



6TH ANNUAL LAW OF RELIGIOUS INSTITUTIONS CONFERENCE

Vicarious Liability for Acts Outside an Employer/Employee Relationship
Closing Loopholes or Limiting Opportunities? Update on Recent Employment Law Reforms
Taking a Risk Management Approach to Mental Health
Responding to Allegations against Clergy: A Guide to Best Practices
Death of Perpetrators of Historical Abuse no Bar to Proceedings
Assessing the National Redress Scheme
Navigating Australia's Patchwork Quilt of Law Reforms
The Productivity Commission's "Future Foundations for Giving" Report
The revised Commissioner's Interpretation Statement for PBIs
The Declining Church: Sustainably Planning for the Future

1.5 day Conference

Thursday 17 & Friday 18 October 2024

Sheraton Hotel Melbourne

Feedback from last year's conference:

- 👉 A very interesting range of topics, and variety of styles and presentations. Everyone was very engaging and the material was clearly well-prepared, up-to-date, and relevant. Well-done for drawing together such a valuable conference.
- 👉 Value for money. High standard to presenters, many of whom presented 'cutting edge' material, i.e. content that was current and topical. This reflected their expertise, i.e. your excellent choice of presenter. The chairs were also well chosen.
- 👉 A lot of content covered - very informative, detailed and current. Appreciated that the slides and papers were very detailed so we can read back on the full content. Helpful that each chairperson asked questions and stirred discussion as well.



Leaders in CPD for Professionals

DAY 1: THURSDAY 17 OCTOBER 2024

CHAIR DAY 1 - AM:
MURRAY BAIRD, PRINCIPAL
MURRAY BAIRD ADVISORY AND
CONSULTANT PROLEGIS LAWYERS,
MELBOURNE

MORNING THEME: WORKPLACE ISSUES IN
RELIGIOUS INSTITUTIONS

9.00 - 9.15am

Introduction and welcome

9.15 - 10.00am

Session 1: The Freedom to Discriminate? Navigating
Australia's Patchwork Quilt of Law Reforms

In 2024, the Australian Law Reform Commission released its report, Maximising the Realisation of Human Rights: Religious Educational Institutions and Anti-discrimination laws, which recommended revising the federal Sex Discrimination Act 1984. Bipartisan support for the legislation has not been forthcoming. So where to now? This session will examine the potential narrowing of religious freedoms in the context of state and territory laws, including:

- What is religious freedom anyway? The role of the International Covenant on Civil and Political Rights
- Maintaining religious ethos and faith tenets: What are the current freedoms afforded to educational institutions to maintain their religious ethos
- The role of balancing clauses in existing discrimination laws
- Proposed changes to the Queensland and New South Wales Anti-Discrimination Acts and the narrowing of religious exceptions
- Challenges for religious institutions operating with patchwork quilt of regulatory obligations
- What are the current freedoms afforded to religious institutions to maintain their religious ethos?

Speaker: Sonya Parsons, Partner - NFPs, Human Rights & Social Impact, Mills Oakley, Sydney

10.00 - 10.10am Panel Comments and Questions

10.10 - 10.55am

Session 2: Closing Loopholes or Limiting
Opportunities? Update on Recent Employment Law
Reforms

The last 12 months have seen significant changes to the Fair Work Act, including the introduction of greater protections for employees against discrimination, adverse action and harassment; and affording them the right to disconnect. The recent employment law reforms have shifted the legal landscape for employers. This session will examine the practical implications of these reforms for religious institutions, including:

- Managing expectations of employees of religious institutions in the age of the right to disconnect and flexible working arrangements
- Employee or independent contractor? Understanding the differences and avoiding sham contracts
- Update on unfair dismissal laws and how they may impact religious institutions
- Categorisation of employees: When might casual employment be permanent?
- An overview of new increases in penalties under the Fair Work Act

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

10.55 - 11.05am Panel Comments and Questions

11.05 - 11.30am Networking Break and Morning Tea

DAY 1: THURSDAY 17 OCTOBER 2024

11.30am - 12.15pm

Session 3: Taking a Risk Management Approach to Mental Health in Religious Institutions

Mental health issues not only impact the individual, but also their workplace, particularly where there is a claim that the mental health is a workplace injury. With a tripling of mental health compensation claims in the last 20 years, the challenge is for religious organisations to take a proactive and risk-based approach to minimising psycho-social hazards. It can be difficult to know where to start. This session will examine the key issues, including:

- An analysis of the duty of care of employers and Codes of Practice
- The regulator's guidelines on mental health management in the workplace
- The treatment of mental health at the recruitment stage - what can employers ask?
- Establishing and implementing policies, procedure and training
- Disability discrimination and the treatment of employees with a mental health condition
- How are "reasonable adjustments" assessed in the mental health space?
- Strategies for identifying and managing some of the perceived mental health triggers such as working hours, bullying, changed work conditions and rosters, public abuse, financial and personal stress

Speaker: Adrian Barwick, Solicitor Director, WilliamsonBarwick, Sydney

12.15 - 12.25pm Panel Comments and Questions

12.25pm – 1.25pm Luncheon

CHAIR DAY 1 - PM:
TO BE ADVISED

AFTERNOON THEME: SAFETY AND
LIABILITY ISSUES

1.25 - 2.10pm

Session 4: Responding to Allegations against Clergy: A Guide to Best Practices

When faced with a complaint lodged against a member of the clergy, knowing the precise steps to follow is imperative. This session offers pragmatic insights into managing complaints, covering:

- Immediate actions upon receiving a complaint
- Navigating the investigative process adeptly
- Understanding the significance of restorative justice and engagement within existing frameworks
- Established procedures for investigating both clergy and lay leaders
- Engaging with regulatory and legal bodies in cases involving criminal allegations
- Making informed decisions and determining outcomes, including disciplinary measures and external referrals
- Efficient management of internal and external communications
- Evaluating the effectiveness and clarity of your complaints mechanisms

Speaker: Tim Whincop, Director, Vocare Law, Sydney, NSW

2.10 - 2.20pm Panel Comments and Questions

DAY 1: THURSDAY 17 OCTOBER 2024

2.20 - 3.05pm

Session 5: Assessing the National Redress Scheme: Lessons Learned and Strategies for Religious Institutions

2024 marks the sixth year of the National Redress Scheme for institutional child sexual abuse, with the Scheme paying out approximately \$1.3 billion to date to survivors. However, legal issues have arisen in the operation of the Scheme to date, including challenges in determining eligibility criteria, concerns about the adequacy of compensation payments, and criticisms of the scheme's administration and response processes. This session will examine the efficacy of the scheme, lessons learned from its operation so far, and how religious institutions can prepare for future claims. It covers:

- The implications of the simplification of the application process and the removal of the requirement for claims to be supported by statutory declarations
- Changes to the scope of people eligible to make a claim
- Lessons learned from the first five years of the operation of the Scheme
- Widening the scope of the eligible claimants: implications for insurers
- Scheme claims and civil suits: legal exposure of religious institutions
- Risk management: how can religious organisations best prepare to deal with claims
- When is withdrawal from the Scheme appropriate?

Speaker: Hudson Digby, Senior Associate, Mills Oakley, Sydney

3.05 - 3.15pm Panel Comments and Questions

3.15pm - 3.35pm Networking Break & Afternoon Tea

3.35 - 4.20pm

Session 6: The Door Left Ajar - Death of Perpetrators of Historical Abuse no Bar to Proceedings

Following the decision of the High Court in *GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore* there has been a significant shift in the availability of permanent stays of proceedings for claims of historic abuse where the perpetrator, and other key witnesses, are deceased. This session examines the practical implications for religious institutions and how to manage these types of proceedings going forward. It covers:

- The position prior to *GLJ* and how the playing field has now changed
- Post Royal Commission: the legislative removal of statutory limitation periods
- Exceptional circumstances: When might a permanent stay of proceedings be justified?
- Documentation, information and evidence: the importance of record keeping and corporate memory in historical abuse claims
- Prioritising the rights of victims vs the forensic challenges of historical abuse claims: a delicate balance
- Private, domestic or institutional? Does the place where the abuse took place have a bearing on the question of the unfairness and oppression of proceedings?

Speaker: Roisin Annesley KC, Barrister, Victorian Bar, Melbourne

4.20 - 4.30pm Panel Comments and Questions

DAY 2: FRIDAY 18 OCTOBER 2024

CHAIR DAY 2: REBECCA LAMBERT-SMITH, PRACTICE LEADER, MOORES, MELBOURNE

THEME: LEGISLATIVE REFORM AND FUTURE PLANNING

9.00 - 9.05am

Introduction and welcome

9.05 - 9.50am

Session 7: Vicarious Liability For Acts Outside an Employer/Employee Relationship

In the recent past, the courts have been required to consider the liability of religious institutions, including schools, churches and not-for-profit organisations, for the criminal abuse of children. With the High Court now considering the extent to which a diocese can be vicariously liable for the historic acts of criminal abuse perpetrated by an assistant priest, it has never been more important for religious organisations to understand the extent of the employer / employee relationship. This session will consider the implications and challenges for religious institutions if they are to be vicariously liable for religious practitioners engaged outside the traditional employer/employee relationship, including:

- Competing theories of liability: the difference between non-delegable duty of care and vicarious liability
- The two-step test in DP v Bird as a pre-condition for vicarious liability
- Lessons and key finding from DP v Bird
- Factors going to proof of direct control
- The role of insurance in potential future vicarious liability claims
- Minimising risk: practical tips for religious institutions in the engagement of non-employees

Speaker: Luke Geary, Partner, Mills Oakley, Brisbane

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 8: The Future of Regulation of Religious Organisations in Australia

When the ACNC was established in 2012 it was intended that it would be the regulator for the whole charity sector. The independent review of the ACNC in 2018 recommended that NFPs with a turnover of \$5 million or more be registered with the ACNC. That recommendation was not adopted. Instead, funding was provided to the ATO to develop its register. From 1 July 2024 the ACNC will register only 22% of the NFP sector and the ATO will register the remaining 78% of Income Tax Exempt Entities. In this session Dr Matthew Turnour, who was one of the ACNC independent reviewers, will discuss these developments. He will focus on what they might mean for the future of regulation of religious organisations in Australia. This session will cover:

- An overview of the history of regulation of religious charities since the 1980s
- The emergence of the ACNC and the reasons behind its establishment
- The carveouts for Basic Religious Charities
- The independence of the ACNC historically, at present and into the future
- The data on the ACNC's performance against its Objects and implications, and
- Possible futures for the regulation of religious organisations in Australia.

Speaker: Dr Matthew Turnour, Chairman, Neumann & Turnour Lawyers, Brisbane

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2: FRIDAY 18 OCTOBER 2024

11.15 - 12.00pm

Session 9: To be (benevolent), or not to be (benevolent)? The Impact of the revised Commissioner's Interpretation Statement for Faith-based PBIs

The ACNC recently released the revised Commissioner's Interpretation Statement for Public Benevolent Institutions, with the Statement providing updated guidance on how the law will be interpreted to determine whether an organization is a PBI.

This session explores the revisions to the CIS PBI, focusing on key changes and additional commentary introduced in the latest revision. Participants will gain insights into the implications of these changes for religious organisations and other entities seeking PBI status, with a focus on navigating the evolving regulatory landscape including:

- Examining the 'public,' 'benevolent,' and 'institution' Requirements
- Implications of shifting focus from 'main purpose' to benevolent relief activities
- Exploring the sufficiency of connection requirement and its impact on PBI eligibility
- Evaluating the conditions under which commercial activities align with benevolent relief objectives
- Understanding acceptable development assistance activities and their role in PBI eligibility

Speaker: Dr Mark Fowler, Principal, Fowler Charity Law, Sydney

12.00pm - 12.10pm Panel Comments and Questions

12.10 - 12.55pm

Session 10: The Declining Church: Sustainably Planning For The Future

Many religious institutions across the denominations are facing dwindling congregations. How do organisations best prepare for the future and maintain its ethos in a world of changing commercial realities? This session explores the key governance and structuring issues religious institutions should consider when planning for a sustainable future. It covers:

- Understanding the current landscape – trends in congregation numbers across the denominations, and the financial implications of declining membership
- Strategic financial planning - developing long-term financial sustainability plans
- Strengthening governance structures to adapt to change
- Roles and responsibilities of church leadership in financial planning
- Spotlight on property and asset management – options for underutilised properties and how to manage land rich / cash poor scenarios
- Mission and ethos preservation – balancing financial decisions with the mission of the institution
- Case studies of successful adaptations preserving mission integrity

Speaker: Nicole Shenfield, Director, Paxton-Hall Lawyers, Brisbane

12.55 - 1.05pm Panel Comments and Questions

1.05pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference and conference papers. Refreshment breaks on both conference days and lunch on day 1 are included for delegates attending the face to face event.

Conference Papers

TEN will 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 (substantive law).

CPD Certificate

All delegates attending the conference will receive a CPD Certificate confirming attendance.

The Conference Venue

Sheraton Melbourne Hotel

27 Little Collins Street, Melbourne

Delegate Discount Rate at the Sheraton Melbourne Hotel

Enjoy 10% discount off the best available bed & breakfast rate by using the code ZS7 in the special rates section when booking at: <https://www.marriott.com/en-us/hotels/melsi-sheraton-melbourne-hotel>

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 rooms can vary depending on where you are sitting. Short sleeves/summer tops are generally OK, but it is advisable that you bring a jacket/long sleeved top just in case you need it)

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