

September 2019

This document is issued for general guidance only. It does not constitute professional advice. The issues with which it deals are complex and the document necessarily deals only with general principles. No reader should rely on this document for the purpose of making a decision as to action but should seek the appropriate advice from the Union on the particular circumstances of that reader. The Union accepts no responsibility for the consequences should any person act in reliance on this document without obtaining the appropriate advice from the Union.

Legal assistance

Financial members of the QTU have access to support, advocacy and assistance if something goes wrong during their employment with the Department of Education.

Members can access free legal assistance for responding to disciplinary allegations, police investigations relating to work, abusive parents and WorkCover claims.

Subsidised legal assistance is available for non-work-related issues and issues which could affect your employment.

A free half hour of legal assistance is available on any topic for members.

Professional conduct

Departmental employees must read and understand their obligations under the Queensland Government Code of Conduct and the department's Standard of Practice. While the department provides some training on the code and standard, it is important that members familiarise themselves with these obligations.

The Queensland Teachers' Union offers free member seminars presented by the Union's lawyers, which include discussion of the application of the code and standard.

Responding to disciplinary action

Disciplinary action taken by the department can range from a reprimand or warning to the teacher not to repeat the behaviour to a reduction in the officer's pay (demotion), a recommendation that the teacher's employment be terminated or that they be transferred to another school.

A teacher who receives a letter asking them to "show cause" as to why they should not be disciplined or asking them to respond to an allegation should immediately contact the Union for advice. A member needs to send in a copy of the discipline letter and a written request for legal assistance.

Electronic media

As a teacher, it is important to ensure that you do not cross professional boundaries through contact with a student which is improper, or open to being interpreted as improper. It is important that you keep this in mind when using any form of electronic social network. You must ensure that you do not communicate with students from a private or personal email address or mobile phone. Communication with students via departmental email should be for official purposes only. You must not use social networks to contact or access present students enrolled in any school or institute. If you use internet social networks in your personal time, you must ensure that the content is appropriate and private, and that you restrict access to specific people who are not students.

Conflict of interest

While you have the right to conduct activities away from your employment, involvement in work, volunteer activities or family-businesses outside of your teaching duties raises important issues for consideration. The department requires all employees to disclose any personal interest that could, or be seen to, influence the performance of duties. Disclosure of any possible conflict is required in writing, preferably on the department's form. This includes tutoring and coaching, as well as any involvement in a family business.

Intellectual property

Teaching materials prepared by a teacher in the course of their work for the department belong to the department.

The department engages teachers not just to present lessons, but also to prepare material based on the curriculum as the basis of these lessons. Teachers are not free to use those materials outside of their employment with the department.

Material prepared outside of teaching duties, but used as part of a teacher's duties, can become the property of the department.

Police matters

If teachers are accused of having broken the law, whether in their employment or outside, it can result in a charge or a conviction and put at risk not only the teachers' reputation, liberty and property, but their employment and teacher registration.

If you are the subject of a police investigation arising from an incident in employment, the Union may grant free confidential legal assistance through the Union's lawyers.

Whether you are innocent or guilty, what you say to other people and to police officers when the allegations are raised may have serious consequences for the outcome of the proceedings against you. If approached by police, your response should be "I would like to speak to the Union's lawyers".

Because of the serious consequences which criminal charges can have for a teacher's employment, the Union can consider extending some legal assistance even if the criminal matter has no connection with your employment.

Teachers' liability in negligence to students

Teachers and their employers undertake the care, control and supervision of young people in a wide variety of circumstances, ranging from the normal classroom situation to activities such as sports, swimming, travelling to various places outside the school grounds and the handling of potentially dangerous chemicals. As trained professionals, teachers are considered capable of supervising and controlling large numbers of young people and are expected to exercise the level of care and skill of a professionally trained teacher in carrying out their duties.

Allegations of breach of duty of care most commonly arise from not taking reasonable steps to minimise the risk of students being injured by their own conduct or by the conduct of other students. There is certainly an element of protecting students from the consequences of their own immaturity.

State indemnity

The Public Service Act 2008 provides that no civil liability attaches to a public service employee in relation to their official powers and functions – liability instead attaches to the state. This "indemnity" is available provided the teacher was acting in good faith and without gross negligence.

This means that when acting within the scope of their duties, teachers are entitled to protection from the state in relation to legal proceedings taken against them.

Teachers can apply for indemnity to cover their legal defence costs and any damages payable in civil proceedings.

The indemnity applies generally to civil proceedings. Other proceedings, such as work health and safety prosecutions, can have some (but not all) elements of the indemnity offered,

Accidents

In the event of an accident, you may be required to provide a statement, either by way of a report in the school-based incident report on OneSchool, or in response to a request from the department.

If you believe you could be held liable for the accident in any way, no statement should be provided without first contacting the Union. In such cases, the Union will provide advice on the content of the proposed statement, to ensure your rights are protected. This procedure will not cause undue delay in the provision of a statement, and you should simply advise that you are seeking legal advice before providing a statement. If no statement is requested, it is advisable to keep a record of the circumstances of the accident for your own purposes, as an action for damages may be commenced some years after the event.

Departmental records

Teachers are entitled to access documents held about them by the department, particularly documents which are detrimental to their interests. Teachers can ring regional office and arrange a time to review documents. Teachers' employment is mainly regulated by the Public Service Act 2008 (Qld) and the Public Service regulation 2018 (Qld), made under that act.

Freedom of association

Freedom of association is the right of workers, including department and TAFE teachers and administrators, to become and remain a member of their union and engage in legitimate union activity, without fear of discrimination. Freedom of association is a fundamental human right recognised by the United Nations (International Labour Organisation) in C087 – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87). Australia is a signatory to this convention. It is a right that has existed since the last century which cannot be taken away by the state government, despite its removal of many other rights of workers and their unions.

Anti-discrimination complaints

The intention of the Anti-Discrimination Act 1991 (Qld) (“ADA”) is to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity, and from sexual harassment and certain associated objectionable conduct.

The ADA prohibits discrimination on the basis of the following attributes:

- sex, age, race, gender identity or sexuality
- relationship status
- pregnancy, breastfeeding, family responsibilities or parental status
- impairment
- religious belief or activity
- political belief or activity
- trade union activity
- association with, or relation to, a person identified on the basis of any of the above attributes.

WorkCover claims

WorkCover is insurance for injuries which arise from your employment.

If you are injured at work, a claim can be lodged by calling WorkCover Queensland, completing an online claim form or by visiting your GP, who will then lodge the claim.

Common physical injuries covered by WorkCover are falls on paths and stairs, back strains and soft tissue injuries.

Psychiatric injuries can be covered, as long as they have not arisen from reasonable management action taken in a reasonable way. MUP processes, discipline and transfer are generally regarded as reasonable.

Psychiatric injury arising from student behaviour or student assaults should be accepted by WorkCover. Do not include “lack of support from management” as part of your claim if you are stressed because of a student related issue.

Defamation of teachers by parents and others

In Queensland, defamation is the publication of material that tends to lower a person’s reputation in the estimation of others by making them think less of that person, usually by bringing the person into hatred, contempt or ridicule. It is through the eyes of “ordinary, right-thinking” members of society that the defamatory nature of the publication is to be determined.

Facebook and social media have created a new form of open defamation of teachers. The Union can assist to respond to social media defamation through letters to the defamer and contact with the social media sites. The department’s Cyber Safety and Reputation Management Unit can also assist.

Most defamation should not be the subject of court proceedings and is not funded by the Union. Defamation action is expensive and can take years to resolve. The material may be obviously defamatory, but there are many defences available, including a defence that the consequence of the defamation is “trivial”.