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CORNEY & LIND
LAWYERS

SPIRITUAL APPOINTEES

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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 Brisbane CBD opposite the RBWH transport hub



What we will cover today

1. What is a “spiritual appointment”?
2. Differences between a “spiritual appointee” and an “employee”
3. Case studies
4. Practical application
5. Questions?



1. What is a “spiritual appointment”?

- Differs from an employer/employee relationship
- Differing duties
- “Appointment of a pre-eminently spiritual character”
- Provides the spiritual appointer flexibility in managing the relationship – relief against employer legal obligations

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2. Differences: Spiritual Appointee vs an Employee

Nature of Relationship

“Spiritual appointee”

- Pre-eminently of a spiritual nature
- Duty to God

Employee

- Legal relationship
- Duty to employer

Superannuation

“Spiritual appointee”

- No obligation to pay
- Can be personal contributions

Employee

- Payable at the rate required by legislation. Currently 9.5% per annum.

Government Funded Parental Leave?

“Spiritual appointee”

- Generally, parental leave applies to employees, not volunteers
- neither employee/volunteers – carry out duties and receive a form or remuneration – therefore may be eligible
- Individual may need to make own application to Government

Employee

- Eligible

Access to legal remedies

“Spiritual appointee”

- Presumption employment dispute remedies only apply to employees
- No legally binding agreement
- Church would have more freedom to govern its own affairs and disputes.
- Exceptions apply – we will discuss these cases later

Employee

- Access to legal remedies under relevant legislation (eg. Fair Work Act)
- Rights under contract law

Minimum Standards

“Spiritual appointee”

- Generally no minimum standards
- Caution should still be exercised – church still owes spiritual appointees duty of care

Employee

- National Employment Standards under the Fair Work Act apply – minimum employment conditions
- Eg. maximum hours, leave arrangements, wages, notice of termination etc.

Long Service Leave

“Spiritual appointee”

- Generally not entitled – not an employee pursuant to *Industrial Relations Act 1999* (Qld).

Employee

- Eligible

Exempt Fringe Benefits

“Spiritual appointee”

Employee

- Both may be eligible, provided meet *Fringe Benefits Tax Assessment Act 1986* (Cth):
 - Religious practitioner
 - Church – religious institution
 - Benefits provided to individual or spouse;
 - Benefit not provided principally in respect of duties other than any pastoral or directly related religious activities.

Insurances

“Spiritual appointee”

- Generally WorkCover Queensland insurance coverage will apply to spiritual appointees on basis stipends are subject to PAYG.
- Contact Insurer to ensure appointee is covered – Group insurance may be required

Employee

- WorkCover insurance applies to employees
- Other insurances – employers vicariously liable for actions of employees

Control

“Spiritual appointee”

- Principal duty to God - may be more difficult for the church to legally exert control or give directions.

Employee

- In an employment relationship, the employee owes its principal duty to their employer.
- Higher degree of control

3. Case studies

1. *Rogers v Booth* [1937] CA751
2. *Teen Ranch Pty Ltd v Brown* 1995 AILR 5-036
3. *Knowles v The Anglican Property Trust, Diocese of Bathurst* (1999) 46 AILR 5-210
4. *Ermogenous v the Greek Orthodox Community of SA Inc* [2002] HCA 8
5. *Bellia v Assisi Centre Inc* [2010] FWA 2904
6. *Steven Threadgill v Corporation of the Synod of the Diocese of Brisbane* [2014] FWC 6277

Rogers v Booth

- *"It is a relationship pre-eminently of a spiritual character. They are united together for the performance of spiritual work, and, in order to carry out efficiently the ends they have in view, they submit to a very strict discipline, and a very strict command. On the face of that, it appears to me that the necessary contractual element which is required before a contract of service can be found is entirely absent. The parties, when they enter into a relationship of that kind, **are not intending to confer upon one another rights and obligations which are capable of enforcement in a court of law.**" [Emphasis added] – Sir Wilfred Green MR*

Teen Ranch Pty Ltd v Brown

- The parties had not intended to enter into legal relations
- There was no contract between the parties; and
- The worker had not worked in order to receive the benefits provided.

Knowles v The Anglican Property Trust, Diocese of Bathurst

“...consensual compact to which the parties were bound by their shared faith based on spiritual and religious ideas - not based on a common law contract.”

Ermogenous v the Greek Orthodox Community of SA

Kirby J at [76]

Even people of a spiritual vocation normally need stable arrangements for the necessities of life. In a case where such an agreement is proved with an identifiable party and it is breached, the victim of the breach is not beyond the law's protection. Australia is a secular polity. There is no general rule that the "spiritual character of the relationship" concerned "militate[s] against a finding that the necessary intention [to enter] into contractual relations has been formed".

Bellia v Assisi Centre Inc

- he was not engaged in providing services of a purely religious nature
- not a religious organisation but rather an aged care community organisation;
- day to day direction and control of Assisi;
- worked exclusively for Assisi; and
- Father Bellia - received a stipend, motor vehicle and accommodation and PAYG tax instalments were deducted by Assisi (which Fair Work Australia noted by themselves are by no means determinative).

Steven Threadgill v Corporation of the Synod of the Diocese of Brisbane

“Rev Threadgill’s role was one within the church proper, primarily or entirely religious in character, as affirmed by the relief sought. His post was under the archbishop’s licence, which (subject to the canons) is discretionary. His case is materially different in those respects from *Ermogenous* and *Bellia* but cannot be materially distinguished from *Knowles*.”

4. PRACTICAL APPLICATION

- *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd & Ors* [2015] HCA 45:

“...cannot create something that has every feature of a rooster, but call it a duck and insist that everybody else recognise it as a duck.”

4. PRACTICAL APPLICATION

- 1. Carefully word the agreement and policies surrounding the appointment of the spiritual appointee**
- 2. The appointing entity should be a religious body – such as a church or NFP organisation whose primary objects are for the advancement of religion.**
- 3. Ensure the duties of the spiritual appointee are primarily spiritual duties of a religious nature.**
- 4. Get legal advice – we know the rights lawyers who can help!**

Questions?

Next Webinar

THURSDAY

6th December @ 1:00pm

Domestic violence within the church

corneyandlind.com.au/webinar/qb-domestic-violence-within-church/