8TH ANNUAL LAW OF RELIGIOUS INSTITUTIONS CONFERENCE

- Directors' Duties Under Scrutiny: What Religious Institution Boards Must Get Right
- Too Complex to Control? The ACNC's Focus on Charity Structures
- When Meetings Turn Hostile: Legal Risks and Control in Religious Institutions
- Not Directors, Still Liable? The Standard of Care for Religious Institution Boards
- Liability Without Fault: When Institutions Are Still Responsible
- Institutional Liability Is Expanding Again: What Religious Organisations Need to Know
- Spiritual Role or Employment Relationship? The New Test for Clergy
- Can You Still Hire for Faith? The Future of Religious Employment Law
- Permission To Speak (Freely): Hate Speech, Vilification Laws and What They Mean for Religious Institutions
- Not as Separate as You Think: When Church Assets Are on the Line

Our regular 2-day conference delivered online in 3 parts

Wednesday 21 October 2026
Thursday 22 October 2026
Friday 23 October 2026

Feedback from last year's conference:

I really appreciated the ability to attend online as it made it so much easier to engage with.

It was a very good conference with highly qualified speakers and highly relevant and current issues.

I thought that this was the best of your conferences that I have attended. The atmosphere was relaxed and welcoming which makes the whole experience rewarding. The speakers were very professional and the content of their papers excellent. Well done.

50th ANNIVERSARY

The Education Network

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PART 1: WEDNESDAY 21 OCT 2026

CHAIR PART 1: LUKE GEARY, PARTNER, MILLS OAKLEY, BRISBANE, QLD

THEME: GOVERNING WELL: DUTIES, STRUCTURES AND RISK

1.00 - 1.10pm

Introduction and welcome

1.10 - 1.55pm

Session 1: Directors' Duties Under Scrutiny: What Religious Institution Boards Must Get Right

The Federal Court's recent civil penalty proceedings against company directors have sharpened the expectations placed on boards when it comes to risk oversight, information flow, and decision-making. While the case arose in a commercial setting, the principles apply equally to religious institutions, where governance structures are often less formal but no less exposed. This session examines what boards of religious organisations must do to properly discharge their duties, and where governance practices commonly fall short. Drawing on recent Federal Court guidance, this session explores:

- The different roles of executive and non-executive directors, and why both remain exposed where risks are not properly identified and escalated
- Why directors cannot rely on management alone and must form their own independent judgement
- The responsibility of directors for the quality and completeness of the information they receive, including the adequacy of board papers
- The importance of active engagement, including asking questions, testing assumptions, and ensuring scrutiny is reflected in board minutes
- How operating in higher-risk environments can elevate the standard expected of boards
- The Court's approach to hindsight and what this means for documenting decisions and processes at the time
- Practical steps to strengthen governance, including reviewing reporting lines, escalation protocols, and record-keeping practices

Speaker: Rebecca Lambert-Smith, Practice Leader, Moores, Melbourne, Vic.

1.55 - 2.05pm Questions and Discussion

2.05 - 2.50pm

Session 2: Too Complex to Control? The ACNC's Focus on Charity Structures

Many religious institutions have grown organically into complex webs of entities each established to serve a particular purpose at a particular time. Complex charity structures are now one of the ACNC's declared compliance and enforcement priorities for 2025-26. This session maps out what the regulator is looking for and the risks arising in complex structures, including:

- What the ACNC means by a "complex structure" and the disproportionate representation of religious institutions in this category
- The ACNC's August 2025 guidance on governance practices for complex structures and the seven areas requiring heightened attention
- The specific challenge of common directorships across multiple entities within a group
- How the choice of legal structure shapes mission alignment
- The question of whether religiously motivated activities should be housed in separate entities from commercial or aged care operations, and the compliance and mission risks that arise when those boundaries are blurred
- How institutions should approach a governance and structure review and how to deal with misalignments between structure and mission

Speaker: Elizabeth Wighton, Partner, Gilbert + Tobin, Sydney, NSW

2.50 - 3.00pm Questions and Discussion

3.00 - 3.10pm **Short Break**

PART 1: WEDNESDAY 21 OCT 2026

3.10 - 3.55pm

Session 3: When Meetings Turn Hostile: Legal Risks and Control in Religious Institutions

Disorderly conduct at board, elder and congregational meetings is becoming more common, and the consequences can extend well beyond disruption. Poorly managed meetings can expose religious institutions to invalid decisions, personal liability, defamation claims and even work health and safety breaches. This session examines what the law requires when meetings break down and what institutions can do to maintain control. This session explores:

- The common law principles governing the conduct of meetings and the principles that are frequently unknown, even to the most experienced office holders
- The distinction between different types of deliberative bodies within a religious institution and how the applicable rules and legal frameworks differ between them
- How psychosocial safety obligations under work health and safety legislation now apply to the meeting environment, and the legal consequences that can flow when conduct at a meeting causes psychological harm to a participant
- The defamation risks that arise when members are accused of misconduct at or in connection with meetings
- The legal mechanisms available to remove a disorderly or disruptive member from a meeting, and the separate and more complex question of how to remove a director or officer from their position altogether
- The intersection of meeting governance with the Corporations Act 2001 (Cth) and incorporated association legislation, including the question of when a decision made at an improperly conducted meeting may be invalid
- What institutions should build into their constitutions, by-laws, and meeting procedures to reduce the risk of contested decisions, personal liability, and costly litigation later

Speaker: Chris Mills, Director,
Neumann & Turnour Lawyers, Brisbane, Qld

3.55 - 4.05pm Questions and Discussion

4.05 - 4.50pm

Session 4: Not Directors, Still Liable? The Standard of Care for Religious Institution Boards

Religious institutions are often governed by boards, committees, elders and trustees who do not neatly fit within the traditional framework of company directors. Yet the legal duties they owe, and the risks they face, can be just as significant. The applicable standard of care is complex, and in some respects unsettled, creating uncertainty for those responsible for governance. This session examines the legal framework governing office holders in religious institutions and the practical challenges it creates. This session explores:

- How the legal standard for trustees of charitable purpose trusts differs from the standard applied to company directors
- Why boards and committees drawn from the elders and members of a Church, making decisions for charitable purposes, may not be held to the standard required of company directors
- Why the fiduciary duties owed by officeholders of a letters patent bodies may not translate into the full suite of directors' duties under the Corporations Act
- The tension for religious institutions that incorporate under the Corporations Act as companies limited by guarantee, where responsible persons are also subject to ACNC Governance Standards
- The practical governance challenge of wanting to appoint people for their theological convictions and pastoral qualities, while needing to ensure the governing body has sufficient capability to discharge the legal duties that apply to it
- What Catalyst reveals about the different legal obligations that may apply to church boards, trustees, committees and officeholders depending on the governing structure
- What institutions should consider when reviewing the composition, capability, and decision-making processes of their governing bodies
- How the choice of governance structure affects accountability, liability and oversight

Speaker: Sophia Chen, Special Counsel,
Carroll & O'Dea Lawyers, Sydney, NSW

4.50 - 5.00pm Questions and Discussion

5.00pm

Close

PART 2: THURSDAY 22 OCT 2026

CHAIR PART 2: DR MARK FOWLER, FOWLER CHARITY LAW, SYDNEY, NSW

THEME: PROTECTING PEOPLE: LIABILITY, ABUSE AND THE LIMITS OF SAFEGUARDING

1.00 - 1.10pm

Introduction and welcome

1.10 - 1.55pm

Session 5: Liability Without Fault: When Institutions Are Still Responsible

The High Court of Australia's decision in AA v The Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle has altered the liability landscape for religious institutions and any organisation that cares for children or other vulnerable people. This session considers what the decision means for religious institutions, including:

- The distinction between vicarious liability and non-delegable duty of care
- How the High Court identified the "special relationship" and what features of that relationship triggered the duty
- Why implementing safeguarding systems is no longer a shield
- Why non-delegable duty represents a fundamentally different basis of liability from vicarious liability and why that distinction matters
- The categories of vulnerable people to whom a non-delegable duty may now be owed by your institution
- How damages are assessed where non-delegable duty is established, including the impact of any applicable statutory caps
- Practical steps for religious institutions to audit their safeguarding frameworks, delegation structures and insurance arrangements considering this decision

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

1.55 - 2.05pm Questions and Discussion

2.05 - 2.50pm

Session 6: Institutional Liability Is Expanding Again: What Religious Organisations Need to Know

The High Court's decision in Bird v DP drew a clear line with respect vicarious liability in Australia, but the legislative response across the states has moved quickly to redraw it. This session maps out where things now stand and what it means for how religious institutions manage their people and safeguarding obligations, including:

- Why the High Court in Bird v DP held that vicarious liability cannot extend to relationships merely "akin to employment"
- How the Victorian Justice Legislation Amendment (Vicarious Liability for Child Abuse) Act 2026 reverses the effect of Bird in that state and the practical implications of this legislative reform
- The patchy and evolving legislative response across other jurisdictions
- The three factors' courts and tribunals will use to determine whether a person is "akin to an employee"
- How the Victorian legislation operates retrospectively, opening the door to claims previously barred or settled in the wake of Bird
- The practical significance of classifying a relationship as employment-like, and the growing range of relationships now attracting closer scrutiny
- Practical suggestions for institutions to review their screening, supervision and child safety training arrangements for all individuals who exercise authority or control over children in their care

Speaker: Nathan Donovan, Director, Donovan Winkler Lawyers, Gold Coast, Qld

2.50 - 3.00pm Questions and Discussion

PART 2: THURSDAY 22 OCT 2026

3.00 - 3.10pm **Short Break**

3.10 - 3.55pm

Session 7: Spiritual Role or Employment Relationship? The New Test for Clergy

Whether a minister, priest, pastor, or rabbi is an "employee" for the purposes of the Fair Work Act 2009 is no longer a purely theoretical question, and the introduction of s 15AA has made the answer harder to predict. This session will consider what the current legal framework requires and what it means for how religious institutions structure and manage relationships with clergy, including:

- The requirements of s 15AA of the Fair Work Act 2009
- The traditional position that clergy hold a spiritual office rather than a contract of employment, and the factors courts and tribunals have relied on to reach that conclusion
- Why the introduction of s 15AA creates uncertainty for religious institutions that rely on ecclesiastical documents such as letters of call or placement arrangements to characterise the relationship as non-contractual
- The key indicia that may now be assessed and how the practical realities of a clergy member's working life may weigh in favour of an employment relationship
- How different denominations and structures may produce different outcomes under the s 15AA analysis
- Practical steps for institutions to review how clergy relationships are documented, structured and managed

Speaker: Adam Foster, Partner,
Colin Biggers & Paisley, Melbourne, Vic.

3.55 - 4.05pm Questions and Discussion

4.05pm

Close

PART 3: FRIDAY 23 OCTOBER 2026

CHAIR PART 3: LIBBY KLEIN, DIRECTOR, SOCIAL IMPACT LEGAL, MELBOURNE, VIC.

THEME: AUTONOMY UNDER PRESSURE: FREEDOM, INDEPENDENCE AND MISSION

1.00 - 1.10pm

Introduction and welcome

1.10 - 1.55pm

Session 8: Can You Still Hire for Faith? The Future of Religious Employment Law

The intersection of anti-discrimination law and religious freedom is one of the most contested and fast-moving areas affecting religious institutions. The scope of available exemptions is under increasing scrutiny, and the legal position varies across jurisdictions, creating uncertainty for faith-based employers. This session examines the current framework and how it is evolving, and what institutions need to do to protect their position. This session explores:

- The structure of religious exemptions in federal and state anti-discrimination legislation and the sometimes inconsistent frameworks for faith-based employers
- What the inherent requirements test means for religious institutions and how courts and tribunals approach that question
- The Sanders v Melbourne Archdiocese Catholic Schools dispute and potential implications for faith-based employers nationwide
- Whether broader federal exemptions under the Sex Discrimination Act override more restrictive state protections under state based legislation and why the jurisdictional question is itself significant
- How different states are moving at different speeds and the effect of this legislative patchwork that institutions operating across jurisdictions
- The ALRC's 2024 report on religious educational institutions and anti-discrimination law, and what its recommendations would mean in practice for religious institutions
- What institutions should be doing now to review their employment policies, position descriptions, and ethos statements to ensure they are in the strongest possible position to rely on available exemptions if challenged

Speaker: Cathy Lyndon, Special Counsel, MinterEllison, Brisbane, Qld

1.55 - 2.05pm Questions and Discussion

2.05 - 2.50pm

Session 9: Permission To Speak (Freely): Hate Speech, Vilification Laws and What They Mean for Religious Institutions

A wave of new hate speech and vilification legislation has swept across federal and state jurisdictions in the past year, culminating in the Combatting Antisemitism, Hate and Extremism Act 2026 (Cth). For religious institutions, the question is not simply whether these laws apply to them, it is whether the language they use in preaching, teaching and advocacy could expose them to civil or criminal liability. In this session, attendees will gain an insight into where the law now stands and what religious institutions need to understand, including:

- The distinction between laws targeting incitement to violence and broader vilification prohibitions
- The key provisions of the federal legislation, including the aggravated offences that apply specifically to religious officials and spiritual leaders who advocate or threaten violence
- A comparative analysis of state-based legislation dealing with hate speech and vilification laws
- The tension between hate speech laws and the constitutionally implied freedom of political communication
- Why the precise drafting of these laws matters for institutions that wish to engage in public debate on contested religious, social, and moral questions
- How institutions should review their preaching, teaching, publication, and social media practices considering this evolving legislative landscape
- The circumstances in which seeking legal advice before speaking publicly is now prudent

Speaker: to be advised

2.50 - 3.00pm Questions and Discussion

3.00 - 3.10pm Short Break

3.10 - 3.55pm

Session 10: Not as Separate as You Think: When Church Assets Are on the Line

The Supreme Court of Queensland's decision in the Catalyst litigation against the Presbyterian Church of Queensland has delivered a landmark ruling on how letters patent bodies hold property, who bears responsibility for commercial decisions, and what happens when a church's commercial ventures go wrong. This session takes a closer look at what the decision means for religious institutions with similar structures and how to manage commercial risk going forward, including:

- How a letters patent body incorporated under relevant legislation holds property on trust for the purposes of the association, not beneficially
- Why PresCare's separate ABN, board, management structure, and ACNC registration were not sufficient to establish it as a separate trust
- Why the legal ownership of Church property may differ dramatically from the assumptions held by congregations, boards and officeholders
- The distinction between congregational property and denominational property, and what it means for which assets may be called upon when debts arise
- How liabilities arising in one ministry, aged care service, school or commercial operation may affect assets held elsewhere within the broader Church structure
- Practical options for ring-fencing risk and whether existing structures achieve that objective
- The need for officeholders of letters patent bodies to seek court directions before, not after, taking actions about which they are uncertain
- How commercial parties dealing with letters patent bodies must exercise caution in due diligence
- Guidance for institutions with letters patent structures to audit their governing documents, consider how commercial risk is managed, and determine whether their current structure adequately protects Church assets

Speaker: Jessica Lipsett, Director, Vocare Law, Brisbane, Qld

3.55 - 4.05pm Questions and Discussion

4.05pm

Close

GENERAL INFORMATION

Conference Registration Fee

The conference registration fee includes online attendance at the conference and conference materials.

Conference Papers

TEN does not provide printed copies of the conference papers or Powerpoints. Access to the papers & Powerpoints will be available online to all delegates in the lead-up to the conference (as they become available).

CPD

Lawyers: 9 CPD units/points (substantive law)
WA Lawyers: TEN is an accredited provider

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The papers from this conference will be available in electronic format approximately 1 week after the conference has been held. You can pre-order the papers now online via our website at www.tved.net.au.
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