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# Your Legal Questions Answered

The new frontier – enrolment issues

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## Current Issues in enrolment



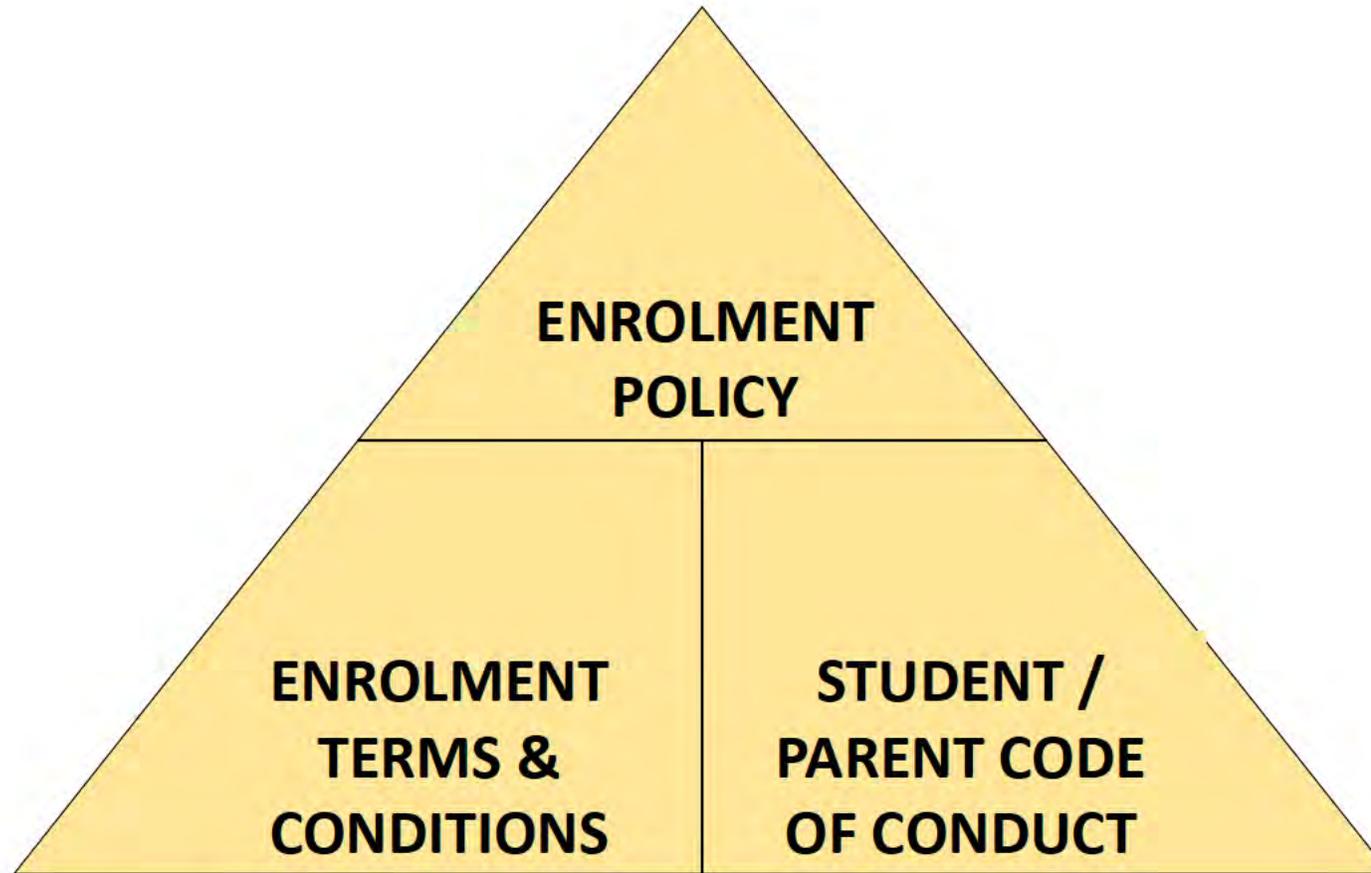
- “Gatekeeping”, disability and reasonable adjustments
- Faith-based schools and religious education, discrimination and suppression
- Parents and students behaving badly and intervention / personal safety orders
- COVID-related fee discounts
- Parent fee demands due to remote learning or COVID restrictions
- May 2022 ACAT decision querying “one term’s fees in lieu of notice”

## Tips and traps in enrolment

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- Enrolment policies and terms/conditions can give rise to discrimination and breach of contract claims.
- When assessing enrolment, consider:
  - When you should seek information about a child's disability, and what information you might require
  - Whether you should meet a child in person
  - How you may want to ask questions about a perceived disability when there is no diagnosis and parents are in denial
- Before terminating enrolment, consider your obligations under discrimination laws and the Disability Standards for Educations.
- NB: The focus should be on inclusion. Timing and language is important.

# The Enrolment Triangle



# Inclusion, discrimination and suppression practices

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- Schools are required to balance the following competing interests and obligations, including:
  - Legal obligations (discrimination, suppression practices, school registration requirements, duty of care, reporting, OHS)
  - Parents/ Carers
  - Students
  - Educational Authorities
  - Lay leadership/religious ministry (if applicable)
  - Staff / Community



## You couldn't make this up ... parents behaving badly

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- Ran over teacher's foot in the car park
- Drove in the wrong gate, ran over the groundskeeper when chastised
- Refused to accept "return to school safely" plan
- Stalking of educators in person and online
- Parents claiming they do not have to pay because of remote learning
- Parent appeared at pick up in a unicorn costume, hugging kids



## Failure to Educate Claims

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- Few cases in Australia where a parent has argued “failure to educate”, the ones that have received media or court attention have an element of:
  - poor fee recovery processes;
  - poor management of parent / student behaviour – likely due to poor policies, procedures and codes of behaviour; and
  - poor or non-transparent pre-enrolment processes and documents

## Australia Consumer Law

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- Concerned with protecting parents from “unfair contracts”
- “Unfair” in this sense is concerned with power imbalance.
- Common school terms which might be “unfair” could include:
  - School has one-sided right to terminate;
  - Penalties for parents terminating; or
  - School being able to change the contract unilaterally.

## Financial penalties for parents terminating

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- VCAT has upheld one term's fees in lieu of notice – however a recent case in the ACT differs
- Larger \$ can be unenforceable civil penalties
- Non-refundable fees prior to enrolment a challenge
- Scholarship repayment is fraught, noting:
  - Repayment of scholarship value possible; but
  - School needs to show penalty is a reasonable pre-estimate of school's loss and damage.

## Typical traps in debt arrangements

- Schools are kind, want to be supportive
- Payment plans are often not enforceable/ in writing
- Dates for payment unclear, open to interpretation
- No consequences for breaching plan
- Parents often “forget” to tell school they found a new job
- *Law of diminishing returns* - each plan is weaker than the last, and the enrolment terms no longer apply...



## Presenter Details

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