

Under construction

Tips for those considering building projects



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Tips for those considering building projects

Building projects can be the source of great excitement and also the source of great angst for church bodies. The key to ensuring that there is more of the former and less of the latter is preparation and planning.

Naturally, every project is different and with variation in size and scope of the project comes variation in the amount of preparation required.

The usual steps a church body might take in the course of a building development include the following:

Identify the need for construction works or the nature of the project

This may seem self-evident. However, the more thought given to precisely what is sought to be achieved by the project at this stage the better. It reduces the number of modifications along the way and keeps costs down.

Seek assistance from others

On a project of any reasonable size, a Project Control Group (PCG) of interested parties should be established at an early stage. Members of the PCG usually include representatives of the Finance Committee of the church body and other appropriately qualified persons to assist in planning and administration of the project.

Retain professionals

Generally these will include an architect, a town planner, engineer, quantity surveyor and possibly a project manager. It is important to retain professionals who are in synch with the church body and its requirements. Preference should be given to those with whom the church body has worked previously or those who can provide excellent references from other church bodies.

The church body should communicate clearly the purpose and financial parameters of the project to its architect and other professionals in order to ensure that everyone is on the same page.

“Preparation and planning is vital when undertaking building projects”

Getting the ‘go ahead’

Place your detailed proposal before any church authority from whom you require consent. Prepare your Development Application and have it signed by the appropriate church authority. Then lodge the Development Application with the local council. Using your architect, town planner and other professionals, you should pursue Development Application to approval.

Once you have got the green light ...

have your architect prepare a specification. Have your lawyers prepare a contract and tender documents in consultation with the architect. Then seek and assess the tenders.

Do not necessarily choose the lowest tender. Money may be important, but long experience demonstrates that a false economy early on often ends up in enormous expenditure and a less than satisfactory outcome.

Make sure the construction contract is signed by both parties. It is strangely common for projects to get to this advanced stage only for the parties to forget to have the contract signed!

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“Deal with issues which have the potential to develop into full-blown disputes immediately ... early resolution of disputes can avoid matters becoming very costly and time-consuming.”

Tips for those considering building projects

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Monitor the work

The skills of those in the original PCG may be different to those required once construction has commenced. If so, a different PCG ought to be established. That PCG should meet regularly.

Ensure that there are regular site meetings. These meetings should be properly minuted, with action items assigned to specific persons. Action items should be followed up with rigor.

Overall responsibility for representing the church body and its interests should reside with one person, in order to avoid issues “falling through the cracks”. This often occurs where there is a division of responsibility. Generally speaking, overall responsibility will reside with the church body’s architect, who also superintends the contract on its behalf.

Where possible, instructions should be provided to the architect and other professionals in writing. It

is vital to maintain detailed written records throughout construction. These may prove vital in the unhappy event that there is a dispute with the builder.

If issues arise which have the potential to develop into full-blown disputes, then those issues should be dealt with immediately. Most building contracts provide for a comparatively simple dispute resolution mechanism. Do not hesitate to use it. Building disputes which are not resolved at an early stage can develop into very costly and time-consuming matters. Therefore, every effort should be made to resolve such disputes at the earliest possible time in accordance with the contract’s dispute resolution provisions.

On completion of project

Ensure that your builder and your professionals discharge all their responsibilities on completion, including the handover of required documents, as-built drawings and

manuals, as well as an occupation certificate.

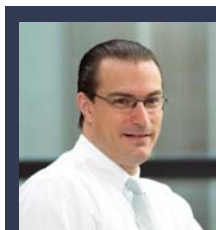
Ensure that architect undertakes a detailed inspection following completion in order to identify defects and notify builder

The PCG and the architect should oversee the rectification of defects during the period following completion, which is generally known as the “defects liability period”.

It is important to maintain focus during the defects liability period to ensure that defects are attended to in a timely and proper manner. A failure to do so may leave the church body with a project that falls short of the standard for which it had planned—and paid! ■



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Where should we invest our surplus assets?

“Church administrators have an obligation to invest the surplus assets of the church body appropriately”

Church administrators are required to act diligently in the management of the assets of the church body and, in particular, to invest the money which is left over after expenses and which can be profitably allocated for the goals of the church body.

Church administrators therefore have an obligation to invest the surplus assets of the church body appropriately, having regard to the financial needs of the church body and its objects.

The current turmoil in the financial markets makes the decision about where surplus church assets should be invested more important and in many cases more difficult.

The investment products available to investors generally are very extensive and it is important to establish the right balance between the risk that a church body should take in its investment and the appropriate return.

One of the most important initial decisions is to determine the time horizon over which the church body wants to achieve its financial objective.

All investments carry some degree of risk so it is important to understand the risks upfront. Generally speaking, the higher the return is, the higher the risk is that an investor’s financial expectations will not be achieved.

Diversification of investment is one of the most important methods of managing risk in investment and enhancing returns.

Risk can be dependent upon the timeframe to achieve investment objectives and this risk generally decreases over time. So, a longer term investment for a period of, say, 10 years or more would have a higher



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chance of providing the investment return expected even though there may be some volatility over that period.

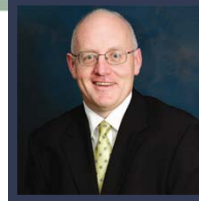
The current financial circumstance is an extreme example of such volatility. It is interesting to note however that equity investments such as shares, which many see as being on the higher end of the risk profile, have recovered significantly after previous downturns (eg the 1987 crash, the 1993 recession, etc).

In these difficult times it is important to keep one’s head and to rely upon the advice of those who have long term experience and professional expertise in advising on these matters. Their advice generally seems to be at present that if you have a long term objective, you should stick to that objective rather than withdraw investments at present when you may lose the upside of a recovery – no-one can pick the bottom of a market.

This article is intended to offer some reflection on investment obligations and processes in these troubled times. This is not professional investment advice and we recommend that church bodies seek advice from professional financial advisers to assist them in their investment decisions. ■



Principal impacts of GST for Church organisations



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Allowing for a number of concessions which are available, Church organisations are generally subject to the same requirements as businesses in complying with the GST. This is allowing for the many Church ministries, such as health and education, where the services provided are generally GST-free, meaning there is no GST on sales, although GST input tax credits paid to suppliers of goods and services can be reclaimed subject to the normal tax invoice rules. This is distinguished from GST input-taxed activities, whereby sales have no GST in the price but no GST can be reclaimed on amounts paid to suppliers. This applies to activities such as financial services, but also applies, by way of election, to fundraising and similar events run by Churches, including school tuck shops. For all concessions which are currently available to apply, the Church organisation is required to be endorsed as a charity by the ATO, as well as being specifically endorsed to access these GST concessions.

Registration and administration

Non-profit organisations, including endorsed charities, are currently only required to register for GST where its turnover is greater than \$150,000 per annum. Importantly sales of GST input-taxed activities and gifts (which are not subject to GST as they are freely given and not in return for any material benefit), are not included when calculating turnover for GST registration purposes. With Church

organisations usually operating within a branch/unit structure, each unit can be treated separately for GST purposes so long as the main organisation is and remains registered. Each unit will be considered independent for these purposes if it:

- maintains an independent system of accounting; and
- can be separately identified from the main organisation by its location or by its activities.

Non-profit organisations that are endorsed as income tax exempt charities and belong to the same religious organisations can also form a GST religious group. This means that there will be no GST on transactions between group members. However each member of this group is still required to be individually registered for GST, subject to the turnover requirements outlined above.

Other concessions

In addition to the above concessions which apply to non-profit organisations generally, a number of other concessions are available to charitable institutions/funds and gift-deductible entities. The most important of these for Church organisations are set out in the table below.

Summary

Due to the numerous GST concessions available and the particular impacts of GST for property transactions, there is a need for Church organisations to take particular care in ensuring that their affairs are in order in respect of GST and that there are appropriate systems and due diligence processes in place to ensure continued compliance with their GST obligations.

Joe Shannon, Partner and Allan Mortel, Director, Moore Stephens Sydney Pty Ltd.

Other concessions available to Church organisations

- Regardless of annual turnover, an organisation may choose to account for GST on a cash basis.
- Sales of goods and services which are considered "non-commercial" are GST free. This is the case where the consideration (for the supply of accommodation) is less than 75% of either the GST inclusive market value or the cost of supplying the accommodation or (for supplies other than accommodation) is less than 50% of the GST inclusive market value or 75% of the costs incurred in acquiring the thing supplied.
- Subject to certain rules, sales of donated second-hand goods are GST-free.
- Sales in connection with certain fundraising activities may be treated as input taxed.
- Tickets to a raffle or bingo are GST-free provided the activity does not contravene a law.
- GST input tax credits can be reclaimed for reimbursements made to volunteers for expenses they incur that are directly related to their activities as a volunteer of the entity.
- Adjustments of GST credits are not required when an item acquired by a business is subsequently gifted to an eligible charity.
- For retirement villages run by charities, the entity may provide GST-free accommodation, related services and meals to residents.
- From 1 July 2004, non-profit child care providers are specifically defined as charities provided they meet all the characteristics required of a charity. Consequently such entities will have the same GST concessions as other charities.

How much supervision in our schools is enough?

“The duty of care applies in the classroom, in the playground and during sporting or recreational activities”

The overwhelming majority of cases commenced against Church school authorities include an allegation that there was a breach of duty to provide any or any adequate supervision.

During those periods when the teacher and pupil relationship is in existence, it is necessary for the teachers assigned to supervision duties to closely and directly supervise children under their care and for the school authority to ensure that an adequate system of supervision is put in place to protect pupils from a foreseeable risk of injury.

The Courts have historically avoided any specific formula or directive as to how much supervision is adequate. Rather, the Courts have always stated that it depends on the circumstances of the particular case in question.

Playground supervision

Some guidance on this point was given by the High Court in 1982 in the celebrated “flagpole case” of *Commonwealth of Australia v Introvigne* (1982) 56 ALJR 749. In this case, a 15 year old boy was skylarking with some of his friends in the school

quadrangle before school was due to commence. They swung on the halyard attached to the flagpole. Without warning, the truss fastened to the top of the flagpole became detached and fell, striking Master Introvigne on the head and severely injuring him. There were about 900 pupils in the playground at the time. All members of the teaching staff except one were at a staff meeting called by the acting principal to inform the staff that the principal had died. The meeting only lasted 5 minutes during which time the accident occurred. One staff member was excused from the meeting to supervise the children in the grounds.

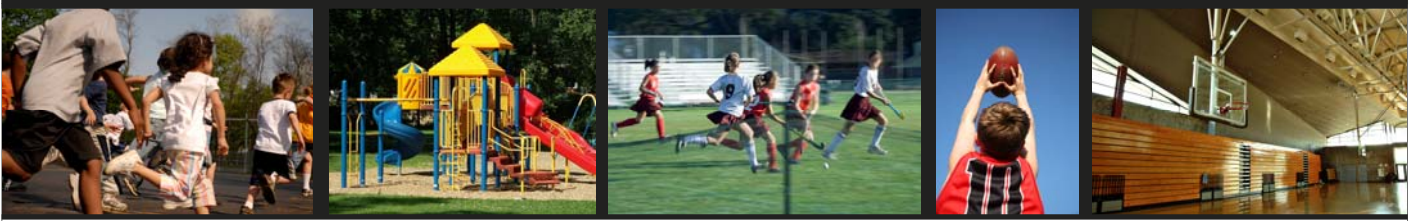
Justice Mason conceded that the school teachers’ duty of care does not require that 15 year old boys be kept under constant supervision and observation. However, his Honour held that “... *It would be unreal to suggest that no supervision was called for. In ordinary circumstances, supervision at that time was provided by members of the teaching staff ranging in number from 5 to 20. This provides some measure of what was considered to be appropriate ...*”

By providing only one teacher, the school authority failed to provide an adequate system of supervision to ensure that Master Introvigne was not exposed to an unnecessary risk of injury. The Court found that the flagpole was a lure for children and that the risk of children incorrectly playing with it was foreseeable in the sense that it was not farfetched or fanciful.

More recently, the High Court again examined the issue of supervision in the playground in *The Trustees of the Roman Catholic Church for the Diocese of Canberra and Goulburn v Hadba* [2005] HCA 31. In this case, an 8 year old girl was injured while using a flying fox in a playground during a recess period. The particular area where the

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How much supervision in our schools is enough?

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plaintiff was injured was supervised by two teachers. The school had in place a 'hands off rule' requiring the children not to touch each other during play. This rule was regularly reinforced at school assemblies. During the morning recess, the plaintiff ascended a platform of the flying fox and took hold of the triangle in preparation to ride across to the other platform. There were approximately 40 children in the area. Contrary to the school rules, a boy and girl in Year 3 each grabbed one of the plaintiff's legs. The plaintiff struggled to free herself, and was pulled off the flying fox; her face struck the platform as she fell to the ground.

The High Court held that supervising teachers cannot be everywhere at once and that constant supervision (involving a specific commitment of staff and financial resources) goes beyond the bounds of reasonableness. The Court recognised that constant supervision of students is also likely to retard the teacher/pupil relationship by removing the element of trust. Further, the High Court held on the question of causation that a different supervision regime would have been unlikely to prevent the plaintiff's injuries.

Sporting and recreational activities

Another important decision in the area of supervision, particularly involving sporting and recreational

activities, is *The Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Kondrajian* [2001] NSWCA 308. In this case, the Court of Appeal considered the liability of a Catholic school in conducting a modified game of hockey in which the plaintiff was tragically killed when accidentally struck by a hockey stick wielded by another student.

The Court of Appeal made the following observations:

- The duty is only to take reasonable care for the safety of the pupils concerned.
- A school is not absolutely liable for injuries sustained by pupils where they are under the supervision of their teachers.
- Reasonable steps should be taken to guard against foreseeable conduct on the part of children that may result in harm to themselves or others.
- Where an injury is caused by an unfortunate concurrence of circumstances that reasonable precautions could not have prevented, no breach of duty will have occurred.
- Factors such as the benefits of the game, the magnitude of the risk involved, its degree of probability, the degree of possibility of inadvertence or negligent conduct on the part of participating children, the training given to the children and their skill level, are important in

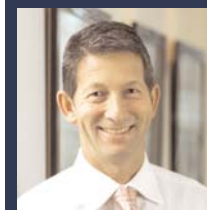
determining whether reasonable steps were taken to prevent injury occurring.

Conclusion

Supervision is a key element in the discharge of a Church school's duty of care towards pupils under its control. The above cases illustrate the way in which Courts interpret this duty, whether it be in the playground, classroom or during sporting/recreational activities.

It is clear that since the NSW Court of Appeal decision in *Kondrajian* in 2001, superior courts are taking a more realistic and commonsense approach towards the analysis of this duty and in particular having greater regard to the reality that school authorities cannot provide direct one-on-one supervision of pupils at all times.

The level of supervision required is such as is commensurate with the activity taking place rather than any artificial formula which applies in every situation. ■



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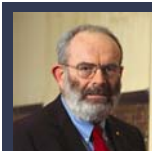
Administry

Issue 1

Assisting in the administration of your ministry

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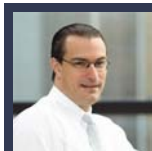
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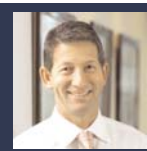
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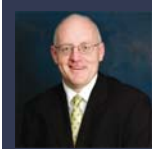


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