

# THE FIRST ANNUAL BRISBANE LAW OF RELIGIOUS INSTITUTIONS CONFERENCE

A two-day conference organised by Television Education Network Pty Ltd

Stamford Plaza Hotel, Brisbane, Monday 11 & Tuesday 12 November 2019

Managing & conducting investigations in religious institutions  
Management of persons of concern  
Settlements in child abuse matters: where to from here?  
Civil liability for clergy child abuse  
Duties of board and committee members of religious institutions  
The fine line between religious freedom and Australia's discrimination laws  
The fate of the basic religious charity  
The ordained: employed or called by god?  
Managing volunteers in religious institutions  
Pastoral care, religious institutions and supporting mental wellbeing  
Effective records management and data protection in religious institutions

**FEEDBACK FROM THIS SAME CONFERENCE  
RUN IN MELBOURNE EARLIER THIS YEAR:**

"Great breath of content and it was well focussed."  
"Covered current areas of concern with relevant  
and up to date information. Great to have faith  
based speakers in the legal governance & HR areas."

"Good quality speakers used comprehensive content,  
sticking to time & material available which is detailed  
& helpful, content was specific and to the point."  
"I attended this conference in Melbourne and I just  
wanted to congratulate you and your team on  
an excellent conference, in fact one of the best  
of the papers and speakers were all of  
a consistently high standard."

**INCLUDING THE NEW  
RELIGIOUS FREEDOM  
REFORMS**



The professional development specialists

# DAY 1 - MONDAY 11 NOVEMBER 2019

**CHAIR: DR MATTHEW TURNOUR,  
CHAIRMAN, NEUMANN & TURNOUR  
LAWYERS, BRISBANE**

## MORNING THEME: CHILD SAFETY

### 9.00 - 9.10am

Introduction and welcome

### 9.10 - 9.55am

#### **Session 1: Managing & Conducting Investigations in Religious Institutions**

Given three jurisdictions now have reportable conduct requirements, investigations are part of life for many religious institutions. This session will look at how an investigation should be conducted, including:

- The reportable conduct legal framework
- The basic structure of an investigation
- Identifying the relevant scope of an investigation
- Establishing the appropriate foundation for conducting an investigation, including considerations in the selection of the investigator and work arrangements during the investigation
- Addressing other threshold issues prior to commencing an investigation, including appropriate roles of stakeholders
- Gathering information relevant to the scope of the investigation from other sources
- Principles of procedural fairness and natural justice
- Making findings - evaluating the information gathered; applying the relevant legal tests, burden of proof and standard of proof and assessing credibility
- Applying the findings of an investigation in a disciplinary context, the role of the decision maker and implementing and communicating outcomes

*Speaker: David Ford, Partner, Carroll & O'Dea Lawyers, Sydney*

### 9.55 - 10.05am Panel Comments and Questions

### 10.05 - 10.50am

#### **Session 2: Management of Persons of Concern**

A known child sex offender, also known as a person of concern, may wish to worship at their local religious institution. This often creates a conflict between mission and duty for the religious institution. This session will explore the topics of person of concern and safety agreements in more detail, including:

- Who is a person of concern?
- Legislative framework and legal obligations involving persons of concern
- Balancing theological considerations
- Best practice policy and procedure
- Grooming education and persons of concern
- Controls for non-compliance
- What to do when things go wrong

*Speaker: Rebecca Lambert-Smith, Team Leader, Moores, Melbourne*

### 10.50 - 11.00am Panel Comments and Questions

### 11.00 - 11.25am Networking Break and Morning Tea

### 11.25am - 12.10pm

#### **Session 3: Civil Liability for Clergy Child Abuse**

Despite the Royal Commission, uncertainty still exists concerning corporate personality and who may need to be sued in the context of child abuse claims. When can churches be vicariously liable for the sexual abuse committed by clergy? This session examines the key issues surrounding liability, asset protection and recent law reform, including:

- The question of 'legal personality' in religious institutions
- Limitation periods
- Attaching liability to churches:
  - a. Vicarious liability and the non-delegable duty
  - b. Church liability for 'non-employees'
- Protecting church assets:
  - a. Appropriate structures and other asset protection strategies
  - b. When can the church trustee be held to account?
- Case update, including Ellis and Anglican Diocese of Bathurst
- Recent statutory reforms

*Speaker: to be advised*

### 12.10 - 12.20pm Panel Comments and Questions

# DAY 1 - MONDAY 11 NOVEMBER 2019

12.20 - 1.05pm

## Session 4: Settlements in Child Abuse Matters: Where To From Here?

This session is designed for those regularly dealing with child abuse claims. It will also serve as a useful guide for leadership who attend settlements, or are involved in a claim, but have no legal training. This session will explore the frequently asked questions relating to settlements, including:

- How is quantum calculated:
  - a. Economic loss and non-economic loss
  - b. What factors are taken into consideration?
- Should independent legal advice be provided to claimants?
- Claims that can't be settled - What is the cost/benefit of running a matter to trial (when you have the choice)?
- The role of the National Redress Scheme
- Can past settlements be reopened?
- Case update - discussion of current cases, including lessons from Geelong Grammar

*Speaker: Amanda Ryding, Partner, Colin Biggers & Paisley, Sydney*

1.05 - 1.15pm Panel Comments and Questions

1.20 - 2.15pm Luncheon

AFTERNOON THEME: GOVERNANCE AND LAW REFORM

2.15 - 3.00pm

## Session 5: Duties of Board and Committee Members of Religious Institutions: Spotlight on the New External Conduct Standards

Those appointed to a board or committee of a religious institution have the overall responsibility for managing and directing the affairs of their organisation. In the current climate, good governance and a proper understanding of that role is crucial. This session will explore these duties, as well as the recently introduced External Conduct Standards, and what they mean for the governors of religious institutions. It covers:

- The role of those appointed to a Board or Committee
- The key duties for those appointed and how to apply them in practice
- ACNC governance standards, governance learnings from the Banking Royal Commission and APRA's expectations
- Spotlight on the new External Conduct Standards
- Personal liability issues
- Why the culture of your religious institution matters
- Why a positive compliance culture is key to good governance
- What good governance looks like in religious institutions
- Common governance mistakes made by committees and boards - tips and traps to avoid

*Speaker: Jessica Lipsett, Associate, Corney & Lind Lawyers, Brisbane*

3.00 - 3.10pm Panel Comments and Questions

# DAY 1 - MONDAY 11 NOVEMBER 2019

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**3.10 - 3.55 pm**

## **Session 6: The Fine Line Between Religious Freedom and Australia's Discrimination Laws**

After years of speculation, the Australian Government has finally released a package of legislative reforms on religious freedom. With strongly held views on both sides of the argument, protection of religious freedom in Australia remain a complex and sensitive issue. This session examines the new landscape and what the reforms will mean in practice for religious institutions.

It covers:

- Discrimination on the basis of religion under anti-discrimination laws – the current state of play
- Unpacking the new legislation:
  - Religious Discrimination Bill 2019
  - Religious Discrimination (Consequential Amendments) Bill 2019
  - Human Rights Legislation Amendment (Freedom of Religion) Bill 2019
- How do the reforms protect against discrimination on the grounds of religious belief or activity?
- How do the reforms deal with cases like the Archbishop of Hobart Julian Porteous and Israel Folau?
- What restrictions can government entities and private companies place on what employees can say about their faith both inside the workplace and outside of work hours?
- What is the role of the new Religious Freedom Commissioner?

*Speaker: to be advised*

**3.55 - 4.05pm** Panel Comments and Questions

**4.05 - 4.25pm** Networking Break and Afternoon Tea

**4.25 - 5.10pm**

## **Session 7: The Fate of the Basic Religious Charity**

Basic religious charities are in a unique position compared to other registered entities and enjoy a number of exemptions under the ACNC Act. However, BRCs have faced significant scrutiny over the last twelve months, with some claiming their religious freedoms need further protection, while others have called for the removal of the BRC category. This session examines this evolving landscape and considers the future of BRCs. It covers:

- Protections currently available to BRCs:
  - Exemptions from financial reporting
  - Exemptions from governance standards
  - Entitlements to FBT concessions, franking credit refunds and GST concessions
- Extent of the ACNC's power to regulate BRCs:
  - Can the ACNC replace or appoint responsible persons in religious registered entities?
  - Is the ACNC required to take into account religious freedoms / protections?
- Lessons from the Royal Commission on the need for regulatory change for BRCs
- Future reforms - unpacking the key recommendations from the ACNC Review Report

*Speaker: Mark Fowler, Director, Fowler Charity Law, Sydney*

**5.10 - 5.20pm** Panel Comments and Questions

# DAY 2 - TUESDAY 12 NOVEMBER 2019

## MORNING THEME: EMPLOYMENT LAW ISSUES FACING RELIGIOUS INSTITUTIONS

**9.00 - 9.45am**

### **Session 8: The Ordained: Employed or Called by God?**

There are many times when the secular and religious worlds misunderstand one another. One such area is when secular or legal standards are applied to ordained members of faith. This session examines this tension and the challenges it creates, including:

- Control test - who is an employee?
- Principles of *Ermogenous v Greek Orthodox Community of SA Inc* on the legal recognition of ordained persons:
  - Not governed by law, purely "spiritual"
  - Governed by law but as a public law "office" rather than as a contract
  - Established as a contract under the category of "independent contractor"
  - Employment contract
- Who can fire clergy?
- Classification implications:
  - Compulsory super legislation
  - Fringe benefits tax
  - Vicarious liability
  - Unfair dismissal claims
  - Workers' compensation
- Volunteer work outside of normal hours and overtime issues
- Case report: *Sharpe v The Bishop of Worcester* [2015] EWCA Civ 399; *McDermid v Anglican Trusts Corporation for the Diocese of Gippsland & McIntyre* [2012] VCC 1406

*Speaker: Luke Geary, Partner, Mills Oakley, Brisbane*

**9.45 - 9.55am** Panel Comments and Questions

**9.55 - 10.40am**

### **Session 9: Managing Volunteers in Religious Institutions**

Volunteers play an important role in religious institutions, but they come with their own unique challenges. This session examines your institution's legal obligations to your volunteers and how to best implement proper management practices and policies to manage the risks. This session covers:

- Volunteers versus employees - what are the key differences?
- Applicability of the Fair Work regime to volunteers
- Volunteer safety - obligations under the WHS regime
- Vetting volunteers appropriately at the recruitment stage - why it matters
- Do you need volunteer agreements? Key drafting essentials to consider
- Liability and volunteers
  - When will your institution be liable for volunteer conduct?
  - How far does this liability extend within your institution?
  - When are volunteers liable?
- Case study: Managing the enthusiastic employee undertaking volunteer work on weekends - are they entitled to overtime rates of pay?

*Speaker: Adam Foster, Senior Associate, Macpherson Kelley, Melbourne*

**10.40 - 10.50am** Panel Comments and Questions

**10.50 - 11.10am** Networking Break and Morning Tea

# DAY 2 - TUESDAY 12 NOVEMBER 2019

**11.10 - 11.55am**

## **Session 10: Managing Bullying & Harassment in a Religious Setting**

Bullying and harassment in the church setting can lead to lower levels of attendance, volunteer turnover, and lower morale. This session explores the legal and practical requirements involved in managing bullying and harassment in the church context. It covers:

- Defining bullying and harassment - how can they arise and how are they legally defined?
- Who are the bullies and who are the bullied in a religious context - religious staff and functionaries, congregations, volunteers and others
- Review of anti-bullying policies - drafting policies for best practice
- Minimising bullying and discrimination risks in your institution - how can it be done?
- Managing complaints:
  - Processes you need in place to respond quickly and fairly to both the alleged victim and alleged perpetrator
  - Investigating bullying and harassment - ensuring you take complaints seriously and investigate properly
- Complaints mechanisms - is your system clear and thorough?
- What remedies are available to employees?

*Speaker: Moira Rayner, Principal, Moira Rayner & Associates, Melbourne*

**11.55am - 12.05pm** Panel Comments and Questions

**12.05 - 1.05pm** Lunch

## **AFTERNOON THEME: CONTEMPORARY CHALLENGES**

**1.05 - 1.50 pm**

## **Session 11: Pastoral Care, Religious Institutions and Supporting Mental Wellbeing**

Many religious institutions believe they have a moral and spiritual responsibility to provide resources for mental health care in the wider community. However, mental health issues may be overlooked when they are closer to home. This session gives practical guidance on how best to manage mental health and wellbeing in your religious organization, including:

- Distinguishing religious or spiritual problems from mental illness
- Identifying workplace triggers which may cause stress or mental health issues within religious organisations:
  - a. Child safety issues
  - b. Difficult or challenging issues with congregation
  - c. Mishandled disciplinary procedures
- The responsibility to protect employees from workplace stress under WHS legislation
- Facilitating conversations about stress and mental health issues
- Implementing appropriate policies and frameworks to support mental health
- How to make suitable reasonable adjustments for employees experiencing a mental health condition

*Speaker: Sarah Rey, Partner, Justitia, Melbourne*

**1.50 - 2.00pm** Panel Comments and Questions

# DAY 2 - TUESDAY 12 NOVEMBER 2019

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**2.00 - 2.45pm**

**Session 12: Document, Document, Document:  
Effective Records Management and Data Protection in  
Religious Institutions**

With the rollout of the new Notifiable Data Breach scheme, it has never been more important for boards and senior executives of religious institutions to understand their privacy obligations and to ensure these obligations are given strong operational effect. This practical session will cover the core requirements for any religious institution to set up a compliant electronic records management practice. It will cover:

- Overview of the mandatory data breach provisions and regime
- Getting started - understanding the key concept of managing documents and records
- Developing a governance framework for records and information
- Implementing a data breach policy and reporting mechanism
- Creating and capturing electronic records (identification, metadata, automation)
- Conducting a records and information inventory - understanding what you hold
- Information security, privacy and access to information
- Tips and tricks for communicating and educating staff on policy and procedure

*Speaker: Leah Mooney, Special Counsel, MinterEllison, Brisbane*

**2.45 - 2.55pm** Panel Comments and Questions

**2.55pm** Conference Close

# GENERAL INFORMATION

## Conference Registration Fee

The registration fee includes attendance at the conference, online access to the conference papers and refreshment breaks and lunch.

The registration fee does not include any travel or accommodation. Delegates are advised to make their own travel arrangements.

## Conference Papers

TEN no longer provides printed copies of conference papers at its events. Access to the papers will be available online to all delegates in the lead-up to the conference (as the papers become available), during the conference and for 30 days after the conference. The papers will be available in .pdf format for easy download to your local computer or portable device.

At the conference TEN will supply printed copies of the PowerPoint presentations.

## CPD Units/Points

**Lawyers (except WA):** 7 CPD units (substantive law)

**WA Lawyers:** 6 CPD points (substantive law)

## The Conference Venue

### Stamford Plaza Hotel

39 Edward Street, Brisbane

[www.stamford.com.au/spb](http://www.stamford.com.au/spb)

## Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

## Conference Dress

Smart casual attire is suitable. (*note: the temperature in the conference room varies depending on where you are sitting. Light dress is generally OK, but it is advisable that you bring a jacket/long sleeved top in case you need it.*)

## Cancellation Policy

Cancellations must be received in writing at least 10 days prior to the Conference for a 85% refund. Substitute delegates accepted at any time.

## Conference Terms

Program subject to change without notice. The information and views presented in the conference are not necessarily those of TEN, and participants rely on these at their own risk. TEN is not responsible for any financial or other losses incurred by delegates or for injury or damage to persons or property. TEN's maximum liability for conference cancellation or any other loss or liability is the refund of the registration fee paid.

TEN is not responsible for financial loss incurred by you as a result of the cancellation or postponement of the conference as a result of strikes, natural disasters, and other Acts of God such as volcanic ash clouds in Australian airspace. We therefore strongly advise you to take out travel insurance if your attendance plans involve air travel or other significant travel to the conference venue.

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# REGISTRATION FORM – TAX INVOICE\*

Registration is simple; complete the form below and fax or post your registration to us or register online.

Television Education Network Pty Ltd, (ABN 19 052 319 365)

GPO Box 61, Melbourne, Victoria 3001

Fax (03) 9670 0588 Phone (03) 9670 2055 Enquiries Jenna Pickrell

Register online: <http://www.tved.net.au> – go to CONFERENCES

Please register me for the **First Annual Brisbane Law of Religious Institutions Conference** – a 2-day conference to be held in Brisbane on Monday 11 & Tuesday 12 November 2019 [conf code: BLRNOV19]

**Early Bird Registration** – for registrations made on or before 11 October 2019 – **\$1870** (\$1700 + \$170 GST)

**Full Price Registration** – **\$2145** (\$1950 + \$195 GST)

**Subscriber First Discount Registration** – I am a Subscriber First member and entitled to a 10% discount off the full registration fee – **\$1930.50** (\$1755 + \$175.50 GST)

**Multiple registration discount?** If you would like to send more than one person from your company to this conference, please ask Jenna about the discounts available for multiple registrations: The more you send, the greater the discount. [jenna@tved.net.au](mailto:jenna@tved.net.au) or phone (03) 8601 7729.

**One-day only?** We do accept bookings for attending one day only (either day 1 or day 2). To organise a one-day booking, please contact Jenna Pickrell (details above).

The papers from this conference will be available in electronic form only approximately 2 weeks after the conference has been held. You can pre-order the papers now online via our website at [www.tved.net.au](http://www.tved.net.au). The papers are **\$198** (\$180 + \$18 GST) [Code: PBLRNOV19].

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