

just redemptive outcomes®



CORNEY & LIND
LAWYERS

School Enrolment Contracts and Process: Opportunities, Traps and Tips

Fiona Manderson,
Special Counsel

1 March 2019

just redemptive outcomes®



CORNEY & LIND
LAWYERS

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



Why you should listen to me!

- Some degrees and qualifications (for those interested):
 - 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 9 years
- I have been in practise 14 years including 5 years at Legal Aid Queensland;
- I am currently working in the commercial team doing complex matters for schools and not-for-profits – both commercial and dispute work;
- 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 on behalf of private Schools.
- Because I've seen what can go wrong from a litigation side of the fence, I am passionate about applying an ounce of prevention from the commercial side!



1. Enrolment – its just a process right?

- For Private Schools, enrolment is the 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 often a legal process that schools don’t think about much until things go wrong.
- Enrolment is at its heart a process where the School enters into a contract to provide services in exchange for money.
- Whilst this sounds all very mercenary, this process is the starting point of running the marathon with this family that is the education of their child – so lets start this race off on good footing and forge a relationship!





2. Enrolment – Opportunities await...

- The Enrolment **Process** is an opportunity:
 - To gather relevant information and ensure you are contracting with the right people;
 - To allow you to screen families and children and make sure that you can offer the educational services you say you will.
 - To set out the boundaries and expectations your school has of parents, and of students at the outset.
 - To make it clear what expectations parents and students can have of your school.
 - To start a relationship with a family on a good note!
- 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 if problems occur.



3. What do you have to have for there to be a contract?

- Offer
- Acceptance
- Intention to create legal relationship
- Consideration
- Legal Capacity
- Consent
- Terms of Contract
- Contracting Parties





4. Offer vs Invitation to Treat

- An offer is different from a willingness to deal with someone, or to negotiate with someone.
- An offer is a promise to be bound by a contract if the terms are accepted.
- You can withdraw your offer provided that you do so before it is accepted, and you have communicated to the other person that the offer has been withdrawn.
- An “invitation to treat” is a legal phrase coined by judges several hundreds of years ago, and is different. One of the usual examples of an invitation to treat is a Vase in a store with a price tag – in some circumstances, it would be considered an invitation to the prospective purchaser to make an offer to purchase it. There are no terms stated, just a price listed.
- There are good reasons to make sure that your enrolment process is structured so that the Applications for Enrolment are the offer, but this is something that requires careful analysis of the policy, marketing, and contract documents.





5. Acceptance and Intention to be legally bound

- Usually, someone agrees to the offer – this can be by statement (such as sending an email accepting the offer, or by signing a written contract) or by action.
- A person has NOT accepted an offer merely because they have not expressly rejected it (although the tiny print at the entrance to a paid parking facility might suggest that that is the case!!).
- It is also necessary that people intend to enter into a legally binding agreement. This is not always explicit (but sometimes making it explicit helps parents to understand that this is a legal contract!!).



6. Consideration

- is a fancy legal way of referring to the price paid – so something of value.
- It does not have to be money – it could be part money, part volunteering special skills or experience. So long as there is “consideration” of some sort, even barter will be considered to be consideration.





7. Legal Capacity and Consent

- Not everyone can enter into a contract – for example:
 - People who have an impairment – for example, an intellectual disability that has resulted in them having a guardian;
 - Young people (minors);
 - Some categories of prisoners; and
 - My dog (are you awake still???)
- Consent must be genuine. If one party is forced to sign a contract, it will not be binding. Its the contract law equivalent of a “shotgun wedding”
- Proper consent can be affected by:
 - Mistakes;
 - False statements;
 - Duress; and
 - Undue influence or unconscionability





8. Contracting Parties, and terms

- There are “express” terms of contracts, which are terms clearly set out (usually in writing) and “implied” terms of contracts, which are terms which are usually not written down or discussed, but which are necessary to be implied to make the contract work. It would probably be an implied term of an enrolment contract that a school was accredited as a school, but it would not be written into the contract.
- It is unusual to successfully argue that terms are implied into a contract, so you should ensure as much is in the “express” terms of the contract as is possible! Terms can only be implied into a contract where the contract doesn’t work without them.
- Contracting parties is an issue for schools – and we will talk about the family law aspects in a moment – but the short version is you need to ensure that the people who sign the enrolment contract have the parental responsibility to do so!



9. Family law – What do you want to see?

- Options for Parenting Arrangements:
 - Informal Agreements;
 - Parenting Plans (written down, signed and dated by both parent
 - Court Orders (written down, sealed by the Court);
 - 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** for the child?

“Parental responsibility, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.” (Section 61B FLA)



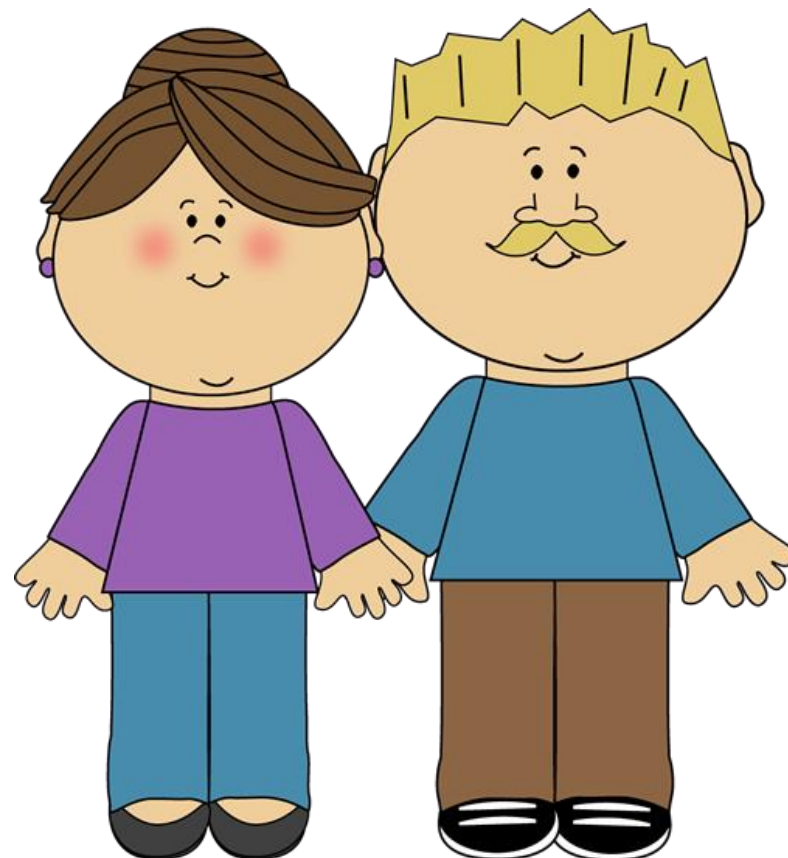


10. Who has parental responsibility (and why we care)?

- One parent has sole parental responsibility:
 - They give permission;
 - You probably need permission to disclose information to the other parent;
 - BUT – your funding agreement may have a requirement to provide report cards to BOTH parents, try to do so when possible – section 425 Ed (GP) Act might be the escape clause.
- 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;
 - 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.

11. Who has parental responsibility (and why we care)?

- There are no orders, or the orders do not make mention of parental responsibility.
 - 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 after they have separated.
- **Even if there is equal shared parental responsibility, you will need to consider communication strategies in the event of allegations of family violence.**



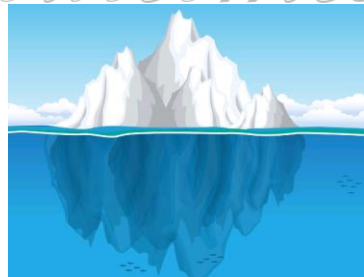


12. Tips – what you should consider putting in your enrolment contract:

- Confirmation that parents have provided accurate and full information to the School;
- Support for the School ethos, approach, and Statement of Faith (where relevant);
- Clearly set out what you are responsible for, and what the parents are responsible for;
- Behavioural expectations of students and parents, and possible consequences where relevant;
- Provisions dealing with what happens if the parents don't agree (usually after separation);
- 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, and advising if things change;
- Communication arrangements, including social media use;
- Clear arrangements for payment of fees (when, how, etc);
- Privacy; and
- Good termination options for if things go wrong.



13. Traps – what avoid:



to try to

- School Policies – If you incorporate them as terms of the contract, then you are bound by them – and if one of your staff breaches a policy, you could find yourself responding to a breach of contract claim. Avoid incorporating school policies as terms!
- Anti-discrimination:
 - increasingly, schools are finding themselves responding to allegations of discrimination – on the basis of sexuality/gender, religion, and impairments;
 - Your enrolment process/policy is really important in the discrimination space;
 - Discrimination is a whole topic in itself, and is beyond the scope of today.



13. Traps – what icebergs to try to avoid:

- Domestic violence –
 - 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.
- Social media:
 - Parents are increasingly using social media as a coercive tool – a stick if you will. You need to be on top of this area





14. Where to from here – your action plan!

- We recommend that each year:
 - schools pull out their enrolment policy and process, and contracts and READ them;
 - Schools meet with their team and review where the problems have come from, and whether any amendments to documents will head something similar off in the future – this team approach should include your Enrolments Registrar, Principal and Deputy, and Pastoral Care team, and Accounts team; and
 - consider setting up documents and procedures that allow for easy updating of terms!
- Where you need advice, we can help.

just redemptive outcomes®



CORNEY & LIND
LAWYERS

Next School Webinar

FRIDAY

24th May @ 10:00am

Brisbane local time

Is your School compliant when it comes to Government funding?

<https://www.corneyandlind.com.au/legal-webinars/school-compliant-government-funding/>

FREE OFFER School Health Check

Free 45 minute consultation
with one of our Senior School Lawyers

- › At your convenience
- › At your location (Brisbane area only. Regional & interstate, contact us)



CORNEY & LIND
LAWYERS

Enrolment Contract Review

- › **Is your contract clear and comprehensive?**
- › **4 step process**
 - › Initial consultation with a Senior Lawyer
 - › Review Current Enrolment Contract
 - › Draft New Enrolment Contract (or amend as required)
 - › Post-drafting Consultation

FIXED FEE

Ask us for a quote

Tailored CPD Presentation

delivered by a Senior School Lawyer

- › **2 hour seminar at your school**
 - › Includes Q&A
- › **Learn more about**
 - › Child protection;
 - › Workplace Health and Safety obligations; or
 - › Managing enrolment contracts

from
\$2,500 incl. GST

CORNEY & LIND
LAWYERS

Unpaid School Fees?

We offer streamlined debt recovery on unpaid school fees

ASK US FOR OUR FIXED COST OFFERING

Letter of Demand: \$299

just redemptive outcomes®



CORNEY & LIND
LAWYERS

Contact



Name: Fiona Manderson

Position: Special Counsel

Email: fiona.manderson@corneyandlind.com.au

07 32520011

www.corneyandlind.com.au