



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

General Secretariat

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Dear Ms Tse

Consultation Paper 207-Charitable Investment Fundraisers

Thank you for the opportunity to comment on the consultation paper.

The Australian Catholic Bishops Conference (ACBC) is a permanent institution of the Catholic Church in Australia (the Church) and the instrumentality used by the Australian Catholic Bishops to act nationally and address issues of national significance.

Preamble

The proposals that ASIC remove or amend the existing exemptions will have significant implications for communities across Australia for it would mean cessation or a substantial reduction in the provision of Church and charitable services to those communities.

The proposals give insufficient attention to the obvious differences between religious charitable development funds (RCDFs) and other registered finance companies and charitable fundraisers regulated by the Australian Securities and Investments Commission (ASIC).

The proposals also fail to give recognition to the role of the Australian Charities and Not-for-profits Commission (ACNC) in regulating charities and the reporting obligations which charities must now comply with under the ACNC Act.

The ACBC recognises there has been considerable progress in addressing the challenge of Government regulators working together as evidenced by the recent Memorandum

of Understanding between ASIC and the ACNC. While it is the ACNC's primary purpose to reduce red tape for charities wherever possible, it is critical that ASIC works towards a similar goal in parallel regulatory reforms of the environment in which RCDFs operate. In the ACBC's view, many of the proposals developed will add to red tape not only for RCDF's but also for investors who, for example, might be deprived of the convenience of accessing their funds at call.

In the current economic climate it will become necessary if these changes are implemented for governments to fund projects and services currently funded by charitable development funds of the Catholic Church.

The answers to the list of questions throughout the consultation paper are contained in the attached Appendix.

Some effects on the community

RCDFs established by the Catholic Church of Australia, called Catholic Development Funds (CDFs), enable the Church to fund church projects including:

- Church buildings
- Parish facilities
- Church halls and meeting places
- School buildings and playgrounds
- Hospitals
- Retirement Villages and Nursing Homes

They also generate valuable income to support the many and varied charitable activities which support people in need across the community.

Collectively the CDFs stand to lose more than \$15 million in income per annum to support the activities outlined above should lay investors be discouraged by the proposed reforms from investing their "faith dollar" with CDFs. Most of this loss of income will be in regional and remote communities.

Option 1: Remove existing exemptions

The ACBC does not see that a case has been made to remove all existing exemptions. If this option were to be pursued by ASIC it would have significant implications on the operations of CDFs which will impact on their long term viability.

Option 2: Retain existing exemptions and introduce additional conditions of relief;

The ACBC agrees with the proposed retention of the existing exemptions from the Corporations Act but questions the modification of the current conditions of relief or adding the proposed new ones. Option 2 with the new conditions proposed also fails to

have sufficient regard to the differences between CDFs and other registered finance corporations (RFCs) and religious charitable fundraisers.

Description of Catholic Development Funds

CDFs are not separately incorporated and are a collection of invested funds and loans that are vested in the Diocesan body corporate or the Diocesan Bishop.

The Diocesan Bishop exercises ultimate control of the CDF with the assistance of an Advisory Committee/Board, the Diocesan Financial Administrator and Diocesan Finance Council and acting in accordance Catholic Church Law (The Code of Canon Law). Day to day management is delegated to a Manager and staff.

Many of the members of the committees, board or councils are qualified professionals who have experience in finance, accounting and the law.

CDPF Limited is approved by ASIC as the sponsor of the 25 Australian CDFs. CDPF Limited holds the group charities exemption from the fundraising, managed investment, debentures and Australian financial services (AFS) licensing provisions of the Corporations Act.

Independent auditors annually audit each CDF and prepare an audit report for the Bishop of the Diocese. A copy of the audited accounts is provided to CDPF Limited each year.

Shadow Banking v CDFs

The ACBC would like to make a number of points about the concerns of ASIC in so far as they apply to CDFs.

Shadow Banks

First, the consultation paper refers to entities which are not authorised deposit-taking institutions (ADIs) as "shadow banks" and includes religious charitable fundraisers (RCDFs) or CDFs among these. The suggestion that CDFs are "shadow banks" fails to understand the history and role of CDFs. Unlike banks, CDFs were established to:

1. Support parishes, schools and other church entities to pool their financial resources so they can operate cooperatively by providing funds for capital development projects and at the same time earn interest on the amounts invested
2. Allow parishioners (the laity) who wish to support the pastoral works of the church to do so by investing funds
3. Provide funds for the capital development projects within the church
4. ***Generate income by investing surplus funds predominantly in ADIs, the returns from which are then used for the charitable works of the Diocese.***

While banks support the financial underpinnings of commerce and industry and earn profits to measure their success, CDFs do not operate for profit and provide funds to support investments in social and charitable infrastructure. Whereas banks operate across the entire economy, CDFs operate within a local Catholic Church community for both raising investible funds and directing funds to investments. CDFs lend only for Church projects, and do not lend to the general community.

The ACBC is concerned about both the proposed removal or modification of existing exemptions and the scope of the proposed conditions. The conditions are targeted at the clergy and the laity who wish to support the pastoral work of the church.

The consultation paper appears to have moved beyond requiring adequate disclosures, indemnities, advertising restrictions and other conditions but has offered no evidence about why existing exemptions are perceived not to have operated effectively in the supervision of CDFs and the protection of investors in CDF's.

Registered Finance Corporations v Catholic Development Funds

The recent failures of RFCs, which have operated as margin lenders, consumer credit services and retail debenture issuing lenders, appear to be the primary justification for withdrawing the exemption to CDFs, even though there is no evidence provided of CDF failures. Nor is there any evidence of a lack of public trust and confidence in RCDFs generally or CDFs specifically. The lack of complaints received, or investigations undertaken by ASIC into RCDFs and CDFs confirms this.

As outlined in its submission to the Australian Prudential Regulation Authority (APRA), the view of the ACBC is that CDFs are so different from RFCs that they should not be treated as if they are the same. Unlike RFCs, CDFs:

1. Have no shareholders
2. Are not for-profit entities
3. Do not lend to the public, businesses or property developers
4. Lend only to parishes, schools and associated Church entities who have reliable cash flows
5. ***Are risk adverse and invest surplus funds predominantly in cash and fixed interest investments with ADIs***
6. ***Are clearly named and branded to identify their connection to the Catholic Church.***

The ACBC believes a considered examination and comparison is needed of the risks RFCs such as Banksia Securities posed to their investors, with the risks which CDFs pose to the laity who invest in them. Without such an investigation, there is potential for a misunderstanding of the risks of CDFs, the unnecessary removal of current exemptions, or the imposition of additional conditions the ultimate price of which will be a significant reduction in the provision of charitable services to the Australian community.

The ACBC suggests ASIC should address RFCs issues separately to RCDFs, and discharge its regulatory responsibilities consistent with the risk profiles rather than a broad brush "one size fits all" approach to regulatory supervision.

Liquidity Risks

The consultation paper refers to RCDFs being vulnerable to risks associated with lending for illiquid assets whilst having at call or short term withdrawal rights. However, no evidence is offered to support this concern and the ACBC is not aware of any instance where this issue has arisen for CDFs.

The ACBC believes there needs to be a considered examination and evaluation of the asset allocation practices, portfolio management techniques and cash flows of RCDFs before perceived liquidity risks are argued as a justification for removing existing exemptions or imposing additional conditions on RCDFs.

Advertising and marketing

The consultation paper suggests the promotional material of RCDFs, including the focus on financial performance of products and their low fees, will mislead investors into thinking RCDFs are 'bank like' and therefore require more significant investor protection. Again, no evidence is offered to support this suggestion.

The ACBC is unaware of any evidence in relation to CDFs to support these views. The promotion by CDFs of investments to laity is predominantly based on a conscious choice to support the works of the local Church. Again, ASIC states in the consultation paper that there are differing expectations of regulatory protection by lay investors who are motivated by the charitable objectives of RCDFs.

International Monetary Fund

The ACBC questions the import of the International Monetary Fund (IMF) views as a reason to remove existing exemptions for RCDFs when it is acknowledged that RCDFs account for a small proportion of the Australian Financial System. The IMF also acknowledges that the number of such institutions is small and the scale of their activities is predominantly *de minimis*.

Specific Issues

The ACBC wishes to make a number of points about the rationale given in the consultation paper for the two proposed alternative reforms.

1. Wholesale and Retail Investors

The consultation paper states that the proposed exemption order would include the condition that RCDFs not accept funds from 'wholesale and retail investors'. The ACBC questions the application of these categories to CDFs.

The definition of “associated entity” in Clause 42 states that individuals are not regarded as associated entities even if they are connected with that Church community. Individual clergy of the Church typically invest funds with their CDFs as a demonstration of their commitment to support the charitable objectives of the CDF in their local diocese. Excluding clergy from the definition of “associated entity” would have the effect of making every CDF subject to the new requirements whichever of Option 1 or 2 as currently formulated is adopted. The ACBC submits that the definition of “associated entity” should be extended to include clergy who invest with their CDF.

CDFs are prohibited from advertising to the public and so it follows that ‘retail investors’ would not know about CDFs as CDFs do not have retail outlets and are not permitted to publicly advertise.

2. Public and community interest

The ACBC is pleased that ASIC acknowledges the differing expectations of regulatory protection by lay investors who are motivated by the charitable objectives of RCDFs.

Public and community interest are the basis for CDFs’ cooperative model working for the common good. Unfortunately the consultation paper seems only concerned about investing public interests and not about the wider public and community interest impacted by the proposals outlined in the consultation paper.

3. Specific AFS licensing requirements

The need for compliance with AFS licensing provisions has not been demonstrated. Laity who invest with CDFs do not expect financial advice nor is any given. They are made aware of the existing disclosures required and are accepting of these as part of their “faith investment”.

4. Minimum charitable investment requirements

The ACBC strongly believes that the current regulatory regime under the “group charities” exemption in Regulatory Guide 87 under the sponsorship of CDPF has been a demonstrable success.

The proposed requirement to have 75% of the invested funds held in “charitable assets” is both impractical and is in conflict with the prudent management of liquidity. It also does not recognise that a significant portion of the invested funds from CDFs’ internal treasury clients are seasonal and therefore cannot be directed toward long term illiquid assets.

5. Capital and liquidity requirements

The ACBC wishes to reiterate that CDF assets are generally either in cash and fixed interest investments with ADIs or in loans to parishes, schools and associated entities.

The ACBC believes each CDF should continue to be permitted to determine its minimum capital requirements in accordance with their portfolio makeup having regard to

standards set by APRA and ASIC. The ACBC believes ASIC has not provided any evidence as to why CDFs should be subject to the same level of regulation as commercial fundraisers.

The consultation paper 199: *Debentures: Reform to strengthen regulation (CP 199)* is targeted at all issuers of debenture products to 'retail investors'. As noted elsewhere in this submission, CDFs are prevented from advertising and therefore cannot participate in the 'retail investor' market. The ACBC would also like to point out that failures in the commercial debenture market have been at the speculative end of the property market, particularly development lending to fringe property developers without regular cashflow. CDFs do not operate in this space.

6. Ready Access of funds to lay investors

All lay money helps to build the pool of funds used to generate returns for the charitable works of the Church. Historical evidence is that lay investors are extremely loyal long term investors in CDFs and fund outflows are minimal. In addition unlike RFCs, CDFs have regular cash flow via parishes, schools and associated entities.

The consultation paper has not provided any evidence that lay investors in CDFs have been unable to access their funds because of perceived liquidity problems. It should be up to CDFs to continue to successfully manage liquidity requirements for their investors having regard to standards set by APRA and ASIC.

7. Investor acknowledgements

CDFs are currently required to provide disclosures which simply acknowledge the awareness that CDFs are not ADIs and not covered by regulatory protection. No evidence has been provided to suggest the current disclosures have failed or that investors in CDFs do so solely because of the expectation of regulatory protection.

The proposed new investor acknowledgments are provocative and focus on the "risk of loss", not the degree of regulatory protection. They would unnecessarily raise investor fears and damage the good reputations of CDFs.

8. Restrictions on the use of certain terms

The ACBC has no difficulty with the proscribing of the word 'deposit' in relation to its activities. However, no evidence has been provided to suggest that the use of these generally accepted terms, in particular the term "account", have again led investors to believe they are dealing with a bank and not a CDF or that the security of their investment is equivalent to that of a deposit with an ADI. Again, ASIC states in the consultation paper that there are differing expectations of regulatory protection by lay investors who are motivated by the charitable objectives of RCDFs.

9. General purpose v specific purpose financial reports

All CDPF Limited sponsored CDFs are required to submit a copy of their audited financial reports, which due to the nature of the CDFs are special purpose accounts, to CDPF

Limited. The extra cost of compliance to produce general purpose accounts, particularly for smaller regional CDFs, cannot be justified.

Conclusion

CDFs have been operating successfully for almost 60 years, aided by strong governance and compliance structures. CDFs are a successful model of cooperation for pooling resources for the common good.

The proposal as it stands, resulting in the loss of lay money used by CDFs to further the charitable work of the Church, will inhibit the capital development in the Church's educational, welfare, health and pastoral services to the community.

The ACBC would like to see the current exemptions continue in their current form given the long successful history of CDFs.

We would welcome the opportunity to discuss this further.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Rev Brian Lucas', written in a cursive style.

Rev Brian Lucas
General Secretary

Appendix

Charitable investment fundraisers Consultation Paper-Answers to Questions

B1Q1 Do you agree with this proposal? If not, why not?

No. The ACBC does not see that a case has been made to remove all existing exemptions. If this option were to be pursued by ASIC it would have significant implications on the operations of CDFs which will impact on their long term viability.

B1Q2 Do you believe there is any basis to apply a less rigorous regulatory framework to charitable investment fundraisers' investment funds generally? If so, please explain.

The proposals give insufficient attention to the obvious differences between religious charitable development funds and other registered finance companies and charitable fundraisers regulated by ASIC.

Almost 90% of funds sponsored by CDPF Limited are internal church monies. The lay proportion is just over 10% but still valuable to CDFs. The laity makes a conscious decision to invest to support the works of the church and should not be denied that opportunity based on commercial criteria applying to unrelated retail investors. However, CDFs lend only to Church projects, and do not lend to the general community.

The benefits of CDFs to the Australian community are well established. Any increase in regulation only increases the costs for CDFs and diminishes the funding available to provide church based services to the community. CDFs further the charitable works of the church and regulatory responsibility has to be balanced with the cost of compliance.

B1Q3 Do you believe it is reasonable to apply a less rigorous regulatory framework to charitable investment fundraisers that only raise investment funds from associated entities? If not, why not?

The proposals give insufficient attention to the obvious differences between religious charitable development funds and other registered finance companies and charitable fundraisers regulated by ASIC.

The ACBC believes a considered examination and comparison is needed of the risks RFCs such as Banksia Securities posed to their investors, with the risks which CDFs pose to the laity who invest in them. Without such an investigation, there is potential for a misunderstanding of the risks of CDFs, the unnecessary removal of current exemptions, or the imposition of additional conditions the ultimate price of which will be a significant reduction in the provision of charitable services to the Australian community.

B1Q4 Do you believe it is reasonable to distinguish between charitable investment fundraisers that raise investment funds from associated entities only and those that raise funds from wholesale investors more generally (including those that are not associated entities of the charity)?

Not applicable to CDFs.

B1Q5 What benefits do you consider will result from this proposal?

Little if any. The perceived concerns purportedly addressed by this proposal will not add to the benefits gained by investors in CDFs.

Lay investors should not be discouraged from investing their "faith dollar" with CDFs.

B1Q6 What disadvantages do you consider will result from this proposal?

Removing existing exemptions Increases regulation which increases costs for CDFs. This decreases funding available for charitable works to the community. In the current economic climate it will become necessary if these changes are implemented for governments to fund projects and services currently funded by charitable development funds of the Catholic Church. The proposals will reduce the funding available to the church for capital development projects, forcing church entities to the commercial loan market at higher servicing cost levels.

The disadvantaged in our community will be further marginalised as charitable services are cut due to regulatory compliance cost increases.

B1Q7 How would this proposal affect your organisation's ability to pursue its charitable purpose? For example, to what extent would it affect your organisation's ability to invest in assets, programs or services associated with your charitable purpose?

In its Discussion Paper *Banking Act exemption and section 66 guidelines*, APRA stated that of the \$7.0 billion in RCDF liabilities, around \$1.1 billion is sourced from individuals. The loss of this \$1.1 billion through being unable to comply with this proposal would have a serious effect on RCDFs. For the CDFs it would be a loss of around \$632 Million in lay money with most of this loss occurring in regional Australia. Most CDFs and their related entities will be forced to lay off staff and cut services.

B1Q8 Would complying with this proposal require you to restructure your business in any way?

Yes. Staff will have to be laid off and services cut in many of the 25 CDFs operating across Australia.

B1Q9 What impact will this proposal have on your business costs? How will you manage these costs? Please quantify and substantiate any costs that you consider would arise.

Compliance costs will increase forcing CDFs to reduce services to pay for these additional compliance costs. Ultimately, the CDFs collectively stand to lose more than \$15 million in income per annum.

B1Q10 Will this proposal have any significant impact on investment fundraising by charitable organisations generally? For example, do you believe it will impact some investors' appetite for investments with charitable investment fundraisers and cause them to move investment funds to ADIs? Please explain.

Yes. The profile and nature of the laity who invest in CDFs is misunderstood. The relationship of lay investors with their CDF will change from one of a personal faith-based relationship, supporting the charitable works of the Church to one of red tape that is reflective of ADI and other AFS licenced providers.

B1Q11 Are there any practical problems with the implementation of this proposal? Please give details.

Yes. Current practices will need to change. Many lay investors have significant histories with CDFs and will be significantly inconvenienced.

Also, the definition of new charitable investment fundraising includes existing investors who wish to roll over their investment. In practice this means that all existing investments will at some time rollover and therefore be classed as new investments and that over time exemptions will no longer apply because all investments will be defined as new.

C1Q1 Do you agree with this proposal? If not, why not?

No. The rationale for the proposal is flawed in relation to CDFs. The proposal lacks proper understanding of the Church's model of operating CDFs. The consultation paper does not provide any proof that the current exemptions have led investors in CDFs to lack confidence or be ill informed or that they have been ineffective in addressing the unique role of CDFs.

AFS licencing imposes significant compliance costs.

C1Q2 Is it reasonable to provide the proposed exemptions on the basis that investors may be motivated in part by charitable objectives and so are likely to have different expectations of regulatory protections?

The proposed exemptions and additional conditions of relief are an overreach and most are unreasonable given the risk profile of CDFs and in the absence of any evidence that current exemptions have not worked.

C1Q3 Is there any other basis for the proposed exemptions in light of the purposes of the relevant provisions of the Corporations Act?

Laity who invest in CDFs are motivated by the charitable works that can be derived from pooling their investment funds with others who are similarly motivated. Their reasons for investing in CDFs are different to retail investors in other institutions where the principal consideration is maximising returns.

C1Q4 Is this proposal preferable to the alternative proposal (Option 1) set out in Section B? Please give reasons.

Retaining any existing workable exemptions is better than not retaining any. However the consultation paper is misleading to suggest the proposal only applies to new issues because unless a CDF prevents existing lay investors from reinvesting it will be subject to these new conditions.

C1Q5 What value and proportion of your organisation's assets are on-lent as loans (whether to associated entities or otherwise), or invested in illiquid assets? To what extent does your organisation require investors to bear the risk of default on moneys your organisation lends?

The proportion of assets loaned varies between CDFs.

Investors are backed by several layers of protection. First, Church CDFs hold reserves to cover for any loss and second, the diocese indemnifies investors from loss. The indemnity is backed by the assets of the diocese.

C1Q6 What benefits do you consider will result from this proposal?

We see little benefit from the proposed exemptions and additional conditions.

C1Q7 What disadvantages do you consider will result from this proposal?

It is unlikely any CDF will be able to continue to operate in their current form under this proposal. The loss of lay investments will not only mean a loss of more than \$15 million in income per annum, it will also pose major liquidity problems for a number of CDFs and also has implications for funding capital projects.

Increased compliance costs and red tape will result from the proposed additional obligations and ultimately be prohibitive leading to the demise of lay investors to this sector. Lay investors will lose this option to support the charitable works of the Church and the community will suffer.

C2Q1 Do you agree with this proposal? If not, why not?

No. The consultation paper has failed to demonstrate the need for compliance with AFS licencing provisions. Laity who invest with CDFs do not expect financial advice nor is any given. They are made aware of the existing disclosures required and are accepting of these as part of their "faith investing". Their investment choice is driven by the religious and charitable nature of the CDF, not by any licencing provisions.

C2Q2 What benefits do you consider will result from this proposal?

None. The consultation paper has not provided any evidence that there is an advisor/investor relationship or increased risk to investors requiring a substantial extension of regulatory oversight through the application of the AFS licensing regime to CDF's.

C2Q3 What disadvantages do you consider will result from this proposal?

The structures of CDFs are not suited to AFS licensing provisions which are onerous and disproportionate to the risks profile of CDFs. CDF staff do not hold themselves out to be financial advisors or experts in the field and the laity who invest in CDFs accept that.

C2Q4 Do you consider there are any specific obligations imposed on AFS licensees under the Corporations Act that should not apply to AFS licensees that are charitable investment fundraisers? If so, please give details and reasons.

The education and training requirements for AFS licensees are disproportionate with the function of CDF staff who are not employed to give advice, not qualified to do so and not asked by lay investors to give any advice.

C2Q5 Would complying with this proposal require you to restructure your business in any way?

Yes.

C2Q6 If this proposal is implemented, would you respond by changing the way your organisation currently fundraises?

Yes.

C2Q7 What impact will this proposal have on your business costs?

Compliance costs will increase particularly in education, training and supervision of staff.

C2Q8 Are there any practical problems with implementation of this proposal? Please give details.

Compliance represents a disproportionate effort for the benefit gained. Almost 90% of funds in CDFs belong to the church and associated entities. Complying in order to retain just over 10% of funds across mostly regional areas is disproportionate and will prove difficult.

C3Q1 Do you agree that charitable investment fundraisers should be subject to a minimum charitable investment requirement?

No. It is not the role of regulators to set investment policy or determine asset allocation levels.

The proposed requirement to have 75% of the invested funds held in "charitable assets" is impractical and is in conflict with the prudent management of liquidity. It also does not recognise that a significant portion of the invested funds from CDFs' internal treasury clients are seasonal and therefore cannot be directed toward long term illiquid assets.

CDFs do not keep separate books for lay investor fund allocations. They all form part of the larger pool of funds. Fundraising is not done on a project by project basis. CDFs need to accumulate investments so funds are available for capital projects, often at short notice.

CDFs have had decades of operational experience and understand their Church customers "businesses" intimately. CDFs have sufficient experience and expertise to set investment guidelines which suit their own profiles.

C3Q2 Do you agree with the proposed definition of charitable assets in proposal C3(d)(i)? If not, please explain why not and give suggestions.

No. Any asset used to further the mission of the Church is a charitable asset. The interest earned on term deposits with an ADI and used to employ a pastoral worker is no less of a charitable asset than the building in which the pastoral worker works.

C3Q3 What benefits do you consider will result from this proposal?

None.

C3Q4 What disadvantages do you consider will result from this proposal?

It is impractical to turn away a lay investor just because at that time there is no charitable investment that can be acquired. All lay money helps to build the pool of funds used to generate returns for the pastoral and charitable works of CDFs.

C3Q5 Is the proposed amount of 75% the appropriate amount if such a requirement is to apply? For example, is the proposed percentage high enough to ensure the investment product is likely to appeal primarily to investors whose priority is to support the organisation's charitable purpose, as distinct from investors who are primarily concerned with being repaid or acquiring a financial return on their investment?

See answer to question C3Q1.

C3Q6 Is the proposed amount of 75% low enough to allow charitable investment fundraisers sufficient flexibility to manage the financial needs of the organisation (e.g. to maintain sufficient liquidity to allow investor redemption requests to be met, or to ensure charitable investment fundraisers satisfy the proposed capital and liquidity requirements in proposal C4)?

See answer to question C3Q1.

C3Q7 Do you think a principles-based charitable investment requirement would be preferable (e.g. a requirement on charitable investment fundraisers to invest investment funds in charitable investments as much as is practicable, having regard to the financial needs of the charitable debenture issuer or scheme)? Alternatively, do you think this should be an additional requirement to proposal C3? Please explain.

See answer to question C3Q1.

C3Q8 Would complying with this proposal require you to restructure your business in any way?

Yes.

C3Q9 What impact will this proposal have on your business costs? How will you manage these costs?

Compliance costs will increase resulting in charitable services being cut.

C3Q10 Are there any practical problems with the implementation of this proposal? Please give details.

See answer to questions C3Q1 and C3Q4.

C4Q1 Do you agree that charitable investment fundraisers that fundraise from retail investors (other than associated entities) should be subject to a minimum capital or subordinated liability requirement? If not, why not?

In relation to minimum capital and liability requirements, the rationale given in the consultation paper is based on an unfounded link that concerns relating to retail

debenture issuing lenders also apply to CDFs. In the view of the ACBC, the two are manifestly different. Unlike retail debenture issuing lenders, CDFs are not driven by profits, do not lend to the public, do not compete with other providers and have no shareholders.

The consultation paper fails to identify the increased risks to lay investors from failures of retail debenture issuing lenders.

The ACBC strongly believes that capital and liquidity requirements should involve balancing the costs of compliance with the risk of failure. Given the unique nature of CDFs it should be up to each CDF to self determine its own capital requirements in accordance with their portfolio makeup and minimum capital requirements in accordance with their portfolio makeup, having regard to standards set by APRA and ASIC and if appropriate report to ASIC through their group charities sponsor.

C4Q2 Is the proposed capital requirement of 8% of risk-weighted assets high enough to define charitable investment fundraisings that should be eligible for exemption, given the risks and the fact that charitable investment fundraisers are not subject to prudential supervision or a requirement to comply with the exempted provisions in the Corporations Act?

The ACBC suggests CDFs self regulate in accordance with their portfolio makeup having regard to standards set by APRA and ASIC and report to ASIC through their group charities sponsor.

C4Q3 Do you agree that charitable investment fundraisers that fundraise from retail investors (other than associated entities) should be subject to minimum liquidity requirements?

The ACBC suggests CDFs self regulate and report to ASIC through their group charities sponsor.

C4Q4 Is the proposed liquidity requirement of 9% of liabilities in high-quality liquid assets high enough to define charitable investment fundraisings that should be eligible for exemption, given the risks and the fact that charitable investment fundraisers are not subject to prudential supervision or a requirement to comply with the exempted provisions in the Corporations Act?

The ACBC suggests CDFs self regulate and report to ASIC through their group charities sponsor.

C4Q5 Should the minimum capital or subordinated liability requirements and minimum liquidity requirements only apply to some charitable investment fundraisers (e.g. those that on-lend the funds raised or that on-lend the funds raised to certain types of projects only, or those with investment funds above a prescribed threshold)? Please give reasons. If you believe these requirements should only apply to a sub-group of charitable investment fundraisers, please describe and give reasons.

See answers to questions C4Q1.

C4Q6 Is there a basis to treat managed investment schemes differently because investors do not have the right to sue a corporation for a debt in order to obtain their rights?

The ACBC is unable to comment on this.

C4Q7 Do you believe the proposed capital and liquidity requirements should only apply to charitable schemes where retail investors would have expected when they invested that they would receive a fixed return or be able to redeem over fixed timeframes?

See the answer to question C4Q1.

C4Q8 Could the proposed capital and liquidity requirements be independently monitored practically, given there is no entity separate from the charitable investment fundraiser with a role to monitor compliance with these requirements?

Through their Diocesan Bishop assisted by advisory councils, boards and compliance and internal audit committees, CDFs already have independent oversight and monitoring of capital and liquidity benchmarks. In addition those with a group charities exemption such as CDFs have another layer of oversight through their sponsor corporation.

C4Q9 What changes to the operation of charitable investment fundraisers will occur if the proposed capital and liquidity requirements are implemented?

This will depend on the individual CDF, however the misunderstanding of the risks of CDFs and these additional conditions will force CDFs to review their operations.

C4Q10 Will charitable investment fundraisers have any practical difficulties in meeting and maintaining the proposed capital and liquidity requirements? Please estimate the likely costs.

Yes. There may be some restructuring involved for some CDFs resulting in a loss of flexibility. Compliance costs will vary between CDFs.

C5Q1 Do you agree with this proposal? If not, why not?

No. The loss of at call investments will result in the loss of significant liquidity for capital development projects and result in lower income for service delivery.

The ACBC does not believe it is the role of regulators to set investment policies or repayment practices of CDFs.

C5Q2 What benefits do you consider will result from this proposal?

None.

C5Q3 What disadvantages do you consider will result from this proposal?

See answer to C5Q1.

It is up to CDFs who offer ready access of funds to lay investors to manage this. All lay money helps to build the pool of funds used to generate returns for the pastoral and charitable works of CDFs

C5Q4 Do you agree that this proposal should only apply to charitable investment fundraisers that fundraise from retail investors (other than associated entities)?

See answer to C5Q1.

The ACBC reiterates its previous position that the notion of 'retail investors' does not apply to CDFs who operate under conditions restricting advertising to the public, and do not have retail outlets or ATMs.

C5Q5 Would complying with this proposal require you to restructure your business in any way? If applicable, please provide details about the portion of investment funds at your organisation that relates to investment products that can be required to be repaid within 31 days.

Yes. CDFs collectively have \$346 Million in lay at call funds. This represents just over half of lay funds.

C5Q6 What impact will this proposal have on your business costs? How will you manage these costs?

Some cost savings will accrue through lower account activity however, any loss of staff, particularly for smaller regional diocese, will reduce available employee output in non-CDF work. The cost savings will be more than offset by lost income.

C5Q7 Are there any practical problems with the implementation of this proposal? Please give details.

See answer to question C5Q1.

C6Q1 Do you agree with this proposal? If not, why not?

No. The ACBC is unaware of when the current disclosures been proven to be inadequate.

It is also unaware of why clause C6 (b)(ii) is proposed as a disclosure when ASIC does not required it as a disclosure for all other publicly promoted investment products.

C6Q2 What benefits do you consider will result from this proposal?

None.

C6Q3 What disadvantages do you consider will result from this proposal?

Proposed clause C6 (b)(ii), if not required of all other investment products, discriminates against CDFs and damages the reputation of CDFs by unnecessarily raising investor fears when the risk has not changed.

C6Q4 Would complying with this proposal require you to restructure your business in any way?

Yes.

C6Q5 What impact will this proposal have on your business costs?

Costs will increase from reprinting of existing documentation containing the existing disclosures with the proposed disclosures.

C6Q6 Are there any practical problems with implementation of this proposal? Please give details.

Proposed clause C6 (b)(ii) has the potential to mislead lay investors into thinking their investment may convert to a donation at the discretion of the CDF resulting in potential loss of funds and more difficult to attract new funds..

C7Q1 Do you agree with this proposal? If not, why not?

No. These terms are generally accepted terms and whilst we have no difficulty with proscribing the word 'deposit' in relation to these activities, no evidence has been provided to suggest the use of these generally accepted terms have led investors to believe they are dealing with a bank and not a CDF.

For example, the term 'account' is a universal term used in non-banking situations such as telephone account, internet account, service account etc.

Nevertheless the ACBC concedes the use of the word deposit.

C7Q2 What benefits do you consider will result from this proposal?

None.

C7Q3 What disadvantages do you consider will result from this proposal?

Restricting the use of generally accepted terminology only serves to confuse lay investors who are aware of the disclosures and the CDF they invest with.

The technology used by CDFs is a system designed for retail banking where terms such as account are a fundamental part of the system. Any restriction on generally accepted terminology will lead to massive costs in having the technology modified.

C7Q4 What impact will this proposal have on your business costs?

Costs will increase from reprinting of existing documentation containing the existing disclosures with the proposed disclosures.

As mentioned in C7Q3 the cost of modifying systems will be massive.

C7Q5 Are there any practical problems with implementation of this proposal? Please give details.

Restricting the use of generally accepted terminology is not going to stop their use. How are CDFs expected to stop lay customers from using generally accepted terminology?

C8Q1 Do you agree that charitable investment fundraisers should be required to make the disclosures in proposal C8(a) in offer documents and promotional materials? If not, why not?

No. The consultation paper has not provided any evidence to suggest that the current disclosures have failed or that lay investors in CDF would expect regulatory protection. The proposed new investor acknowledgements are provocative, draconian and focus on the 'risk of loss', not the degree of regulatory protection. They would unnecessarily raise investor's fears and damage the good reputation of CDFs.

C8Q2 Are these matters of disclosure adequate to deter potential investors whose primary motive for investment is to be assured of repayment or to seek a financial return on their investment?

The ACBC believes that the additional disclosures are an overreach and in the case of C8 (a) (ii) draconian and beyond what is acceptable and reasonable having regard to no investor in a CDF having lost their investment.

CDFs are prohibited from advertising to the general public and hence are unable to attract investors seeking assurance of repayment or motivated by the return on

investment. Investors in CDFs are motivated by the benefit their investment provides to the charitable works of the CDF.

C8Q3 What benefits do you consider will result from this proposal?

None.

C8Q4 What disadvantages do you consider will result from this proposal?

The ACBC believes it is appropriate to make reasonable disclosures but inappropriate to force CDFs to publish opinions or statements such as proposed in C8 (a) (ii).

C8Q5 What impact will this proposal have on your business costs? How will you manage these costs?

Costs will increase from reprinting of existing documentation containing the existing disclosures with the proposed disclosures.

C8Q6 Are there any practical problems with the implementation of this proposal? Please give details.

The ACBC believes the phraseology in the example offered is poor, painting CDFs in a negative light and is designed to discourage lay investors from investing in CDFs.

C9Q1 Do you agree with this proposal? If not, why not?

The ACBC requires all CDPF Limited sponsored RCDFs to submit their audited financial reports to CDPF Limited.

If RCDFs accept lay money, we believe it acceptable for ASIC to receive copies of the audited financial reports of CDFs provided they continue to be special purpose accounts.

If on the other hand as a CDF does not accept lay money, we see no reason for ASIC to receive audited financial reports.

C9Q2 Do you believe the proposed time for lodgement of audited financial statements should be shortened? Please give reasons.

No. Six months is a reasonable time.

C9Q3 What benefits do you consider will result from this proposal?

None.

C9Q4 What disadvantages do you consider will result from this proposal?

ASIC, governments or other interest groups may use this information to influence or interfere in the governance and operations of CDFs.

C9Q5 Would complying with this proposal require you to restructure your business in any way?

No.

C9Q6 What impact will this proposal have on your business costs? Please quantify and substantiate your estimate.

Significant extra accounting and audit costs if CDFs are required to prepare fully compliant general purpose financial reports.

C9Q7 Are there any practical problems with implementation of this proposal? Please give details.

Yes. It undermines the exemptions entitled to the Church under the ACNC regime. The ACNC has exempted the provision of audited financial reports to Basis Religious Charities (BRC's). This conflicts with the proposal by ASIC.

C10Q1 Do you agree with this proposal? If not, why not?

No. The ACBC does not agree with the rationale that because few lodgement requirements are applicable to CDFs registered identification statements are appropriate.

The ACBC believes that the additional requirements are unnecessary given the group charities exemption provided to CDFP Limited. Further the ACBC believes it is up to the ACNC and not ASIC to identify the charitable purpose of the CDF. If the CDF is registered with the ACNC, then ASIC should accept that.

C10Q2 Do you believe the new content requirements for identification statements are reasonable? If not, why not?

No. Much of this information is already available through other regulatory bodies such as the ACNC and the Australian Taxation Office (ATO).

No evidence has been provided as to why additional information is warranted.

C10Q3 What benefits do you consider will result from this proposal?

None.

C10Q4 What disadvantages do you consider will result from this proposal?

More red tape as CDFs have to duplicate the provision of information across government agencies.

C10Q5 What impact will this proposal have on your business costs?

Costs will increase.

C10Q6 Are there any practical problems with implementation of this proposal? Please give details.

The ACBC believes proposal C10 (c) provides ASIC with broad powers to delve into the affairs of CDFs which are now properly the responsibility of the ACNC.

C11Q1 Do you agree with this proposal? If not, why not?

No. The ACBC believes that subjecting CDFs to the same level of breach reporting obligations as licensees operating under the AFS licensing requirements is an overreach. We strongly believe that CDFs should be responsible for monitoring their own compliance.

C11Q2 Do you believe the proposed time for lodgement of breach reports under proposal C11(a) should be longer? Please give reasons.

See answer to C11Q1.

C11Q3 What benefits do you consider will result from this proposal?

None.

C11Q4 What disadvantages do you consider will result from this proposal?

More red tape as CDFs are required to "continuously report" compliance activities to ASIC.

C11Q5 What impact will this proposal have on your business costs?

Compliance costs will increase.

C11Q6 Are there any practical problems with implementation of this proposal? Please give details.

Determining what a significant or likely breach is, will be a matter of interpretation and discretion. This may give rise to misunderstanding between CDFs and ASIC in properly fulfilling their respective obligations.

C12Q1 Do you agree with this proposal? If not, why not?

This proposal is at odds with the rationale for proposal C11 where CDFs have primary responsibility for monitoring their compliance. External monitoring by auditors will be very costly.

C12Q2 What benefits do you consider will result from this proposal?

None. Requiring auditors to sign off on compliance with investment guidelines will result in the scope of their audit increasing disproportionately with the risk profile of CDFs.

C12Q3 What disadvantages do you consider will result from this proposal?

Independent auditing of compliance with any investment requirements is another layer of red tape that will add substantial auditing cost currently incurred by CDFs.

C12Q4 Do you believe that, in the absence of this requirement (or an alternative external monitoring requirement), there is a significantly increased risk of non-compliance with the minimum charitable investment requirement (proposal C3) and the capital and liquidity requirements (proposal C4)?

No. As stated previously we do not believe it is the role of regulators to set investment policy or determine asset allocation levels.

C12Q5 Do you think an alternative requirement for external monitoring of compliance with the minimum charitable investment requirement (proposal C3) and the capital and liquidity requirements (proposal C4) may be preferable? If so, please give details.

Yes. Audit/Compliance Committee regime similar to that under the Managed Investments Act is a far better and more cost effective method of monitoring compliance. Some CDFs voluntarily use this method of monitoring compliance.

C12Q6 What impact will this proposal have on your business costs?

Auditing costs will increase substantially. A certificate from a responsible person is a more sensible way of reporting to ASIC.

C12Q7 Are there any practical problems with implementation of this proposal? Please give details.

Yes. The financial reporting standards vary giving rise to confusion as to which International Accounting Standards Board (IASB) standard is to be adopted.

C13Q1 Do you agree with this proposal? If not, why not?

No. The ACBC believes the proposal may be an overreach giving excessive powers to ASIC over CDFs particularly if the breach is non-systemic.

C13Q2 What benefits do you consider will result from this proposal?

The ACBC is concerned about what conditions may be imposed and if these will be conducive to the continuing operation of the CDF? What if they are not reasonable or conducive to a positive outcome?

C13Q3 What disadvantages do you consider will result from this proposal?

The powers of ASIC to take action are a major concern that needs further thought, discussion and clarification.

C13Q4 What impact will this proposal have on your business costs?

Legal costs will increase depending on the action of ASIC and or any conditions imposed.

C13Q5 Are there any practical problems with implementation of this proposal? Please give details.

Alternatives actions need to be investigated to rectify breaches. Enforceable undertakings may be one means to allow systemic breaches to be corrected without limiting the operations of the CDF as a going concern.

C14Q1 Do you agree that charities relying on the group charities exemption should be required to meet these conditions? Please give reasons.

No. We believe that the current sponsor exemptions under RG 87 should be retained. We are unaware of any evidence that these sponsor exemptions have not worked.

C14Q2 Do you think that charities relying on the group charities exemption should be required to comply with any other conditions (whether applicable to charities relying on the individual charities exemption or not)? If so, please give details.

No.

C14Q3 Should charitable investment fundraisers relying on the group charities exemption have to lodge an individual identification statement? If so, what benefits would arise?

No.

C14Q4 Would complying with this proposal require you to restructure your business in any way?

Yes.

C14Q5 If this proposal is implemented, would you respond by changing the way your organisation currently fundraises?

Yes.

C14Q6 What impact will this proposal have on your business costs?

Additional red tape and costs to comply with these requirements.

C14Q7 Are there any practical problems with implementation of this proposal? Please give details.

CDFs would have to report to both their sponsor and ASIC. This duplication will result in increased costs particularly audit costs.

D1Q1 If Option 1 is implemented, do you agree with the proposed timeframe for implementation?

No. It is too short. ASIC should consult further with CDFs on acceptable implementation timeframes.

D2Q1 Do you agree with the proposed timeframe in Table 2 for implementation of the AFS licensing requirement? If not, why not?

No. It is too short. ASIC should consult further with CDFs on acceptable implementation timeframes.

D2Q2 Do you agree with the proposed timeframe in Table 2 for implementation of the minimum charitable investment requirement? If not, why not?

No. It is too short. ASIC should consult further with CDFs on acceptable implementation timeframes.

D2Q3 Do you agree with the proposed timeframe in Table 2 for implementation of the capital and liquidity requirements? If not, why not?

No. It is too short. ASIC should consult further with CDFs on acceptable implementation timeframes.

D2Q4 Do you agree with the proposed timeframe in Table 2 for implementation of the requirement to not issue at-call or short-term investment products? If not, why not?

No. It is too short. ASIC should consult further with CDFs on acceptable implementation timeframes.

D2Q5 Do you agree with the proposed timeframe in Table 2 for implementation of the proposed investor acknowledgement requirement? If not, why not?

No. It is too short. ASIC should consult further with CDFs on acceptable implementation timeframes.

D2Q6 Do you agree with the proposed timeframe in Table 2 for implementation of the requirement to not use certain terms, such as 'account', 'at-call' or 'deposit'? If not, why not?

No. It is too short. ASIC should consult further with CDFs on acceptable implementation timeframes.

D2Q7 Do you agree with the proposed timeframe in Table 2 for implementation of the additional disclosure requirements? If not, why not?

No. It is too short. ASIC should consult further with CDFs on acceptable implementation timeframes.

D2Q8 Do you agree with the proposed timeframe in Table 2 for implementation of the modified requirement to lodge financial statements? If not, why not?

No. It is too short. ASIC should consult further with CDFs on acceptable implementation timeframes.

D2Q9 Do you agree with the proposed timeframe in Table 2 for implementation of the modified identification statement (content) requirement? If not, why not?

No. It is too short. ASIC should consult further with CDFs on acceptable implementation timeframes.

D2Q10 Do you agree with the proposed timeframe in Table 2 for implementation of the breach reporting requirements? If not, why not?

No. It is too short. ASIC should consult further with CDFs on acceptable implementation timeframes.

D2Q11 Do you agree with the proposed timeframe in Table 2 for implementation of the audit report requirement? If not, why not?

No. It is too short. ASIC should consult further with CDFs on acceptable implementation timeframes.

D2Q12 Do you require a transition period to ensure that adequate arrangements are in place to meet the requirements of these proposals? Please provide details.

Yes. It is unreasonable to expect RCDFs to transfer to a new regulatory regime without an adequate transition period. ASIC should consult further with CDFs on an acceptable transition period.

E1Q1 Do you agree with this proposal? If not, why not?

Yes.

E1Q2 Do you consider that the existing terms of the relief should be amended? If so, please provide details.

No.