

CYBERLAW LITERACY: IMPLICATIONS FOR TEACHERS IN THE AUSTRALIAN TEACHING STANDARDS AND CURRICULUM

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This paper¹ identifies cyberlaw literacy, or understandings about law relevant to the use of information and communication technologies ('ICT'), as a necessary component of legal literacy for teachers if they are to fulfil their professional responsibilities regarding curriculum content knowledge and pedagogy, student and teacher safety in the teaching and learning environment, and general professional behaviour and attitudes as described in the Australian Professional Standards for Teachers² (Standards) and Australian Curriculum.³

I INTRODUCTION

Australia is one of a number of nations that place a digitally skilled and globally engaged citizenry as a cornerstone of a bright social and economic future and which have implemented education policies which put teachers in the frontline of delivering these social and economic goals. This raises the question: What do teachers need to know and do to achieve the desired outcomes?

Drawing primarily from the Australian experience, this paper identifies cyberlaw literacy, or understandings of the information and communication technologies ('ICT') legal landscape, as a necessary part of teachers' knowledge if they are to meet professional responsibilities regarding curriculum content knowledge and pedagogy, student and teacher safety in the teaching and learning environment, and general professional behaviour and attitudes. It first briefly introduces the concept of cyberlaw literacy and the interrelated contemporary concepts of digital competence and citizenship. It then provides a brief overview of some key federal government policies underlying the recently implemented *Australian Professional Standards for Teachers* ('Standards')⁴ and *Australian Curriculum*,⁵ and gives a brief overview of the *Standards'* content and purposes, while the next part uses the *Standards* as the framework for identifying requirements for professional cyberlaw literacy. Empirical evidence indicative of a need for more support and education for teachers in relevant cyberlaw knowledge is outlined and discussed as is the relevance of cyberlaw literacies to school leaders. The need for more research into teachers' and school leaders' cyberlaw literacy is highlighted.

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II A BRIEF CONCEPT GUIDE TO CYBERLAW LITERACY AND DIGITAL COMPETENCE

A *Cyberlaw*

There is no generally accepted definition of ‘cyberlaw’,⁶ nor is there universal acceptance of cyberlaw as a field of study.⁷ There is not even a consistent use of terminology within and between the policy, education, information technology, and law sectors, where the adjectival terms ‘cyber’,⁸ ‘digital’, ‘technological’, ‘e-’ or ‘electronic’, and ‘ICT’ are frequently encountered. These terms are often used more or less interchangeably, however, there can be nuances of meaning which create a ‘continuum of ambiguity’.⁹ Depending on the context, the same terms may be used in a limited sense, for example, to describe issues specific to the internet, or in a very broad sense which encompasses any issues related to the use of computers, the internet or online environments.¹⁰

In this paper, ‘cyberlaw’ is defined in the broadest possible sense and includes laws that are applicable to, or impact upon, the use of information and communication technologies, and is not limited to laws specifically made to regulate the digital environment.

B *Cyberlaw and Legal Literacy*

Litigation risk minimisation has been a significant factor behind calls for improvements in teachers’ legal literacy in what is perceived to be an increasingly legalised professional environment.¹¹ However, while having enough legal knowledge to comply with various laws or to avoid litigation is one measure of legal literacy for teachers and other citizens, it is not the sole measure. Tapp and Levine define ‘legal literacy’ as ‘an individual’s capacity to resolve legal conflicts and to make rational, ethical legal judgements’¹² and suggest that greater legal literacy enables citizens to move beyond being ‘[compliant and accepting] consumers of law’ to a position where active participation in the creation and mobilisation of law is possible.¹³

If this is accepted, cyberlaw literacy not only includes understandings that support compliance with legal regimes in the cyber or ICT environment, but also includes understandings that support participatory, critical, ‘active’ citizenship.

C *The Interrelationship of Cyberlaw Literacy with Digital Competence & Citizenship*

Contemporary expert conceptions of ‘digital competence’, yet another loose and evolving concept¹⁴ with numerous synonyms or near synonyms, also include requirements for cyberlaw literacies which can support both compliance with law and active citizenship. A broad definition is provided by the European Commission’s *Online Consultation on Experts’ Views on Digital Competence Report*:

Digital Competence [is] ... the confident, critical and creative use of ICT to achieve goals related to work, employability, learning, leisure, inclusion and/or participation in society ... It is related to many of the 21st Century skills which should be acquired by all citizens, to ensure their active participation in society and the economy.¹⁵

It goes on to outline the important role of legal understandings in attaining digital competence as follows:

These digital competence areas involve direct, ‘primary’, use of digital technology, which must be embedded in or supported by other competences involving awareness and skills relating to the wider implications and impact of using digital technologies. These

'supportive' (but by no means less important) competences are: awareness of legal and ethical aspects, as well as privacy and security issues and the ability to act prudently in these matters on one side, and an understanding of the role of ICT in society together with a balanced attitude towards technology on the other side.¹⁶

While it does not use the expression 'digital competence', the *Melbourne Declaration on Educational Goals for Young Australians* (2008) ('*Melbourne Declaration*'),¹⁷ which is discussed in more detail in subsequent sections, also adopts a similar perspective on the essential nature of these skills and competencies for its citizens.

III UTILITY OF THE STANDARDS AS A FRAMEWORK FOR IDENTIFICATION OF PROFESSIONAL CYBERLAW LITERACY

While the use of formal teaching standards as a regulatory tool can be contentious,¹⁸ and standards have also been criticised as being 'acontextual'¹⁹ and for ignoring 'critical features of what teachers know, believe and do'²⁰ this paper proceeds on the basis that the *Standards* are an appropriate framework for considering professionally relevant cyberlaw literacy for Australian teachers. While it may be difficult, if not impossible, to fully define all desirable features of teaching practice, the *Standards* were shaped and informed by teachers as well as other significant education stakeholders²¹ and the *Standards* are the formal basis for registration/accreditation and the official 'outline' of the knowledge and skills required for professional practice.²²

IV OVERVIEW OF THE AUSTRALIAN CURRICULUM AND STANDARDS

A National Policy and Regulatory Background

The development of a nationalised curriculum and teaching standards can be seen as part of a long history of federal pursuit of central control or direction over aspects of the education system in order to further national interests. In the context of national reconstruction in the 1940s, the Joint Standing Committee on Social Security recorded its view that education should be equal for all and nationally controlled. It particularly noted the wide variation in curriculum between states and the need for 'great improvement ... [in] vocational and technical training ... for future careers outside the established professions' and most importantly, the provision of 'cultural and civic training to qualify ... [school leavers] to become useful and efficient members of society'.²³

From at least this time, to a greater or lesser degree, successive federal governments have sought influence over schooling by using a variety of mechanisms to overcome potential constitutional barriers to their national education policies.²⁴

1 The Constitutional Background

In the Australian federation, the Commonwealth government's legislative powers are limited to those specified in the *Constitution*, some of which are exclusive federal powers, while others are concurrent with the states. As education is not one of the enumerated powers,²⁵ responsibility for education remained with the states. One of the most powerful devices utilised by the Commonwealth to overcome any state resistance to the national agenda is the ability to allocate funds to states via tied grants pursuant to s 96 of the *Constitution*. This section allows the Commonwealth Parliament to make grants to the states on 'such terms and conditions as it sees fit'. In negotiating these terms, the Commonwealth wields considerable fiscal power due to its

control over income tax revenue, while the states have more limited sources of funding outside of the income tax stream

Other Commonwealth powers relevant to schools include s 51 (xx), the ‘corporations’ power, which allows the Commonwealth to legislate in respect of the private school sector, s 51 (xxix), the ‘external affairs’ power which allows for legislation to give effect to international treaty obligations,⁷⁶ and s 51 (xxiiiA) which allows the Commonwealth to provide ‘benefits to students,’ among other social services. This section allowed the Commonwealth to provide school students with laptop computers, in contrast to the scheme under consideration in the *Williams No 2* case,⁷⁷ discussed below. There is also potential for the Commonwealth to make laws on matters referred to it by one or more State Parliaments under s 51 (xxxvii), but any enacted laws under this head only apply to the applicant state(s)

It should be noted that not all of the mechanisms that the Commonwealth has attempted to utilise have been found constitutionally valid, the most recent examples being *Williams v Commonwealth* (2012) 248 CLR 156 (‘*Williams No 1*’) and *Williams No 2*. In *Williams No 1*, the majority found that the Commonwealth was not entitled to use executive powers conferred by s 61 of the *Constitution* to fund school chaplaincy services in the absence of existing legislative authority. Next, subsequent to an attempt by the Commonwealth to provide such legislative authority, the majority in *Williams No 2* found that the chaplaincy services in question were not within the ambit of s 51 (xxiiiA), which, amongst other social services, allows the Commonwealth to provide ‘benefits to students’. In this case, the majority found that the impugned scheme did not ‘provide material aid to provide for the human wants of students [or] material aid in the form of any service rendered or to be rendered to or for any identified or identifiable student’⁷⁸ and could not be described as being ‘directed to the consequences of being a student’⁷⁹

2 Digital Education Policy and the Australian Standards and Curriculum

In terms of the digital education policy agenda, Australian government policies have long positioned a technologically-focussed education system as a key strategy for economic competitiveness especially in the ‘digital’ economy.⁸⁰ In 1989, the Federal and State Ministers for Education released a joint statement commonly referred to as the *Hobart Declaration*.⁸¹ The statement includes a goal ‘To develop in students ‘skills of information processing and computing’ which appears in the context of other goals for education to be ‘relevant’ and ‘responsive’ to national economic needs (in addition to ‘social’ and ‘cultural’ needs). The *Hobart Declaration* also introduces the concept of the importance of an ‘international context’ for participation as ‘active and informed’ citizens of Australia (at cl 7). Subsequently these goals were revised and expanded upon, first in 1999⁸² and most recently in the *Melbourne Declaration* in 2008.

The *Melbourne Declaration* emphasises the need, inter alia, for ‘young people’ to be to be responsible global and local citizens,⁸³ highly skilled in the use of ICT [and in] the use of digital media, which are essential in all 21st century occupations’⁸⁴ These themes of developing ICT skills and citizenship are carried through as sub-elements⁸⁵ of Goal 2 of the *Declaration* that

All young Australians become successful learners, confident and creative individuals, and active and informed citizens [the achievement of which is supported by the commitment of] all Australian governments [by] working in collaboration with all school sectors.⁸⁶

Teachers are described as being of ‘fundamental importance to achieving these educational goals’³⁷ and the *Standards* and *Australian Curriculum* are each designed to embody and forward the goals of the *Melbourne Declaration*.³⁸ The significance of the relationship between these policy goals and the role of the *Standards* and teachers, is graphically illustrated in the *Australian Teacher and Performance Development Framework*³⁹ where the *Standards*, together with the *National [Australian] Professional Standards for Principals*, are depicted at the base of a pyramid which moves up through strata of: ‘career progression and promotion’; related national frameworks for teacher professional performance, development and learning; resultant ‘high quality teaching and school leadership; and finally, attainment of the *Melbourne Declaration*’s ‘Goal 2’.⁴⁰

B Organisation of the Standards and Relationship with the Australian Curriculum

The *Standards* framework is hierarchically organised with three top-level ‘Domains’ (*Professional Knowledge*, *Professional Practice*, and *Professional Engagement*). The Domains are sub divided into the seven ‘Standards’⁴¹ summarised in Table 1.

Table 1: Domain and Standard divisions reproduced from the table in the *Australian Professional Standards for Teachers (Formerly the National Professional Standards for Teachers)* (AITSL, Reprint June 2012 ed, 2011), 3.⁴²

Domain	Standard
Professional Knowledge	1 Know students and how they learn
	2 Know the content and how to teach it
Professional Practice	3 Plan for and implement effective teaching and learning
	4 Create and maintain supportive and safe learning environments
	5 Assess, provide feedback and report on student learning
Professional Engagement	6 Engage in professional learning
	7 Engage professionally with colleagues, parents/carers and the community

These Standards are subdivided into a total of 37 ‘Focus’ areas.⁴³ Each Focus area contains further ‘descriptors’ of required understandings and practices under four ‘Career stages’⁴⁴ starting with the ‘Graduate’ stage and progressing through ‘Proficient’, ‘Highly Accomplished’ and ‘Lead’ levels. This structure is illustrated in Table 2, using Standard 4.5 (‘Use ICT safely, responsibly and ethically’) as an example. It should also be noted that the *Standards* are not intended to be seen as independent items but as ‘interconnected, interdependent and overlapping’.⁴⁵

In addition to their common grounding in the goals of the *Melbourne Declaration*, discussed above, additional relationships between the *Standards* and *Australian Curriculum* can be identified in the *Standards* themselves. There are explicit references within Standards 2,⁴⁶ 3,⁴⁷ 4⁴⁸ and 5⁴⁹ to teachers’ understandings of ‘curriculum’ and ‘subject’ content, and to the ability of teachers to design lessons to meet curriculum requirements and to report and assess against the ‘curriculum’.⁵⁰ ‘Curriculum content [means] what teachers are expected to teach and students

Table 2 Standard 4.5 by Domain, Standard, Focus and Career Stage, adapted from the table in the *Australian Professional Standards for Teachers (Formerly the National Professional Standards for Teachers)* (AITSL, Reprint June 2012 ed, 2011), 15¹

DOMAIN PROFESSIONAL PRACTICE			
STANDARD 4 MAINTAIN STUDENT SAFETY			
Focus 4.5 Use ICT safely, responsibly and ethically			
<i>Graduate (4.5.1)*</i>	<i>Proficient (4.5.2)</i>	<i>Highly Accomplished (4.5.3)</i>	<i>Lead (4.5.4)</i>
Demonstrate an understanding of the relevant issues and the strategies available to support the safe, responsible and ethical use of ICT in learning and teaching	Incorporate strategies to promote the safe, responsible and ethical use of ICT in learning and teaching	Model, and support colleagues to develop, strategies to promote the safe, responsible and ethical use of ICT in learning and teaching	Review or implement new policies and strategies to ensure the safe, responsible and ethical use of ICT in learning and teaching

*Numbering scheme used in NSW

are expected to learn [and] includes knowledge, skills and understanding and is usually described for a particular learning area at a particular year level’⁵² So, while the *Standards* do not directly refer to the *Australian Curriculum*, the *Australian Curriculum* is necessarily included in these references to ‘curriculum’⁵³ and curriculum or subject content

C Purposes of the Standards

The *Preamble* sets out a range of purposes for the *Standards*⁵⁴ Some of these are regulatory in nature, perhaps the most significant purpose being the role played in teacher registration or accreditation Registration is contingent on attainment of both the Proficient and Graduate levels⁵⁵ The *Standards* are also relevant to administrative and legal determinations about fitness for registration and as a possible issue or evidence in other potentially litigable situations For example, in cases of professional negligence the *Standards* would be relevant evidence of ‘peer professional opinion widely accepted in Australia’ under s 50 of the *Civil Liability Act 2002* (NSW) which states that

(1) a person practising a profession does not incur a liability in negligence arising from the provision of a professional service if it is established that the professional acted in a manner that (at the time the service was provided) was widely accepted in Australia by peer professional opinion as competent professional practice (3) The fact that there are differing peer professional opinions widely accepted in Australia concerning a matter does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section

(4) Peer professional opinion does not have to be universally accepted to be considered widely accepted

Section 5O(2) also allows the court to negate such opinion if it is 'irrational'.

It might then be tempting to consider teachers' requirements for legal literacy from a very narrow legalistic perspective with a resultant focus on the compliance aspect of legal literacy. However, there are also 'developmental'⁵⁶ and/or aspirational purposes embedded in the *Standards* which provide a model of professional knowledge which can inform and guide all domains of professional practice and self-development and which supports broader social and policy goals. These additional purposes also need to be considered when identifying professionally relevant legal literacy.

1 *Role in Professional Registration*

Attainment of the *Standards* at the first two career levels are of particular significance as registration or 'accreditation'⁵⁷ is a prerequisite for employment as a teacher in schools.⁵⁸ In New South Wales,⁵⁹ prospective teachers must reach the standard of accomplishment required at the 'Graduate' stage for initial provisional accreditation.⁶⁰ Once provisionally accredited, under the 'new scheme',⁶¹ teachers must then be accredited as 'Proficient' in accord with the *Standards* within a specified period or accreditation will be revoked.⁶² Maintenance of continuing accreditation at this level also requires 'monitoring and evaluation' against the *Standards*, evidenced by completion of 100 hours of professional development over a five year period.⁶³ The transition to the *Standards* as a basis for the 'new scheme' teachers was completed in 2014,⁶⁴ and recently introduced legislative amendments seek to make this process mandatory for all teachers by the end of 2017.⁶⁵

Currently, only the first two levels are mandatory stages and continuing registration as a teacher is not dependent on reaching the remaining career levels, although some schools and systems may require attainment of the higher levels of accreditation for continuing employment or promotional opportunities.

2 *Other Roles*

Non-regulatory functions or roles for the *Standards* listed in the *Preamble* include:

- a. 'a public statement of what constitutes teacher quality'⁶⁶
- b. 'define[s] the work of teachers'⁶⁷
- c. 'make explicit the elements of high-quality effective teaching ... that will improve educational outcomes for students'⁶⁸
- d. 'a framework which makes clear' what is required from teachers regarding
 - i. Knowledge
 - ii. Practice
 - iii. Professional engagement⁶⁹
- e. 'present a common understanding and language for discourse between teachers, teacher educators, teacher organisations, professional associations and the public'.⁷⁰
- f. Provide a basis to guide 'professional learning'; to assist in self-reflection and assessment of professional attainment⁷¹
- g. 'Contribute to professionalization'⁷²
- h. 'Raise status of the profession'⁷³

V THE CYBERLAW LITERACIES REQUIRED BY THE STANDARDS

A *Compliance and Citizenship: Two Aspects of Cyberlaw Literacy in the Standards*

All three Domains include Standards that expressly or impliedly require professional legal understandings relevant to the use of ICT, whether as part of a Standard that applies generally across teaching practice, or in a Standard that specifically refers to the use of ICT. These cyberlaw literacy requirements can be linked back to the inter-related concepts of 'active and responsible global and local citizenship' and 'highly-skilled use of ICT' used in the *Melbourne Declaration*.⁷⁴

B *Pedagogy and Content Knowledge: Cyberlaw Literacy as a General Requirement for Teachers*

The use of ICT by teachers is not optional. In the Domain *Professional Knowledge*, at the Proficient level,⁷⁵ Standard 2.6.2⁷⁶ requires '[integration of] ICT into learning and teaching programs'. The necessary ICT understandings to do so, which include relevant legal understandings, are therefore not limited to technology subject specialists and are made the responsibility of all teachers. Further emphasising the importance of ICT-related literacies for teachers of all subjects and stages, the *Australian Curriculum*⁷⁷ includes ICT not only within the specific element of the curriculum (subject) area 'Technologies', but also as a 'general capability'⁷⁸ included within the content of all F-10 and Senior Secondary subjects.⁷⁹

One of the five interrelated elements of the ICT general capability is 'Applying social and ethical protocols and practices when using ICT'.⁸⁰ Expected achievements (appropriate to each of six Levels from Foundation to Year 10) include developing cyber law literacies in both 'compliance' and 'active citizenship' senses. For example in the 'Recognising intellectual property' area,⁸¹ in terms of 'compliance' in Foundation Year, students should 'typically ... recognise ownership over their own digital work'.⁸² The concept continues to be developed through the remaining Levels, so that by the end of Year 6 students should be able to 'identify the legal obligations regarding the ownership and use of digital products',⁸³ and by end of Year 8 'apply practices that comply with legal obligations regarding the ownership and use of digital products resources'.⁸⁴ In the 'active citizenship' sense, students by the end of Year 10 should be able to 'identify and describe ethical dilemmas and consciously apply practices that protect intellectual property'⁸⁵ as well as to 'assess the impact of ICT in the workplace and in society, and speculate on its role in the future and how they can influence its use'.⁸⁶

If it is accepted that teachers can only 'teach what they know' and as Standard 2.1.2 requires teachers to 'apply knowledge of the content ... of the teaching area' and Standard 2.3.2 requires teachers to 'Design and implement learning and teaching programs using knowledge of curriculum...',⁸⁷ the ICT-related legal literacies described above are relevant to both the content and teaching or pedagogical knowledge required by the *Standards*.

C *Cyberlaw Literacy and Safety in the Teaching and Learning Environment*

In the Domain *Professional Practice*, Standard 4.4.2 requires teachers to 'ensure students wellbeing and safety within school by implementing school and/or system and legislative requirements'.⁸⁸ More specifically Standard 4.5.2 requires teachers to 'incorporate strategies to promote the safe, responsible and ethical use of ICT in learning and teaching'.⁸⁹ That this would necessarily involve some understandings of legal issues on the part of teachers arises from the

legal nature of many of the risks⁹⁰ students and teachers are potentially exposed to in the use of ICT and because many ICT-relevant concepts, such as ‘copyright’ are legal constructions.

That more than a rudimentary or vague knowledge of law would be required by these Standards can be confirmed by an examination of curriculum and syllabus requirements, as discussed above, and also by examination of the materials and resources provided on ‘official’ sites for teacher and student education.⁹¹ Using the example of copyright, to understand whether an online use or activity is ‘safe’ or ‘responsible’ (in terms of the risk of being exposed to civil or criminal sanctions for illegal use of copyright material) requires relevant understandings of copyright law, such as understanding what material is protected by copyright, what constitutes a breach of copyright law, exceptions such as fair dealing,⁹² and educational licences.

D *Cyberlaw Literacy and Professional Behaviour*

In the *Domain of Professional Engagement*, Standard 7 requires that teachers ‘Engage professionally with colleagues, parents/carers and the community’. At the proficient level, 7.2.2 means that teachers must ‘Understand the implications of and comply with the relevant legislative, administrative and organisational and professional requirements, policies and processes’⁹³ and 7.1.2 refers to teachers ‘meet[ing] codes of ethics and conduct established by regulatory authorities, systems and schools’.⁹⁴

Whether the expressions ‘legislation’⁹⁵ or ‘legislative requirements’⁹⁶ used in the Standards reflects an intention to limit the ambit of required professional understanding in these particular Standards solely to statutory law is unclear. The previous NSW standards⁹⁷ contained references to ‘regulations and statutes related to teachers’ responsibilities and students rights’⁹⁸ and to ‘curriculum requirements of the Education Act’⁹⁹ but in some states more general terms, such as ‘legal’ were used in the old state standards.¹⁰⁰ The inclusion of other sources of ‘requirements’ and ‘policies’ (schools, systems, codes of ethics etc) means that, in practice, the legal understandings required are not limited to statutory law.

Which legislation, parts of legislation or other legal requirements are relevant is not identified or described by the *Standards* but relevant professional cyberlaw understandings would presumably include ‘requirements’ that have been identified and promulgated as relevant by higher levels of school management and in various school or system based policies. For example, the NSW Department of Education and Communities *Code of Conduct* (which is not specifically directed to ICT) draws its employees’ attention to a number of pieces of legislation relevant to the use of ICT¹⁰¹ including, but not limited to the following: *Anti-Discrimination Act 1977* (NSW), *Crimes Act 1900* (NSW), *Work Health and Safety Act 2011* (NSW), *Ombudsman Act 1974* (NSW), and the *Privacy and Personal Information Protection Act 1998* (NSW).¹⁰² Schools and systems also produce a variety of ICT-specific policies which refer to legal and or legislative requirements. For example, the Catholic Schools Office Diocese of Broken Bay *Acceptable Use Policy For Internet/Intranet & Network Services* requires ‘students and staff ... to comply with all relevant legislation in using the internet and network services in DSS schools and offices’.¹⁰³ The identified legislation includes: *Human Rights and Equal Opportunities Commission Act 1986* (Cth), *Classification (Publication, Films and Computer Games) Act 1995* (Cth), *Copyright Act 1968* (Cth), *Copyright Amendment [Digital Agenda] Act 2000* (Cth), *Privacy Amendment (Private Sector) Act 2000* (Cth), *Anti-Discrimination Act 1977* (NSW), *Children and Young Persons (Care and Protection) Act 1998* (NSW), *Crimes Act 1900* (NSW), *Defamation Act 2005* (NSW), *Workplace Surveillance Act 2005* (NSW), *Privacy Act 1988* (Cth), and the *Spam Act 2003* (Cth).¹⁰⁴

VI EMPIRICAL EVIDENCE ABOUT TEACHERS' LEVEL OF CYBERLAW LITERACY

If teachers are to fulfil their role as one of the primary influences in developing citizenship in children, it is particularly important that teachers have accurate and relevant professional knowledge of the ICT legal environment and use this to model appropriate professional and legal behaviours and attitudes.

It is often assumed that younger generations are adept, highly sophisticated and informed users of technologies,¹⁰⁵ with the implication that they therefore have little to learn about the digital world. However, Prensky's 'digital native' concept is founded on assumptions about the abilities and practices of this generation, rather than on any rigorously examined empirical evidence. Indeed, after reviewing a number of local and international studies, Bennett et al noted 'a clear mismatch between the confidence with which claims are made and the evidence for such claims'.¹⁰⁶ A more recent cluster analysis study using data from 2096 students aged between 17 and 26 from three Australian universities also highlights the lack of homogeneity of so-called 'digital native' or 'net generation' students.¹⁰⁷ Further, it cannot be assumed that high frequency of use of, or facility in using, technologies means other aspects of digital literacy, such as legal and ethical understandings regarding technologies and their uses have been developed.

Well-developed cyberlaw literacy is also critical knowledge if teachers are to 'understand the relevant issues'¹⁰⁸ or 'incorporate strategies to promote safe, responsible and ethical use' of ICT'.¹⁰⁹ That this is essential knowledge for teachers is highlighted by a number of studies which indicate that lack of literacy translates into inability or unwillingness to teach or guide students in appropriate use of ICT.¹¹⁰ Suboptimal levels of literacy may also result in inadequate preventative management and planning or in failures to identify and respond appropriately to serious incidents. In Australia, a national study in 2011 surveyed teachers on cybersafety topics including teachers': internet skills; cyber-safety practices; 'awareness' of cyber-safety issues; response to 'incidents'; type of incidents; and 'awareness and [use of] ... cyber-safety information'.¹¹¹ The results indicated an overall perception by teachers that direct technical controls (such as blocking) were 'the most effective cyber-safety preventative measures in schools'.¹¹² In contrast, education and information for students was seen as significantly less effective¹¹³ and this may reflect a lack of sufficient legal understandings on the part of the teachers to be able to effectively guide or model appropriate use. A more detailed study of Victorian middle school students', teachers' and parents' perceptions of legal risks associated with Social Networking Sites (SNS) found that awareness was limited to a narrow range of issues (eg cyberbullying and grooming) and that while 'generally aware ... that risks must be managed'¹¹⁴ there was 'little clear understanding ... of the precise nature of risks that may arise from everyday SNS use'.¹¹⁵

Intellectual property/copyright infringement was one of the significant areas that failed to be identified as a potential legal risk by teachers in the de Zwart study,¹¹⁶ and this may be related to the fact that copyright is a notoriously complex area of law which is often very poorly understood.¹¹⁷ Yet safety requirements are not the only reason accurate understandings about some cyberlaw issues including copyright, are necessary. In teaching curriculum and subject content¹¹⁸ a level of sophistication is expected by the *Australian Curriculum* and, consequently, the *Standards*. For example, teachers working with Foundation Year students must be able to convey concepts relevant to digital copyright law such that students can 'recognis[e] that they own text, photos and videos they produce',¹¹⁹ but in a survey-based study of preservice primary and secondary teachers in the final semester of university, only 43 percent were able to identify that a school student would own copyright in their own digital homework.¹²⁰ The respondents were also asked to rate their awareness of a number of fundamental copyright law areas such as the general principles

of authorship and ownership, the categories of materials protected by copyright, moral rights, and fair dealing exceptions, and for these areas, only 12% to 25% reported 'good' or 'very good' awareness with 35-36% reporting 'no', or 'poor' levels of awareness.¹²¹

VII CONCLUSION

While the *Standards*, read together with the *Melbourne Declaration* and *Australian Curriculum* indicate the need for understandings of cyberlaw in both the compliance and citizenship sense, there are few empirical studies into the extent or nature of teachers' cyberlaw literacy in Australia. As the forgoing discussion indicates, teachers' pre-existing understandings of cyberlaw are not necessarily a reliable foundation for meeting the *Standards'* professional requirements including the ability to: comply with legislative requirements, provide appropriate classroom management such as identifying and managing legal risks of ICT; or, provide the content knowledge required by the curriculum.

In addition to the studies discussed above, which are indicative of gaps in teachers' and preservice teachers' professional knowledge base, other studies have been conducted using the Technological Pedagogical Content Knowledge ('TPACK') model.¹²² These however, look at cyberlaw knowledge only in a very general sense.¹²³ For example, the *Teaching Teachers for the Future (TTF) TPACK Survey* instrument measures preservice teachers' perceptions of confidence and usefulness on a self-rated scale and includes questions such as 'How confident are you that you have the knowledge, skills and abilities to support students' use of ICT to ... demonstrate an understanding of safe, legal and ethical use of digital information and technologies'.¹²⁴ While this approach provides some information about Australian teachers' preparedness to teach,¹²⁵ there is a need for more research into teachers' factual knowledge of cyberlaw, as well as their enacted practices,¹²⁶ particularly if teachers' professional training needs are to be adequately met.

The cyberlaw literacies required by the *Standards* cannot be achieved in isolation. Rapid changes in technologies and technology uses and the complexity of relevant legal regimes create a complex environment that make it very difficult for a teacher at any career stage to independently maintain currency in the professional cyberlaw literacies required by the *Standards*. Appropriate initial teacher education, continuing and timely professional development, and support and guidance from school leadership, professional organisations and government bodies is essential.

Indeed, the cyberlaw literacies discussed in this paper are pertinent to school leaders. School leadership is seen having a critical role in the *Melbourne Declaration*,¹²⁷ Similarly to the *Standards*, the *Australian Professional Standards for Principals*¹²⁸ also imply a need for cyberlaw literacy, for example, the 'Knowledge and understanding' Leadership Requirement includes the following statement:

Principals are well versed in the latest research and developments in pedagogy, curriculum, assessment and reporting, and student wellbeing. They have knowledge of relevant national policies, practices and initiatives as well as relevant federal and state legislation, agreements and policies. They understand the implications of child safety, health and wellbeing, human resource management, financial management and accountability, and other legislative and policy requirements in relation to serving their community and broader society.¹²⁹

While further research is also needed into this group's level of relevant knowledge of cyberlaw, as previous empirical studies are indicative of gaps in principals' and school leaders' general education or school law literacies, both in Australia,¹³⁰ and internationally,¹³¹ it might be

expected that there might also be concerning gaps in principals' cyberlaw knowledge. If this is the case, it is also vitally important that they also receive appropriate professional development in order to fulfil their leadership role.

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Keywords: professional teaching standards, ICT, digital literacy, teachers' legal literacy, cyberlaw literacy

ENDNOTES

- 1 This paper updates and expands upon an earlier conference paper, Lucy York, 'Legal Literacy And ICT: An Examination of the Australian Teaching Standards and Implications for Teachers' Understandings of Law', (*Paper presented at the Australia & New Zealand Education Law Association 22nd Annual Conference Hobart 2-4 October 2013*).
- 2 Australian Institute for Teaching and School Leadership ('AITSL'), *Australian Professional Standards for Teachers (Formerly the National Professional Standards for Teachers)* (2011) ('Standards'), Education Services Australia Limited, © 2011 Education Services Australia Limited. Use of materials in this source are subject to the following conditions: 'The Australian Professional Standards for Teachers (the Standards) were developed by the Australian Institute for Teaching and School Leadership (AITSL). AITSL was formed to provide national leadership in the profession of teaching and school leadership, with funding provided by the Australian Government. Education Services Australia, as the legal entity for the Standing Council on School Education and Early Childhood, retains all copyright for the material. Apart from any use permitted under the Copyright Act 1968 (Cth), and use for non-commercial education purposes where the source is acknowledged, the Standards may not be sold or used for any commercial purpose. Other than as permitted above or by the Copyright Act 1968 (Cth), no part of the focus statements may be reproduced, stored, published, performed, communicated or adapted by any means without the prior written permission of the copyright owner'.
- 3 The most current version is available at Australian Curriculum, Assessment and Reporting Authority ('ACARA'), *Australian Curriculum* <<http://www.australiancurriculum.edu.au>>. Unless otherwise indicated, this paper refers to *Version 7.5* which was current as at 18 August 2015. *Australian Curriculum Version 7.5 (Foundation to Year 10)* (2015) <<http://www.australiancurriculum.edu.au/Download/F10>> ('F-10') and Australian Curriculum, Assessment and Reporting Authority, *Australian Curriculum Version 7.5 (Senior Secondary)* (2015) <<http://www.australiancurriculum.edu.au/Download/SeniorSecondary>> ('Senior Secondary').
- 4 *Standards*, above n 2.
- 5 Above n 3.
- 6 Daniel J Ryan et al, 'International Cyberlaw: A Normative Approach' (2011) 42 *Georgetown Journal of International Law* 1161, 1166-1167.
- 7 For example, Frank H Easterbrook has suggested that cyberlaw or 'Law in Cyberspace' is another unprofitable example of the 'Law of the Horse' or 'Law and 'dilettantism, in Cyberspace and the Law of the Horse' [1996] *University of Chicago Legal Forum* 207, 207-8. In contrast, Laurence Lessig counter-argues that cyberlaw is not a case of 'Law of the Horse', but that 'by working through

- examples of law interacting with cyberspace ... a set of general questions about law's regulation outside cyberspace' emerge, in 'The Law of the Horse: What Cyberlaw Might Teach' (1999) 113(2) *Harvard Law Review* 501, 502.
- 8 'Cyberspace' for example, is also a contested and contestable term, Ryan et al, above n 6, 1166–1168.
 - 9 Douglas AJ Belshaw coins this term in his examination of the meaning of 'digital literacy', in *What is 'Digital Literacy'? A Pragmatic Investigation*. (Ed D Thesis, Durham University, 2012) <<http://etheses.dur.ac.uk/3446/>>. see Chapter 5, in particular.
 - 10 See for example, the broad view adopted in the entry on 'Cyberlaw' in Richard J. Samuels (ed), *Encyclopedia of United States National Security* (SAGE, 2005).
 - 11 See for example, in Australia, Jane Edwards, Andrew Knott and Dan Riley (eds), *Australian Schools and the Law* (LBC Information Services, 1997), Preface; Doug Stewart and Paul McCann, 'Educators and the Law: Implications for the Professional Development of School Administrators and Teachers' (1999) 25(1) *Journal of In-Service Education* 135, 136; and for example in the United States: Matthew Militello, David Schimmel and H Jake Eberwein, 'If They Knew, They Would Change: How Legal Knowledge Impacts Principals' Practice' (2009) 93(1) *NASSP Bulletin* 27, 43; Lynn Sametz, Caven McLoughlin and Victor Streib, 'Legal Education for Preservice Teachers: Basics or Remediation?' (1983) 34(2) *Journal of Teacher Education* 10, 1; David E. Gullatt and John R. Tollett, 'Educational Law: A Requisite Course for Preservice and Inservice Teacher Education Programs' (1997 *Journal of Teacher Education* 48(2) 129, 130–131.
 - 12 June Louin Tapp and Felice J Levine, 'Legal Socialization: Strategies for an Ethical Legality' (1974–1975) 1 *Stanford Law Review* 1, 3.
 - 13 Ibid 7–8.
 - 14 Liisa Ilomäki et al, 'Digital Competence – an Emergent Boundary Concept for Policy and Educational Research' (2014) *Education and Information Technologies* 1.
 - 15 José Janssen and Slavi Stoyanov, *JRC Technical Report: Online Consultation on Experts' Views on Digital Competence (European Commission Joint Research Centre Reference Report)* (Publications Office of the European Union, 2012), 1 <<http://ipts.jrc.ec.europa.eu/publications/pub.cfm?id=5339>>.
 - 16 Ibid 21.
 - 17 *Ministerial Council for Education, Early Childhood Development and Youth Affairs ('MCEEDYA'), Melbourne Declaration on Educational Goals for Young Australians (2008)*, 6–15 ('Melbourne Declaration').
 - 18 Judyth Sachs suggests that the 'very term... [is] a site of struggle between various interest groups, bureaucracies, teachers' unions and teachers themselves, in 'Teacher Professional Standards: A Policy Strategy to Control, Regulate or Enhance the Teaching Profession?' in Nina Bascia et al (eds), *International Handbook of Educational Policy* (Springer Netherlands, 2005) vol 13, 579, 579.
 - 19 Sachs, above n 18, 583. Diane Mulcahy also notes that the mundane practice of teaching involves professional 'judgements ... contingent upon the shifting circumstances of teaching and specific to classroom events' in 'Assembling the 'Accomplished' Teacher: The Performativity and Politics of Professional Teaching Standards' (2011) 43 *Educational Philosophy and Theory* 94, 103.
 - 20 Mulcahy, above n 19.
 - 21 'Their development included a synthesis of the descriptions of teachers' knowledge, practice and professional engagement used by teacher accreditation and registration authorities, employers and professional associations. Each descriptor has been informed by teachers' understanding of what is required at different stages of their careers. An extensive validation process involving almost 6,000 teachers ensured that each descriptor was shaped by the profession'. in *Preamble, Standards* above n 2, 1.
 - 22 The *Standards* claim to provide a comprehensive 'outline [of] what teachers should know and should be able to do'. Above n 2, 3.
 - 23 Joint Standing Committee on Social Security [1941–46], Parliament of Australia, *Fifth Interim Report* (1942), 5 [17].

- 24 For a brief history of how the Commonwealth increased its influence over education, particularly in the post-World War II era see Jane Edwards 'Education and the Constitution' in Jane Edwards, Andrew Knott and Dan Riley (eds), *Australian Schools and the Law* (LBC Information Services, 1997) 274
- 25 The majority of these powers are enumerated in s 51 of the *Australian Constitution*
- 26 *Commonwealth v Tasmania* (1983) 158 CLR
- 27 *Williams v Commonwealth and Others* (2014) ALR 41 ('*Williams No 2*')
- 28 Ibid 52 [47]
- 29 Ibid [47] [48]
- 30 Buchanan suggests that the 'last two decades' of Australian educational policies, including the 'digital turn' 'reflect the global emphasis on choice, competition and performance' with the most recent manifestations being apparent in 'educational agendas [such as the] nationalisation of the K–12 curriculum [and the *Digital Education Revolution*] in Rachel Buchanan 'Paradox, Promise and Public Pedagogy: Implications of the Federal Government's Digital Education Revolution' (2011) 36(2) *Australian Journal of Teacher Education* Article 6 67, 67–68 The *Digital Education Revolution* policy is described as one of the 'key initiatives that will drive Australia's digital future' and as 'providing students and educators with the tools and training needed to equip them for [a] digital economy' in, respectively Department of Broadband, Communications and the Digital Economy (Cth) ('DBCDE'), *Australia's Digital Economy: Future Directions (Final Report)* (2009) 1 and DBCDE, *National Digital Economy Strategy: Leveraging the National Broadband Network to Drive Australia's Digital Productivity* (2011) 37
- 31 Ministerial Council on Education, Employment, Training, and Youth Affairs ('MCEETYA'), *Australia's Common and Agreed Goals for Schooling in the 21st Century* (1989)
- Given the emphasis which the major parties place on global competitiveness and the importance of ICT skills and infrastructure in achieving positive economic outcomes they are unlikely to reverse this policy trend in the foreseeable future, although the mechanisms put in place to forward this agenda may vary
- 32 MCEETYA *The Adelaide Declaration on National Goals for Schooling in the Twenty-First Century*
- 33 Including national and personal values, above n 17, 4–5
- 34 Ibid 5
- 35 Ibid 8–9
- 36 Ibid 8
- 37 Ibid 11
- 38 See the *Standards*, above n 2, 1, 8, and ACARA, *Shape of the Australian Curriculum: Version 4.0* (2013) 25 The *Shape of the Australian Curriculum: Version 4.0* 'provides background to the development of and for the implementation of the Australian Curriculum, at 3, and the document also makes numerous references to how the Curriculum is designed to reflect and support the goals and skills set out in the *Melbourne Declaration*, see for example, 26, 239–435 and 1078
- 39 AITSL, *Australian Teacher and Performance Development Framework* (Australian Institute for Teaching and School Leadership, 2012)
- 40 Ibid 8 The *Standards* are also available online at <<http://www.aitsl.edu.au/australian-professional-standards-for-teachers/standards/list>>
- 41 When not italicised, the words 'Standard' or 'Standards' are used to refer to the individual Standards and their subdivisions as described in the main *Standards* document for example 'Standard 7' or 'Standard 4.2.1'
- 42 © 2011 Education Services Australia as the legal entity for the Education Council
- 43 *Standards*, above n 2, 8–19
- 44 'Career stages' are 'benchmarks represented by increasing levels of knowledge, practice and professional engagement' ibid 20
- 45 Ibid 3

- 46 Curriculum knowledge is relevant to this *Standard* as a whole ('Know the content and how to teach it') and 'curriculum' is specifically referred to in the following Focus areas: 2.1 Content and teaching strategies of the teaching area; 2.3, Curriculum, assessment and reporting; and, 2.6 Information and Communication Technology (ICT).
- 47 Curriculum is referred to as one of the bases on which teachers will 'Evaluate and improve teaching programs' in Focus area 3.6.
- 48 Focus area 4.4 Maintain student safety, includes requirements in the various Descriptors to work within 'curriculum' requirements.
- 49 Curriculum knowledge is relevant to this *Standard* as a whole and as one of the bases on which teachers can 'Assess, provide feedback and report on student learning,' and 'curriculum' is used specifically in Focus areas 5.1 Assess student learning; 5.2 Provide feedback to students on their learning; and, at the 'Lead' level (5.3.4) as a basis for 'lead[ing] and evaluat[ing] moderation activities' in 5.3 Make consistent and comparable judgements.
- 50 These varied uses for teachers' curriculum knowledge in the *Standards* are also summarised in an overview, above n 2, 4–7.
- 51 Above n 42.
- 52 Glossary, *ibid*, 20.
- 53 The term 'curriculum' can be defined as the totality of what is taught and learned 'in classrooms and other learning environments' including all resources 'official and unofficial' Allan Luke et al, *Development of a Set of Principles to Guide a P-12 Syllabus Framework: A Report to the Queensland Studies Authority Queensland, Australia*. (Queensland Studies Authority, 2008), 11. As the authors of the *Report* also point out (at 12), there is a significant distinction between the terms 'curriculum' and 'syllabus', which is not always maintained in discourse about education: the syllabus being an attempt to 'shape and set the parameters of the curriculum,' so a syllabus can be seen as an element that contributes to the final 'curriculum'. Whether not the *Australian Curriculum* is technically a 'curriculum' or a 'syllabus', the use of the term 'curriculum' in the *Standards* would therefore include the requirements of the *Australian Curriculum*.
- 54 *Standards*, above n 2, 2.
- 55 'The *Graduate* and *Proficient* levels of the *Standards* are the basis for the registration or accreditation process for each state and territory which assists in 'support[ing] ...nationally consistent teacher registration' *ibid*. In New South Wales, the term 'accreditation' is used rather than 'registration' in the relevant legislation (*Teacher Accreditation Act 2004* (NSW), formerly the *Institute of Teachers Act 2004*), but similar arrangements are in place in the other jurisdictions participating in the national scheme. The *Preamble* also suggests that the standards might be used as 'basis for a professional accountability model ... [a basis against which] ... teachers can demonstrate appropriate levels of knowledge, practice and professional engagement', at 2.
- 56 'Developmental' purposes focus on 'improving [teachers'] professional knowledge...[and] take a student centred approach to teaching and learning', above n 18, 583.
- 57 See above n 54. The accreditation requirements and other *Standards* and *Curriculum* arrangements for New South Wales are used as the primary source of examples in the remainder of this paper.
- 58 *Teacher Accreditation Act 2004* (NSW), s 29.
- 59 While the *Australian Standards* are now being similarly implemented in all states and territories, this discussion will use examples from the New South Wales jurisdiction.
- 60 Section 28 of the *Teacher Accreditation Act 2004* (NSW) means that, under the 'New scheme', only accredited persons can teach in New South Wales' schools. Section 30(2) provides that an applicant may be provisionally accredited if a teacher accreditation authority is 'satisfied' that the applicant has met the requirements in the *Standards*, or that a person has completed an approved course and will receive a teaching qualification. A teacher may also be 'conditionally' accredited under s 31.
- 61 *Ibid* s 30(4) and to be accredited at the 'Proficient' level, an accrediting authority must be satisfied that requirements in the *Standards* have been met, at s 32(a)(ii).
- 62 For fulltime teachers the period is three years from the date of accreditation unless otherwise determined by the Minister, *ibid* s 30(5).

- 63 New South Wales Institute of Teachers, 'Accreditation Matters' (2012)(3) <<http://www.nswteachers.nsw.edu.au/DownloadDocument.aspx?DocumentID=742>>
- 64 Ibid
- 65 Teacher Accreditation Amendment Bill 2014 (NSW) cl 41
- 66 *Standards* above n 2, 2
- 67 Ibid
- 68 Ibid
- 69 Ibid
- 70 Ibid
- 71 Ibid
- 72 Ibid
- 73 Ibid
- 74 The *Standards Preamble*, at 1, notes that the *Standards* support the 'aspirations' of the *Melbourne Declaration*
- 75 Unless otherwise indicated, the examples discussed are the Descriptors at the Proficient level
- 76 *Standards* above n 2, 11 The AITSL *Standards* publication does not number Standards at the Descriptor level but for convenience the numbering scheme in New South Wales Institute of Teachers, *Australian Professional Standards for Teachers* (2013), the NSW republication is adopted in this paper
- 77 The *Australian Curriculum* is in the process of being phased in across NSW K–10 syllabuses the timelines and other information about implementation is available at Board of Studies Teaching and Educational Standards NSW ('BOSTES') *New NSW Syllabuses About* <<http://syllabus.bostes.nsw.au/about/>>
- 78 There are seven General Capabilities Literacy Numeracy, ICT capability Critical and creative thinking Personal and social capability Ethical understanding and Intercultural understanding A 'capability encompasses knowledge, skills behaviours and dispositions some of which 'may be shared' with other capabilities, example the application of social and ethical protocols in the use of digital technologies is included in ICT capability' ACARA, *General Capabilities in the Australian Curriculum (F-10)* (2013 updated September 2014) <<http://www.australiancurriculum.edu.au/GeneralCapabilities/Pdf/Overview>> 5
- 79 The ICT capability is addressed in more detail in the *F-10* subject content requirements *Australian Curriculum Version 7.5 (Foundation to Year 10)* (2015) <<http://www.australiancurriculum.edu.au/Download/F10>> ('*F-10*') compared to the *Senior Secondary Curriculum* ACARA *Australian Curriculum Version 7.5 (Senior Secondary)* (2015) <<http://www.australiancurriculum.edu.au/Download/SeniorSecondary>> ('*Senior Secondary*') which is 'written on the assumption that students who undertake a senior secondary subject have prior knowledge understanding and skills developed during their Foundation to Year 10 schooling ACARA *The Australian Curriculum Senior Secondary Curriculum Information Sheet* (ACARA 2013) <http://www.acara.edu.au/verve/_resources/Senior_Secondary_Australian_Curriculum_file.pdf>
- 80 Above n 78 55–57
- 81 Additional examples can also be found within the following areas Apply digital information security practices 'Apply personal security protocols' and 'Identify the impacts of ICT in society', *ibid*
- 82 For example by 'recognising that they own text, photos and videos they produce' *ibid* 55
- 83 Ibid
- 84 Ibid
- 85 Ibid
- 86 In the area 'Identify the impacts of ICT in Society' *ibid* 57
- 87 *Standards* above n 2 10
- 88 *Standards* above n 2 19
- 89 Ibid
- 90 As an indication of the potential scope of legal understanding required in a study which focussed on social networking services the legal risks identified as being most significant were 'Privacy,

disclosure and breach of confidence; Intellectual property rights, especially copyright infringement; Defamation; and Criminal laws, including harassment and offensive material', Melissa June de Zwart et al, *Teenagers, Legal Risks and Social Networking Sites* (Monash University Press, 2011), 1. This is not to suggest that only legal areas are relevant to this Standard - other areas which may need to be considered include ergonomic and physical safety; economic and resource responsibility; and social relationships.

- 91 See for example the *Cybersmart* website at < <http://www.cybersmart.gov.au>> (*Cybersmart* is a national cybersafety and cybersecurity education program managed by the Australian Communications and Media Authority), and the New South Wales Department of Education and Communities website *Digital Citizenship* <<http://www.digitalcitizenship.nsw.edu.au/>> which contains resources for teachers to assist them to understand and teach key areas of digital citizenship including 'Digital law' to children aged from 5-18.
- 92 The 'fair dealing' provisions in the *Copyright Act 1968* (Cth) ss 40-42 are not identical to the 'fair use' concept found in US copyright law. The existence of such international variations is also a relevant understanding.
- 93 *Standards*, above n 2, 19.
- 94 *Ibid*.
- 95 In Standard 1.6.
- 96 In Standards 1.6, 4.4 and 7.2.
- 97 New South Wales Institute of Teaching, *Professional Teaching Standards* (2005).
- 98 *Ibid* 14, Standard 7.1.5.
- 99 *Ibid* 4, Standard 1.1.
- 100 For example 'Teachers understand and fulfil their professional, legal and ethical responsibilities to students, colleagues and the community' was used in Western Australian College of Teaching, *Western Australian Professional Standards for Teaching* (Western Australian College of Teaching, 2009), Standard 8.3. Western Australia has adjusted its own implementation of the *Standards*, by substituting 'legal requirements' for 'legislative requirements' in Standard 4.4 descriptors Teacher Registration Board of Western Australia, *Professional Standards for Teachers in Western Australia* (Teacher Registration Board of Western Australia), < <http://trb.wa.gov.au/currently-registered/professional-standards/>>. Western Australia originally adopted the then *National Professional Standards* in 2011 – the newer implementation extends to early childhood teachers and the TRB allows reference to either *Professional Standards for Teachers in Western Australia* or the *Standards* as they are 'the same in material respects', *Professional Standards for Teaching*, at 1.
- 101 The relevance of the legislation to ICT activities is not made explicit in the document.
- 102 Department of Education and Communities (NSW), *The Code of Conduct* (2014), 2.
- 103 Catholic Schools Office Diocese of Broken Bay, *Acceptable Use Policy For Internet/Intranet & Network Services In The Diocesan School System: Operational Policy November 2012* (Catholic Schools Office Diocese of Broken Bay, 2012), 4.
- 104 *Ibid* 5.
- 105 See for example, Marc Prensky, 'Digital Natives, Digital Immigrants Part 1' (2001) 9(5) *On the Horizon* 1; Marc Prensky, 'Digital Natives, Digital Immigrants Part 2: Do They Really Think Differently?' (2001) 9(6) *On the Horizon* 1.
- 106 Sue Bennett, Karl Maton and Lisa Kervin, 'The 'Digital Natives' Debate: A Critical Review of the Evidence' (2008) 39(5) *British Journal of Educational Technology* 775, 782.
- 107 G Kennedy et al, 'Beyond Natives and Immigrants: Exploring Types of Net Generation Students' (2010) 26(5) *Journal of Computer Assisted Learning* 332.
- 108 Standard 4.5, at the Graduate descriptor 4.5.1.
- 109 *Ibid* at the Proficient descriptor 4.5.2.

- 110 Davina Pruitt-Mentle and Educational Technology, Policy Research, and Outreach, *2008 National Cybersafety, Cybersecurity, Cyberethics Baseline Study* (2008), Davina Pruitt-Mentle, Portia Pusey and Policy Research Educational Technology, and Outreach *State of K12 Cyberethics: Safety and Security Curriculum in U.S. Educator Opinion* (2010) Portia Pusey and William Sadara 'Preservice Teacher Concerns about Teaching Cyberethics, Cybersafety, and Cybersecurity: A Focus Group Study' (Paper presented at the Society for Information Technology & Teacher Education International Conference 2012, Austin, Texas, USA, <<http://www.editlib.org/p/40117>>, Portia Pusey and William A. Sadara, 'Cyberethics, Cybersafety, and Cybersecurity: Preservice Teacher Knowledge, Preparedness, and the Need for Teacher Education to Make a Difference' (2011) 28(2) *Journal of Digital Learning in Teacher Education* 82
- 111 IRIS Research Ltd and Australian Council for Educational Research, *Australian Children's Cyber-safety and E security: Results of a Teachers' Survey* (Department of Broadband Communications and the Digital Economy, 2011), 9
- 112 Ibid 53
- 113 Ibid 54
- 114 Melissa June de Zwart et al, *Teenagers' Legal Risks and Social Networking Sites* (Monash University Press, 2011), 1
- 115 Ibid 61–62
- 116 Ibid 1
- 117 See for example the problematic nature of copyright for young people in the context of SNS use, discussed by de Zwart et al, ibid 14–16
- 118 This is not to suggest that 'General awareness' or 'alertness' about certain legal issues are inappropriate levels of literacy in every *Standards* context
- 119 An example of the ability to 'Recognise intellectual property' at the Foundation level in *Australian Curriculum: F-10* (2014), above n 78
- 120 In a scenario-based multiple choice question
- 121 Lucy York, 'Preservice Teachers: What do They Know about Cyberlaw?' in Lawrence Walker and Lindsey Conner (eds), *Future Focussed Teacher Education: Proceedings of the Society for Information Technology and Teacher Education International Symposium, University of Canterbury, Christchurch, New Zealand, 28–29 April 2014* (Society for Information Technology & Teacher Education, 2014) 71–79 <<http://www.editlib.org/p/149921/>> This paper presented selected findings from the author's doctoral research project which investigates NSW preservice teachers' cyberlaw literacies using a *Standards* framework and a mixed methods approach
- 122 TPACK, or Technological Pedagogical Content Knowledge is a framework for understanding or describing the types of teacher knowledge 'required for technology integration in teaching' proposed by Mishra, Punya and Matthew J Koehler, 'Technological Pedagogical Content Knowledge: A Framework for Teacher Knowledge' (2006) 108(6) *Teachers College Record* 1017
- 123 This is not to discount the importance of self-efficacy and confidence in their own digital literacies if teachers are to integrate ICT into their practices as required by the *Standards*
- 124 Romina Jamieson-Proctor et al 'Development of the TTF TPACK Survey Instrument' (2013) 27(3) *Australian Educational Computing* 26, 31
- 125 One such finding relevant to the *Standards* framework was that preservice teachers were 'least likely to be confident that ICT would support teaching in relation to Digital citizenship to promote student demonstration of rights & responsibilities in use of digital resources & tools' Glenn Finger et al, 'Teaching Teachers For The Future (TTF) Project TPACK Survey: Summary Of The Key Findings' (2013) 27(3) *Australian Educational Computing* 13–16
- 126 Teachers' practices in the classroom do not always coincide with their espoused beliefs for reasons which may be internal and/or external to the individual teacher, see for example, Peggy A Ertmer et al, 'Teacher Beliefs and Technology Integration Practices: A Critical Relationship' (2012) 59(2) *Computers & Education* 423
- 127 Above n 17, 11

- 128 Australian Institute for Teaching and School Leadership, *Australian Professional Standards for Principals and the Leadership Profiles* (AITSL, Updated June 2015 ed, 2011).
- 129 Ibid 22.
- 130 See for example, DJ Stewart, 'Principals' Knowledge of Law Affecting Schools' (1996) 1(1) *Australia and New Zealand Journal of Law and Education* 111; Paul McCann, 'Principals' Understandings of Aspects of the Law Impacting on the Administration of Catholic Schools: Some Implications for Leadership' (PhD Thesis, Australian Catholic University, 2006); and Allison J Trimble, Neil Cranston and Jeanne M Allen, 'School Principals and Education Law: What do They Know, What do They Need to Know' (2012) 18(2) *Leading & Managing* 46.
- 131 In the US, see for example, Matthew Militello, David Schimmel and H Jake Eberwein, 'If They Knew, They Would Change: How Legal Knowledge Impacts Principals' Practice' (2009) 93(1) *NASSP Bulletin* 27.

