

30 July 2020

To State and Territory Presidents, CEOs
and all members of the
St Vincent de Paul Society in Australia

Dear Vincentians

DISCUSSION PAPER

Proposed Higher Order Authority Intervention Strategy

I am writing to you to explain some changes to the Rule Part III being considered by the National Council and to seek your views and comments. These changes will give specific power to State and Territory Councils and to the National Council to intervene to address damage to the Society brought about by the actions of a person in a lower order Council, Conference or a Special Work or a corporation in which the Society has an interest.

State and Territory Councils and the National Council already have general power under the Rule to intervene in a subsidiary Council or Conference but the provisions are found in various parts of the Rule and the scope and limits of their operation are unclear. The proposed changes will introduce clarity about when and how the powers may be used and give a right of appeal against a decision.

When to Intervene?

One example of intervention might include where a member of a Council has made public statements that are likely to damage the Society's reputation. Such damage could result from an attack on certain companions as being unworthy; making public statements as a Society member that are contrary to Catholic Social teaching; a conference that refuses to follow the Rule; or a Council, Board or a Special Work that is putting the Society's assets at risk through a series of poor financial decisions. Some further examples are discussed in the attachment.

There have been a few occasions over the years where National Council, and more frequently for State and Territory Councils, has intervened to protect the Society, its reputation or its assets. The current provisions in the Rule Part III covering when an intervention might take place are not as clear as they might be. This may lead to disputes and perhaps intervention of the Courts into matters that the Society should otherwise be able to sort out through its own procedures that comply with principles of natural justice.

As Vincentians we must always try to resolve any issue through discussion and consultation with the aim to reach consensus and understanding of what is best for the Society, its members and our companions. Intervention to compel a course of action or to suspend or remove someone from office should only be undertaken in a serious case and where discussion and conciliation have not resolved the issue.

It is important that in those cases where intervention of a higher order authority is necessary, that the Society has clear mechanisms for intervention and that a person affected be given a right of

appeal if they feel that they have been treated unfairly. The proposed changes to the Rule will achieve these aims (refer Attachment 1).

The Current Provisions for Higher Order Authority

Under the Rule Part II - 1.7.2 The National Council of Australia is, for all legal purposes, the highest and ultimate body responsible for events occurring within Australia. The Council General International does not accept responsibility for matters occurring in Australia.

In the Rule Part III, which relates specifically to the Society in Australia, **Article 16** provides that National Council decisions are binding upon all Councils and Conferences in Australia.

Article 9 provides that Regional, Central and State or Territory Councils are formed to provide a link between Conferences and Councils and between Councils at difference levels. They facilitate joint action and communication and provide resources to assist the effective, efficient and appropriate working of Conferences and Councils.

A decision of a State or a Territory Council is binding upon all of the Councils and all of the Conferences within that State or Territory. A decision of a Central Council is binding on all Regional Councils and Conferences that comprise that Central Council.

These provisions do not specify what kind of decisions are binding on subsidiary Councils and Conferences so in some sense the power to make binding decisions is unlimited. Further there is no specified right of appeal against a decision although, in practice, a higher Council will generally be willing to review a decision of a subsidiary Council.

If a Council sees that the Rule is not being followed in a subsidiary Council or Conference or that the Society's reputation or assets are at risk the higher Council will usually decide to intervene to resolve the issue. There are numerous examples of intervention in the states and territories.

National Council Role

Some of the governance functions of National Council contained in **Article 16** are to:

- Ensure that the principles and the Rule of the Society are upheld;
- Draw up and amend, in a spirit of consultation, rules for the functioning of the Society in Australia;
- Uphold the spirit of the Rule throughout all Councils and Conferences by means of access, where necessary, to all funds and other information. State or Territory Councils may be authorised to perform this function where appropriate;
- Ensure that the basic principles of the Society are respected;
- Settle authoritatively any question submitted by any Council or Conference about the meaning or effect of the Rule in Australia.

Disciplining members

Under **Article 19** the National Council President may, after consultation with the State or Territory President, for serious reasons, annul the election of a member as President of a Conference or Council. Such a member will immediately cease to exercise office and may appeal to the National Council. The final appeal of a member is to the International President General.

This is the only provision that specifically gives a right of appeal.

In 2010, the then National Council President used this provision to dismiss the NSW State Council.

Proposed Amendments to the Rule for Higher Order Authority Intervention

Background

When considering the draft constitution for Canberra/Goulburn to move to a Company Limited by Guarantee, the National Council Legal and Governance Advisory Committee (LAGAC) recommended that the Society implement a stepped Higher Order Authority intervention strategy that would enable intervention particularly in relation to an incorporated State/Territory operating entity or a Special Work where there is serious damage to the Society or its reputation. It was recommended that State/Territory Councils deal with matters within their jurisdiction and that the National Council deal with national matters.

It was recognised that there was a general implied power to intervene within the Rule Part III but that a clearer path of intervention was desirable. The Legal and Governance Standing Committee (LAGSC) also recognised that there needs to be a clear line of appeal within the Society structure to circumvent the need for outside parties -arbitrators, Courts - getting involved.

At its meeting on 8-9 February 2020, National Council agreed to consider whether an intervention strategy which aligned with the Rule, should be adopted as follows:

- (i) State/Territory Councils be responsible for addressing damage brought about by the actions or decisions of a Special Work or by a lower council (central/diocesan council) or by a conference.
- (ii) National Council be responsible for addressing damage brought about by the actions or decisions of a State or Territory Council.
- (iii) Council General International be responsible for addressing damage brought about by the actions or decisions of National Council.

The LAGSC was asked to consider the issue and make a recommendation to the National Council which it has now done.

Statement of Principle

The LAGSC considered whether a statement of principle would suffice to explain the Higher Order Authority intervention strategy with reliance being placed on the current provisions in Articles 9, 16 and 19. For the reasons set out below the Committee does not consider this to be a satisfactory option.

The Rule Review

In the course of the review of the Rule, the LAGSC considered the best solution was one that should be legally enforceable and keep all processes for intervention and appeal within the Society by having a specific provision in Articles 9 and 16 to provide for Higher Order Authority Intervention. Article 19 to remain unchanged.

Incorporated Operating Entities and Special Works

Each of the States and Territories has an incorporated entity – company, association and in two cases a trust and an incorporated entity – to run the “business” of the Society in their jurisdiction. As long as the Boards of these entities comprise only members of State/Territory Council then there is a reasonable chain of authority under the Rule through the elected Presidents to allow intervention in a serious case where the actions of an entity or Board member puts the reputation of the Society at risk or damages the Society in a material way, e.g. fraud or serious breach of the Rule. But the power to intervene is not as clear as it might be and could be subject to litigation.

As State/Territory entities move to include independent Directors on the Boards of Companies Limited by Guarantee ('CLG') (i.e. NSW and soon Victoria) such directors are not subject to the Rule in the same way. The constitutions of those CLGs do require the Directors to abide by the spirit of the Rule but it becomes complicated. In such instances, intervention then relies on a provision in the CLG constitution to abide by the spirit of the Rule yet any intervention is then through the Rule rather than relying on the powers given to the members in the CLG constitution and the **Corporations Act 2001**. The outcome of a Court action based on such an intervention would be by no means certain.

It is not clear from Article 9 the extent to which State and Territory Councils currently have power to intervene to protect the Society in their jurisdiction from damage to the Society brought about by the actions of a Special Work.

It is very unclear whether the constitutions of some State based Special Works enable the State Council to intervene to address damage to the Society. Queensland and NSW have intervention enabling provisions in the constitutions of their Special Works. In some of the other jurisdictions the situation is still being addressed.

Assuming all State Councils have an intervention power contained in the constitutions of their Special Works, the LAGSC still considers that a specific power to intervene should also be mirrored in the Rule.

State/Territory Council Intervention

As discussed above, the National Council President does have power under Article 19 to intervene to annul the election of a President. Such power should be used sparingly and may not always be an appropriate method of intervention to address damage to the Society.

In Article 9 there is a provision that "A decision of a State or Territory Council is binding upon all of the Councils and Conferences within that State or Territory. A decision of a Central Council is binding on all Regional Councils and Conferences that comprise the Central Council." There are no apparent limits on these decision making powers but equally there is no clear process for intervention when things go wrong or for disciplining of a member.

To give the State and Territory Councils specific power to intervene to protect the Society in their jurisdiction the LAGSC recommends that Article 9 be amended to include:

"A State or Territory Council may intervene in any lower Council, Conference or incorporated entity within that State or Territory in which the Council or a person is a member as a member of the Society to protect the reputation of the Society, to prevent damage to the Society, to preserve its assets or to remedy a serious breach of the Rule. Such intervention may include disciplining of a member, and in a serious case removal of a member from any office and removal of a Director from and incorporated entity of the Society. A right of appeal against a decision of a State or Territory Council lies to with the National Council."

National Council Intervention

Intervention may be required at a national level where there is a dispute between State/Territory Councils or between say, a member and their State/Territory Council. There are implicit powers in Article 16 that may allow the National Council to intervene to protect the Society, e.g. to "ensure that the basic principles of the Society are respected."

The LAGSC recommends that for clarity Article 16 of the Rule Part III be amended to include:

"Where a State/Territory has not been able to resolve an internal issue within the State/Territory or where a State/Territory is unable to resolve an issue involving

another State/Territory then the issue will be referred to the National Council by either or both parties. The National Council may then intervene in any State or Territory Council or incorporated entity in which the Council or a person is a member as a member of the Society to protect the reputation of the Society, to prevent damage to the Society, to preserve its assets or to remedy a serious breach of the Rule. Such intervention may include disciplining a member, and in a serious case removal of a member from any office and removal of a Director from an incorporated entity of the Society. A right of appeal against a decision of the National Council lies with a person appointed by the Council General International.”

Note: The reference to the phrase “incorporated entity in which a person is a member as a member of the Society” is designed to pick up a Special Work where the Society has a part interest.

International General Council Intervention

Although as I said above the Council General International does not accept responsibility for actions of the Society in Australia the LAGSC considers it important that there be a right of appeal from a decision of the National Council to intervene in a State/Territory matter. Such appeal could be to independent arbitration in Australia but the LAGSC recommends that internal disputes should preferably be resolved within the Society and in the spirit of the Rule.

For this reason the LAGSC recommends that the Council General International be asked to take responsible for addressing damage brought about by the actions or decisions of National Council by appointing one of the International Vice Presidents to intervene in order to resolve the matter.

The National Council does not have the power to include a provision to this effect in the Rule. However, it is suggested that National Council recommend to Council General International that it include such a provision in the Rule Part II for which it is responsible.

Comments

The National Council invites written comments from Councils, Conferences and members on any aspect of the intervention strategies discussed in this letter. Please send your written comments to Ms Kara Gibbs (kara.gibbs@svdp.org.au) in the National Council Secretariate by COB 31 August 2020.

Yours sincerely



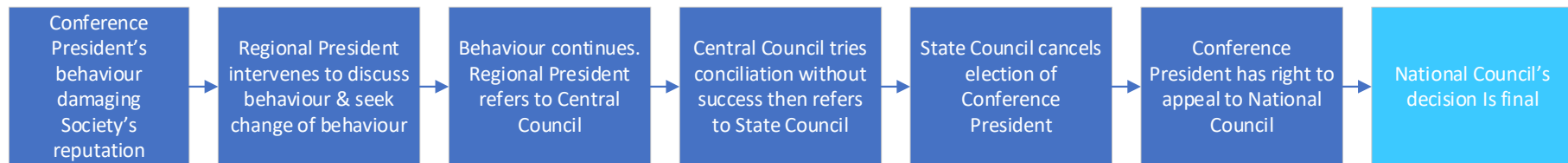
Warwick Fulton

Deputy President

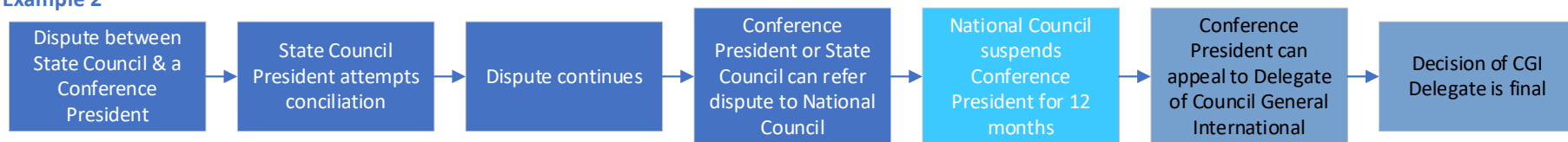
National Council of Australia
0404 469 370

HIGHER ORDER AUTHORITY INTERVENTION STRATEGY

Example 1



Example 2



Examples of Intervention.

1. John is a Central Council President. He has been asked by the local radio station to give an interview about the Society's response to the poor in his district. In the interview John makes several statements about 'dole bludgers' and about some people who seek help from Vinnies being 'unworthy' of help from the Society.

There is a public outcry against the Society and some people say they will cease donating to Vinnies. John is counselled by his State President not to make this kind of public statement and in future to get prior clearance from the media unit of anything he wants to say to the media. John says that it is his duty to speak out.

The radio Shock Jocks get John in for further interviews in which he repeats the statements he made previously about some companions being 'unworthy' of help from Vinnies.

The State Council decides to publish a press release to counter John's public statements. John tells the State President that he considers it his duty to continue to make similar public statements. The State Council relying on the amendments to Article 9 of Part III of the Rule decides to suspend John's election as Central Council President and to be reviewed in 12 months.
2. Helen is a Conference President. The Conference has not met in the last 12 months and Helen has not attended or reported to a Regional Meeting despite numerous requests from the Regional President. The Conference continues to assist companions but has not made any reports on visits or finance reports. The Regional and Central Council Presidents have met with Helen and the conference office bearers to explain the shortcomings in the way the Conference operates and the requirements of the Rule. They offer training to Helen and the conference office bearers.

Helen agrees to comply with the Rule but over the next 12 months nothing changes. Several reminders are given by the Central Council President but the Conference continues to operate in the same way.

The State Council decides to apply the amendments to Article 9 to annul the election of Helen as the Conference President and consequently the appointment of the office bearers. An administrator is appointed by the State Council to lead the conference for 12 months and with training being provided to conference members. A new election will be held when the administrator can report to the Regional President that the conference is able and willing to comply with the Rule.
3. A State Council has decided to invest its financial reserves in Panamanian deferred securities that offer a good rate of return but are generally considered a risky investment. The National Council Treasurer advises the State Chief Financial Officer that the investment is in breach of the National Council's Investment Policy. The State Council is made aware of the breach by the National Council President but continues with the investment without any attempt to divest when the market is stable.

The National Council realises that the financial viability of the Society in the State will be at risk if the investment drops significantly in value and there is a good chance that this will occur because of political instability in Panama. The State Council is advised to divest of the investment and on failure to comply is then instructed to do so by the National Council. It does not comply. The National Council suspends the State Council and then intervenes to divest of the investment relying on the amendments to Article 16 of Part III of the Rule.

Attachment 1

Proposed Amendments to the Rule Part III

Recommendation 1

That the National Council approves amendment to the Rule Part III to add to Article 16 – National Council Functions:

- “Where a State/Territory has not been able to resolve an internal issue within the State/Territory or where a State/Territory is unable to resolve an issue involving another State/Territory then the issue will be referred to the National Council by either or both parties. The National Council may then intervene in any State or Territory Council or incorporated entity in which the Council or a person is a member as a member of the Society to protect the reputation of the Society, to prevent damage to the Society, to preserve its assets or to remedy a serious breach of the Rule. Such intervention may include disciplining a member, and in a serious case removal of a member from any office and removal of a Director from an incorporated entity of the Society. A right of appeal against a decision of the National Council lies to a person appointed by the International General Council.”

Recommendation 2

That the National Council approves amendment to the Rule Part III to add to Article 9 - Councils - Regional, Central and State or Territory:

“A State or Territory Council may intervene in any lower Council, Conference or incorporated entity within that State or Territory in which the Council or a person is a member as a member of the Society to protect the reputation of the Society, to prevent damage to the Society, to preserve its assets or to remedy a serious breach of the Rule. Such intervention may include disciplining of a member, and in a serious case removal of a member from any office and removal of a Director from an incorporated entity of the Society. A right of appeal against a decision of a State or Territory Council lies to the National Council.”