

FROM THE COMMISSION OF ASSEMBLY (RULE 5.55) COMMUNICATION TO ALL CONGREGATIONS

Receivers' Costs

The Receivers were appointed by the Supreme Court of Queensland on 12 May 2021 after an Application was made to the Court by the Presbyterian Church of Queensland (Incorporated by Letters Patent) due to the claims for payment on PresCare from a major creditor (Catalyst) not being able to be met.

The Court Order appointing the Receivers is available on request to clerk@pcq.org.au for any who wish to gain a full understanding of what it contains. In summary, it provides (amongst other things) that the Receivers are authorised to;

- Take possession of, preserve or maintain, insure and repair the property of the PCQ
- Deal with the PresCare matters
- Bring and defend and compromise all proceedings in the name of the PCQ
- Appoint solicitors, accountants or other professionally qualified persons to assist the Receivers
- Pay the costs and expenses incurred in the ordinary course of operating the PCQ
- Take reasonable steps to gather information in relation to the trust or trusts on which the PCQ's property is held and the assets or property out of which the PCQ may have right of indemnity.

The Receivers provided a detailed report¹ to the Court on 31 March 2022 outlining their work and including information as to the Receivers' opinion on any trust or trusts, including their opinion on the terms of each trust, on which they believe PCQ holds each of its assets and property and the categories thereof.

Since appointment the Receivers, among other things, traded (with the benefit of an operational funding grant from the Department of Health (DoH) in excess of \$20m) and realised the PresCare Residential Aged Care Facilities (RACFs) with approx. \$100m being paid to the Catalyst entities and c.\$20m for RAD's and employee entitlements. Additionally they have attended to significant litigation commenced by the Catalyst entities shortly after the appointment. The Catalyst entities claim was for approximately \$135m (before the RACF realisations). Other external claims that remain outstanding in PresCare include the DoH in the amount of \$41m and the ATO and other creditors of approximately \$5m.

The Court Order also provides that the Receivers be remunerated on the basis of the time spent on their work and that their remuneration be paid from the PCQ's property and the PresCare Property subject to certain conditions. The payment of all costs and expenses in connection with the Receivership is to be addressed similarly. The Receivers have always sought and gained the agreement of the Supreme Court for the realisation of PCQ property including to meet their costs.

Since the time of the appointment of the Receivers, they have necessarily incurred costs in the course of carrying out these Orders of the Court (as Officers of the Court). As at 31 January 2024, the amounts accrued for the Receivers' Remuneration are as follows:

Receivers' Remuneration :

- PCQ - \$6.684m
- PresCare – \$6.908m
- Fairholme College -\$0.387m
- Queensland Theological College – \$0.270m
- Total – \$14.249m

¹ <https://report.pcq.church/>

In addition, it has also been necessary for other professional costs and receivers' disbursements to be incurred and paid in the Receivership over and above the usual costs associated with PCQ's operations. These additional costs include costs incurred by legal firms engaged being Allens, Maddocks and Neumann & Turnour, costs of various Counsel engaged to assist in the PCQ report, various Court applications and the Catalyst litigation and costs for experts and witnesses involved in the Catalyst litigation. A summary of the total costs paid to the end of January 2024 is as follows:-

- PCQ - \$5.699m
- PresCare – \$5.913m
- Fairholme College – \$0.142m
- Queensland Theological College – \$0.002m
- Total – \$11.756m

The Receivers have advised that as at 31 January 2024, there is a shortfall of about \$7m in payment of the costs incurred to that date after allowance or payment from PCQ, PresCare and Fairholme. This shortfall has arisen as all cash reserves (apart from operational working capital) will soon be exhausted. This shortfall is currently being managed as the Receivers have not drawn remuneration in respect of their work for PCQ since January 2022, for PresCare since December 2022 and QTC since their appointment. Allens have not been paid for their work for PCQ and PresCare since February 2023 and QTC since appointment.

PresCare and Fairholme costs have been met to date from their specific assets and realisation approved by the Supreme Court. As at 31 January 24, there were no remaining available assets in PresCare. Consequently, costs outstanding at January 24, including Legal fees of \$4.0m and Receivers of \$1.6m relating to PresCare work to the end of January 24, require funding from PCQ assets. These amounts have been included in calculating the shortfall amount of c.\$7m. The amounts for PresCare legal costs and the Receivers are for the period 1 January 2023 to 31 January 2024.

The Receivers have advised that they have provided a significant discount on their normal rates in the order of several million dollars that has been afforded to PCQ charitable entity and have advised that there has also been no adjustment to their charged rates since the time of appointment. The Receiver's lawyers, Allens have also applied significant discounts to their time incurred throughout the Receivership.

Possible Outcomes of Trial and Timelines

Firstly, it is important to note that the Supreme Court provided directions in October 2022 and October 2023 that it was appropriate for the Receivers to continue to conduct the litigation to defend the PCQ against the claims brought against the Church (originally commenced by Catalyst entities shortly after the Receivership commenced in May 2021).

The Trial was conducted over 3 weeks in November/December 2023 following which written closing submissions were required to be submitted in the period up to 22 December 2023. Following that, Oral closing submissions were made before the Court on 31 January and 1 and 2 February 2024. The Attorney-General for the State of Queensland (A-G) was also a party to the proceedings and her submissions to Court were supportive of PCQ's arguments.

On 2 February 2024 the trial concluded with the Judge reserving his decision. His Honour indicated a decision would not be made for at least a few months. The Receivers' best estimate is to expect a

judgment to be handed down in the second half of 2024. It is anticipated that the Judge will provide detailed reasons for his Judgement when delivered.

It is worth noting that it is both unwise and premature to speculate on what the Court's judgment may be while the matter is being considered by the judge.

There is a range of potential outcomes, including the possibility of adverse or beneficial outcomes for the PCQ. Given the complexity and difficulty of the case and the multitude of legal issues to be considered it is expected one or more of the parties (including the A-G) may seek to appeal aspects of any judgement. Should an appeal occur it is likely the process would add a further period of at least 6 months (post original judgement) for the appeal to be heard and a further period within which a further determination would be made. An appeal process does require specific short timeframes to be met by the parties in filing notices of appeal and as such preliminary preparation steps are being taken by the Receivers and by the Assembly should the need arise. If the Judgement is adverse for the PCQ and it is decided there are grounds for an appeal, it is expected that a Stay of Costs would be sought.

It is anticipated that every reasonable opportunity to reach a settlement would be pursued during this period.

Special Commission of Assembly Decisions

The Receivers, in accordance with the orders of the Supreme Court of Queensland made on 12 May and subsequently, have confirmed their intention to realise assets of PCQ for the payment of their costs, outlays and remuneration and have sought the view of the Assembly about available assets. Please note that no request for the sale of the real property of any functioning Charges has been put to the Church.

The Special Commission of the Queensland State Assembly (which includes all the members of the Assembly) met recently on two occasion to receive a report from the Letters Patent Officers and determine a way forward in relation to meeting the costs of the Court Appointed Receivership. After considering various options, the Assembly decided to raise no objection to the use of funds from the following sources (provided this is done consistently with the law of the Church):

- the PCQ Endowment Fund
- deposits in the Capital Fund recorded in the accounts as at the date of the appointment of the receivers in the name of the closed Charges and in denominational accounts
- the interest or other income accrued on the funds invested in the Capital Fund since the date of the appointment of the Receivers

The 11 April 2024 meeting of the members of the Assembly (as a Special Commission) decided that where it has been duly advised that a Charge or a section of a Charge has been closed (i.e., is no longer effectively functioning), the Letters Patent Officers may respond to a request from the Receivers for the Church's view on the proposed sale of such property by informing the Receivers that the Charge or section of a Charge has ceased to function and its assets are not currently in use. The above position of the Special Commission of Assembly applies to the three closed Charges and the one closed section of a Charge that are under consideration for sale. The Special Commission of Assembly also stated that nothing in the above should prejudice the general view of the Assembly that congregational assets held by the Letters Patent Entity should not be sold to pay for the Receivers' remuneration, costs, and outlays.

The Assembly also decided to establish an ad hoc committee consisting of a member of the Finance and Administration Board, a member of the Property Board, a member of the Ad Hoc Committee Supporting the LPOs, a member of the Fairholme College Board, one of the Letters Patent Officers, a member of the Rule 5.55 Commission of Assembly, with power to co-opt, in consultation with the Attorney-General, Dr Matthew Turnour and Mr Philip Pan, to support the enduring charitable ministry purposes of the Church and its constituent parts to give due consideration to steps to be taken to:

- (a) protect the rights of the Church and its congregations concerning properties held for the ministry purposes of each Charge;
 - (b) identify assets to be used and means by which funds can be raised to enable these rights to be protected and to address the ongoing financial obligations of the Church arising directly from the Court Appointed Receivership, taking into consideration prioritised funding plans developed by each Presbytery;
- and bring recommendations to the Special Commission of Assembly.

If you wish to ask any questions concerning the above, in the first instance please contact the Session of your Congregation. Your Session will have members appointed to attend the various meetings of the Assembly and so should be able to answer your question or seek an answer on your behalf from the Office of the Clerk of Assembly.

Please continue to bring these matters before God in prayer, as we look to Him to provide all that we need according to the riches of His glory in Christ Jesus (Philippians 4:19).

John Gilmour

John Gilmour (Rev)
Moderator Elect
26 April 2024