

THE 5TH ANNUAL LAW OF RELIGIOUS INSTITUTIONS CONFERENCE

Our regular two day conference delivered online in four parts

Thursday 5 October 2023

Part 1: Governance and Structuring

Friday 6 October 2023

Part 2: Managing Compliance Risks

Thursday 12 October 2023

Part 3: Managing Employees

Friday 13 October 2023

Part 4: Future Reforms

Feedback from last year's conference:

- “I am an in-house counsel for a church organisation and this will be completely relevant to my field of work. Plus, there is no other legal conference like this in Australia to cater for religious lawyer/organisation needs.”
- “Great variety of relevant topics. Speakers were experts and shared their experiences selflessly. They covered the field and made it relevant to us both as legal practitioners and church employees.”
- “All the content is highly relevant for religious institutions and the speakers are working in the space so understand the unique nature of churches/welfare organisations.”
- “The topics were highly appropriate and the speakers were well qualified to speak on their topic. I learned a lot.”



Leaders in online CPD for Lawyers & Accountants

PART 1 - THURSDAY 5 OCTOBER 2023

**CHAIR: MURRAY BAIRD, PRINCIPAL
MURRAY BAIRD ADVISORY AND
CONSULTANT PROLEGIS LAWYERS,
MELBOURNE**

THEME: GOVERNANCE AND STRUCTURING

10.00 - 10.10am

Introduction and welcome

10.10 - 10.55am

Session 1: For Whom the Bell Tolls: Counting the Cost of Poor Governance for Religious Institutions

The recent controversies surrounding the Hillsong Church sounds a warning bell to religious institutions about the importance of taking governance seriously and the consequences of non-compliance. This session will examine the church's failings through a case study and provide an essential guide to what good governance should look like for religious institutions, including:

- Key measures of accountability and transparency in religious organisations
- How close is too close? Dynastic and divine appointments, family dominions and board composition
- The impact of culture on an organisation and strategies for improvement
- Managing damaging allegations and whistleblowers
- Listening to members and timely dealing with rifts and complaints
- Control mechanisms for minimising risks of financial mismanagement and fraud
- Tips for conducting audits and investigations
- Is it possible to turn a sinking ship around?
- The inquiry into Hillsong and potential recommendations

Speaker: Rebecca Lambert-Smith, Moores, Melbourne, Vic

10.55 - 11.05am Questions and Discussion

11.05 - 11.50am

Session 2: It's All Relative: Conflict of Interest Disclosure in Religious Institutions

Conflicts of interest within religious institutions can create difficult problems if not properly managed, especially where related party arrangements are concerned. The risks of undisclosed or undisclosed conflicts can seriously jeopardise integrity, reputation and legal status. This session will provide a guide to managing obligations and practice concerning conflicts of interest, including:

- The duty to avoid conflicts of interest in the content of religious institutions and how it arises
- Who is subject to the duty?
- How legal structure impacts the duty to avoid a conflict of interest - Corporations Act, incorporated and unincorporated associations
- Registered charities and conflicts of interest - ACNC Governance Standard 5
- A discussion of related party transactions and the consequence for charities
- Responding to conflicts of interest issues
- Appropriate policies and procedures for ensuring disclosure and minimising risks
- The role of conflicts registers and record keeping
- Time to review constitution and other documents?
- Cases and examples

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

11.50 - 12.00pm Questions and Discussion

12.00 - 12.10pm Short Break

PART 1 - THURSDAY 5 OCTOBER 2023

12.10pm - 12.55pm

Session 3: The Regulator's Role in the Religious Sector: Might v Right?

With a new government and minister, and the appointment of a new chairman, the stage appears to be set for assessment and recalibration of the ACNC, now venturing into its second decade of regulation. This session will examine what may be in store for the ACNC and regulated organisations, and particularly religious institutions, in the near future, including:

- Reporting changes that impact religious institutions
- The role of the ACNC in providing guidance to the charity sector and the public
- The scope and outcome of the 10 year review of the ACNC legislation and operations.
- When can regulated bodies appeal or challenge decisions of the ACNC?
- How do the discretions of the Commissioner impact transparency and decision-making?
- What redress does an organisation have against the ACNC for decisions which have a significant financial impact?
- Lessons from cases including *O'Brien v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] FCA 632; *Endresz v Queensland Racing Integrity Commission & Ors* [2022] QSC 262; *Waubra Foundation v Commissioner of the Australian Charities and Not-for-profit Commission* [2017] AATA 2424

Speaker: Vera Visevic, Partner, Mills Oakley, Sydney, NSW

12.55 - 1.05pm Questions and Discussion

1.05pm

Close

PART 2 - FRIDAY 6 OCTOBER 2023

**CHAIR: HOWARD HARRISON,
PARTNER, CARROLL & O'DEA,
SYDNEY, NSW**

THEME: MANAGING COMPLIANCE RISKS

10.00 - 10.10am

Introduction and welcome

10.10 - 10.55am

Session 4: Child Safety Compliance and Risk Management for Religious Institutions

Ministering to families and children is an integral part of most faith-based organisations. To this end, the obligations to keep children and young people safe is both a legal and moral one. This session will examine a number of legal requirements and risks religious institutions need to be aware of to protect children with whom they associate, including:

- The application of federal and state child safety principles and obligations
- To whom do the obligations apply? Liability and vicarious liability explained
- Who is responsible for child safety in the organisation? Risk and responsibility allocation
- Guidance for implementing child safety and reporting requirements into the organisation
- How to identify abuse and appropriate responses
- The status of the religious confessional
- Criminal offences and other consequences of breach
- Tips for managing outsourced service providers
- What to do if your organisation receives an allegation of child abuse

Speaker: Sam Burnett, Partner, Prolegis Lawyers, Sydney, NSW

10.55 - 11.05am Questions and Discussion

11.05 - 11.50am

Session 5: Updates and Developments in Historical Sexual Abuse Claims

Five years on from release of the final report and recommendations, the historical abuse cases continue within a far more developed legislative framework and structured claims process. This session will provide an update on cases and developments in the claims' jurisdiction, and provide a guide on handling claims in light of these developments, including:

- The statistics: claims numbers and awards on the increase
- The National Redress Scheme under strain and under review
- Scheme or litigation - what is determining the choice of alleged victims?
- Opening the door to previously settled claims - the consequences of removal of limitations and setting aside past settlements
- The extension of the vicarious liability doctrine to clergy: *Bird v DP (a Pseudonym)* [2023] VSCA 6
- Evidence and witness issues in historical claims: *The Trustees of the Roman Catholic Church for the Diocese of Lismore v GLJ* [2022] NSWCA 78
- An analysis of cases - trends from judicial decisions
- Strategies for assessing treatment of claims - key factors which determine handling

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

11.50 - 12.00pm Questions and Discussion

12.00 - 12.10pm Short Break

PART 2 - FRIDAY 6 OCTOBER 2023

12.10pm - 12.55pm

Session 6: God's Little Acre: Real Estate and Religious Institutions

A land holding is a key asset of many religious institutions, and can range from a place of worship to a house for the cleric, a school or aged care facility. The legal impacts and risks of these holdings can be significant and require careful consideration and planning. This session will examine some of the more common issues, including:

- How do religious institutions hold land? Who owns the land?
- Distinguishing centrally held and individually held assets
- Structures for holding land and associated obligations
- Tax and other exemptions for land held by religious institutions and the risks of losing them
- Property development and commercial arrangements by religious institutions and taxation implications
- Balancing public interest and the exemptions of religious institutions
- The fate of church property in insolvency, disputes and large compensation claims - cases and examples, including the Tasmanian Anglican Church experience and the Presbyterian Church of Queensland
- Protective measures religious institutions should be taking for their land holdings

Speaker: Jonathan Green, Senior Associate, Mills Oakley, Sydney, NSW

12.55 - 1.05pm Questions and Discussion

1.05pm

Close

PART 3 - THURSDAY 12 OCTOBER 2023

**CHAIR: MARK FOWLER, PRINCIPAL,
FOWLER CHARITY LAW, SYDNEY**

THEME: MANAGING EMPLOYEES

10.00 - 10.10am

Introduction and welcome

10.10 - 10.55am

Session 7: Developments in Employment Law for Religious Institutions

The new government has wasted no time in implementing its agenda for workplace reforms, which significantly changes the landscape and impose greater obligations on all employers to varying degrees. This session will provide a guide to religious organisations on some of the most important changes, recent cases and developments including:

- Limitations on fixed term contracting
- Changes to casual employment and the rights of casual employees
- Increased right to flexible working arrangements
- Long service leave obligations and working overseas
- What pay secrecy means in practice
- Reforms to paid parental leave and domestic violence leave
- Focus of the Fair Work Ombudsman enforcement activities including underpayments

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

10.55 - 11.05am Questions and Discussion

11.05 - 11.50am

Session 8: On the Front Line: Psychosocial Injury and Religious Institutions

Mental health compensation claims by employees have tripled in the last twenty years, constituting the biggest category of workplace injury. These claims provide significant challenges to organisations such as religious institutions, who are in the front line when it comes to dealing with vulnerable people and confronting circumstances. This session will examine the obligations of employers in managing the heightened risk of psychosocial claims, including:

- The duty of care of employers and the Codes of Practice
- The regulator's guidelines on mental health management in the workplace
- Key considerations for mental health policies, procedures, support and training in the workplace
- Avoiding allegations of discrimination in the management of employees with a mental health condition
- What are the obligations of an employer in managing an employee with a mental health illness?
- Strategies for identifying mental health triggers such as unreasonable working hours, bullying, changed rosters, exposure to abuse and personal issues
- The lessons from the decision of the High Court in *Kozarov v State of Victoria* [2022] HCA 12 and other cases

Speaker: Adrian Barwick, Director, WilliamsonBarwick, Sydney, NSW

11.50 - 12.00pm Questions and Discussion

12.00 - 12.10pm Short Break

PART 3 - THURSDAY 12 OCTOBER 2023

12.10pm - 12.55pm

Session 9: Risks and Rewards in Volunteer Reliance

Many religious institutions could not afford to operate if it was not for the volunteers who provide services in varying capacities day in and day out. However, the use of volunteers can pose significant risks to an organisation if not appropriately selected, managed and trained. This session will highlight the risks in engagement of volunteers and provide guidance on how to achieve the best outcome for all parties, including:

- Characterisation of the relationship between a volunteer and the organisation
- Does a duty of care exist for both parties in relation to the other?
- Workplace safety obligations to volunteers - cases including *GVZ v Harvey* [2021] VCAT 467; *SafeWork NSW v Camden Council* [2021] NSWDC 709
- The risks of vicarious liability and personal liability of volunteers
- Tips for undertaking a risk-based assessment for volunteer usage and management
- Due diligence in volunteer recruitment
- Training and security considerations
- Key content for volunteer policies and arrangements

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

12.55 - 1.05pm Questions and Discussion

1.05pm

Close

PART 4 - FRIDAY 13 OCTOBER 2023

CHAIR: LIBBY KLEIN, DIRECTOR, SOCIAL IMPACTY LEGAL, MELBOURNE, VIC

THEME: FUTURE REFORMS

10.00 - 10.10am

Introduction and welcome

10.10 - 10.55am

Session 10: Current issues in Fundraising and Philanthropy for Religious Institutions

Donations form a significant chunk of funding for the work of religious institutions and the solicitation of them is the subject of increasing regulation. Difficult economic times also impact the funding pool and provide challenges to fundraising. This session will highlight some of the legal and risk issues in fundraising and charitable giving and provide advice on meeting the challenges, including:

- The background and rationale for the Basic Religious Charity exemption
- Is the exemption in danger?
- What will a roll back of the exemptions mean for BRC registrants?
- National fundraising legislative reforms and their impact unpacked
- How technology, third party providers/intermediaries and social media has changed fundraising
- New skills and strategies fundraisers need to have
- Examples of alternative fundraising methods and their risks
- How to ensure regulatory compliance for non-traditional fundraising activities
- Does the traditional regulation of fundraising meet the needs of a changing donation environment?
- Government proposals and the Productivity Commission's review into philanthropy

Speaker: Catherine Brooks, Senior Advisor, Wendy Brooks & Partners, Melbourne, Vic

10.55 - 11.05am Questions and Discussion

11.05 - 11.50am

Session 11: Religious Freedom - At the Crossroads?

The change in government resulted in the stalling and re-thinking of the Religious Discrimination Bill, with the Australian Law Reform Commission tasked with a review into the exemptions for religious institutions in current federal anti-discrimination laws. This session will provide an update on the developments in the proposed reforms and the potential impacts on religious institutions, including:

- The background to the inception of the Religious Discrimination Bill
- Current protections for people of faith - why aren't they satisfactory?
- Responses to the Bill from all sides
- The government's position on protection of students, protection of staff members and preferential employment in faith-based schools
- The effectiveness of current State anti-discrimination laws and religious freedom
- Are there effective laws in place for religious vilification?
- Religious freedom and employment - case study of Andrew Thorburn and the Essendon Football Club

Speaker: Sonya Parsons, Partner, Mills Oakley, Sydney, NSW

11.50 - 12.00pm Questions and Discussion

12.00 - 12.10pm Short Break

PART 4 - FRIDAY 13 OCTOBER 2023

12.10pm - 12.55pm

Session 12: An Unholy Alliance: Religious Advancement, PBIs and Taxation

The attraction of PBI status, which gives access to a range of additional tax concessions, has been dampened by the strict requirements for registration which can preclude religious institutions engaged in particular activities. The ongoing tensions in this area continue to make this a hot topic for those impacted. This session will provide an update on current thinking, developments and potential reforms, including:

- The PBI registration requirements and why religious institutions are at a disadvantage
- Issues in meeting the threshold requirements for PBI registration
- Do recent cases indicate a judicial trend to widen the categories for inclusion?
- Is the current concept of a PBI fit for purpose in current times?
- DGR status and schools - lessons from *The Buddhist Society of Western Australia v Commissioner of Taxation (No 2)* [2021] FCA 136
- The June 2022 redraft of the Commissioner's Interpretation Statement - responses, comments and criticism
- New Commissioner, new direction? Where to from here

Speaker: Nathan Donovan, Director, Donovan Winkler Lawyers, Brisbane, Qld

12.55 - 1.05pm Questions and Discussion

1.05pm

Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference, conference papers and recordings of all sessions.

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 conference.

This online conference will be delivered in a style similar to a live conference. There are 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.

Conference Papers

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 (except WA): 10 CPD units (substantive law).

WA Lawyers: 6 CPD points (substantive law) being the maximum claimable for a conference. TEN is an accredited provider.

CPD Certificate

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 - b. Restrictions on movement of persons imposed on persons by any responsible authority in Australia
 - c. The inability or refusal of one or more presenters or TEN team members to attend the conference to present
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Please register me for the Fifth Annual Law of Religious Institutions Conference Online – an online conference delivered over 4 half day mornings on 5, 6, 12 & 13 October 2023 [conf code: MLROCT23]

- Early Bird Registration** – for registrations made on or before 25 August 2023 – \$1573 (\$1430 + \$143 GST)
 Discount Registration – for registrations made on or before 15 September 2023 – \$1738 (\$1580 + \$158 GST)
 Full Price Registration – \$1848 (\$1680 + \$168 GST)

One-part only? We do accept bookings for attending individual parts. To organise a part booking, please contact Hayley (details above).

Conference Papers

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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