



# McKEAN & PARK

## LAWYERS

### MINIMALIST APPROACH TO THE NEW RULES & CONSTITUTION

There may be some who would want to suggest that McKean & Park could have made further changes to the new "Australia-wide" Rules & Constitution, particularly because the Rotary Standard Club Constitution and the 2004 Bylaws which we used are considered by some people as "old documents".

Changes were indeed kept to a minimum and there were reasons for this which is as follows:-

Those articles in the **Rules & Constitution** that are marked with an asterisk (\*) are taken from the Club Constitution. Only Rotary International (RI) through its Council on Legislation (COL) has power to amend those articles.

McKean & Park has therefore reproduced them in their present form and as they are currently used by every Rotary Club worldwide with only a very few technical alterations being made (to which RI agreed) to achieve compliance with the *Associations Incorporations Act* of each Australian State and Territory.

RI's power to amend these articles derives from it's chartering of each Rotary Club and is a right that is legally accepted by the charter members and by all subsequent members.

Some articles without an asterisk have been taken from the 2004 **Club Bylaws**. Individual clubs are entitled to amend those articles by the process provided in the new "**Australia-wide**" Rules & Constitution.

So long as the amendment (or addition) is "in harmony with the club Constitution and to the Constitution and Bylaws of RI." Again, however, McKean & Park has refrained from making amendments other than those technically necessary to achieve compliance with the Act and which were also approved by RI.

The reason for this is that a draftsman may consider an amendment he or she proposes as an improvement on an existing document. But

that view may not be shared by others. It is a subjective view and in the case of drafting a legal document of the nature of the Rules & Constitution such a view should be rejected.

If individual Clubs want to amend these articles they may do so but it is appropriate that the initiative should come from the Clubs themselves.

Other articles (also without an asterisk) have been inserted to provide compliance with the *Association Incorporations Act* of every Australian State and Territory.

**These have been kept to the minimum necessary to attain that objective.**

It could be suggested that Article 13 Section 1 breaches the *Trade Practices Act 1974* by requiring Rotarians to subscribe either to "The Rotarian" or "Rotary Down Under".

The thought is that this could constitute what the jargonists refer to as "third line forcing".

Even assuming it does, our response is that this is a matter for Rotarians to amend through RI in the democratic manner that RI provides.

This involves a member or members who want an amendment to a "Constitution" article proposing that amendment to the Club.

If the Club accepts that proposal, it passes this on to the District. If the District accepts, it is passed on to RI.

It eventually goes to the COL which makes a decision at its next three yearly meeting. In our view this process cannot and should not be short circuited. (For the record we would be surprised if the High Court would agree that article 13 constitutes third line forcing).

McKean & Park is very willing to undertake further amendments for a Club or to include amendments the Club itself drafts and delivers to us electronically. A charge will be involved and quoted to you before work commences.

We hope all Rotarians will understand that it would be improper for McKean & Park to re-draft Rotary documents just because we think we can improve them.

The amendments and additions we have made are solely for the purpose of obtaining compliance with the law for existing Rotary documents.

By the way, even though the Rotary documents are the best part of 100 years old (at least in their original form) they are finely drafted and

have stood the test of time. They say only what has to be said and leave it open for local laws to flesh out what they contain.

They are intended to apply to Rotary clubs in hundreds of separate nations and states where different laws in connection with these matters apply.

Our advise is, don't be in too much of a hurry to amend Rotary documents, they may well be better than anything you can devise to replace them.

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