Anglican Church of Australia

Diocesan Financial Advisory Group

By email: exemptiondp@apra.gov.au

23 May 2013

Mr Neil Grummitt
General Manager, Policy Development
Policy, Research and Statistics
Australian Prudential Regulation Authority
GPO Box 9836
SYDNEY NSW 2001

Dear Mr Grummitt

Submission in response to APRA's Discussion Paper: Banking Act exemptions and section 66 guidelines

1. We welcome the opportunity to respond to the April 2013 Discussion Paper published by the Australian Prudential Regulation Authority (APRA) concerning, amongst other things, the existing Banking Act exemption for religious charitable development funds (RCDFs).

2. The Diocesan Financial Advisory Group (DFAG) was established in 2000 by the Anglican Church of Australia to advise the General Synod on various financial matters. This has included matters in relation to the operation and governance of RCDFs, often otherwise referred to as Anglican Diocesan Developments Funds (ADDFs).

3. We recognise that several ADDFs will have provided you with individual submissions in response to APRA's Discussion Paper. We also note that many ADDFs have subtle differences in their design and intent and in their modus operandi. This letter draws together the largely common views and concerns across the ADDFs and on behalf of the Standing Committee of the General Synod of the Anglican Church of Australia.

Executive Summary

4. We submit that the existing exemption order should not be withdrawn by APRA. Rather, we contend that the legitimate concerns of APRA can be adequately addressed by extending the conditions under the exemption order. Additional conditions required of ADDFs might include some or all of: the prohibition of using the word 'deposit'; the requirement to obtain explicit acknowledgements from retail investors in ADDFs; guarantees from the relevant Anglican diocese; and enhanced disclosures by ADDFs.

5. We also recommend that APRA clarify the definition of affiliates, and confirm there is no requirement that an individual ADDF must operate as a full service 'de facto corporate treasury' for its affiliates. We further request clarification that cheque account and BPAY facilities can continue to be offered by ADDFs to their affiliates.

Background

6. ADDFs were established to support the charitable activities of Anglican dioceses and their affiliated organisations, and as a means for others to contribute to supporting those activities, including individuals for whom profit may not be of primary relevance in their investment decisions. The charitable activities include community services, social welfare, aged care and education.

7. The principal concern of APRA appears to be that an investment in an ADDF may be confused as being equivalent to a deposit with an authorised deposit-taking institution (ADI): "*In this Discussion Paper, APRA is proposing requirements aimed at reducing the likelihood that an investor, and particularly a retail investor, in an RFC would confuse such an investment with an ADI deposit or other deposit-like product. APRA also believes that similar measures are appropriate in respect of RCDFs that currently accept funds from retail investors."*

8. We believe APRA's proposals to deal with this potential confusion are – certainly in relation to ADDFs – akin to the proverbial 'sledgehammer to crack a nut'. The Discussion Paper itself makes it clear that APRA's concern stems from the collapse of a registered financial corporation (RFC); RFCs are fundamentally different from ADDFs in both motive and operation. APRA does not cite any known failures of ADDFs in Australia.

9. We also note that the Discussion Paper draws on a recent International Monetary Fund (IMF) study which ultimately recommended increased regulation of RFCs, not ADDFs. According to the Discussion Paper, IMF's concern was that "*there are major global institutions benefiting from this exemption*". ADDFs are clearly not major global institutions.

Response and recommendations

10. While ADDFs are not of a size to be systemically significant to APRA, their operation is crucial to the current charitable activities of Anglican dioceses. For some ADDFs, the proposed prohibition of retail investors would be quite drastic and hence the recommendations set out below.

11. We are pleased that APRA considers it appropriate for ADDFs to continue supporting diocesan affiliates. Indeed, it is essential that ADDFs continue to be able to provide the accounts and services currently offered to Anglican parishes within the diocese and other diocesan organisations. We do, however, seek some clarification of relevant aspects of the Discussion Paper below.

Retail investors

12. We understand APRA's concern that a retail investor with an ADDF might mistakenly expect the levels of protection ordinarily provided by an ADI under the Banking Act. Rather than removing the current exemption order, we believe APRA's concerns can be reasonably and adequately addressed by extending the conditions under the exemption order.

13. We recommend a number of potential alternative (possibly in combination) conditions could be:

    (a) we agree with APRA's proposal to change the exemption order to prohibit the use of the word 'deposit' or any of its derivatives in relation to an ADDF's activities
    (b) the ADDF being required to obtain and maintain records of each retail client's explicit acceptance of the terms of an investment with an ADDF, and their acknowledgement that the ADDF does not provide a level of protection equivalent to an ADI regulated by APRA
    (c) that the religious body (in our case, the relevant Anglican diocese) provide a guarantee of repayment of all retail investments
    (d) that as well as making its annual audited financial statements available to its retail investors, the ADDF make available its Board management policies (or equivalent) relating to capital adequacy and liquidity management. We note that the Standing Committee of the General Synod has encouraged the adoption of minimum standards developed by DFAG covering, amongst other things, capital adequacy requirements, liquidity requirements and asset underwriting requirements.

Affiliates

14. We recommend that APRA clarify that the reference in the Discussion Paper to ADDFs operating as "*de facto corporate treasuries for their affiliates*" is not a requirement that an individual ADDF must operate as a de facto corporate treasury for its affiliates.

15. In our view, in order to take advantage of the exemption order, an individual ADDF should not be required to provide any specific treasury services (eg financial advice or management) which are in addition to the existing services which are provided by the ADDF.

16. We also request that APRA clarify the definition of 'affiliate' for the purposes of the exemption order. We recommend that the definition at paragraph 4(a) of Schedule 2 to the existing exemption order would be suitable.

Facilities

17. We request further clarification from APRA that it did not intend to introduce a new condition prohibiting the offering of cheque facilities to affiliates. We recommend that in its capacity as a de facto corporate treasury, the ADDF should only offer cheque account facilities to those affiliates already allowed for under Schedule 2(4) of the existing exemption order.

18. We also recommend that an ADDF operating as a de facto corporate treasury should continue to be able to offer BPAY to its affiliates. The functionality is actually typically provided by ADDFs through an ADI and in substance this service represents no more risk than the use of a cheque account.

19. The proposed withdrawal of cheque and secure on-line transaction functionality currently provided to Anglican parishes within the dioceses, diocesan organisations and other customers who satisfy the requirements of Schedule 2(4) of the existing exemption order would cause considerable disruption to the day-to-day operations of those customers.

Concluding remarks

20. The financing of the Anglican Church has traditionally been sourced in the main from lay members and other church supporters, either through gifting to the church, lending to the church or investing in church endeavours. ADDFs were established simply to improve the efficiency of the financing activities. This financing has provided the means for the church to carry out its many and varied and highly valuable (in some communities, essential) charitable activities. The proposals in the Discussion Paper would seriously impact the ability of the church to deliver these activities to the detriment of not only church members but the broader communities and society it serves.

21. We do recognise the legitimate concerns raised by APRA in the Discussion Paper. However, we submit that, as explained above, aspects of the Discussion Paper are unjustified, unnecessary and inconsistent with those concerns. The recommendations provided in this submission, we believe, would adequately address the genuine concerns of APRA.

Yours sincerely

Michael Codling
Chair
Diocesan Financial Advisory Group