# GOVERNANCE for Victorian Croquet Clubs 

## ENTITY TYPES

## LEGAL ENTITY TYPES

- Unincorporated Association - Incorporated Association -Company Limited by Guarantee


# UNINCORPORATED ASSOCIATION 

- Not a legal entity
- Everything must be done or registered in the name of a member or members
- Members responsible for actions and debts of the association


# COMPANY LIMITED BY GUARANTEE 

- Is a legal entity
- Can open bank accounts, contract debts, etc.
- Members liability is limited (as defined in Articles of Association)
- Administered by Australian Securities and Investments Commission


## INCORPORATED <br> ASSOCIATION

- a legal entity
- Can open bank accounts, contract debts, etc.
- Members liability is limited (as defied in Constitution)


## ASSOCIATIONS - VIC

## Legislation

- Associations Incorporation Reform Act 2012
- Associations Incorporation Reform Regulations 2012


## Regulator

- Department of Justice \& Regulation Consumer Affairs Office (CAV)


# INCORPORATED <br> ASSOCIATIONS - NSW 

## Legislation

-Associations Incorporation Act 2009

- Associations Incorporation Regulation 2016
Regulator
Office of Fair Trading


## CONSTITUTIONS

# MODEL RULES OR CONSTITUTION? 

## Model Rules

- Not written for sports clubs
- Insert name, purposes and end date of financial year only
- No changes or amendments allowed
- Low registration costs


# MODEL RULES OR CONSTITUTION? 

## Consitition

- Can be written to suit each club or association
- Allows for By Laws
- Can be changed or amended as required.
- Must cover certain points (otherwise relevant part of Model Rules applies)
- Higher registration costs than for Model Rules


## CONSTITUTION

Constitutions must provide for:
>members,
$>$ the committee,
$>$ record keeping,
$>$ meetings,
$>$ funds,
>alteration of the rules, and
$>$ winding up of the association

## Membership

Qualifications (if any)
\&Fees \& Subscriptions
\&Rights, obligations and liabilities
\& Disciplinary procedures (if any)
\& Grievance procedures

## Management

\& Name, membership \& powers of committee
BElection/appointment of members
DTerms of office
-Grounds for removal

- Casual vacancies

QQuorum \& procedures at meetings
DProcedures for appointment \& removal of Secretary

## Record Keeping

> Custody of Records \& Documents
> Custody \& use of Common Seal
> Members' access to documents
> Minutes - preparation \& retention
> Members' access to minutes of General and Committee meetings

# Meetings (General Meetings) 

 >Intervals between general meetings>Manner of calling
>Quorum \& procedure
>Proxy voting?
$>$ Period \& method of notice \& notices of motions

## Funds

$>$ Sources of funds
$>$ Management of funds including signatories

## Alterafion of Rules

Winding up of Association

## HINTS FOR A CONSTITUTION

KISS - Keep it simple use unambiguous, plain language

KISS - Keep it short
as much as possible in By Laws

## CONSTITUTIONAL ISSUES

## Membership

-When does membership lapse?

- How do you get rid of members?
-Can a 13 year old vote?
-Life members?
- Associate members?


## CONSTITUTIONAL ISSUES

## The Committee

-How many?
-Time - length of terms, maximum terms?

- Office bearers, elected individually?
-How to get rid of the committee?


## CONSTITUTIONAL ISSUES

## Elections

-Who can stand?
-Period of election - one or two years?
-Half senate arrangement?

- Method of voting
- Notice - time \& method
-Quorum?


## MANAGEMENT <br> The Committee

A committee is a collection of the unfit, chosen from among the unwilling, by the incompetent, in order to do the impossible.

# COMMITTEES - AUTHORITY 

- Affairs of the Association are managed by a committee
-Model Rules - Rule 42(1)
-Constitution - Schedule 1 to the Act (Vic)


## COMMITTEE - COMPOSITION

Model Rules: President, Vice-president, Secretary, Treasurer plus a number of ordinary members (if required) voted on at each AGM.

Constitution: As provided for in the Constitution or By Laws

## COMMITTEE MEETINGS

Model Rules: minimum of four committee meetings per annum

Constitution: as required or as laid down in Constitution

## PRESIDENT

- Acts as spokesperson for Association
- Chairs General \& Committee meetings oEntitled to debate (not too early) oEncourages participation in debate oPuts question to vote oEntitled to vote


## VICE-PRESIDENT

- Chairs meeting in absence of President - Assists President in discharge of duties


## SECRETARY

- Must advise appointment within 14 days
- Duties as required under the Act
>Maintains register of members
>Has custody of common seal \& documents, except financial documents
>Provides access to records \& minutes


## TREASURER

- Receives all monies and issue receipts
- Ensures all monies received are banked
- Ensures cheques are signed, or EFTs are authorised, by two members
- Ensures Financial Records are maintained in accordance with the Act
- Coordinates preparation and certification of annual Financial Statements


## DIRECTORS-RESPONSIBILITIES GENERAL

- Act bona fide in best interests of association
- Exercise powers for proper purposes
- Retain discretion
- Avoid conflict of interest
- Avoid improper use of position
- Avoid improper use of confidential information
- Exercise care, skill \& diligence
-Prevent insolvent trading


## REFERENCES FOR CONDUCT OF MEETINGS

## MEETINGS \& ORGANISATIONS

-The authoritative text

- Plain, accessible style
-Published in two volumes
-Vol 1 - Guide for Voluntary Associations
- Vol 2 - Guide for Meetings
- First published 1961, latest edition (8 $8^{\text {th }}$ Ed) 2005
- Retails for \$122 per volume


## JOSKE'S LAW \& PROCEDURES AT MEETINGS IN AUSTRALIA

- Explores various sources of law that govern meetings in Australia oCommon law, Corporations Act, Statutes
- More legalistic
- Current ( $11^{\text {th }}$ Ed) retails for $\$ 150$


## ROBERT'S RULES OF ORDER

-US text

- Intended for adoption for use by a deliberative assembly
- Most widely used parliamentary (congressional) authority in US
-Current (11 th $)$ edition , 2011 available online, around \$20


## MEEIINGS

## STANDING ORDERS

Permanent rules for regulation of business \& proceedings at meetings

- Procedures should be well defined
- Carefully worded to minimise disputes o interpretation
- Should nominate reference for situations not covered


## MEETING PROCEDURE

Agenda and comprehensive papers distributed a week prior.

Papers read before meeting - meetings are for decisions, not for reading information.

## AGENDA

-Can double as notice of meeting

- Many formats - adopt most suitable
- Arrange
- Reports, including previous minutes; then oltems for decision
oltems for discussion
oltems for information (if really necessary)


## Formal?

Motion moved \& seconded before debate Or

## Informal?

Discussion, consensus, then motion \& vote

## MOTIONS

## Procedural - deals with conduct of

 meeting itself, must be dealt with immediately; e.g.-"That the question [motion] be now put."

## MOTIONS

- Substantive orders something to be done, authorises a past or proposed action, expresses the meetings position on a matte, or otherwise deals with the organisations general activities.
- Verb must be in subjunctive mood, e.g. "That the minutes be confirmed." not "That the minutes are confirmed."
- Not a mere statement
- Should not be in first person, e.g. "That this association..." not "That we..."


## MOTIONS

## Amendments

- Cannot contradict the original,
- Can remove words,
- Can remove \& replace words,
-Can add new words


## MINUTES

- Many formats - table, narrative, etc.
- Various levels of detail movers/secondary's, who said what, votes for and against, etc.
- Minutes need to record decisions and the information that led to decisions, which could be an appendix.


## ACTION ITEMS

- Highlight who has action on a matter - Have an Action Item List - review regularly


## COLLEGIALITY

-Finally - a decision made by the committee is made by all members of the committee and is binding on all members, regardless of how they voted.

Try:

## ourcommunity.com

## For:

books, templates, draft policies, etc.

# LEGAL DUTIES OF COMMITTEE MEMBERS 

## LEGAL DUTIES OF COMMITTEE MEMBERS



## DUTY TO ACT IN GOOD FAITH / PROPER PURPOSE

Duty has two 'limbs':
i.duty to act in good faith in the best interests of the organisation as a whole
ii.duty to act for a proper purpose and within the powers given to the Committee
i. duty to act in good faith in the best interests of the organisation as a whole >act honestly, fairly, loyally; >don't allow personal preferences to govern decision;
>act in best interests of organisation as a whole (not just part of the membership).
ii. duty to act for a proper purpose and within the powers given to the Committee
>all decisions of Committee members must further the purpose for which the organisation was set up
>all decisions of Committee members must be within powers given to the Committee by the organisation

## Top-3-tips to complywith duty:

-Get a copy of your Rules: understand the purpose of your association and your Committee's powers, and use these as a guide for decision-making.
-When making decisions ask yourself: 'Am I deciding this in best interests of the association'?
-Apply a 'how will it look later' test: looking back, would a reasonable person in your shoes have made the same decision?

## LEGAL DUTIES OF COMMITTEE MEMBERS



## DUTY-TOACTWITH CARE, SKILL AND DILIGENCE

This duty requires you to pay attention to, and make considered decisions about:
i. the important affairs, activities and strategic direction of the organisation
ii. the financial position of the organisation (this one is very important - almost a sub-duty!)
> 'care': read and carefully consider information so decision-making is sound
> 'skill': usually no qualifications necessary to be a Committee member, but where there are skills, they must be used for organisation
$>$ 'diligence': thoroughness; seek further advice if needed

## LEGAL DUTIES OF COMMITTEE MEMBERS



## DUTY NOT TO MISUSE POSITION OR INFORMATION

You must not make improper use of i. your position as a Committee member; or ii. information obtained through your position; to either:
> gain an advantage for yourself (or a relative / another association)
> cause a detriment to your assoaociation

Top 3 tips to comply:
-Induct new Committee members: on culture and standards expected by your organisation.
-Avoid gossip about Committee happenings.
-Use information only in the way it was intended by those who gave you the information respect confidentiality.

## LEGAL DUTIES OF COMMITTEE MEMBERS



## DUTY TO DISCLOSE AND MANAGE CONFLICTS OF INTEREST

A 'conflict of interest' is not the same as a disagreement (or conflict) between members.

A conflict of interest is a situation which arises when a person's position in the association provides them with an opportunity to:

- personally benefit (over and above the usual benefits arising from that position); or
- provide a benefit to a relative, close friend or to another organisation with which they are involved.

3 step process for dealing with conflicts of interest:

- disclose
$>$ as soon as possible
$>$ full disclosure
$>$ if in doubt - disclose
- manage
$>$ do not take part in decision-making
$>$ leave the room for all discussion and decisions
- record
> ensure minutes record that you left room / did not take part

