

# SCHOOL LAW

## Separately Bookable Days / Sessions

Day One: Includes Staff & Student Issues, School ICT Law & School Sports Law

Day Two: Risk, Business Management & Governance

29, 30 May 2019

RACV City Club, Melbourne

### TOPICS INCLUDE

#### Day One

- **Managing staff conduct outside the school's gates:** social media use, out of school misconduct, and external work
- **Performance management best practice primer**
- **Dealing with difficult parents:** bullying and online criticism
- **Complying with the reportable conduct scheme:** practical issues and problems for unwary schools
- **Student suspensions and exclusions**
- **Managing students with mental health issues**

#### LawSense School ICT Law Topics Include:

- **Privacy and confidentiality:** examining your school's obligations and managing access
- **Data storage, security, the cloud and reporting**
- **ICT contracts, insurance and dealing with external contractors:**
- **Copyright and trademarks update:** navigating current laws affecting schools and social media

#### LawSense School Sports Law Topics Include:

- **Risk assessment case studies** in sport events, camps and trips: examining key learnings for best practice
- **AFL Australia case study**
- **Managing legal exposure and compliance:** permission notes, waivers, privacy, teacher qualifications, volunteers
- **Case study: implementing new policies and practices in school sport to meet child safe obligations** and manage risks

#### Day Two (non-state schools)

- **Discrimination update:** navigating enrolment and the limits of reasonable adjustments
- **Outsourcing services in schools:** managing key risks and implementing effective contracts
- **Assisting the board in 2019: what should they expect from you?**
- Identifying, responding to and managing **conflict of interest** affecting the board and school leaders
- **Effectively negotiating and documenting staff exits**
- Understanding and defending **staff adverse action claims**

### Early Bird Offer

Register by 5 April 2019  
to receive the Early Bird Discount!

### SPEAKERS & PANELISTS

#### Education Lawyers

- **Ben Tallboys**, *Principal, Russell Kennedy Lawyers; Legal Consultant to Association of Heads of Independent Schools of Australia (AHISA)*
- **Michaela Moloney**, *Partner, K&L Gates Lawyers*
- **David Woodman**, *Partner, Minter Ellison Lawyers*
- **Steven Troeth**, *Partner, Gadens Lawyers*
- **Jason Newman**, *Partner, Gilchrist Connell Lawyers*
- **Johnathan Oliver**, *Principal Consultant, Complispace*
- **Lisa Oldham**, *Director of Human Resources, St Patrick's College, Ballarat*
- **David Maddocks**, *Partner, Perry Maddocks Trollope Lawyers; Former Neuropsychologist*
- **Robert Gregory**, *Partner, Maddocks Lawyers*
- **Craig Subocz**, *Senior Associate, Russell Kennedy Lawyers*
- **Paul Noonan**, *Partner, Thomson Geer Lawyers*
- **Skye Rose**, *Principal Leader, Moores Legal*
- **Cameron Roberts**, *Partner, Thomson Geer Lawyers*
- **Biljana Apostolova**, *Partner, Gadens*
- **Nick Duggal**, *Partner, Moray & Agnew Lawyers*
- **Magda Marciniak**, *Special Counsel, Justitia*
- **Melissa Scadden**, *Senior Associate, Justitia*

#### AFL Australia

- **Steven Reaper**, *Head of Community Football Sustainability and Compliance, AFL Australia*

#### Schools

- **Josie Crisara**, *Principal, Aitken College*
- **Rob Flavell**, *Head of Critical Thinking, ELTHAM College; President of the Victorian ICT Network for Education (VINE)*
- **Mark Murphy**, *Principal, Marcellin College; President-Elect, Association of Victorian Catholic Secondary Schools (PAVSS)*
- **Paul La Cava**, *Director of Sport, Geelong Grammar School*
- **Mark Glover**, *Business Manager/CFO, Strathcona Baptist Girls Grammar*

## PROGRAM AT A GLANCE Choose your days / sessions

### Day One – 29 May 2019 Staff & Students

**Morning**  
8.45am-1.15pm

**Option 1 - Staff / School Issues**

**OR**

**Option 2 - School ICT Law**

**Afternoon**  
2.00pm - 5.15pm

**Afternoon - General Session**

**OR**

**School Sports Law**

### Day Two 30 May 2019 – Risk, Business Management & Governance

**8.45am-4.30pm**

**All Day Session (Non-State Schools)**

## DAY ONE – WEDNESDAY, 29 MAY 2019 LEGAL ISSUES RELATING TO STAFF AND STUDENTS

### MORNING SEMINAR: 8.45AM-12.15PM STAFF RELATED LEGAL ISSUES

**8.45** Opening from LawSense

**8.50** Opening Remarks from the Chair

 **Josie Crisara, Principal, Aitken College**

**9.00** **Managing Staff Conduct Outside the School's Gates: Social Media Use, Out of School Misconduct, and External Work**

- Defining the limits of the School's obligations for what staff do outside of work
- Staff relationships: dealing with conflicts between staff in social settings
- Managing staff misuse of social media
- Reputational issues when staff publish social, political and religious views online
- The School's authority to intervene in non-school matters, and request information
- Issues with staff engaging in other paid and unpaid work

 **Ben Tallboys, Principal, Russell Kennedy Lawyers; Legal Consultant to Association of Heads of Independent Schools of Australia (AHISA)**

**Performance Management Best Practice Primer: Optimising Performance Management, Dealing with Staff who have Mental Health Conditions, and Defending Staff Claims Against You**

**Navigating Rights, Obligations and Pitfalls in Commencing Performance Management and Responding to Lower Level Issues**

- Reviewing current performance management laws affecting schools – what are your rights and what are the key elements to know?

- Identifying the early signs of underperformance and the steps you can take. What are the pitfalls of acting informally? How should steps be documented?
- Exploring options for responding to "lower level" performance issues
- Understanding the line between underperformance and misconduct
- Knowing at what point to use a performance improvement plan and key considerations in implementing it
- Confidentiality – what can you say to staff who have complained about the underperforming employee or other staff?

**Performance Managing Staff and Workers Compensation – Navigating Your Options**

- Reviewing the worker's compensation investigation and claims process
- Understanding how a worker's compensation investigation or claim affects your ability to performance manage staff

 **Michaela Moloney, Partner, K&L Gates Lawyers**

**Performance Managing Employees with a Mental Health Condition – Understanding Your Rights and Obligations**

- Performance managing an employee you suspect has a mental health issue, how should you proceed?
- Navigating reasonable adjustments and performance management
- Managing extended absences

**Effectively Defending Staff Claims Against You During Performance Management or Investigations**

- Reviewing key claims that can be made by staff against you during performance management:
  - bullying and harassment
  - adverse action
  - discrimination

- Understanding how these claims affect performance management or investigations
- To what extent can a failure to follow policies prejudice your defence?
- Examining key steps in defending a claim against you
- Exploring strategies during performance management or investigations to help avoid potential claims

 **David Woodman**, *Partner, Minter Ellison Lawyers*

## Dealing with Difficult Parents: Bullying and Online Criticism

- Examining legal frameworks that can apply in dealing with difficult parents, including:
  - duty of care and WHS
  - privacy and confidentiality
  - defamation
- Dealing with parents attending the school or school events in breach of Intervention Orders
- Examining options to respond to parent bullying

 **Steven Troeth**, *Partner, Gadens Lawyers*

1.10 Closing Remarks from Chair


1.15 Close of Morning Seminar

OR

## MORNING SEMINAR: 8.45AM-1.15PM SCHOOL ICT LAW

8.45 Opening from LawSense

8.50 Opening Remarks from the Chair

 **Rob Flavell**, *Head of Critical Thinking, ELTHAM College; President of the Victorian ICT Network for Education (VINE)*

### 9.00 Privacy and Confidentiality: Examining Your School's Obligations and Managing Access

- Reviewing current legal frameworks affecting privacy and confidentiality in schools
- Examining who can have access to student information:
  - parents – navigating access to student information with separated parents
  - staff or volunteers within the school, including board members
  - groups related to the school such as sporting groups, alumni and P&C bodies
  - external parties, including sharing information with other schools
- Understanding when a student can consent to disclosure of information. What if a student objects to disclosure?
- Navigating access to medical / psychological reports and school counselling records

- Determining the right level of access
- Dealing with those receiving the information forwarding it on or sharing with others that have lower access rights
- Navigating privacy and confidentiality and BYOD
- Video surveillance in schools – understanding the limits of a school's rights and obligations

 **Jason Newman**, *Partner, Gilchrist Connell Lawyers*

## Data Storage, Security, the Cloud and Reporting: Understanding a School's Current Obligations and Exploring Best Practice

### Reviewing Current Legal Frameworks, Including Mandatory Reporting

- Understanding a school's current obligations with respect to record keeping and data security

### Mandatory Reporting and Data Breaches, Including Involving Cloud Providers

- Mandatory reporting of requirements for data breaches:
  - understanding the requirements and assessing when you must report
  - examining key steps in responding to a data breach
  - responding where a cloud provider is breached – what is your legal exposure and what are key steps you should take?

### Best Practice Record Keeping Policies, Security and Data Management Policies

- Exploring best practice policies in record keeping, data security and management
- Learning from case studies and scenarios

 **Robert Gregory**, *Partner, Maddocks Lawyers*

## ICT Contracts, Insurance and Dealing with External Contractors: Examining Key Matters for School ICT Managers to Consider in the Current Risk Environment

- Reviewing key issues and clauses to consider in school ICT contracts
- Exploring issues with cloud-based systems:
  - use of school data by cloud providers or affiliates
  - implementing arrangements to manage data breach risk and response
- Optimising service quality through effective contracts and management
- Effectively addressing child protection issues
- Reviewing insurance coverage - what should be covered and in what circumstances?
- Understanding the limits of insurance where critical issues arise

 **Craig Subocz**, *Senior Associate, Russell Kennedy Lawyers*

## Copyright and Trademarks Update: Navigating Current Laws Affecting Schools and Social Media

- Reviewing current intellectual property laws affecting schools, including reviewing recent changes to copyright laws
- Examining exceptions to copyright obligations and how these apply to schools
- Copyright and social media – what should a school consider?
  - ownership of social media content
  - the implications of re-tweeting, re-posting and re-gramming

- managing liability for use of social media by students in breach of intellectual property rights
- Using copyright material in school projects and performances – licensing of music, written material and art works
- Understanding when and how to obtain permission for use of copyright material
- Social media – strengthening the brand and attendant risks
- Exploring copyright ownership and use of work produced by students or school staff
- Implementing best practice policies to manage intellectual property in schools

 **Paul Noonan, Partner, Thomson Geer Lawyers**

**1.10 Closing Remarks from the Chairperson**

**1.15 Close of Seminar**


## AFTERNOON SEMINAR OPTION 1 – 2.00PM TO 5.15PM STUDENT RELATED LEGAL ISSUES

**2.00 Opening Remarks from the Chair**

 **Mark Murphy, Principal, Marcellin College; President-Elect, Association of Victorian Catholic Secondary Schools (PAVCCSS)**

**2.05 Complying with the Reportable Conduct Scheme: Practical Issues and Problems for Unwary Schools**

- Threshold issues in identifying reportable allegations:
  - Pandora's Box: Behaviour that causes significant emotional or psychological harm, and its implications for student discipline
  - dealing with allegations concerning children who turn 18
  - behaviour by staff occurring outside of the workplace
- Practical issues when investigating reportable conduct:
  - choosing the right investigation process
  - interim measures to protect child safety
  - managing reportable allegations involving the School Leadership
  - communicating with affected students, parents and staff
  - managing overlapping investigations and inquiries (e.g. VIT, VRQA)

 **Ben Tallboys, Principal, Russell Kennedy Lawyers; Legal Consultant to Association of Heads of Independent Schools of Australia (AHISA)**

### **Student Suspensions and Exclusions: Examining Your Rights and Obligations in Investigating and Providing Procedural Fairness and Transparency**

- Reviewing legal rights and obligations regarding suspensions and exclusions
- Investigations:
  - to what extent should you investigate before considering suspending or excluding a student
  - understanding your rights in obtaining information, including student searches, and review of data on phones
  - meeting your obligations of impartiality
- Dealing with complaints by parents, including allegation of bias and

requests to access evidence

### **Suspension or Exclusion of Students with a Disability**

- Navigating discrimination laws and your obligations to the student and other students

 **Steven Troeth, Partner, Gadens Lawyers**

### **Managing Students with Mental Health Issues: Clarifying your Duties, the Limits of Discipline and Managing School Refusal**

#### **Key Legal Rights and Obligations of The School**

- Reviewing legal rights and obligations affecting mental health issues in schools including duty of care, identification of issues, privacy, confidentiality and discrimination
- Examining your rights and obligations in dealing with external mental health practitioners and agencies

#### **School Refusal**


- Exploring duties of schools in responding to school refusal where ongoing anxiety or mental illness may be involved
- Investigating school refusal and developing and implementing management plans. To what extent should adjustments be made to accommodate the student?

#### **Self-Harm**

- Practical measures to deal with your risks and obligations
- Understanding and managing the role of the school counsellor and access to counsellor records and sharing of information
- Ensuring the school's response to mental health issues does not breach discrimination obligations

#### **Return to School After an Incident**

- Conducting a risk assessment and assessing adjustments. What if there are no plans from the discharging hospital and private practitioner?
- Implementing and monitoring a return to school plan

 **David Maddocks, Partner, Perry Maddocks Trollope Lawyers; Former Neuropsychologist**

**5.15 Closing Remarks from the Chairperson**

**5.15 Close of Seminar**

OR

## AFTERNOON SEMINAR OPTION 2 – 2.00PM TO 5.15PM

### SCHOOL SPORTS LAW

#### *Comprehensive Risk Assessment and Management Session*

#### 2.00 Opening Remarks from the Chairperson

 Paul La Cava, Director of Sport, Geelong Grammar School

#### 2.05 Risk Assessment Case Studies in Sport Events, Camps and Trips: Examining Key Learnings for Best Practice

*Risk assessments reflecting an understanding of relevant legal obligations, risks and exposures can form the basis of a best practice risk management strategy, optimising safety, student experience and the school's legal protection. Applying laws and developing optimum assessments is generally not a "one-size-fits-all" approach, with different circumstances dictating considerations. This session examines learnings from risk assessment case studies in different school circumstances*

- Reviewing the legal frameworks applicable in dealing with sport programs, camps, excursions and trips:
  - duty of care
  - WHS obligations
  - contracts with external providers and venues
  - child safe standards
  - disability and participation
  - insurance policies
- Applying legal requirements – learnings from case studies and experiences

 Jason Newman, Partner, Gilchrist Connell Lawyers

#### AFL Australia Case Study: Optimising Risk Assessment, Management and Legal Compliance in Community Sport Programs and How This Can Apply in Schools

 Steven Reaper, Head of Community Football Sustainability and Compliance, AFL Australia

#### Managing Legal Exposure and Compliance: Permission Notes, Waivers, Privacy, Teacher Qualifications, Volunteers

##### Effective Permission Notes

- Evaluating blanket permission notes versus event-specific permission
- Managing potential pitfalls in electronic or online permission systems
- Examining examples of optimal permission notes

##### Waivers, Disclaimers and Risk Warnings by the School

- Understanding the limits to risks management provided by waivers and disclaimers

- Reviewing what your waiver or disclaimer should contain to optimise the school's position

##### Waivers, Disclaimers and Risk Warnings by External Providers or Venues

- Evaluating and responding to waivers and indemnities contained in contracts with venues or external providers

##### Photos, Video, Social Media – Complying with Your Privacy Obligations

- Understanding privacy restrictions potentially applying to photos and video in school sport
- Dealing with mobile phones and social media use by students. Can you conduct searches of bags or possessions?

##### Teacher Qualifications

- Exploring potential legal exposure in teachers with limited qualifications or experience taking sport teams

##### Volunteers

- Examining your rights and obligations regarding volunteers and key matters to consider
- Exploring appropriate induction/training for volunteers

 Johnathan Oliver, Principal Consultant, Complispace

#### Case Study: Implementing New Policies and Practices in School Sport to Meet Child Safe Obligations and Manage Risks

*St Patrick's College, Ballarat have implemented new policies and practices in school sport to address recommendations from the Royal Commission, subsequent law reform and to optimise practice in managing school sport training and events. This practical session steps through the relevant requirements and how St Patrick's College are addressing these issues:*

- Identifying areas that needed to be updated to meet recommendations, law reform in child protection and other risks and requirements
- Selecting, engaging, training and managing coaching staff
- School camps and trips:
  - reviewing the risk management process
  - optimising student supervision arrangements
  - managing student accommodation, including home-stay

 Lisa Oldham, Director of Human Resources, St Patrick's College, Ballarat

#### 5.10 Closing Remarks from the Chairperson

#### 5.15 Close of Seminar

# DAY TWO – THURSDAY, 30 MAY 2019

## RISK, BUSINESS MANAGEMENT AND GOVERNANCE

### MORNING SESSION 8.45AM TO 12.15PM

8.45 **Opening from LawSense**

8.50 **Opening Remarks from the Morning Chair**

 **Mark Glover**, *Business Manager/CFO, Strathcona Baptist Girls Grammar*

9.00 **Discrimination Update: Navigating Enrolment and the Limits of Reasonable Adjustments**

#### Disabilities, Including Learning and Behavioural Disabilities

- Reviewing the current laws affecting disability discrimination in schools: Disability Discrimination Act 1992 (Cth), Disability Standards for Education 2005 (Cth), Equal Opportunity Act 2010 (Vic)
- Disabilities and enrolment – examining when you can decline enrolment for “unjustifiable hardship”. What is ‘unjustifiable’?
- Exploring the limits of the “reasonable adjustments” the school is required to make: clarifying what is ‘reasonable’
- Balancing the impact on other students – to what extent does this factor into “unjustifiable hardship” or “reasonable” adjustments?
- Exploring unjustifiable hardship and reasonable adjustments in different contexts
- Managing discrimination obligations where:
  - a place has been offered, but the student develops a condition prior to commencing school
  - conditions are developed post-enrolment

#### LGBTIQ

- Exploring the application of current laws pre and post enrolment regarding LGBTI students

 **Skye Rose**, *Principal Leader, Moores Legal*

#### Outsourcing Services in Schools: Managing Key Risks and Implementing Effective Contracts

- Reviewing the legal framework affecting outsourcing in schools:
  - contract law
  - employment and WHS legislation
  - privacy
  - duty of care
  - child protection laws
- Examining common arrangements schools enter into for outsourcing or contracting services
- Identifying and managing risks in outsourcing after school and vacation care, including:
  - child protection

- activities conducted and extent of supervision
- recovery of fees
- Optimising insurance arrangements, including insurance you should require of the outsourcing partner or contractor
- Exploring key structures and clauses in effective outsourcing contracts

 **Cameron Roberts**, *Partner, Thomson Geer Lawyers*

#### Assisting the Board in 2019: What Should They Expect from You?

- Reviewing current governance obligations and emerging areas of risk
- Exploring challenges in reporting on risk and demonstrating compliance:
  - what a board member needs to see
  - working with the more “hands on” board member
  - learning from examples and case studies of reporting in risk areas
- Assisting the Board in carrying out other key functions


 **Steven Troeth**, *Partner, Gadens*

12.10 **Closing Remarks from the Morning Chair**

12.15 **Close of Morning Session**

### AFTERNOON SESSION 1.00PM TO 4.15PM

1.00 **Opening Remarks from the Afternoon Chair**

 **Tim Rowler**, *Business Manager and Company Secretary, Loreto Toorak; Chair, CEBA*

1.05 **Identifying, Responding to and Managing Conflict of Interest Affecting the Board and School Leaders**

- Examining the obligations regarding conflict of interest affecting the school board and school executive
- Exploring the grey areas of conflict of interest including:
  - related party transactions
  - use of school resources, assets or facilities
  - “sponsorships” and donations by suppliers
- Considering options for managing potential conflicts
- Understanding the role and options of the school business manager or leadership in responding to potential conflicts of interest

 **Biljana Apostolova**, *Partner, Gadens*

## Effectively Negotiating and Documenting Staff Exits

- Reviewing the advantages and disadvantages of negotiated staff exits
- Examining key factors to weigh up in determining when and how to negotiate
- Understanding the differences in negotiations involving executive and non-executive staff
- Dealing effectively with unions
- Documenting staff exits – key issues to consider
- Including and enforcing non-disparagement and confidentiality clauses

 **Nick Duggal**, *Partner, Moray & Agnew Lawyers*

## Understanding and Defending Staff Adverse Action Claims

- Reviewing circumstances where adverse action claims are commonly made in schools
- Examining the Fair Work Act general protections for employees which are the basis for adverse action claims:
  - what constitutes a 'workplace right' including 'an inquiry or complaint in the employee's employment'
  - understanding when a school is taking 'adverse action' against an employee
  - the reverse onus of proof – what requirements does a school need to meet to defend an adverse action claim and what sort of evidence is needed?
  - examining some penalties, damages and other orders a school is exposed to
- Understanding how discrimination claims under the general protections provision apply and differ from anti-discrimination laws.
- Reviewing learnings from case studies and scenarios

 **Magda Marciniak**, *Special Counsel, Justitia*

 **Melissa Scadden**, *Senior Associate, Justitia*

**4.10 Closing Remarks from the Chairperson**

**4.15 Close of Seminar**

## Comments from LawSense School Law in 2018:

“ Fantastic seminar... ”

Attendee at LawSense School Law 2018

“ Excellent... very informative ”

Attendee at LawSense School Law 2018

“ Great event! Very informative & insightful in so many areas for schools... ”

Attendee at LawSense School Law in 2018

“ Excellent... every school leader should attend your seminar! ”

Attendee at LawSense School Law in 2018

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 **Read the speaker's bios**

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