

Affiliated Clubs

All incorporated clubs have the following things in common

- . Separate Legal Entity
- Membership base
- . Common Interest and Purpose
- . Committee or Office Bearers
- . Non-Profit

A Non-Profit organisation does not mean that it may not make a profit – non-profit means that any profits generated by the Club must be returned to benefit the Club as a whole, eg provision of better services or facilities.

Becoming incorporated means the members become a whole entity rather than a group of individuals and it ensures everlasting succession in that the Constitution provides for annual election of committee members and/or office bearers.

The Name of the Club concludes with Incorporated or Inc and it can enter into contracts and even own property.

Most importantly a Club can be sued, (or sue) however under Incorporation the Club as a whole would be sued, rather than the office bearers individually.

There is some restrictions on the ways in which Clubs may operate, once incorporated, such as:

- (a) Any changes to the Constitution

Can only be made in accordance with the existing constitution and the Associations Incorporations Act. This usually requires a Special Meeting for the purpose and a special resolution of members. The changes must be lodged with the Commissioner for Corporate Affairs and be approved.

- (b) Winding Up

The Associations Incorporations Act governs the winding up or dissolution of a Club. The Club's Constitution must include a Dissolution that complies with the requirements of the Act.

To wind up a Club that has not been operative for more than 12 months or has less than six members or has insufficient members to comply with its own Dissolution Clause, the Commissioner can be requested to dissolve the Club.

Responsibilities of a Club include:

MANAGEMENT

Not many powers of management are left to the members because it would prove difficult, if not impossible, to administer. A committee is generally appointed to manage the affairs of a Club.

The members do not then have the power to enter into contracts, etc, as this power has been conferred on the Committee.

LEGAL

- (a) Liable for Debts

If a Club is unincorporated and enters into a contract, there is doubt about where the responsibility lies. Courts have decided over the years that the members are not usually liable,

firstly there are too many of them to sue individually, and secondly it is unlikely that they would enter into a contract. The responsibility for incurring the debt then becomes that of one or more of the Committee members and they become liable.

An incorporated Club has procedures in place to ensure that a collective decision resulted in the debt and there is no personal liability for Committee members. This is the main difference between incorporation and non-incorporation.

(b) Other Liabilities

These may include injury, or breach of contract. Once again there is no personal liability for Committee members of an incorporated club.

(c) Duties

The Office Bearers have a duty of care to the members and the Law has developed standards and rules in this regard. These include:

(i) Use of reasonable care and diligence

What is reasonable standard of care and diligence?

The standard of conduct of office bearers is governed by what is reasonable under the circumstances having regard to the type of club and its circumstances. For example, a Treasurer of a Club need not have a degree in accountancy, or be a member of the CPA.

The Club, however, would be responsible for appointing a “suitable person” as Treasurer and this should not be someone who has been convicted of a criminal offence and who can:

- (ii) Act Honestly (in Good Faith)
- (iii) Avoid conflicts of interest
- (iv) Not use powers for improper purposes
- (v) Not to use information or position to gain a personal advantage

(d) Breach of Duty

In the event of a breach of duty on the part of the Club or its office bearers, a likely consequence may be that someone will have suffered a loss, or the Club may have made a profit at the expense of a third party. In such a case, the law may well require that the Club pays the person who incurred the loss or the profit made be paid to the third party, or a fine imposed.

(e) Personal Injury Negligence

Action or damages can be awarded against the Club when a person is injured. The Club is a separate legal entity in law, but it may be that a member of the Committee has not exercised professional care.

The injured party may sue the Club for damages and the Club may then take action against its office bearers if they did not exercise a duty of care.

COMPLIANCE

Club's must comply with their usual and specific legal obligations, including:

- . Income Tax
- . Goods & Services Tax