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Impact of Family Law on Enrolments

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Corney & Lind School Webinar Series
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Introduction

Corney & Lind Lawyers Pty Ltd

- Mid size law firm – 18 lawyers + 30 staff
- Our focus areas

Schools & Education

Not for Profit & Charity

Commercial

Employment & Discrimination

Personal Injury

Commercial & Construction Litigation

Migration & Visas

Family Law

Criminal & Traffic

Estate & Elder Law

- Our lawyers travel to you if needed
- Specialist lawyers committed to delivering “*just redemptive outcomes®*” with care and integrity
- Based right next to the CBD opposite the RBWH transport hub



My background and qualifications (why you should listen to me!)

- Degree in Law (Hons);
- Masters of Law;
- Vocational Graduate Diploma of Family Dispute Resolution;
- Registered Family Dispute Resolution Practitioner (mediator);
- Accredited Independent Children's Lawyer for about 7 years
- I have been in practise over 10 years including 5 years at Legal Aid Queensland, and have extensive family law and domestic violence experience;
- For the past 4 years, I have represented private schools in general litigation matters, including providing extensive high level advice in relation to enrolment contracts, responding to subpoenas, and litigating contract law, consumer law, defamation, discrimination and employment matters in a variety of jurisdictions.

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The Context

- When a relationship ends:
 - The Grieving Cycle;
 - Practical arrangements;
 - The need for independent legal advice; and
 - People are hurting – and hurting people do not necessarily behave rationally, and do not necessarily behave as they normally would.

And that is just the “easy” relationship breakdowns!

The more complex ones might include (among others!):

- Domestic and Family Violence;
- Child Abuse (physical, sexual, emotional, neglect);
- Parental Mental Health issues; and
- Parental substance abuse issues.

Dealing with domestic violence

- What is Domestic Violence?
- Why does it concern schools?
- How prevalent is the issue?
- What does that mean for our school?
 - Ensure that your enrolment contracts require that parents provide all relevant domestic violence and family court orders to the school – retain a copy on file.
 - Ensure that communication protocols are in place and all staff are aware of the issues;
 - Ensure that you have obtained advice if there is a conflict between safety issues relating to domestic violence and family court orders, and funding agreement requirements.





Dealing with domestic violence

- I think there might be a breach of a Domestic Violence Order:
 - Safety first – assess the current danger level to staff, students, and members of the public that may be present on campus.
 - Tell someone immediately – usually the principal
 - Call 000 if safety is an immediate concern
 - If there is not an immediately safety concern, consider whether it is appropriate to speak with the person and ask they leave. If they refuse to do so, this could constitute trespass and the police ought to be called.
 - Make a clear diary note – ensure any staff member who observed the difficulty does their own diary note.
 - Ensure that staff are cared for – they may well require counselling.
 - You may be able to exclude the parent from the school grounds on the basis of trespass, or pursuant to legislative powers. You should obtain legal advice if you are intending this course.

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Reading a DVO

- Who is the Aggrieved?
- Who is the Respondent?
- Who are the named persons?
- What are the conditions?

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The Framework in Australia

- Section 60CA *Family Law Act*: **Best Interests of the Child are paramount;**
- Section 60B and section 60 CC *Family Law Act*: **Children's rights and parents responsibilities:**
 - A right to be safe
 - A right to know and be cared for by both parents if it is safe to do so.
 - A right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development;
 - A right to enjoy their culture.

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The Framework in Australia

- Parental Responsibility:
 - What is parental responsibility?
 - What is Equal Shared Parental Responsibility?
 - What does that mean for our School?
- Where a child lives and where a child spends time:
 - Custody, Guardianship, Access, Residence, and Contact.
 - Is there a flow on consequence for an Equal Shared Parental Responsibility Order in relation to time?

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Parenting Arrangements – what to look for

- Options for Parenting Arrangements:
 - Informal Agreements;
 - Parenting Plans;
 - Consent Orders;
 - Court Orders other than by Consent; and
 - It is possible (although beyond the scope of today's discussion) that there may be Orders made by a Court exercising Child Protection jurisdiction).



Who has parental responsibility?

- One parent has sole parental responsibility:
 - They give permission;
 - You probably need permission to disclose information to the other parent;
 - BUT – your funding agreement probably has a requirement to provide information including report cards to BOTH parents.
- Parents have equal shared parental responsibility
 - You are entitled to act on the direction of one of the parents as if it was a joint decision – but this probably won't apply if you KNOW the parents do not agree;
 - You should be sharing information with both parents wherever possible;
 - You may need to consider the terms of your enrolment contract, PARTICULARLY in relation to what happens if the parents do not agree about schooling matters later.



Who has parental responsibility?

- There are no orders, or the orders do not make mention of parental responsibility.
 - If the Orders were pre 1 July 2006 – it may use old terminology (or not be in there at all!)
 - If no Orders in place, then BOTH parents have parental responsibility.
 - You may need to consider the terms of your enrolment contract PARTICULARLY in relation to what happens if the parents do not agree about schooling matters.



Dealing with information

- Informal –
 - Dealing with parents directly (do they have parental responsibility and is it safe to do so??)
 - Consider your privacy obligations (particularly for students who are older!)
 - Consider the extent of your disclosures, particularly where there are ongoing reports etc. Section 186 of the Child Protection Act for example.
- Formal –
 - Providing mandatory reporting as required by the Education (General Provisions) Act, and the Child Protection Act – and the protection of notifiers under section 186;
 - Providing information to an ICL;
 - Providing information in answer to a subpoena; and
 - Giving evidence in Court



Who pays what?

Formation of the Contract:

- Offer
- Acceptance
- Intention to be legally bound
- Consideration

• **What does your enrolment contract say about who is responsible for paying? Is it joint and severable?**

• **So the parents tell you that they have:**

- A binding child support agreement that says who pays the tuition costs?
- A Court Order saying that one parent pays the tuition costs?
- An outstanding child support bill?

And your response is??

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Who pays what?





Practical tips and tricks

- Review your enrolment contracts – they should include:
 - Provisions dealing with what happens if the parents don't agree;
 - Provisions dealing with provision of information to parents and others;
 - Provisions requiring the parents to provide the School with copies of any family law orders or domestic violence orders.
- Have clear boundaries with both parents and students
- Try to have open communication with both parents where possible
- Try to have both parents commit to any decision being made
- Get BOTH sides of the story from parents.
- Don't agree with a parent about their assessment of a situation – they will try to recruit you to be on their team!
- Keep detailed file notes that are accurate.
- Don't forget your mandatory reporting requirements.
- Get legal advice early – it could save you a LOT of money and heartache long term.
- Don't get involved in the parents child support/parenting/property/spousal maintenance issues – it gets too messy!

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Next Webinar

FRIDAY

1st Dec 2017 @ 10:00am

Managing Parent Debts

corneyandlind.com.au/webinar/school-law-managing-parent-debts/

FREE OFFER
School Health Check

Free 45 minute consultation
with one of our Senior School Lawyers

- › At your convenience
- › At your location



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