



School & Education Law Services



VOCARE
LAW

FORWARD

At Vocare Law (formerly known as Corney & Lind Lawyers) we have decades of experience in serving the Education and Not-for-profit sector.

We are called to deliver Just, Redemptive Outcomes. Educational institutions are in the business of shaping lives and culture. Watchful, prudent legal allies are essential to ensure the smooth running of these communities. Our goal is to equip our clients with the appropriate tools and resources to be able to manage risk and serve their employees, students and parents. We work with you to tailor documents a school may need, and come alongside you to achieve the outcomes you need. Our desire is to journey with you and to help you navigate the legal and compliance landscape you operate within.

Whether it is enrolment issues, policy reviews/updates, assistance in managing employee performance/disputes or privacy concerns, our team will assist and guide you in every aspect of your matter.

We look forward to working with you and trust the information within this booklet will be of service.

If you would like to get in touch with us, contact information (and who to contact) is towards the end of the booklet.

Information in this booklet is general information for educational purposes only and is NOT legal advice. If you would like advice in relation to any issue raised in this booklet, please contact our team who are ready and available to assist.

THE VOCARE LAW TEAM



Contents

Enrolment Contracts	5
Unpaid School Fees	6
Policies and Procedures	9
Managing Psychosocial Hazards Policy	9
Privacy Policy	10
Separated Families Policy	11
Social Media Policy	12
Staff Code of Conduct	12
Further Policies for Your Consideration.....	13
A Case Study in Good Policy	13
School and Anti-Discrimination Law	16
Empolment of Staff	17
Template Employment Contracts.....	17
Employment Relationship	17



Contents

Managing Complaints and Grievances Against Staff	18
Workplace Investigations - Why, When and How	19
Dismissal/Termination at Work	19
Mediating Your Disputes	21
Getting the Right Skills Mix on Your School Board	22
Non-State School Accreditation Board (NSSAB) - Prohibited Arrangements	23
Child Safety - Issues and Audits	25
Family Law Update	26
Got Questions? Lawyer on Demand	28
Resources for Schools	29

➤ Enrolment Contracts

Did you know that an enrolment contract is a legally binding agreement between the parents and the School? Unfortunately, in our practice, we see a number of schools that have adopted insufficiently drafted enrolment contract, which causes them difficulty. For example, failing to have a properly drafted termination of enrolment clause, parent's standard of conduct clause, or a clause that requires the parents and student to follow the policies and procedures of the College, make it much more difficult to confidently terminate an enrolment or enforce standards of conduct for parents.

The Enrolment Process

"Enrolment" is the whole process of getting applications in, offering places, and generally getting "numbers" so you know how many students you have, how many teachers you need, and how you will fit these things together with classrooms.

It's a legal process that schools don't often think about in detail until things go wrong. Enrolment is, at its heart, a process where the School enters into a contract to provide education services in exchange for money. While this sounds very mercenary, this process is the starting point of running the marathon with a family that is the education of their child. It's imperative to build on a solid foundation.

The Enrolment Contract is an opportunity:

- To ensure that both the school and the parents clearly understand the "deal" they have reached,

- To try to "head off" common problems before they occur,
- To give the School options for resolving problems if they occur.

There are lots of considerations and thought that is required when it comes to drafting enrolment contracts. We understand that this can be overwhelming for Schools. We offer a fixed fee service in reviewing a School's Enrolment Policy, Enrolment Contract, Acceptance and Rejection Letters and general review in the enrolment process. If you require a review of your enrolment policies and procedures, please do not hesitate to contact us.



➤ Unpaid School Fees



What impact does unpaid school fees have on students and schools?

The ability for a family to meet tuition fees/school fees payments can deteriorate very rapidly for a variety of reasons. This can negatively affect the student's education as well as the school's or college's financial position, particularly where budgets have already been set.

Our firm has a wealth of experience in advising on debt recovery matters for the school and in the education sector. Our breadth of experience aims to assist schools in implementing strategies to minimize the loss to a school both financially and in the delivery of stable education to students. We offer three strategies below.

Strategy 1 – Address Defaults Early with Parents

Parents are almost always able to meet private school tuition fees at the start of a student's enrolment. However, the circumstances of parents can change quickly and may not occur because of any malicious or negligent intention of the parent.

A default in tuition fees may arise out of difficult family circumstances, including:

- Unexpected redundancy
- Family law proceedings
- Increased medical expenses to address a serious illness

These circumstances can have negative impact on a student's education by themselves and are often beyond the control of parents and guardians.

While maintaining a sense of empathy, acting on defaults quickly and maintaining open and frank discussions between the school and the parent allows for alternative suitable agreements to be put in place. These discussions and ensuing documents generally do not prejudice the strict legal rights of the school or college if they are conducted on a “without prejudice” basis.

For example, if a parent is in default due to increased legal spend as family law proceedings are afoot, it may be possible to reach agreement for alternative suitable arrangements such as deferring fees which can be paid out of a family property settlement.

Engaging early with parents may not just prevent unpaid school fees from “spiralling out of control”, but it allows a school to pre-empt any future legal issues that may arise out of the family’s changing circumstances (e.g. it is common for schools to get caught in the middle of family law proceedings).

In our experience, neglected defaults are the ones at risk of “spiralling out of control”. A parent’s capacity to repay is reduced as additional costs are added to the debt, or other debtors commence recovery action against the parent.

Strategy 2 – Involve a Lawyer

Unpaid school fees relate to the recovery of a debt, which can attract the services of a debt collector. However, we suggest that retaining a lawyer has a number of added benefits over retaining a debt collector.

Receiving a Letter of Demand from a lawyer on their letterhead is usually a firm reminder to the debtor of the seriousness of an unpaid debt. Such a letter will usually remind the debtor that unpaid school fees/debt gives rights to the school to commence legal proceedings, and in our experience the debtor will usually try to resolve the outstanding amount quickly.

What options are available after a Letter of Demand?

In the event the Letter of Demand is ignored, a lawyer is able to assist the school in escalating legal proceedings in pursuit of the debt.

Lawyers are regulated by strict ethical duties (although debt collectors are also highly regulated). This ensures procedure is followed that works towards preserving the reputation of the school.

A lawyer will be able to provide holistic advice and support to schools at every stage of a fees debt matter from preparing enforceable agreements through to a court process, if alternative payment terms cannot be agreed upon with the responsible payer.



Strategy 3 – Review Your Enrolment Contract

Having a clearly worded and enforceable enrolment contract can be an effective deterrent against potential defaults.

For a school, it is important to review the enrolment contract from an enforcement perspective. Steps should be taken to ensure that an enrolment contract is able to be relied upon to enforce matters such as (without limitation):

- o Payment of up-front monies
- o Termination in event of un-remedied default
- o Payable notice in the event of early termination by parent
- o Interest payable on unpaid monies, and
- o Passing on additional costs of recovery (i.e. legal fees)

Need a Streamlined Debt Recovery Process?

Through our significant experience in and understanding of the schools and education sector, we have developed a streamlined debt recovery process which can be specifically tailored to your priorities.

Our process is inexpensive and affordable. We offer ethical and cost-effective debt recovery solutions that take into consideration your interests, of which other debt collectors may be unaware.

This includes a fixed-fee recovery option and discounts for pursuing multiple debts.

If you would like to learn more about our options for assisting schools to recover unpaid fees, please contact our office.



➤ Policies and Procedures



Policies, policies, policies! A lot of risk can be mitigated with well drafted policies and procedures in place. Generally our first question to schools when faced with a sticky situation is “do you have a policy in place for this?” Good governance cannot exist without policies and procedures and is the oil to ensure the smooth operation of your school.

We often assist schools with challenges that could have been avoided if they had the correct policies and procedures in place. Policies and procedures can easily become outdated due to growth within the school, changes to legislation, or changes to real practice that have evolved. It is important to occasionally take a step back and look at the results – *have our policies and procedures kept pace with the growth in our number of enrolments or development of our premises?*

Does our overall policy framework look like an endlessly renovated house with no overarching consistency and internal coherency? Do any of our individual policies need updating to align with the legislative changes?

A sample of key policies that may be important for your school to consider are set out below.

➤ Managing Psychosocial Hazards Policy

The term “psychosocial hazard” is becoming a new buzz word in employment law. There is now a positive obligation on employers to proactively manage psychosocial hazards within the workplace, that is, to mitigate as much risk as possible to their employees to protect them from harming their mental health.

Common examples of psychosocial hazards include:

- Lack of support
- Lack of role clarity (i.e. no clear position description)
- Remote or isolated work
- Poor organisational management
- Inadequate award or recognition
- Bullying
- Harassment
- Traumatic events or material
- Conflict or poor workplace relationships and interactions

So what is a psychosocial hazards policy? A psychosocial hazards policy essentially outlines how the school will mitigate and address psychosocial hazards in the workplace, along with how they will respond to concerns surrounding potential psychosocial hazards within the workplace. The existence of a psychosocial hazards policy allows the school to have a clear process in place to address concerns from their staff.

➤ Privacy Policy

Managing personal information is an increasingly regulated and difficult endeavour. There are lots of personal and sensitive information that is disclosed in the enrolment process alone, such as health information. We receive many questions such as *who can I share this information with? Do I need to disclose personal information when requested? What personal information disclosed by a student, am I required to share with parents?*

The answers to these questions are not always straightforward and can differ between schools. The answers can also change over time as legislation and best practice change.

If you require advice in relation to these issues or have received a request for personal information and are unsure how to respond, we are ready and able to assist you.

The management of personal information and obligations of an entity handling personal or sensitive information is governed primarily by the Privacy Act 1988 (Cth).

There are now anticipated legislative changes which have been highlighted in the Privacy Act Review Report 2022 ("the Report") where 116 proposals were made to amend the Privacy Act 1988 (Cth). In response to the Report, the government agreed to 38 of the recommendations and 68 of the recommendations were 'agreed in principle'.



Considering the recommendations and proposed amendments, organisations are encouraged to consider the reforms immediately in the context of their business and identify whether any amendments need to be made to ensure compliance with the 'agreed' principles. With respect to the 68 reforms which are agreed 'in principle', organisations should work towards compliance using lessons learned from global best practice. There are numerous amendments within the Report which will require schools to update their privacy practices. If you require further information on this, please contact our team.

Privacy Policies must be customised to reflect the specific activities of your school. Please ask us for a fee estimate tailored to your organisation's needs.

➤ Separated Families Policy

At Vocare Law we are often called upon to assist schools work through disputes or to provide clarity in circumstances where parents have separated.

When parents separate during a student's enrolment, it can raise many questions both for the parents and the school. *Who is responsible for fees? What do we do if one parent has advised the school that they no longer wish the child to attend the school, but the other parent wants to maintain the enrolment? What do we do if one parent is insisting on collecting a child when it is "not their time" under family court orders? Do we have to tell the other parent that one parent has cancelled a student's enrolment? What if one parent says not to communicate with the other parent now?*

Many schools seek to pre-empt such issues by including certain clauses in their enrolment contracts. However, these provisions do not usually 'cover the field'. It can greatly assist a school to have a Separated Families Policy in place to provide a pathway through these situations that align with the recent amendments to the *Family Law Act 1975* (Cth).

At Vocare Law we have developed a Separated Families Policy in collaboration with our experienced Family Law team which assists schools to deal with the following:

- Duty of care in specific situations
- Parent enrolment obligations
- Pickup of students at school
- Parental and extended family involvement in school activities
- Communication about students and parents accessing student information
- Complying with Court orders
- Staff responsibilities in relation to student well-being and safety



We are currently able to offer this policy tailored to the needs of your school for a fixed fee of \$1,650 +GST. Please contact us to discuss how having a Separated Parents Policy could assist your school.

➤ **Social Media Policy**

With the increasing use and misuse of social media, it is becoming more important than ever that schools are regulating (as much as they can) how employees, parents and students are interacting online. If parents, students, or teachers misuse social media or otherwise conduct themselves poorly on the internet, a school will be better placed to commence disciplinary action if they can point to a well-established Social Media Policy which outlines the expectations of how teachers, parents, and students are to act online.

If a Social Media Policy is not in place, it is difficult to commence disciplinary proceedings if the parents, teachers or students do not have rules or policies which sets the College's expectations.

➤ **Staff Code of Conduct**

We also recommend ensuring your school has an up-to-date Staff Code of Conduct. This provides clarity to employees about the school's expectations of behaviour and conduct within the workplace. Not only does this clarity assist to reduce psychosocial hazards, but it can assist you to manage incidents of inappropriate staff conduct.

If employees breach your Staff Code of Conduct, your school can more easily take steps to commence disciplinary action as your employees fail to meet the expected standard of behaviour established by your Staff Code of Conduct.

If you require assistance in drafting or reviewing any of the above policies, please do not hesitate to contact us.



➤ Further Policies for your consideration

There are, of course, many policies that a school may wish to have in place. However, in the interests of avoiding overwhelm, here is a list of the policies for your further consideration:

- a. Anti-Bulling, discrimination and harassment Policy
- b. Grievance, Procedure and Complaints Policy
- c. Managing Performance Policy
- d. Parent Code of Conduct
- e. Dress Code / Uniform policy
- f. Transgender Policy
- g. Contact sports (head injury management) Policy

If your school is interested in creating any of the abovementioned policies or reviewing their existing policies, we are more than happy to assist in whatever way best suits your needs.

A Case Study in Good Policy

Vocare Law was recently able to act for a non-state school in defending the school's dress and haircut policies and received a favourable outcome from the Queensland Civil and Administrative Tribunal ('QCAT'). This decision highlights that school dress codes can be enforced, particularly where:

- the policy has been made known to parents,
- the dress code is representative of the culture and ethos of the school, and
- the school otherwise acts reasonably in applying the policy.

We consider the recent decision of Senior Member Fitzpatrick in *XA (BY ZA) v School* [2024] QCAT 15, and the implications arising from this for schools.

The Facts

The parties' names have been de-identified to protect the privacy of the child the subject of this proceeding.

XA was enrolled as a prep student at the school for the year commencing 2024. He is a boy with long hair, which he typically wears in a neat topknot style.

At all material times the school had in place a detailed Code of Behaviour which includes the following:

Pride in appearance is a measure of self-esteem and loyalty to the College. Students must wear their full uniform (formal or sporting), without any clothing additions or variations, and ensure it is maintained clean and in good repair. The formal uniform is to be worn at all College activities, and to and from school, unless otherwise advised.



Hairstyles must be in keeping with the neat and conservative style of the uniform, and as defined by the College. This means that hair must be a natural colour, and fashion trends or extremes of hair length are not acceptable. Fringes must be above the eyebrows. Long fringes swept or held back by hair product are not acceptable. Boys' hair must be trimmed about the collar and the ears, and must not have any significant difference in length between the side and the top; girls must tie hair back from the face with College approved accessories only.



ZA, the father of the young child, filed a Complaint with the Queensland Human Rights Commission (QHRC) in late 2023, asserting that his son had experienced direct and indirect discrimination on the basis of gender.

On 12 January 2024, ZA filed an application in QCAT pursuant to section 144 of the Anti-Discrimination Act 1991 (Qld) (the AD Act) seeking an interim order, or injunction, that XA:

- be accepted as enrolled at the school,
- commence school on 22 January 2024 without complying with the school's hairstyle policy which would require XA to have his hair cut, and
- not be bullied or subjected to negative comments about his hair by students or staff.

Outcome

In declining to grant the injunction, QCAT Member Fitzpatrick found:

- XA was unlikely to establish a prima facie case of direct discrimination because he was unlikely to establish that different treatment with respect to hair is unfavourable treatment, which is a necessary element of the claim;
- on a preliminary assessment, XA did not demonstrate a prima facie case with respect to a claim of indirect discrimination; and
- the balance of convenience favoured the school and the application of its Code to all students.

Lessons for schools

What then, can schools learn from the 2024 decision by the Tribunal?

- Rules concerning appearance will not be discriminatory because their content is different for males and females if they enforce a common principle of smartness or conventionality, and taken as a whole, neither gender is treated less favourably in enforcing that principle.
- There was no evidence that XA was unable to comply with the requirement that he cut his hair, the length of which was a matter of personal choice. At paragraph [12] of the Judgment, the Member stated:

There is no suggestion of any racial, cultural, religious or gender identity significance to the manner in which XA wears his hair. Given the very young age of XA which I infer to be 4 or 5 years, it is reasonable to assume that XA's hairstyle is a styling choice made by his parents and that the views set out in the Complaint as to restriction and disadvantage are the views of ZA.

- In the absence of any attribute such as race, culture (applicable in the case of *Taniela*), religion or gender identity such that long hair is a relevant characteristic, the requirement that boys' hair be trimmed above the collar was not unreasonable.

If your school has any questions about enforcing its uniform policy or would like us to conduct a review of a uniform policy/guidelines, please contact our office.



➤ Schools and Anti-Discrimination Law

Discrimination law is a complex and increasingly contested area as the law changes in-line with changing societal expectations of our legal system to safeguard individual rights.

Currently anti-discrimination laws prohibit discrimination in a range of settings against people on grounds including sex, sexual orientation, gender identity, marital or relationship status, religion, and health/disability.

Complexities are exacerbated by federal laws differing from laws in each state and territory.

If your school intends to exclude certain people from accessing its services or only employ people who adopt a specific faith or lifestyle, we recommend that you first obtain legal advice to manage the risk of non-compliance with anti-discrimination law.

There have been numerous issues at the point of enrolment for our schools who tailor their education services to a particular religion.

There have been legislative changes introduced in the *Anti-Discrimination Bill 2024* which may change the landscape for schools at the point of employment and enrolment. It will be imperative for schools to stay up-to-date as the legal landscape continues to move.

We also regularly provide advice for Schools who deal with students who express their desire to transition genders. This is an ongoing and complex area where schools need to be careful in how they approach their students to ensure they are not breaching discrimination laws. At a minimum, we recommend the adoption of a transgender policy and provide ongoing ad hoc advice. We can assist you in implementing this.

Our lawyers are well placed to advise in this challenging and developing anti-discrimination landscape. We not only routinely advise schools and churches in this area, but are also regularly involved in policy and legislative discussions with interest groups and government.



➤ Employment of Staff

➤ Template Employment Contracts

Schools often do not review their employment contracts on a regular basis. It is important that Schools regularly re-visit and update their employment contracts to ensure they are in alignment with changes to legislation. Employment contracts for teachers also have unique clauses in them specific to the industry, such as child protection clauses and Queensland College of Teachers registration. Vocare Law have a specialist employment law team that can assist with the hiring and disciplining of staff as the need arises.

Although we always recommend that you take advice on the terms of your employment agreements, our employment law team can offer template employment contracts (fulltime, part-time, and casual) to get you started. Our team works with you to cater to the specific needs of your School to ensure the clauses in the employment contract accurately reflect the mission and goals your School is seeking to achieve. If you are interested in a template employment contract or wish to review an existing contract, please do not hesitate to contact our employment team.

➤ Employment Relationship

During the employment relationship, there is frequently the need for legal advice because of the serious nature of the relationship. If this relationship is not handled correctly, it can lead to legal action.

Our school and employment lawyers can provide you with comprehensive advice to help navigate potential minefields.

In particular, we advise on the following:

- Managing employee and employer expectations and promises
- Implied duty of mutual trust and confidence
- Drafting and reviewing employment policies and procedures
- Advising on employee entitlements (including personal and carer leave) under modern awards and enterprise agreements
- Advising on employee complaints including grievances against other employees, complaints of bullying, and harassment etc
- Assisting with and conducting independent investigations about complaints of improper conduct, bullying or harassment by employees
- Representing employees and/or employers at grievance, discipline, or show cause meetings
- Advising on workers compensation and Workcover claims for both employees who have been injured or employers who have been the subject of a complaint or claim
- Drafting settlement deeds and separation agreements for employers or advising employees regarding settlement deeds and separation agreements.

Our employment lawyers are uniquely skilled to assist schools to manage their employment relationships. Their experience includes representing employers and individual employees, which means that they have a well-rounded knowledge of the best course of action for schools faced with employment challenges.

➤ Managing Complaints and Grievances Against Staff



Most schools actively foster good working relationships, however even in environments where good relationships are supported, disagreements can occur.

It is important to handle and manage complaints and grievances appropriately and swiftly as this assists schools to retain staff, build better relationships with your employees, and maximise job satisfaction and productivity.

To best manage complaints and grievances, schools should adopt a clear process on how an employee can lodge complaints and grievances, including providing a simple process for employees to report their concerns, and a clear, written complaints and grievance policy that they can follow.

Oftentimes, a clear complaints policy can avoid a simple complaint from getting drawn out and becoming a major issue. If you require further assistance in managing a complaint that has blown out of proportion or if you require assistance in implementing a more streamlined process in managing complaints in the future, give Vocare Law a call.

➤ Workplace Investigations - Why, When and How

At Vocare Law, we conduct workplace investigations where there have been allegations of bullying, harassment or improper conduct. The engagement of an independent external investigator provides security for both the complainant and accused that the person conducting the investigation is impartial and independent.

If there is a complaint or grievance that constitutes serious misconduct, we recommend contacting an independent external investigator immediately.

A Vocare Law investigator will make contact with you and organise a time to meet with all the relevant parties to conduct an interview. The investigator will form an opinion based on the interviews and evidence and will communicate this view in a formal report, which can be relied upon if the complainant escalates the issue to other legal avenues like Court or the Human Rights Commission.

If you are interested in this service, or would like to learn more, please contact our office.

➤ Dismissal/Termination at Work

If your relationship with an employee ends and they believe that it arose out of unfair circumstances or they believe they have been forced to resign from their employment, they may make a claim for unfair dismissal to protect their rights.

Unfair dismissal and termination of employment claims are usually complex and require employment law experts to consider a just outcome for everyone involved.

Our school and employment lawyers can guide you through the legal process and advise you on the following:

- Claims for unfair dismissal where the dismissal is considered harsh, unjust or unfair, or not a genuine redundancy.
 - For employees: We can assist in drafting a claim if you believe you have been unfairly dismissed.
 - For employers: We can assist in responding to a claim and represent you.



- Assist with genuine redundancies for both employers and employees.
- Advise on adverse action where a claim has been made regarding an exercised workplace right.
- Draft and advise on settlement deeds or separation agreements.
- Initiating or defending proceedings for breach of the employment contract.

Due to their wealth of experience representing employers and employees in unfair dismissal matters, our employment lawyers are able to provide expert advice and support throughout the legal process. If you would like any assistance in this space or would like further information, please contact our office.



➤ Mediating Your Disputes



“Helping you preserve working relationships that are strained and rebuild working relationships that are broken.”

Just Redemptive Mediations (“**JRM**”) is the product of a joint vision shared by Vocare Law’s Managing Director, Alistair Macpherson, and employment practice leader, Fran Keyes, in offering mediation services to our schools, boards, councils, and not-for-profit and charity clients.

Our goal is to help our clients navigate workplace conflict and relationship breakdowns in a different way: in a cost-effective, timesaving, and constructive manner. Mediation is a much kinder alternative to litigation.

In a mediation context, we help our clients navigate workplace issues such as relationship breakdowns, complaints of bullying and harassment, and challenging behaviours. We find mediation to be an excellent tool to navigate workplace conflict following changes in management, particularly where new senior appointments are made and there is team fall-out. Our role as mediators is to create a safe space where people can identify key matters of disagreement, understand others’ interests better, and reach a cooperative, compassionate resolution.

More information about our mediators, the process and pricing can be found on our website here:

<https://mediations.corneyandlind.com.au/>

➤ Getting the Right Skills Mix on Your School Board

It is important for schools to use a 'skills matrix' when discerning who should sit on its board. Due to the increasing complexity of operating a school and the many and varied obligations requiring compliance, we recommend your school consider having a lawyer on your Board. Most of our staff are currently or have previously served on a board, and we are able to provide recommendations and/or referrals if you are searching for a legal professional to sit on your school or college board.

For schools that have a close affiliation with a church or denominational body, ideally your Board members will be drawn from your ministry network or school community. However, there is often also significant benefit in engaging independent paid directors with specific skills to benefit your charity and to manage the risk of 'group think'.

Experienced and skilled board members usually have the knowledge and tools required to help schools encourage growth and navigate challenging times. If you have any questions about the legal requirements of a board or the operational elements of a board, our governance lawyers are more than happy to provide advice and support as needed.



➤ NSSAB - Prohibited Arrangements

For schools that have a close affiliation with a church or denominational body, it is critical that consideration be given to the nature and operation of that relationship, as it may impact on the school's accreditation and funding. We are seeing increased focus from Non-State Schools Accreditation Board ("NSSAB") on the issue of *prohibited arrangements* between related parties such as schools and churches.

For schools where the parent religious body (such as a church) holds status as the "approved authority" under the *Australian Education Act 2013*, and the school receives financial assistance from the federal government to be used for school purposes, prohibited arrangements are often entered into inadvertently because there is insufficient separation between the school and the church.

A prohibited arrangement is a contract or arrangement in relation to a school:

- which is entered into by a school's governing body and another entity (such as a church) where they have not dealt with each other at arm's length; and
- the arrangement or contract is not, or will not be, for the benefit of the school.

Some common situations where schools fall foul of the prohibited arrangements requirement include -

- a contract for goods or services is entered into but not at reasonable market value
- a contract for goods or services is entered into but is not required to advance the school's philosophy and aims
- Inappropriate inter-entity financial transactions, for example, loans



- the school governing body is made up of church members who also run the church
- The governing document for the governing body exists only within the church's constitution
- inadequate or inappropriate policies and procedures for identifying, declaring and dealing with any conflict of interest of a board member may have relating to an aspect of the operations of the school
- the governing body lacks sufficient skills, experience and qualification to properly govern the school (for example, members do not have financial/ accounting, legal/ compliance, educational, governance, risk management, strategy/ general business skills and experience).

If NSSAB considers that a school has entered into a prohibited arrangement, it may issue a compliance notice or a show cause notice. If such notices are not responded to carefully, the school may no longer meet accreditation requirements.

If you have any concerns about prohibited arrangements, please contact one of our experienced lawyers.



➤ Child Safety - Issues and Audits

Most people are aware that people working in specific professions such as teachers, doctors, registered nurses, and police officers are required to make a report to Child Safety if they –

- form a reasonable suspicion that a child has suffered, is suffering, or is at an unacceptable risk of suffering significant harm caused by physical or sexual abuse, and/or
- the child may not have a parent able and willing to protect them.

These are called mandatory reports and are made by designated mandatory reporters pursuant to the Child Protection Act 1999 (QLD) ("CPA").

However we note that many schools fail to properly understand and fulfil their mandatory reporting obligations, which are contained in the CPA but also more broadly in legislation.

Often, schools do not provide the required or appropriate training to deal with issues of child safety and do not understand when the mandatory reporting obligations are triggered. This can lead to under reporting and a breach of legal obligations.

At Vocare Law, we can prepare a "Safeguarding Audit Report" for presentation to the College Board and Executive team, addressing the following:

- a. A review of relevant Policies and Procedures (child protection, mandatory reporting, working with children checks, staff training, staff codes of conduct, etc);
- b. Recommended amendments to relevant Policies and Procedures to comply with legislative obligations and best practice principles;
- c. Review of a sample of mandatory reporting cases, to advise on internal compliance with relevant policies;
- d. Review of a sample of complaints regarding allegations of harm to children, to advise on internal compliance with relevant policies;
- e. Review staff training records, to advise on whether the type and frequency of training is sufficient to comply with best practice principles and legislative requirements;
- f. Review Board and Executive reports regarding child safety matters across the organisation, to assess whether the content of reports is sufficient to comply with legislative obligations and best practice organisational governance;
- g. General observations and advice.

If you would like one of our team to conduct a safeguarding audit report, please contact our education law team. If you have failed to comply with your obligations under child safety legislation, please contact us.

➤ Family Law Update

Schools often deal with issues involving Family Law, such as parenting arrangements between separated parents, issues regarding domestic violence, and ascertaining who they can take instructions from.

Amendments to the *Family Law Act 1975* (Cth) which took effect on 6 May 2024 significantly change the way the family law matters will be decided. While previously the law focused on the rights of the child and the responsibilities of the parents, the amendments now bring into sharp relief that the focus should be on the best interests of the child, including ensuring their safety.

Parental responsibility means all the duties, powers, responsibilities and authority which parents have in relation to children. Unless there is a court order allocating parental responsibility to a particular parent, each parent can make decisions relating to the long-term care, welfare, and development of a child, *for example*, enrolling them in a school. Where there is no court order, parents can exercise this decision-making power either in agreement with the other parent or on their own. This understanding of parental responsibility is not changing under the 2024 amendments.

However, a significant change to the law is the removal of the presumption that it will be in a child's best interests for parents to be allocated equal joint decision-making responsibility for decisions about long-term issues, such as schooling, health, and education.

Further, the requirement that a court must consider an 'equal time' arrangement has been removed.

What the changes may mean for schools

- There may be more variety in the types of orders that are made, and schools should not assume that parents have equal joint decision-making power, even if the child is living in an "equal time" arrangement.
- There may be more orders that allocate decision-making responsibility to only one parent for some matters (such as schooling) and to both parents for other matters (such as religion and health).
- Where there are no court orders or there is an order for equal decision-making for all matters, schools can continue to rely on one parent's communicated decision as if it is a joint decision of the parents.
- However, if there is an order for joint decision-making and parents communicate conflicting instructions, there is no decision the school can make – they should put the responsibility back on the parents to resolve the dispute between themselves.



- In the context of a school, some examples of major-long term issues relating to the care, welfare, and development of a child could be:

1. Enrolment of a student
2. Termination of an enrolment
3. Providing counselling services to a student
4. Senior subject selection
5. Long camps
6. Inherently dangerous activities like horse-riding and contact sports

Some examples which may not require the consent of both parents are:

- Participation in a workshop or series of workshops designed to improve a student's social interactions
- Sporting events
- Most camps

We regularly provide advice to schools about how to interpret family court orders, how they interact with domestic and family violence orders, and the school's obligations generally when dealing with separated families.

If you require advice in this area or would like one of our family lawyers to give a presentation to your school on any of the matters raised above, please contact us.



➤ Got Questions? Lawyer on Demand

We offer negotiated client retainer agreements with institutional clients including schools and colleges in circumstances where they have used our services over a period of time and find that it is financially viable to be placed on monthly retainer.

A Retainer assists clients to manage their legal costs and is a building block in forming a trusted relationship, which is mutually beneficial between us.

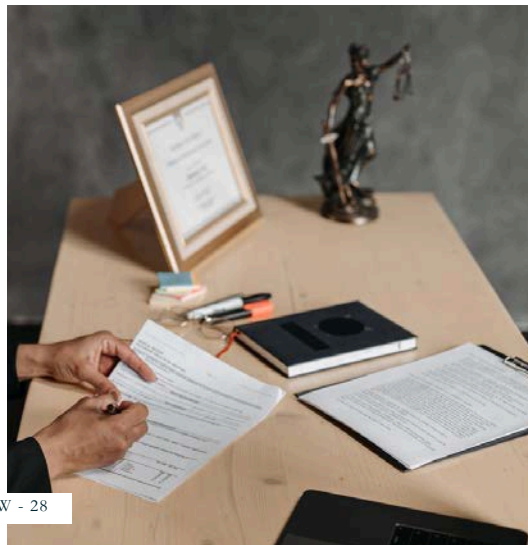
Retainers are considered on a case-by-case basis. The retainer is between Vocare and a school/college client where both parties enter into an agreement for a fixed legal cost for a set of specific legal services, for a set period of time.

Most retainers are entered into for a time frame such as 6 or 12 months, and can be reevaluated at 3 stages: after the initial 3 months; the 6 month mark; and then every 12 months thereafter.

Factors that will affect pricing negotiations can include number of students attending a school/college, scope as to what is to be included and excluded.

Please note that generally, litigation and disbursements are excluded from our client retainers because of their complexity and pricing beyond our control.

It should give school /college clients peace of mind to note that we have strict confidentiality processes around our retainers, including an internal policy that considers non-disclosure, access control, use of information, communication, training and awareness, review and update, for our Vocare Staff.



➤ Resources for Schools

Vocare Law offer several resources for Schools to keep updated on new legislation which may effect their policies, procedures and operations. We send out a monthly newsletter outlining these changes which you can subscribe to via our website.

We also offer professional development on numerous topics that may be helpful for teachers in fulfilling their legislative obligations. This includes, but is not limited to:

1. Mandatory reporting requirements / Child safety obligations
2. Risk management
3. How to handle students considering transitioning genders
4. Anti-discrimination obligations
5. Disability standards requirements.

Please let us know if you would like to arrange for one of our lawyers to provide in-house training on any of the above topics.



➤ Meet The Team



ALISTAIR MACPHERSON
Managing Director



JESSICA LIPSETT
Director



JAMES TAN
Director



EUSTACIA YATES
Special Counsel



FRAN KEYES
Practice Leader - Employment &
Discrimination
Accredited Mediator



LUKE BORGERT
Practice Leader - Personal injury
& Compensation



FRANCISCA MAYER
Associate

➤ For More Information

For more information about our Webinars and Not-for-Profit Services scan these QR CODES:

WEBINARS



NFP SERVICES



> Contact Us



Get in touch


Brisbane office
Suite 43, Level 4
17 Bowen Bridge Road
Herston QLD 4006

Sydney office
Unit 3.03, Level 3
32 Delhi Road
North Ryde NSW 2113

Phone 1300 862 529
Email admin@vocarelaw.com.au

 **Facebook:** <https://www.facebook.com/vocarelaw>

 **Instagram:** <https://www.instagram.com/vocarelaw>

 **Linked In:** <https://www.linkedin.com/company/vocarelaw>

LIABILITY LIMITED BY A SCHEME APPROVED UNDER PROFESSIONAL STANDARDS LEGISLATION.

