the area of law' (2006).

⁷ Helen Little, Ellen Beate Hansen Sandseter and Shirley Wyver, 'Early childhood teachers' beliefs about children's risky play in Australia and Norway' (2012) 13(4) *Contemporary Issues in Early Childhood* 300; Erica McWilliam and Alison Jones, 'An unprotected species? On teachers as risky subjects' (Pt Taylor & Francis) (2005) 31(1) *British educational research journal* 109; Erica McWilliam and Lee-Anne Perry, 'On being more accountable: The push and pull of risk in school leadership' (Pt Routledge) (2006) 9(2) *International Journal of Leadership in Education* 97; Karen Starr, 'Problematizing 'Risk' and the Principalship: The Risky Business of Managing Risk in Schools' (2012) 40(4) *Educational Management Administration & Leadership* 464.

⁸ York, above, n 4; Newlyn, above, n 6.

⁹ Newlyn, above, n 6.

¹⁰ York, above, n 4.

¹¹ Jerome G Delaney, 'The value of educational law to practising educators' (2009) 19 *Education Law Journal* 119; Michael Imber, 'Pervasive Myths in Teacher Beliefs about Education Law' (Pt Routledge) (2008) 30(2) *Action in Teacher Education* 88; Mark Littleton, 'Teachers' Knowledge of Education Law' (Pt Routledge) (2008) 30(2) *Action in Teacher Education* 71; Julie F. Mead, 'Teacher Litigation and its Implications for Teachers Legal Literacy' (Pt Routledge) (2008) 30(2) *Action in Teacher Education* 79; Matthew Militello and David Schimmel, 'Toward Universal Legal Literacy in American Schools' (Pt Routledge) (2008) 30(2) *Action in Teacher Education* 98; David Schimmel, 'Legal Literacy for Teachers: A Neglected Responsibility' (Pt Harvard Education Publishing Group) (2007) 77(3) *Harvard educational review* 257; Philip H. Wagner, 'The Legal Preparedness of Preservice Teachers' (Pt Routledge) (2008) 30(2) *Action in Teacher Education* 4.

management, ostensibly in response to the laws underpinning Negligence, WH&S¹² and Child Protection,¹³ do not question the accuracy of teachers' understandings of these laws.

My proposed study is significant at a time when the search for ways to improve student outcomes, is a high priority for nations striving to compete in the global economy. Although effective leadership from principals is very important for school success,¹⁴ research has consistently found that teacher quality is the key factor in improving student outcomes.¹⁵ Research has also found strong links between teacher self-efficacy and positive student outcomes.¹⁶ It follows that a study exploring possible links between teachers' legal literacy and their self-efficacy will be of interest to governments and educational leaders keen to understand drivers of quality teaching. 'Self-efficacy' has been defined as, 'an individual's beliefs (or confidence) about his or her abilities to successfully execute a specific task within a given context',¹⁷ and in this proposal, this term will be used interchangeably with the term 'professional confidence' which in this context, is referring to teachers confidence about their ability to shape students' knowledge, values and behaviour.

In Australia, the drive to improve teacher quality has resulted in legislation linking school funding to the implementation of teacher performance and development frameworks.¹⁸ This means that to qualify for government funding, schools must implement human resource management strategies to support teachers in reaching specific professional standards.¹⁹ It is therefore clear that research aimed at identifying possible impediments to teachers reaching these specific standards, should be given close attention by Australian governments and school leaders.

¹² Helen Little and Shirley Wyver, 'Outdoor play: Does avoiding the risks reduce the benefits?' (Pt Australian Pre-School Association) (2008) 33(2) *Australian journal of early childhood* 33; Little, Sandseter and Wyver, above n 7.

¹³ McWilliam and Jones, above n 7; Erica McWilliam and Parlo Singh, 'Safety in numbers? Teacher collegiality in the risk-conscious school' (2009) 5(1) *The Journal of Educational Enquiry* 22.

¹⁴ Kenneth Leithwood and Doris Jantzi, 'The effects of transformational leadership on organizational conditions and student engagement with school' (2000) 38(2) *Journal of Educational Administration* 112; Viviane M Robinson, Margie Hohepa and Claire Lloyd, *School leadership and student outcomes: Identifying what works and why* (Australian Council for Educational Leaders Melbourne, 2007) vol 41; Michael Coelli and David A Green, 'Leadership effects: School principals and student outcomes' (2012) 31(1) *Economics of Education Review* 92.

¹⁵ Linda Darling-Hammond, 'Teacher quality and student achievement' (2000) 8 *Education policy analysis archives* 1; Seth Gershenson, 'Linking teacher quality, student attendance, and student achievement' (2016) *Education Finance and Policy*; Douglas N Harris and Tim R Sass, 'Teacher training, teacher quality and student achievement' (2011) 95(7) *Journal of public economics* 798; Mareike Kunter et al, 'Professional competence of teachers: Effects on instructional quality and student development' (2013) 105(3) *Journal of Educational Psychology* 805; JG Ladwig and JM Gore, 'Measuring teacher quality and student achievement' (2005) 4(2) *Professional Educator* 26.

¹⁶ Robert M Klassen and Virginia MC Tze, 'Teachers' self-efficacy, personality, and teaching effectiveness: A meta-analysis' (2014) 12 *Educational Research Review* 59; Angela D Miller, Erin M Ramirez and Tamera B Murdock, 'The influence of teachers' self-efficacy on perceptions: Perceived teacher competence and respect and student effort and achievement' (2017) 64 *Teaching and Teacher Education* 260; Megan Tschannen-Moran, Anita Woolfolk Hoy and Wayne K Hoy, 'Teacher efficacy: Its meaning and measure' (1998) 68(2) *Review of educational research* 202; Marjolein Zee and Helma MY Koomen, 'Teacher self-efficacy and its effects on classroom processes, student academic adjustment, and teacher well-being: A synthesis of 40 years of research' (2016) 86(4) *Review of Educational Research* 981.

¹⁷ Frank Pajares, 'Self-efficacy beliefs in academic settings' (1996) 66(4) *Review of educational research* 543, 544.

¹⁸ *Australian Education Act 2013* (Cth).

¹⁹ *Australian Teaching Standards*.

This study will also be of interest to other education stakeholders. University education faculties should look at the findings of this proposed research, when planning to better prepare teachers for their work in the new risk aware era. In the same way, peak bodies and administrators in state, independent and catholic education sectors, should be interested in the findings of this study. This is because of the implications the study findings may have for teacher professional development aimed at improving teacher knowledge, confidence and ability to reach professional standards. The final stakeholders of course are students and their families, who have a keen interest in removing any possible impediments to high quality teaching, innovative curriculum and academic success.

My research findings will have international relevance as governments and educational leaders globally, are striving to improve teacher effectiveness within the new context of risk awareness. Despite differences in legal and educational systems, researchers and educational administrators in other countries will be interested in this study, as the risk society phenomenon and its impact on educators, has been observed in a range of countries including the US, UK, Sweden, Norway and New Zealand. Internationally based researchers and educational administrators concerned about the impact of the new risk management era on teachers, along with those with an interest in teacher legal literacy, will be particularly interested in a study investigating possible links between these two issues. It is likely then, that the theory built during this inductive study, will be appropriate for testing in a variety of educational sectors in a range of states and countries.

Background

Educators' Legal Literacy

There have been a series of studies investigating Australian school principals' legal literacy. An older study of state school principals completed in 1996,²⁰ and a study of catholic school principals a decade later,²¹ both found that principals' legal literacy is not sufficient to enable them to successfully implement preventative risk management practices. Stewart found that a large majority of principals utilised reactive rather than preventative approaches in their development of legal knowledge.²² A more recent exploratory study of government school principals revealed that much of their education law knowledge was very superficial and not sufficient to enable them to confidently deal with routine legal issues.²³

This series of Australian studies on principals' legal literacy has not been replicated with regards to Australian teachers' legal literacy. In stark contrast, studies into teachers' legal literacy abound in the US,²⁴ and to a lesser extent Canada.²⁵ Imber has provided compelling evidence that US teachers are labouring under serious misapprehensions about the nature and extent of their legal duties as well as their risk of falling foul of the law.²⁶ This researcher states that even in the US where litigation in education is far more common than any other

²⁰ Douglas J Stewart, 'School principals and the law: A study of the legal knowledge needed and held by principals in government schools in Queensland' (1996); Stewart, 'Principals' knowledge of law affecting schools', above n 5.

²¹ McCann, above n 5.

²² Stewart, above n 5.

²³ Trimble, Cranston and Allen, above n 5.

²⁴ Imber, above, n 11.

²⁵ Troy Allen Davies, 'The worrisome state of legal literacy among teachers and administrators' (2009) 2(1) *CINSE/RCJCÉ*; Alan W Leschied, Wendy J Lewis and Gregory Dickinson, 'Assessing educators' self-reported levels of legal knowledge, law-related areas of concern and patterns of accessing legal information: implications for training and practice' (2000) 15(1) *EAF Journal* 38.

²⁶ Imber, above n 11.

western country, it is still rare for teachers to be named as defendants in law suits.²⁷ Despite this fact, there appears to be a myth amongst US teachers about an ‘explosion of litigation’ against teachers and schools.²⁸ Imber goes on to surmise that teachers who overestimate their legal liability may be overly timid in pursuing legitimate educational goals and practices,²⁹ which is a similar hypothesis to the one at the heart of my proposed study.

Unlike the substantial body of research on teacher legal literacy conducted in the US and Canada,³⁰ the two Australian studies of teacher legal literacy,³¹ do not have similar findings with regards to teachers’ legal literacy. The older study found that teachers in NSW government schools, did not possess the necessary level of legal literacy required for them to confidently carry out their work.³² In contrast, the preliminary findings of the more recent study conducted by Quentin Bryce scholar, Lucy York, found that pre-service teachers have reasonably accurate perceptions of the law applicable to the use of ICT in schools, apart from issues surrounding copyright law. This study once completed, will provide very useful information about pre-service teachers’ understanding of ICT law applicable to their future professional life. There will still however be a substantial gap with regards to what is known about the general legal literacy levels of teachers currently working in Australian schools. More importantly, there is no literature in Australia or elsewhere which has explored a possible link between teacher legal literacy, teacher self-efficacy with regards to risk management and possible barriers to innovative curriculum. It is important to fill this gap in the literature because as mentioned previously, there is now strong evidence that it is the quality of teaching which is crucial for positive student outcomes.³³

Both Newlyn³⁴ and York³⁵ emphasise the need for better, formalized legal training for teachers, but their concepts of ‘appropriate teacher legal literacy’ differ. For Newlyn – appropriate teacher legal literacy would allow teachers to recognise a legal problem when it arises, in order to seek further assistance.³⁶ It is submitted that this concept of legal literacy is in fact problematic because it may leave teachers perpetually wondering if they should be seeking further assistance. For York, the goal is for sufficient knowledge of ICT law to ‘support legal compliance’ and ‘develop active citizenship in students’.³⁷ The assumption here appears to be that an accurate understanding of relevant law will assist teachers with legal compliance but this may not be a safe assumption. The proposed study will look to build a definition of ‘teacher legal literacy’ as it examines what teachers need to understand about the law in order to be confident practitioners able to thrive in the risk management era. The question at the core of my proposed research is whether teacher’s knowledge of the law impacting on their work, is making them question, worry and second guess their pedagogy. Answering this question will help develop the concept of teacher legal literacy so that it encompasses legal knowledge which allows teachers to confidently manage risk, while still providing innovative curriculum.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Above, n 11, n 25.

³¹ Above, n 6.

³² Newlyn, above n 6.

³³ Above, n 15.

³⁴ Newlyn, above n 6.

³⁵ York, above, n 2.

³⁶ See also, Stewart, above, no 5.

³⁷ York, above n 2.

The call for better legal literacy for teachers is also made by Australian academics producing texts on education law. A review of the three texts in this field,³⁸ reveals that the legal areas seen to be important to teacher legal literacy include Negligence, WH&S, Child Protection, Anti-Discrimination, Privacy and some aspects of Criminal law surrounding student misconduct. Newlyn's study,³⁹ also provides some suggestions as to the span of law relevant to Australian teachers. By interviewing teachers and reviewing the teacher union journal, Newlyn concluded that teachers needed a better understanding of aspects of WH&S, Negligence, Child Protection and Criminal law.

A narrowing down of what law is relevant to the risk managing teacher is made possible by an examination of the Australian Teaching Standards. The *Australian Teaching Standards* reveal both express and implied requirements for legal literacy for teachers.⁴⁰ In the context of teachers and risk management, *Standard 4* is most relevant – *Create and Maintain supportive and safe learning environments*. This standard indicates that a 'proficient' teacher should have an understanding of *many aspects* of Negligence, WH&S, Child Protection and *some limited aspects* of Anti-Discrimination, Privacy and Criminal law. My study will thus concentrate on teacher held beliefs on what constitutes 'legal compliance' in these areas and whether misconceptions about this are impacting on teachers' professional confidence and ability to engage students.

Risk Society theory – Explanations of the Risk Management Era

There is no denying that schools, like most modern organisations, are learning to operate in a new era of risk awareness. To gain an understanding of the current context in which teachers are operating, a brief exploration of the theories attempting to explain the development of the risk management era is elucidating. Theorists such as Beck,⁴¹ and Giddens,⁴² describe a new 'risk society', and provide explanations as to why risk management has become the accepted method of being professional. They also suggest that the risk management era may be causing a never-ending spiral of unintended new risks.

The risk society theory has been described as a, 'panoramic theory',⁴³ as it aspires to, 'offer an alternative sociological imagination for investigating contemporary society'.⁴⁴ Beck and Giddens assert that new theoretical tools are required to investigate a society dominated by scientific risks and technological hazards so they have developed the risk society theory that encompasses a range of theoretical approaches to explaining risk.⁴⁵ These theoretical approaches are adapted from a range of disciplines including sociology, political science, anthropology, geography, psychology, law and economics, which provides further grounds for the theory to be described as, 'panoramic'⁴⁶ as well as, 'grand'.⁴⁷

³⁸ Desmond A Butler and Benjamin P Mathews, *Schools and the Law* (Federation Press, 2007); Douglas J Stewart and Andrew Edward Knott, *Schools, courts and the law: Managing Student Welfare* (Pearson Education, 2002); James G Jackson and Sally Varnham, *Law for educators: school and university law in Australia* (LexisNexis Butterworths, 2007).

³⁹ Newlyn, above, n 6.

⁴⁰ York, above n 2.

⁴¹ Beck, et. al., above, n 1.

⁴² Anthony Giddens, 'Runaway world: How globalisation is reshaping our lives (New ed.)' (2002) *London: Profile*.

⁴³ Merryn Ekberg, 'The parameters of the risk society: A review and exploration' (2007) 55(3) *Current Sociology* 343, 344.

⁴⁴ Ibid.

⁴⁵ Beck, et. al., above, n 1; Giddens, above, n 40.

⁴⁶ Ekberg, above, n 43.

Beck's risk society theory does not posit that there been an increase in risk, but rather that society is organised in response to risk.⁴⁸ What is crucial is that it is the *perception* of risk and the accompanying fear which in turn creates its own reality.⁴⁹ Beck succinctly describes the problem: 'The greatest danger, therefore, is not the risk, but the perception of it, which releases fantasies of danger and of the antidotes to them, thereby robbing modern society of its freedom of action'.⁵⁰

The saturation of information technology into society has not only increased the propensity for people to seek knowledge on issues impacting on them personally, but it has enabled the global mass media to bombard people with the perceived dangers of the world.⁵¹ No-one escapes the unsettling modern risk climate but risk assessment acts as an attempt to, 'stabilize outcomes, a mode of colonising the future'.⁵² Beck argues however that the more we try to, 'colonise the future with the aid of the category of risk, the more it slips out of our control'.⁵³ Sociologists call this, 'reflexive modernisation', where there is the possibility of a never-ending, 'spiral' of unintended new risks, because as we respond to the risks we see, we possibly open up new unintended risks.⁵⁴ It appears that responding to the risk of litigation by using risk management processes, 'gives rise to perceptions of increasing, uncontrollable potential for litigation'.⁵⁵ This reflexive spiral may be triggered even if risk management processes are not in place – all that is needed is the uncertainty as to whether such processes are necessary.⁵⁶ Despite a small probability of litigation, the fear whether rational or not, may have psychological effects and cause behavioural changes.⁵⁷

Educators' Responses to the Risk Management era

Studies related to Negligence and WHS law

Some of the research on teachers' work in the new risk society, has focussed on early childhood educators and their responses to legal regulations ostensibly designed to protect children from being injured. The handful of British studies conducted focus on teachers' curriculum choices with regards to field trips and outdoor education whereas the limited number of Australian studies undertaken focus on early childhood teachers' concerns about injuries in the playground.

⁴⁷ Per Lindqvist and Ulla Karin Nordänger, 'Better safe than sorry? Risk and educational research' (Pt Routledge) (2007) 33(1) *Educational Studies* 15, 23.

⁴⁸ Francine Rochford, 'The Law of Negligence in a 'Risk Society' Calculating Ideas of Reasonable Risk' (Pt The Association) (2007) 16(1) *Griffith law review* 172, 173.

⁴⁹ Lee-Anne Perry, 'Risk, error and accountability: improving the practice of school leaders' (2006) 5(2) *Educational Research for Policy and Practice* 149, 154.

⁵⁰ Ulrich Beck, 'The cosmopolitan state: towards a realistic utopia' (2001) 15 *Der Spiegel* 1, 1.

⁵¹ Kenny, 'Terrify and control: The politics of risk society' (Pt Social Alternatives) (2005) 24(3) *Social alternatives* 50, 51.

⁵² Martin Shaw, 'The development of the "common risk" society' (Pt Transaction Publishers) (2001) 38(6) *Society (New Brunswick)* 7, 9; Ulrich Beck, *Risk society: Towards a new modernity* (Sage, 1992) vol 17.

⁵³ Beck, above, n. 4, as cited in Kenny, above, n. 51, 51.

⁵⁴ Kenny, above, n 51.

⁵⁵ Rochford, above, no 48,181.

⁵⁶ Ibid.

⁵⁷ Cass R. Sunstein, 'Terrorism and Probability Neglect' (Pt Springer) (2003) 26(2-3) *Journal of Risk and Uncertainty* 121, 122.

There have been a handful of British studies,⁵⁸ investigating the effect of the risk society on teachers planning outdoor learning experiences for students. British researchers found that Geography teachers were shying away from taking students on field trips not, because they were worried about the risk of accidents, but rather the risk of litigation.⁵⁹ A more recent study also conducted in the UK found that teachers involved in an outdoor education initiative experienced great tensions between a desire to expose children to formative risk taking and their understandings of teachers' risk management responsibilities.⁶⁰ This tension resulted in teachers altering their practice by adopting a more risk-averse approach which compromised the program's aim to teach children to interpret and judge risk.

The early childhood teachers in an Australian study,⁶¹ reported operating in a culture of fear. Regulations appeared to be inhibiting teachers' professional judgment, causing them to take a risk-averse approach to curriculum. Another study,⁶² found that pre-preparatory teachers had similar perceptions of risk. The teachers cited the constraining aspects of regulatory requirements and a litigious environment as reasons for their caution in allowing, 'risky play'.⁶³ This research provided comparisons with early childhood teachers in Norway who did not feel so constricted by legal regulation or the threat of litigation.⁶⁴

As noted in previous sections, these studies report teachers' actions in response to perceived legal requirements, but do not investigate the accuracy of their legal knowledge. My proposed study will explore whether these restricted pedagogical choices are driven by misconceptions about the law impacting on teachers' work.

Studies related to Child Protection law

Other Australian studies investigating the impact of the new risk aware era on teachers, have concentrated on teacher reactions to the impact of legislation attempting to keep children safe from sexual abuse. The term, 'child panic' has been used to describe the rise and rise of societal concern over children being in danger,⁶⁵ particularly in institutional settings such as schools and the resultant flurry of legislation enacted in an attempt to address societal concerns.⁶⁶ The current concept of 'child panic' has resulted in 'teacher touch' becoming a fraught issue, with research conducted in Australia and New Zealand indicating that teachers had developed, 'safe teacher identities'⁶⁷ because they perceived themselves to be 'risky subjects'⁶⁸ who need to act defensively. The safe teacher strives to always be, 'out in the open',⁶⁹ or, 'taking someone along',⁷⁰ to avoid the danger of being alone with a child.

⁵⁸ Mark Connolly and Chantelle Haughton, 'The perception, management and performance of risk amongst Forest School educators' (Pt Routledge) (2015) *British Journal of Sociology of Education* 1; Victoria A. Cook, Deborah Phillips and Joseph Holden, 'Geography fieldwork in a risk society?' (Pt Institute of British Geographers) (2006) 38(4) *Area (London 1969)* 413.

⁵⁹ Cook, Phillips and Holden, above, n 58.

⁶⁰ Connolly and Haughton, above, n 58.

⁶¹ Little and Wyver, above n 12.

⁶² Little, Sandseter and Wyver, above n 7.

⁶³ Little and Wyver, above, n 12.

⁶⁴ Little, Sandseter and Wyver, above, n 7.

⁶⁵ Jo-Ann Wallace, 'Technologies of 'the child': Towards a theory of the child-subject' (Pt Routledge) (1995) 9(2) *Textual Practice* 285.

⁶⁶ Judyth Sachs and Lise Mellor, 'Child panic', risk and child protection: an examination of policies from New South Wales and Queensland' (Pt Routledge) (2005) 20(2) *Journal of Education Policy* 125.

⁶⁷ McWilliam and Jones, above n 7.

⁶⁸ Ibid.

⁶⁹ McWilliam and Singh, above n 12.

Researchers appear to be unclear about the impact of professional development providing legal information to teachers. The restrictive, 'safe teacher identity'⁷¹ according to McWilliam and Jones, is predominantly a product of the child protection risk management training undertaken by teachers. This is in contrast with a separate analysis of data collected from these teachers,⁷² in which Singh and McWilliam suggest that more legal training is required to assist teachers cope with changed responsibilities and demands in the risk society. This anomaly points to the importance of my proposed research investigating the concept of teacher legal literacy and the relationship between teachers' knowledge of education law and the impact on teacher behaviour.

Indeed the researchers mentioned in this section,⁷³ like Imber in the previous section discussing teacher legal literacy,⁷⁴ call for investigations such as the study I am proposing. They point to the need to understand the extent to which heightened teacher anxiety has produced risk-averse approaches to teaching and learning. They also urge educators and researchers to explore ways teachers can be supported so that risk-taking can become part of teachers' professional identities.⁷⁵ My proposed research aims to investigate if any teacher anxiety and restricted pedagogical choices are due to insufficient levels of legal literacy and whether the support teachers need is training that provides a more accurate understanding of what the law requires of them.

Identification of "insurance and assurance" strategies employed by teachers

There are a handful of studies that specifically tie educators' notions and experience of risk to the socio-cultural theories concerning risk. Like the studies mentioned thus far, these studies do not question the accuracy of educators' knowledge of what the law requires of them. Of these studies, there are two from the perspective of Australian principals and one study from Sweden, examining how teachers discuss and experience risk in their daily work.

Lindqvist, Nordänger and Landhal investigated the impact of risk awareness and the notion of 'blame' on the work of Swedish school teachers.⁷⁶ Their exploratory study provided examples of, 'assurance and insurance strategies'⁷⁷ applied by teachers to cope in the risk society. Assurance strategies' such as increasing the presence of teachers in the school yard had been implemented to provide outward evidence of the operation of a safe school.⁷⁸ 'Insurance strategies' included intense levels of documentation being implemented to safeguard the teachers and their school from future blame.⁷⁹ There was evidence that 'legal advice' to Swedish teachers encouraged the documentation of everything because it was difficult to know what might be useful in court should they need to defend a claim for damages.⁸⁰ Here again, it is unclear whether the strategies put in place display a clear understanding of laws regarding teachers' duty of care or whether misapprehensions as to

⁷⁰ Ibid.

⁷¹ McWilliams and Jones, above, n 7.

⁷² Parlo Singh and Erica McWilliam, 'Pedagogic imaginings: negotiating pedagogies of care/protection in a risk society' (Pt Routledge) (2005) 33(2) *Asia-Pacific Journal of Teacher Education* 115.

⁷³ Singh and McWilliam, above, n 72; McWilliam and Jones, above, n 7.

⁷⁴ Imber, above, n 11..

⁷⁵ Singh and McWilliam, above, n 72.

⁷⁶ Per Lindqvist, Ulla Karin Nordänger and Joakim Landahl, 'Insurance and Assurance: Teachers' Strategies in the Regimes of Risk and Audit' (2009) 8(4) *European Educational Research Journal* 508.

⁷⁷ Ibid, 512.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid, 514.

what the law requires of teachers is driving these time-intensive ‘assurance and insurance strategies’.

The two Australian studies in this area draw on principals’ experiences contending with the need to be risk managers and here researchers also identify examples of ‘assurance and insurance strategies’.⁸¹ One principal reported taking risk-averse actions such as abandoning work experience programmes and school camps.⁸² The principals in both studies indicated that the implementation of such strategies left less time for focusing on pedagogical practice which in turn created the risk of poor educational outcomes. A loss of enthusiasm and creativity which interfered with educational goals was also observed by principals in these studies. Once more however, the accuracy of these educators’ understanding of what the law actually requires of them with regards to risk management, was not questioned. With principals identifying significant threats to educational goals, an exploration of whether educators’ risk management actions are based on misconceptions of the law, is urgently needed.

Proposed research questions and contribution

The literature review in the previous section has drawn together literature exploring three topics; Educators’ (principals’ and teachers’) legal literacy, risk society theory (in particular, the effect of risk management demands on professionals) and principals’ and teachers’ responses to the risk management era.

Although there is a strong body of research surrounding teacher legal literacy in the US and Canada, little is known about what Australian teachers know about the laws that impact on their professional practice. This is particularly worrisome in the context of heightened risk awareness, as teachers must grapple with the resultant demands on educators to be proficient managers of risk. It is therefore crucial to examine whether Australian teachers, like their principals, and teachers in the US and Canada, hold serious misconceptions about their legal duties with regards to the law impacting on their work.

This review reveals that although there has been some research into the work of Australian principals in the current risk society, there is scarce information on Australian teachers’ work in the risk management era. From the limited investigations to date, it appears that the impact of the new risk aware era on teachers has been substantial, with teachers experiencing a crisis in professional identity, evidenced by an increase of uncertainty, frustration and risk-aversion. What has not been examined however, is whether this reported lack of professional confidence and restricted pedagogical choices emanate from an accurate understanding of what the law actually requires of teachers.

It is quite possible that Australian teachers do not have adequate levels of legal literacy to underpin the confidence required to be manage risk, while also providing innovative curriculum. This may be a case of what sociologists call, ‘reflexive modernisation’,⁸³ where false perceptions of teachers’ legal duties have led to fearful, risk-averse teachers. My proposed study aims to explore this possibility by investigating the attitudes, beliefs and knowledge of Australian teachers with regards to the law and explore what links this may have with their approaches to risk management. The key questions to be answered are:

⁸¹ McWilliam and Perry, above n 7; Starr, above n 7.

⁸² Starr, above n 81.

⁸³ Beck, Giddens and Lash, above n 1.

- Do Australian teachers have an accurate picture of what the law requires of them with regards to risk management?
- Is there a relationship between what Australian teachers know about the law impacting on their work and their approach to risk management?
- What is the effect of legal literacy on teacher's self-efficacy and approach to risk management? Does it necessary follow that low levels of legal literacy leads to a lack of confidence and reluctance to take pedagogical risks? Do high levels of legal literacy lead to confidence and a willingness to take pedagogical risks?

Conclusion

At a time when innovative pedagogy driven by confident teachers, is seen as an essential ingredient to improving educational outcomes, the possibility that educators are being stymied by uncertainty about their legal duties should be investigated. Researchers have alluded to the possible links between teacher legal literacy and self-efficacy but to date, this connection has not been explored.

There have been calls for greater legal literacy for educators in the past, and these have for the most part fallen on deaf ears. The reason for this may stem from concerns that improved teacher legal literacy will not impact positively on student outcomes. My study may well show that good levels of teacher legal literacy could have positive impacts on student outcomes because of the effect it has on teachers' self-efficacy and approaches to pedagogy. As the impact of the risk management era on teachers continues to intensify, it is essential that these possible impediments to the delivery of innovative curriculum are examined.

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