



**St Vincent de Paul Society**

NATIONAL COUNCIL of AUSTRALIA Inc.

*good works*

# CONSTITUTION

**ST VINCENT DE PAUL SOCIETY NATIONAL COUNCIL OF  
AUSTRALIA INCORPORATED**

Last amended 30 April 2022

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# ASSOCIATIONS INCORPORATION ACT (A.C.T) 1991

## ST VINCENT DE PAUL SOCIETY NATIONAL COUNCIL OF AUSTRALIA INCORPORATED

### PART 1

#### PRELIMINARY

##### Mission Statement

The St Vincent de Paul Society National Council of Australia Incorporated is to do spiritual and temporal good by undertaking of activities to alleviate or relieve poverty, sickness, suffering, distress, misfortune, destitution, homelessness or helplessness by fulfilling its mission as a lay Catholic organisation that aspires to live the gospel message by serving Christ in the poor with love, respect, justice, hope and joy and by working to shape a more just and compassionate society.

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## 1. INTERPRETATION

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This Constitution is to be read and interpreted with reference to The Rule which, along with the International Statutes, governs the operation of the worldwide Confederation of the St Vincent de Paul Society.

- 1.1 In this Constitution except in so far as the context or subject - matter otherwise indicates or requires:

"the Act" means the *Associations Incorporation Act 1991 (ACT)*.

"ACNC Legislation" means the *Australian Charities and Not-for-Profits Commission Act 2012 (Cth)* and regulations made under the Act.

"Annual General Meeting" means a meeting of the Association held under section 68 or 69 of the Act.

"Association" means St Vincent de Paul Society National Council of Australia Incorporated.

"Association Member" means a member of the Association for the time being and does not mean members of the Society as defined in The Rule.

"Board" means the committee established pursuant to the Act for the time being of the Association also known as the "Board of Management".

"Chairperson" means the National Council President or any other person holding that office from time to time.

"Directors" means the persons constituting the committee of the Association pursuant to the Act for the time being.

"General Meeting" means a general meeting of the Association other than an Annual General Meeting.

"National Council" means the National Council of the St Vincent de Paul Society constituted under Article 15 Part 111 of The Rule.

"National Council President" means the person from time to time occupying the position of the National Council President appointed pursuant to Article 18 Part III of The Rule.

"Public Officer" means the public officer of the Association in accordance with the Act.

"the Regulations" means the *Associations Incorporation Regulation 1991 (ACT)*.

"The Rule" means The Rule of the St Vincent de Paul Society in Australia as amended from time to time.

"the Society" means the St Vincent de Paul Society in Australia.

"State Council President" means the president (or sometimes known as the chairperson) of a State or Territory Council as elected in accordance with Article 11 Part III of The Rule.

1.2 In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes where the function is a duty, a reference to the performance of the duty.
- (c) Words importing the singular or plural number shall be deemed to include the plural or singular number respectively and words importing the masculine or neuter gender only shall be deemed to include the female and neuter or the feminine and masculine respectively as the case may require.

1.3 The provisions of the *Legislation Act 2001 (ACT)* apply to and in respect of these rules in the same manner as those provisions would so apply if this Constitution was an instrument made under the Act.

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## **2. OBJECTS OF THE ASSOCIATION**

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2.1 The Association will carry out the charitable functions of the National Council as articulated in Article 16 Part 111 of The Rule and will:

- (a) promote the Society in Australia;
- (b) foster the growth of the Society in Australia;
- (c) represent the Society in Australia;
- (d) establish a public fund to work in partnership with impoverished persons and their local communities to create lasting and meaningful change by supporting the implementation of sustainable development programs with the aim of assisting to break the cycle of poverty in developing countries;
- (e) co-ordinate the funding by conferences, councils and individual donors of overseas development programs;

- (f) undertake such activities, functions and purposes as are determined by the Board to be incidental or ancillary to the carrying out the objects of the Association;
- (g) liaise with other organisations in any manner deemed conducive to the fulfilment of the Association's objects; and
- (h) to carry out such other functions and purposes which are necessary or incidental to the fulfilment of the Association's objects.

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### **3. NOT-FOR-PROFIT**

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- 3.1 The income and property of the Association will only be applied towards the promotion of the objects of the Association set out in clause 2.
- 3.2 No income or assets of the Association will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Association Member. However, nothing in this Constitution will prevent payment in good faith to an Association Member:
  - (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Association;
  - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Association;
  - (c) of reasonable and proper rent for premises leased by any Association Member to the Association; or
  - (d) for the Association Member to carry out the Association's charitable purpose(s).

## **PART 2**

### **MEMBERSHIP**

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#### **4. MEMBERSHIP QUALIFICATIONS**

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- 4.1 A person shall be an Association Member whilstever they occupy the office of:
- (a) State Council Presidents (or sometimes known as the chairperson) within the Society;
  - (b) the National Council President; and
  - (c) such other persons who are appointed to the National Council in accordance with The Rule by the National Council President.
- 4.2 There shall be no entrance fee or annual subscription or membership fees.
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#### **5. CESSATION OF MEMBERSHIP**

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- 5.1 A person ceases to be an Association Member if the person:
- (a) dies; or
  - (b) ceases to hold office in accordance with clause 4.1.
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#### **6. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE.**

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- 6.1 A right, privilege or obligation which a person has by reason of being an Association Member:
- (a) is not capable of being transmitted to another person except if permitted in accordance with The Rule; and
  - (b) terminates upon cessation of the person's membership.
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#### **7. REGISTER OF MEMBERS**

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- 7.1 The Public Officer of the Association shall establish and maintain a register of members of the Association specifying the name and address of each person who is an Association Member together with the date on which the person became an Association Member and the date on which the Association Member ceased to be a member.
- 7.2 The register of members shall be kept at the principal place of administration of the Association and shall be open for inspection, free of charge, by any Association Member at any reasonable hour, by arrangement with the Public Officer.
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## **8. DISPUTE RESOLUTION AND DISCIPLINING OF MEMBERS**

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- 8.1 Dispute resolution and/or any disciplinary action(s) may only be taken in accordance with The Rule.



## **PART 3**

### **THE BOARD**

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#### **9. POWERS OF THE BOARD**

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- 9.1 All day-to-day management and control of the Association shall be vested in the Board who shall exercise all such powers of the Association as are not by the Act, the Regulations, and this Constitution required to be exercised in any other manner.
- 9.2 The Directors must comply with their duties as Directors under legislation and common law (Judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Legislation which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Association;
  - (b) to act in good faith in the best interests of the Association and to further the charitable purpose(s) of the Association set out in clause 2;
  - (c) not to misuse their position as a Director;
  - (d) not to misuse information they gain in their role as a Director;
  - (e) to disclose any perceived or actual material conflicts of interest;
  - (f) to ensure that the financial affairs of the Association are managed responsibly; and
  - (g) not to allow the Association to operate while it is insolvent.

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#### **10. DIRECTORS**

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- 10.1 All persons who are Association Members shall be Directors of the Association.
- 10.2 Directors shall hold office subject to holding office as an Association Member.

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#### **11. OFFICE BEARERS**

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- 11.1 The office bearers of the Association shall include:
- (a) National Council President;
  - (b) Vice Presidents;
  - (c) Secretary; and
  - (d) Treasurer.

11.2 The office bearers of the Association, other than the National Council President, shall be appointed in accordance with The Rule and shall hold office in accordance with The Rule.

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## **12. NATIONAL COUNCIL PRESIDENT**

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12.1 The National Council President shall chair meetings of the Board. The National Council President is permitted to delegate functions to a Vice President.

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## **13. VICE PRESIDENTS**

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13.1 The Association may have any number of Vice Presidents appointed in accordance in clause 11.2.

13.2 The Vice President of the Association shall accept any delegated function from the National Council President.

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## **14. PUBLIC OFFICER**

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14.1 The Public Officer shall be appointed by the Board and, as soon as practicable after being appointed Public Officer, lodge notice with the Association of his or her contact details including address.

14.2 It is the duty of the Public Officer to keep a register of members in accordance with clause 7.

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## **15. SECRETARY**

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15.1 The National Council Secretary shall be the Secretary of the Association.

15.2 It is the duty of the Secretary to keep minutes of:

- (a) all appointments of office bearers and Directors;
- (b) the names of Directors present at a Board meeting or an Annual General Meeting or a General Meeting; and
- (c) all proceedings at Board meetings, Annual General Meetings and General Meetings.

15.3 Minutes of proceedings at a meeting shall be signed by the person presiding at the meeting or at the succeeding meeting.

15.4 Copies of all minutes shall as soon as possible after the holding of the Board meeting be forwarded to all Directors.

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## **16. TREASURER**

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- 16.1 The National Council Treasurer shall be the Treasurer of the Association.
- 16.2 It is the duty of the Treasurer of the Association to ensure that:
- (a) all money due to the Association is collected and received and that all payments authorised by the Association are made; and
  - (b) correct books and accounts are kept showing the financial affairs of the Association including full details of all assets, receipts and expenditure connected with the activities of the Association.

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## **17. YOUTH AND YOUNG ADULTS REPRESENTATIVE**

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- 17.1 The Youth and Young Adults Representative of the National Council shall perform such functions as set out in The Rule.

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## **18. SPIRITUAL ADVISOR**

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- 18.1 The Association may have a Spiritual Advisor who shall perform such functions as set out in The Rule.
- 18.2 The Spiritual Advisor is not a Director. The Spiritual Advisor does not vote and unless expressly stated in this Constitution, cannot exercise any function of the Association.

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## **19. CASUAL VACANCIES**

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- 19.1 For the purpose of this Constitution, a casual vacancy in the office of a Director occurs if the Director:
- (a) dies;
  - (b) ceases to be an Association Member;
  - (c) becomes of unsound mind or becomes physically or mentally incapable of performing their duties as an Association Member or of the Board, under the law relating to mental health; or
  - (d) is absent without the consent of the Board from all meetings of the Board held during a period of 6 months.

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## **20. MEETINGS AND QUORUM**

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- 20.1 The Board shall meet as often as required to conduct the business of the Association.
- 20.2 A Board meeting may be convened or held using any technology consented to by a majority of Directors. The consent may be a standing one.
- 20.3 Oral or written notice of a meeting of the Board shall be given by the Secretary to each Director at least 48 hours (or such other period as may be unanimously agreed upon by the Directors) before the time appointed for holding of the meeting.
- 20.4 Notice of a meeting given under clause 20.3 shall specify the general nature of the business to be transacted at the meeting and no business other than that business shall be transacted at the meeting except business which the Directors present at the meeting unanimously agree to treat as urgent business.
- 20.5 A majority of Directors shall constitute a quorum for a meeting of the Board.
- 20.6 No business shall be transacted by the Board unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present the meeting stands adjourned to the same time and same place in the following week. Notice of the adjourned meeting shall be given again in accordance with clause 20.3.
- 20.7 If at the adjourned meeting a quorum is not present within half an hour the time appointed for the meeting, the meeting shall be dissolved.
- 20.8 At a meeting of the Board:
- (a) the Chairperson shall preside; or
  - (b) if the Chairperson is absent or unwilling to act one of the office bearers listed in clause 11 may be chosen by the Directors present at the meeting to preside.

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## **21. DELEGATION BY BOARD TO COMMITTEE**

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- 21.1 The Board may, by instrument in writing, delegate to one or more committees (consisting of such Association Members as the Board thinks fit plus any other persons considered appropriate by the Board and consistent with The Rule) the exercise of such of the functions of the Board as are specified in the instrument, other than:
- (a) this power of delegation; and
  - (b) a function which is a duty imposed on the Board by the Act or ACNC Legislation or by any other law.
- 21.2 A function the exercise of which has been delegated to a committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the committee in accordance with the terms of the delegation.
- 21.3 A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of delegation.

- 21.4 Notwithstanding any delegation under this clause, the Board may continue to exercise any function delegated.
- 21.5 Any act or thing done or suffered by a committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the Board.
- 21.6 The Board may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- 21.7 A committee may meet and adjourn as it thinks proper but within the Terms of Reference approved by the Board for that committee.
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## **22. VOTING AND DECISIONS**

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- 22.1 Questions arising at a meeting of the Board or of any committee appointed by the Board shall be determined by a majority of the votes of Directors or members of the committee (as appropriate) present at the meeting.
- 22.2 Each Director present at the meeting of the Board or of any committee appointed by the Board including the person presiding at the meeting is entitled to one vote but, in the event of an equality of votes on any question, the chairperson may exercise a second or casting vote.
- 22.3 Any act or thing done or suffered, or purporting to have been done or suffered, by the Board or by a committee appointed by the Board, is valid and effectual notwithstanding any defect that may afterwards be discovered in the appointment or qualification of any Director or member of the committee.
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### **22A. RESOLUTIONS BY BOARD**

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- 22A.1 The Board may pass a resolution by way of a circular resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document.
- 22A.2 The resolution is passed when the last Director (to make up a majority of Directors) signs.
- 22A.3 A transmission, via whatever technological means, which is received by the Association and which purports to have been signed by a Director shall for the purposes of this clause be taken to be in writing and signed by that Director at the time of the receipt of the transmission by the Association in legible form.
- 22A.4 The Association may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
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**PART 4**  
**GENERAL MEETINGS**

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**23. ANNUAL GENERAL MEETINGS - HOLDING OF**

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- 23.1 With the exception of the first Annual General Meeting of the Association, the Association shall, at least once in each calendar year and within the period of
- 23.2 5 months after the expiration of each financial year of the Association, convene an Annual General Meeting of its Association Members.
- 23.3 The Association shall hold its first Annual General Meeting within the period of 18 months after its incorporation under the Act.
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**24. ANNUAL GENERAL MEETINGS - CALLING OF AND BUSINESS AT**

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- 24.1 The Annual General Meeting of the Association shall, subject to the Act be convened on such date and at such place as the Board thinks fit.
- 24.2 In addition to any other business which may be transacted at an Annual General Meeting, the business of an Annual General Meeting shall be:
- (a) to confirm minutes of the preceding Annual General Meeting and of any General Meeting held since that meeting;
  - (b) to receive from the Board reports upon the activities of the Association during the preceding financial year; and
  - (c) to receive and consider the statement which is required to be submitted to Association Members pursuant to section 72 of the Act.
- 24.3 An Annual General Meeting shall be specified as such in the notice convening it.
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**25. GENERAL MEETINGS - CALLING OF**

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- 25.1 The Board may, whenever it thinks fit, convene a General Meeting of the Association.
- 25.2 The Board shall, on the requisition in writing of not less than 25% of the total number of Association Members, convene a General Meeting of the Association.
- 25.3 A requisition of Association Members for a General Meeting:
- (a) shall state the purpose or purposes of the meeting;
  - (b) shall be signed by the Association Members making the requisitions;
  - (c) shall be lodged with the Secretary; and
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- (d) may consist of several documents in a similar form, each signed by one or more of the Association Members making the requisition.
- 25.4 If the Board fails to convene a General Meeting to be held within one month after the date on which a requisition of Association Members is lodged with the Secretary, any one or more of the Association Members who made the requisitions may convene a General Meeting to be held not later than 3 months after that date.
- 25.5 A General Meeting convened by an Association Member or Association Members as referred to in clause 25.2 shall be convened as nearly as is practicable in the same manner as Annual General Meetings are convened by the Board and any Association Member who thereby incurs expense is entitled to be reimbursed by the Association for any expense incurred.
- 25.6 Except where the nature of the business proposed to be dealt with at a General Meeting requires a special resolution of the Association, the Secretary shall, at least 14 days before the date fixed for the holding of the General Meeting, cause to be sent by pre-paid post or via email to each Association Member at the Association Member's address appearing in the register of members, a notice specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- 25.7 Where the nature of the business is proposed to be dealt with at a Special General Meeting requires a special resolution of the Association, the Secretary shall, at least 21 days before the date fixed for the holding of the General Meeting, cause notice to be sent to each Association Member in the manner provided in clause 25.3 specifying, in addition to the matters required under that clause, the intention to propose the resolution as a special resolution.
- 25.8 No business other than that specified in the notice convening a General Meeting shall be transacted at the meeting except, in the case of an Annual General Meeting, business which may be transacted pursuant to clause 26.2.
- 25.9 An Association Member desiring to bring any business before a General Meeting may give notice in writing of that business to the Secretary who shall include that business in the next notice calling a General Meeting given after receipt of the notice from the Association Member.
- 25.10 No item of business shall be transacted at a General Meeting unless a quorum of Association Members entitled under this Constitution to vote is present during the time the meeting is considering that item.
- 25.11 Five Association Members present in person (being Association Members entitled under this Constitution to vote at a General Meeting) constitute a quorum for the transaction of the business of a General Meeting.
- 25.12 If within half an hour after the appointed time for the commencement of a General Meeting a quorum is not present, the meeting if convened upon the requisition of Association Members shall be dissolved and in any other case shall stand adjourned to the same day in the following week at the time and (unless another place is specified at the time of adjournment by the person presiding at the meeting or communicated by written notice to Association Members given before the day to which the meeting is adjourned) at the same place. If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the Association Members present (being not less than 3) shall constitute a quorum.
- 25.13 A General Meeting may be convened or held using any technology consented to by a majority of Association Members. The consent may be a standing one.

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## **26. CHAIRPERSON**

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- 26.1 The National Council President shall preside as Chairperson at each General Meeting and Annual General Meeting of the Association.
- 26.2 If the National Council President is absent from an Annual General Meeting or General Meeting or unable or unwilling to act, the National Council President shall appoint one of the Vice Presidents to preside at the meeting.
- 26.3 If the Vice President appointed in clause 26.2 is absent or unable or unwilling to act, the Association Members present shall elect one of their own number to preside at the meeting.
- 26.4 The Chairperson may invite any person to attend and observe an Annual General Meeting or General Meeting without the need to obtain the consent of the Association Members.

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## **27. ADJOURNMENT**

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- 27.1 The person presiding at a General Meeting at which a quorum is present may, with the consent of the majority of Association Members present at the meeting, adjourn the meeting from time to time and place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment first took place.
- 27.2 Where a General Meeting is adjourned for 14 days or more, the Secretary shall give written or oral notice of the adjourned meeting to each Association Member stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- 27.3 Except as provided in sub clauses 27.1 and 27.2, notice of an adjournment of a General Meeting or of the business to be transacted at an adjourned meeting is required to be given.

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## **28. MAKING OF DECISIONS**

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- 28.1 A question arising at a General Meeting or Annual General Meeting of the Association shall be determined on a show of hands and, unless before or on the declaration of the show of hands a poll is demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the Association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- 28.2 At a General Meeting or Annual General Meeting of the Association, a poll may be demanded by the chairperson or by not less than 3 Association Members present in person or by proxy at the meeting.
- 28.3 Where a poll is demanded at a General Meeting or Annual General Meeting, the poll shall be taken:
- (a) immediately in the case of a poll which relates to the appointment or election of the person presiding as chair (other than the Chairperson) in accordance with clauses 26.2 and 26.3 of the meeting or to the question of an adjournment; or
  - (b) in any other case, in such manner and at such time before the close of the meeting as



the chairperson directs, and the resolution of the poll on the matter shall be deemed to be the resolution of the meeting on that matter.

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## 29. SPECIAL RESOLUTION

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- 29.1 Subject to the Act, a resolution of the Association is a special resolution if it is passed by not less than three quarters of the Association Members as, being entitled under this Constitution to do, vote in person or by proxy at a General Meeting or Annual General Meeting of which not less than 21 days written notice specifying the intention to propose the resolution as a special resolution was given in accordance with this Constitution.
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## 30. VOTING

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- 30.1 Upon any question arising at a General Meeting or Annual General Meeting only Association Members shall be entitled to vote. An Association Member has one vote only.
- 30.2 All votes shall be given personally or by proxy but no Association Member may hold more than 5 proxies.
- 30.3 In the case of an equality of votes on a question, the chairperson of the meeting is entitled to exercise a second or casting vote.
- 30.4 Proxy voting may only be undertaken if it is not expressly prohibited by the Rule.
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## 31. APPOINTMENT OF PROXIES

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- 31.1 Each Association Member shall be entitled to appoint another Association Member to be a proxy by notice given to the Secretary no later than 24 hours before the time of the meeting in respect of which the proxy is appointed.
- 31.2 The notice appointing the proxy shall be in the form set out by the Board.
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## 31A. CIRCULATING RESOLUTION OF ASSOCIATION MEMBERS

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- 31A.1 Subject to **clause 31A.3**, the Board may put a resolution to the Association Members to pass a resolution without a general meeting being held.
- 31A.2 The Board must notify the auditor (if any) as soon as possible that a circulating resolution has or will be put to Association Members, and set out the wording of the resolution.
- 31A.3 Circulating resolutions cannot be used where the Act or this Constitution requires a meeting to be held.
- 31A.4 A circulating resolution is passed if a majority of Association Members or in the case of a Special Resolution at least 75% of all Association Members entitled to vote on the resolution, sign or agree to the circular resolution, in the manner set out in **clause 31A.5** or **clause 31A.6**.
-

31A.5 Association Members may sign:

- (a) a single document setting out the circulating resolution and containing a statement that they agree to the resolution; or
- (b) separate copies of that document, as long as the wording is the same in each copy.

31A.6 The Association may send a circulating resolution by email to Association Members and Association Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

**PART 5**  
**MISCELLANEOUS**

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**32. INSURANCE**

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32.1 The Association shall effect such insurance as is appropriate for its purposes.

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**33. FUNDS - SOURCE**

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33.1 The funds of the Association shall be derived from donations, grants, fees for any service and, subject to any resolution passed by the Association in a General Meeting, such other sources as the Board determines.

33.2 All money received by the Association shall be deposited as soon as practicable and without deduction to the credit of the Association's bank account.

33.3 The Association shall, as soon as practicable after receiving any money, issue a suitable receipt.

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**34. FUNDS - RECORDS**

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34.1 The Association must make and keep written financial records that:

(a) correctly record and explain its transactions and financial position and performance;  
and

(b) enable true and fair financial statements to be prepared and to be audited.

34.2 The Association must also keep written records that correctly record its operations.

34.3 The Association must retain its records for at least 7 years.

34.4 The Directors must take reasonable steps to ensure that the Association's records are kept safe.

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**35. FUNDS - MANAGEMENT**

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35.1 Subject to any resolution passed by the Association, the funds of the Association shall only be used in pursuance of the objects of the Association in such manner as the Board determines.

35.2 All cheques, draft bills of exchange, promissory notes and other negotiable instruments shall be signed by any 2 Directors or employees of the Association, being members or employees authorised to do so by the Board. Any electronic transfer of funds shall likewise be approved by 2 Directors or employees of the Association, being members of employees authorised to do so by the Board.

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- 35.3 The Board shall cause proper accounting and other records to be kept as required by the Act and the ACNC legislation and shall distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) accompanied by a copy of the auditor's report thereon as required by the Act and shall cause to be made out and laid before each Annual General Meeting a profit and loss account and balance sheet made up to date not more than 5 months before the meeting.
- 35.4 The Association will establish a public fund which shall be known as the St Vincent de Paul Society National Council of Australia Incorporated - Overseas Development Fund (**the Fund**), held at the Commonwealth Bank or such other financial institution as approved by the Board from time to time, which will be governed by the rules of the Fund.
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## **36. AMENDMENT TO CONSTITUTION**

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- 36.1 This Constitution may be altered, rescinded or added to only by a special resolution of the Association Members.
- 36.2 The Australian Taxation Office and the Australian Charities and Not-For-Profits Commission must be notified of any variation, addition or change to the rules of the Fund.
- 36.3 Any provision in this Constitution must not be varied or amended if that variation or amendment has the effect of removing the Fund's status as an overseas aid fund.
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## **37. COMMON SEAL**

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- 37.1 If the Association has a common seal, it shall be kept in the custody of the Public Officer.
- 37.2 The common seal shall not be affixed to any instrument except by the authority of the Board and the affixing of the common seal shall be attested by the signatures either of 2 Directors or of one Director and the Public Officer or Secretary.
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## **38. CUSTODY OF BOOKS ETC**

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- 38.1 Except as otherwise provided by this Constitution, the Public Officer shall keep in his or her custody or under his or her control all records, books and other documents relating to the Association.
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## **39. INSPECTION OF BOOKS**

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- 39.1 The records, books and other documents of the Association shall be open to inspection, free of charge, by a member of the Association at any reasonable hour.
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## 40. SERVICE OF NOTICES

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- 40.1 For the purpose of this Constitution, a notice may be served by or on behalf of the Association upon any Association Member either personally or by sending it by post to the Member at the Member's address shown in the register of members.
- 40.2 Where a document is sent to a person by properly addressing, prepaying and posting to the person a letter containing the document, the document shall, unless the contrary is proved, be deemed for the purposes of this Constitution to have been served on the person at the time at which the letter would have been delivered in the ordinary course of post.

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## 41. OVERSEAS DEVELOPMENT FUND

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### 41.1 Establishment of the Fund

- (a) In accordance with Clause 35.4 of the Constitution, a public fund will be established called the St Vincent de Paul Society National Council of Australia Incorporated - Overseas Development Fund.
- (b) The Fund will operate on a not-for-profit basis.

### 41.2 Objects and purpose

- (a) The purpose of the Fund is to work in partnership with impoverished persons and their local communities to create lasting and meaningful change by supporting the implementation of sustainable development programs with the aim of assisting to break the cycle of poverty in developing countries.
- (b) The objects for which the Fund is established are to:
- (i) provide assistance to persons in countries declared by the Minister for Foreign Affairs to be developing countries that are impoverished or abused or suffer illness and their communities, through the implementation of sustainable development programs and activities as required for these purposes irrespective of nationality, ethnicity, gender or religious belief;
  - (ii) provide assistance to children, families and communities experiencing poverty in countries declared by the Minister for Foreign Affairs to be developing countries through sustainable development programs, sponsorship and activities that provide for the care, maintenance, education, training and wellbeing of needy children irrespective of nationality, ethnicity, gender or religious belief;
  - (iii) work in partnership with overseas aid agencies or enter into formal arrangements with other local organisations to train, local organisations and charities in developing countries to implement sustainable development programs and activities to achieve the objects of the Fund;
  - (iv) solicit gifts and donations to enable the Fund to carry out the objects of the Fund;
  - (v) coordinate appeals for, and collection of, money and goods in kind, and to coordinate the organisation of fundraising events for the purposes of raising

funds for carrying out the objects of the Fund;

- (vi) attract and encourage bequests, legacies and all forms of deferred gifts for the purposes of the Fund;
- (vii) do all such other things as are incidental or conducive to the attainment of the objects of the Fund;
- (viii) cooperate with the obligations imposed on the Fund whilst ever it is registered and endorsed as an overseas development fund; and
- (ix) retain a strong Australian identity.

#### 41.3 Public Fund requirements

- (a) The Fund is established as a public fund and must be administered as follows:
  - (i) The Association shall invite members of the general public to make gifts to the Fund which will be used solely for the purpose of carrying out the objects of the Fund. The general public will be able to make gifts directly, or via State Councils of St Vincent de Paul Society acting as agents for the Fund.
  - (ii) Any number of accounts may be established in the name of the Fund to receive gifts for the Fund.
  - (iii) All gifts received by the Fund must be deposited into the Fund's bank account which is established solely to receive gifts to the Fund.
  - (iv) All monies received by the Fund because of such gifts will be credited to the Fund's bank account.
  - (v) All gifts made to the Fund, and any money received because of such gifts, will be used solely for the objects of the Fund.
  - (vi) The Fund may receive monies from any source but only gift monies (and accretions therefrom) can be credited to the Fund.
  - (vii) Gifts made to the Fund will be kept separate from any other funds of the Association.
  - (viii) The Fund will adopt and maintain clear accounting procedures in respect of the Fund's bank account.
  - (ix) The Fund will be operated on a non-profit basis and moneys will not be distributed to members of the Overseas Development Fund Management Committee or any Association Member or Director of the Association, except as:
    - (A) reimbursement for out-of-pocket expenses reasonably incurred on behalf of the Fund; or
    - (B) proper remuneration for administrative services provided to the Fund.
  - (x) The Association must only provide money, property or benefits from the Fund to persons as permitted by the Australian Taxation Office for overseas aid funds endorsed under the Overseas Aid Gift Deduction Scheme.
  - (xi) All receipts for gifts must be issued in the name of the Fund. Receipts issued for gifts must include:

- (A) the name of the Fund;
- (B) that the receipt is for a gift; and
- (C) the Australian Business Number of the National Council.

#### 41.4 Investment

- (a) Any moneys (including income derived from investments and proceeds of the realisation of investments) paid or accrued to the Fund as a direct or indirect result of the particular gift may only be invested by the Association in a manner in which the Association is permitted by a Federal Act, a State Act or a law of a Territory of the Commonwealth to invest trust moneys.
- (b) The Association may from time to time vary any investments as aforesaid for others of any nature hereby authorised and the Association shall not invest money in any other manner.

#### 41.5 Management of the Fund

- (a) The Fund will be managed by a committee of management known as the Overseas Development Fund Management Committee.
- (b) The Committee must comprise of at least 3 members, this may include the CEO of the Association.
- (c) The Board must ensure that a majority of people in the Overseas Development Fund Management Committee fund are responsible persons in accordance with Taxation Ruling 95/27 (as amended from time to time) meaning that they are persons having a degree of responsibility to the general community by reason of their occupation or their standing in the community.
- (d) For the purposes of this clause, the Board shall from time to time appoint persons to the Overseas Development Fund Management Committee for the purposes of managing the Fund.

#### 41.6 Winding Up or Revocation of the Fund

- (a) On the winding up of the Fund or on the revocation of the endorsement of the Fund as a deductible gift recipient (whichever occurs first), any surplus assets of the Fund remaining after the payment of all debts and liabilities will be transferred to a fund, authority or institution to which income tax deductible gifts can be made and which has a similar purpose to the Fund.

#### 41.7 Change in fund requirements

- (a) Notwithstanding the above rules, the Fund will be maintained and operated in a manner which complies with the legislative and administrative requirements which apply from time to time for the maintenance and operation of a public fund.

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## 42. WINDING UP

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- 42.1 If the Association is wound up, any surplus assets must not be distributed to an Association Member or a former Association Member, unless that member or former member is a charity described in clause 42.2.

- 42.2 Subject to the Corporations Act and any other applicable Act, and any court order any surplus that remains following the winding up of the Association, must be given or transferred to one or more charities which meet the requirements set out at subclauses 42.2(a) to 42.2(d) below:
- (a) has objects which are similar to the objects of the Association as set out in clause 2.1(f);
  - (b) has a governing document which requires its income and property to be applied in promoting its objects;
  - (c) is registered as a public benevolent institution and endorsed by the Australian Taxation Office to be income tax exempt and to have deductible gift recipient (**DGR**) status; and
  - (d) has a governing document which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Association by clause 3.2.
- 42.3 The identity of the recipient charity or charities is to be determined by a special resolution and approved by the National Council President in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.
- 42.4 In the event that the Association ever has its endorsement as a DGR revoked, the Association must transfer all remaining money received in respect of such gifts and contributions to a charity which would be entitled to receive the surplus on winding up under subclause 42.2.

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## 43. GOVERNING LAW

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- 43.1 If there is any inconsistency between the Constitution and The Rule, the provisions of The Rule shall prevail.



## ANNEXURE A - AMENDMENTS TO THE ORIGINAL CONSTITUTION

1. The Amended Constitution contains the amendments listed below. Words and expressions defined in the Original Constitution have the same meaning here unless they are otherwise specified.
  - (a) The following defined terms are inserted in clause 1.1 of the Amended Constitution:
    - (i) "**ACNC** Legislation";
    - (ii) "Annual General Meeting";
    - (iii) "Association Member";
    - (iv) "General Meeting"
    - (v) "Public Officer";
    - (vi) "the Regulations";
    - (vii) "The Rule";
    - (viii) "the Society"; and
    - (ix) "State Council President".
  - (b) The following defined terms contained within clause 2(1) of the Original Constitution have been amended:
    - (i) "Chairperson";
    - (ii) "Board";
    - (iii) "Directors"; and
    - (iv) "National Council".
  - (c) The following defined terms contained within clause 2(1) of the Original Constitution have been deleted:
    - (i) "Conference";
    - (ii) "Council";
    - (iii) "International Council General";
    - (iv) "members";
    - (v) "Mission Statement";
    - (vi) "the President General";
    - (vii) "the secretary";

- (viii) "Society"; and
  - (ix) "Special General Meeting".
- (d) There are slight variations in the terms and expressions used in the objects of the National Council under clause 2 of the Amended Constitution. In substance however the objects remain the same as those in clause 1 of the Original Constitution - that is, amongst other things, to represent the Society in Australia and coordinate the funding by the conferences, councils and individual donors of overseas development programs.
- (e) A new clause 3 is inserted in the Amended Constitution to ensure the National Council operates on a non-profit basis.
- (f) Administrative changes have been made to Parts 2, 3 and 4 of the Original Constitution to:
- (i) provision for changes in the defined terms;
  - (ii) expressly outline the roles and responsibilities of the office bearers of the National Council; and
  - (iii) ensure consistency between the Amended Constitution and The Rules.
- (g) A new clause 34 is inserted in the Amended Constitution to ensure the proper recording of the Fund's financial records and operations.
- (h) A new clause 41 is inserted in the Amended Constitution which mirrors Appendix 4 of the Original Constitution, notwithstanding the following:
- (i) minor changes to the words and expressions used in the objects and purpose of the Fund provision (contained within clause 41.2 of the Amended Constitution);
  - (ii) a new clause 41.4 is inserted in the Amended Constitution to allow monies paid or accrued by the Fund to be invested in a manner consistent with the way trust monies is invested and permitted by law; and
  - (iii) administrative changes to:
    - (A) the 'Management of the Fund' provision in clause 41.5 of the Amended Constitution. However, the requirement to maintain at least three members on the committee, who are persons who retain a degree of responsibility to the general community, remains; and
    - (B) the 'Changes to the Rules' provision contained within clause 7 of Appendix 4 of the Original Constitution has been shifted to clause 36 of the Amended Constitution.
- (i) A new clause 42 is inserted in the Amended Constitution with respect to the winding up of the National Council.
- (j) A new clause 22A is inserted in the Amended Constitution to allow the Board of Directors to make resolutions by circular motions outside of meetings of the Board of Directors.
- (k) A new clause 25.13 is inserted in the Amended Constitution to allow the Members of the Association to meet using any technology agreed to by the majority of Association

Members.

- (l) A new clause 25.13 is inserted in the Amended Constitution to allow the Members of the Association to make resolutions by circular motions outside of meetings of the Association Members.