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Dear Mr Grummitt,

Submission from the Anglican Investment and Development Fund in response to APRA's Discussion Paper: Banking Act exemptions and section 66 guidelines

The Anglican Investment and Development Fund (AIDF) welcome the opportunity to comment on the Discussion Paper. The AIDF was established in 1967 as a vehicle for Anglicans and agencies with which they are associated in the Diocese of Canberra and Goulburn to entrust money to it that could be put to the use of the Church. It subsidises loans and makes grants to parishes and diocesan agencies from the surplus it makes from the investment and management of entrusted and borrowed funds. In 1989 the AIDF became an early adopter of maintaining risk weighted reserves on a voluntary basis, and since that time consistent with sound prudent practice, has withheld amounts to build reserves. Today the fund has grown to have around \$100m in total assets and reserves of over \$5m.

The AIDF was established under the AIDF Ordinance which, through a 1917 NSW Act of Parliament, is a binding legal trust arrangement. The Ordinance includes a Diocesan guarantee of the fund. The AIDF funding provided to parishes and other diocesan agencies, including schools, is often the enabler for social enterprises to be established, restructured or to continue to operate. The AIDF 'retail depositors' support the AIDF and in turn are a means to support these social enterprises, without which the current models would not be able to continue across the full economic cycle.

Summary

The AIDF submits that:

1. There should be **no change** to the current RCDF exemption, because it is not necessary.
2. If changes are made then, **retail deposits including "at call" should be permitted with the following additional conditions:**
 - a. A guarantee of repayment by the religious body,
 - b. Maintenance of a net asset ratio equivalent to the major ADIs,
 - c. Publication of the RCDF audited accounts on the organisation's website.

3. There are numerous 'trust' based businesses taking similar deposits in Australia - including in the funds management and superannuation sectors - that are either not regulated by APRA or do not have an authority under the Banking Act.
4. The "at call" description should be permitted or an alternative such as "everyday access" be specifically permitted in the exemption.
5. The "Deposit" description could be restricted, however if this is to be done it should be through Section 66 of the Banking Act and not through the RCDF exemption.
6. Unless "retail deposits" are allowed, the continuation of the requirement for RCDFs to have any exemption is inappropriate,
7. BPAY should be permitted,
8. A full Regulatory Impact Statement (RIS) should be completed.

The AIDF seeks answers to the following questions

Question 1 to APRA: Does S51 (xx) of the Constitution apply to ACPT and if so, is it a trading or financial corporation? Why?

Question 2 to APRA: Why does APRA consider the ACPT to be a business?

Question 3 to APRA: In APRA's view in what decade did the ACPT become a business? Was it before or after the enactment of the *Banking Act 1959*?

Question 4 to APRA: Is it APRA's view that S24 Anglican Church of Australia Trust property Act 1917 involves banking?

Question 5 to APRA: Is it APRA's view that taking monies on trust involves banking and if so under what circumstances?

Question 6 to APRA: Will an RFC be permitted to offer non retail 'at call' accounts?

Question 7 to APRA: Are the definitions of retail deposit, retail investor and retail investments as per APRA Prudential Standard APS 210 – Liquidity dated November 2011?

Question 8 to APRA: Why is APRA restricting RCDFs more than RFCs?

Submission

Background

Church Financing

The financing of Churches including the physical buildings, clergy stipends and social enterprises by lay members of a religion (retail depositors) has a well-documented history that dates back over 2,000 years¹. These traditional arrangements, many of which are still operating in some form today, include:

- Marketplaces at or in Church buildings with traders providing payments to the Church in terms of money (rent or share of profits) or goods or use of private assets in a symbiotic relationship. Current examples of this can be readily found throughout European/Middle eastern cities at their cathedrals and even in a smaller scale at local Australian church fetes and events.
- Parishioners regularly donating a proportion of their earnings, business profits or wages. Most Australians are familiar with the 'passing of the plate' at church services. Less familiar but still in practice in our regional parishes are arrangements including 'cattle accounts' or 'crop accounts'. As an example cattle accounts which were common practice only a generation ago included the 'marking of 1 in every X calves' with a Church brand (transfer of goods), raising them on trust and upon their sale the placing of funds into a Church parish trust account.
- One off bequests or gifts. Many parishioners leave assets particularly in their estates but also when life events occur or when they wish to have a particular 'parish/community asset' project implemented. Typically if these assets are monies, they are held in an account on 'trust' or if they are real assets (i.e. land for building a church) transferred into the church name and held on trust. Over time they may provide yearly cash flow finance, irregular capital gain support for projects or collateral support for borrowings. These trusts may be for either general use or specific purposes and are managed as part of the Church's estate.

These 'traditional arrangements' have evolved as societies have changed and particularly in recent centuries as communities have become more urbanised.

Modern methods of financing their religion by lay members of a Church have increasingly involved the providing of money on trust:

- Without interest. The following ATO documentation provides an example:
'Interest free loan to church'
- at an interest rate that is below market rates.

¹ See generally E Green, 'Banking: An Illustrated History', Phaidon Oxford 1989. For a history of the usury laws in the context of credit regulation see Chapter 1, Duggan and Lanyon, 'Consumer Credit Law', Butterworths, 1999.

- on terms that do not have the same flexibility/features. For example: Businesses and individuals using Church accounts that have no cheque access but a higher/similar interest rate compared to the near zero rates paid by an ADI on cheque accounts;
- using Church 'Online accounts' rather than traditional ADI at call branch accounts;
- using Church accounts despite risk ratings (either with or without a church guarantee) - in preference to AAA rated ADIs or lower rated credit union accounts – (either with or without a government guarantee);
- to offset the balance or interest rate payable on existing loans – for example to lower the balance on a parish loan for a clergy car or hall refurbishment.

The provision of funds in this way enables Churches to **lower the cost of their funding**. Over the interest rate cycle, lay parishioner funds form an important long term competitive funding source.

In Australia, unlike some European countries, clergy stipends and the upkeep of buildings (many of which are historic/have heritage values/costs) are paid for by lay members (retail depositors) – not the government.

Naturally, these lay members (retail depositors) increasingly want modern tools that are both efficient and transparent, such as Internet banking facilities.

Church Funding Requirements

Given trustees' fiduciary obligations to ensure prudent management of the Church Estate and in particular, that assets are being adequately utilised/servicing the current Church community, over time, real assets will need to be redeveloped, sold or transferred. This can involve significant funding requirements, including:

- Redevelopment of prime sites in city centres involving multi-million dollar developments often at the urging of local councils over shorter 1-3 year funding timeframes.
- Building and running schools. These (low fee) schools are often in new development areas (mortgage belt areas) which local/state governments have policy and economic imperatives to develop. Given the long term nature of building these businesses to breakeven, long term patient funding is required. In addition equity capital is usually required along with community and land developer support. This specialised form of lending is not readily available in the market, particularly at a price that allows for a breakeven point to be achieved.
- Other social welfare programs. Often these programs are partially supported by government or other non-Church funding sources. They tend to change regularly (with government and other priorities) and as a result quick response flexible short term funding arrangements are needed.
- Restructuring of parishes and associated fixed assets. Over time some communities grow and some decline. There are many examples in all major Australian religions, particularly in regional towns, villages and localities, where populations have declined, ADIs have closed branches and all that's left are the Church buildings. Maintaining these often historical

buildings including their significant annual insurance cost and a clergy stipend amongst a dwindling population can become an unrealistic proposition and burden the often ageing parishioner base. There are many examples of the various faiths working together in these situations to enable both social and fixed asset adjustments to occur. For example the provision of Church services of different faiths in the same single building or Church, or initiatives such as joint development of aged care and/or independent living units at a price that is accessible to that community.

As a result of the specialised nature of **Church Financing and Church Funding Requirements** dedicated units (Religious Charitable Development Funds RCDFs) have long been established in Australian Churches. Features of these RCDFs include:

1. Funding sources regularly involving not only monies from lay parishioners but also funding from commercial sources;
2. Specialised lending on terms not usually available through commercial sources;
3. Personalised customer (individual or parish) relationships;
4. Coverage of 'pockets of market failure' in the ADI market due to development, social nature (breakeven/Charity/NFP), small regional community or reputational concerns.

AIDF History

The Anglican Investment & Development Fund, Diocese of Canberra and Goulburn (AIDF) was established in 1967 by a small group of dedicated finance-professional lay parishioners, along with the support of a \$1,000 loan. For many years it operated out of the AMP offices in Canberra although, given the strong support by lay members (depositors), it quickly established agencies in a number of towns throughout the Diocese. By 1974 it had repaid the initial loan, made grants of over \$4,000 and produced an annual profit of \$11,500. The Fund has operated profitably every year since inception, with profits either withheld as reserves or paid out as grants. In 1989 the AIDF voluntarily adopted (simplified) capital adequacy guidelines as the appropriate standard for maintaining and increasing reserves each year and this reserve element was encapsulated in the Fund's Ordinance. Reserves are invested in order to further support depositors' funds.

The AIDF's core purpose of being a strong and significant supporter of local parishes, including their community activities and buildings, aligns with the depositors' desires of not only receiving competitive and accessible accounts but also of supporting their own community. The AIDF depositors are a fundamental reason for the success of the AIDF over its long history.

The AIDF welcomes all depositor types - including individuals, partnerships, businesses, charities/ community associations, NFP entities and trusts. The AIDF provides fee free accounts, including at call and term investments paying consistently highly competitive interest rates. In addition for the online "community accounts" the AIDF will donate a percentage back into the depositors' local community parish account.

The AIDF offers secure online transaction functionality including BPAY, BankLink (accounting), Cemtex (business salary files) and third party payment functionality. The system provider is Data-Action, which has many clients in the Credit Union sector. The AIDF also participates in the Bulk Electronic Clearing System (BECs), through Indue, with the AIDF BSB being [REDACTED] (online use).

In the past 20 years, the AIDF, in addition to building reserves and managing the Church Financing and Church Funding Requirements, has made grant payments to the Diocese of over \$5m.

Through the explanations provided above it should be clear **that issues of 'competition' with ADIs are not relevant to this discussion.** RCDFs are, as described, focused on charitable social development work. It is noted that APRA's concerns in this area, which were mentioned in the 2006 APRA review, have not been raised again.

History of the RCDF and Exemptions

Despite the long-standing *Banking Act 1959* definition of 'Banking Business', the first indication that anyone, including current and past regulators, viewed the AIDF's activities as falling within this definition came in 2002 – over 30 years after AIDF operations commenced!

This is despite the AIDF being active on this legal front since inception, including obtaining on:

1. 13/02/1968 an exemption from income tax by Commonwealth of Australia.
2. 16/07/1969 a refusal concerning Stamp Duty exemption in respect of Shares and debentures in NSW.
3. 09/12/1975 an exemption from registration of the Money Lenders Ordinance.
4. 20/1/1986 an exemption from the National Companies and Securities Commission.
5. 26/04/1995 an ASC exemption.

The AIDF made an application for the current RCDF exemption dated 23/9/2003, based on APRA's view that it was required. Subsequent to this an APRA letter dated 2/8/2004 was received advising that APRA was undertaking a review of the 'exemption process in order to streamline it'. Further correspondence outlining APRA's 'views' on this review to the General Synod dated 26/9/2005 are noted below:

- APRA's clear view is that this is **Banking Business**
- The reason for exemption was due to the Church/Charity nature
- Concerns included the impact on the Regulated ADI sector
- APRA comments that given the additional restrictions some contributors/depositors may stop contributing and that **they will provide reasonable transition periods.**

The suggested restriction on the word 'deposit' was removed from the exemption conditions.

The view of the AIDF at that time was that there is very little clear legal authority on the meaning of the expression 'Banking Business' and this has not changed.

Discussion Paper Chapter 1 - Introduction

What is Banking Business?

In November 2012, APRA chair Dr John Laker, speaking at an AB+F luncheon, was adamant that his jurisdiction extended only to ADIs, and Banksia fell outside his brief. *"Banksia's advertising made it very clear the organisation wasn't a bank, and the people who lost money didn't think it was a bank, but was a trusted community operation,"* Dr Laker said. He also made it clear where the borders were when it came to defining APRA's powers. *"The issue of where the line is between prudential supervision and market based, or disclosure, supervision was really laid down by the Wallis enquiry. If the government of the day wants to change the line, that will be their call,"* he said.

The AIDF agrees with Dr Laker's comments and is seeking clarity from APRA through the posing of eight specific questions outlined below (on pages 8-11 of this response).

The modern term 'bank' comes from the 'banco' or merchant's bench in the marketplaces of medieval Italy: money dealing was conducted from a portable bench, which would be publicly broken in the event of failure of the merchant's business – the origins of the concept of bankruptcy².

Banking Act 1959

Banking business means:

- (a) a business that consists of banking within the meaning of paragraph 51(xiii) of the Constitution; or**
- (b) a business that is carried on by a corporation to which paragraph 51(xx) of the Constitution applies and that consists, to any extent, of:**
 - (i) both taking money on deposit (otherwise than as part-payment for identified goods or services) and making advances of money; or**
 - (ii) other financial activities prescribed by the regulations for the purposes of this definition.**

The Constitution: section 51

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

(xiii) banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money;

(xx) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;

² Essential Banking Law and Practice, Elisabeth Wentworth, Special Counsel to the Ombudsman Banking and Financial Services Ombudsman Ltd Page 3.

Does this definition apply to all RCDFs and the AIDF?

Many RCDFs are not incorporated and operate under “trust law” legal structures and others that are incorporated are established under laws not specifically covered by the Corporations Act, including ‘Corporation Sole’.

As an example, the AIDF is established under Ordinance, with a separate Board of Management, as part of the Anglican Church Property Trust (ACPT) Diocese of Canberra and Goulburn (formerly Church of England Property Trust Diocese of Goulburn). The ACPT is a body corporate under the NSW Anglican Church of Australia Trust Property Act 1917.

ANGLICAN CHURCH OF AUSTRALIA TRUST PROPERTY ACT 1917

Section 5 - Existing corporate bodies

The following bodies, that is to say:

Church of England Property Trust Diocese of Sydney,
Church of England Property Trust Diocese of Goulburn,
The Corporate Trustees of the Diocese of Grafton and Armidale,
Church of England Property Trust Diocese of Bathurst,
Trustees of the Church Property for the Diocese of Riverina,
The Corporate Trustees of the Diocese of Grafton,

are hereby declared to have been duly constituted as bodies politic and corporate by the said names respectively, under the provisions of the Church of England Trust Property Incorporation Act 1881, and notwithstanding the repeal of the said Act they shall remain so constituted as aforesaid, and, except so far as there is anything in this Act inconsistent therewith, this Act shall apply to them as if this Act had been in force at the time they were constituted and they were constituted hereunder.

Section 24 - Management

*It shall be lawful for the synod of a diocese for which any church trust property is for the time being held, from time to time by ordinance, to provide and to vary any provision now or hereafter to be made for governing and controlling the management and user of such property for the purposes for which the same is for the time being **held in trust**, and for all things incidental to such government and control, including constitutions of councils, committees, and other bodies, whether incorporated or not, and such property shall be held, managed, and used under and in accordance with such ordinance accordingly, the provisions of the trust instrument or instruments (if any) to the contrary notwithstanding.*

*"Church trust property" includes all or any part of any real and personal property which may for the time being be subject to **any trust whether by dedication, consecration, trust instrument, or otherwise**, for or for the use, benefit, or purposes of the Church of England in any diocese, and each such diocese is referred to as the diocese for which the church trust property in question is held.*

Arguments/Rebuttal

- 1) It is clear that the ACPT is a corporation (see Section 5 above), but is it a corporation to which Section 51(xx) of the Constitution applies? We do not think that it is a financial or trading corporation and thus it is beyond the scope of APRA's regulation³.

Question 1 to APRA: Does S51 (xx) of the Constitution apply to ACPT and if so, is it a trading or financial corporation? Why?

Is the ACPT a Business? If so, when did this change occur? It is reasonable to consider the Church and an investment holding entity like the ACPT are **not** in business.

Question 2 to APRA: Why does APRA consider the ACPT to be a business?

Understanding the general timeframe when the ACPT became a business in **APRA's** view would be informative.

Question 3 to APRA: In APRA's view in what decade did the ACPT become a business? Was it before or after the enactment of the *Banking Act 1959*?

- 2) The ACPT has been given powers under a NSW Act (S24 of the 1917 Act see above) that have not been specifically overwritten by a Federal law and define the activities being undertaken by the AIDF. There is no reference to this being banking or State Banking (under S51 XIII).

Question 4 to APRA: Is it APRA's view that S24 Anglican Church of Australia Trust Property Act 1917 involves banking?

- 3) The legal definition of "banking" has been debated widely over many centuries. Historically some would argue that it is a **contractual money relationship**⁴ rather than a **'trust' money relationship** (as arguably conducted by the AIDF in respect of so called **"retail deposits"** and outlined in S24 above). **There are numerous 'trust' based businesses taking similar deposits in Australia - including in the funds management and superannuation sectors - that are either not regulated by APRA or do not have an authority under the Banking Act.** The banker-customer relationship is not one of the accepted fiduciary relationships⁵ and the contractual duty of a banker to a customer is not a fiduciary duty, except in special circumstances.⁶

³ see *R v Federal Court of Australia; Ex parte WA National Football League* (1979) 143 CLR 190

⁴ Essential Banking Law and Practice, Elisabeth Wentworth, Special Counsel to the Ombudsman Banking and Financial Services Ombudsman Ltd Page 10.

⁵ See *James v Australia and New Zealand Banking Group Ltd* (1986) 64 ALJR 347, 391; *Commonwealth Bank v Finding* [2001] 1 QdR 168; *ACCC v Oceana Commercial Pty Ltd* [2003] FCA 156 (18 December 2003)

⁶ For a summary of the law in relation to banks and fiduciary duties, see the decision of Barrett J in *Timms v Commonwealth Bank of Australia* [2004] NSWSC 76

Question 5 to APRA: Is it APRA's view that taking monies on trust involves banking and if so under what circumstances?

Recent Developments

The AIDF concurs that *"the past 5 years has seen considerable turmoil internationally in banking systems"*. However, it also notes the work of the BIS and international regulators to prevent a recurrence of these problems

This turmoil was clearly focussed on very large highly regulated institutions that had highly complex products (CDO's etc.), a bubble like focus on short profits compared to long term community value creation (prudential risks) and significant interconnectivity with the economy (systemic risk). APRA is correct to focus its attention in this area particularly given the significant taxpayer funded support now provided to ADIs. As with any risk taking activity there is no 100% guarantee of non-failure either for prudentially supervised institutions or in the non-supervised sector. There is however now a well-established concentration risk or "too big to fail" cost. This cost should be recognised and spread across those institutions that are too big to fail through levies. With this in mind we support using these additional funds generated to remove concentration risk by **supporting the local community mutual sector – initially, by rebating the annual regulatory compliance cost.**

The comments in the KPMG Mutuals:2012 Survey *"A new beginning amid tough competition"*, including that 72% of Mutuals believe Basel III will disadvantage their business, 74% believing a 5th banking pillar is not possible and 67% believing a review should be performed, should be focus for APRA.

An article in the Economist *"An Anglican leader's ideas on Mammon"* dated 29 April 2013, by a member of the UK parliamentary Banking Standards Commission, the Most Reverend Justin Welby Archbishop of Canterbury (Primate of the Church of England and symbolic head of the Anglican Communion), provides further insight into the GFC and the role of major banks. It also provides an insight into Anglican views on banking relevant to the APRA review as does related reports by the BBC. In summary, as Andy Haldane of the Bank of England argued in the same piece, once banks get to a certain size, diminishing returns (to the community) may set in.

AIDF agrees with the IMF comments - as outlined in the referenced *"Australia, Basel Core Principles for effective Banking Supervision, detailed Assessment of Observance (dated 21 November 2012)"* - in particular, that the number and scale of non-regulated entities in Australia is *"de minimis"*. **APRA as a prudential regulator should concentrate on systemic risk** and not on this class of entity which, while significant in social and community value, is small in financial scale and impact.

The 2012 IMF and World Bank, Financial Sector Assessment Program (FSAP) Recommended Action Plan to Improve Compliance with the Basel Core Principles -Table 2 includes Permissible Activities – Recommended Action as follows:

*“Revise the conditions for the exemption from section 11 of the Banking Act for Registered Financial Corporations RFC (**not RCDF**) to ensure at a minimum, that such exemptions are limited to institutions reliant wholly on **wholesale funding**”*

The AIDF notes the IMF’s quoted recommendation concerning wholesale funding for RFCs, however, sees no reason why RCDFs should be included in the same bucket despite the APRA discussion paper making this connection. The AIDF also notes the following comments from page 36:

*“It is recognized that the exemption from section 11 of the Banking Act for **religious charitable funds** will be reviewed and also that APRA would consider using **suasion** techniques, which have been successful in the past, to encourage RFCs to relinquish their status should the activity of these entities grow significantly or exhibit some other cause for concern, but **in practice APRA’s legal powers are limited.**”*

The AIDF may be prepared to consider relinquishing its current status if:

- a sound case for change was articulated,
- a viable replacement path for Church Financing and Church Funding was made available,
- the annual cost was rebated, and
- an appropriate timeframe for implementation is allowed.

It should be evident from the material provided that there are a number of legal and technical reasons, some historic, that are unlikely to permit in practice, unless APRA so chooses, the number of RCDFs to grow in number.

The AIDF’s preference has always been to operate within its community without public fanfare and to concentrate on its purposes rather than use valuable resources on external considerations. However it would clearly be inappropriate for APRA to act ultra vires or use its powers contrary to model litigant guidelines.

Despite the GFC, the AIDF is not aware of any turmoil within the RCDFs. The AIDF experience was that deposits grew over the GFC period March 2007 to March 2009 and have continued to grow strongly since. The AIDF’s view is that lay parishioners value simple products backed by local organisations they can understand (a preference for sandstone rather than CDOs). To our knowledge there has never been an RCDF that hasn’t paid back its depositors’ funds and, as a result, any inferred connection between RCDFs and the GFC or “shadow” banking is erroneous.

Chapter 2 Proposed Amendment to RFC exemption order

It is unclear whether an RCDF that converted to an RFC would be allowed to provide non retail ‘at call’ accounts to its internal customers (i.e. as outlined in section 4a of the current exemption).

Question 6 to APRA: Will an RFC be permitted to offer non retail ‘at call’ accounts?

The purpose and value in restricting BPAY is unclear.

Chapter 3 Proposed Amendment to RCDF exemption order

Retail Deposits definition

Question 7 to APRA: Are the definitions of retail deposit, retail investor and retail investments as per APRA Prudential Standard APS 210 – Liquidity dated November 2011?

“Retail deposits are defined as deposits placed with an ADI by a natural person. Deposits from legal entities, sole proprietorships or partnerships are captured in wholesale deposit categories.”

Further clarity would be beneficial, noting that:

- the discussion paper uses both terms retail deposits and retail investors
- the types of financing of Churches by lay members of a religion, and
- the fact that many RCDFs are not incorporated or covered by the Corporations Act.

RFC versus RCDF

The discussion paper includes a number of historic concerns with RFCs including the Banksia collapse.

Despite this, the proposal is to restrict all retail (parishioner) deposits for RCDFs but **allow** them for RFCs with maturity greater than 30 days. **This appears to be providing a blanket solution that penalises the wrong party.**

Question 8 to APRA: Why is APRA restricting RCDFs more than RFCs?

AIDF Recommendation 1

There should be no change to the current RCDF exemption because it is not necessary.

The strong preference from the AIDF is that there be no change to the current **exemption** and that it should be extended indefinitely subject to APRA calling a **24 month** review period on the exemption as a class.

In respect of **RCDFs** there is:

1. no well-articulated reason for change
2. considerable legal uncertainty in respect of the Banking Act
3. no prudential or systemic concerns
4. limited size and potential financial impact, and
5. a strong societal service **that has developed and sustained over the long term including through schools and age care programs**

AIDF Recommendation 2

The AIDF may be prepared to be persuaded by APRA to strengthen the current exemption, if items 1-5 above remain in dispute. It should be noted that for over 20 years the AIDF has

voluntarily adopted a simplified structure for risk weighting assets and patiently built its reserves accordingly. The AIDF has expended considerable effort in determining an appropriate simplified voluntary methodology for the AIDF in regard to the APRA exemption. That said, the AIDF understands that different RCDFs have different *modus operandi*, that external (including depositor) oversight and clarity could be improved and that a simpler approach is always preferable.

The AIDF considers that the following principles are important:

1. If religious bodies are to accept deposits (from lay parishioners) then they should morally and **by reputation** stand behind the repayment of these amounts (a guarantee). The morals and reputations of religious organisations are the fundamental reason lay parishioners wish to belong to and financially support RCDFs. It is therefore not appropriate or necessary to seek to back this commitment with physical security. There is no need for third parties to assess the 'financial value' of this guarantee.
2. An RCDF should be constrained according to its size using a simple external measure. The AIDF believes that the best way to achieve this is to require a net asset to total asset ratio greater than the previous 5 year quarterly rolling Major ADI average (**refer to appendix A**).

This approach allows for an RCDF to manage its growth in a prudent long term manner. For example the AIDF could reduce assets (including running off loans, transferring to an ADI/other entity or delaying draw down of a loan and hence projects), seek an equity injection or withhold payment of future surpluses. In addition this approach injects an appropriate level of management discipline into the RCDF which in turn is likely to improve management skills. However, as it does not increase costs or complexity, it would not detract from investors' desire to support or understanding of their RCDF.

Audited annual accounts of an RCDF should be made publicly available on its website. The ability of investors to scrutinise accounts and assess compliance themselves is an important principle.

RCDF Additional Conditions

Retail deposits are permitted including at call, subject to:

- a. **A guarantee of repayment of all retail deposits by the religious body, in a legally binding document (including in a Deed Poll).**
- b. **Maintenance of a net asset to total asset ratio greater than the previous 5 year quarterly rolling Major ADI average as at the RCDF balance date and as per the APRA Quarterly Bank Performance Statistics (see appendix).**
- c. **Publication of the RCDF's Audited Financial accounts on its website within nine months of the end of their financial year.**
- d. **Ceasing of taking of new retail deposits if these conditions are not met.**

In order to further remove APRA's perception that RCDFs have a similar public persona to RFCs, encapsulated by the statement ***"public response to recent RFC failures has demonstrated that,***

even with such (not regulated by APRA) disclosures, investors may still consider that the security of their investment is equivalent to a deposit with an ADI", the RCDF exemption should:

- Be self-executing (as proposed in the conditions above);
- Specifically not require any involvement or ongoing oversight by APRA, in order to further distance APRA's role; and
- Continue indefinitely subject to APRA calling a 24 month review period on the exemption as a class.

AIDF Recommendation 3

"At Call" Descriptor

The "at call" description should be permitted or an alternative such as "everyday access" be specifically permitted in the exemption. This is in order to avoid the need for future changes.

It would also be acceptable to the AIDF to include a caveat (on all account opening forms) "subject to the discretion of the RCDF" marked against these terms. This is consistent with the open nature of the guarantee and is supportive of liquidity management principles.

AIDF Recommendation 4

"Deposit" Descriptor

The "Deposit" description could be restricted; however if this is to be done it should be through Section 66 of the Banking Act and not through the RCDF exemption. The AIDF sees no sound reason why APRA should use the exemption process rather than the legislative path clearly provided within Section 66 of the Banking Act. If there is to be a restriction it should apply not only to those that have an exemption but also the rest of society including non-exempt unregulated entities.

If the "deposit" description is restricted, then alternatives within the exemption should be specifically permitted to include **"Term Investment"**, **"Held on Trust"** and **"Trust Investment"**.

AIDF Recommendation 5

RCDF exemption without retail deposits

Unless "retail deposits" are allowed, the continuation of the requirement for RCDFs to have any exemption is inappropriate, that is unless APRA is to also require all other non-religious "corporate treasuries" to hold a similar exemption. For example, **an exemption for BHP corporate treasury (et al) is not being required so why require one for RCDFs?**

If APRA is also requiring all other non-religious "corporate treasuries" to hold a similar exemption, then we support the use of the current definitional terms in section 4a of the RCDF exemption.

AIDF Recommendation 6

The purpose of restricting BPAY for RCDF is unclear. For corporate treasury entities this functionality continues to be of value and is provided through an ADI not directly by the RCDF. There has been considerable investment by RCDF in becoming PIM's. Having BPay is consistent with the Australian Payments Clearing Association (APCA) approach in reducing cheque fraud and the need for and number of cheques. Some internal customers have switched others are actively considering it.

Chapter 4 Section 66 Guidelines

If the words 'at call' and "deposit" are restricted, it should occur under Section 66 rather than under specific (RCDF or RFC) exemptions so that it applies across society as a whole as envisaged by the legislators.

The long standing practice outlined in APRA's July 2006 press release "**APRA standardises exemptions for religious charitable development funds**", is clearly proposed to change. Prior to changing the historical businesses of RCDFs, using a new view of what is 'financial business' under the Banking Act, **it would be prudent to articulate how this new definition of 'financial business' is to apply.**

The 'Financial Business' guidance should be clearer, including issues of:

1. "trust" versus a "contractual" based legal relationship for all depositors.
2. what size constitutes "business" in the context of the Banking Act.
3. APRA's (non-systemic) prudential role for RFCs and RCDFs, if any.
4. how APRA intends to consider issues of non-financial and charitable purposes and motives rather than profit in conducting "financial business".
5. how newer forms of currently unregulated "financial business" are to be regulated/exempted, compared to the proposed RDF/RCDF approach, including:
 - Finance that does not involve payment of interest
 - Financial Business systems involving payment of Goods with Goods (including via EFTPOS)
 - Crowd Funding, in particular over the Internet
 - Electronic cash (prepaid cards), Digital Wallet and Facebook style deposit accounts.

Chapter 5 Cost Benefit Analysis

AIDF Recommendation 7

AIDF sees no benefit to the community from the proposed APRA approach. The AIDF considers that the impact on the 'not for profit sector' would be more than minor and that a full Regulatory Impact Statement (RIS) should be completed.

The obvious impact is the loss of \$1.1 Billion in estimated retail deposits (refer to discussion paper page 11). This number is clearly underestimated given that 8 RCDFs did not respond to the APRA survey.

This \$1.1B is often the catalyst that provides the ability for RCDFs to raise funds from the commercial ADI market or other sources (including internal parish accounts) estimated by APRA at a further \$6.3B.

In total this \$7.4B is spread over at least 42 and up to 50 separate entities across Australia. These monies are lent to support various internal entities and programs (see Church Funding section). They are often the source of funds that enable entities to continue operating, redevelopment to become a commercial proposition or restructuring rather than closure to occur. As a result the \$7.4B is only the obvious amount, the impact and total involved is many multiples thereof. By way of example a diocesan entity may use this finance to attract a commercial lender to a community project (4 times multiple), to attract a government grant that has \$1 for \$5 funding requirement (5 times multiple) or to maintain quick start up capacities during quiet periods (10 times multiple).

The community projects themselves have considerable value beyond the multiple of \$7.4B described above. These include real assets (improved building market value and community utility), real services (including education) and the 'outcomes' sought after by government grant programs (at home care of the elderly etc.).

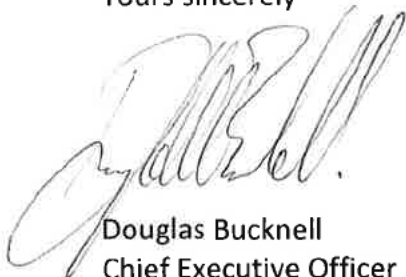
By removing the retail (lay parishioner) deposits, a thread from the fabric of society is being pulled. In many cases, particularly in regional and under privileged communities, that fabric has already worn very thin with the Churches being the last institutions available. RCDFs often continue or step in to operate where there are pockets of market failure, where ADIs have long since left communities and commercial financing is not available.

The direct annual cost impact on RCDFs could be estimated by comparing the retail (lay depositor) cost of funds to long term commercial market funding costs. The difficulty with this approach is that it varies over the interest rate cycle and as there is currently unusually high competition for deposits, the margin is narrower than would otherwise be the case.

The direct costs are however irrelevant if the quantum is likely to force RCDFs to change their operations across the economic cycle.

We look forward to promptly commencing discussions with APRA and would be grateful if you could contact this office to arrange a suitable time and venue.

Yours sincerely



Douglas Bucknell
Chief Executive Officer
Anglican Investment & Development Fund

(\$ million)

	Dec 2007	Mar 2008	Jun 2008	Sep 2008	Dec 2008	Mar 2009	Jun 2009	Sep 2009	Dec 2009	Mar 2010	Jun 2010	Sep 2010	Dec 2010	Mar 2011	Jun 2011	Sep 2011	Dec 2011	Mar 2012	Jun 2012	Sep 2012
Cash and liquid assets	117,473	137,556	116,654	154,210	193,800	140,871	160,296	144,048	165,668	136,753	145,552	141,380	149,421	137,744	155,491	172,193	171,278	177,887	207,081	183,397
Securities	132,699	134,733	149,129	174,610	238,852	222,419	223,433	231,600	255,263	246,654	265,865	266,145	283,087	284,513	304,581	320,559	321,174	326,197	335,913	335,666
Acceptances of customers	91,612	92,465	91,177	90,779	88,505	87,522	87,331	83,617	78,158	79,669	75,266	72,316	58,716	58,305	55,361	55,423	53,085	52,490	49,293	46,001
Gross loans and advances	1,209,122	1,242,889	1,278,885	1,335,701	1,530,594	1,556,407	1,566,426	1,574,473	1,582,756	1,598,758	1,659,038	1,649,390	1,667,196	1,688,031	1,721,507	1,764,718	1,785,803	1,816,671	1,843,980	1,871,575
of which:																				
Total housing	688,288	687,841	704,873	734,958	877,516	900,543	930,353	950,132	974,423	981,784	1,028,035	1,037,340	1,055,605	1,068,314	1,085,628	1,114,339	1,125,111	1,151,211	1,166,878	1,173,136
Term	352,764	361,382	360,617	376,457	488,784	456,658	442,398	435,707	429,471	427,071	441,959	428,919	432,687	436,114	440,455	466,267	463,948	461,501	482,943	504,193
Other	188,071	193,666	213,385	222,286	164,295	199,226	193,656	186,533	185,982	186,933	189,035	183,130	178,930	181,603	184,423	184,113	185,745	183,959	184,039	184,246
Lending provisions	7,660	8,764	9,428	10,207	13,820	16,733	16,453	18,587	19,513	20,381	21,419	20,515	21,106	20,873	20,866	20,472	20,092	20,092	20,087	19,749
Net loans and advances	1,201,462	1,234,125	1,269,457	1,325,494	1,516,774	1,539,674	1,547,973	1,555,886	1,570,243	1,586,377	1,637,619	1,628,875	1,646,090	1,668,158	1,700,841	1,744,246	1,765,416	1,796,578	1,823,773	1,851,626
Other investments	4,530	4,985	5,059	5,716	7,669	6,884	5,920	6,074	4,448	4,828	5,143	5,087	5,305	5,329	5,270	5,669	5,541	5,688	5,797	5,879
Fixed assets	5,865	5,361	5,451	5,711	7,070	7,120	7,239	7,271	7,355	7,164	7,501	7,507	7,560	7,641	7,687	7,890	7,803	7,652	7,769	7,836
Intangible assets	20,114	20,148	20,635	21,123	22,659	30,297	30,801	30,840	33,692	34,033	34,636	34,648	34,789	34,872	35,269	35,891	36,316	36,255	36,528	36,840
Other assets	235,948	252,016	243,875	296,655	370,056	327,918	285,489	256,153	264,721	267,241	301,793	302,256	294,278	287,646	288,323	383,415	389,980	299,073	321,569	326,600
Total assets	1,808,733	1,881,338	1,901,487	2,064,499	2,443,386	2,362,305	2,328,482	2,316,470	2,379,508	2,362,149	2,473,444	2,463,223	2,468,258	2,484,220	2,533,574	2,703,084	2,670,694	2,701,831	2,787,764	2,783,845
Due to clearing houses and financial institutions	105,318	107,188	89,612	111,554	92,022	77,125	65,255	66,187	63,024	60,427	67,170	59,929	61,276	65,984	75,225	80,039	77,102	70,955	79,066	72,933
Acceptances	65,820	62,794	56,672	53,473	46,170	50,525	49,537	45,474	39,136	42,171	35,657	35,187	23,259	24,144	22,194	23,039	19,161	20,702	17,083	16,845
Deposits	831,144	948,581	985,442	1,066,121	1,276,727	1,286,949	1,331,407	1,300,285	1,321,550	1,306,956	1,367,281	1,356,196	1,389,689	1,406,464	1,453,882	1,505,249	1,544,723	1,565,524	1,613,618	1,631,055
of which:																				
Call on demand	444,337	435,985	463,317	473,849	556,142	579,837	598,252	588,480	561,984	577,732	599,736	602,495	611,745	614,036	640,059	661,919	659,539	646,756	686,013	698,579
Term deposits	271,800	290,524	302,449	337,793	428,478	421,364	447,543	436,726	484,309	492,005	515,050	538,065	544,750	558,932	565,796	581,189	611,265	641,775	653,871	676,555
Certificates of deposit	191,773	199,816	207,440	232,493	264,434	235,657	256,574	246,966	251,089	221,468	225,440	207,334	224,172	216,953	228,106	250,035	250,879	253,754	250,116	230,139
Income tax liability	5,138	3,830	2,976	1,754	3,069	4,690	5,023	5,006	6,334	2,546	6,571	4,295	4,780	4,190	5,106	5,315	5,653	4,966	5,310	5,561
Provisions	3,622	4,345	6,850	6,923	4,567	4,568	7,524	7,246	4,735	6,517	8,373	8,284	4,870	6,854	9,320	8,533	4,767	7,287	9,665	9,143
of which:																				
Employee entitlements	2,188	2,222	2,380	2,543	2,381	2,505	2,665	2,921	2,377	2,782	3,076	3,330	2,702	2,905	3,216	3,438	2,723	2,697	3,087	3,255
Other	1,633	2,123	4,470	4,380	2,205	2,094	4,659	4,327	2,358	3,735	5,297	4,955	2,168	4,049	6,104	5,096	2,044	4,391	6,576	5,887
Other short-term borrowings	113,385	126,469	127,434	143,907	169,759	130,788	128,301	135,526	146,384	128,868	137,078	121,316	132,546	127,282	137,944	149,043	155,303	147,785	153,431	110,506
Long-term borrowings	254,069	282,380	285,884	315,417	365,751	340,076	311,637	338,877	364,437	374,199	382,510	382,041	371,278	366,114	385,183	385,884	365,291	386,816	383,751	462,552
Creditors and other liabilities	233,732	245,912	246,739	281,121	360,061	334,479	295,513	290,173	291,742	298,482	321,378	352,478	323,604	326,598	329,757	388,556	336,689	330,669	389,342	374,000
Total liabilities	1,712,466	1,781,528	1,801,539	1,960,270	2,317,138	2,278,220	2,194,387	2,179,776	2,237,351	2,226,715	2,327,009	2,318,728	2,321,301	2,332,730	2,399,411	2,545,661	2,508,688	2,536,704	2,621,257	2,622,995
Share capital	47,396	47,449	48,059	51,761	72,111	76,873	81,638	86,773	91,240	90,893	91,594	92,709	94,333	94,544	95,189	97,159	100,158	100,260	100,981	103,439
Reserves	1,968	1,018	-717	951	1,069	1,565	-688	-1,758	-2,041	-2,530	-781	-3,301	-4,903	-5,164	-4,460	-2,298	-3,251	-2,724	-1,932	-2,639
Retained profits	46,068	48,814	50,085	48,961	50,440	50,116	50,613	48,138	50,421	51,468	53,338	54,557	54,996	59,575	60,917	61,953	62,516	64,997	64,810	67,753
Other	2,790	2,517	2,521	2,856	2,600	2,521	2,546	2,540	2,535	2,543	2,571	2,531	2,529	2,535	2,516	2,579	2,584	2,594	2,568	2,566
Total shareholders' equity	97,270	99,797	99,948	104,229	128,259	133,075	134,110	138,694	142,156	141,974	146,722	146,495	146,986	151,490	154,182	159,423	162,007	165,128	166,507	171,249
Number of entities	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4

Average equity

5 year rolling quarterly average

5.78%

5.37%

5.30%

5.26%

5.05%

5.17%

5.63%

5.76%

5.89%

5.97%

6.01%

6.04%

6.07%

6.11%

6.13%