A Rotary club as an Incorporated Association

Rotary District 9650 – May 2015

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Introduction

This document provides advice on the management of a Rotary club as an incorporated association including a review of how the Standard Rotary Constitution, the RI Recommended Club Bylaws and the District Recommended Club Bylaws (modified by John Boag in 2013) apply to the Constitution of an Incorporated Association. Suggestions are made for changes where appropriate.

The document also covers compliance with legal obligations as an incorporated association and a charitable organisation under the laws of NSW.

Links to relevant web pages and forms are provided. 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.

Incorporation under the Associations Incorporation Act 2009 (NSW) 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.

**Constitution of the incorporated Rotary club**

Every incorporated Rotary club must have a constitution. This is the constitution of the Rotary club which was last registered in the public register of incorporated associations, maintained by NSW Fair Trading. Any changes to your club's constitutional documents are not legally binding until they are registered. In any legal dispute the rules of the registered constitution will apply.

Rotary International requires each club to adopt the Standard Rotary Club Constitution. Rotary International provides Recommended Club Bylaws.

The Associations Incorporation Act 2009 (NSW) requires an association's constitution to include certain mandatory provisions.


It may well be that the rules by which your club was incorporated are now so out of date that they bear little resemblance to the current Standard Rotary Club Constitution and the Recommended Club Bylaws.

Unless you have been keeping the club's constitution and bylaws updated, as changes are made by the Council on Legislation every three years (Standard Rotary Club Constitution, 2013) and by the RI Board of Directors from time to time (Recommended Club Bylaws, 2014), you may need to review, adopt and register up-to-date rules of incorporation.

The next Council on Legislation is in 2016 so your constitution and bylaws will probably need revision after that.

On the district's website is a Standard Rotary Club Constitution and District Recommended Club Bylaws which include the requirements of NSW both in relation to incorporation and charitable fundraising as well as requirements of the Commonwealth regarding dissolution and winding up provisions etc. The club may adopt the District Recommended Club Bylaws or may modify them to suit the club's needs, providing that the modifications are in conformity with, and in the spirit of, the Standard Rotary Club Constitution and the other RI constitutional documents.


**Appendix 1** contains a table listing the mandatory provisions of the Act and where the provisions are covered in either the Standard Constitution, the RI Recommended Club Bylaws or the District Recommended Club Bylaws. Two provisions are not covered in any of these documents and a suggested alternative Article 5 and additional Article 11.7 are provided in **Appendix 2**.

**Registration of changes to the constitution**

**Please note** your club's Constitution and your club's Bylaws together become the Constitution of the Incorporated Club. The adoption of a revised constitution or bylaws require the passing of a special resolution and the changes only take legal effect when the new Constitution of the Incorporated Club is registered with NSW Fair Trading. Please refer to **Note** below. The club must apply for registration of the changes within 28 days of the special resolution using Form A6 and on payment of the prescribed fee ($45 in 2014)

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. A suggested practical alternative is to add to your bylaws, the next time they are changed, a provision for Standing Orders. 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.

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

**Note:** Although the Department of Fair Trading has clearly indicated that the adoption of a revised Constitution will only be effective on registration, every known version of the Rotary International 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 probably to do so each 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 for bank accounts).

A board member, an ordinary member or a person outside the Rotary club may hold the position of public officer. They must be over 18 years of age and reside in New South Wales. A Rotary club’s incorporation may be cancelled if the public officer does not comply with these requirements.


The public officer is appointed by the Board. The public officer can only be removed from office by the passing of a resolution at a general meeting. The public officer remains in office until such time as he/she is unable to continue or is removed from office.

Should the position becomes vacant, the Board must fill the position within 28 days.

The new public officer must notify NSW Fair Trading within 28 days of the new appointment. Notification must be on the approved Form A9. There is no fee for this notification.


**Annual 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 must be in accordance with the category of Rotary club, either Tier 1 or Tier 2.


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

Smaller, or Tier 2 Rotary clubs 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 NSW Fair Trading within 1 month after the AGM. A Tier 1 club will need to attach its audited financial records. The prescribed fee is $53 (2014).

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 proceedings of board and general meetings
- a register of members.

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


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.

Authority to Fundraise

The Charitable Fundraising Act 1991 (NSW) requires that before an organisation may conduct charitable fundraising activities it is required to hold a licence to fundraise. Any fundraising carried out in the name of Rotary is considered to be charitable fundraising. Please refer to Appendix 3. The act is administered by the Office of Liquor, Gaming and Racing (OLGR).


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


It is a requirement of the Authority to Fundraise that the ‘audited’ financial statements be submitted to an annual general meeting of the club within six months after conclusion of the financial year.

An auditor is required to offer an independent opinion on whether the financial report gives a true and fair view. A registered company auditor has to conduct a detailed examination of the club’s financial records in order to express such an opinion and this may incur significant cost.

Rotary clubs with fundraising income less than $50,000 may engage a person who has no formal accounting training but who possesses other suitable qualifications and experience, including:

- experience and expertise in the field of commercial or government finance
- sound accounting knowledge and experience

If your auditor is not a registered company auditor, application must be made to the Office of Liquor Gaming and Racing for approval to engage a person with lesser qualification as an ‘auditor’.


This ‘auditor’ may be a member of the club but cannot be a member, or related to a member, of the Board.
**Notes**

**Terminology**

<table>
<thead>
<tr>
<th>NSW Fair Trading</th>
<th>Rotary</th>
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<tr>
<td>Association</td>
<td>Club</td>
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<tr>
<td>Constitution &amp; Objects</td>
<td>Standard Constitution + Club Bylaws</td>
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<td>Committee</td>
<td>Board</td>
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<tr>
<td>General Meeting</td>
<td>Club Assembly</td>
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</tbody>
</table>

**Common Seal**

Under the Associations Incorporation Act 2009 associations no longer need to use a common seal to execute documents. Instead, they can have documents signed by two of their authorised signatories. The public officer will be an authorised signatory by virtue of that office.

**Fees**

NSW Fair Trading fees generally increase in July each year. Always download the latest forms which will show the current fees.
**Appendix 1 – Matters to be included in the constitution**

The constitution of the incorporated association must include each of the matters referred to in Schedule 1 of the *Associations Incorporation Act 2009*.

<table>
<thead>
<tr>
<th>The constitution of an incorporated Rotary club must address each of the following:</th>
<th>Where are these covered at present?</th>
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<tbody>
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<td>RI Standard club Constitution</td>
<td>RI Recommended club bylaws (2013)</td>
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<td>3 Fees, subscriptions etc.</td>
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<td>5 Disciplining of members</td>
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<td>11 Postal ballots</td>
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<td>12 Sources of funds</td>
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<td>13 Management of funds</td>
<td>Article 9</td>
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<td>14 Custody of books etc.</td>
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<td>15 Inspection of books etc.</td>
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<tr>
<td>16 Financial year</td>
<td>Article 9.6</td>
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</tbody>
</table>
Appendix 2 – Alternative or additional bylaws.
Suggested alternative or additional bylaws. Those provisions marked * must be addressed in the Constitution of an Incorporated Club. The wording that you adopt may be different but the marked provisions must be dealt with.

**Article 5 - Meetings**

**Section 1 – Annual Meeting**
An annual meeting of this club shall be held on the day in each year as set out at Item 5 of the Schedule, to elect the officers and directors who will serve for the next Rotary year. (Note: this meeting must be held within 6 months of the end of financial year and before 31 December)

* **Section 2 – Business at Annual Meeting**
In addition to any other business which may be transacted at an annual meeting, the business of the annual meeting is to include the following:

  (a) to confirm the minutes of the last preceding annual meeting and of any special meeting held since that meeting;

  (b) to receive from the board reports on the activities of the club;

  (c) to receive and consider the financial statements which must be submitted to members as required by the Associations Incorporation Act 2009 (NSW).

**Section 3 – Notice of Annual Meeting**
An annual meeting must be specified as such in the notice convening it.

**Section 4 – Regular Meeting**
The regular weekly meetings of this club shall be held on the date and at the time as set out at Item 6 of the Schedule. Reasonable notice of any changes in or cancelling of the regular meeting shall be given to all members of the club.

* **Section 5 – Quorum at Meetings**
One-third of the membership shall constitute a quorum at general and regular meetings of this club.

**Section 6 – Board Meetings**
Regular meetings of the board shall be held on the day of each month as set out at Item 7 of the Schedule. Special meetings of the board shall be called with reasonable notice by the president, or upon the request of two (2) directors.

* **Section 7 – Quorum at Board Meeting**
A majority of the directors shall constitute a quorum of the board.

**Section 8 – Presiding Member**
At a meeting of the board, if the president and the vice president are absent or unwilling to act such one of the remaining members of the board as may be chosen by the members present at the meeting shall preside.

**Section 9 – Voting**
Questions arising at a meeting of the board or of any committee appointed by the president in accordance with Article 9 shall be determined by a majority of the votes of members of the board or of any such committee present at the meeting.

* **Section 10 – Casting Vote**
Each member present at a meeting of the board or of any such committee (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
Section 11 – Act with Board Vacancy
Subject to a quorum being present, the board may act notwithstanding any vacancy on the board.

Section 12 – Validity of Actions
Any act or thing done or suffered, or purporting to have been done or suffered, by the board or by such a committee, is valid and effectual notwithstanding any defect that may afterwards be discovered in the appointment or qualification of any member of the board or of such a committee.

* Section 13 – Proxy voting
Proxy voting must not be undertaken at or in respect of a general meeting.

Article 11 - Finances
* Section 7 – Source of Funds
The funds of the club shall be derived from admission fees and annual membership dues, donations and, subject to any resolution passed by the club at a meeting of the club, such other sources as the board determines.

Article 17 - Standing Orders
In addition to the provisions of the club constitution and these bylaws, standing orders shall 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 these bylaws and where any such conflicts arise the constitutional documents and these bylaws shall prevail. The secretary shall maintain a register of such standing orders. All standing orders shall be reaffirmed, amended or deleted at the first club assembly of 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).

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 (or the procedure specified in the bylaws) at a later date.
Appendix 3 – What is a fund raising appeal.

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


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 Account.