

## AGENDA 2.4.2

# Constitutional changes: ACNC requirements

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## PROPOSED MOTION

**BE IT RESOLVED** that **Article 4 Objects** of the Model Constitution for a Congregation be amended with the addition of new sub-clauses 4.1.5 and 4.2 as follows (words to be deleted – ~~striketthrough~~; words to be added – **bold**):

### ARTICLE 4. OBJECTS

- 4.1 The Objects of the Congregation are to
  - 4.1.1 glorify the Triune God in its worship and in its work;
  - 4.1.2 bear witness to the Lord Jesus Christ through the proclamation of the Gospel in accordance with the Confession and practice of the Church;
  - 4.1.3 gather into the Congregation such persons as are, or desire to become, members of the Church for their edification through the Word and the Sacraments;
  - 4.1.4 help the members to dedicate their God-given spiritual, material and physical gifts to the service of their Lord;
  - 4.1.5 **enable the members to reach out into the community in their daily lives and in their congregational activities as bearers of the Gospel;**
  - 4.1.56 minister to human need in the name of Jesus Christ our Lord in the spirit of Christian charity and service;
  - 4.1.67 exercise discipline over its members in conformity with the Scriptures and the Confession of the Congregation;
  - 4.1.78 join with the Church and the District in building and extending the Kingdom of God; and
  - 4.1.89 acquire, dispose of or otherwise deal with real and personal property in the interest of the work of the Church and the Congregation.
- 4.2 **Not-for-Profit**
  - 4.2.1 **The property and income of the Congregation shall be applied solely towards the promotion of the objects or purposes of the Church and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to members of the Congregation, except in good faith in the promotion of those objects or purposes.**
  - 4.2.2 **A payment may be made to a member out of the funds of the Congregation only if it is authorised under the following clause 4.2.3.**
  - 4.2.3 **A payment to a member out of the funds of the Congregation is authorised if it is**
    - 4.2.3.1 **the payment in good faith to the member as reasonable remuneration for any services provided to the Congregation, or for goods supplied to the Congregation, in the ordinary course of business; or**
    - 4.2.3.2 **the payment of interest, on money borrowed by the Congregation from the member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or**
    - 4.2.3.3 **the payment of reasonable rent to the member for premises leased by the member to the Congregation; or**
    - 4.2.3.4 **the reimbursement of reasonable expenses properly incurred by the member on behalf of the Congregation; or**
    - 4.2.3.5 **making a payment or providing a benefit to a member in carrying out the objects of the Congregation for charitable purposes.**

**BE IT FURTHER RESOLVED** that **Article 4 Objects** of the Model Constitution for a Parish be amended with the addition of a new sub-clause 4.2 as follows (words to be deleted – ~~striketrough~~; words to be added – **bold**):

#### **ARTICLE 4. OBJECTS**

- 4.1 The Parish, consisting of congregations which are members of the Church, has as its objects to
  - 4.1.1 assist its member-congregations in promoting their objects and to this end to
    - 4.1.1.1 call a pastor or pastors or church workers for the benefit of the Parish and the Church, and to determine the terms under which they shall serve with the Parish;
    - 4.1.1.2 hold, purchase or take on lease real and personal property, and to sell, exchange, mortgage, borrow, lease or build, and otherwise deal with all property as may from time to time be determined upon by the members of the Parish in accordance with the rules of the Parish;
    - 4.1.1.3 appoint such office-bearers and representatives as the Parish may desire from time to time; and
  - 4.1.2 promote the objects of the Church within its sphere.
- 4.2 **Not-for-Profit**
  - 4.2.1 **The property and income of the Parish shall be applied solely towards the promotion of the objects or purposes of the Church and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to members of the member-congregations of the Parish, except in good faith in the promotion of those objects or purposes.**
  - 4.2.2 **A payment may be made to a member out of the funds of the Parish only if it is authorised under the following clause 4.2.3.**
  - 4.2.3 **A payment to a member out of the funds of the Parish is authorised if it is**
    - 4.2.3.1 **the payment in good faith to the member as reasonable remuneration for any services provided to the Parish, or for goods supplied to the Parish, in the ordinary course of business; or**
    - 4.2.3.2 **the payment of interest, on money borrowed by the Parish from the member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or**
    - 4.2.3.3 **the payment of reasonable rent to the member for premises leased by the member to the Parish; or**
    - 4.2.3.4 **the reimbursement of reasonable expenses properly incurred by the member on behalf of the Parish.**

**BE IT FURTHER RESOLVED** that **Article 11 Dissolution** of the Model Constitution for a Congregation be amended as follows (words to be deleted – ~~striketrough~~; words to be added – **bold**):

#### **ARTICLE 11. DISSOLUTION**

- 11.1 **A special resolution is required if it is proposed that the Congregation dissolve and Any such** resolution for dissolution shall be made according to the following procedure:
  - 11.1.1 **Written N**notice of a motion to dissolve the Congregation shall be given to the members of the Congregation.
  - 11.1.2 The motion shall be presented to the Congregation only after the Bishop of the District has been consulted.
  - 11.1.3 At least thirty [30] days written notice of a meeting, specifying the intention to dissolve as a special motion, shall be given to all the voting members of the Congregation.
  - 11.1.4 The motion shall require a majority of three-quarters [3/4] of all the voting members of the Congregation **for determination at a general meeting.**

- 11.1.5 **The result, if carried by at least the required majority, shall be declared as being carried as a special resolution.**
- 11.1.56 The decision shall only become operative after the sanction of the Church Council of the District has been obtained.
- 11.1.67 Once the decision has been made to dissolve the Congregation according to the above procedure, a date for dissolution shall be set contingent upon all matters pertaining to dissolution and the transference of all titles and other assets of the Congregation being effected according to law.
- 11.2 In the event of such dissolution, the Congregation may give indication regarding the use of its assets by the District and/or the Church. **Any surplus assets which remain after such dissolution and the satisfaction of all debts and liabilities shall be transferred to one or more Lutheran organisations with similar purposes, that are charitable at law and which are not carried on for the profit or gain of individual members.** Where no such indication is given, if any surplus remains following the winding up of the Congregation, the surplus shall not be paid to or distributed amongst members, but be transferred to the District absolutely.

**BE IT FURTHER RESOLVED** that **Article 11 Dissolution** of the Model Constitution for a Parish be amended with the additions as follows (words to be deleted – ~~striketrough~~; words to be added – **bold**):

#### **ARTICLE 11. DISSOLUTION**

- 11.1 **A special resolution is required if it is proposed that the Parish dissolve and** Any such resolution for dissolution shall be made according to the following procedure:
  - 11.1.1 **Written** ~~Notice~~ of a motion to dissolve the Parish shall be given to the member-congregations of the Parish.
  - 11.1.2 The motion shall be presented to the member-congregations only after the Bishop of the District has been consulted.
  - 11.1.3 At least thirty [30] days written notice of a meeting, specifying the intention to dissolve as a special motion, shall be given to all the voting members of the Parish.
  - 11.1.4 The motion shall require a majority of three-quarters [3/4] of all the voting members of the Parish **for determination at a general meeting.**
  - 11.1.5 **The result, if carried by at least the required majority, shall be declared as being carried as a special resolution.**
  - 11.1.56 The decision shall only become operative after the sanction of the Church Council of the District has been obtained.
  - 11.1.67 Once the decision has been made to dissolve the Parish according to the above procedure, a date for dissolution shall be set contingent upon all matters pertaining to dissolution and the transference of all titles and other assets of the Parish being effected according to law.
- 11.2 In the event of such dissolution, the Parish may give indication regarding the use of any Parish-owned assets by the District and/or the Church. **Any surplus assets which remain after such dissolution and the satisfaction of all debts and liabilities shall be transferred to one or more Lutheran organisations with similar purposes, that are charitable at law and which are not carried on for the profit or gain of individual members.** Where no such indication is given, if any surplus remains following the winding up of the Parish, the surplus shall not be paid to or distributed amongst members, but be transferred to the District absolutely. Any assets of the member-congregations are not subject to this clause.

**BE IT FURTHER RESOLVED** that **Article 13 Alterations to the Constitution and Matters requiring a Special Resolution** in the Model Constitution for a Congregation be amended as follows (words to be deleted – ~~striketrough~~; words to be added – **bold**):

#### **ARTICLE 13. ALTERATIONS TO THE CONSTITUTION AND MATTERS REQUIRING A SPECIAL RESOLUTION**

- 13.1 A special resolution is required if it is proposed that the Congregation do any of the following:
- ~~13.1.1 to amend, alter, add to or repeal its Constitution, including changing the name of the Congregation, except as hereinafter provided in the following clause 13.5 and subject to the preceding clause 3.1.4; or~~  
The Congregation may resolve to amend, alter, add to or repeal its Constitution, including changing the name of the Congregation, except as hereinafter provided in the following clause 13.54 and subject to the preceding clause 3.1.4; or
  - ~~13.1.2 to approve the terms of an amalgamation with one or more other incorporated associations; or~~
  - ~~13.1.3 to be wound up voluntarily; or~~
  - ~~13.1.4 to cancel its incorporation.~~
- 13.2 A special resolution is only passed if it is passed
- ~~13.2.1 after having been given as a written notice to all voting members;~~
  - ~~13.2.2 at a general meeting of the Congregation;~~
  - ~~13.2.3 by the votes of not less than three-quarters [3/4] of the voting members of the Congregation who cast a vote at the meeting; and~~
  - ~~13.2.4 by being declared as being carried as a special resolution.~~
- 13.32 Notice of the proposed amendment, alteration, addition or repeal shall be presented in writing and shall be read to the Congregation at a duly called meeting of the Congregation held at least twenty one [21] days earlier or be published to the Congregation at least twenty one [21] days prior to the meeting.
- 13.43 In addition to any other requirement of this Constitution and of the Act, the quorum for **such** a meeting held to consider a special resolution shall be one-quarter [1/4] of the members entitled to vote and the result of such a ballot shall be recorded in the minutes.
- 13.54 Notwithstanding anything else in this Constitution, Article 2. and clause 13.54 of this Constitution shall be considered fundamental and shall not be amended, altered, added to or repealed so as to alter their intent and meaning.

**BE IT FURTHER RESOLVED** that **Article 13 Alterations to the Constitution and Matters requiring a Special Resolution** of the Model Constitution for a Parish be amended as follows (words to be deleted – ~~striketrough~~; words to be added – **bold**):

#### **ARTICLE 13. ALTERATIONS TO THE CONSTITUTION AND MATTERS REQUIRING A SPECIAL RESOLUTION**

- 13.1 A special resolution is required if it is proposed that the Parish do any of the following:
- ~~13.1.1 to amend, alter, add to or repeal its Constitution, including changing the name of the Parish, except as hereinafter provided in the following clause 13.5 and subject to the preceding clause 3.1.4; or~~  
The Parish may resolve to amend, alter, add to or repeal its Constitution, including changing the name of the Parish, except as hereinafter provided in the following clause 13.54 and subject to the preceding clause 3.1.4; or
  - ~~13.1.2 to approve the terms of an amalgamation with one or more other incorporated associations; or~~
  - ~~13.1.3 to be wound up voluntarily; or~~
  - ~~13.1.4 to cancel its incorporation.~~
- 13.2 A special resolution is only passed if it is passed
- ~~13.2.1 after having been given as a written notice to all voting members;~~
  - ~~13.2.2 at a general meeting of the Parish;~~
  - ~~13.2.3 by the votes of not less than three-quarters [3/4] of the voting members of the Parish who cast a vote at the meeting; and~~
  - ~~13.2.4 by being declared as being carried as a special resolution.~~
- 13.32 Notice of the proposed amendment, alteration, addition or repeal shall be presented in writing and shall be read to the Parish at a duly called meeting of the Parish held at

least twenty one [21] days earlier or be published to the member-congregations at least twenty one [21] days prior to the meeting.

13.43 In addition to any other requirement of this Constitution and of the Act, the quorum for **such** a meeting ~~held to consider a special resolution~~ shall be one-quarter [1/4] of the members entitled to vote and the result of such a ballot shall be recorded in the minutes.

13.54 Notwithstanding anything else in this Constitution, Article 2. and clause 13.54 of this Constitution shall be considered fundamental and shall not be amended, altered, added to or repealed so as to alter their intent and meaning.

## **REASONS FOR THE MOTION**

These amendments to these constitutions have been made necessary for the most part in order to effect compliance with the requirements of the Australian Charities and Not-for-profits Commission (ACNC).