



# Banking exemption No. 1 of 2016

## Religious charitable development funds

### *Banking Act 1959*

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I, Pat Brennan, a delegate of APRA, under subsection 11(1) of the *Banking Act 1959* (the Act), DETERMINE that sections 7 and 8 of the Act do not apply to the class of persons described in the attached Schedule, while this determination continues in force, AND under paragraph 11(2)(c) of the Act, I make this determination subject to the conditions specified in the attached Schedule of conditions.

This determination commences on 1 January 2017.

Dated: 31 August 2016

[Signed]

Pat Brennan  
Executive General Manager  
APRA

### **Interpretation**

In this determination

**APRA** means the Australian Prudential Regulation Authority.

**person** in accordance with section 2C of the *Acts Interpretation Act 1901*, includes a body corporate as well as an individual.

*Note 1* This determination is a legislative instrument (see subsection 11(6) of the Act).

*Note 2* Under subsection 11(3) of the Act, a person is guilty of an offence if the person does or fails to do an act and doing or failing to do that act results in a contravention of a condition to which a determination under section 11 is subject (being a determination that is in force and that applies to the person). The penalty is 200 penalty units or, by virtue of subsection 4B(3) of the *Crimes Act 1914* in the case of a body corporate, a penalty not exceeding 1,000 penalty units. By virtue of subsection 11(3A) of the Act, an offence against subsection 11(3) is an indictable offence. Under subsection 11(3B) of the Act, if a person commits an offence against subsection 11(3), the person is guilty of an offence against that subsection in respect of the first day on which the offence is committed and each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

## Schedule - the class of persons to whom this determination applies

1. Section 7 of the *Banking Act 1959* does not apply to a person who is a controlling entity of a fund in the list below; and
2. Section 8 of the *Banking Act 1959* does not apply to a fund that is a body corporate, or a body corporate that is a controlling entity of a fund, in the list below:
  - Anglican Funds – South Australia
  - Anglican Community Fund (Inc) (previously known as Anglican Deposit Fund Perth (Inc))
  - Anglican Development Fund – Gippsland
  - Anglican Development Fund (Diocese of Melbourne)
  - Anglican Development Fund (Diocese of Tasmania)
  - Anglican Development Fund Diocese of Bathurst
  - Anglican Financial Services (ANFIN) (Diocese of Brisbane)
  - Anglican Investment and Development Fund
  - Anglican Managed Investments Fund Diocese of Bathurst
  - Anglican Savings and Development Fund Diocese of Newcastle
  - Archdiocese of Adelaide – Catholic Development Fund
  - Archdiocese of Brisbane – Archdiocesan Development Fund (or The Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane)
  - Archdiocese of Canberra and Goulburn – Catholic Development Fund (or The Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn (ACT) & (NSW))
  - Archdiocese of Hobart – Catholic Development Fund
  - Archdiocese of Melbourne – Catholic Development Fund
  - Archdiocese of Perth – Catholic Development Fund
  - Archdiocese of Sydney – Catholic Development Fund (or The Trustees of the Roman Catholic Church for the Archdiocese of Sydney)
  - Armidale Diocesan Investment Group
  - Assemblies of God in Australia Ltd
  - Baptist Financial Services Australia Limited
  - Catholic Development Fund Diocese of Port Pirie
  - Centenary Development Foundation
  - Christian Outreach Centre
  - Churches of Christ Building Extension Mutual Fund Incorporated
  - Churches of Christ Financial Services Limited
  - Diocesan Cash Investment Fund (Anglican Church Diocese of Sydney)
  - Diocesan Development Fund – Anglican Diocese of Bendigo
  - Diocesan Development Fund (Diocese of Armidale)
  - Diocese of Ballarat – Catholic Development Fund
  - Diocese of Bathurst – Catholic Development Fund
  - Diocese of Broken Bay – Catholic Development Fund (or Trustees of the Roman Catholic Church for the Diocese of Broken Bay)

- Diocese of Bunbury – Catholic Development Fund
- Diocese of Cairns – Catholic Development Fund (or The Roman Catholic Trust Corporation for the Diocese of Cairns)
- Diocese of Darwin – Diocesan Development Fund (or Catholic Church of the Diocese of Darwin Property Trust – Darwin Diocesan Development Fund)
- Diocese of Lismore – Diocesan Investment Fund (or The Trustees of the Roman Catholic Church for the Diocese of Lismore)
- Diocese of Maitland – Newcastle – Catholic Development Fund (or The Trustees of Church Property for the Diocese of Newcastle)
- Diocese of Parramatta – Diocesan Development Fund
- Diocese of Rockhampton – Diocesan Development Fund
- Diocese of Sale – Catholic Development Fund
- Diocese of Sandhurst – Diocesan Development Fund
- Diocese of Toowoomba – Diocesan Development Fund
- Diocese of Townsville – Diocesan Development Fund
- Diocese of Wagga Wagga – Diocesan Provident Fund (or The Trustees of the Roman Catholic Church for the Diocese of Wagga Wagga)
- Diocese of Wollongong – Catholic Development Fund
- EFKS Financial and Investment Services
- National Spiritual Assembly of the Baha'is of Australia Incorporated – Baha'i Investment Fund
- Riverina Anglican Development Fund
- Stewards' Foundation of Christian Brethren
- Temple Society Australia
- The Baptist Union of Queensland
- The Churches of Christ Property Trust
- The Corporate Trustees of the Diocese of Grafton – Grafton Diocese Investment Fund
- The Uniting Church in Australia Property Trust (SA)
- The Uniting Church Investment Service
- UCA Funds (incorporating UCA Cash Management Fund Limited, UCA Growth Fund Limited, UCA Funds Management Limited, the Development Fund, The Uniting Church in Australia Property Trust (Victoria) and the Funeral Fund)
- Uniting Church in Australia Synod of Western Australia Uniting Church Investment Fund
- Uniting Financial Services (incorporating The Uniting Church (NSW) Trust Association Limited, The Uniting Church in Australia Property Trust (NSW), the Funeral Fund and the Self- Help Fund)
- Wangaratta Anglican Development Fund

## **Definitions**

In this Schedule:

***controlling entity*** means a person or body corporate who or which is a trustee of, or otherwise concerned in the management of, a fund.

## Schedule of conditions

1. The Fund must be and continue to be:
  - (a) recognised at law as being formed for religious and charitable purposes stated in a trust deed, ordinance or other foundation document governing the Fund (Fund constitution);
  - (b) limited to the purposes stated in the Fund constitution; and
  - (c) operated not-for-profit.
2. The Fund's retail products must have the sole or dominant intention of furthering the religious and charitable purposes of the Fund.
3. A copy of the Fund constitution setting out the Fund's religious and charitable purposes must be available for inspection on request by APRA.
4. Subject to Condition 5, where a Fund offers, issues or sells a retail product to a retail investor on or after 1 January 2017:
  - (a) the retail product must have a minimum term or call period of 31 days; and
  - (b) subject to Condition 7, the retail investor must not be able to redeem any funds for 31 days from the date they are invested in the retail product.
5. A Fund may continue to make available to a retail investor, a retail product that:
  - (a) was offered, issued or sold to the investor prior to 1 January 2017; and
  - (b) which does not meet the requirements in Condition 4;until 1 January 2018.
6. When money held in a retail product that is issued or sold by a Fund to a retail investor reaches its 31 day maturity, the Fund must:
  - (a) roll over the retail investor's funds for a further period of at least 31 days; or
  - (b) if the retail investor requests that the funds not be rolled over, repay the retail investor's funds in the form of cash, cheque or direct credit to an account held at an authorised deposit-taking institution (ADI) as defined in the *Banking Act 1959*.
7. A Fund may, upon written request from a retail investor at any time, pay to the investor some or all of the funds invested in a retail product, provided that the Fund is satisfied that the investor has demonstrated that he or she is subject to exceptional circumstances that may lead to hardship and that it is appropriate to release the funds.
8. A Fund may only release funds under Condition 7 if the release complies with a written procedure prepared by the Fund. The procedure must set out the basis upon which the Fund will determine whether exceptional circumstances that may lead to hardship exist that would warrant the early release of an investor's funds.
9. The Fund must not offer to retail investors:
  - (a) cheque account facilities; or
  - (b) BPAY facilities,in relation to retail products.

10. The Fund must not offer to retail investors or affiliates:
  - (a) Electronic Funds Transfer at Point Of Sale (EFTPOS) facilities; or
  - (b) Automatic Teller Machine (ATM) facilities,
 in relation to retail products.
  
11. Condition 9 does not preclude a Fund from making or receiving payments to or from a retail investor using such facilities.
  
12. The Fund or its controlling entity must in all cases ensure that advertising and marketing material of the Fund contains, at a minimum, the following disclosure:
 

*{Insert name of Fund} (the Fund) is not prudentially supervised by the Australian Prudential Regulation Authority. Therefore, an investor in the Fund will not receive the benefit of the financial claims scheme or the depositor protection provisions in the Banking Act 1959. Investments in the Fund are intended to be a means for investors to support the charitable purposes of the Fund.*
  
13. The Fund or its controlling entity may advertise and market the Fund on-line or in print produced by or under the auspices of the controlling entity (or the religious institution that established the Fund). All advertising and marketing material of the Fund must contain the disclosure required under Condition 12.
  
14. A Fund must not use or assume the words or expressions deposit or at-call, or any other word or expression (whether or not in English) of like import, in relation to a retail product offered, issued or sold to a retail investor.
  
15. A reference to a word or expression being used or assumed includes a reference to the word or expression being used or assumed:
  - (a) as part of another word or expression; or
  - (b) in combination with other words, letters or other symbols.

### ***Definitions***

16. In this Schedule:
 

***affiliate*** means:

  - (a) a body constituted by or under the authority of a decision of the central governing body of a related religious organisation;
  - (b) a body in relation to which the central governing body of a related religious organisation is empowered to make ordinances or other binding rules;
  - (c) a person acting as a trustee of a trust for or for the use, benefits or purposes of a related religious organisation;
  - (d) a body that is of the same religious denomination;
  - (d) an employee or voluntary staff member of a body mentioned in sub-paragraphs (a) to (d) above; or
  - (e) a member of the clergy, or equivalents in other denominations, within a related religious organisation; or
  - (f) a person undertaking training or education for the purpose of becoming a member of the clergy, or equivalents in other religious denominations, within a related religious organisation.

***controlling entity*** means a person or body corporate who or which is a trustee of, or otherwise concerned in the management of, a Fund.

***retail investor*** means a person who would be a retail client under section 761G of the *Corporations Act 2001*, but excludes affiliates.

***retail product*** means securities, a financial product or any other arrangement involving the taking of money on deposit offered to a retail investor.