

# ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



## Rev. Paul Anthony O'Donnell v The Trustees of The Roman Catholic Church for The Diocese of Wilcannia-Forbes [2024] FWC 1223

Fair Work Commission, Deputy President Easton, 9 May 2024

A priest claimed unlawful dismissal from his office with a Diocese.

**Key words:** Church, Australia, Retirement, Stipend, Contractual Relationship

1. Dr O'Donnell was ordained as a priest of the Catholic Church in 1980 and held various positions within and outside the Diocese of Wilcannia-Forbes (the Diocese) over a period of approximately 33 years. Dr O'Donnell retired in 2013, and the then-Bishop made specific arrangements regarding his sustenance in retirement.
2. Dr O'Donnell argued that in 2023, in his retirement, he was an employee of the Trustees of the Roman Catholic Church for the Diocese of Wilcannia-Forbes (the Trustees) and that in September 2023, he was unlawfully dismissed from his employment in contravention of the general protection provisions of the [Fair Work Act 2009](#) (the Act).
3. Dr O'Donnell claimed that a letter recording a meeting with the Apostolic Administrator of the Diocese in 2011 was a contract of employment as it had the look and feel of one, with the obligations and rights and important terms expressed in writing. It recorded a settled arrangement based upon offer and acceptance with consideration.
4. It was argued that the nature of the contract must be employment, as he was not conducting his own independent business as an independent contractor.
5. Further, Dr O'Donnell was nominally available to continue or otherwise undertake spiritual activities within the diocese as required, to fill temporary vacancies of parish priests.
6. The removal of the monthly stipend was a repudiation of the employment contract and, therefore, a dismissal.
7. The Trustees argued that Dr O'Donnell was not an employee in 2023 or earlier and that its relationship with Dr O'Donnell was covenantal and spiritual and incapable of recognition as temporal employment. Prior decisions in the Fair Work Commission had recognised the covenantal and spiritual position of some ministers of religion and rejected claims of employment (see [Fihaki v Uniting Church in Australia, Qld Synod](#) [2023] FWC 1650, [Woldeyohannes v Zion Church](#) [2020] FWC 4194 and [Threadgill v Corporation of the Synod of the Diocese of Brisbane](#) [2014] FWC 6277).

8. Further, they argued that Dr O'Donnell had no role whatsoever in the life of the Diocese after his retirement, neither residing within its geographical bounds, nor playing any part in its affairs. He was neither expected nor required to provide spiritual or temporal services after that, and did not do so.
9. The issues before the Commission were:
  - whether Dr O'Donnell was an employee of the Trustees in September 2023; and if so,
  - whether he was dismissed from his employment in September 2023 when his stipend was unilaterally and significantly reduced.
10. The Commission found (at [49]):
  - (a) the parties did not have any intention to create legal relations in 2011 when Dr O'Donnell returned to work in a parish in the Diocese;
  - (b) Dr O'Donnell was therefore not an employee of the Trustees when he was a parish priest between 2011 and 2013;
  - (c) when Dr O'Donnell retired in 2013 and stopped working in and for the Diocese, any possible employment relationship between the parties was terminated;
  - (d) when Dr O'Donnell sought and was granted permission to retire 15 years earlier than convention required, no legal contract was made or varied at this time, let alone an employment contract;
  - (e) after he retired Dr O'Donnell was not contractually obliged to stand and wait for directions to perform work, nor was the Trustees obliged to provide work for Dr O'Donnell to perform or pay him; and
  - (f) when the Trustees and/or the Diocese unilaterally reduced Dr O'Donnell's retirement stipend in 2023 it did not repudiate any contract with Dr O'Donnell or otherwise dismiss Dr O'Donnell from employment.
11. The Commission found that the correspondence between Dr O'Donnell was not a legal contract because the parties did not intend to create contractual relations. It was prepared (at[ 54]):

...to avoid any "canonical misunderstanding", which is indicative of the parties agreeing to operate within the Canon laws and conventions of the church rather than a voluntary assumption of a legally enforceable duty.
12. While there was evidence of retired priests performing incidental functions on an ad hoc basis for additional payment, Dr O'Donnell had not established by way of any evidence at all that a term of this contract, either being a new contract or a variation to the contract, included any requirement for him to perform work, or to be available to perform work.
13. Dr O'Donnell had maintained a connection to the Diocese, but this connection was not related to his work, or even to the work that he could have been called upon to perform. It was the product of his history in the Diocese and his shared faith with others in the Diocese.
14. Dr O'Donnell had argued that because he was incardinated as a priest to the Bishop of the Diocese, he was a priest for life unless he resigned from the priesthood or was defrocked. The Commission remarked that this may be correct under Canon law, but did not provide evidence of an ongoing contractual relationship, or an ongoing employee status.
15. The Commission was not satisfied that there was a contract of employment in 2023 and that Dr O'Donnell was an employee who was dismissed in 2023, as claimed.



Common law courts have traditionally conceived of the relationship between a church and its clergy as the conferral of an office known as a benefice, not a relationship of master and servant. 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.

The underlying legal concepts came to Australia from the United Kingdom, where the relationships were characterised historically as benefice appointments. A benefice is a proprietary estate given to clergy. In state-established churches, this entailed similarities to the way the state commissioned, empowered, and enabled a military officer to fulfil military duties, or a police officer to perform executive duties pertaining to law enforcement.

Australian law has altered, both in the common law and statute. Where the circumstances of engagement of a minister of religion by a church or other organisation show the characteristics of an employment relationship, the relationship will be governed by employment law. It is prudent to record the understanding of the parties in a written agreement to reduce the risk of the relationship being characterised by circumstances rather than the expressed intention of the parties.

For a complete treatment of the issue of clergy employment, refer to: Mills, Christopher J.R. (2018) [Bargain or benefice? Understanding the legal relationship between an Australian church and its clergy](#). Master's by Research thesis, Queensland University of Technology.

## VIEW THE CASE



This case may be viewed at: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FWC/2024/1223.html>

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**Date of creation:** June 2024

**Number of case:** 2024-84

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*ACPNS acknowledges the funding assistance of Our Community to produce the ACPNS Legal Case Notes Series.*



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