



# Anglican Church Diocese of Sydney

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15 February 2016

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Mr Andrew Duffy  
Investment Managers and Superannuation  
Australian Securities & Investments Commission  
GPO Box 9827  
SYDNEY NSW 2001

Dear Andrew

**Submission in relation to ASIC Consultation Paper 207 *Charitable Investment fundraisers***

Thank you for your letter of 7 January 2016 forwarding a copy of ASIC's modified proposals.

Please find attached our comments about the proposals.

In essence, we propose restructuring our charitable fundraising scheme so that we will no longer accept investments from retail investors, although you will note that in our comments we request that the term "retail investors" not include individuals in their capacity as trustees of church property.

We do not proposed seeking an AFS license.

We would be happy to comment on the terms of any revised class order.

Yours sincerely

MARK PAYNE  
Chief Executive Officer

# Glebe Administration Board

## Responses to ASIC's Policy Proposals for the regulation of Charitable Investment Fundraisers

### Proposal 1 – Licensing

Glebe Administration Board (“GAB”) notes that the Australian Securities and Investments Commission (“ASIC”) proposes that charitable investment fundraisers (“CIFs”) that accept new investment fundraising from retail investors who are not “associated entities” will no longer have the benefit of a specific exemption from the requirement to have an AFS licence which authorises them to issue interests in managed investment schemes or debentures (as applicable).<sup>1</sup>

For this purpose, ASIC currently proposes to treat as “associated entities” entities (other than individuals) which are connected with the CIF by being subject to common control or having a common charitable objective.

GAB broadly supports ASIC’s proposal, subject to 2 comments –

- Care needs to be taken in defining what constitutes “common control”.
- Care also needs to be taken in defining what constitutes a “common charitable objective”.

#### “Common control”

Care needs to be taken in defining what is “common control”.

In the Anglican Church in New South Wales, the synod of each diocese has power, by ordinance, to create bodies which are able to be incorporated under the *Anglican Church of Australia (Bodies Corporate) Act 1938* (NSW). These entities are bodies corporate, but are not companies. They do not have shares or shareholders which makes it difficult to apply corporate law concepts of “related entity”. The synod may also have power to make ordinances in relation to other bodies, although such bodies are not created by the synod.

Nevertheless, GAB submits that such bodies created by a synod or for which the Synod may make ordinances (including a CIF) should be regarded as associated entities because they are under the ultimate control of the synod. The definition of “common control” needs to be drafted in a way to recognise this association.

In addition, the synod of each diocese of the Anglican Church in New South Wales has wide powers, under the *Anglican Church of Australia Trust Property Act 1917* (NSW), to pass ordinances in relation to church trust property held for or for the use, benefit, or purposes of the relevant diocese. Such ordinances are binding on the trustees of the property to which the ordinances relate.

Because trustees of church trust property held for or for the use, benefit, or purposes of the Anglican Church in a diocese are subject to the ordinances of the synod of the diocese, GAB considers that such trustees (whether bodies corporate or individuals) ought be considered to be subject to common control with the relevant CIF.

Accordingly, GAB submits that an “associated entity” of a CIF should include –

- (a) a body constituted by or under the authority of a decision of the central governing body of a related religious organisation, or
- (b) a body in relation to which the central governing body of a related religious organisation is empowered to make ordinance or other binding rules, or
- (c) a person acting as a trustee of a trust for or for the use, benefit or purposes of a related religious organisation.

Such a definition of “associated entity” would be consistent with the wording of *Banking exemption No. 2 of 2015* which applies to CIFs which are also religious charitable development funds listed in that exemption.

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<sup>1</sup> Some CIFs may nonetheless have the benefit of a licensing exemption which is of more general applicability.

### *“Common charitable objective”*

Care also needs to be taken to define the expression “common charitable objective”.

As mentioned, in the Anglican Church in each diocese in New South Wales, the property of the church in that diocese is church trust property. While the trustees of that property are subject to the direction of the relevant synod under *the Anglican Church of Australia Trust Property Act 1917*, the trusts applying to the relevant properties are not identical in terms.

Usually a trustee will hold church trust property on trust for a specific purpose or objective of the Anglican Church in the Diocese which is different from another specific purpose or objective. For example, certain property may be held on trust for the purposes of the Anglican Church in the parish of X; other property may be held for the purposes of the parish of Y. While the property is all “church trust property”, (and, in that sense, can be said to have a common charitable objective) the specific trusts are different (and, in a narrow sense therefore, it could be said that there is no common charitable objective).

Similarly, entities associated with the Anglican Church in a particular Diocese, or more generally, may have a charitable objective which is expressly widely (for example, one entity’s objective could be to raise funds to support the purposes of the Anglican Church in Australia), or which is expressed in more specific terms (for example, a second entity’s objective could be to raise funds to support the purposes of the Anglican Church in a particular diocese in undertaking a particular activity, such as relief of the poor). While both entities have a common charitable objective at a wide level, their specific objectives are different (albeit that the objectives of the second entity could be regarded as a subset of the objectives of the first entity).

GAB submits that ASIC should apply a wide meaning to what is a “common charitable objective”. The CIF connected with a particular charitable organisation ought be regarded as having a “common charitable objective” with –

- (a) the trustees of any property held on trust (whether general or specific) for a purpose which is related to, or connected with, one or more of the purposes of that charitable organisation, and
- (b) entities which have a charitable objective (whether general or specific) which is related to, or connected with, one or more of the objectives of that charitable organisation.

### Proposal 2 – Prohibition on issues of at call or short term products

GAB does not object to the substance of ASIC’s proposal provided that it is clear that the requirement that CIFs cannot assume an obligation of repayment within 31 days in relation to any retail, non-associated investor (paragraph (a) of the current proposal) applies only to *new* obligations and not existing obligations. Otherwise the date in that paragraph should be extended to 1 January 2017 from 1 January 2018 to allow a reasonable transition time.

### Proposal 3 – Investor acknowledgement requirement

GAB does not object to ASIC’s current proposal.

### Proposal 4 – Restricted Terms

GAB does not object to ASIC’s current proposal.

### Proposal 5 – Additional Disclosure Requirements

GAB does not object to ASIC’s current proposal where a CIF accepts new investment fundraising from non-associated retail investors. However, GAB does not believe that additional disclosures beyond those currently required by Class Order 02/184 are necessary if only the investors in the CIF are associated entities.

### Proposal 6 – Financial Reporting

GAB does not object to ASIC’s current proposal.

### Proposal 7 – Identification Statement

GAB does not object to ASIC's current proposal.

### Proposal 8 – Breach Reporting

GAB does not object to ASIC's current proposal.

### Proposal 9 – Commencement Date

GAB does not object to the commencement date and transitional provisions proposed by ASIC.

15 February 2016