

# **Australian Salesian Mission Overseas Aid Fund**

**Salesian Society (Vic) Inc**

**Australian Business Number ABN 43 206 946 086**

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## This deed of trust

is made on 14 OCTOBER 2000 by:

### Salesian Society (Vic) Inc

of 1a Ventnor Street, Chadstone, Victoria, 3148  
(Trustee)

### Recitals

- A. The Trustee has for some time been operating a fund (**Fund**) for the relief of overseas persons in necessitous circumstances and for development projects in overseas countries that have been declared and approved from time to time as developing countries by the Minister for Foreign Affairs for the purposes of Section 30-85 of the ITAA 1997.
- B. On 29 August 1986 notice of an approval by the Commonwealth Treasurer of the Fund for the purpose of the overseas aid gift deduction scheme was published in the Australian Commonwealth Government Gazette.
- C. The Trustee has power, among other things, to act as the trustee of the Trust.
- D. It is intended that the Trust will solicit and receive gifts from the public.

### This deed witnesses

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## 1 Name

The Trust is to be known as Australian Salesian Mission Overseas Aid Fund.

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## 2 Definitions and interpretation

### 2.1 Definitions

In this deed:

**Accounting Period** means the period from the date of this deed to the following 1 January and then each period of 12 months ending on 31 December in each calendar year, or any other period that the Trustee decides from time to time;

**ACFOA** means the Australian Council for Overseas Aid;

**Advisory Committee** means a committee established under clause 9;

**Code of Conduct** means the Code of Conduct adopted from time to time by ACFOA for funds providing aid to overseas countries;

**Eligible Purposes** means:

- (a) the provision of relief of poverty and emergency situations;
- (b) funding of development projects;
- (c) basic education and training;

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- (d) health care; and
- (e) other charitable purposes

in overseas countries which have been declared developing countries by the Minister for Foreign Affairs for the purposes of section 30-85 of the *ITAA 97*.

**ITAA 97** means the *Income Tax Assessment Act 1997*;

**Specified Income** means income of the Trust other than donations, gifts, government grants, and other voluntary transfers of property to the Trust;

**Sub-Fund Capital** has the meaning given in clause 4.3(a);

**Trust** means the trust established under this deed;

**Trustee** means the person named in this deed as the Trustee and any other trustee for the time being of the Trust whether original, additional or substituted; and

**Trust Fund** means:

- (a) all the assets of the existing fund administered by the Trustee;
- (b) all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the Trust Fund;
- (c) all accretions to the Trust Fund;
- (d) all accumulations of income; and
- (e) the money, investments and property from time to time representing the above or into which they are converted,

and includes any part of the Trust Fund.

## 2.2 Interpretation

In this deed unless the context requires otherwise:

- (a) the singular (including defined terms) includes the plural and the plural includes the singular, and words of any gender include all genders;
- (b) a reference to this deed means this deed as originally executed and as from time to time lawfully amended, varied or added to; and
- (c) a reference to any legislation includes any amendment to that legislation, any consolidation or replacement of that legislation and any subordinate legislation made under it.

## 2.3 Headings

Headings are used for convenience only and do not affect the interpretation of this deed.

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# 3 Declaration of trust

The Trustee declares that it will hold the Trust Fund and the income from the Trust Fund on the trusts, with the powers and subject to the provisions in this deed.

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## 4 Purposes

### 4.1 Application of income and capital

The Trustee must hold the Trust Fund and the income of the Trust Fund derived in each Accounting Period on trust to pay or apply the income and, if and so far as it thinks fit, all or any part of the capital of the Trust Fund, for the purpose of providing money, property or benefits to or for Eligible Purposes, as the Trustee decides from time to time.

### 4.2 Factors Trustee may consider

In exercising its discretions under clause 4.1, the Trustee may have regard to:

- (a) any recommendations of an Advisory Committee with authority to make the recommendations; and
- (b) the provisions and objects, so far as they are consistent with the purpose of the Trust, of any other trust (including a trust established by a testamentary instrument) where:
  - (1) the capital of that other trust has been transferred to or otherwise vested in the Trustee to hold on the trusts of this deed; and
  - (2) the trustee of the other trust has requested the Trustee to recognise the provisions or objects of the other trust in exercising the Trustee's discretions and powers under this deed.

### 4.3 Sub-Fund Capital

Where:

- (a) money, investments or other assets (**Sub-Fund Capital**) are proposed to be transferred to or otherwise vested in the Trustee and the proposed donor, testator or other benefactor requests that the Trustee pay or apply the income or capital or both of the Sub-Fund Capital to or for one or more Eligible Purposes or for the establishment of one or more Eligible Purposes:
  - (1) as outlined by the donor, testator or other benefactor; or
  - (2) as the Trustee decides; and
- (b) the Trustee is willing to accede to that request,

the Trustee will advise the proposed donor, testator or other benefactor that the Trustee will, when the Sub-Fund Capital is transferred to or otherwise vested in it, subject to clause 4.7, hold the Sub-Fund Capital in accordance with that request.

### 4.4 Management accounts for Sub-Fund Capital

The Sub-Fund Capital transferred to or otherwise vested in the Trustee under clause 4.3 forms part of the Trust Fund but, for the purposes of identification only, the Trustee may maintain separate management accounts in respect of that Sub-Fund Capital, its income, and payments or applications of its income or capital.

#### **4.5 Naming management accounts**

The Trustee may name any management accounts maintained under clause 4.4 as the Trustee thinks fit and, without limitation, may name particular management accounts in recognition of the donor, testator or other benefactor.

#### **4.6 Trustee may accumulate income**

Despite clause 4.1, the Trustee may in any Accounting Period accumulate and retain as part of the Trust Fund so much of the income of the Trust Fund as it thinks fit, so long as the proportion of the Specified Income accumulated in any Accounting Period does not exceed fifteen percent (15%) of the Specified Income derived by the Trustee during that period, or any other percentage or amount that is from time to time approved by the Commissioner of Taxation or a Deputy Commissioner of Taxation.

#### **4.7 Varying original purposes of Sub-Fund Capital**

Despite clause 4.3, where the Trustee decides at any time that circumstances exist where the original purposes in respect of the whole or any part of any Sub-Fund Capital transferred to or otherwise vested in the Trustee could, if that sub-fund were a distinct trust, be altered by a court of competent jurisdiction to allow the Sub-Fund Capital (or the relevant part of it) to be applied cy-près, the Trustee may revoke, add to or vary the original purposes so as to enable the Sub-Fund Capital (or the relevant part of it) to be applied cy-près, so long as no part of the Trust Fund or the income of the Trust Fund becomes subject to any trusts other than public charitable trusts for the provision of money, property or benefits to or for Eligible Purposes.

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### **5 Trustee's powers**

#### **5.1 Investment**

The Trustee must invest money of the Trust Fund only in a way in which trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia.

#### **5.2 Other powers**

The Trustee may:

- (a) change an investment for any others or vary the terms and conditions on which an investment is held;
- (b) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;
- (c) borrow or raise or secure the payment of money in any manner the Trustee thinks fit and secure the repayment of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge, lien, encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated;

- (d) take and act on the opinion of a barrister practising in Australia in relation to the interpretation or effect of this deed or any of the trusts or powers of this deed without responsibility for any loss or error resulting from doing so, but this provision does not prohibit or impede the Trustee from applying to a court of competent jurisdiction;
- (e) take any action the Trustee thinks fit for the adequate protection or insurance of any part of the Trust Fund;
- (f) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- (g) subject to the trusts of this deed, generally:
  - (1) perform any administrative act; and
  - (2) pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management or which the Trustee thinks fit to pay or deduct (whether or not the Trustee is under any legal obligation to make the payment) or in connection with the preparation, execution and stamping of this deed, as though the Trustee were the absolute owner of the Trust Fund and the income of the Trust Fund;
- (h) attract and encourage donations, gifts (by will or otherwise), endowments, trust distributions and other forms of financial assistance to or for the benefit of the Trust;
- (i) accept grants from government agencies or other authorities to or for the benefit of specific projects which are Eligible Purposes;
- (j) employ and pay or provide any benefit for any employee without being responsible for the default of the employee or for any loss occasioned by the employment;
- (k) engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;
- (l) sponsor, organise and undertake fund raising activities and arrange for the issue of appeals to the public for donations;
- (m) accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustee may invest, apply or deal with the Trust Fund under this deed;
- (n) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), donation, settlement or other disposition in money, moneys worth or property;
- (o) manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any Eligible Purpose to occupy the property on the terms and conditions the Trustee thinks fit;



- (p) mix any money forming part of the Trust Fund with money held by the Trustee in its personal capacity or as trustee of any other trust, so long as the Trustee keeps proper records to enable the separate identification of the funds so mixed; and
- (q) do all other things incidental to the exercise of the Trustee's powers under this deed.

### **5.3 Powers are supplementary**

The powers and discretions in clause 5.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

### **5.4 Code of Conduct**

The Trustee must comply with the Code of Conduct.

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## **6 Liability for breaches of trust**

The Trustee, where purporting to act in the exercise of the trusts and powers of this deed, and any officer, agent or employee of the Trustee purporting to exercise powers under this deed, is:

- (a) not liable for any loss or liability; and
- (b) entitled to be indemnified from the Trust Fund in respect of any loss or liability,

unless the loss or liability is attributable to:

- (c) the dishonesty of the Trustee (or of the relevant officer, agent or employee of the Trustee); or
- (d) the wilful commission or omission of an act known by the Trustee (or by the relevant officer, agent or employee of the Trustee) to be a fraudulent breach of trust in bad faith.

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## **7 Indemnity of Trustee from Trust Fund**

The Trustee is entitled to be indemnified out of the Trust Fund in respect of:

- (a) all costs and expenses incurred by the Trustee relating to:
  - (1) entering into this deed or any deed amending this deed;
  - (2) establishing, operating, administering, amending, terminating and winding up the Trust; or
  - (3) otherwise in respect of the Trust and all matters incidental to the Trust; and
- (b) all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to those taxes) and acts and things done in connection with or resulting from the matters referred to in

clause 7(a) including, but not limited to, the Trustee performing its duties and exercising its powers, rights and discretions under this deed.

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## **8 Books of account**

### **8.1 Trustee to keep accounts**

The Trustee must keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Trust Fund and of all dealings connected with the Trust Fund.

### **8.2 Financial statements**

As soon as practicable after the end of each Accounting Period the Trustee must prepare or cause to be prepared a financial statement showing the financial position of the Trust Fund at the end of that Accounting Period. The financial statement must be audited in accordance with the obligations imposed on the Trustee by law.

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## **9 Advisory Committees**

- (a) The Trustee may establish Advisory Committees and appoint and remove, or make provision for the appointment and removal of, members of Advisory Committees.
- (b) Each Advisory Committee may consist of a single individual or the number of individuals that the Trustee decides.
- (c) The functions of each Advisory Committee will be decided by the Trustee and, subject to the Trustee's decision, will be to advise the Trustee on how payments or applications of income and capital should be made under clause 4.
- (d) The Trustee may specify:
  - (1) the manner in which proceedings of each Advisory Committee are to be conducted;
  - (2) the matters which the Advisory Committee must have regard to in carrying out its functions; and
  - (3) any other matters concerning the Advisory Committee or its functions that the Trustee decides.
- (e) The Trustee may wind up an Advisory Committee at any time.

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## **10 Patrons**

The Trustee may appoint any persons it thinks fit as patrons of the Trust.

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## 11 Amending this deed

The Trustee may by deed revoke, add to or vary any of the terms of any of the trusts, beneficial interests, powers and discretions set out in this deed, so long as:

- (a) no part of the Trust Fund or the income of the Trust Fund becomes subject to any trusts other than public charitable trusts; and
- (b) unless the Commissioner of Taxation or a Deputy Commissioner of Taxation has consented to the revocation, addition or variation:
  - (1) no part of the Trust Fund or the income of the Trust Fund becomes subject to trusts other than trusts for the provision of money, property or benefits to or for Eligible Purposes;
  - (2) no amendment is made to or affecting clause 4.6;
  - (3) no amendment is made which authorises the Trustee to invest money of the Trust Fund other than in a manner in which trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia; and
  - (4) no amendment is made to this clause 11 so as to permit this deed to be amended in a manner prohibited by clause 11(b)(1), (2) or (3).

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## 12 Trustee's remuneration

### 12.1 General remuneration

The Trustee may charge and be paid out of any part of the capital or income of the Trust Fund the remuneration that the Trustee considers to be fair and reasonable. However, the maximum remuneration chargeable by the Trustee in respect of any Accounting Period must not exceed an amount equal to the maximum commission chargeable by trustee companies under the *Trustee Companies Act 1984* (Vic) in respect of that Accounting Period.

### 12.2 Sub-Fund Capital

Despite clause 12.1, where:

- (a) Sub-Fund Capital is transferred to or otherwise vested in the Trustee under clause 4.3; and
- (b) the donor, testator or other benefactor and the Trustee both agree on the Trustee's remuneration in respect of the Sub-Fund Capital or the income from it (whether before or after the establishment of a management account in respect of that Sub-Fund Capital),

the Trustee's remuneration in respect of that Sub-Fund Capital will be as so agreed.

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## **13 General**

### **13.1 Receipts by others**

The receipt of the person purporting to be the treasurer, secretary or other proper officer of any recipient of a payment or application of income or capital from the Trust Fund under this deed is a sufficient discharge to the Trustee and the Trustee need not see to the application of the payment or application.

### **13.2 Trustee's discretion**

Except where there is an express contrary provision in this deed, every discretion given to the Trustee is absolute and uncontrolled and every power given to it is exercisable at its absolute and uncontrolled discretion.

### **13.3 Personal interest**

The Trustee and any director or member of the Trustee may exercise or concur in exercising all powers and discretions given by this deed or by law (including making any investment authorised under clause 5.1) even though the Trustee, or any person who is a director or member of the Trustee:

- (a) has or may have a direct or personal interest in the method or result of exercising the power or discretion; or
- (b) may benefit either directly or indirectly from the exercise of any power or discretion,

and even if the Trustee is a sole trustee.

### **13.4 Administrative support**

The Trustee may provide secretarial, book-keeping, accounting or administrative assistance to the Trust or to an Advisory Committee and is entitled to be paid or reimbursed by the Trust for the reasonable costs and expenses of doing so.

### **13.5 Delegation of powers**

The Trustee may by power of attorney or otherwise delegate to any person any of the discretionary or other powers given to it under this deed. The execution or exercise of any of the trusts or powers of this deed by an attorney or delegate is valid and effectual and binds all persons interested in the Trust Fund.

### **13.6 Trustee's receipts**

The Trustee may receive capital and other money and give valid receipts for all purposes including:

- (a) those of any statute; and
- (b) the receipt of any capital money which may or may not be deemed to be capital money for the purposes of any law relating to settled land,

and even if the Trustee is a sole trustee.

### 13.7 Trustee's decisions

The Trustee may decide:

- (a) whether any money is to be considered as capital or income;
- (b) whether any expense, outgoing or other payment ought to be paid out of capital or income; and
- (c) all questions and matters of doubt arising in the execution of the trusts of this deed.

Every decision on these matters, whether made on a question actually raised or implied in the acts or proceedings of the Trustee, is conclusive and binds all persons interested under this deed.

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## 14 Winding up

- (a) If, on the winding up of the Trust, any property remains after the satisfaction of all its debts and liabilities, the Trustee must give and transfer the property to Eligible Purposes, or to or for a fund which is charitable at law and which complies with the requirements of item 2 of the table in section 30-15 of the ITAA 97, as the Trustee decides.
- (b) Where, in respect of an Eligible Purpose, section 30-15 of the ITAA 97 provides that gifts to it are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, the gift or transfer must be made in accordance with those conditions.

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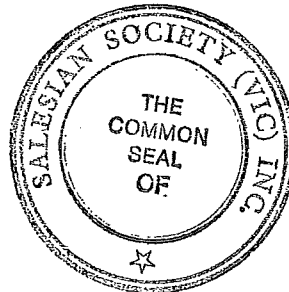
## 15 Governing law

- (a) This deed is governed by the laws of Victoria.
- (b) Each of the parties irrevocably submits to the exclusive jurisdiction of the courts of Victoria.

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### Executed as a deed:

The common seal of  
**Salesian Society (Vic) Inc**  
is fixed to this document  
in the presence of:



I. Murdoch  
Committee Member

IAN MURDOCH  
Name (please print)

Francis Bertagnoli  
Committee Member

FRANCIS BERTAGNOLI  
Name (please print)