

Gaze Burt has been active in advising charities and, in particular, churches and organisations with an Open Brethren heritage, for over 75 years. Churches and charities regularly ask us about potential liability issues. We have been asked by Stewards' Trust to assist Brethren Assemblies by providing practical answers to a number of typical questions that you may face, which we have been asked over the years. These are intended as general guidelines and are not a substitute for taking specific legal advice tailored to your particular circumstances.

I've heard that under the Human Rights Act our Church is not allowed to discriminate against certain people or organisations. What does this really mean? Who are the people I can't discriminate against and in what areas?

The Human Rights Act prohibits discrimination on various grounds. These grounds are gender, marital status, religious or ethical belief, colour, race or ethnic origins, disability, age, political opinion, employment or family status, and sexual orientation.

You are not permitted to discriminate against someone based on one or more of the prohibited grounds. Specified areas where discrimination is expressly forbidden include employment, qualification or ordination, access to education, access to accommodation, land or housing, access to vehicles or facilities, and in the provision of goods and services (when offered to the public).

In one notable case a Christian businessman who ran a service station advertised for a "keen Christian" to pump petrol. This was deemed to be unlawful discrimination as there is no reason why a non-Christian cannot pump petrol as effectively as a Christian.

However, this does not mean that a church cannot have a requirement that its pastors must be keen Christians. Each prohibited area of discrimination has its own set of exceptions. Some of the most relevant to churches are:

1. You are allowed to discriminate on the basis of ethical or religious belief when employing someone, if the job in question is for a pastor, priest, or equivalent role, or a teacher in a private school.
2. You are allowed to discriminate on the basis of gender when employing if this is necessary to comply with the doctrines or rules of a religion. So, for example, you could specify that a pastor would need to be a male.
3. You are allowed to discriminate on the basis of qualification or ordination where it is necessary in order to comply with the doctrines or rules or established customs of religion. So, you could state that a pastor must hold a theological degree.

Various other exemptions may be permitted depending on individual requirements of the role. Seek clarification from an expert before relying on any exemption.

What about an applicant for a pastor or associate pastor position who is a practising homosexual?

There is enormous and deceptive complexity involved in this question, both in the determination of what the pastor or associate pastor's role actually is in relation to the local church, and how the Human Rights Act may be applied. However as a general summary it is sufficient to say that:

- a) If you employ your pastor or an equivalent role you may discriminate based on either ethical belief or religious belief - given that practising homosexuality is a religiously prohibited activity

(if you take the Bible seriously). For the same reason an existing religious leader could be dismissed for practising homosexuality.

- b) If you call or ordain your pastor, you may refuse qualification or ordination where it is necessary in order to comply with the doctrines or rules or established customs of religion.

We make our Church available for weddings. From time to time we make the church available for non-christian wedding services as well. But we don't want to make the church available for civil union ceremonies. Can we draw this distinction? Would we be illegally discriminating?

Possibly you would be illegally discriminating. The most practical way to ensure you don't run into trouble is probably to have a policy that you will only hire the church out for weddings in which an approved member of your church is involved as a celebrant. Then, issue a policy that members of your church should not seek listing as celebrants for civil union ceremonies.

Nothing prevents you from allowing the occasional exception to the policy (e.g. where a couple for good reason want a Christian celebrant who is not a member of the church). But at least if you have a written policy as outlined above, it gives you a rationale for declining hireage of the church for a civil union ceremony.

What about health and safety and OSH issues? We have heard that this is a very big deal. In a nutshell, what are our obligations?

"OSH" stands for "occupational health & safety" which the Department of Labour manages. They don't specifically prohibit activities. Your duty is "to take all reasonably practicable steps" to avoid harm to your staff, volunteers and people who attend the church. That is your broad duty. In practice it has been deemed to require 3 steps:

- 1) identify all hazards (actual or potential causes of harm)
- 2) identify the significant hazards (the ones that could cause serious harm)
- 3) Develop a suitable system or action relevant to each specific hazard:
 - eliminate the hazard if possible (e.g. use lifting equipment for really heavy loads). If that's not possible
 - isolate the hazard (e.g. putting the dangerous equipment in one area) or
 - minimise the hazard (e.g. training)

So, Looking at typical "hazards" at a church, some common sense steps would be:

- Point out the dangerous items (by signs and by formal induction for staff) e.g. zips that boil water, power cords and other electrics, what to do about safe handling of money from collection, what to do about strange people wandering into the church.
- Put up some signs – e.g. warning parents as to where detergents, poisons are kept (and locking those cupboards)
- Emphasise to parents to watch their children and point out any "child free" areas.

The Privacy Act: Can we still have a church directory without running foul of the Privacy Act?

We anticipate that Church members freely contribute their own personal information (phone numbers etc) to the directory, and that these are retained and published subject to the notification of any changes. In this case the Church is not liable for a breach of privacy as the people involved have

consented to the release of their information; in fact, the reason that they gave their information was expressly so that it would be published and distributed.

There are certain obligations on the church.

1. Firstly, try to collect the information from the members directly, and ensure they know what it is to be used for.
2. Secondly, cease publishing any information where the person involved objects.
3. Third, make the information freely available to the contributors for the purpose of allowing them to maintain and update their details.

A short statement at the start of the directory noting that the contact details have been given for purposes pertaining to the church, and not for other purposes (e.g. soliciting business) would be wise.

We have heard that under the Privacy Act we are not allowed to let people take photos of children in church-organised events. Is this true?

Regarding photos, there is no law against taking photos of children per se. When people are in a public place the assumption is that they can reasonably expect to be seen, and sometimes photographed. A Court of Appeal case held that there is no blanket prohibition on photographers taking pictures of celebrities and their children in public places.

However, common sense must be exercised. Potentially offensive photos, or photos in ill taste, of children in compromising positions, in skimpy dress or with inappropriate captions should of course be avoided.

If the photo is being used for promotional purposes it would be wise to obtain parental consent prior to publication.

What are these “terms of call” that we have heard people talk about? Surely it is better to have your pastor as an employee because that is a paradigm that more people are familiar with?

This is a big topic – too big to deal with here other than to say that our churches should move away from a default assumption that employment is the only way to go. The law expressly provides other (usually better) options, one of which is based on the concept of a “call” from God. This matter is discussed in the following website articles:

1. An article written by Andrew Clemow, partner with Gaze Burt:
Visit www.gazeburt.co.nz, go to the *Resources* page and type in the key word “pastors”.
2. An article by David Burt, formerly a partner with Gaze Burt:
Visit www.brethren.org.nz/employment and scroll to the heading “Don’t employ a pastor”.

This general information has been provided by Andrew Clemow (partner) and Nathan Tetzlaff (solicitor) of Gaze Burt. For specific advice on any issues mentioned above, contact Andrew or Nathan.

Tel: 09 303 3764

Andrew.clemow@gazeburt.co.nz

Nathan.tetzlaff@gazeburt.co.nz

www.gazeburt.co.nz

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