

From Playground to Courtroom: Bullying, School Liability and Lessons from the Rapid Review



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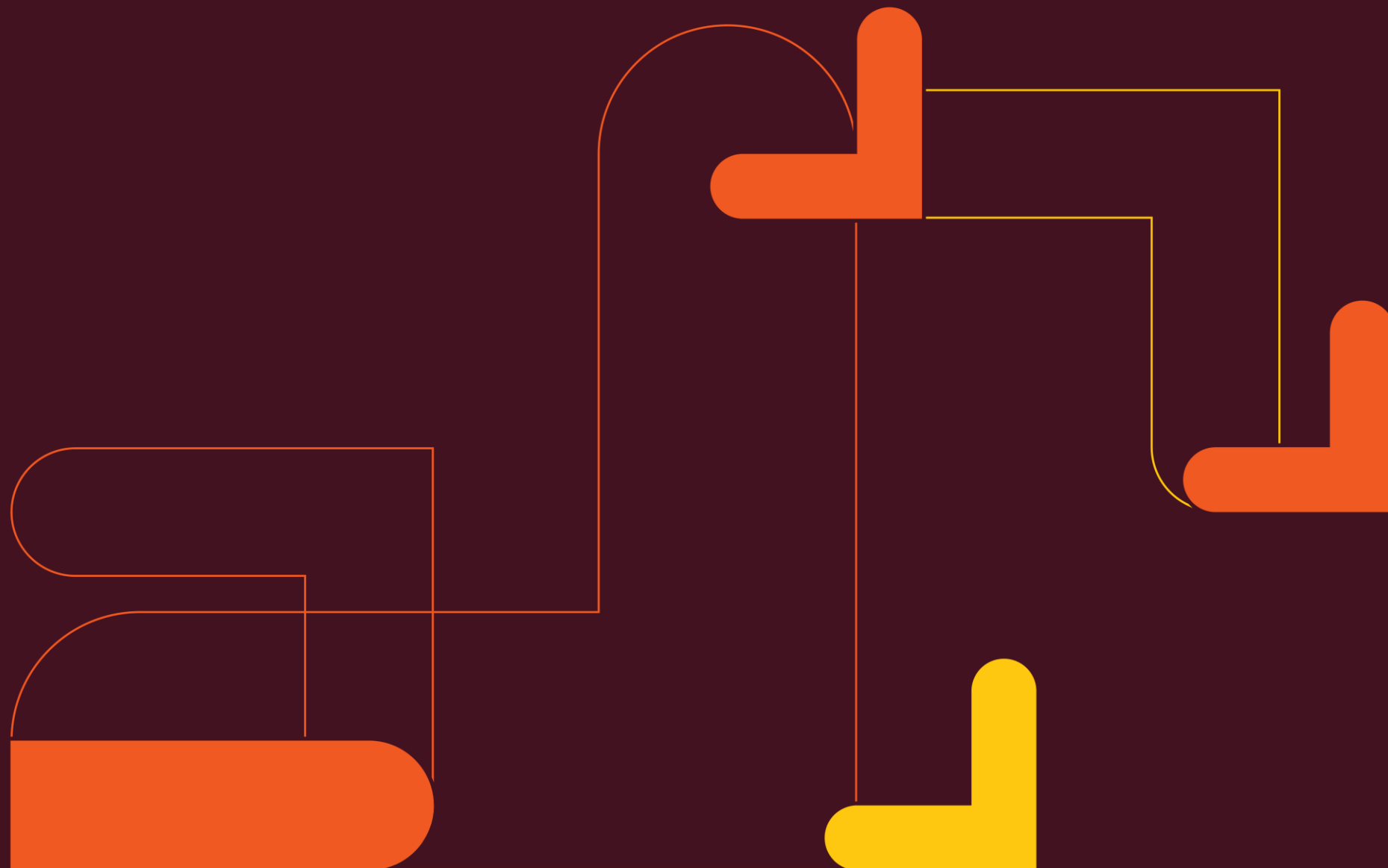
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School bullying in Australia





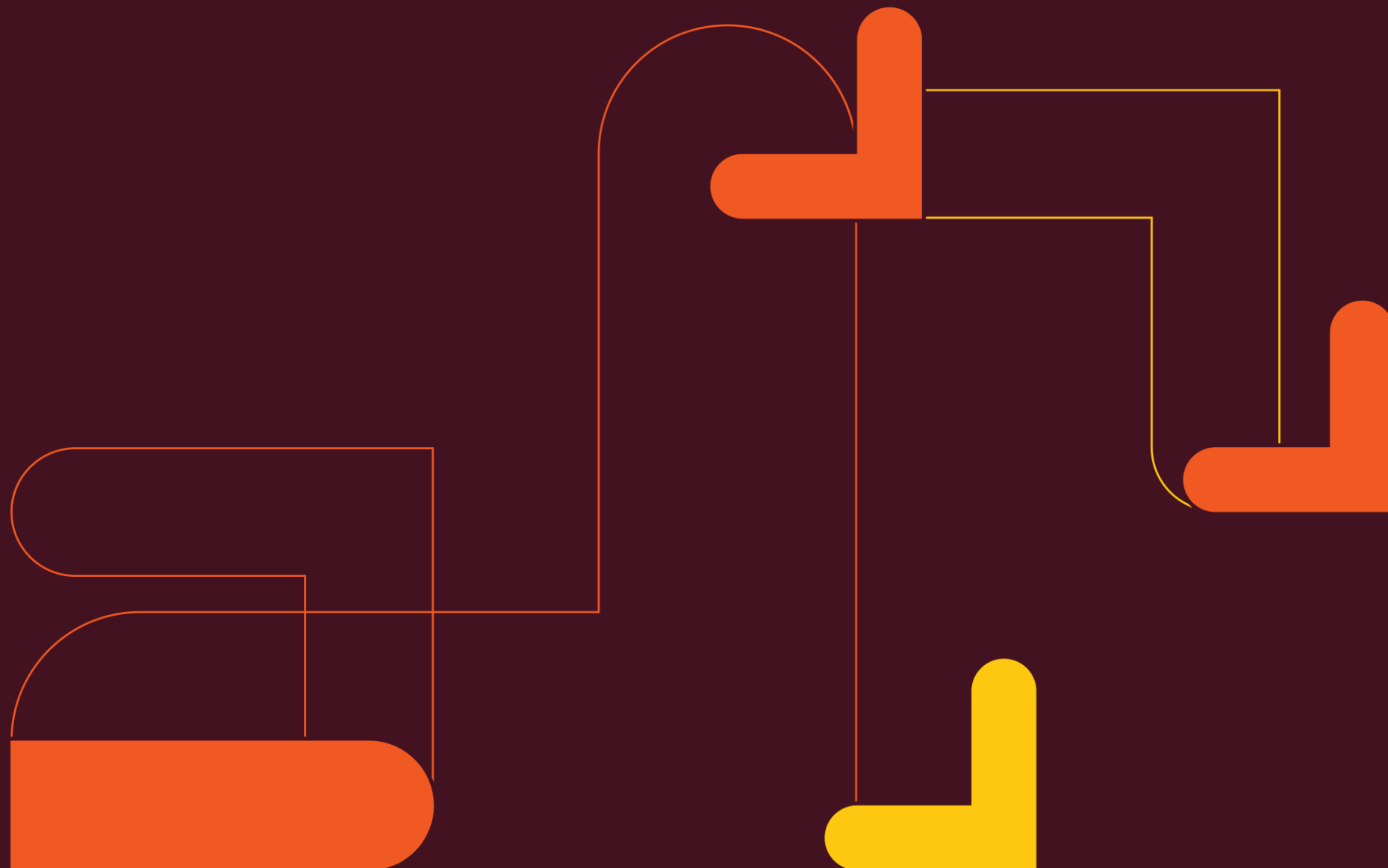
Key statistics

- Over one in four Year 4 to Year 9 students (27%) report being bullied every few weeks or more often.
- Over five years from 2019 to 2024, cyberbullying complaints to the eSafety Commissioner increased by 455%. In 2024, 46% of complaints involved children aged 13 years or younger.
- 84% of students who were bullied online were also bullied in person.
- In 2022, Australia was ranked the second highest country in student exposure to bullying.





Duty of care and bullying





Anti-Bullying Rapid Review



Student support and empowerment



Consistent and clear messaging
around bullying



Robust anti-bullying policies and
procedures



Timely responses



Parent engagement



Duty of Care

Schools have a non-delegable duty of care to students arising from:

- Common law
- Wrongs Act 1958
- VRQA Guidelines to Minimum Standards and Requirements for School Registration

The School must take reasonable steps to protect against reasonably foreseeable risks of harm.

This may include outside of the school premises if there is a sufficient connection with the school environment.

In a negligence claim, compensation is uncapped



Recent case study – duty of care beyond the school gates

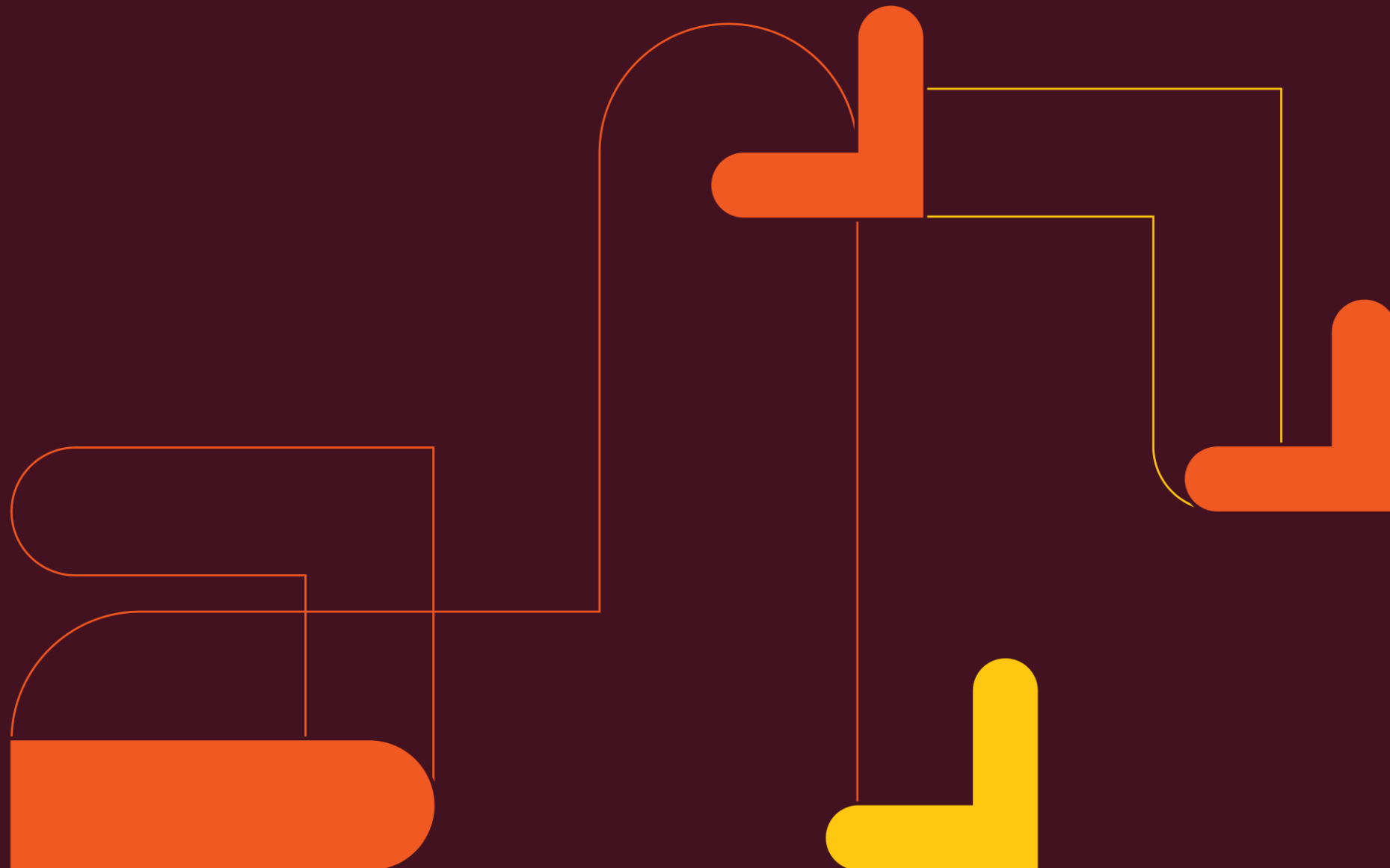
State of New South Wales v T2

- A 14-year-old student waiting at the bus stop when alerted to a potential threat by another student.
- He walked to the school's office for help but it was unattended.
- He student messaged his mother who also tried to contact the school but her calls went to voicemail.
- He was led away from the busy stop where he was assaulted by a group of 12 students.
- The State argued the duty of care didn't extend beyond the school grounds or beyond school hours.
- The Court found that the school was negligent and T2 was awarded \$1.75 million in damages





Practical considerations





Key tips



Early intervention and use restorative processes, if appropriate



Offer support and implement safeguards



Maintain confidentiality



Promptly and comprehensively address the conduct



Provide procedural fairness



Consider evidence based on the balance of probabilities



Ensure harmful behaviour is addressed consistently



Ensure the process and decision makers are independent and impartial.



Consider students with additional needs



Be aware of the Rapid Review recommendations



Support Group Method

Teacher meets with the victim and asks about their experience which is documented.



Alleged perpetrators are invited to a meeting with other students who are supportive of the victim. The teacher describes the victim's experience of the bullying



Each group member is asked to state publicly what they are prepared to do to improve the situation



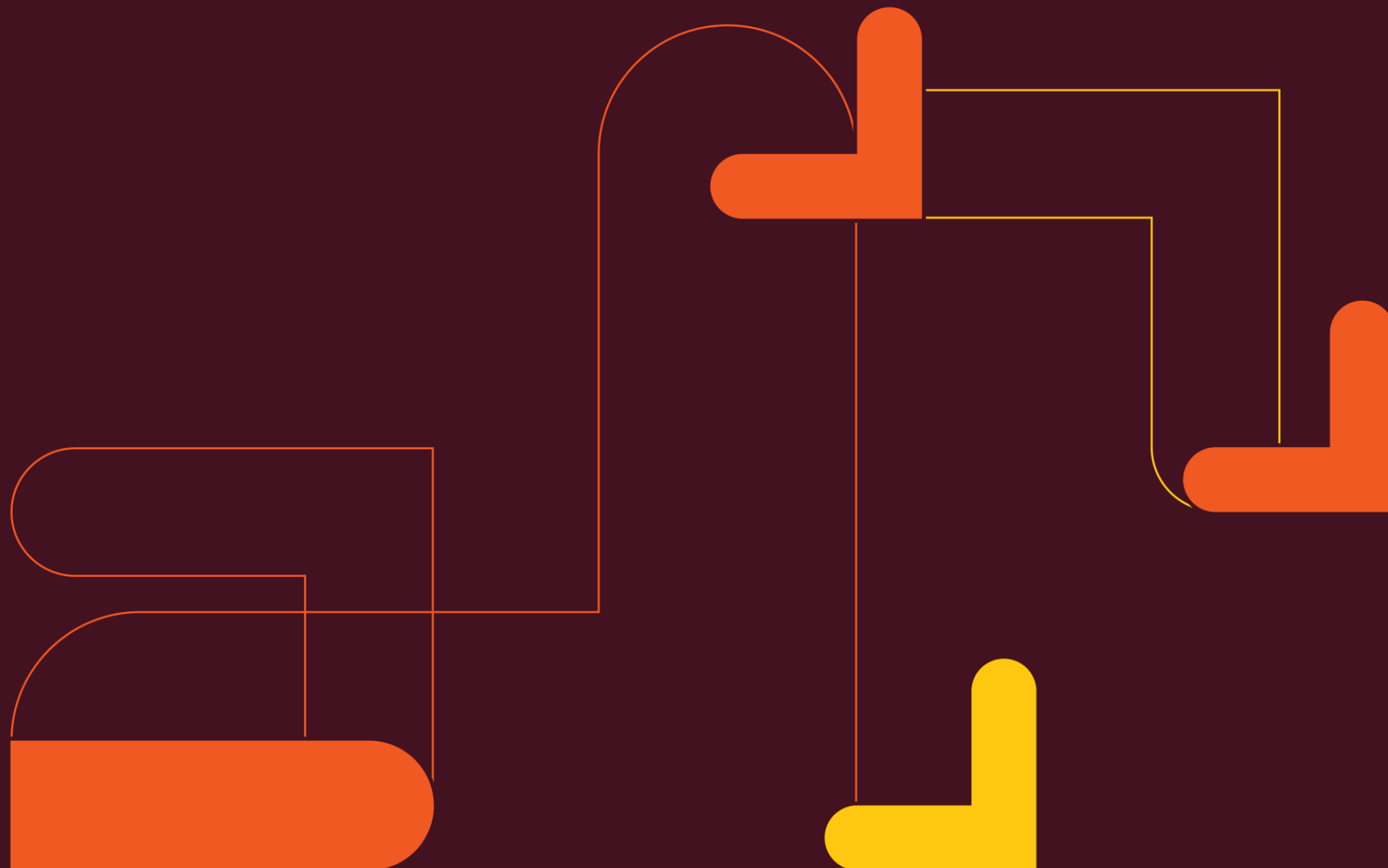
Recent case study

Kaplan v State of Victoria (No 8)

- Five students brought a claim under the *Racial Discrimination Act 1975* (Cth) in relation to antisemitic bullying they were subjected while at school.
- The Court found that the College failed discharge its duty of care by taking reasonable steps to take action against antisemitic bullying.
- The court compared the College's response to antisemitism compared to LGBTQIA+ students – it found that the response to antisemitism compared to its response to discrimination against LGBTQIA+ students differed greatly.
- The state was held vicariously liable and ordered to pay compensation and damages of over \$435,000.



Case studies





Case study 1: In the classroom

Safin is a year 5 student who reports to the school that he feels he is constantly being targeted by Raj who is also in year 5. He says that when they are in class, Safin will constantly poke at his back and snicker behind him. This has come to a head when Safin says during lunchtime Raj came up to him and pushed him into the building and screamed at him.

Raj is diagnosed with with Oppositional Defiant Disorder (ODD) and Attention Deficit/Hyperactivity Disorder (ADHD). He has previously been warned about a previous incident in which he was shouting at another student.

When you talk to Raj, he denies doing anything to Safin. The day after you receive a call from Raj's parents saying that other students and the school is targeting Safin because of his disabilities.

What are the issues?

What are your options for addressing the conduct?



Case scenario 2: Group chat

After the school holidays, a parent of the school makes a report to you about bullying against their child, Helen. The parent reports that Helen was part of friendship group, which has now turned against her. They say this was instigated by another student, Milly, over the school holidays.

It is reported that Helen was in a message group chat with Milly and five other students when Milly removed her from the chat. When Helen added her back into the group chat, Helen saw that in the group chat history, Milly was making accusations that Helen was being fake and told the other students they shouldn't be friends with her.

Since being back at school, Milly has been excluded from the group and they have been actively ignoring her. When Milly reported this to her teacher, the teacher told Milly to not worry about it and that it would blow over eventually.

What steps need to be taken in order to minimise harm to Helen?

Does any action need to be taken against the teacher?

Would you respond differently if Helen had a mental illness or showed visible signs of distress?



Case scenario 3: Former student complaint

You are a Principal and you receive a letter from a former parent claiming that their child was treated badly by another child. You speak with the teachers who worked with the student and are told that there was ongoing friction between the students and that both were challenging to manage in the classroom.

You decide to meet with the parents to discuss their concerns. They tell you that the former student has been distressed, has needed support and that they intend to seek “significant compensation”. Around 18 months later you receive a letter from lawyers acting for the parents, asking to provide them with documents about the student and steps the school took to prevent harm.

What are the issues?

What are the next steps?



Questions?



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