

Rotary Club Incorporation Problems

Many clubs seek the protection of incorporation. Without incorporation, the members of a club are individually liable for the debts that the club incurs and worse, the person to whom the debt is owed can sue selected members of the club (presumably those with sufficient money to pay the debt) and they, in turn, can sue the other members to recover their shares of the debt.

A club's debts can be normal debts from purchases and trading, damages for injuries or loss suffered by a member of the club while carrying out work for the club or damages incurred by third parties as a result of something which has been done by the club.

Incorporation is a well established means of protection. Incorporation means that the club itself, in the eyes of the law, becomes a 'person' separate from the human persons who are the club's members. Because the club has become an artificial 'person' it is responsible for its own debts and the human persons who are its members are no longer liable for the club's debts unless they are guarantors of any of those debts or in some other way make themselves personally liable.

Incorporation requires a club to comply with the incorporation law of the State or Territory in which it is incorporated. An incorporated club must have Rules which are acceptable to the laws of that State or Territory. It also requires that the name of the club contains something that indicates it as being incorporated such as the word "Incorporated" or its abbreviation "Inc." at the end of its name. Without that identification a person dealing with the club may well believe that it is unincorporated.

An incorporated club's Rules must become a public document with the State or Territory registry so that anyone can inspect them at any time.

These requirements are in place so that people joining the incorporated club or contemplating business with it will know that the club, and not its members, is responsible to them and if they are injured, expelled, suspended or otherwise suffer loss or damage, it is the club that is indebted to them. They have only the incorporated club to look to for payment unless a member or members have guaranteed payment.

Some incorporated Rotary clubs do their utmost to make their members personally liable for the club's debts despite the protection of incorporation. The answer in the case of Rotary clubs is very largely that the Standard Rotary Club Constitution (**SRCC**) and the Recommended Rotary Club Bylaws (**RRCB**) are designed for use only by unincorporated clubs. The fact is that many countries in which Rotary operates do not have incorporation laws. When Australian clubs attempt to incorporate using the SRCC and the RRCB their applications are rejected because these documents do not comply with the relevant State or Territory incorporation laws.

To overcome the problem outlined above, many clubs have mistakenly turned to the State's Model Rules. They have found that if they use the Model Rules, incorporation is assured, but at what cost?

The Model Rules are very different indeed to the SRCC and the club's Bylaws. As a result, although it is easy for any club to incorporate under the Model Rules it is impossible to operate a Rotary club under them without incurring considerable risk. For example, the Model Rules give members a year in which to pay their dues, they do not provide for regular meetings or require attendance at any meetings at all, they do not require subscription to The Rotarian or any other Rotary magazine. Obtaining membership under the Model Rules is much easier than what Rotary requires. Disciplinary proceedings are more restrictive. The above are only a few examples of the many differences between the Model Rules and the requirements of Rotary International. As a result, Rotary clubs who incorporate under the Model Rules find it far easier to conduct the club's operations as if the SRCC and RRCB were their Rules and they ignore the Model Rules.

Potential dangers involved in all the above are considerable. There are clubs that carry insurance through their Districts, but has anyone told the insurance company about the clubs who are incorporated under "dummy rules" and are using quite different Rules to carry out their operations? There have been club meetings where new members were inducted and handed copies of the SRCC

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and the RRCB without a word about the “dummy rules” under which the club was incorporated and which, in the event of dispute, a Court would regard as the club’s legal Rules. Has anyone considered what the club President should say if placed under cross examination as to which rules apply in respect of the club’s operations and why the person suing the club or its members was never told that the club was operating under a set of rules which were quite different from those that it held itself out as operating?

Failure to comply with the “dummy rules” under which a club is incorporated could justify an application by an aggrieved person to have the affairs of the club taken over by a statutory manager or even to have the club deregistered and its assets distributed in the manner contemplated by the “dummy rules” rather than according to the requirements of Rotary International.

None of these problems need to occur. The answer to the problem is the creation of Rules that comply with all the requirements of the State or Territory under the laws of which the club is incorporated and Rotary International. That is what McKean Park has initiated and will make available to your club in electronic form if requested.

For assistance in this area, please email Ross Blair at ross.blair@mckeanpark.com.au or call him direct on (03) 8621 2815. He will be happy to assist you.

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