

Rotary Clubs and the Subsection 48(3) trap

Subsection 48(3) of the *Associations Incorporation Reform Act 2012* (Victoria) (**Act**) provides as follows:

“(3) – If the rules of an incorporated association do not make provision for a matter as required by Section 47(2), the model rules, to the extent that they make provision for that matter, are taken to be included in the rules of the association.”

This is not a part of the Act that most Rotarians ever have need to access, let alone consider. On the other hand, for many Rotarians it has considerable consequences which need to be recognized particularly by Rotarians who are members of incorporated Rotary Clubs that still retain the Recommended Rotary Club Bylaws (**RRCB**) which Rotary International (**RI**) prescribes, without any changes or alterations having been made to those Bylaws.

The RRCB, as you will recall, contains many provisions such as for the elections of officers of the Club and other members of the Board, the provisions dealing with the operations of the Board, membership dues, bank accounts, the duties of the officers of the Club and many others. The Model Rules which are contained in the *Associations Incorporation Reform Act Regulations 2012* contain Rules covering exactly the same Matters as those referred to in the above examples.

Subsection 47(2) which is referred to in SS48(3) requires that the Rules of an incorporated association must make provision for each of the 23 Matters that are specified in Schedule 1 of the Act, to the extent the Matter is applicable to the association, and also to other prescribed matters. All the above examples are Matters which are specified in Schedule 1 of the Act.

What follows from the above is that in the case of each of the examples given, because the Matters involved are contained in the Club's Bylaws and not in the Club's Rules, SS48(3) will apply and as a result, the equivalent provisions in the Model Rules will be taken to be included in the incorporated Rotary Club's Rules. In none of the examples given do the provisions of the Model Rules agree with the equivalent provisions contained in the incorporated Rotary Club's Bylaws. It therefore follows that as a result of this an incorporated Rotary club in such a situation may well be frequently breaching its own Rules by the simple expedient of following its Bylaws.

Other States and Territories have similar (but not necessarily identical) provisions to SS48(3). The Queensland version, for example is even wider in its scope than SS48(3). Indeed, in the version of SS48(3) contained in the previous *Associations Incorporation Act 1981* (Victoria) in SS21(3) the wording is as wide as that in the current Queensland version.

All the above needs to be understood thoroughly and preferably to be dealt with in the Rules of incorporated Rotary clubs such as those McKean Park provides. That recognition should extend to a reassessment of what is handed to a new Rotarian when he or she is inducted into the Club. New Rotarians after all are entitled to know exactly what the Rules and the Bylaws of the Club in which they have sought membership are.

SS48(3) is not included simply as a trap for inexperienced club secretaries and others. It does provide a safeguard in the case of unincorporated associations which leave their Rules unchanged for lengthy periods. The requirements placed upon incorporated associations are constantly changing and if the changes are required in an area to which SS48(3) applies it is considered appropriate that it occur automatically even though the members of the club do not realise the change has happened.

On the other side of the coin in the current climate of increased litigation the process of automatic charge by virtue of SS48(3) can, if it is not recognised by the members, provide a powerful weapon to be used against the club by anyone suing it or involved in a discipline or a grievance process against the club or another member.

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