

INSTRUCTIONS TO PREPARE RULES AND BYLAWS OF A ROTARY CLUB

INSTRUCTION SHEET

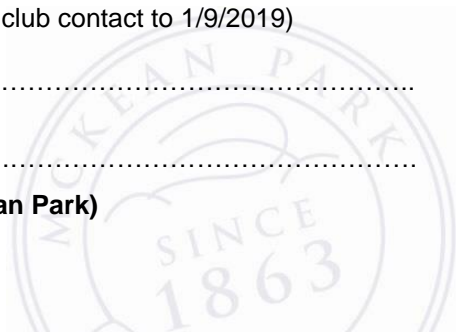
[This Instructions Sheet needs to be answered in full. Please answer each question. Please **do not** forward your existing documents to be read by McKean Park.]

1. Full name of Club.....Inc.
2. If Club is not incorporated do you wish McKean Park to quote you for its incorporation?
3. In which State / Territory is the Club incorporated or to be incorporated?
4. What is the applicable Rotary District ?.....
5. What is the exact locality (territorial limits) of the Club, as assigned to it by Rotary International?
.....
.....

[Please use RI's wording. If uncertain please contact RI Parramatta, PO Box 1415, Parramatta NSW 2124; Telephone: 02 8894 9800; Facsimile: 02 8894 9899; email: risppo@rotary.org. If your club wishes to change its locality description (e.g. from one in "Metes and Bounds") please contact RI Parramatta and advise McKean Park below

.....
.....

6. Number of Ordinary Directors (i.e. excluding office bearers).
.....
7. Club Address.....
Club Postal Address.....
Club Email address.....
All Club address details will be retained in confidence
8. Permanent Club Contact (Please advise details for permanent club contact to 1/9/2019)
Name of Contact
Tel..... Mobile..... Email.....
(Changes in these contact details must be notified to McKean Park)



9. **Nominating Committee** McKean Park **strongly recommends** use of a nominating committee. Please advise the required membership of that committee in addition to President and President-elect (e.g. "and 2 active members"). This is free of charge
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10. **Day and Commencing Time set for Club Regular Meeting. Please advise frequency.**
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11. **Changes to Bylaws** **READ THIS**

11.1 Rotary International (RI), through the 2016 Council on Legislation (COL) removed much of the strict uniformity which had previously been part of Rotary, for the purpose of enabling clubs, individually, to develop alternative requirements (rules) in the areas of attendance, membership and meetings. RI is to be congratulated upon this initiative.

11.2 To open the way for the development of alternative rules to occur, RI amended its Standard Rotary Club Constitution (SRCC) to legally enable clubs, individually, to make Bylaws in respect of the areas referred to, which would be regarded legally as exceptions to what the SRCC rules provided. This is an acceptable process under the laws of the States of the USA

11.3 To take advantage of RI's initiative, a number of things **must occur** as follows:

11.3.1 In Australia, State laws which deal with the incorporation of associations contain no provisions for bylaws and, do not permit the alteration of the Rules of an incorporated Club to be carried out otherwise than in accordance with the provisions of those laws

11.3.2 As a result of the above it must be understood that:

11.3.2.1 Unincorporated Rotary Clubs can proceed to adopt the 2016 SRCC (if they have not already done so) and then proceed to write their respective Bylaws including any exceptions to the SRCC rules in the areas referred to. State laws do not apply directly to unincorporated clubs because the clubs involved are not incorporated.

11.3.2.2 Incorporated Rotary Clubs which use a form of Rules, (such as that which McKean Park provides), need to adopt a variation of such Rules which contains the 2016 COL provisions permitting clubs to make exceptions in their Bylaws to the SRCC provisions in the areas of attendance, membership and meetings. This avoids the conflicts which otherwise might occur.

11.3.2.3 That above version must not however, suggest that the exceptions contained in a club's Bylaws will automatically supersede what is contained in the Rules because Australian State laws accept only Rules that an incorporated club has approved at a General Meeting, by a special resolution and which have subsequently been approved by the Registrar of the relevant State or Territory.

11.3.3 Rotary clubs which have incorporated by using the Model Rules of an Australian State or Territory will each need to review their positions. The Model Rules do not acknowledge the existence of Bylaws at all. As a result Clubs incorporating under the Model Rules have no legal ability to take advantage of RI's offer. In addition, the State Registrar would reflect the changes for the same reasons as set out above.

In summary every Rotary Club must adopt the 2016 SRCC provisions before, or simultaneously with, its adoption of its Bylaws which contain that club's version of the exceptions it intends to make to its Rules. This is simple for an unincorporated Rotary Club. It is a more complex task for a Rotary Club which is incorporated. In the case of Rotary Clubs incorporated under the Model Rules, the task is impossible. These clubs

cannot proceed with adopting what RI has offered unless they either revert to unincorporated club status (which means loss of the legal protection they have as the result of incorporation) or retain their incorporated status but switch to Rules which contain what the SRCC requires without breaching the requirements of the Australian laws. The only good news that can be offered to these clubs is that so far as McKean Park is concerned the cost of making the switch includes the cost which will be incurred in revising the Club's Rules.

- 11.4 As has already been said, Australian State laws do not recognise Bylaws. They use the Model Rules which each State / Territory publishes and regularly updates to contain similar provisions to those that Rotary Clubs normally include in their Bylaws. The same laws also provide that if an incorporated club's rules do not include all the provisions those laws require then the 'missing provisions' as contained in the Model Rules, will be deemed to be included in order to make up the deficiency. To avoid this possibility McKean Park has largely emptied the form of Bylaws which it provides of its provisions and placed them in the Rules in order to circumvent the deeming provisions referred to above.
- 11.5 The cost of revising an incorporated Rotary Club's Rules, Bylaws and other subsidiary documents every three years is a fixed figure which McKean Park has always endeavoured to keep cost effective by adopting a policy of drafting uniform documents with specific provisions for change (without additional cost) wherever this is necessary. This has been difficult to carry out since the 2016 COL because club Bylaws in the three areas referred to will contain 'exceptions' which are likely to differ from club to club and consequently require different wording, resulting in much more legal work and appropriately increased legal costs. To avoid this as far as it can be avoided McKean Park will provide Bylaws containing a selection of 'exception' provisions which, it is hoped, will satisfy most clubs. In other cases, there is provision in the Bylaws for 'written agreements' between a club and a member containing any variations to the above and / or further requirements by way of 'exceptions'. In the event that such a 'written agreement' is required a further charge will be made in respect of the work involved in preparing that document at the hourly rate specified in the Engagement Agreement.

12. Attendance

The club's existing attendance provisions which are required by Rotary International are contained in Articles 12 and 15 of McKean Park's current Rules ('Constitution' in New South Wales). It is clear from their wording, that although attendance percentages apply to all Rotary clubs, the Board of each club has the power to excuse attendance short comings 'for good and sufficient reason', or pursuant to section 3 of Article 12 of its Rules.

The term "good and sufficient reason", is clearly a relative term and consequently is dependent upon the circumstances of each individual case. The term is not one which can be accurately defined. For the purposes of its use in documents its provisions should be agreed upon in advance and recorded in writing rather than argued at a later date. This is particularly so in the case of attendance by "new types of membership" members such as Corporate Members, Family Members and Auxiliary Members. However, what is agreed upon as being "good and sufficient reason" for the acceptance of a reduced attendance percentage in one case may be less than sufficient or more than sufficient in another case.

The point to be made from the above is that Rotary's existing provisions regarding attendance requirements have always, if properly understood, provided considerable leeway to the Board in dealing with a member whose attendance percentage is less than required, particularly if the member involved requested special consideration before his or her attendances fell below the required percentage. It is therefore our opinion that because of the above, clubs should give very careful consideration before contemplating changes to attendance requirements other than:

- in respect of some new types of membership (e.g. Corporate, Family and Auxiliary membership);
- opening up attendance at club projects and social events as substitutes for attendance at regular meetings; and

- reducing the number of weekly meetings per month.

McKean Park has inserted new sections 2 and 3 of Article 5 of the Bylaws as follows:

- *Section 2 – Amending Regular Meetings*

The regular weekly meetings specified in Section 1 may be amended by the Board, with the approval of the members, regarding the frequency of meetings and / or counting service projects or social events as alternative meetings to regular meetings as long as the Club meets at least twice per month.

- *Section 3 – Amending Attendance Requirements*

The attendance requirements may be amended from time to time by the Board, with the approval of the members.

Our conclusion is that the above changes to "attendance" requirements should be sufficient and are capable of being adjusted by the Board.

13. Meetings

McKean Park, by inserting section 2 of Article 5 (Bylaws) as set out above has made provision for flexibility which should be sufficient for most, if not all, clubs.

14. Membership

As noted above there is a need for cost effectiveness in altering Bylaws so as to provide accurate exceptions to existing Rules without breaching applicable law or opening up an incorporated club to litigation. McKean Park proposes to do this by:

- *including* in the Bylaws the core provisions for as many new types of membership as possible;
- the core provisions will be as comprehensive as possible;
- McKean Park will also provide, when required "written agreements" which will flesh out the core provisions and may also be used to amend core provisions if required by a club. These written agreements will endorse the core provisions unless the club wishes the core provisions to be amended by the written agreement;
- there will be a separate charge for the provision of a written agreement, however, a written agreement will be required only if the club wants to induct a new membership member. It should also be noted that such a proposed member may wish to negotiate the terms of the written agreement with the club.

15. Seminars and Newsletters

McKean Park regularly holds free breakfast seminars and circulates newsletters. These provide information on a wide range of legal matters and frequently relate to legal matters which will be of interest to Rotary Clubs and Rotarians. Details of seminars and the circulated newsletters will be forwarded to the permanent contact unless you instruct otherwise. Please indicate: **Yes/No.**

16. Additional Provisions

Not every Rotary Club wants the same Rules (apart from the 'Constitutional' provisions) and Bylaws. McKean Park can vary your Club's Rules and Bylaws to suit its needs. The following are the usual variations currently available and the fixed charges for each are set out on page 2. Any other Variations or additions will be charged as additional work (see page 3).

16.1 Variation of Board Membership

It is sometimes desirable for a Rotary Club to be flexible as to the number of ordinary directors which should be elected to its Board. McKean Park have prepared a Variation to the Rules enabling a Club to elect whatever number of ordinary directors it needs between stated maximum and minimum numbers.

Fixed Charge \$60.00 plus GST

16.2 Vice Presidents

RI requires that every Rotary Club must have at least one Vice President so the position cannot be eliminated. McKean Park provides as a Variation to the Rules that the Club's Immediate Past President will fill the office of Vice President. This is acceptable to RI.

Fixed Charge \$60.00 plus GST

16.3 Club Liquor Licences

Some Rotary Clubs meet in unlicensed premises and would like to obtain a Club Liquor Licence in respect of those premises so that liquor can be available and consumed either before or during (or both) Club meetings and functions. The Club's Rules need to be adapted in order to be acceptable to the appropriate licensing authority.

Fixed Charge \$150.00 plus GST

16.4 Inspection of Club Rules

Rotary Clubs have a number of different views about what rights should be provided for members, as of right, to inspect Club documents. McKean Park provides a range of provisions which can be substituted for existing Rules and which are acceptable to RI.

Estimated Charge \$80.00 plus GST

16.5 Assistant Secretary and Assistant Treasurer

Some clubs would like to have either an Assistant Secretary or an Assistant Treasurer or both in order to share the work with the appropriate officer or officers. McKean Park provides a number of variations to its Rules ranging from the appointment of assistant officers as equal members of the Board or not as Board members at all but entitled to attend Board meetings for the purposes of their respective duties.

Estimated Charge \$100.00 plus GST

16.6 Annual General Meetings

RI has agreed with McKean Park that annual general meetings must be held on or before the end of November to comply with Australian law. Some Clubs prefer to delay their elections beyond that date McKean Park advises how this can be lawfully achieved.

Fixed Charge \$60.00 plus GST

16.7 International Record of Understanding

This is an 'agreement' between Rotary Clubs in different countries covering a project in one of those countries in which both Clubs will participate. It can be varied to provide participation by more Clubs if required.

Fixed Charge \$70.00 plus GST

Legal Profession Uniform Law

Engagement Agreement and Instruction Sheet for Incorporated Rotary Clubs

Services to be provided:

McKean Park will:

1. Prepare Rules to replace existing Rules. The Rules will comply with:
 - Existing RI requirements (including the current CoL amendments); and
 - State legal requirements (in the State or Territory where the Club is incorporated).

2. Prepare Bylaws.
3. Advise the Club as to the process involved in adopting the Rules Bylaws.
4. Provide electronically forms for the adoption of the Rules and the Bylaws.
5. Retain electronically the Rules and Bylaws until 1 September 2019 on behalf of the Club.
6. Advise the Club of changes required to the Rules necessitated by legislative changes in the relevant State or Territory coming into force on or before 1 September 2019.

The foregoing services will be provided for the fixed fee that is payable by the Club. In addition McKean Park is prepared, if requested by the Club, to provide the following additional services for the Club:

- Prepare amendments to the Rules or Bylaws initiated by the Club and advise as to their adoption and provide all necessary documentation.
- Provide advice to the Club in respect of matters relating to its Rules and/or Bylaws or in respect of any other legal matter within the competency of McKean Park.
- Provide additional advice, services and/or assistance on any other issues.

Fees and Expenses:

McKean Park charges a flat fee as advised in our accompanying letter as its fee for all the work outlined in paragraphs 1 to 6 (inclusive) unless a District discount has been agreed with the Rotary District of which the Club is a member in which case the lesser flat fee so agreed will be charged in lieu of the above amount.

If additional work is required McKean Park, on request, will include additional provisions if requested at a flat fee specified on page 4 (see paragraph 10) for frequently used additional provisions) or will give a fixed quotation or an estimate (as appropriate) of the fees involved in any other case. Otherwise, the fees for the additional work will be charged at the rate of \$400.00 plus GST per hour.

Agent:

If these services are undertaken as part of a District Initiative, the Club acknowledges that the District Committee (or its appropriate sub-committee) has been appointed by the Club to act as the Club's Agent to liaise with, assist and instruct McKean Park on behalf of the Club.

Continuation of Contact:

The Club undertakes that it will notify McKean Park of every change in the contact details for the Club occurring at any time on or before 1 September 2019. This requirement is essential to enable McKean Park to retain contact with the Club in order to provide the agreed services.

Terminating Engagement:

The Club may end the engagement by written notice at any time. If it does this it must pay any outstanding fees incurred up until that time.

Extending Engagement:

McKean Park will contact the Club directly or via the District Committee (as appropriate) before 1 September 2019 to discuss extending the Engagement for 3 years.

Jurisdiction:

The law of the State of Victoria applies to our fees and expenses. The Club has the right to sign a costs agreement under a corresponding law or to advise McKean Park that it requires the law of another jurisdiction to apply.

Interest on Unpaid Invoices:

If a tax invoice remains unpaid 30 days after the Club receives it, McKean Park may charge it the maximum percentage allowed under the *Legal Profession Act 2004* and the Regulations made under that Act.

Commencing Engagement:

The signatory being duly authorised by the Club instructs McKean Park to provide the services referred to in paragraphs 1 to 6 (inclusive) and any additional work as notified.

Fees and Expenses

Cheque enclosed / please bill to cover – (delete one)

	Fees (as per page 1)	\$400.00
Plus	Variations (please indicate Variations and insert cost from page 2)	\$
Plus	Written Agreements and Variations not otherwise provided for will be charged in addition to the above fees at the rate of \$400 (plus GST) per hour	\$
Plus	GST on balance	\$
Total		<u>\$</u>

The Club agrees to the terms of the Engagement Agreement.

Confirmed on behalf of the Club..... (Sign here)

Name of signatory

Tel: **Fax:** **Email:** (See below)

Date / /201

Please complete the details identified and return to:
 McKean Park: Level 11, 575 Bourke Street Melbourne VIC 3000.

The Club will be forwarded a Tax Invoice.

(Documents will be delivered **electronically** to the above signatory at his / her email address).