

Why Rotary Clubs update their incorporation

There are many reasons why a group of people who join together in an organisation for a common purpose may wish to incorporate. In the United States, for example, there are clear tax benefits for incorporated associations. People who join together as an organisation also may wish to incorporate that organisation in order to enter into a contract together. An organisation may incorporate because, as an incorporated association, it will be eligible for a larger range of government and private grants. For Rotary Clubs in Australia, however, incorporation almost invariably occurs to provide members, office bearers and their families with legal protection against personal liability they may incur for the club's debts and other legal obligations.

Incorporation of Rotary Clubs, and also many other organisations, provides an ultimate protection for members and their families if all other protection fails. If, for example, someone sues the club for some real or imagined wrong of which the members may have no knowledge; or if whoever in the club having the task, fails to take out insurance, or doesn't pay the premium, or the event that occurs is excluded from the insurance policy, incorporation may be the only fall back. The possible scenarios where liability may occur are many and varied. Fortunately they occur only infrequently. But they do occur.

If incorporation has been undertaken by a Rotary Club to provide members and their families with the ultimate legal protection, then that protection must be maintained at all times and not just occasionally. Failure by a Rotary Club to maintain incorporation protection at all times seems to me remarkably like taking out insurance for one year only in every four or five years. If protection is what the members require then it should be provided, just like insurance, at all times, not just at some times. It is pointless to go to the cost of obtaining protection and then to limit that protection to some years but not to all years.

The best example of failure by a Rotary Club to maintain protection for its members and their families is when it decides not to update its Rules every three years after the Council on Legislation publishes its amendments. This results in the club having, in effect, two sets of Rules, those which impliedly include the Council on Legislation amendments and those the club "published" when it last registered with its State or Territory registry as an incorporated association which do not include those amendments. Such a discrepancy can provide exceptionally damaging legal 'ammunition' for anyone suing the Rotary Club and so provide exploitable weaknesses in the club's incorporation protection.

In addition, incorporated Rotary Clubs are required to update their rules after each Council on Legislation triennial meeting as a 'price' for Rotary International agreeing to their incorporation. Merely by publishing the amended Standard Rotary Club Constitution and the Recommended Rotary Club Bylaws, Rotary International achieves the automatic amendment of those documents in respect of all unincorporated Rotary Clubs worldwide. If a club chooses to incorporate, however, it comes under different laws which apply only to incorporated associations and which require each club to be responsible for its own rules and their amendment from time to time. The actions of Rotary International through the Council on Legislation therefore must be supplemented by all incorporated Rotary Clubs. This requires that they individually adopt the Council on Legislation amendments and produce for registration an updated set of rules which is registered ('published') in place of previous rules.

In addition to all the above, the laws in each Australian State and Territory continue to alter year by year. Some of these automatically apply to all incorporated associations but others require each incorporated association to take some prescribed action. Because of this, McKean Park takes the opportunity of including appropriate legal requirements in the Rotary Club Rules which it prepares every time that amendments must be made to comply with Council on Legislation requirements.

As a final word some Rotarians ask, "who would want to sue Rotary"? In response, many clubs have used a Power Point presentation produced by McKean Park titled 'Who wants to sue Rotary?' This shows clearly that organisations like Rotary are capable of being sued even when their only purpose is to assist others. This is not of course a reason to cease assisting those who seek assistance but it is a reason why Rotary Clubs need to take considerable care in protecting their own members and their members' families.

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