



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 ASSOCIATION

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

**INCORPORATED
ASSOCIATIONS - VIC**

Legislation

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

Regulator

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

**INCORPORATED
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?

Constitution

- 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
 - Election/appointment of members
 - Terms of office
 - Grounds for removal
 - Casual vacancies
 - Quorum & procedures at meetings
 - Procedures 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

Alteration 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

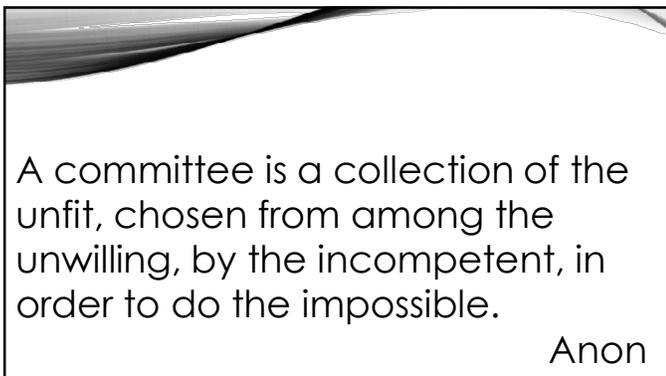
- How many?
- Time – length of terms, maximum terms?
- Office bearers, elected individually?
- How to get rid of the committee?

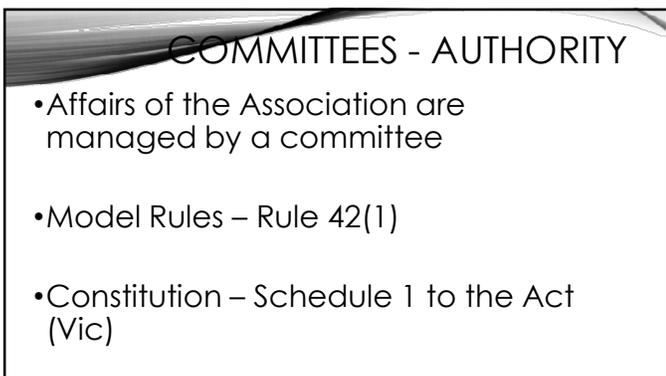
CONSTITUTIONAL ISSUES

Elections

- Who can stand?
- Period of election – one or two years?
- Half senate arrangement?
- Method of voting
- Notice – time & method
- Quorum?







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
 - Entitled to debate (not too early)
 - Encourages participation in debate
 - Puts question to vote
 - Entitled 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

RENTON'S GUIDE FOR 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 (8th Ed) 2005
- Retails for \$122 per volume

LOSKE'S LAW & PROCEDURES AT MEETINGS IN AUSTRALIA

- Explores various sources of law that govern meetings in Australia
 - Common law, Corporations Act, Statutes
- More legalistic
- Current (11th 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 (11th) edition , 2011 – available online, around \$20

MEETINGS

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
 - Items for decision
 - Items for discussion
 - Items for information (if really necessary)

CONDUCT

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 matter, or otherwise deals with the organisations general activities.

MOTIONS

- 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.

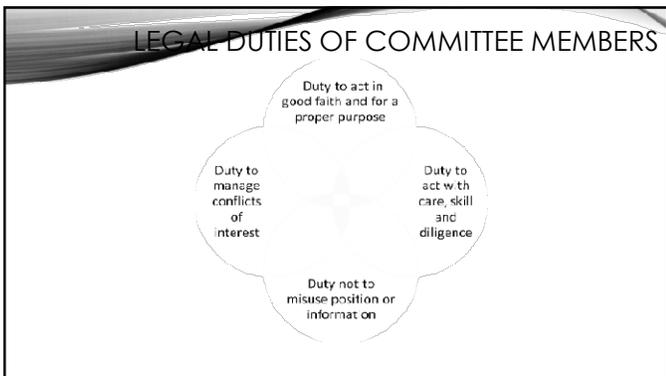
Try:

ourcommunity.com

For:

books, templates, draft policies,
etc.

LEGAL DUTIES OF COMMITTEE MEMBERS



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

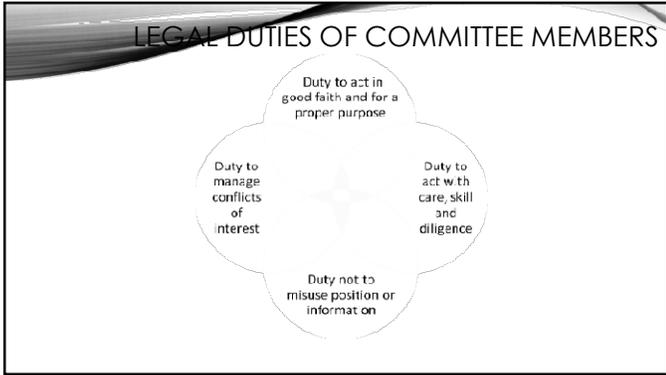
- act honestly, fairly, loyally;
- don't allow personal preferences to govern decision;
- act in best interests of organisation as a whole (not just part of the membership).

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 comply with 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?



DUTY TO ACT WITH CARE, SKILL AND DILIGENCE

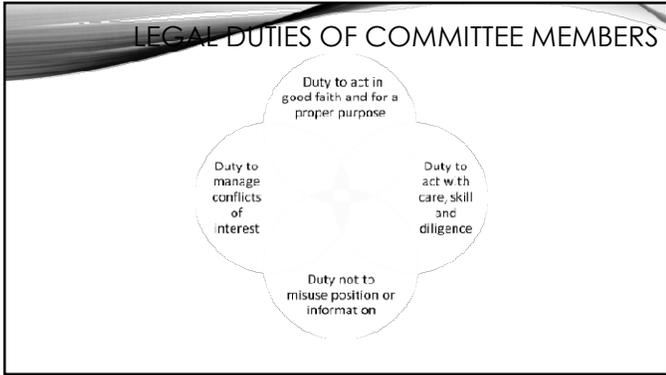
This duty requires you to pay attention to, and make considered decisions about:

- 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



DUTY NOT TO MISUSE POSITION OR INFORMATION

You must not make improper use of

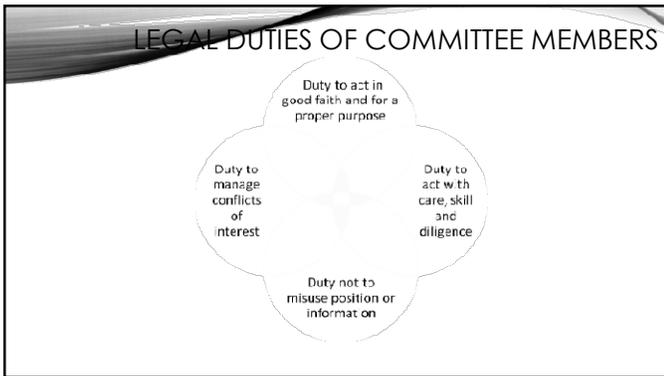
- i. your position as a Committee member; or
- ii. information obtained through your position;

to either:

- gain an advantage for yourself (or a relative / another association)
- cause a detriment to your association

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.



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
