

# THE 3<sup>RD</sup> ANNUAL LAW OF RELIGIOUS INSTITUTIONS CONFERENCE

OUR REGULAR TWO DAY CONFERENCE  
DELIVERED **ONLINE** IN FOUR PARTS  
**OVER FOUR HALF DAYS**

## **Part 1: Governance Challenges**

Thursday 14 October 2021 [10am to 12.45pm]

## **Part 2: Risk Management**

Friday 15 October 2021 [10am to 12.45pm]

## **Part 3: Managing People**

Thursday 21 October 2021 [10am to 12.45pm]

## **Part 4: Mandatory Reporting and Litigation**

Friday 22 October 2021 [10am to 12.45pm]

### **FEEDBACK FROM LAST YEAR'S CONFERENCE:**

*"Very relevant and detailed content, specific to this cohort of clients. Extensive coverage of the range of legal issues that religious institutions deal with. Presenters who were very knowledgeable about religious organisations. Will attend again!"*

*"I appreciated the effort to bring complex matters to practical points of understanding specific to our particular situation."*

*"Overall the conference was very well put together, and on the whole the speakers and their papers were first class."*

*"Relevant and access able with excellent speakers."*

# PART 1: THURS 14 OCTOBER 2021

Chair: Murray Baird, Principal,  
Murray Baird Advisory, Melbourne

## THEME: GOVERNANCE CHALLENGES

**10.00 - 10.05am**

**Introduction and welcome**

**10.05 - 10.45am**

### **Session 1: Board Member and Director Duties under the Spotlight in Religious Institutions**

Times have changed from when sitting on the board was simply a voluntary past time and goodwill was enough to bring to the table. Today, board members have increasingly onerous responsibilities, compliance obligations and potentially personal liability when things go wrong. This session will provide a guide to board members in religious institutions to help them navigate their roles and responsibilities, including:

- Revisiting key duties and obligations for board members
- Recent legislation and cases impacting director's duties including Australian Securities and Investment Commission v Mitchell (No 2) [2020] FCA 1098
- Becoming personal: the changing nature of liability for board members
- Does the board know what it needs to know? What should be on the agenda of every board meeting
- Duties of board members in difficult economic conditions
- Lessons from recent royal commissions, ACNC standards and governance guidance for boards

Speaker: Philip Battye, Partner, HWL Ebsworth,  
Melbourne

**10.45 - 10.55am** Questions and Discussion

**10.55 - 11.35am**

### **Session 2: Blowing Away the Cobwebs from Constituent Documents of Religious Institutions**

There's no time like the present to ensure that your organisation's constituent documents are fit for purpose and meeting the needs of the institution. Not only can a good spring clean flush out redundancies and gaps, but also focus the organisation on what is required to position the organisation for the future. This session will guide organisations through the process of review and reflection, including:

- Understanding and analysing the key terms of constituent documents
- How statutory and common law impact on constituent documents' content and form
- When and how often is a review appropriate?
- What should organisations be looking for when reviewing the documents?
- Balancing fiddling around the edges with wholesale review and starting over
- Reviewing the fundamentals:
  - Objectives and purpose
  - Decision-making processes
  - Membership rights, meeting and votes
  - Dispute resolution
  - Winding up
- Anticipating member unrest and strategies for harmony
- Judicial review options when all else fails

Speaker: Rebecca Lambert-Smith, Practice Leader,  
Moore, Melbourne

**11.35 - 11.45am** Questions and Discussion

**11.45 - 11.55am**

**Short Break**

# PART 1: THURS 14 OCTOBER 2021

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**11.55am - 12.35pm**

## **Session 3: Avoiding the Nuclear Option: Effective Management of Member Disputes**

Disputes between an organisation and its members, or between members themselves, can threaten the very existence of the organisation and severely impact both culture and wellbeing. This session will provide a guide to internal conflict management and governance, including:

- Constitutions, rules and the law – how religious organisations manage their relationship with members
- The impact of member disputes and why they need careful handling
- Spotting red flags and strategies for heading off member disputes at the pass
- Designing a best practice dispute management process for members
- Optional dispute management solutions including:
  - Internal process
  - Mediation or arbitration
  - Judicial
- Building organisational capacity and training in dispute management and negotiation skills
- Communication management in a time of conflict
- Cases including *Faamate & Ors v Congregational Christian Church in Samoa – Australia* [Ipswich Congregations & Ors [2020] QCA 87

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

**12.35 - 12.45pm** Questions and Discussion

**12.45pm**

**Close**

# PART 2: FRIDAY 15 OCTOBER 2021

Chair: Andrew Lind, Director,  
Corney & Lind Lawyers, Brisbane

## THEME: RISK MANAGEMENT

10.00 - 10.05am

Introduction and welcome

10.05 - 10.45am

### Session 4: Is Faith Enough? Re-thinking Risk Management in Religious Institutions

Risk management has never been more important for religious institutions following the recommendations of relevant royal commissions and the impact of covid-19 on the workplace and service provision. This session will examine what religious institutions need to be doing to realign their risk culture with the new environment, including:

- Why risk management should be seen as an opportunity not a barrier
- The effect of organisational culture on risk and guidance for changing the tone from the top
- What are the new or increased risks for religious institutions? What impact do these have on the organisations?
- Strategies for reviewing risk plans in light of the changing environment
- Bringing the organisation along – aligning risk and culture
- Assigning roles and responsibilities for risk management from the board down
- What policies and procedures are at the heart of effective risk management?
- Is your insurance in order? Auditing and managing insurance coverage
- Specific risk minimisation strategies for changing times, including work from home, on-line environments and health

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

10.45 - 10.55am Questions and Discussion

10.55 - 11.35am

### Session 5: As Clear as Mud: Transparency and Conflict of Interest in the Governance of Religious Institutions

The potential reputational, legal and financial damage from a failure to prevent or manage conflicts of interest can be devastating for a religious institution. Whether involving board or staff decisions, the use of a supplier or other contractual arrangement, the importance of preventing or managing conflicts of interest is an essential component of good governance. This session will examine best practice in management of conflicts, including:

- Identifying the elements of a conflict of interest
- Actual, potential and perceived conflicts explained
- Statutory and common law conflict of interest rules, including in the Corporations Act and ACNC standards
- Defining personal interests and examples of interests that conflict with a persons' duties or obligations
- Consequences of poor management of conflicts of interest
- When and how should a conflict of interest be disclosed?
- Strategies for preventing or managing the impacts of conflicts of interest
- What should be in your organisation's Conflict of Interest policy and who should it apply to?
- Managing conflict of interest through contracts and Codes of Conduct

Speaker: Hannah Fraenkel, Senior Associate,  
Macpherson Kelley, Melbourne

11.35 - 11.45am Questions and Discussion

11.45 - 11.55am

Short Break

# PART 2: FRIDAY 15 OCTOBER 2021

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**11.55am - 12.35pm**

## **Session 6: Process and Procedural Fairness in Investigations for Religious Institutions**

Running a fair and impartial investigation can be a very demanding process, particularly where serious complaints and allegations with significant adverse consequences are involved. This session will provide a practical and detailed guide for religious institutions for planning and conducting effective investigations which will hold up against any later challenges, including:

- Determining authority and precedent for conducting an investigation
- Designing an investigation process and supporting procedures that meet the test of procedural fairness
- Internal and external investigations and the pro's and con's of each
- Procedural issues including:
  - The selection and qualifications of the investigator
  - The role of lawyers, support persons and representation
  - Interviewing rules, including interviewing children
  - Affording procedural fairness – what does it mean in practice? Cases and examples
  - Evidence, confidentiality and record keeping protocols
- Who is authorised to make and/or receive recommendations or findings?
- Authority for decision-making and outcomes, including disciplinary action and referral to external authorities

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

**12.35 - 12.45pm** Questions and Discussion

**12.45pm**

**Close**

# PART 3: THURS 21 OCTOBER 2021

*Chair: Mark Fowler, Principal,  
Fowler Charity Law, Sydney*

## THEME: MANAGING PEOPLE

**10.00 - 10.05am**

**Introduction and welcome**

**10.05 - 10.45am**

### **Session 7: A Rose by Any Other Name? Characterising the Legal Relationship between Religious Institution and Clergy**

The historical nature of religious institutions and their relationship with their clergy has, until recently, been seen as outside the realm of traditional employment. However, while the provision of services has become increasingly regulated and categorised in the secular world, the relationships within the church setting have become uncertain. This session will examine the current thinking on relationships within religious institutions and why it is important to consider how they might be treated by the law, including:

- Why characterising employment relationships matters and the consequences of getting it wrong
- What are the characteristics of an employment relationship? How is an independent contractor distinguished?
- Why have clergy been treated differently to employees – a discussion of the historical context and constituent documents
- Common law developments over the last few decades and what they mean for the traditional relationships: *Ermogenous v Greek Orthodox Community of South Australia Inc* [2002] HCA 8; *Steven Threadgill v Corporation of the Synod of the Diocese of Brisbane* [2014] FWC 6277; *Sharpe v The Bishop of Worcester* [2015] EWCA Civ 399; *Solomon Woldeyohannes v Zion Church in Melbourne Australia Inc* [2020] FWC 4194
- How to define the status of other relationships including lay assistants and volunteers engaged in religious service
- Vicarious liability as an issue in relationship characterisation and management
- The benefits of creating more certainty in the relationship – key terms for a contract of employment or service for clergy and religious assistants

*Speaker: Adrian Barwick, Solicitor  
Director, WilliamsonBarwick, Sydney*

**10.45 - 10.55am** Questions and Discussion

**10.55 - 11.35am**

### **Session 8: Developments in Employment Law for Religious Institutions**

The employment of staff brings with it many challenges, not the least of which is keeping up to date with developments in the employment landscape and law. This session provides a guide to recent issues and legislative changes and what religious institutions need to do to ensure they are compliant with their legal obligations, including:

- Casual employment in the firing line – recent cases and proposed legislation and the consequences for employment of casual staff
- Identifying the difference between an independent contractor and an employee and the consequences of getting it wrong
- Obligations to and protections for whistleblowers
- Lessons on adverse action from *Roohizadegan v TechnologyOne Limited* [No 2] [2020] FCA 1407
- Government reforms and future focus

*Speaker: Stephen Hughes, Principal Lawyer,  
Franklin Athanasellis Cullen, Brisbane*

**11.35 - 11.45am** Questions and Discussion

**11.45 - 11.55am**

**Short Break**

# PART 3: THURS 21 OCTOBER 2021

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11.55am - 12.35pm

## Session 9: Raising the Bar: A Higher Standard for Employees of Religious Institutions?

At a time when there appears to be increasing rights and freedoms for employees in Australia, the question needs to be asked whether employees of religious institutions can be fairly constrained in their activities and views as a consequence of working in a more traditional and faith-based environment. This session will provide a guide to how religious institutions can lawfully and validly manage aspects of their recruitment and employment, including:

- Why should working in a faith-based institution be treated differently?
- Can religious institutions discriminate in the recruitment and management of staff? A discussion of the application of the current discrimination laws and the status of the religious discrimination bill
- How to frame recruitment advertisements and interview questioning to comply with the law
- Strategies for regulating and managing behaviour both inside and outside work to align with the values of religious institutions
- What should be in the staff code of conduct and other internal policies? How far can and should the values of the religious institution be imbued in policies and procedures?
- To what extent can a contract of employment stipulate faith and constrain behaviour?
- Can an enterprise agreement be utilised to enshrine faith and impose standards and limitations?
- Cases and examples

*Speaker: Adam Foster, Principal Lawyer, Macpherson Kelley, Melbourne*

12.35 - 12.45pm Questions and Discussion

12.45pm

Close

# PART 4: FRIDAY 22 OCTOBER 2021

Chair: Robert Goot, AO SC,  
Barrister, State Chambers, Sydney

## THEME: MANDATORY REPORTING AND LITIGATION

**10.00 - 10.05am**

**Introduction and welcome**

**10.05 - 10.45am**

### **Session 10: It's Not Child's Play: A Guide to Mandatory Reporting for Religious Institutions**

The recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse are now the subject of State legislation, imposing obligations to meet certain standards and have a mandatory reporting scheme. This session provides an in-depth guide to the required obligations of religious institutions and to potential personal and organisational liability for failure to comply, including:

- What is mandatory reporting and who does it apply to?
- Defined terms and obligations of people in religious ministries and faith-based organisations
- Does the obligation apply to non-employees?
- Is information obtained in the confessional required to be reported?
- What to do if your organisation receives an allegation of abuse?
- When to call in the police and other authorities
- What needs to be in your reporting framework – policies, procedures and staff training
- Record keeping and information management essentials
- Personal and organisational liability for failure to comply

Speaker: *Skye Rose, Practice Leader, Moores, Melbourne*

**10.45 - 10.55am** Questions and Discussion

**10.55 - 11.35am**

### **Session 11: With the Benefit of Hindsight: New Perspectives for Managing Historical Sexual Abuse Claims**

The significant developments in legislation and case law following the Royal Commission recommendations has set up a framework which gives religious institutions and their lawyers a framework which provides a guidance to management of claims of historical sexual abuse, but is the outcome any more certain for either party? This session provides a practical guide on next steps when a claim is received and how to more effectively predict possible outcomes, including:

- Who needs to know about a claim? Advising the board, lawyers and key players
- Mandatory reporting and other key legal obligations
- Have staff been trained to manage claims?
- Obligations of confidentiality and privacy
- Records identification, evidence and privilege
- Assessing the veracity of the claim and potential outcome – what your lawyer will tell you
- Guidance for managing or contributing to an investigation
- Applying lessons on quantum and costs from decided cases and settlements to the case at hand
- Making the call – who has the responsibility for decision-making?
- Reputation, financial impact and other matters to consider before heading down the defence path
- What should be in any settlement offer?

Speaker: *Katie Clark, Partner, MinterEllison, Brisbane*

**11.35 - 11.45am** Questions and Discussion

**11.45 - 11.55am**

**Short Break**

# PART 4: FRIDAY 22 OCTOBER 2021

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**11.55am - 12.35pm**

## **Session 12: Sexual Harassment and Misconduct by Leadership in Religious Institutions**

The relationship between a church, its ministers and staff and the congregation is complex, and when someone in leadership crosses the line on acceptable behaviour the consequences can be dire. Although sexual harassment and misconduct is neither a new phenomenon nor unknown in religious institutions, the reactions, expectations and consequences of the community have significantly changed. This session examines strategies for complaints management against leaders accused of sexual harassment, including:

- Immediate steps to take when a complaint is received
- Key elements for setting up an investigation
- What to do when religious leadership breaches religious values
- Procedures for investigating clergy and lay leaders
- Dealing with regulatory and legal authorities where allegations of a criminal offence
- Crisis and communication strategies for the organisation, membership and the wider community
- Exploring the links between cultural environment and inappropriate behaviour, and the value of cultural audits
- Reconfiguring initial and ongoing recruitment and training to minimise risk
- Best practice codes of conduct, policies and processes for managing sexual harassment and misconduct in the workplace.

*Speaker: Alistair Macpherson, Managing Director, Corney & Lind Lawyers, Brisbane*

**12.35 - 12.45pm** Questions and Discussion

**12.45pm**

**Close**

# GENERAL INFORMATION

## Conference Registration Fee

The registration fee includes attendance at the online conference, online access to the conference materials and recordings of each of the sessions will be provided to all delegates after the conference.

## Conference Materials

Access to the conference materials will be available online to all delegates. Access will commence in the lead-up to the conference as the materials become available. Following the conference delegates will have access to the conference materials online with no expiration date.

## CPD Units

**Lawyers:** 11 CPD units (substantive law)

## Online Conference Delivery

The conference will be delivered online. Delegates will receive a link to login and attend each of the 4 parts of this online conference.

This online conference will be delivered in a style similar to a live conference. There will be Chairs for each part to introduce speakers and facilitate question time and the online portal allows delegates to pose questions to the speakers via the chat facility.

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  - b. Restrictions on movement of persons imposed on persons by any responsible authority in Australia
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  - a. If actually received by TEN within 10 days of the first day on which the conference is to be held, 85% of the registration fee you have paid
  - b. Otherwise, no refund.

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## GOVERNING LAW – ALL CONFERENCES

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