



Spiritual Appointments and Employment Contracts

An Overview Guide for Churches

**Assisting local QB churches
extend a call to pastors.**



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1 Executive Summary

The changes to Employment Legislation in relationship to fixed term contracts that is scheduled to be implemented on the 6th December 2023, has some significant impacts for QB pastors and churches.

Currently churches can engage pastors with either an employment contract or a spiritual appointment. These are very different approaches, having both advantages and disadvantages, and each having their own unique challenges. QB Services has undertaken a thorough review of both approaches given the recent changes and has updated the relevant contracts and agreement templates. This guide discusses each approach and what churches need to do to effectively implement each.

It is important for church leadership teams (especially administrators, treasurers, and pastors) to understand each approach and to make a decision about which approach is preferred.

If churches have fixed term employment contracts in place greater than 2 years in total (considering any previous extensions or renewals), they will need to advise their employees and their congregations that from 6th December 2023, these employees will become permanent employees upon any renewal or extension to their contract. In addition, they will need to review their constitution and remove any clauses that refer to any fixed-term contracts and ensure they have the appropriate policies in place to manage their employees as per the requirements of the Fair Work legislation.

If churches are seeking to adopt spiritual appointments for their pastors, there is a need to ensure that documents that you have in place to facilitate this are up to date and there is consistency across these. Churches will need to ensure their own documents are up to date and conduct a review of their constitution to remove any clauses that seek to infer employment contracts and ensure that the intent for spiritual appointments is clearly articulated.

If a church seeks to change their approach, then they will need to have agreement from all parties.

This document seeks to help churches understand these approaches how to implement each legally and effectively. Queensland Baptist Services have developed sets of resources and templates and have provided an education session on these matters .

2 Introduction

Most pastors, when faced with the question “are you working for a church or serving God?” would say “Both!” But in our current employment landscape, churches and pastors must choose one to be primary – at least as far as defining their relationship. The distinction is very important as there are very different legal frameworks that need to be put in place for each of these.

When talking about relationships there is essentially 2 options on offer,

- 1) A pastor can be an “Employee” of a church, or
- 2) A pastor can be a “Spiritual Appointee” to the office of pastor at the church.

3 Understanding the Difference between Employees and Spiritual Appointees

Before getting into the detail, some definitions might help.

An “**employee**” is an individual who works casual, part-time or full-time under a “contract of employment”, whether oral or written, express or implied, and has recognized rights and duties which are described in a role

description. These employees are normally the subject of annual reviews that are used to assess whether they are performing their role appropriately. The relationship is one of employer / employee which includes the concepts of subordination, control and direction. There is a considerable volume of employment law in Australia (which we shall deal with below) and if you are an employer, then all this law applies to you. An employee is paid a wage or salary, which is in return for time or effort.

A “**spiritual appointee**” is an individual, called by God, who serves in an agreed spiritual role in or on behalf of a religious institution. The spiritual appointee’s role is broadly defined by the beliefs and practices of the religious institution and normally described in their foundational documents that govern their operation (referred to as their “consensual compact”). The role is focused around the spiritual nature of the calling, rather than on a list of duties or tasks and because of this fact, there is broad liberty and freedom granted to a Spiritual Appointee to act out their calling as they feel is appropriate. A spiritual appointee is not considered to be an “employee” as they do not have an employment contract and so the body of employment law does not apply to them. They are paid a stipend, which is not related to output or expertise, but is a payment voluntarily made by the church to ensure that the minister has sufficient income to live by so that they are not required to find another source of income and compromise the appointed role. **Because of the nature of a spiritual appointment, this naturally lends itself to Pastoral roles (Senior, Solo and Associate roles). While it could potentially be applied to ministry worker roles this is a more difficult task due to a lack of clear definition of Ministry Worker roles at a denominational level, the nature of the role being more management of ministry rather than broad spiritual oversight, and the likelihood that they are more directed and controlled in their role than a pastoral role. For this reason, QB would recommend that engagement of Ministry Workers be via employment contracts rather than spiritual appointments.**

A summary of the key differences between these two approaches is shown in Table 1.

Table 1 – Difference between an Employee and a Spiritual Appointee

	Employee	Spiritual Appointee
Form of Relationship	Employee / Employer	Appointment of a person to an “office” (of Pastor/Minister).
Defining Document	Employment Contract document	Spiritual Appointment document
Focus of Role	Duties and Tasks undertaken in service of the employer (the church).	Spiritual Service to God and to the church as an outworking of that.
Intention of the Relationship	The intent is to create a legally binding employment relationship (enforceable by the courts under the authority of the Fair Work Act and other employer / employee legislation) where there is mutual obligations with remuneration promised in return for service.	The intent is to create a relationship which is not legally binding or enforceable by legal courts. It is a relationship where a church appoints a minister to an office and into a covenant between God, the congregation and the minister that allows the minister to follow their call from God and minister to a church in light of their calling.
Definition of Role	Clear and detailed duties that direct the Pastor in their role. Duties are specified in a detailed Role Description and the entitlements and obligations are detailed in the Employment Contract and broader employment law.	Pastor given autonomy, freedom & discernment in how and what their ministry looks like. Broad description of role (character, qualifications and general duties) provided in denomination’s core policy documents that focus on the spiritual role

	Employee	Spiritual Appointee
		that is an outworking of their calling by God. It is recommended that more detailed discussion about roles be restricted to conversations rather than written role descriptions.
Control	Pastor's work is controlled and directed by the church (this may be delegated to leadership and worked out through a detailed role description) resulting in limited Pastoral autonomy.	The pastor may be accountable to a governance group (e.g. elders), but there is limited control and minimal direction operationally in this relationship which results in the pastor enjoying a level of autonomy and freedom. Rather than being controlled or directed, a Spiritual Appointee will work in collaboration with their Governance Group.
Financial Arrangement	Remuneration (salary or wage) is paid in return for time served and duties performed. It is a transactional approach with financial recompense given in exchange for work or service. It is expected and required as part of the contractual terms.	A Stipend provided by the congregation as an expression of grace to cover a pastor's living costs, enabling them to focus on and live out their calling rather than seeking alternative employment in order to fund their normal costs of living.
Negotiation of Terms	Permitted. Though minimum standards are not negotiable.	Not Permitted. The appointment is subject to established terms.
Fair Work Laws & National Employment Standards	These laws and standards govern all aspects of employment. They are a complex set of laws requiring complete and careful compliance.	Not applicable as not an "employee."
Hours of Work	Set days and hours for work as specified in contract. Maximum hours are defined in National Employment Standards. Additional work (not considered reasonably part of contract) can be refused or needs to be compensated via overtime payments.	Allows great flexibility in hours and days worked as well as location depending on what is required to fulfill a pastor's call and ministry. The Pastor is able to manage this.
Superannuation	Must be paid in accordance with Fair Work laws and the Superannuation Guarantee.	Does not legally need to be paid, but would be recommended as part of a church's broad support of a pastor's ministry and calling. If a church desires to make a contribution on behalf of the Minister, it must be paid as an "Other Third Party Contribution"
Leave Entitlements	Annual, Sick, Long Service, Personal / Compassionate, Parental and Community Service Leave as well as public holidays are all compulsory under National Employment Standards	None compulsory, but leave is recognized as essential to the longevity and wellbeing of a pastor. A church is free to determine what sabbath rest it would require of a minister to ensure they are able to minister effectively.
Fixed Term Contracts	From 6 th December 2023, any new fixed-term or maximum-term contract exceeding 2 years will have no effect and an employee will be considered to be permanent. There	Permitted if defined within the terms of the appointment.

	Employee	Spiritual Appointee
	are some exceptions.	
Termination of Employment	You must have a valid reason for terminating an employment and strict criteria and processes apply in such processes otherwise, an Unfair Dismissal Claim can be raised with the Fair Work Commission.	Relationship is able to be terminated by either party at any time as per the terms of the appointment, giving the agreed notice.
External Arbitration	Fair Work Commission oversees compliance to laws governing employment.	The denomination can be invited in to assist with resolving any disputes between the church and pastor.
WHS requirements	Applies as an employee is considered a “worker”	Applies as a spiritual appointee is considered a “worker”
Worker’s Compensation Payments	Applies as an employee is considered a “worker”	Applies as a spiritual appointee is considered a “worker”
Registration as a QB Minister	Required of pastors, but not necessarily linked to employment unless it is written into their contract.	Required of pastors and typically a qualification required for them to continue to function in their office as it monitors and confirms a minister’s fitness to serve.

In considering these two definitions, it is extremely important to take heed of the broadness of the definition of an “employee”. The defining document, the “contract of employment”, need not be a formal agreement with that heading. It might be a simple written agreement, or an exchange of emails, or even a verbal agreement that one party would do something in exchange for “consideration”. The consideration need not be financial. One example of this involved an old bush block that offered bush camping experiences for city people and was managed by a voluntary committee. The chair of this committee met a ‘drifter’ and offered him the right to stay in the old house on the block. As an afterthought, he asked him if he could do some work on the boundary fencing while he was living there. Some months later the man claimed he injured himself while doing the work. The Workcover Authority deemed there was a verbal contract of employment, and he was eligible for Workers Compensation for the injury suffered and for any loss of wages. This included any potential earnings and as the man claimed he was about to take a well-paid job tree-felling, it turned into a very expensive claim.

Historically, it once would have been universally understood that any appointment of clergy by a church was a Spiritual Appointment. But several recent legal cases have set a precedent that this is not the case. There should be no presumption that a minister working in a church is not an employee¹ and in fact, given the common practice in churches of seeking to document terms and conditions and provide clear role descriptions, it is more than likely that a court will find that an employment contract does exist and that a minister is an “employee” rather than a spiritual appointee. Even the language between pastor and church has become employee-like: “...how much sick leave am I entitled to?”; “...I intend to take paternity (or maternity) leave...”; “...if you sack me I will sue you for unfair dismissal...”; and so on. In many instances, the relationship has lost any sense of being a Spiritual Appointment and become a legal employment relationship.

¹ *Ermogenous v Greek Orthodox Community of SA Inc.* [2002] HCA 8.

Percy v Board of National Mission of the Church of Scotland [2006] 2 AC 28

McDermid v Anglican Trusts Corporation for the Diocese of Gippsland & McIntyre [2012] VCC 1406

Solomon Woldeyohannes v Zion Church in Melbourne Australia Inc [2020] FWC 4194

A summary of these Cases and their findings can be found in Appendix 1.

Some of the Challenges of Modern Employment Law for Pastors and Churches

So is it a problem for ministers to be treated as employees?

Of course, many churches do now have employees that undertake particular roles, including clerical, cleaning and sometimes pastoral work. There is a very specific job specification that covers the roles and responsibilities as well as terms and conditions, and these churches fulfil all the legal responsibilities that fall on them as employers. Such people clearly are not “Spiritual Appointees”.

Additionally, many of the benefits that employees are entitled to are good and appropriate benefits for pastors (e.g. Workers Compensation, superannuation contributions, and Long Service Leave). It is also appropriate for pastors to have the certainty of an agreement that ties down all the loose ends, clearly states the terms and conditions that apply and even (if necessary) gives recourse if one party does the wrong thing.

But in some very fundamental ways, a pastoral role is incompatible with being an employee. For example, every Australian employee has coverage from the National Employment Standards (“NES”) as set out in the Fair Work Act. These are regarded as minimum standards which must apply to the employee – but often do not work well for a pastoral role where a person is called by God to serve Him and his church. Consider these examples ...

- 1) The NES requires that employees work a maximum of 38 hours per week, or if they work more than that in a given week, the number of hours must average no more than 38 hours over an agreed period of time. There are situations where an employee can be requested to work more hours than these (for example a senior management position where remuneration is set at a higher level to reflect the additional responsibilities), but it must be established that this is reasonable as defined by the Fair Work Commission. This requires careful monitoring and can conceivably lead to employees refusing to work outside of normal set working hours or when there are periods of intense ministry or pastoral care which is not uncommon for many pastoral roles.
- 2) The NES also states that employees are entitled to public holidays, or penalty rates if they are required to work them. An employee can also refuse to work on a public holiday if it can be determined that there are reasonable grounds. While we would struggle to imagine it being possible, the NES establishes a framework where a pastor could refuse to work Christmas Day, Good Friday and Easter Sunday. While it is likely that the Fair Work Commission would deem that working on these days was a reasonable request for a church to make, it would undoubtedly create significant tension in working through this issue.
- 3) Most Church constitutions provide a facility whereby a Members’ Meeting can dismiss a pastor with three months’ notice. This may be as a result of the congregation discerning that they need to follow God’s leading in a new direction or just that the pastor’s time is coming to an end. The NES only provides for termination based on misconduct, under performance or when a role (e.g. Senior Pastor) is no longer required. A decision by a congregation to follow what they discern is God’s leading could be problematic under the employment framework unless the Pastor agrees to it and resigns voluntarily.

It is also illegal for an employer to contract out of these responsibilities, even if the employee is happy to forego them.

Here at QB Services, it is our view that both options of employment contracts and spiritual appointments are viable for churches, however, some employment conditions may create additional challenges for churches to manage and create a misfit for churches and pastors in certain situations.

The Alternative Approach - Spiritual Appointments

An alternative to pastors being considered as employees is for them to voluntarily enter Spiritual Appointments with a church. These return the relationship to its spiritual roots of allowing the Pastor to serve God through their appointment, but still provide the Pastor with necessary benefits (financial and other) to enable them to survive while doing so.

This approach has been long established in law, originally being established in English common law where the relationship between a church and a minister has been based on a conferral of an office known traditionally as a “benefice.”

A benefice is not a contract. The parties do not bargain or negotiate its terms. Though it deals with interests similar to a contract, civil courts do not enforce it. They treat it as an essentially spiritual product of the unique consensual compact among members of a church that could only be enforced under ecclesiastical law. More importantly, they have generally considered bargain and benefice to be mutually exclusive modes of appointment.²

Rather than negotiating specific terms and conditions of individual relationships, the church members focus instead on what the office (or role) of a pastor should be characterized by. Their focus is on spiritual aspects of the call that the pastor has from God, their shared doctrine and theology and appropriate behaviour and character that they expect to see in the pastor who assumes this office. These things are shared characteristics of all pastoral roles that are typically defined at a denominational level in documents that govern the accreditation of pastors. The church members when seeking a pastoral appointment defer to these commonly held characteristics as part of their appointment document.

This alternative approach to employment is recognized by the Courts³ and there are established criteria (indicia) which courts use to examine whether a spiritual appointment exists.

Comparison of the Benefits of Employment Contracts and Spiritual Appointments.

As with all decisions, there are advantages and disadvantages with either approach for both parties as shown in Tables 2 and 3. These statements seek to describe how each type of relationship is seen to operate under the law and as such they are by necessity generalizations, and may not describe all pastors or churches. It is important to recognize the fundamental characteristics of each type of engagement and regardless of the choice made, pastors and churches should seek to develop strong and trusting relationships that will enable them to work effectively and weather any relational disputes that might arise.

A careful consideration of these should be made before making any decision about whether a church should adopt employment contracts or spiritual appointments. It is clear from looking at these tables, that these different approaches have very different benefits and their own unique challenges.

² Mills, C 2018, *Bargain of Benefice? Understanding the Legal Relationship between an Australian Church and its Clergy*, Master's Thesis, QUT Business School., p.iii.

³ Knowles v The Anglican Church Property Trust, Diocese Of Bathurst [1999] 89 IR 47
 Preston (formerly Moore) v President of the Methodist Conference [2013] UKSC 29
 Steven Threadgill v Corporation of the Synod of the Diocese of Brisbane [2014] FWC 6277
 Rev. Hedley Wycliff Atunaisa Fihaki v Uniting Church in Australia, Qld Synod [2023] FWC 1650

A summary of these Cases and their findings can be found in Appendix 1.

Table 2 - Advantages and Disadvantages of Employment Contracts

	Advantages	Disadvantages
For Employees (Pastors)	<ul style="list-style-type: none"> Broad protections in place. The National Employment Standards (NES) ensure that employees receive fair and equitable compensation for their work and includes work hours, flexible work arrangements, various leave entitlements and rights to public holidays. Dispute resolution processes are available via an ombudsman and commissioner related to unfair treatment, wage disputes, or breaches of employment contracts. The Fair Work Commission can review dismissals and order reinstatement or compensation if a dismissal is unjust or if due process has not been followed. Legislation provides <ul style="list-style-type: none"> Protection against unfair dismissal. Anti-discrimination and equal opportunity provisions Parental leave policies Protections for vulnerable workers. 	<ul style="list-style-type: none"> The relationship is defined primarily by terms and conditions. The complexity of the legal requirements and the award system can result in lengthy and costly disputes. Minimum entitlements often do not provide for basic living expenses and an individual has limited power to bargain with an employer to change these. Since there are no awards covering pastors, the pastor is dependent on the church choosing a more generous remuneration level. Terms and conditions are set and there is limited flexibility to adjust these for individual needs or changing circumstances. Fixed role description and the power for employers to closely supervise, control and direct the specifics of your work often removes the autonomy of the employee. A greater chance of misalignment with personal (emotional and spiritual) values or ministry giftings because as an employee you can be directed and controlled in your role by the employer (church).
For Employers (the Church)	<ul style="list-style-type: none"> Clear employment standards exist to help employers maintain consistency in their employment practices. Ability to clearly define tasks for each role and set KPIs to hold employees accountable. Employer has the right to control and direct the work of an employee within the boundaries laid down in a role description. Dispute resolution mechanisms exist. Defined reasons for termination and clear processes for employers to follow when dismissing employees. Protection from industrial actions. The Fair Work Commission acts as an external umpire. 	<ul style="list-style-type: none"> Relationships take a back seat to terms and conditions, rights and entitlements when there are problems. Higher administrative burden to ensure compliance in a complex system. Often will require HR advice to ensure processes are followed correctly to avoid lengthy and costly disputes. Minimum standards are fixed with no room for negotiation on these. Limited flexibility on other items. Lack of flexibility of hours and days worked can lead to challenges in church ministry which is people focused and unpredictable. Restrictions imposed on how and why employees can be terminated require care when removing underperforming or problematic employees as well as when there is a sense that God is calling the church in a new direction. Restrictions on casual employment. Restrictions on fixed term contracts. Legislative frameworks of employment do not necessarily reflect a call to ministry or service of God and the Fair Work Commission looks at things through an employment lens rather than a spiritual calling lens. While enterprise agreements are possible, they are too complex to establish for pastors in a pastoral role.

Table 3 - Advantages and Disadvantages of Spiritual Appointments

	Advantages	Disadvantages
For Spiritual Appointees (Pastors)	<ul style="list-style-type: none"> Relationship is defined around a calling and spiritual ministry which has the potential to create a supportive and compassionate work environment. Greater flexibility in work hours, location and job responsibilities are possible to meet personal needs and ministry needs. Freedom and autonomy provided to pastor in how and when they complete their work. Better potential for alignment with personal values, mission, ethics and spiritual beliefs and alignment to their personal calling. There is a clear focus on a pastor's personal spiritual growth and development. Dispute resolution is available through the denominational relationship. 	<ul style="list-style-type: none"> Relies upon maintaining a strong and respectful relationship with church (especially leadership). Not provided with the same level of direction or clarity about a role. Left to pastor to determine the specifics of their role. Not the same level of legal protections against workplace discrimination or unfair treatment as employees. Don't have protection of being provided with the benefits listed in the National Employment Standards. Dependent upon the grace and goodwill of the church to provide for your needs (financial and other). No obligations to provide a stipend or other benefits Potential challenge maintaining a healthy work-life balance because of the expectation to be available outside of normal working hours. Requirement to ascribe to the opinions and beliefs of the organisation. Limited capacity for legal recourse if a dispute arises. There is ability for involvement of denomination to arbitrate, but power of decision still lies with congregation.
For the Church	<ul style="list-style-type: none"> Not considered an employment contract and therefore not under the legal authority or compliance demands of the Fair Work legislation. Based around a calling and establishing a relationship rather than a contract. Fulfilled and committed appointees. Provides the chance for clear alignment to the organisation's mission and vision (the spiritual). The focus is on spiritual qualifications and the ongoing spiritual life of the appointee. Character, cultural and spiritual fit are important considerations. Qualifications and criteria for appointments are set by shared theology and doctrine of the Association. Greater freedom to provide an arrangement that meets the needs of the appointee and the church and fits the ministry circumstances. Can appoint people for fixed terms . Able to terminate appointees with agreed notice without constraints of Fair Work legislation or review by Fair Work Commission. 	<ul style="list-style-type: none"> Appointment can be abused by a pastor if relationship breaks down due to limited direction. Not able to set specific role tasks or set KPI's for measuring performance. Not able to direct or control appointees. They must be given autonomy and freedom to minister as they see fit according to their calling. Creates a risk for the church. The actions of a pastor may not be in alignment with the church leadership view in every instance. Review of appointees is not on tasks or what is completed, but rather on whether the spiritual needs of the church are being met. There needs to be careful consideration that language and all documents of the organisation, including those used in the spiritual appointment process fit within a spiritual appointment framework.

4 Establishing a Spiritual Appointment

The biggest challenge of a church seeking to establish Spiritual Appointments is ensuring that the presentation of appointment cannot be construed as an employment contract. Because employment contracts are far more common in our society, people naturally slip into the language and practice of employment because it is familiar. However, doing this, undermines the purpose and even the legal foundation of spiritual appointments and thus potentially renders them an employment contract in the eyes of the law. Thus it is important to grasp the differences between Employment Contracts and Spiritual Appointments and follow the recommendations laid down in this guide as closely as possible.

It is critical that all documentation and communications related to a spiritual appointment have the following characteristics

- There is a clear intention that this is a spiritual appointment, not a legally binding employment contract.
- Language is not transactional or contractual – avoid terms such as employment, obligations, rights, entitlements, salary, wage, etc.
- Any benefits to be provided are given free of obligation to provide support to the pastor as they live out their calling in ministry to the church.
- The appointment needs to focus on the spiritual calling not on a list of tasks to be completed.
- The relationship provides freedom and autonomy to the pastor rather than defining relationships that involve subservience, control and direction of the pastor.

If a church chooses Spiritual Appointments, they enjoy the benefit of not being constrained by the requirements of the Fair Work Legislation. It may appear conversely that this means that a pastor has no protection from abuse or benefits. However, this is not the desired aim of Spiritual Appointments. A Spiritual Appointment is focused on relationships and needs to be structured to promote good and healthy relationships that are God honouring. Where each party is more concerned about the interests of the other than about self-interests, there should be little need for externally imposed protections such as are established in the Fair Work legislation. The fact that these are needed is sad indictment on the abuse and exploitation of workers in the past and are behaviours that should never be found or tolerated in any church.

While the pastor is invited in this arrangement to follow their spiritual calling as directed by God, at its most basic level, this normally aligns also with the church's own mission and values. The church therefore has a vested interest in their pastor being effective in their calling and this speaks to the consideration of what might allow a pastor to be successful or effective.

It is important and totally appropriate, therefore, to seek to define some basic provisions in spiritual appointments that might assist pastors work out their calling, provisions such as a stipend and patterns of sabbath rest. A primary purpose of a church providing these benefits is to free a pastor to pursue their calling and minister as called, without the need to have to find alternative employment to earn a wage that can sustain them in life.

The QB Spiritual Appointment Document

The Queensland Baptist Spiritual Appointment document, provides a template where a pastor's needs can be adequately provided for and at the same time, create an environment where the pastor is not disadvantaged in any way.

The template as provided contains several areas that require specific input, including the name of the church, name of the pastor, role, and start date. Additionally, there are brackets throughout the document indicating areas that need customization to fit your context.

The introductory sections in the first page and a half are carefully worded and should not be casually edited. It is important that this document clearly sets forth the intention of this appointment and basis of the pastoral call and office. It is important to state up front that it is not a contract of employment and that signing the Spiritual Appointment does not make the pastor a de-facto employee. The link to QB Registration is equally important as the link to a denominational standard of accreditation ties the Spiritual Appointment to the denominational policies and practices defining the call of pastors that make up the denominational “consensual compact.”

The subsequent section titled "SAA Provisions" includes a number of provisions. These should be designed to provide the necessary supports for the appointed pastor to enable them to minister in response to their calling from God without having to seek other means of support such as from other employment. There should be provisions in every SAA, covering stipend, exempt benefits, superannuation⁴, Sabbath rest, reviews, insurance coverage⁵, professional development, termination, and appeals process. Minor tweaks are allowed, but substantial changes are discouraged.

The optional clauses from (m) onwards are more flexible and may not apply to all appointments. Remove irrelevant clauses for clarity. Optional provisions cover part-time ministry, call length, housing, home office support, breaks, maternity/paternity leave, motor vehicle, and other specific conditions.

The SAA concludes with sections on Confidentiality, Relevant Policies and a Statement of Faith. Review the list of applicable policies for your church. The document requires signatures from the Church and Pastor.

Other Documents

The Spiritual Appointment document is an important part of the appointment documentation, but it is not the only document that is important. It is critical that all documents that comprise the appointment are consistent in their language and their intent and that they all point to a spiritual appointment rather than an employment contract. Thus, a set of templates are provided for churches to help in this regard.

Other parts of the appointment include

- 1) *A Letter of Offer*. A template letter of offer is provided.
- 2) *The Local Church Constitution*. It is important that all references to employment, contracts or other such terms are removed from a local church’s constitution and that instead, the constitution clearly point to a spiritual appointment approach. The constitution should refer to QB registration as an essential qualification for appointment and that this be maintained as a requirement for this appointment. Your constitution should also lay out a process for dealing with conflicts and disputes using internal and denominational processes. It should be careful to suggest that there would not be

⁴ Advice from the ATO received by QB on 24th November 2017 and later published as an ATO Edited Private Advice Authorisation No. **1051311987528 dated April 2018 indicates that the ATO views the relationship between a QB minister and a QB church is not one of employee / employer and thus the QB church is not required to make mandatory Superannuation Guarantee Contributions, nor is it permitted to make employer contributions on behalf of a minister. It may however, make contributions on behalf of a minister, but they must be labelled as “Other Third Party Contributions.” This has been confirmed in advice received from Christian Super dated 17th January 2018, but this advice should be confirmed by the superannuation fund nominated by the minister.**

⁵ In advice from Workcover received by QB on 16th November 2016, it was stated that Workcover “would generally consider ministers on a “spiritual appointment” to be “workers” according to the Workers’ Compensation Act. This does not mean employees from a legal sense, but only under our Act.” As a consequence, their wages will need to be declared as part of a church’s policy.

any support or processes sought from outside of the local church or denomination. An example of what a local church constitution might include is shown below.

Role of Pastor

The pastor will be a person called by God to a gospel focused ministry within a local church. They along with the elders are the spiritual leaders in the life and ministry of the church. They will have the necessary spiritual and other qualifications, experience, character and gifts that will enable them to be registered with Queensland Baptist as a Registered Minister. They will be appointed to the position of pastor to lead the church to fulfil the kingdom vision revealed by God and accepted by the members.

The pastor is primarily accountable to God. They are then accountable to the eldership and to the members of the church.

The broad duties of the pastor are the *General Duties of a Pastor* as set out in the *QB Registration and Ordination Guidelines*. The pastor will have the freedom and autonomy to work out their role in accordance with these general duties for the spiritual benefit of the local church and the community in which it is located.

Appointment of Senior Pastor

- a. The appointment of the pastor will be a Spiritual Appointment to the office of pastor. The church recognizes God's call on the pastor's life and commits to provide care and support for the pastor to enable them to work out this calling in the context of the local church.
- b. The pastor must be a Registered Minister, as defined by the Queensland Baptist Ministerial Services Committee, or become registered within six (6) months of the call being accepted. As such, the pastor must meet all the standards of qualification, gifting and character that are required of a Registered Minister.
- c. The decision to appoint a pastor is the congregation's. Any recommendation to call a pastor shall be voted upon at a members meeting as a recommendation from the eldership.
- d. The pastoral appointment shall be for a set period, as determined by the church on a recommendation by the eldership. An appointment can be terminated by either the church or the senior pastor, as per the provisions laid down in the terms and conditions of the relevant Spiritual Appointment document.
- e. Any recommendation to renew an appointment or terminate an appointment of a pastor shall be introduced to a members meeting as a recommendation from the eldership.
- f. In all decisions regarding the pastorate, a majority vote of two-thirds (2/3) of members' votes returned is required. Signed absentee votes presented to the church secretary prior to the meeting shall be accepted.
- g. If the pastor is found guilty of any moral offence or guilty of any misconduct (deemed as such by the Ministerial Services Committee of the Queensland Baptist), his appointment shall automatically be terminated.
- h. In the case of an extended absence of the pastor or if there is no pastor, the board will appoint a suitable person to fulfil the role of pastor until the pastor's return, or a new pastor is appointed.

Conflict Resolution

Resolution of conflict between the pastor and board members should follow the procedure laid down

in relevant church policy.

Should there be an impasse between the church Leadership and the pastor, which is hampering their ministry, either party will be at liberty, without the authority of the members, to request Queensland Baptist to nominate a mediator to discuss the issue, and under God's guidance, give advice.

Alternatively, if mediation is not appropriate or has been unsuccessful, a request or complaint can be raised with Queensland Baptist who will undertake an investigation of the circumstances and provide a judgment and list of recommended actions. These will be provided to the membership of the church to make a final decision in the said matter. First and foremost in their consideration will be whether the spiritual needs of the church are being met and whether the spiritual conditions and qualifications are being maintained by the pastor in question.

- 3) *QB Documents* that will comprise the *QB Consensual Compact*. For the purposes of establishing the legal standing of the spiritual appointment, it is important for there to be a set of denominational documents that lay out the nature of the relationship between the pastor and local church. These documents will include:
- The *QB Constitution and By-Laws* which contains our minimum doctrinal statement, vision and mission of QB as well as the relationship between QB and local churches. It also defines that registration of ministers is overseen by the Ministerial Services Committee and detailed in guidelines.
 - The *QB Registration and Ordination Guidelines* which contains information about the criteria that pastors need to satisfy in order to be registered. This also contains a general set of duties for pastors and highlights the spiritual nature of the role. The registration processes also extend to documents such as the *Ethical and Investigation Response Group Guidelines*, *The Code of Ethics and Ministry Practice for QB Ministers* and *Position Statements*.
 - The *QB Ministerial Remuneration and Stipend Guidelines*

Oral Communication

While recent legal cases have indicated that a written contract is the primary source document used to identify what sort of relationship is in place⁶, oral communication can also be construed as being important. Therefore, it is important for church leadership teams to be careful how they characterize the appointment of pastors. Using terminology that characterizes employment relationships (e.g. talking about being employed, using terms such as salary or wages, talking about leave entitlements or other National Employment Standard entitlements) can mistakenly infer that the relationship is one of employment when the intention is one of a spiritual appointment. Anyone who is involved in the appointment process must understand the nuances of the spiritual appointment process and be careful about what is said and implied.

⁶ *CFMMEU v Personnel Contracting* [2022] HCA 1

ZG Operations Australia v. Jamsek & Ors [2022] HCA 2

Muller v Timbecon [2023] FWCFB 42

A summary of these Cases and their findings can be found in Appendix 1.

5 Establishing an Employment Contract

In many ways, establishing an employment contract is easier than establishing a spiritual appointment. The contract of employment can be quite succinct since you do not need to be concerned about seeking to define benefits or provisions as these are clearly articulated in the Fair Work Act and associated National Employment Standards.

To assist in this process, Queensland Baptists will provide for churches templates for the key documents that will form a part of a standard employment contract including:

- 1) *A Letter of Offer.*
- 2) *An employment contract*
- 3) *A range of Role Descriptions* for common roles within churches.

In establishing an employment contract, there is significant responsibility placed on the employer to ensure that they are providing the minimum entitlements to the employee and that they have processes and procedures in place that manage that employee in a legally acceptable manner. Several key elements should be considered in this process:

- 1) *Offer and Acceptance:* The employer must make a clear and specific offer of employment to the individual. The offer should outline essential terms and conditions, such as job title, duties, work hours, compensation, benefits, and any other relevant details. The individual must accept the offer, either verbally or in writing, demonstrating their agreement to the terms of the contract. Failure to clearly articulate the terms and conditions can lead to disputes down the track.
- 2) *Intention to Create Legal Relations:* Both parties must intend for the employment relationship to be legally binding. In most cases, employment contracts are presumed to have this intention, but it's essential to clarify this in the offer and acceptance.
- 3) *Consideration:* Employment contracts require "consideration," meaning that both parties must exchange something of value. Typically, the employer provides compensation (salary or wages), benefits, and a job position, while the employee offers their skills, time, and commitment to perform the job. This mutual exchange forms the basis of the contract.
- 4) *Terms and Conditions:* The contract should include all essential terms and conditions of employment, such as job responsibilities, working hours, salary or wage rate, payment schedule, benefits (if applicable), duration of employment (e.g., permanent or temporary), and any other relevant provisions. Specific clauses may be included based on the needs and legal requirements of the employer.
- 5) *Compliance with Employment Laws:* Employers must ensure that the employment contract complies with all applicable employment laws and regulations at the federal, state, and local levels. This includes minimum wage laws, anti-discrimination laws, and any industry-specific requirements. Similarly, it must communicate the expectation that the employee complies with relevant laws such as Workplace Health and Safety, Privacy and Anti-discrimination.
- 6) *Termination and Notice:* The contract should address the procedures and notice periods for termination, including both voluntary resignation and involuntary termination by the employer. It should also outline any severance or notice pay provisions.
- 7) *Confidentiality and Non-Compete Clauses:* Depending on the nature of the job and industry, employers may include confidentiality agreements or non-compete clauses to protect their business interests and intellectual property.
- 8) *Governing Law:* The contract should specify the governing law that will apply in case of disputes and the

jurisdiction where legal actions will be taken.

- 9) *Signatures*: Both the employer and the employee should sign the employment contract to indicate their agreement and acceptance of the terms and conditions. Electronic signatures are generally accepted in many jurisdictions.
- 10) *Review by Legal Counsel*: It's advisable for employers to have employment contracts reviewed by legal counsel or human resources experts to ensure compliance with employment laws and to protect their interests.

Managing changes to Employer laws – An example, Limited Fixed Term Contracts

Employers should be aware that employment laws can vary significantly by jurisdiction and can change from time to time as legislation is updated. It is the responsibility of the employer (the church) to stay abreast of changes and be informed about the specific regulations applicable in their region. Consulting with legal professionals or HR specialists can help ensure that employment contracts are legally sound and meet all necessary requirements.

As an example of this, the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Act)* changes the way in which fixed term contracts apply to employment contracts. From the 6th December 2023, the Fair Work Act will dramatically limit the use of fixed or maximum term (or 'outer limit') contracts to perform the same role beyond a total of two years. Subject to a limited number of exceptions, the ban will cover any combination of:

- a single fixed or maximum term contract;
- a series of fixed or maximum term contracts; or
- one or more contracts containing one or more options to renew.

What this means in general is that offering fixed term contracts for pastors for periods greater than 2 years (in total) will soon be illegal⁷.

Circumstances that are granted exceptions to this 2 year limit include:

- 1) Performing only a distinct and identifiable task involving specialised skills;
- 2) Training programs for trainees or apprentices;
- 3) Where the employee earns more, under the contract, than the high-income threshold in the year in which they enter into the contract;
- 4) Where the employee has a governance position that has a time limit under the governing rules of a corporation;
- 5) Performing essential work during a period of emergency; or
- 6) Other circumstances as permitted by a modern award.

The fourth exception may be relevant for some churches in the case of a senior pastor who is a part of the governance group at the church. This would require relevant clauses in the local church constitution to state that governance members are required to have a limited appointment period after which they may be considered for reappointment.

In general, the implications of this change are that from 6th December 2023, most pastoral appointments (greater than 2 years) will need to be considered as permanent appointments. This means that churches will

⁷ An information sheet titled *Changes to Fair Work requirement for Fixed Term Contracts for QB Pastors and Church Workers* is available on this change.

need to have specific processes for managing pastors that will provide a framework for terminating these pastors if needed.

Processes required for termination of employees

There may be several reasons why a pastoral contract may be terminated. Churches need to ensure they have processes in place to act according to their obligations under workplace legislation when a termination is required. QB will be seeking to provide templates that will assist churches in these matters.

1) *Termination for Misconduct:* Processes under employment contracts would need to involve:

- a. *Investigation:* Before taking any disciplinary action, the employer should conduct a thorough and impartial investigation into the alleged misconduct. This may involve interviewing witnesses, reviewing evidence, and gathering all relevant information. Having a clear code of ethics or code of conduct is important in establishing whether misconduct has occurred.
- b. *Notice of Allegation:* The employee should be provided with a notice of the allegations against them, including details of the misconduct, evidence, and potential consequences. The employee should have an opportunity to respond to the allegations.
- c. *Meeting:* Arrange a disciplinary meeting with the employee to discuss the allegations and allow them to present their case. The employee has the right to be accompanied by a support person.
- d. *Decision:* After considering all the evidence and the employee's response, the employer should make a fair and reasonable decision regarding disciplinary action. This may include warnings, suspension, or termination, depending on the severity of the misconduct.
- e. *Notice of Termination:* If termination is the chosen outcome, provide the employee with written notice of termination, stating the reasons for termination and the notice period (if applicable). The notice period typically depends on the employment contract and employment duration. It is important to ensure that the notice period is in alignment with the *Fair Work Act 2009* (Cth).
- f. *Final Payment:* Ensure the employee receives their final pay, including any accrued leave entitlements, within the required time frame.

2) *Termination for Underperformance:*

- a. *Performance Management:* Implement a structured performance management process that includes clear expectations, regular reviews, feedback, and opportunities for improvement. Document in detail all discussions and performance issues.
- b. *Performance Improvement Plan (PIP):* If the employee's performance does not meet the required standards, develop a Performance Improvement Plan (PIP) outlining specific performance goals, timelines, and support mechanisms.
- c. *Regular Feedback:* Provide ongoing feedback and support to help the employee meet the performance expectations outlined in the PIP.
- d. *Review and Assessment:* At the end of the PIP period, assess whether the employee has achieved the required performance improvements. If not, consider further action.
- e. *Consultation:* If termination is being considered due to ongoing underperformance, consult with the employee, explain the concerns, and allow them to respond.
- f. *Termination:* If improvement is not achieved, and termination becomes necessary, provide written notice of termination with the required notice period and final pay.

3) Termination due to Redundancy (Changed Organizational Needs):

- a. *Identify Redundancy*: Determine whether the employee's position has become redundant due to changes in the organization, such as restructuring, technological advancements, or reduced workload.
- b. *Consultation*: Engage in a genuine consultation process with the affected employees, explaining the reasons for redundancy and exploring alternatives, such as redeployment within the organization.
- c. *Notice of Termination*: Provide written notice of termination, which includes the redundancy pay entitlement based on the employee's years of service.
- d. *Final Payment*: Ensure the employee receives their final pay, including redundancy pay and accrued leave entitlements, within the required time frame.
- e. *Redundancy Pay*: Comply with the statutory redundancy pay requirements under the Fair Work Act, which vary depending on the employee's length of service.

It's crucial for employers to follow due process, provide clear communication, and act fairly and reasonably when terminating employees in any of these scenarios. Employers should also be aware of any applicable awards, enterprise agreements, or individual contracts that may contain additional requirements or procedures related to termination. Legal advice or HR expertise can be invaluable in ensuring compliance with Australian Fair Work Legislation

6 Conclusion – my next steps

After gaining a detailed understanding of your options and the implications of each of these, a church must decide which approach it will take for its pastors. It is strongly advised that there be a consistency in the approach taken for pastors, that is, all pastors should be engaged by employment contracts or all appointed under spiritual appointments. Mixing the approach will inevitably lead to confusion and to problems down the track if the nuances of the two approaches are not strictly adhered to.

In making the decision you may consider the following.

We want to ... <ul style="list-style-type: none"> - Focus on the task aspects of the pastoral role. - Define pastoral roles (and tasks) in detail through role descriptions. - Set KPI's for pastors and measure their performance. - Provide clear direction to pastors about their roles. - Manage pastor's work and control their work. - Adopt the National Employment Standards and broader employment laws as standard employment terms and conditions. 	Employment Contracts will likely be the best approach
We want to ... <ul style="list-style-type: none"> - Focus on the spiritual aspects of the pastoral role. - Provide flexibility for the pastor to live out their calling in a way they believe is appropriate. - Have flexibility in conditions and terms around the engagement and not be constrained by various aspects the standard Employment Laws. - Have an engagement that is relational rather than contractual. - Have the potential for having fixed term contracts. - Not be constrained by the National Employment Standards and broader employment laws. 	Spiritual Appointments will likely be the best approach

Once a decision is made, you will need to consider what needs to happen to implement changes.

If you have fixed term employment contracts greater than 2 years (in total considering any previous extensions), you will need to advise your employees and congregation that from the 6th December 2023, your employees will become permanent employees upon any future renewal or extension of their contract. You will need to review your constitution and remove any clauses that refer to any fixed term contracts.

If you are seeking to adopt spiritual appointments, there is a need to ensure that documents that you have in place to facilitate this are up to date and there is consistency across these. Again, there may be a requirement to review your constitution and remove any clauses that seek to infer employment contracts and ensure that the intent for spiritual appointments is clearly articulated.

If a decision is made to change your arrangements, then you will need to have agreement from all parties and so there will need to be education and conversation.

Queensland Baptist Services has provided some information and education sessions on these matters to assist pastors and churches to process the changes in the Fair Work legislation.

Version Control

Version	Date	Main Changes
1.0	22/9/23	Original Published Version
1.1	29/11/23	Document updated in accordance with Fair Work Advice that current contracts will not be changed and that changes will only be for contracts established after 6 th December 2023. Other minor changes throughout the document to make it more readable, especially in Tables 2 & 3. Published on new QB Guide Template

A description of the last 3 version changes should be listed

Appendix 1 – Relevant Legal Cases, their Findings and Precedents

Cases that upheld an Employment Relationship are shown in Red.

Cases that dismiss the existence of an Employment Relationship are shown in Blue.

Teen Ranch Pty Ltd v Brown [1995] 87 IR 308

In this case, volunteer Brown worked for Teen Ranch, receiving accommodation, food, and facility use, but without wages. He claimed an employment contract for workers' compensation after getting injured. The court ruled no binding employment contract existed, as there was no clear intention for legal relations. Brown's work was voluntary, driven by altruism, not payment, and thus, he wasn't entitled to workers' compensation.

Knowles v The Anglican Church Property Trust, Diocese Of Bathurst [1999] 89 IR 47

In this case, it was established that the relationship among church members in New South Wales is termed a "consensual compact," rooted in shared faith and spiritual beliefs, rather than a typical legal contract.

It was concluded that the relationship's provisions did not align with a standard employment contract, but was fundamentally religious and based on shared faith and spiritual ideas. **The use of the term "employment" in this context was considered equivalent to "appointment," indicating that it did not inherently imply a legally enforceable employment relationship. The court distinguished between the possibility of a priest entering into a contract of employment with a secular employer and the unique relationships involved in fulfilling priestly functions within the church.**

Ermogenous v Greek Orthodox Community of SA Inc. [2002] HCA 8.

In this case, the Archbishop of the Autocephalous Greek Orthodox Church (AGOC) claimed to be employed by a community organisation focused on promoting Greek Cultural Heritage in South Australia. The High Court of Australia ruled that the AGOC and the organization were closely integrated, and **the Archbishop's responsibilities for the AGOC were also considered duties owed to the organisation.** The Court rejected the presumption that there was no intent to create a contract and determined that the way the Archbishop was engaged resembled an employment contract. **Despite the spiritual nature of his ecclesiastical role, the Court found that this role also served the organisation's broader purpose.** Ultimately, the Court concluded that the Archbishop was indeed an employee of the community organization, and **his engagement had the characteristics of an employment contract.**

Percy v Board of National Mission of the Church of Scotland [2006] 2 AC 28

In this case, an associate minister within the Church of Scotland was considered to be in an employment relationship, despite her role's spiritual nature. She had a formal employment contract that included a stipend, defined duration, and responsibilities. Importantly, **the Church's authority to discipline or dismiss her extended beyond spiritual matters.** As a result, she had the legal right to pursue a discrimination claim, indicating that her employment contract encompassed both spiritual and non-spiritual aspects.

Gutnick v Bondi Mizrahi Synagogue [2009] NSWSC 257

In this case, a Rabbi, sought to prevent the termination of his employment by the Synagogue on redundancy grounds. He argued that his employment contract either explicitly or implicitly included hazaka, granting him life tenure. This would mean that his employment could only be terminated with his consent, involving payment for life, or through a decision by a religious court in accordance with Jewish law. While it was unclear if hazaka was expressly included in his contract, Judge White acknowledged that there was a significant question about whether hazaka continued to apply after the expiration of the 1987 contract, as it had not been explicitly excluded.

Bellia v Assisi Centre Inc [2010] FWA 2904

In this case it was determined that a priest seeking unfair dismissal relief had an employment relationship with the Respondent, an aged care facility. **This conclusion was based on various factors, including the priest's performance of both religious and pastoral duties, the nature of the organisation which was not purely religious, the organisation's control over the priest's work, his exclusive employment with the organisation, and the financial arrangements, such as stipend, benefits, and tax deductions.** This decision is consistent with the principles established in the Ermogenous case, classifying the priest's role as an employment relationship rather than purely religious.

McDermid v Anglican Trusts Corporation for the Diocese of Gippsland & McIntyre [2012] VCC 1406

In this case, an Anglican minister claimed to be an employee to access worker's compensation entitlements. The Court ruled in favor of the minister, considering that **the terms of his appointment were based on an individual agreement rather than being governed solely by the church's rules**. The contract's key elements were overseen by the Diocese, with the Bishop having authority over the minister's duties. Consequently, the court determined that **the minister's employment primarily involved carrying out the spiritual functions of his role**, aligning with the precedent established in *Percy v Board of National Mission of the Church of Scotland*.

Preston (formerly Moore) v President of the Methodist Conference [2013] UKSC 29

In the case involving a Methodist minister, the Supreme Court of the United Kingdom determined that there was no employment contract. They found that Methodist ministers' engagement is based on their standing in the church's constitution rather than a conventional employment contract. **Ministers receive benefits like housing and stipends due to their ecclesiastical status of being a minister, and their relationship with the church is not terminable by unilateral resignation but rather requires decisions by specific church committees**. Therefore, the Court concluded that this relationship cannot be characterized as an employment contract.

Steven Threadgill v Corporation of the Synod of the Diocese of Brisbane [2014] FWC 6277

The Fair Work Commission upheld a jurisdictional objection to the minister's unfair dismissal

application because he was not an employee. **While the church Hi the language of employment for the rector's visa application, taxable stipend, and other benefits, this did not necessarily imply an employment contract**. The mere use of descriptions that resembled employment-like benefits was not enough of itself to change the parties' substantive obligations.

Solomon Woldeyohannes v Zion Church in Melbourne Australia Inc [2020] FWC 4194

In this, an assistant pastor sought protection from unfair dismissal in the Fair Work Commission. The church contended that he was not an employee but rather in a spiritual relationship, while the assistant pastor claimed he was an employee based on continuous payments and other employment-related factors such as leave entitlements. The tribunal ruled that a contract of employment did exist, emphasizing that **the common law in Australia doesn't presume that relationships between religious bodies and their ministers are exempt from legal obligations**. This case signifies a shift in Australian law, recognizing employment relationships even within religious contexts. **It underscores the importance of having written agreements that reflect the parties' intentions to avoid ambiguity in such relationships**.

Rev. Hedley Wycliff Atunaisa Fihaki v Uniting Church in Australia, Qld Synod [2023] FWC 1650

In this case, a minister received a "Letter of Call" from the Uniting Church outlining various entitlements but without specific duties. **The Commissioner determined that the minister's relationship with the church was not based on an individually negotiated employment agreement. Instead, the stipend provided was considered a living allowance, and control over the minister's duties was governed by church regulations and the Presbytery, not a negotiated agreement**. The minister was paid by the church's "business arm" and supervised by the Presbytery while working for the Congregation, emphasizing the absence of an individual employment contract.

CFMMEU v Personnel Contracting [2022] HCA 1

ZG Operations Australia v. Jamsek & Ors [2022] HCA 2

The High Court overturned two Full Federal Court decisions, highlighting the primacy of written agreements in determining whether a worker is an employee or an independent contractor. In their decisions, they departed from the longstanding traditional multi-factorial test that included both the terms of the contract and how it was performed and just focussed on written agreements.

In *CFMMEU v Personnel Contracting*, the Court stressed that when a written contract clearly establishes an independent contractor relationship and is legally valid, there's no need for an extensive review of the parties' history. The Court found Mr. McCourt, labelled as an independent contractor, to be an employee based on the agreement's terms.

In *ZG v Jamsek*, where agreement validity wasn't challenged, the Court confirmed independent contractor status based on the written agreement. These rulings didn't address the approach in cases without written agreements or how the multi-factorial test should be applied in such situations.

These cases emphasize the importance of accurately categorizing employees and independent contractors and ensuring well-drafted and effectively implemented contractor agreements to avoid legal and commercial consequences.

Muller v Timbecon [2023] FWCFB 42

In the Muller case, a photographer's employment status was at issue in an unfair dismissal claim. Despite initially agreeing to work as a contractor, the photographer later worked full-time hours for the company, Timbecon. The contract was varied to reflect the increased days worked, but did not change the control Timbecon had over the photographer or his ability to work in his own business. The court's decision stressed the significance of the original contract terms and disregarded post-contractual conduct upholding the photographer as a contractor not an employee. The Fair Work Commission upheld this approach, highlighting the importance of clear, written contracts that outline the parties' intentions and discouraging reliance on post-contractual conduct to establish contract terms.