

31 March 1995

Circular to Ministers and Churchwardens

Re: Taking Loans and Deposits from Parishioners

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1. Introduction

Some parishes may be, or are contemplating, accepting deposits or loans from parishioners to assist the work of the parish. The deposits or loans may assist the financing of the acquisition of property or the construction of buildings or undertaking of renovation works. In some cases deposits or loans may provide working capital for the parish or are invested by the parish to earn income. The key feature in all these schemes is that the parishioner has the right to require repayment of the deposit or loan and, perhaps, the payment of interest.

The purpose of this circular is to draw your attention to the need to obtain legal advice in relation to these schemes to ensure that they comply with the relevant law.

In this circular, these schemes are included in the term “fundraising schemes” and must not be confused with schemes where donations or gifts are sought for the parish. The comments made in this circular do not apply to schemes under which donations or gifts are solicited.

You may not need this circular now but you should keep it for future reference.

2. Application of the Corporations Law

The Corporations Law contains provisions (called “fundraising provisions”) which regulate fundraising schemes to ensure that investors have at least a minimum amount of information about the scheme and protection against unscrupulous schemes. For example, a prospectus may be required to accompany all invitations to deposit or lend money. An independent trustee may have to be appointed to act in the interests of depositors or lenders. The fundraising provisions apply to most fundraising schemes including those conducted by church bodies.

It is an offence to conduct a fundraising scheme in breach of the Corporations Law.

After a series of public hearings, the Australian Securities Commission (ASC) has recently exempted charities, including church bodies, from the fundraising provisions. The exemption is not automatic: it can be obtained only on application to the ASC and upon fulfillment of a number of conditions. The terms of the exemption are set out in class order 94/1702, a copy of which can be obtained from the ASC.

The ASC has recently indicated that it intends to prosecute charities which conduct fundraising schemes other than in accordance with the applicable provisions of the Corporations Law or the exemption set out in the class order. Accordingly, if you take, or propose to take, deposits or loans from parishioners, you must obtain legal advice about the requirements of the Corporations Law and ensure that you comply with the relevant requirements of that Law.

3. Other Matters

There are a number of other matters which must be considered in the conduct of fundraising schemes.

First, has the parish suitable liquidity controls to ensure that it is able to repay deposits or loans when they become due for repayment? Have the minister, churchwardens and parish council, or any of them, received appropriate advice about their personal liability if the assets of the parish are insufficient to repay deposits or loans and to pay interest?

Secondly, is the scheme carefully and prudently managed with adequate systems of internal control in place?

Thirdly, if deposits or loans are invested, are the modes of investment authorised by the Investment of Church Trust Property Ordinance 1990?

Fourthly, are the accounts of the fundraising scheme, especially all liabilities associated with the scheme, noted in the parish accounts and subject to audit?

Fifthly, what are the obligations, if any, to deduct tax payments and remit them to the Australian Taxation Office if a depositor does not quote a Tax File Number?

The abovementioned list of relevant matters is not comprehensive.

4. What you must do

If your parish accepts, or proposes to accept, deposits or loans from parishioners the parish must obtain legal advice on its legal obligations, if any, under the Corporations Law and other relevant law.

Please contact me if you have any questions.

Kind regards

MARK PAYNE
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