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Screening Your Pastors, Volunteers and Employees

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17 October 2017

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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



1. The Tort of Negligence, or “Why Screening and Monitoring Church Staff Is So Important”

- Donoghue v Stevenson ALL ER 1932
- Duty of Care + Reasonable Foreseeability = Damages



2. How can an Employer be held liable for the actions of an Employee?

Vicarious Liability

The employer is vicariously liable to third parties for tortious acts of the employee which are impliedly authorised, that is,

acts committed while the employee is acting within the scope of his or her authority and performing the employment duties or acts incidental to the performance of those duties

Even for criminal acts in extreme cases – like the ones we are about to consider

Not aware of any instances of Vicarious Liability for churches to church members, but churches to school children has occurred – not applicable to volunteers



3. Non- Delegable Duty

- Extends the Duty of Care to third parties because the nature of the relationship to the Plaintiff requires it.
- Victoria has extended the *Wrong's Act* to include a non-delegable duty to children in the care of institutions
- Queensland has proposed similar amendments
- This would include obligations to screen and monitor and report the actions of volunteers and employees.



4. Lyndall's Case

- Context – Boarding School
- The hiring of the perpetrator – knew of allegations of misconduct at prior school
- Many acts perpetrated
- Suicide note
- School's Response
- Diocese Response
- Damages Awarded – including exemplary



5. Prince Alfred College v ADC

- Adult male who was abused at Boarding School sent his son to the same school and suffered consequent flashbacks and PTSD
- Mere opportunity not sufficient in such cases, must consider:
 - Authority,
 - Control,
 - Trust and
 - Ability to achieve intimacy
- Will be determined on the facts of the case

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6. The Royal Commission Recommendations

- Limitation Periods
- Non-Delegable Duty
- Criminal liability for not reporting



7. How Do You Prevent A Compensation Claim???

Appropriate Screening, Monitoring and Reporting

- Comply with Legislative requirements – Jurisdictional Issues
- ACC has useful tools SMR and the Safer Churches Policy Documents
- If truly concerned, seek legal advice

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8. Screening

What do you do with a known offender???



9. Monitoring

- Regularly review individuals performance
- Require regular police clearances in accordance with your state's jurisdictional requirements
- Regularly review your policies to ensure they meet best practice and legislative requirements

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10. Reporting

Don't sweep it under the rug.

Respond to complaints in a timely, sensitive and thorough manner that is compliant with the jurisdiction's requirements

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Next Webinar

FRIDAY

16th Nov 2017 @ 1:00pm

Resolving disputes within the church

corneyandlind.com.au/webinar/resolving-disputes-within-church/