



Baptist Churches
of NSW & ACT

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Guidelines on Employment vs Spiritual Appointment

Background

The purpose of this document is to outline the considerations around employing a pastor vs the spiritual appointment of a pastor in a Baptist Church in NSW/ACT.

Currently, the vast majority of Baptist Churches in NSW and ACT are in an employment relationship with their pastors which is regulated by employment and other state and federal laws. This is despite the fact that the church may have a letter of call with their pastor as there are other indicators that create an employment relationship with the pastor which may or may not be intentional.

This document should be read in conjunction with the *Remuneration Recommendations* as well as the *Guidelines for the Remuneration of Ministers*.

What is an employee and spiritual appointment?

An employee is a person who is hired to provide a service to an organisation either on a full-time, part-time or casual basis in exchange for payment. ¹

Indicators that may suggest an employment relationship include, but are not limited to:

- A written contract of employment between the pastor and the church
- A position description for the role stating duties, outcomes, and indication of regular weekly hours
- Contribution of superannuation and withholding and remitting of tax by the church on behalf of the minister
- Entitlement to and payment of leave

A spiritual appointment is a type of covenantal relationship grounded in a call from God to ministry, confirmed by the church.

Indicators that may suggest a spiritual appointment relationship include, but are not limited to:

- A written *Letter of Call* which is a document outlining the Spiritual Appointment, giving effect to the will of God as expressed by a decision of the governance of the Church and by the response of the Pastor concerned. It is an invitation into a covenant between God, the congregation and the Pastor and is not based on a common law contract

¹ Definition as per Fair Work Australia available at <https://www.fairwork.gov.au/dictionary/e>



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- The payment of a living allowance i.e. stipend and provision of a manse to the minister as they exercise their needs rather than a salary
- No position description – rather, the pastor is given autonomy and discernment in their ministry.

Determining whether an employment or spiritual relationship exists between the church and a pastor would need to be done on a case by case basis and include an examination of the rules and practices of the church. Any special arrangements made with the pastor will also need to be considered and assessed.

Differences between employee and spiritual appointment

Below are some differences to be considered between a pastor as an employee vs spiritual appointment in the context of a typical Baptist Church in NSW/ ACT being an unincorporated entity registered as a Basic Religious Charity under the ACNC:

	Employee		Spiritual Appointment	
	Difference	Things to consider	Difference	Things to consider
The role				
Defining document	Employment contract between the Pastor as the employee and Church Leadership as the employer.	Employment contract and any subsequent changes to the contract should be documented in writing.	Letter of Call, being the document outlining the Spiritual Appointment between the Pastor and the congregation of the church (or Leadership as the representative of the congregation)	There needs to be careful consideration of language in all documents of the church to ensure that they fit within a spiritual appointment framework.
Pastors Role	The pastor's role is clearly defined in the position description and includes expected duties and outcomes. KPIs are able to be set to hold them accountable.	There is clarity and accountability in the role of the pastor. The Church Leadership is able to direct and controls the work of their pastor to ensure it is in line with church Vision.	The pastor is given autonomy and discernment in their ministry. Not able to set specific duties, outcomes and KPI's for measuring performance.	Broad description of the role i.e. character, qualification and general duties may be provided in policy documents that focus on their spiritual role as an outworking of their calling by God. As such, there is not the same level of clarity about their role, this is left to the pastor to determine which also means it is harder for a church to direct or control the work of their pastor.
Payment	Salary and wages are paid.	Payments will need to be in line with the <i>Fair Work Act 2009</i> which also includes provisions on minimum wages. The Baptist Association recommends that the pastor is paid in line with the annual Remuneration Recommendations Guidelines.	Living allowance is paid i.e. stipend and provision of a manse/ housing allowance	Legally, as they are not an employee, there is no legal minimum to be paid. The Baptist Association recommends that the pastor is paid in line with the annual Remuneration Recommendations Guidelines.

Employment Related Laws				
Employment laws	<i>Fair Work Act 2009</i> (including the <i>National Employment Standards</i>) apply.	<p>The Fair Work Act ensures protections for employees in the workplace.</p> <p>The Church will need to comply with the Fair Work Act which includes the National Employment Standards. This means that the church will need to have written policies and procedures in place that are in line with the compliance requirements.</p>	Employment laws do not apply as the pastor is not an employee.	There are less legal protections for the pastor. For the church, it is important that there are clear written policies and procedures in place to ensure the pastor is treated fairly and consistently, as well as looking after their health and wellbeing.
Fixed Term Contracts	No.	<p>There are some exceptions, refer to https://www.fairwork.gov.au/starting-employment/types-of-employees/fixed-term-contract-employees .</p>	Yes.	As they are not employees. The term should be documented in the Letter of Call.
Hours of work	Set hours for work	<p>Full-time employees usually work an average of 38 hours each week. Part time employees would be on a pro rata basis.</p>	Flexible hours and days worked in order to fulfill the call as determined by the Pastor.	There may be expectations that the pastor is available outside of “normal working hours” which will need to be monitored to ensure their health and wellbeing.
Work Health and Safety requirements	Applies as an employee is considered a worker.	<p>The Church will need to comply with the <i>Work Health and Safety Act 2011</i>. This means that the church will need to have written policies and procedures in place that are in line with the compliance requirements.</p> <p>Note that recent changes include identifying and managing hazards and risks to workers’ psychological health and safety as well as physical health and safety in the workplace.</p>	Applies as a spiritual appointment is considered a worker.	<p>The Church will need to comply with the <i>Work Health and Safety Act 2011</i>. This means that the church will need to have written policies and procedures in place that are in line with the compliance requirements.</p> <p>Note that recent changes include identifying and managing hazards and risks to workers’ psychological health and safety as well as physical health and safety in the workplace.</p>

Employment Related Laws (continued)				
Workers Compensation	Applies as an employee is considered a worker.	The Church should have documented policies and procedures in place to ensure compliance with the <i>Workers Compensation Act 1987 (NSW) / Workers Compensation Act 1951 (ACT)</i> ²	Applies as a spiritual appointment is considered a worker.	The Church should have documented policies and procedures in place to ensure compliance with the Act ²
State and Federal Antidiscrimination laws in relation to employment e.g. <i>Anti-discrimination Act 1977, Age Discrimination Act 2004, Sex Discrimination Act 1984</i> etc	Applies as an employee.	There are legislations that provide protections for employees. This means that the church will need to have written policies and procedures in place that are in line with the compliance requirements.	Laws in relation to employment do not apply.	There are less legal protections for the pastor, as a church it is important that there are clear written policies and procedures in place to ensure the pastor is treated fairly and consistently, as well as looking after their health and wellbeing.
Entitlements				
Superannuation	To be paid in line with the Superannuation Guarantee Administration Act 1992.	The Baptist Association recommends superannuation is paid in line with the annual Recommendations Guideline.	No legal entitlement.	The Baptist Association recommends superannuation to be paid to support the Pastor in line with the annual Recommendations Guideline. This should be paid as an <i>other third party contribution</i> rather than as an <i>employer contribution</i> .
Leave entitlements	In line with National Employment Standards (NES).	For further information on NES Leave entitlements refer to https://www.fairwork.gov.au/employment-conditions/national-employment-standards	No legal entitlement.	The Baptist Association recommends leave for Pastors as it is essential to their wellbeing in line with the annual Recommendations Guideline.

² Details available at <https://www.sira.nsw.gov.au/resources-library-old/workers-compensation-resources/publications/workers-compensation-policies/workers-compensation-guide-for-employers#:~:text=receive%20their%20entitlements.-,Your%20obligations,have%20workers%20compensation%20insurance&text=display%20the%20if%20you%20get,if%20a%20worker%20is%20injured>

Termination of employment				
Termination of employment	<p>An employee may resign on their own or can be dismissed. Dismissals must be done in line with Fair Work Act 2009.</p> <p>This means, among other things, that procedural fairness should be provided.³</p>	<p>Dismissals will need to be addressed in line with the Church's applicable policies e.g. Performance Management, Disciplinary Policy, Termination Policy etc.</p> <p>Under performance will need to be addressed in line with Church Policy on Performance Management and Disciplinary Policy if applicable to ensure procedural fairness is provided.</p> <p>Some churches have provisions in their constitution for the church meeting to vote to remove a pastor. It should be noted that such provisions are overridden by the requirements of the Fair Work Act as described above. This means that, while a church may vote to terminate a pastor's employment if it's constitution provides for this, it may only do so after the processes and requirements of the Fair Work Act have been adhered to.</p>	The relationship may be terminated by either party in line with the letter of call.	Inability for the pastor to meet the spiritual needs of the church needs can be addressed through constitutional provisions around loss of confidence vote by members of the church which may vary from church to church.
External arbitration	The Fair Work Commission oversees compliance to laws governing employment.		The Association (or external dispute resolution consultants) may be invited to assist with any dispute resolutions.	

³ Procedural fairness includes such things as

- the church had relevant procedures in place for dealing with the situation, and followed them
- the minister is informed about the situation and has opportunity to explain their side of it
- the minister was able to seek advice or have a support person available at meetings dealing with the situation

Also see <https://www.fwc.gov.au/other-relevant-matters#:~:text=Procedural%20fairness%20is%20concerned%20with,been%20harsh%2C%20unjust%20or%20unreasonable.>

Conclusion

There are many considerations when deciding between employing your pastor vs spiritual appointment of your pastor for your Baptist Church. We recommend the Church Leadership carefully assess the above differences to determine the best fit for your ministry situation and then support this decision with required documentation including updating policies and procedures. This is essential to safeguard both parties, ensure mutual understanding, and adhere to applicable laws.

A Pastor who is spiritually appointed does not have the same legal entitlements and protections as a Pastor who is an employee. The Baptist Association recommends that there are entitlements and protections in place for Pastors who are employees as well as spiritual appointments as outlined in our annual Recommendations Guidelines.