

Rotary Clubs don't use the Model Rules!

...and other matters

Some Rotary Clubs still use the Model Rules under their appropriate State or Territory legislation in order to obtain incorporation or, as in Victoria recently, to continue their incorporation by adopting amended statutory requirements which the new Model Rules contain. Unfortunately, Rotary International (RI) cannot be expected to provide incorporated Rotary Clubs with an appropriate worldwide set of Rules because the laws governing incorporation vary considerably from country to country and, in countries like Australia, from state to state. RI must therefore content itself with providing its Standard Rotary Club Constitution (SRCC) and Recommended Rotary Club Bylaws (RRCB), both of which relate only unincorporated Rotary Clubs and cannot therefore be relied upon to comply with the requirements of incorporation legislation.

What appears to happen all too frequently, as a result of this impasse, is that clubs notify the regulatory authority of their intention to use, or to continue using, the Model Rules. This temporarily satisfies the regulatory authority and it accepts the club's incorporation, or continued incorporation, and enters the club's adoption of the Model Rules on the public record. The club however, cannot operate as a Rotary club otherwise than in accordance with the provisions of the SRCC and the RRCB, and consequently it is these documents it turns to. These are the documents it hands to new members upon their induction; these are the documents it relies on in respect of issues such as classification, attendance, committees, elections and almost everything else.

The problem with the above arrangement is, of course, very clear. The law does not accept incorporated associations (or anyone else) adopting two sets of financial accounts (one for public disclosure, the other to be kept hidden) nor does it accept their using a set of Rules (SRCC and RRCB) when they have previously advised the regulatory authority of their adoption of the Model Rules and this has become a matter of public record. I should add that the recording of Rules on the public record is a requirement of the law largely because it affords those contemplating joining or dealing with an incorporated association, the opportunity to inspecting its Rules before taking such a step.

As a result of the above, and no matter how the use of Model Rules in obtaining regulatory authority approval may seem a good idea, the reality is that it places the

Club in very shaky ground. Considering that clubs incorporate in the first place to provide their members with legal protection from liability and unwarranted or costly litigation, the 'good idea' in retrospect must be seen as incredibly foolish. Imagine, for example, what will occur in the event of litigation involving some real or imagined claim by a plaintiff against the club and/or some or all of its members. At some point it seems inevitable that counsel for the plaintiff will ask a member of the club in the witness box and under oath which of the Model Rules or the SRCC/RRCB combination constitutes the club's general Rules and which constitutes its bogus Rules. If this happens to you I hope you have worked out in advance what your answer will be.

There are many decisions which a club's Board of Directors must take over the course of any year where the provisions of its Rules will come into play. Where those provisions in the Model Rules differ from those in the SRCC/RRCB combination there is clearly cause for concern. If the Board's decision is made under that is legally the club's bogus Rules the club and its members are immediately at risk and likely to remain so.

What has always been necessary is that there should be a set of Rules for incorporated Rotary Clubs which complies with the requirements of both RI and with those of the regulatory authority. That set of Rules needs to include all the provisions of the SRCC and most of the provisions of the RRCB. It also needs to contain provisions which are not required by either, but which are requirements of appropriate legislation. It may take quite a number of drafts in order to reach a final version which is acceptable to all parties concerned. This result, however, is well worth the work involved because it returns to incorporated Rotary Clubs the protection and security which was the reason for their incorporation in the first place.

There are many areas in which the Model Rules differ from those in the SRCC/RRCB combination. If a club is would up for example, the provisions for distribution of its assets differ; eligibility for membership differs; payment of dues and subscriptions differ; disciplinary and grievance processes differ; elections differ and so too many other provisions.

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Another issue that should concern incorporated Rotary Clubs is why they must refrain from ignoring the Rules simply because in respect of a particular issue they want to proceed in a way which is contrary to what their Rules provide. If as a club you ignore this advice you can expect trouble. A club's Rules, as the new Victorian Act says, constitute a contract between the club and its members. It follows, if you break that contract you can be sued.

A final issue for Victorian Rotary Clubs is that if you are drawing up your own Rules to comply with the new Act on the one hand, and RI's requirements on the other, you must not only obtain the acceptance of your Rules by Consumer Affairs Victoria (**CAV**), but also by RI.

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