

# A Rotary club as an Incorporated Association

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## Introduction

This document provides advice on the management of a Rotary club as an incorporated association to ensure compliance with Rotary International's ("RI") governing documents and the laws of NSW and Australia.

Links to relevant web pages and forms are provided, however, please note that these links may become inoperative/outdated as RI's governing documents or NSW and Australian legislation are amended.

It is strongly recommended that all members of club boards make themselves aware of the information available in these resources.

## Why incorporate?

All Rotary clubs should be incorporated under the *Associations Incorporation Act 2009 (NSW)* ("the Associations Act").

Incorporation gives a Rotary club certain legal advantages. For example, in the event of a claim against the club the financial liability of members is limited only to the payment of outstanding membership fees.

An incorporated Rotary club has its own legal identity separate from its members, providing protection to members in legal transactions. Board members are also protected provided they act in good faith, with due diligence and in the best interest of the club. In the event of a problem, dispute or legal challenge, board members cannot claim that they 'did not know' about the rules and activities of the club.

An incorporated Rotary club can:

- enter into and enforce contracts, including the ability to hold, acquire and deal with property
- sue or be sued

- continue regardless of changes to membership.

While there are benefits to be gained from incorporation, there are also obligations. For example, incorporation requires the payment of application and annual fees and requires the club to maintain proper financial and membership records and registers and report its financial position annually to the Commissioner of Fair Trading, Department of Finance, Services and Innovation (“Commissioner”).

[http://www.fairtrading.nsw.gov.au/ftw/Cooperatives\\_and\\_associations/Incorporating\\_an\\_association.page](http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/Incorporating_an_association.page)

### **Constitution of an incorporated Rotary club**

Every incorporated Rotary club must have a constitution. The Associations Act requires an incorporated Rotary club’s constitution to include provisions dealing with certain mandatory subjects. RI requires each club to adopt the Standard Rotary Club Constitution. RI also provides Recommended Club Bylaws.

District 9650 provides on its web site a standard club constitution and recommended bylaws which are adapted to ensure they comply with NSW and Australian law.

These documents can be found on the D9650 website, in the documents library.

The standard club constitution and bylaws, together, once adopted, constitute the Constitution of an incorporated Rotary club.

Clubs may modify their bylaws to suit their own needs provided that the modifications are in conformity with, and in the spirit of, the Standard Rotary Club Constitution and the other RI constitutional documents and satisfy the requirements of NSW and Australian law.

Each club must ensure that its Constitution is brought up to date after each Rotary Council on Legislation (which is held every 3 years). **Following the Council on Legislation this year (2016), each club will need to make changes to update its Constitution.**

**Appendix 1** contains a table listing the mandatory subjects which must be covered in an incorporated Rotary club’s constitution and where they are covered in either the RI Standard Constitution, the RI Recommended Club Bylaws or the D9650 Recommended Club Bylaws.

### **Registration of changes to the Constitution**

The amendment/replacement of the Constitution of an incorporated Rotary club requires the passing of a special resolution in conformity with section 39 of the Associations Act. Please see the document *Procedure for Updating Club Constitutional Documents* on D9650’s web site.

Section 14 of the Associations Act specifies that the changes only take legal effect when the new Constitution of the Incorporated Club is registered with the Commissioner. (Please refer to **Note** below.) The club (Public Officer) must apply to the Commissioner for registration of the changes within 28 days of the special resolution using Form A6 and pay the prescribed fee (\$46 in 2016).

[http://www.fairtrading.nsw.gov.au/ftw/About\\_us/Our\\_services/Forms/Associations\\_forms.page?#Form\\_A6\\_-\\_Application\\_to\\_change\\_objects\\_or\\_constitution](http://www.fairtrading.nsw.gov.au/ftw/About_us/Our_services/Forms/Associations_forms.page?#Form_A6_-_Application_to_change_objects_or_constitution)

If your club makes regular changes to its bylaws to record, for example, club policies or procedures, then the requirement to register changes to the Constitution of the incorporated Club may prove onerous and costly. A suggested practical alternative is to add to your bylaws, the next time they are changed, a provision for the making of Standing Orders by the Board or the club. Standing Orders allow for the improved operation and management of the club; they may be changed or temporarily suspended by simple majority vote; and changes do not have to be registered. Standing Orders are an appropriate place to record the ‘good ideas’ that are approved from time to time by members at a regular or general meeting. If the procedure is found to be beneficial to the long term operation of the club, a standing order can be adopted as a club bylaw by special resolution at a later date.

**Appendix 2** provides a suggested Bylaw 17 – Standing Orders and some examples of the standing orders adopted by one Rotary club.

**Note:** Although the Associations Act clearly indicates that the adoption of a revised Constitution will only be effective on registration, every known version of the RI Standard Club Constitution has included a provision indicating that it is subject to amendment by the Council on Legislation. It may be that an amendment passed by the club based on a determination of the Council on Legislation will be binding with or without registration and that the sort of changes made each three years are unlikely to be the subject of litigation. Accordingly it is a matter for each club to determine whether or not it registers changes to the Constitution. However the prudent course is to do so every three years after revising the Constitution in line with changes made by the Council on Legislation.

### **Public Officer**

Each incorporated Rotary club must have a public officer. The public officer is the official point of contact for an incorporated Rotary club and one of the authorised signatories for the Rotary club (but not necessarily for bank accounts).

The recommended bylaws provide that the club secretary is the public officer unless the Board determines that someone else is to be the public officer. He/she must be over 18 years of age and reside in New South Wales.

[http://www.fairtrading.nsw.gov.au/ftw/Cooperatives\\_and\\_associations/Incorporating\\_an\\_association/Public\\_officer.page](http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/Incorporating_an_association/Public_officer.page)

Should the position becomes vacant, the Board must fill the position within 28 days and the new public officer must notify the Commissioner within 28 days of their appointment. Notification must be on the approved Form A9. There is no fee for this notification.

[http://www.fairtrading.nsw.gov.au/ftw/About\\_us/Our\\_services/Forms/Associations\\_forms.page?#Form\\_A9\\_-\\_Notice\\_of\\_appointment\\_of\\_public\\_officer\\_and\\_Notice\\_of\\_change\\_of\\_association\\_address](http://www.fairtrading.nsw.gov.au/ftw/About_us/Our_services/Forms/Associations_forms.page?#Form_A9_-_Notice_of_appointment_of_public_officer_and_Notice_of_change_of_association_address)

### **Annual Financial Statement**

Rotary clubs are required to submit their financial statements for the previous financial year to the annual general meeting. The nature of the financial statements submitted to the AGM depends upon the category of the Rotary club, either Tier 1 or Tier 2, under the Act.

[http://www.fairtrading.nsw.gov.au/ftw/Cooperatives\\_and\\_associations/Running\\_an\\_association/Financial\\_reporting\\_requirements.page](http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/Running_an_association/Financial_reporting_requirements.page)

Tier 1 Rotary clubs are those whose gross receipts exceed \$250,000 per annum or current assets exceed \$500,000. These clubs are required to submit audited financial statements each year to the members at the AGM.

Tier 2 Rotary clubs, that is, those whose annual gross receipts and current assets are below the Tier 1 threshold, are required to submit a summary of their financial affairs to the AGM.

Rotary clubs must lodge annual financial summaries in the approved Form A12 with the Commissioner within 1 month after the AGM. A Tier 1 club will need to attach its audited financial records. The prescribed fee is \$54 (2016).

[http://www.fairtrading.nsw.gov.au/ftw/About\\_us/Our\\_services/Forms/Associations\\_forms.page?#Form\\_A12\\_-\\_Annual\\_summary\\_of\\_financial\\_affairs](http://www.fairtrading.nsw.gov.au/ftw/About_us/Our_services/Forms/Associations_forms.page?#Form_A12_-_Annual_summary_of_financial_affairs)

### **What records must be kept?**

An incorporated Rotary club must keep the following records:

- a register of board members
- a record of any disclosure of conflict of interest by a board member
- a record of the Rotary club's financial transactions and position

- minutes of the Board and general meetings
- a register of members.

The details for each register are specified under the Associations Act.

An incorporated Rotary club should also keep the following records:

- a record of its authorised signatories (those authorised to sign on behalf of the club)
- a record of its current public officer and official address.

[http://www.fairtrading.nsw.gov.au/ftw/Cooperatives\\_and\\_associations/Running\\_an\\_association/Management\\_committee/Association\\_records.page](http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/Running_an_association/Management_committee/Association_records.page)

### **Asset Registers**

Clubs should maintain asset registers in respect of the property the club owns. If those assets include items to which certain safety standards apply, e.g. electric cables, gas bottles and regulators, electrical equipment etc, the club should ensure that appropriate inspections and certificates of compliance are issued or the club should consider ceasing to use such equipment.

### **Liability insurance**

Each incorporated club is entitled to the protections derived from the District's public liability insurance cover, provided that the club complies with the requirements specified by the District from time to time. The provision of such insurance is a requirement of the Associations Act.

[http://www.fairtrading.nsw.gov.au/ftw/Cooperatives\\_and\\_associations/Incorporating\\_an\\_association/Insurance.page?](http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/Incorporating_an_association/Insurance.page?)

### **Authority to Fundraise**

The *Charitable Fundraising Act 1991 (NSW)* ("the Fundraising Act") provides that an organisation may conduct charitable fundraising activities only if it holds an authority to fundraise. Any fundraising carried out in the name of Rotary is considered to be charitable fundraising, therefore each Rotary club should obtain the required authority. Please refer to **Appendix 3**.

[http://www.fairtrading.nsw.gov.au/ftw/Cooperatives\\_and\\_associations/Charitable\\_fundraising/Fundraising\\_controls.page?](http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/Charitable_fundraising/Fundraising_controls.page?)

You can check the current status of your club's Authority to Fundraise at

<https://www.onegov.nsw.gov.au/PublicRegister/#/publicregister/search/Charities>

Records of the income received from and the expenses in fundraising activities of the club must be kept for 7 years.

The Fundraising Act provides that, if a club's gross fundraising income exceeds \$250,000 in any financial year, the financial records of the club's fundraising activities must be audited by a registered company auditor who meets the qualifications specified under the Corporations Act 2001 (Cth). The auditor is required to offer an independent opinion on whether the records of the fundraising activities of the club give a true and fair view of those activities and various other matters.

[http://www.fairtrading.nsw.gov.au/ftw/Cooperatives\\_and\\_associations/Charitable\\_fundraising/Fundraising\\_controls/Auditing\\_charities.page?](http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/Charitable_fundraising/Fundraising_controls/Auditing_charities.page?)

Rotary clubs with fundraising income less than \$250,000 are not subject to these requirements but must nevertheless comply with the requirements of the Associations Act as regards their financial record keeping.

### **Note: Forms & Fees**

Prescribed documents and document lodgement fees may vary from time to time. Always download the latest forms which will show the current fees.

If you have any queries regarding the currency of this document, please contact Tony Young, District 9650 Constitution and Legal Consultant, on [a.d.young@icloud.com](mailto:a.d.young@icloud.com).

## Appendix 1 – Matters to be covered in the Constitution

The constitution of an incorporated Rotary club must include provisions covering each of the matters referred to in Schedule 1 of the *Associations Incorporation Act 2009 (NSW)*.

The Constitution of an incorporated Rotary club must address each of the following:		Where are these covered at present?			
		RI Standard Club Constitution	RI Recommended Club bylaws (2016)	D9650 recommended Club Bylaws (2016)	Your Club
1	Membership qualifications	Article 10, 11			
2	Register of members			Bylaw 15.1	
3	Fees, subscriptions etc.	Article 14	Article 6	Bylaw 6	
4	Member's liabilities			Bylaw 15.2	
5	Disciplining of members	Article 15			
6	Internal disputes	Article 19			
7	Committee (Board) elections, terms, meeting procedures	Article 13	Article 1.4,2, 3 & 8	Bylaw 1.3, 2, 3, 4, 5.3 & 9	
8	Intervals between and manner of calling general meetings	Article 9.3	Article 5.1	Bylaw 5.1, 15.3	
9	Notice of general meetings			Article 15.3	
10	Procedures at general meetings quorum, voting, proxies		Article 1.4, 7	Bylaw 1.3, 7, 13.2, 13.3, 13.4, 13.5, 15.6	
11	Postal ballots			Bylaw 15.6	
12	Sources of funds			Bylaw 15.13	
13	Management of funds		Article 9	Bylaw 11.3, 15.10	
14	Custody of books etc.			Bylaw 15.8	
15	Inspection of books etc.			Bylaw 15.8	
16	Financial year		Article 9.6	Bylaw 15.12	

## Appendix 2

Suggested bylaw if the club wishes to have the capacity to make Standing Orders

### Bylaw 17 Standing Orders

Standing orders may be adopted from time to time by a simple majority of the club for the improved operation and management of the club. Such standing orders shall not be in conflict with the constitutional documents of RI or the Constitution of the club and if any such conflict arises the constitutional documents and the Constitution of the club shall prevail. The secretary shall maintain a register of such standing orders. All standing orders shall be reaffirmed, amended or revoked at the annual meeting of the club each year.

#### Examples of Standing Orders

1. **Cost of meals for Prospective Members** – When members invite a prospective member to a club meeting, the cost of the meal for the prospective member will be paid by the club for the prospective member's 2nd and 3rd visit. (8 Nov 2007)
2. **Fine Box Proceeds** –The proceeds of the fine sessions, made up to a minimum of US\$1,000, shall be paid to The Rotary Foundation at the end of each financial year. (29 Jul 2010)
3. **Friends of Rotary** – This Rotary Club shall adopt the concept of Friends of Rotary to provide an avenue of participation with our club for community minded people who cannot or may not wish to join the club as a Rotarian. The rules for Friends of Rotary are set out in the document entitled 'Friends of Rotary' and may be modified by the board from time to time. (1 Nov 2012).

### **Appendix 3 – Fundraising**

Any fundraising carried out in the name of Rotary is considered to be charitable fundraising.

[http://www.olgr.nsw.gov.au/charitable\\_what\\_is\\_fund.asp](http://www.olgr.nsw.gov.au/charitable_what_is_fund.asp)

However, if an incorporated Rotary club is successful in an open tender process to provide a service for a fee, then this is not a fund raising appeal. It is essential to inform the payer that some or all of the earnings may be used for club projects or in the administration of the incorporated club rather than for charitable purposes. Such income may be deposited in the club's Working (Administration) Account. The club is free to decide at a later date on how much of the income is then used for club projects or for charitable purposes by transfer to the Project (Service) Account.