

**Liability in Negligence of Clergy and Churches in New South Wales for Pastoral
Counselling for Depression**

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Master of Laws By Thesis

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CERTIFICATE OF AUTHORSHIP / ORIGINALITY

I certify that the work in this thesis has not been submitted for a degree nor has it been submitted as part of the requirements for a degree except as fully acknowledged within the text.

I also certify that the thesis has been written by me. Any help that I have received in my research work and the preparation of the thesis itself has been acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

Signature of Candidate

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ABSTRACT

The thesis suggests an approach to be taken in determining whether clergy who provide pastoral counselling for depression¹ to individuals in New South Wales owe a duty of care.² The ‘pastoral’ nature of pastoral counselling for depression is defined herein by reference to several indicia, including that the cleric is a non-professional counsellor and that the counselling is wholly or primarily based on religion.³

The *Civil Liability Amendment (Personal Responsibility) Act 2002* (NSW) (‘the *CLA*’) does not provide a general statement of when a duty of care arises. The common law continues to apply, to the extent not supplanted by the *CLA*. Whatever the *CLA*’s overall effect, the change to the law has not been extensive as it may relate to the existence of the postulated duty of care.⁴

There is no Australian case of direct relevance to pastoral counselling for depression, and no majority accepted general approach in the High Court of Australia (‘the Court’) for determining whether a duty of care exists. It is contended that whether a duty of care will arise for pastoral counselling for depression by clergy may appropriately be determined by reference to the following questions, to be answered with regard to the facts of the case.

These are whether the cleric knew, or a reasonable cleric would have known, of a likelihood of a client relying on the counselling; whether such reliance would be reasonable; whether pastoral counselling for depression could increase the client’s vulnerability if reasonable care is not taken; whether harm to the client is foreseeable to a reasonable cleric as a result of an act or omission when providing pastoral counselling for depression; whether it would be unreasonable, having regard to the public interest, for the cleric to be subject to a duty of care; and whether imposing a duty of care would subject clergy or churches to an unreasonable burden.

¹ ‘Depression’ and ‘pastoral counselling for depression’ are defined in chapters three and four respectively.

² In relation to harm other than pure mental harm. Mental harm consequent upon other personal injury is dealt with in section 17.10. Pure mental harm is mental harm not consequent upon other person injury - section 27 of the *CLA*. Pure mental harm is dealt with in Appendix A.

³ The terms ‘non-professional counsellor’ and ‘religion’ are defined in the Definitions section.

⁴ The main changes of relevance have been in relation to the test for reasonable foreseeability - see chapter eleven and Appendix A. The provision of the *CLA* protecting ‘good samaritans’ from civil liability may also apply, but only for counselling performed in emergency situations - see section 5.3.

Affirmative answers to each of the first four questions and a negative answer to the fifth and sixth questions in a particular case would result in a finding that a duty of care existed. A negative answer to any of the first four questions or an affirmative answer to either of the fifth and sixth questions would mean no duty of care.

It is argued that the provisions of the *CLA* about the standard of care for professionals do not apply to pastoral counselling for depression, and the cleric must act as a reasonable cleric who provides pastoral counselling for depression should in the circumstances. Referral of the client to a general medical practitioner or mental health professional ('the duty to refer') is the main constituent of the degree of care required, if a duty of care arises.

As it relates to causation, the *CLA* was intended by parliament to guide courts as they apply the common sense approach developed by the Court. Whether breach of the duty to refer may be the cause of a suicide attempt by a client, and therefore of damage resulting from the attempt, is considered.⁵ It is argued that in some circumstances it may, and that a suicide attempt does not in itself break the causal chain.

The law and main issues relevant to whether a church could be liable for a cleric's counselling negligence are also identified.

⁵ Damage which might occur in the absence of a suicide attempt, whether from breach of the duty to refer or some other breach of duty, is noted in Appendix A.

PREFACE

The thesis is a Master's thesis, not one supporting a submission for a Doctorate of Philosophy. The thesis takes account of law of significant relevance to its aims to 31 March 2005.

Chapter one provides a description of the areas addressed by the thesis. Some of the areas which the thesis does not concern are now identified.

The thesis does not concern all forms of counselling by clergy

The thesis does not concern pastoral counselling in general, or all forms of counselling for depression which clergy might provide, but rather 'pastoral counselling for depression', defined in chapter four.

While there is a paucity of empirical data as to the counselling practices of Australian clergy, it seems likely that this is not a typical pastoral counselling situation, just as the landmark Californian case of *Nally v Grace Community Church of the Valley*⁶ ('Nally'), to which further reference will be made,⁷ did not involve a typical pastoral counselling situation. As counsel for the plaintiffs in that case argued:

We are talking about a very unusual fact situation that produced tragic, terrible and not so unusual results. We are not talking about typical pastoral counseling or typical religious counseling ... We are concerned with a situation which we believe is very rare. This is a situation where some men, under the guise, and by guise I do not mean to suggest that they were insincere, but under the roof of the church ... take on the horrendous task of providing the ... treatment and ... care of the severely mentally ill. That is not your typical religious counseling.⁸

The situation may not be commonplace, but it warrants investigation nonetheless.

⁶204 Cal. Rptr.303 (Cal. App. 2 Dist. 1984) (Californian Court of Appeal); 240 Cal. Rptr. 215 (Cal. App. 2 Dist. 1987) (Californian Court of Appeal); 253 Cal. Rptr 97 (Cal. 1988) (Californian Supreme Court); certiorari denied 490 US 1007 (1989) (US Supreme Court).

⁷ See in particular section 1.1 and chapter two.

⁸ Edward Barker, argument to the Californian Supreme Court, quoted in Weitz. M.A. 2001, *Clergy Malpractice in America: Nally v Grace Community Church of the Valley*, University Press of Kansas, 169-170. This book is primarily a historical account of *Nally* written for a general audience.

The thesis does not concern a possible duty of care to people other than clients

For the purposes of the thesis, a client is defined as a person aged eighteen or over to whom a cleric provides pastoral counselling for depression.⁹

The consequences of a breach of duty where counselling for depression is provided may include damage arising from a suicide attempt. Obviously, where a suicide attempt results in death, only certain persons apart from the client would have a possibility of bringing a successful action. Consideration of such actions and the eligibility of particular relatives and people to bring them has limited, if any, connection to the main subject matter of the thesis, and is beyond the scope of the thesis. The same applies in relation to the rights, if any, of those exposed to the possibly distressing aftermath of an unsuccessful suicide attempt.

Whether a cleric has a duty to take measures to reduce the risk of a potentially dangerous client harming a third party is also beyond the scope of the thesis.

The thesis is not about a duty of care in relation to pure mental harm

The *CLA* varies the test for reasonable foreseeability in relation to harm other than mental harm.¹⁰ It also imposes a separate foreseeability test in relation to duty of care and mental harm.¹¹ The circumstances to be considered in applying this separate test differ according to whether the mental harm is 'pure mental harm', defined by the *CLA* as mental harm not consequent upon other personal injury,¹² or mental harm that is consequent upon other personal injury.¹³

Comprehensive consideration of the duty of care issue in relation to pure mental harm would take the thesis well beyond its intended scope and is not possible within space limitations. Some discussion of the issue has been included in Appendix A.

⁹ See the Definitions section.

¹⁰ Section 5B (1) (b). See further section 11.1.

¹¹ Section 32(1). See further Appendix A.

¹² Section 27. See further Appendix A.

¹³ See sections 32 (2) and 32 (3). See further section 17.10 and Appendix A.

Moreover, it has recently been stated that there is an ‘element of guesswork’ as to the meaning of some of the provisions of the *CLA*:

Few court decisions have yet arisen other than on damages assessment ... and there is an element of guesswork as to the meaning and effect of some of the legislative changes.¹⁴

This applies to the meaning of the terms ‘recognised psychiatric illness’ and ‘normal fortitude’ for the purposes of foreseeability test imposed stated by section 32 of the *CLA*. Hence it would be of limited utility to consider the issue of liability for pure mental harm resulting from pastoral counselling for depression beyond the observations which are made in Appendix A.

The thesis therefore focusses on harm consisting of physical injury and harm which is consequent to that injury. In the context of pastoral counselling for depression, physical injury will pre-eminently occur from a suicide attempt. As will be seen, the duty to refer is the main constituent of the degree of care required of clergy where they provide pastoral counselling for depression. It is thus fitting for the thesis to focus, in relation to causation and damage, on whether breach of the duty to refer may be the cause of a suicide attempt. This point is taken up in section 1.3.

The possibility of a plaintiff obtaining damages for mental harm consequent upon physical injury is noted in section 17.10. This potential, however, is also contingent on the meaning of ‘recognised psychiatric illness’ and ‘normal fortitude’, thus definitive comment on the issue is unattainable. The possibility of other modes of damage from other breaches of duty is noted in Appendix A.

The thesis does not address the possible obligations of non-Christian clergy, or of clergy who are professional counsellors

The definition of clergy is limited to Christian clergy.¹⁵ It is well-known that Christianity is the main religion in Australia. No attempt is made to consider the ways, if any, the possible legal obligations of clergy from non-Christian religions may vary according to religious differences. While some clergy may be ‘professional counsellors’,¹⁶ the obligations of such clergy are beyond the scope of the thesis.

¹⁴Dietrich, J. ‘Duty of Care under the ‘Civil Liability Acts’’ (2005) 13 *Torts Law Journal*, 17, 18.

¹⁵See the Definitions section.

¹⁶This term is defined in the Definitions section.

Other limitations to the scope

The thesis does not aim to criticise clergy, or to comprehensively state the law of negligence. It does not seek to examine every conceivable legal issue connected to provision of counselling for depression by clergy. Neither does it examine church law;¹⁷ whether churches or clergy owe fiduciary duties to clients of clergy;¹⁸ whether the relationship of clergy and clients is contractual;¹⁹ the liability of non-ordained personnel at church-related counselling centres or of lay people associated with churches; sex crimes or misconduct by clergy; or whether clergy who provide counselling for depression should be accredited or registered.

Unlike psychologists, counsellors in Australia are not required by law to be registered. The Psychotherapy and Counselling Federation of Australia maintains a register of counsellors who are members of relevant professional associations and have completed courses giving them a certain minimum level of competence.²⁰

In Australia ‘there have been isolated efforts over a number of years to create an environment where Christian counselling can be recognised as having nationally agreed standards of training’.²¹ It remains to be seen whether the legislature will require the registration of counsellors, or of clergy who provide counselling.

Applicability of the thesis to different denominations

It is necessary to draw a distinction between clergy who provide counselling and those who do not. The thesis obviously does not apply to situations where clergy do not counsel for depression.

¹⁷ Civil courts will not enforce *church* law unless proprietary rights are involved: eg. *Scandrett v Dowling* (1992) 27 NSWLR 483 per Priestley JA at 565 (Hope AJA agreeing); *Ermogenous v Greek Orthodox Church of SA Inc* (2002) 76 ALJR 465 per Kirby J at 479. The *common law* will be enforced regardless of whether the issues involve property - see further section 5.10 (final paragraph).

¹⁸ The High Court held in *Breen v Williams* (1996) 186 CLR 71 that doctors do not generally owe fiduciary duties to patients. Whether this is relevant to clergy is not pursued herein.

¹⁹ See further section 5.7.

²⁰ Conversation by the author with Mr Ron Perry, Vice-President of the Psychotherapy and Counselling Federation of Australia 30.07.02.

²¹ Court, J.H. ‘Church Related Counseling in Australia’ (1997) 16 *Journal of Psychology and Christianity* 142, 146.

It has been suggested that some clergy in Australia provide counselling because they are seen as ‘gifted’ or merely available, while not being aware of their limitations.²²

Empirical data concerning the numbers of clergy in Australia providing counselling or the denominations to which they might belong is unavailable. There is some anecdotal evidence that in general in Australia, clergy from Pentacostal denominations are more likely to engage in counselling. Pentacostalism:

[H]as emerged as one of the most vigorous religious movements in Australia. Pentacostalism is the faith of a number of churches such as the Assemblies of God, Apostolic Church ... Full Gospel churches, Christian Outreach Centre, Christian Life Centre and others.²³

Pentacostal churches differ to some extent from the churches of other denominations:

The most distinctive feature of Pentacostalists is their mode of worship, which includes praying with the hands outstretched, dancing, speaking in tongues, faith healing, cheery singing and other exuberant practices led by a preacher. They are anti-intellectual to the extent that they stress inherent spiritual authority rather than mastery of theology or any formal ritual.²⁴

It is unclear whether ‘inherent spiritual authority’ might influence the counselling practices of any pentacostal clergy who undertake counselling for depression. As will be seen in chapters one and two, the defendant pastors in *Nally* relied heavily on religious ideas and the Bible in their counselling activities.

²²Court, 143-146

²³Carey, H.M. 1996 *Believing in Australia: A Cultural History of Religions*, Allen & Unwin, Sydney, 173.

²⁴*Ibid* 188.

TABLE OF CONTENTS

Certificate of authorship / originality	i
Acknowledgments	ii
Abstract	iii
Preface	v
Table of Contents	x
Table of Cases	xxi
Table of Legislation	xxv
Definitions	xxvi

Chapter

1. INTRODUCTION

1.1	Rationale	1
1.2	Aim	4
1.3	Methodology	5
	Conclusion	11

2. *NALLY v GRACE COMMUNITY CHURCH OF THE VALLEY*

	Introduction	13
2.1	The facts	13
2.2	Procedural history	15
2.3	Judgments of the Californian Supreme Court	16
2.4	Historical background	17
	Conclusion	20

3. DEPRESSION AND ITS TREATMENTS

	Introduction	21
3.1	The relevance of the <i>NHRMC Guidelines</i>	22
3.2	Defining depression	23
3.3	Major Depressive Disorder	24
3.4	Bipolar disorders	25
3.5	‘Minor’ depression is beyond the scope of the thesis	26
3.6	Causes of and risk factors for depression	26
3.7	Can clergy diagnose depression?	27
3.8	Treatments for depression	27
3.9	The value of pastoral counselling	29
3.10	The vulnerability of depressed people	31
	Conclusion	32

4. PASTORAL COUNSELLING FOR DEPRESSION

	Introduction	34
4.1	Some descriptions of counselling	35
4.2	Defining pastoral care	39
4.3	Defining pastoral counselling	40
4.4	Defining ‘pastoral counselling for depression’ by clergy	41
4.5	Comments on the definition of pastoral counselling for depression	42
4.6	Defining informal pastoral counselling for depression	44
	Conclusion	44

5. PRELIMINARY LEGAL POINTS

	Introduction	46
5.1	The <i>CLA</i>	46
5.2	Interpretation of the <i>CLA</i>	47
5.3	Section 57 of the <i>CLA</i> - good samaritans	48
5.4	Section 61 of the <i>CLA</i> - community work	49
5.5	Exemption of clergy from registration requirements	50
5.6	Novelty of pastoral counselling liability	51
5.7	Contractual relationship	51
5.8	Disclaimer of a duty of care	52
5.9	Voluntary assumption of risk	53
5.10	Freedom of speech and religion	54
5.11	<i>Clark v Roman Catholic Archdiocese of Brisbane</i>	56
5.12	The ‘consensual compact’ entered into by church members	56
5.13	Difficulty in proving causation	57
5.14	The act / omission distinction	58
5.15	The act / word ‘distinction’	59
5.16	The duty of care does not begin when a session is scheduled or at the outset of the first session	60
5.17	A duty, if any, to attend is separate to the postulated duty of care	61
5.18	The duty of care does not extend to all communication	62
5.19	A duty to avoid breaching client confidentiality or sexual misconduct is separate to the postulated duty of care	62
5.20	The term ‘special relationship’ is question-begging	64
5.21	Proximity	64
5.22	Complexity of policy decisions	64
5.23	The difference between principle and policy	65
	Conclusion	65

6. THE INHERENT INDETERMINACY OF NEGLIGENCE LAW

	Introduction	68
6.1	The relevance of previous cases	69
6.2	Analogy and incrementalism	71
6.3	The importance of the circumstances	74
	Conclusion	77

7. GENERAL PRINCIPLES

	Introduction	78
7.1	The Court's acceptance of Barwick CJ's approach	78
7.2	Why Barwick CJ's approach is relevant	79
7.3	Barwick CJ's approach	80
7.4	Knowledge of intended reliance or knowledge of the likelihood of reliance?	82
7.5	Questions of reliance depend on the facts of the case	82
7.6	Actual reliance is not required	83
7.7	Reliance on reliance to establish a duty of care	83
7.8	<i>Tepko Pty Ltd v Water Board</i>	84
	Conclusion	87

8. KNOWLEDGE AND REASONABLENESS OF RELIANCE

	Introduction	89
8.1	The non-professional status of a speaker, or the absence of a representation to be professional or competent, does not preclude a duty of care	89
8.2	Knowledge of the likelihood of reliance	92
8.3	Reasonableness of reliance	93
8.4	The degree of directiveness of the counselling	96
8.5	The cleric is a reluctant participant in the counselling	98
8.6	Express downplaying of competence	99
8.7	The client is attending a general practitioner or mental health professional, or is able to do so	99
8.8	Characteristics of the particular cleric	100
8.9	Characteristics of the cleric's church	100
8.10	Religious background of the client	100
8.11	Reference to Biblical passages	101
8.12	The client is disinterested in the counselling	102
8.13	The client is a mental health professional	102
8.14	A particularised inquiry is necessary	102
	Conclusion	102

9. VULNERABILITY

	Introduction	104
9.1	<i>Perre and others v Apand Pty Ltd</i>	105
9.2	<i>Crimmins v Stevedoring Industry Finance Committee</i>	108
9.3	The relevance of vulnerability generally	110
	Conclusion	113

10. VULNERABILITY CONSEQUENT UPON RELIANCE

	Introduction	115
10.1	Diversion or delay from use of the main treatments for depression	116
10.2	Counselling which exacerbates the client's depression	119
10.3	Degree and nature of increased vulnerability	121
	Conclusion	122

11. REASONABLE FORESEEABILITY

	Introduction	123
11.1	The test for reasonable foreseeability	123
11.2	Foreseeability and advice or information	125
11.3	Foreseeability and pastoral counselling for depression	126
11.4	Foreseeability of the risk of suicide attempt	127
	Conclusion	128

12. THE 'PASTORAL' NATURE OF THE COUNSELLING

	Introduction	130
12.1	The counselling is provided free of charge	130
12.2	The counselling is based on religion	131
12.3	Anticipation or desire for counselling based on religion	133
12.4	Objective of spiritual welfare	134
12.5	No detailed exploration of past experience, and no attempt at deep emotional understanding or restructure of the client's personality	134
12.6	The relationship is short-term	135
	Conclusion	136

13. DEGREE OF CARE

	Introduction	138
13.1	Section 5B of the <i>Act</i>	139
13.2	Section 5O of the <i>Act</i>	140
13.3	<i>Rogers v Whitaker</i>	141
13.4	The opinion of relevant experts	142
13.5	Church codes or rules	143
13.6	The circumstances of the case	143
13.7	The general objective standard of the law of negligence is not abandoned	144
13.8	The condition of the particular client	145
13.9	Presence or absence of a representation of competence	145
13.10	The pastoral nature of the counselling	146
13.10.1	The cleric is a non-professional counsellor	147
13.10.2	The counselling is undertaken free of charge	147
13.10.3	The religious nature of pastoral counselling for depression	148
13.10.4	The client may anticipate or desires counselling based on religion	149
13.10.5	Objective of spiritual welfare	149
13.10.6	No detailed exploration of past experience, or seeking of deep emotional understanding or attempts to restructure the personality	149
13.10.7	The counselling is short-term	150
	Conclusion	150

14. DEGREE OF CARE - REFERRAL

	Introduction	152
14.1	Doubt about which treatment is best does not mean no duty to refer	152
14.2	Foreseeability, probability and gravity of harm	153
14.3	The condition and characteristics of the particular client	154
14.4	The burden of referral	155
14.5	Commonsense supports referral	157
14.6	Pastoral counselling experts support referral	158
14.7	Secular experts support referral	159
14.8	Church codes or rules support referral	160
14.9	Referral has no significant disadvantage	161
14.10	The social utility of pastoral counselling for depression	162
14.11	Social workers and referral	163
	Conclusion	164

15. OTHER POSSIBLE FORMS OF CARE

	Introduction	168
15.1	The main treatments for depression	170
15.2	No duty to diagnose	171
15.3	Requirement not to discourage other treatment	172
15.4	Warning not to discontinue other treatments	172
15.5	Referral of clients to practitioners who may be able to help with problems contributing to the depression	173
15.6	Religious remedies for depression	173
15.7	Understanding of religion-related problems	174
15.8	The suicidal client	175
15.9	Basic information about treatments for depression	177
15.10	Avoid counselling which exacerbates depression	178
15.11	Reasonable termination of counselling	179
15.12	Appropriate records	180
	Conclusion	180

16. POLICY

	Introduction	182
16.1	The social problem caused by depression	183
16.2	The social utility of pastoral counselling for depression	184
16.3	The effect on client welfare of the possibility of clergy being subject to a duty of care	186
16.4	The effect on pastoral counselling of the possibility of clergy being subject to a duty of care	188
16.5	The effect on case loads of courts of the possibility of a duty of care	190
16.6	Telephone ‘counselling’ services	191
16.7	The burden to churches of the possibility of clergy being subject to a duty of care	191
16.8	The burden to clergy of a duty of care	192
16.9	Determinacy of liability	193
	Conclusion	194

17. CAUSAL LINK BETWEEN BREACH OF THE DUTY TO REFER AND DAMAGE RESULTING FROM A SUICIDE ATTEMPT

	Introduction	196
17.1	Commonsense and the ‘but for’ test	197
17.2	The <i>CLA</i>	197
17.3	Presumption of causation from breach and injury	199
17.4	Factual causation	200
17.4.1	Proof that the client would have attended a general practitioner or mental health professional if referred	201
17.4.2	Proof that a general practitioner or mental health professional would have recommended one or more of the main treatments	202
17.4.3	Proof that the client would have used treatments recommended by a general practitioner or mental health professional	202
17.4.4	Proof that a treatment, if used, would have led to improvement sufficient to have averted the suicide attempt	203
17.4.5	Proof that the suicide attempt was due to depression	205
17.4.6	Further probability theory	206
17.5	Factual causation where the negligence is not a necessary condition of the occurrence of the harm	207
17.6	The appropriateness that the cleric’s liability extend to	208

	injury from attempted suicide	
17.6.1	The 'unreasonableness' of a suicide attempt	210
17.7	Is a suicide attempt contributory negligence?	216
17.8	Physical injury	218
17.9	Economic loss consequent to physical injury	218
17.10	Mental harm consequent to physical injury	219
17.11	Economic loss consequent to consequential mental harm	220
17.12	Assessment of damage	220
	Conclusion	222

18. POSSIBLE LIABILITY OF CHURCHES

	Introduction	224
18.1	Bases of vicarious liability	227
18.1.1	Whether clergy are employed by churches	228
18.1.2	The test for employment	229
18.1.3	General considerations in applying the test for employment to clergy	230
18.1.3.1	Labelling of the relationship is not conclusive	230
18.1.3.2	Ordination	230
18.1.3.3	Treatment of clergy for taxation purposes	231
18.1.3.4	Control	231
18.1.3.5	Difficulty identifying persons in control	231
18.1.3.6	Church structure	232
18.1.3.7	The right to suspend or dismiss clergy	232
18.1.3.8	The course of employment	232
18.1.2	Are clergy agents of churches?	233
18.1.3	Are clergy independent contractors?	234
18.1.4	<i>Mowatt v Clarke and others</i>	235
18.1.5	Vicarious liability in the absence of an employment or agency relationship	236
18.2	Duty of care	239
18.3	Non-delegable duty	240
18.4	Specific authorisation of negligence	242
	Conclusion	243

19. GENERAL CONCLUSIONS

19.1	Duty of care	246
19.2	A way forward	249
19.3	Comments on the suggested way forward	250
19.4	Degree of care, the duty to refer and other possible forms of care	252
19.5	Causal link between breach of the duty to refer and damage resulting from a suicide attempt	252
19.6	Liability of churches	252
19.7	Concluding remarks	252

APPENDIX A - OTHER MODES OF DAMAGE

	Introduction	254
A.1	Mental harm not consequent upon physical injury from a suicide attempt - unnecessarily prolonged depression	256
A.1.1	'Recognised psychiatric illness'	256
A.1.2	'Normal fortitude'	257
A.2	Mental harm not consequent upon physical injury from a suicide attempt - other psychiatric illness	259
A.2.1	Psychosis	259
A.2.2	Schizophrenia	261
A.3	Economic loss resulting from pure mental harm	261
A.4	Physical injury in the absence of a suicide attempt	261
	Conclusion	262

APPENDIX B - INFORMAL PASTORAL COUNSELLING FOR DEPRESSION

	Introduction	263
B.1	No duty of care for pastoral care	264
B.2	A duty of care for informal pastoral counselling for depression?	265
B.3	Drawing the boundary between duty and no duty - assessment of reasonableness	265
B.4	The reasonableness of reliance on informal pastoral counselling for depression	267

B.5	Whether a duty of care is unreasonable having regard to the public interest	268
B.6	Whether a duty of care would impose an unreasonable burden on clergy	270
B.7	Both pastoral counselling for depression and informal pastoral counselling for depression are provided	272
B.8	Pastoral counselling for depression incident to counselling for other issues	273
	Conclusion	273

BIBLIOGRAPHY

Anglo-Australian references	274
US references	278

FURTHER RESEARCH UNDERTAKEN

Anglo-Australian references	284
US references	287

TABLE OF CASES

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Wyong Shire Council v Shirt (1980) 146 CLR 40
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TABLE OF LEGISLATION

Anglican Church of Australia Trust Property Act 1917 (NSW)

Baptist Churches of New South Wales Property Trust Act 1984 (NSW)

Civil Liability Amendment (Personal Responsibility) Act 2002 (NSW)

Health Care Liability Act 2001 (NSW)

Interpretation Act 1987 (NSW)

Law Reform (Vicarious Liability) Act 1983 (NSW)

Legal Profession Act 1987 (NSW)

Lutheran Church of Australia (New South Wales District) Property Trust Act 1982 (NSW)

Mental Health Act 1990 (NSW)

Presbyterian Church (Corporations) Act 1995 (NSW)

Psychological Practices Act 1965 (Vic)

Psychologists Act 1989 (NSW)

Psychologists Act 2001 (NSW)

Uniting Church in Australia Act 1977 (NSW).

Definitions

A **‘church’** is essentially a voluntary association of individuals holding property for religious and therefore charitable purposes.²⁵ This definition suffices for the general purposes of the thesis. Ambiguities in the term ‘church’ are noted in chapter nineteen.

‘The CLA’ means the *Civil Liability Amendment (Personal Responsibility Act) 2002* (NSW).

‘Clergy’ is the plural of cleric. For the purposes of the thesis, cleric means a person appointed, ordained, licensed or otherwise authoritatively empowered by a church for religious service, and who, if engaged in the provision of counselling at all, is a ‘non-professional counsellor’, as that term is defined herein. ‘Clergy’ will be used as a synonym for ‘preachers’, ‘ministers’, ‘pastors’, ‘reverends’, ‘priests’ and similar titles. This definition is limited to Christian clergy.

‘Client’ for the purposes of the thesis means a person aged eighteen and over who receives pastoral counselling for depression by a cleric. This is for identification purposes only and does not signify a relationship warranting a duty of care or a particular degree of care.

‘Counselling’ is a notoriously ambiguous term and is often used interchangeably with ‘psychotherapy’.²⁶ The primary term used by the thesis is ‘pastoral counselling for depression’, not counselling. For the purposes of the thesis ‘counselling’ means communication between a counsellor and another person, occurring during one or more scheduled sessions, with the purpose of solving one or more of the other person’s problems, through the provision of advice or information or in some other way involving verbal communication. Counselling is sometimes defined as a professional activity,²⁷ but in reality is not an exclusively professional activity.²⁸

‘Counsellor’ means for the purposes of the thesis a ‘professional counsellor’ or ‘non-professional counsellor’ as those terms are defined herein. The thesis concerns the potential liability of clergy who provide pastoral counselling for depression, not the liability of other personnel for other communication.

²⁵ McPherson, Hon. Mr Justice B.H. ‘The Church as Consensual Compact, Trust and Corporation’ (2000) 74 *ALJ* 159, 160.

²⁶ See chapter four.

²⁷ See section 4.1.

²⁸ There is no requirement in New South Wales that those who engage in counselling be trained in counselling - see section 5.5.

‘**The Court**’ means the High Court of Australia.

‘**Degree of care**’ will refer to the measures which reasonable care requires, where a duty of care exists. Degree of care may be viewed as synonymous with terminology such as ‘scope of duty’, ‘measure of duty’, ‘extent of the duty’, and ‘content of the duty’, about which there is no consistent judicial practice.

‘**Depression**’ means in the thesis major depressive disorder and bipolar disorder as defined in chapter three.

The ‘**duty to refer**’ will denote in the thesis one of the measures which the overall degree of care might require, where a duty of care exists. This method of expression has been disapproved by one text book, but is not uncommon:

It is not uncommon to encounter formulations of the standard [degree] of care in terms of “duty”, as when it is asserted that a motorist is under a duty to keep a proper lookout ... But this method of expression is best avoided²⁹

Referring to ‘the duty to refer’ is more compendious than ‘the obligation to refer’ or ‘the requirement to refer’. With this in mind, it should be readily understood that such terminology pertains to the issue of degree of care, not duty of care.

‘**General practitioner**’ means a general medical practitioner in the thesis.

‘**Informal pastoral counselling for depression**’ is defined in section 4.6.

‘**Malpractice**’ is a term used more in the United States than Australia, and is not used by the thesis. Where it appears in material which is quoted, it may be viewed as interchangeable with ‘negligence’.

‘**Mental health professional**’ will refer to psychiatrists, psychologists and other practitioners in the mental health field who have completed university level degrees or training in psychiatry, psychology, psychotherapy or counselling.

²⁹ Fleming, J.G. 1998 *The Law of Torts* 9th edn LBC Information Services Sydney, 117.

‘Non-professional counsellor’ means in the thesis a person who provides counselling on a casual or irregular basis only, and who does not possess secular qualifications, training or competence in counselling, psychotherapy, psychology, psychiatry, medicine or the management of depression or other mental or emotional problem.

The **‘objective of spiritual welfare’** is for the purposes of the thesis defined as the objective of increasing the client’s religious knowledge or belief, or increasing the client’s compliance with canons of conduct giving effect to religious belief.

‘Pastoral care’ is defined in section 4.2.

‘Pastoral counselling’ and **‘pastoral counselling for depression’** are defined in sections 4.3 and 4.4 respectively. The thesis is not about pastoral counselling in general, or all forms of counselling for depression that clergy might provide.

‘Professional counsellor’ means herein a person who provides counselling on a regular basis and who possesses secular qualifications, training or competence in counselling, psychotherapy, psychology, psychiatry, medicine or the management of depression.

The definition of ‘professional’ is a matter about which ‘no agreement is possible’, and ‘those occupations claiming its mantle would lead one to the conclusion that it was expandable to subsume any known occupation’.³⁰ The definition of professional counsellor adopted herein is broadly consistent with the definition of ‘professional’ proffered by Santow J in a trade practices case:

[R]eferences to profession and professional activity at least include ... medicine, dentistry and the law ... They may ... include, for example taxation consultants, brokers, teachers and conceivably ... mediators. One might distinguish mediation done casually and as an adjunct to another activity, such as a Minister of Religion or Rabbi and mediation done as a principal activity by a trained mediator suitably accredited. Thus the same activity carried on in an untrained or ad hoc way lacking any accreditation, code of ethics or special competence and training would fall outside the notions of profession and professional activity.³¹

³⁰ Partlett, D.F. 1985 *Professional Negligence* The Law Book Company Limited, Sydney, 2. In England it has been said that ‘professional’ is ‘an ill-defined term’ - Davies, M, ‘Debt Counselling: the rise of a new profession and the professional negligence implications’ (1995) 11 *Professional Negligence* 27, 28-29. Whether clergy are professionals is a matter of conjecture. Of background interest is the fact that in the US it has been said that clergy have been ‘established as professionals since the middle ages’ - Wilensky, H. ‘The Professionalisation of Everyone?’ (1964) 70 *American Journal of Sociology* 137, 141, and that ‘pastoral counselling [is an] established profession in the psychotherapy field’ - Robertson, J.D. 1988 *Psychiatric Malpractice: Liability of Mental Health Professionals* John Wiley & Sons New York, 428.

³¹ *Prestia v Aknar* (1986) 40 NSWLR 165 per Santow J at 189.

According to the Royal Australian and New Zealand College of Psychiatrists, a '**psychiatrist**' is a 'medical specialist who has completed at least 13 years of medical education in all aspects of medicine, surgery and psychiatry. Psychiatrists have a unique perspective in being able to diagnose, manage and care for people with mental illnesses and emotional problems whilst keeping both their emotional and physical states in perspective. In addition, psychiatrists are able to offer expert psychological and medical help in the balance required for the individual patient'.³²

'**Psychiatry**' is the branch of medicine that deals with the diagnosis, treatment and prevention of mental and emotional disorders.

'**Psychologists**' cannot practise in New South Wales unless they satisfy section 8 of the *Psychologists Act 2001* which requires 4 years of full-time study in psychology at an approved university or institution or have passed an examination approved by the Psychologist Registration Board, and 2 years of practical experience or 2 years of postgraduate study equivalent to 2 years of practice experience in psychology.

'**Psychology**' means herein the science that deals with mental processes and behaviour, or the application of ideas derived from this science to the treatment of mental or emotional disorders or issues.

There are a large number of definitions of '**psychotherapy**', which is often used interchangeably with counselling. The term is sometimes prefixed by words such as 'medical', 'clinical' or 'specialised'. The Royal Australian and New Zealand College of Psychiatrists describes it simply as 'talking treatment'.³³ The definition of psychotherapy is not of critical importance to the thesis, as the thesis concerns 'pastoral counselling for depression'. For the purposes of the thesis the term means the treatment by verbal communication of mental or emotional disorders or problems.

A '**reasonable cleric**' means in the thesis a reasonable person in the position of a cleric who provides pastoral counselling for depression.

³² www.ranzcp.org.

³³ www.ranzcp.org.

The definition of ‘**religion**’ has received consideration by the Court in only two cases, namely *Adelaide Company of Jehovah’s Witnesses v Commonwealth*³⁴ and *Church of the New Faith v Commissioner of Payroll Tax (Vic)*³⁵ (*Scientology*). In *Jehovah’s Witnesses*, consistent with his view that it was inappropriate for the Court to define religion,³⁶ Latham CJ did not place any limitation on the concept of religion:

One of the chief religions of the world, Buddhism, has risen to great moral and intellectual heights without using the conception of God at all; in its stead it has Dharma, the eternal law ... On the other hand, almost any matter may become an element in religious belief or religious conduct ... each person chooses the content of his own religion.³⁷

In *Scientology* Mason ACJ and Brennan J held that religion comprises (1): belief in a supernatural Being, Thing or Principle; and (2): acceptance of canons of conduct in order to give effect to that belief.³⁸ Their Honours held that beliefs are not religious merely because believers call them religious.³⁹

Wilson and Deane JJ nominated five non-exhaustive but ‘more important’ indicia of religion, with the absence of one not necessarily conclusive.⁴⁰ These were (1) belief in the supernatural; (2) ideas relating to man’s nature, place in the universe, and relation to the supernatural; (3) ideas accepted as requiring or encouraging observance of codes of conduct or involvement in practices having supernatural significance; (4) adherents form an identifiable group or groups; and (5) adherents see the collection of ideas and/or practices as a religion.⁴¹

In this thesis a belief, concept or phenomenon is religious if it satisfies either of the above definitions. The definition of religion is not of critical importance to the thesis, as the beliefs of most or all ‘religious’ groups in Australia are obviously religious.

³⁴(1943) 67 CLR 116.

³⁵(1983) 154 CLR 120.

³⁶*Jehovah’s Witnesses* at 124.

³⁷*Id*; see also McTiernan J at 156 and Williams J at 160-161.

³⁸At 136.

³⁹*Ibid* 132.

⁴⁰*Ibid* 174.

⁴¹*Ibid* 175; see also Murphy J at 151.

‘Religious remedies for depression’ refers in the thesis to the remedies identified in the definition of pastoral counselling for depression in section 4.4.

‘Sects’ and **‘cults’** are not precisely distinguished from each other or from churches, as the boundaries between them are unclear, and legal inquiry should focus on the behaviour of religious groups or individuals, not classification:

The task ultimately for the courts should be to inquire not into whether a group is to be classified as a ‘cult’ or a ‘sect’ but to assess what impact its characteristics had in the particular circumstances of the case upon a particular member.⁴²

The term **‘serious depression’** is used in a small number of places in the thesis. It is intended to correspond to depression in the sense of major depressive disorder or bipolar disorder. It is used only to reflect the fact that some clergy may not be aware of these diagnostic categories and might instead perceive a client to have ‘serious depression’.

‘Spiritual’ will be taken as synonymous with ‘religious’ for the purposes of the thesis.

‘The main treatments for depression’ means in the thesis anti-depressant medication or cognitive behavioural therapy in the case of major depressive disorder, and other pharmacological treatments in the case of bipolar disorder. More detail concerning these treatments is contained in chapter three.

‘The postulated duty of care’ means the duty of care to which reference is made in the first aim of the thesis.

‘Unnecessarily prolonged depression’ means in the thesis ongoing depression experienced by a client of the same or greater severity as that experienced when pastoral counselling for depression was initially provided, which could have been avoided or substantially reduced had reasonable care been exercised.

⁴²Freckelton, I. ‘Cults, Calamities and Psychological Consequences’ (1998) 5 *Psychiatry, Psychology and the Law* 1, 5.