

NATIONAL DISPUTE RESOLUTION TRIBUNAL

The **National Dispute Resolution Tribunal** outlined below is a new concept for Australia.

National Council endorsed the Procedure describing the Tribunal at its Meeting of 27-28 July 2024 (**Resolution 77/24**)

It will sit as a Procedure not as an Appendix.

PROCEDURE

PREAMBLE

The St Vincent de Paul Society National Council of Australia is united in its spirituality and management through the International Confederation of the St Vincent de Paul Society (*The Rule*, Part II, Art. 1.1). National Council is instituted by the International Council General (Part III, Art. 15) and follows the international and Australian statutes outlined in *The Rule*.

The St Vincent de Paul Society in Australia ('the Society in Australia') is governed by *The Rule* which embraces the principle of subsidiarity such that decisions are made as close as possible to the level where activities are performed ensuring local circumstances are taken into consideration (Part I, Art 3.9).

The Society in Australia consists of the National Council and six State Councils and two Territory Councils that together assist the Society's members carry out good works.

Under *The Rule*, the National Council is the Society's superior council in Australia (Part II, Art. 1.6). National Council authorises the legal entities that operate in Australia in the name of the St Vincent de Paul Society. Each of the Society's nine councils in Australia is registered as a charity with the Australian Charities and Not-for-profit Commission (ACNC).

National Council and some of the state and territory councils have established and control separate subsidiary legal entities to assist in the good works of the Society. Each subsidiary entity is registered with the ACNC.

This Procedure integrates *The Rule* with the Constitution of St Vincent de Paul Society National Council of Australia Inc.

DEFINITIONS

Within this policy and all related governance documents, the following definitions apply:

National Council means the Superior Council of the Saint Vincent de Paul Society in Australia instituted by the International Council General.

Tribunal President is a member of the panel of members appointed by the National Council as the Chairperson for a particular referral or appeal.

Secretary means the National Secretary, from time to time, of the National Council.

Vulnerable person means a child, persons who have impaired intellectual or physical function, Aboriginal persons or Torres Strait Islanders or persons who are of non-English speaking background.

Recorder means a person who records the spoken word, whether by longhand, shorthand, or mechanical or other means and includes a person who operates or transcribes mechanical or other recordings of the spoken word.

Originating document means a document by means of which proceedings in the Tribunal are commenced by a party (including a notice of appeal).

Approved form in relation to a document, means the form approved by the President of the Tribunal or the secretary.

PROCEDURES

1. Composition of the Tribunal

The National Council shall establish a panel of eminent members who shall be available to be members of the National Dispute Resolution Tribunal ('the Tribunal'). The Tribunal shall be constituted by three eminent members of the Society together with a suitably qualified mediator or lawyer appointed to assist the Tribunal.

Members of the Tribunal should possess in-depth and up-to-date knowledge of the relevant subject matter of the Tribunal's jurisdiction.

No member of the Tribunal may be a person who is known to the parties to the referral or appeal.

2. Referral

Requests for referral of matters to the Tribunal shall at first instance be made to the National President. The decision whether or not to endorse referral to the Tribunal will be determined by National Council.

3. Jurisdiction

The Tribunal shall have the power to hear and determine any matter referred to it by the National Council.

4. Procedure of Tribunal generally

The Tribunal may determine its own procedure in relation to any matter for which these procedural rules do not otherwise make provision.

The Tribunal is not bound by the rules of evidence and may inquire into and inform itself on any matter in such manner as it thinks fit, subject to the rules of natural justice.

Despite the aforementioned rule, privilege in respect of self-incrimination (in other proceedings) as provided in the *Evidence Act 1995* (Cth) is taken to apply to evidence given in proceedings in the Tribunal.

The Tribunal is to act with as little formality as the circumstances of the case permit and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

The Tribunal is to take such measures as are reasonably practicable.

- (a) to ensure that the parties to the proceedings before it understand the nature of the proceedings, and
- (b) if requested to do so, to explain to the parties any aspect of the procedure of the Tribunal, or any decision or ruling made by the Tribunal.
- (c) to ensure that the parties have a reasonable opportunity to be heard or otherwise have their submissions considered in the proceedings.

The Tribunal

- (a) is to ensure, as far as practicable, that all relevant material is disclosed to the Tribunal so as to enable it to determine all of the relevant facts in issue in any proceedings, and
- (b) may require evidence or argument to be presented orally or in writing, and
- (c) in the case of a hearing, may require the presentation of the respective cases of the parties before it to be limited to the periods of time that it determines are reasonably necessary for the fair and adequate presentation of the cases.

5. Preparing for hearing

Following the decision of National Council to refer a matter to the Tribunal the secretary must give written notice to the parties of the referral:

- (a) stating how the National President/Council proposes to deal with the referral or appeal.
- (b) specifying the date, place and time of the hearing at which a referral or appeal will be held.
- (c) advising the parties of their rights and obligations with respect to the hearing.

6. Application for leave to represent a party

An application by a person for leave to represent a party to proceedings may be made orally or in writing at any stage in the proceedings.

In making an order granting leave to a person to represent a party to the proceedings, the Tribunal may impose such conditions in relation to the representation as the Tribunal thinks fit.

7. Granting and revocation of leave for a person to represent a party

In dealing with an application for leave to be granted to a person to represent a party to proceedings, the Tribunal is to have regard to:

- (a) such of the following circumstances as it considers are relevant to the proceedings -
 - (i) whether the proposed representative has sufficient knowledge of the issues in dispute to enable him or her to represent the applicant effectively before the Tribunal,
 - (ii) whether the proposed representative has the ability to deal fairly and honestly with the Tribunal and other persons involved in the proceedings,

- (iii) whether the proposed representative is vested with sufficient authority to bind the party, and
- (iv) any other circumstances that it considers relevant.

The Tribunal may revoke leave granted to a person to represent a party to proceedings only if the Tribunal is satisfied that -

- (a) the party no longer consents to the person representing the party, or
- (b) the person does not have the qualities referred to in subrule 7(a)(i) or (ii) to act as the party's representative, or
- (c) the party is, or has become, incapable of instructing the representative, or
- (d) any other grounds are present that the Tribunal considers sufficient to justify the revocation.

8. Support Person

There may be present at the hearing a support person such as a friend or family member of the parties. A support person is someone that a party may nominate to provide them with emotional support during a hearing. A support person cannot speak on behalf of a party. Their role is solely to provide support and reassurance.

9. Electronic lodging of documents

- (a) In any proceedings, a document may be lodged on behalf of a party, by electronic means by any of the following --
 - (i) the party,
 - (ii) a person who has been directed to lodge the document by the party.
- (b) When lodged by electronic means, a document that is required to be signed by a person is taken --
 - (i) to have been duly signed, and
 - (ii) to have been duly authenticated for the purposes of clause 5 of Schedule 1 to the *Electronic Transactions Act 2001 (ACT)* (the Act), if the person's name is printed where his or her signature would otherwise appear.
- (c) A document that is lodged by electronic means is lodged as soon as it is received and accepted by the National Secretary.
- (d) The National Secretary must accept a document that is lodged by electronic means unless the secretary refuses to accept the document in accordance with any directions given by the Tribunal.
- (e) The President may give directions in relation to the acceptance of documents lodged by electronic means for a particular proceeding.
- (f) Notice, and the date, of the lodging and acceptance of a document is to be given, by electronic means to the person by whom the document was lodged.

10. Means for service or giving of notices and documents

- (a) A notice or document may be served on or given to a person or body:
 - (i) by means of personal service, or
 - (ii) by posting a copy of the notice or document, addressed to the person or body--
 - (A) to the person's or body's address for service, or
 - (B) if the person or body does not have an address for service, to the person's or body's business or residential address (or the business or residential address last known to the person or body serving the notice or document), or
 - (iii) by leaving a copy of the notice or document, addressed to the person or body--
 - (A) at the person's or body's address for service, or
 - (B) if the person does not have an address for service, at the person's or body's business or residential address (or the business or residential address last known to the person or body serving the notice or document), or
 - (iv) in the case of a person or body that has consented to service by means of a fax sent to a fax number specified by the person or body--by faxing a copy of the notice or document, addressed to the person or body, to that fax number, or
 - (v) in the case of a person or body that has consented to electronic service by means of an email address or mobile phone number specified by the person or body--by transmitting the notice or document in an electronic format, addressed to the person or body, to that address or number, or
 - (vi) in the case of service on a corporation -- by serving a copy of the notice or document on the corporation in any manner in which service of such a notice or document may, by law, be served on the corporation, or
 - (vii) in such other manner as the Tribunal or the secretary may direct in a particular case.
- (b) Service, giving and lodgement of a document with the Tribunal may be accomplished--
 - (i) by leaving it at the National Secretariat, or
 - (ii) by sending it by post to the National Secretariat, or
 - (iii) by any other means, including electronic means, as the Tribunal has made available for use for the service, giving or lodgement of notices or documents with the Tribunal.
- (c) When notice or document taken to be served, given or lodged Unless the contrary is proved, the time at which a notice or document is taken to be served, given or lodged is -
 - (i) in the case of a copy of a notice or document that is posted--at the end of the seventh working day after the date on which the notice or document was posted to the person, or

- (ii) in the case of a copy of a notice or document that is faxed in accordance with subrule 10(a)(iv) at the end of the first working day following the day on which the copy is so faxed, or
- (iii) in the case of a notice or document that is served electronically in accordance with subrule 10(a)(v) --
 - a. if the notice or document that is served has been filed in, or issued by, the Tribunal by electronic means at the time provided by clause 13 of the Act, or
 - b. if the notice or document that is served has not been filed in, or issued by, the Tribunal by such means -- at the time provided by section 13A of the Act.

11. Format of documents lodged or issued electronically

The Tribunal President may, in the case of documents lodged with the Tribunal, or issued by the Tribunal, by means of electronic means approve the format in which such documents are to be lodged or issued.

12. Secretary may accept documents that are not in an approved form

The Tribunal or the secretary may accept any application or other document for lodgement with the Tribunal even though it does not comply with the approved form if the Tribunal or the Secretary considers it appropriate to do so.

Before accepting any such application or other document, the Tribunal or the secretary may require the person or body on whose behalf the document is being lodged to give the Tribunal or secretary such further information as the Tribunal or secretary may require within such period as may be specified by the Tribunal or secretary.

A document accepted by the Tribunal or a secretary under this rule is taken to be duly lodged.

13. Compulsory Conference

Prior to fixing a date for a hearing by the Tribunal there shall be a compulsory Conference on a date and at a time fixed by the National Secretary in an attempt to resolve the dispute prior to the hearing.

14. Hearings to be in Private

Hearings of the Tribunal shall be conducted in private.

15. Exclusion of witness from tribunal hearing room

During proceedings before the Tribunal, a witness shall not, except by leave of the President, be in the hearing room until called to give evidence.

16. Recording of Proceedings

Where the proceedings before the Tribunal are not recorded electronically, they shall be recorded in sufficient detail to enable the course of the proceedings to be followed, and the merits of the case to be judged, from the record.

Where the proceedings are recorded electronically, the recorder shall prepare or cause to be prepared a transcript, in writing, which shall be authenticated by the person who made the transcript.

17. Discovery

It will be a matter for the Tribunal to determine whether an order should be made that a party give discovery of documents, what documents are covered by the order, the format of the discovery and any relevant criteria applicable to the order.

18. Failure to attend the hearing

Should a party fail to attend the hearing of the Tribunal, the Tribunal may dismiss the application or make a ruling in the absence of a party.

19. Exhibits

Subject to subrules 9 and 12 any document or thing admitted in evidence at a hearing by the Tribunal shall be made an exhibit.

Where the Tribunal is satisfied that a copy of, or an extract or relevant parts from, a document or book admitted in evidence is correct, the Tribunal may make the copy or extract an exhibit in place of the document or book.

20. Reasons

The Tribunal shall provide a statement of reasons in writing for its decision.

The statement of reasons shall include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

The Tribunal shall cause a copy of its decision to be given to each party to the proceeding.

21. Costs

The costs of a proceeding or of an application in a proceeding are at the discretion of the Tribunal.

22. Form of documents if no approved form

If there is no approved form for a document to be used in proceedings before the Tribunal, a party may use a form of the party's own devising, but only if it contains such information as may be required by a registrar.

23. Fixing time period

If no time is fixed by these rules for the doing of anything in or in connection with any proceeding before the Tribunal, the Tribunal may fix the time within which the thing is to be done.

24. Applications for extensions of time

An application for an extension of time for any purpose must be made in writing unless the Tribunal dispenses with that requirement.

25. Inspection of Documents

A party to proceedings is, on payment of the applicable fee (if any), entitled to inspect documents in the National Secretariat to the proceedings.

The secretary may impose such conditions as he or she considers appropriate in relation to the granting of access under this rule to a public access document (or a copy of such a document) by

There is no entitlement under this rule to give or be given access to a document in the National Secretariat (or a copy of such a document) if--

- (a) a claim for privilege has been made with respect to the document but not decided by the Tribunal, or
- (b) the Tribunal has decided that the document contains matter that is privileged, or
- (c) the Tribunal has ordered that the whole or part of the document not be disclosed, or
- (d) the disclosure of the whole or part of the document to the person is otherwise prohibited by any legislation or law, or
- (e) the document is or includes a note or working paper produced by or for a member in relation to any proceedings.

26. Matters that may be taken into account when exercising settlement powers

When deciding whether to make orders, the Tribunal is to take into account the interests of any vulnerable person (whether or not a party to the proceedings) if the Tribunal considers that--

- (a) the person may be directly affected by the orders because the person is a party to, or the subject of, the proceedings concerned, and
- (b) it is appropriate to do so in the circumstances.

Nothing in this rule limits the matters to which the Tribunal may have regard when deciding whether to make orders to give effect to a settlement.

27. Disclaimer

The parties acknowledge that there will be no liability for any loss or injury suffered by the parties or a Society member as the result of any decision made in good faith by virtue of this process.

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