



**The Transfer of the current Incorporated Association
to a Company Limited by Guarantee
Questions and Answers**

In this document, **CLG** means **St Vincent de Paul Society Canberra/ Goulburn (a Company Limited by Guarantee)**

Q. How did the proposal arise?

Due to the increase in size of the Society in Canberra/ Goulburn, complexities of regulation, risk and the strategic direction adopted by the Territory Council (TC) of the **St Vincent de Paul Society Canberra/ Goulburn** the TC had come to the view that we do not have the optimum legal structure for the Society.

Various strategic reviews of the Society in Canberra/ Goulburn determined that the current structure was not best suited to take the Society forward and a recent body of work by the Governance Committee of the National Council of **St Vincent de Paul Society** made several recommendations, which related to the consolidation of the governance arrangements of the Society nationally and in Canberra/ Goulburn.

A transition to a “Company Ltd” structure with an appointed Board of Directors is appropriate given the size and scale of the activities (revenue, breadth of services and number of employees) and allowing Independent Directors to be appointed to ensure corporate knowledge is retained.

The TC found that the legal and governance arrangements of the Society were limiting the Council’s ability to deliver on its objectives and contributing to a lack of strategic alignment as outlined by the Charterpoint review in 2020.

Q. What is the current structure of the Society in Canberra/ Goulburn?

The St Vincent de Paul Society in Canberra/ Goulburn (Society) currently comprises St Vincent de Paul Society Canberra/ Goulburn Incorporated (Inc.) and Society of St Vincent de Paul Pty Ltd, which holds the property owned by the Society.

Q. What is the current scale of the Society’s Activities?

For the year, ended June 30, 2020, total revenue of the Society exceeded \$30 million, almost 3.5 times the total revenue of the Society when it became an incorporated association in May 2007. The breadth of services across the Society faces increased risk, competition, and growing regulation. Total assets under management exceed \$31 million, comprising \$13 million of financial assets, along with property, plant, and equipment, valued at over \$18 million.

Q. Why Now?

The environment in which the Society operates today, demands a range of skills and experience at the top level of the organisation which can no longer be sourced solely from within the membership of the Society, given the ever changing and increasing complexity of the business and regulatory challenges faced by the Society in its works.

With 12 voting member positions, the current Committee of Management (TC) is unwieldy. It is acknowledged that governance best practice dictates that an effective Board needs to be no greater than 8-9 people. More effective decision making requires that the appropriate broad range of skills are available to support all the activities of the organisation. It is time to move to a skills-based Board of Directors of the increasingly complex business of the Society in Canberra/ Goulburn.



Q. Does the new structure fit with the requirements of The Rule?

It does. The Company accepts the principle of subsidiarity and democracy as set out in Part III Article 7 of *The Rule*. The Objects of the Company also contain a provision that the governance, management, and operation of the Company shall be carried out in accordance with the spirit and values of *The Rule* and the St Vincent de Paul Society.

Q. What are the benefits to the Society of the Company Limited by Guarantee legal structure?

Organisations often use companies limited by guarantee because they are particularly suited for conducting non-profit activities. Specifically, they cannot pay dividends, they cannot issue shares and therefore no person can acquire a controlling interest or profit from a share sale. They reinvest any surpluses into the work of the company. A company of this type is well regarded by funding bodies and public agencies as a more 'stable' and responsible structure than an incorporated association. It's a public limited company that has guarantors rather than shareholders, so it's suitable for non-profit organisations. The company members agree to pay a fixed amount of \$2 known as a guarantee towards the company's debts and so are protected in the unlikely event that the Society goes into liquidation. The important thing to remember is a company structure places more obligations on its Directors to manage and account for funds and the actions of the company. This is the responsible course of action in managing Society funds and assets.

Q. What are the other states doing?

NSW and Victoria have successfully moved to a Company Limited by Guarantee to manage its business activities. Western Australia has adopted the model of an operational Board, which runs the activities of the Society. This was developed to respond to several financial issues faced in that State and the need for professional expertise to provide oversight during challenging times. Queensland still has an incorporated association to run the Society but engages a full-time legal staff member to assist State Council with its capabilities to manage the most complex operational issues. This is a very costly option.

The National Council of the Society has recently advised all State Councils that the time has come for all State and Territories to consider a move to a "Company Limited by Guarantee" structure. National Council has by resolution approved the Company Limited by Guarantee Constitution.

Q. Are there other organisations that have the same model as proposed?

The Company Limited by Guarantee structure is the most used structure in the not for profit and charitable space and has already been adopted by: Anglicare, Uniting Church and the Red Cross.

Q. Moving to a Company Limited by Guarantee

Part 6 Section 82 of the *Associations Incorporation Act 1991* permits the Society to apply to transfer its incorporation to a public CLG if the members of the Society pass a special resolution approving the application.

Q. Who will be the members of the Company?

The Territory Council Members will be the Company Members, that includes the Territory Council President; Territory Council Vice Presidents; Regional Council Presidents; and the Territory Council Treasurer; each of which is properly elected in accordance with *The Rule*.



Q. What will the new board look like?

The Board will comprise five members of the Territory Council as well as two appointed members with specific skills to help the Board with its work:

- The Territory Council President
- The Vice President Conferences
- The Territory Council Treasurer;
- The Vice President Youth;
- One Other Territory Council Member; and
- Two Qualified Directors appointed by the Board.

The Society Chief Executive Officer, Company Secretary and the Company Treasurer are appointed officers to support the work of Board. Directors must be Company Members (ie members of the Territory Council) and the Qualified Directors are not required to be Society or Company members. At all times it is a requirement that members of the company shall hold the majority of positions on the board.

Q. How will independent Directors be selected?

Whilst it will not be essential for an Independent Director to be a member of the Society or Catholic, careful consideration was given to this issue. In the end, it was decided not to specify that an Independent Director must be a Catholic or Christian and to leave it to the process of appointment by members of the Board.

A selection panel consisting of three Board members, including the President, will interview any person who nominates for appointment to the Board of Directors of the CLG. The panel will evaluate the commitment to mission, demonstrated competencies and skills of the applicant.

It will be essential for the applicant to demonstrate:

- Knowledge of and commitment to the vision, mission, aspirations, and key values of the Society as set out on the first pages of *The Rule* (2012)
- Knowledge of the key works of the broad Society
- For Council representatives – at least 3 year’s membership of the Society, preferably, including time as a conference member.

In addition, an applicant will have to be able to demonstrate experience in the running or operating on the Board of a medium/large multi-faceted business and met the additional requirements, which are being sought, at the time, for the Board. Examples might be Finance, Retail, Government Funding and Public Housing. A commitment to diversity, particularly in the workplace, will also be important.

Q. Can we be sure that the decisions made by the Board of Directors of the company will always be in the best interests of the members and the people we serve?

Apart from the preamble to the Constitution and its Objects, there will always be 2 Vice Presidents, the Territory President appointed who will comprise the majority of the CLG Board. Through this majority, the best interests of the members and the people we serve will always be paramount.

Q. How long will Boards members hold office?

The Directors who are Territory Council Members will hold office for as long as they hold their position under The Rule for up to, but not exceeding 4 consecutive years. The Qualified Directors are appointed for a term of 2 years. At the conclusion of their term, Qualified Directors are eligible for reappointment for a maximum of 6 consecutive years.



Q. If the transfer takes place, how will it affect the work of the Territory Council, as we know it?

Moving the responsibility for running of the Society's business and commercial operations to the Company Limited by Guarantee Board will give the Territory Council the opportunity to concentrate on the key areas of the Society's mission: membership, welfare, and advocacy.

The change to a Company Limited by Guarantee legal structure will not affect the identity of the Territory Council or the existing rights and obligations of the Society. The Territory Council will continue to control the assets of the Society in Canberra-Goulburn.

Q. How will funds be made available to Conferences for their work?

Exactly as they are now. There will be no change.

Q. To whom is the CEO responsible?

The Board of Directors recruits the CEO. With respect to operational matters, the CEO will report directly to the Chair of the CLG Board. With respect to matters relating to the membership of the Society, the CEO will report to and work with the State President.

Q. Who approves the annual budget and the process?

The budget will be prepared by the Chief Financial Officer and Chief Executive Officer reporting to the Finance Committee and through to the Board for endorsement. However, it is important to note that within the reserve powers of members of the new CLG are specific financial approval powers concerning the annual plan (both operational and capital) and significant variations to it. Similar restrictions apply to borrowings, encumbrances and the sale of assets.

Q. What additional administration costs are involved with the new model?

There are no expectations that the new model will incur additional administration costs. In fact, it is anticipated that streamlining the current governance and administration structures will result in savings, which can be redirected towards assisting those in need.

Q. How will the Board communicate with Society Members?

The Board will report once a year Society and Company Members regarding the activities of the Company and this will be conducted as per the AGM of previous years. The Board will meet with the Territory Council twice per year to ensure that Society efforts, direction and strategies remain aligned. In addition, the work of the Board and the Territory Council will be conveyed through our SharePoint website, through *The Companion* Society newsletter and email bulletins as required.

Q. What is required of Society Members in the decision to move to a Company Limited by Guarantee Legal Structure?

Two special purpose general meeting will be called on the same day in November this year and Society Members will be invited to attend to pass a Special Resolution to resolve to transfer from an Incorporated Association to a Company Limited by Guarantee. The second special purpose general meeting will follow where Society members will be asked to pass a special resolution to adopt the new Company Limited by Guarantee constitution.



Q. Because of the restrictions imposed by the State Government to deal with COVID-19 would it be better to postpone the vote on the CLG until 2022?

We are required by Consumer Affairs, by the Australian Charities, and Not for Profit Commission to hold an AGM within 4 months of the end of the financial year. We are required to do this via the options offered within the current Rules, which allows for both proxy and the use of technology.

It is an option to defer the vote on the Constitution until 2022. However, as we have seen from the most recent announcements by the State Government, we would need to establish a COVID-normal environment before such a meeting could be held and there is no clear date when that might be possible. It could easily be 12 months or even later when a vaccine is fully introduced.

We have sought legal advice to ensure that the proposed process demonstrates that we are taking all reasonable steps to ensure procedural fairness and that the result will be valid.