

# 2

# THE SECOND ANNUAL SCHOOLS LAW & REGULATION CONFERENCE

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

Intercontinental Melbourne the Rialto, Melbourne  
Thursday 27 April and Friday 28 April 2017

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Lessons from the Royal Commission

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OHS in schools

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School liability for bullying

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Investing in indigenous students

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Enrolling international students

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Dismissing staff for poor performance

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Gender dysphoria

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Social media

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Challenges facing religious schools

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Running a building program

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Tax concerns for schools

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Financial governance

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## Feedback from last year's conference:

*"This was one of the best conferences I have been to. The venue was perfect, food was absolutely amazing and the staff were excellent. Every presenter was relevant and engaging. The provision of the folders was fantastic as was lanyard rather than a sticky label. Well done to all."*

*"Even with speakers who covered areas where I had high knowledge, these were still great take-outs and something to learn from every session."*

*"Thankyou for a very valuable and useful conference that was highly relevant to school administrators - Principals etc. Thankyou for copies of the papers and powerpoints very helpful and extremely well organised folders - a rarity these days."*

*"Excellent quality of speakers and content. Very good alignment and sequencing of sessions. Excellently practical yet based on legislative and evidence base."*

*"The coverage of topics and information was very thorough and very relevant. The selection of the panel of speakers as important and selection was done very well, great presenters and workshops, a great conference, very worthwhile!"*



The professional development specialists

# DAY 1 – THURSDAY 27 APRIL 2017

Day 1 Chair: *Libby Klein, Principal, Social Impact Legal, Melbourne*

## MORNING THEME: SCHOOL LIABILITY AND MANAGING RISK

**9.00- 9.10 am** Introduction and welcome

**9.10- 9.30 am**

### **Session 1: Opening Address: The Australian Charities and Not for Profits Commission: Its Role in the Regulation of Schools**

*Speaker: David Locke, Assistant Commissioner, Charity Services, Australian Charities and Not-for-profits Commission*

**9.30 – 9.40** Panel Comments and Questions

**9.40 – 10.40 am**

### **Session 2: Lessons From The Royal Commission: What You Should Be Doing Now**

A number of policy and legislative changes have been made as a result of the Child Sexual Abuse Royal Commission, particularly in the areas of record keeping and reporting obligations. This session gives an update on the state of the law following the Royal Commission, including State law reform proposals, and the changes you need to be implementing now. It includes:

- Law reform across the states and territories:
  - Mandatory reporting obligations – what steps need to be followed?
  - Failure to protect – understanding the nature of the offence and what you can do to prevent it occurring
  - Abolition of limitation period
  - Non-delegable duty of care in lieu of vicarious liability
  - Scope of “institutional context” responsibility
  - Reversal of the onus of proof - How to discharge the onus of proof
  - Potential vicarious liability of schools – a case update on *Prince Alfred College Incorporated v ADC* [2016] HCA 37
- Royal Commission guidelines and recommendations:
  - How are they implemented?
  - 10 key elements needed to create child safe institutions
  - Best practice record-keeping and maintaining legacy records

*Speaker: Skye Rose, Principal, Moores, Hawthorn, Vic*

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

**10:50 – 11:15am** Networking Break and Morning Tea

**11.15 – 12:00pm**

### **Session 3: School Camps, Excursions and Recreational Activities : Duty of Care and Work, Health & Safety Laws**

When students leave the school premises to attend camps, outdoor activities and excursions, the risks increase. Understanding how to manage the risks is crucial. This session looks at what the risks are and what schools can do to manage them. It covers:

- A school's duty of care
- Risk Management
- Use of external providers
- Waivers and disclaimers
- Insurance
- WHS obligations and policies
- Practical lessons from case law

*Speaker: David Ford, Partner, Emil Ford Lawyers, Sydney*

**12.00 – 12.10 pm** Panel Comments and Questions

**12:10 – 12:15pm**

Short Break

**12.15 pm – 1.00 pm**

### **Session 4: School Liability for Bullying**

What do schools need to do to avoid bullying claims? Schools often go wrong with labouing over the terms of the policy and forget that the implementation is actually what counts. Failing to investigate, failing to keep the parties apart, and poor record keeping are just some of the issues. This presentation looks at the school's liability and compensation issues when faced with a bullying complaint. It covers:

- Identifying when bullying is occurring
- Understanding the liability of the school:
  - What is the school's duty?
  - What is the scope of the duty?
  - When will the school have breached its duty of care
- Compensation claims:
  - PTSD and other psychological injury
  - Physical injury
  - Damages for negligence
  - Bullying and discrimination claims – they often go hand in hand
- Recent cases and what we can learn from them
- Risk management strategies to deal with bullying
  - policies, procedures and implementation
- Disciplining – do's, don'ts and parental involvement

*Speaker: Nathan Croot, Senior Associate, Emil Ford Lawyers, Sydney*

**1.00 – 1.10 pm** Panel Comments and Questions

**1.10 – 2.10 pm** Luncheon

# DAY 1 – THURSDAY 27 APRIL 2017

## AFTERNOON THEME: ENROLMENT AND EMPLOYMENT ISSUES

2.10 – 2.55 pm

### Session 5: Investing in Indigenous Students: Opportunities and Benefits

An increasing number of indigenous scholarship students are enrolling into non-indigenous schools. The benefits to the individual students and to the school community are significant, but it requires a lot of support to make it work well. This session unravels the key issues:

- Finding and managing donor support
- DGR status in relation to donor support
- When is the contract formed? With who?
- What happens if donor support is withdrawn
- Pastoral care:
  - Accommodation
  - Co-curricular activities
  - Ensuring peer acceptance and integration
  - Cultural sensitivities
  - Relationship with parent/guardian
- School duty of care and liability – on and off the campus

*Speaker: Renee Coffey, General Manager – Strategy and Policy, Australian Indigenous Education Foundation, Sydney*

2.55 – 3.05 pm Panel Comments and Questions

3.05 – 3.10pm Short break

3.10 – 3.55 pm

### Session 6: Legal Aspects of Enrolling International Students

The enrolment process can be difficult enough when it just involves local students. Enrolling international students presents a new variety of issues for schools in managing their risks. This session looks at:

- Terms of the enrolment contract – what should be included when international students are involved?
- Using agents in foreign countries to recruit students:
  - Choice of agent
  - Understanding the contractual arrangements
- Managing international parents' expectations at the enrolment stage
- When is the contract formed? Online contract formation
- The schools' duty of care with international students – how broad is the scope?
- Homestay and looking after international students outside of the school hours – how can schools manage their risks? Are schools liable for the host families' conduct?
- Visas and school responsibility
- Pastoral care - legal ramifications

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

3.55 – 4.05 pm Panel Comments and Questions

4.05 – 4.25 pm Networking Break and Afternoon Tea

4.25 – 5.10 pm

### Session 7: Dismissing Staff as a Result of Poor Behaviour

This session looks at the rights of the school, as an employer, to terminate a teacher who has acted in breach of their employment contract. No one wants to wind up before the Fair Work Commission, or the Federal Court. This session will look at the key things you need to be aware of when attempting to dismiss a staff member. We will cover:

- What does the employment contract say?
- Enterprise agreements, discipline and termination – what rights does the employee have?
- General protections and workplace rights – the key things schools need to be aware of when terminating employment of staff
- Avoiding unfair dismissal claims – proper management and decision making processes
- Bullying allegations during performance management – ensuring you undertake and implement the proper procedure
- Investigations:
  - What is the process?
  - What can you do if the employee won't respond?
  - Tensions between the school investigation and the police
  - Ensuring procedural fairness
  - Investigation and then disciplinary action – understanding the distinction

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

5.10 – 5.20 pm Panel Comments and Questions

# DAY 2 – FRIDAY 28 APRIL 2017

Day 2 Morning Chair: *Natalie Blok, Barrister, Victorian Bar, Melbourne*

## MORNING THEME: SOCIAL AND ETHICAL ISSUES

9.00 – 9.45 am

### Session 8: Social Media: Better the Devil You Know

While we may be up to date with Facebook and Instagram, it is hard to know what students are going to use next. This session looks at ways of regulating social media usage and online bullying in an environment where the goal posts are constantly changing. It covers:

- Understanding the various mediums available to students
- Bullying and harassment on social media – how can schools manage this?
- Sexting - what polices can the school implement to deal with this new phenomenon?
- Duty of care extending to the outside of school arena – how is after hours conduct managed?
- Legal obligation and social media – when a school may incur liability
- Reporting obligations – when do they arise in social media?
- Case study – public relations management and social media
- An insight into best practice in the social media space – what are the latest “cutting edge” ways of dealing with issues arising in this context?

Speaker: *Leneen Forde, Principal, Norton Gledhill, Melbourne*

9.45 – 9.55 am Panel Comments and Questions

9.55 – 10.00am Short break

10.00 – 10.45 am

### Session 9: Schools and Dealing with Gender Dysphoria: a Best Practice Primer

Schools are having to answer some very tricky questions in relation to gender based issues. What information should they be providing to students, how do single sex schools address gender transition and what is the schools' duty of care in assisting students make gender changes? This session will include:

- Gender theory - what will the mandatory program teach from 2018?
  - What should be included in a student wellbeing program
  - What materials should schools have available to students?
  - What training should the teachers have?
- Gender changes:
  - When do schools have an obligation to get the parents involved?
  - Inconsistency between student and parent views – how does the school manage inconsistency between the student and parent views?
  - When is expert psychological help recommended?
  - What is the school's duty of care to assist the student in making their gender changes?
- Gender reassignment and discrimination – to what extent does the school need to actively accommodate gender reassignment?

Speaker: *William Leonard, Director, Gay and Lesbian Health Victoria (GLHV), College of Science, Health and Engineering, Latrobe University, Melbourne*

10.45 – 10.55 am Panel Comments and Questions

10.55 – 11.15 am Networking Break and Morning Tea

11.15 - 12.00 pm

### Session 10: Meeting the Challenges Facing Religious Schools

Religious schools face a unique mix of issues. In this session we take a close look at these key challenges and how religious schools can best manage them. It covers:

- Managing the expectations of stakeholders, including clergy, school personnel, parents and education authorities regarding the role and identity of the school
- Religion and the enrolment process – who makes the cut?
- Staff and their faith – the relevance of religion in the recruitment process
- Religion in the classroom - what can and cannot be part of the curriculum?
- Religious exemptions and discrimination laws
- The impact of religious belief on students and staff:
  - Sexual preferences of staff members and students
  - Gender reassignment of students
- Funding and related organisations:
  - Are you using funding for the appropriate school-related purposes?

Speaker: *Jacquie Seeman, Partner, Thomson Geer, Sydney*

12.00 – 12.10 pm Panel Comments and Questions

12.10 – 1.10 pm Lunch

# DAY 2 – FRIDAY 28 APRIL 2017

*Day 2 Afternoon Chair: Andrew Marks, Director Audit & Assurance, William Buck, Melbourne*

## AFTERNOON THEME: GOVERNANCE AND FINANCE

**1:10 – 1:55 pm**

### **Session 11: Running a Building Program – Construction Law Issues**

Schools often run building programs. While schools are well equipped to manage their staff and students, large scale building projects can be daunting and quickly overwhelm even experienced principals and school business managers. To help schools get the most out of their building projects and to deliver them on time, on budget and without disputes, this session covers:

- The role of the school in project planning and delivery
- Using consultants
- Choosing the best procurement model for school projects
- Engaging builders
- Key risks and responsibilities in contracts and managing them after project commencement
- Getting the most out of builders and avoiding disputes
- Builder liquidation and dealing with the fall out

*Speaker: Hugh Watson, Principal, Moores, Box Hill, Vic.*

**1.55 – 2.05pm** Panel Comments and Questions

**2.05 – 2.10pm** Short break

**2.10 – 2.55 pm**

### **Session 12: Building Funds, Scholarships, Fundraising and Staff - Taxation Concerns in Schools**

Ensuring you have the right structures in place is key to ensuring a strong financial position of the school. This session looks at a broad range of issues schools need to grapple with when it comes to tax implications including a discussion of how tax concessions work, what the obligations are on schools and creative fundraising ideas. It includes:

- The Foundation – purpose and function
- Scholarships – tax deductible donations and capital works
- Building funds – how should they be used?
- Raffles, GST and fundraising
- DGR status – obtaining DGR status and obtaining DGR funds
- Salary packaging for teachers and business managers
- FBT – what fringe benefits should be provided to school staff?
- Bequest funds

*Speaker: Mark Fowler, Director, Neumann & Turnour Lawyers, Brisbane*

**2.55 – 3.05 pm** Panel Comments and Questions

**3.05 – 3.25pm** Networking Break and Afternoon Tea

**3.25 – 4.10 pm**

### **Session 13: Financial Governance in Schools**

A vital element of a well-managed school is understanding key financial data. This practical session provides guidance on how to interpret financial statements, and how this can impact the overall position of the school. This session looks at:

- The role of the audit and finance committee:
  - Effective reporting to the Board
  - The importance of selecting the committee – ensuring you have members with the appropriate skillset
- Borrowing levels:
  - What are you borrowing for?
  - Sustainable debt, cash flow and margins – understanding how it works
  - Liabilities exceeding assets - working capital deficiencies and managing the timing concerns between current liabilities and assets
- Interpreting financial reports
- Unearned income and understanding the effects – fees received in advance
- Doubtful debts column and write offs - the emotional and business decision of the school
- Case study: the benefits of 'dashboarding' key data

*Speaker: John Somerset, Director, Somerset Education, Brisbane*

**4.10 – 4.20 pm** Panel Comments and Questions

**4.20 pm** Conference Close

# GENERAL INFORMATION

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## Conference Registration Fee

The registration fee includes attendance at the conference, conference papers, refreshment breaks and lunch on both conference days.

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

## CPD Units

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

**WA Lawyers:** 6 CPD points – substantive law

## The Conference Venue

### Intercontinental Melbourne the Rialto

495 Collins Street, Melbourne

Phone: (03) 8627 1400

The Intercontinental Melbourne the Rialto Hotel is conveniently situated in the Melbourne CBD.

## Conference Delegate Rate at the Intercontinental Melbourne the Rialto Hotel

**King Deluxe Rooms** (room only) *Full Buffet Breakfast/s can be added at a discounted rate of \$25 per person if advised at the time of booking.*

**\$305** (GST incl.)

Please use the **customised weblink** below to access the special rate. Your credit card will be required as guarantee at the time of booking. A 30 day cancellation policy applies. Any reservations cancelled within 30 days prior to the first arrival date will be charged a cancellation penalty equal to the total room nights booked.

<https://aws.passkey.com/go/ASLRC2017>

Rooms are strictly subject to availability. **Delegates are advised to make their own accommodation arrangements directly with the Intercontinental Melbourne the Rialto.**

## 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 attire 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.

# 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 **Second Annual Schools Law and Regulation Conference** – a 2-day conference to be held in **Melbourne** on **Thursday 28 & Friday 29 April 2017** [conf code: MSLA PR17]

**Discount Registration** – for registrations made on or before **7 April 2017 - \$1815** (\$1650 + \$165 GST)

**Full Price Registration** – **\$1980** (\$1800 + \$180 GST)

**Subscriber First Discount Registration** – I am a Subscriber First member and entitled to a 10% discount off the full registration fee – **\$1782** (\$1620 + \$162 GST)

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 **\$176** (\$160 + \$16 GST) (Code: PMSLPR17).

## PERSONAL DETAILS

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Middle Init.....Last Name .....

Preferred Name for nametag *[if different from above]* .....

Position .....

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