

## **City of Albury RSL Sub-Branch Sub-Branch Incorporation – Information Paper**

### **Background**

In efforts to support improved governance and risk management across the organisation, RSLNSW has been working on a procedure for a Sub-Branch (SB) to change its legal status from an Unincorporated Association to incorporate as a Company Limited by Guarantee (CLG). RSLNSW has developed SOP13 to provide an approved process for incorporation to occur and a Model Constitution for any Sub-Branch to adopt on transition to a CLG to ensure consistency across the state. The *RSLNSW Act 2018* has also been amended in 2022 to exempt the RSL Sub-Branch property transferred to a new CLG entity from Stamp Duties.

SOP13 requires Sub-Branch Trustees and Executive to obtain in-principle approval from Members prior to commencing the incorporation process. It requires Members to be provided with all necessary information to make an informed decision. This document for SB Member review and discussion identifies benefits and detriments (or pros and cons) of moving to incorporate the SB as a CLG, including cost estimates.

### **Current Situation**

City of Albury RSL Sub-Branch of RSLNSW is an Unincorporated Association under Charter since its formation over 100 years ago and is registered as a Charity with the Australian Charities & Not for profit Commission (ACNC) which gives the SB certain tax exemptions. The SB also carries a Charitable Fundraising Authority with NSW Fair Trading. This requires the SB to comply with legislation and report on an annual basis to RSLNSW in compliance with its Constitution, and provide an Annual Information Statement to the ACNC, including independent audited financial statements.

As an Unincorporated legal entity current SB governance structures include Trustees, Executive (President, Vice President, Secretary, Treasurer) and a Management Committee comprising 7 Members (3 Executive and 4 additional Members including Assistant Secretary). Formal Management Committee meetings are held on a monthly basis and General Meetings are held monthly with an Annual General Meeting held in March each year. The SB reports on its reconciled financial position on a monthly basis and presents an independent audited financial report on an annual basis to its Membership.

The SB undertakes a number of key activities during the year consistent with its Charitable Purpose, including operation of ANZAC House and grounds, major public commemoration service programs, memorabilia custodianship, fundraising initiatives, securing grants, welfare and well being support, pensions and rehabilitation support. This draws on the expertise and experience of volunteer Members throughout the year, which requires risk management planning and insurance.

### **Company Limited by Guarantee (CLG)**

A CLG is a type of public company suitable for charitable or not-for-profit organisations such as a SB. CLGs usually have a Constitution which includes an object clause that outlines the charitable purpose of the company. RSLNSW SB Model Constitution fulfils this in Clause 2.

Member liability is limited to a nominal guarantee of \$10 which the Member must contribute to the company if the SB is wound up to pay any debts or liabilities or winding up costs. The company cannot distribute assets or income to its members but must reinvest money towards the organisation's purpose.

In order to register a public CLG there are certain minimum requirements:

- There must be at least three Directors, two of which must reside in Australia
- At least one Secretary, who must reside in Australia
- Its Registered Office must be open and accessible to the public
- It must have at least one Member
- Members must hold a guarantee. If the company is wound up, the liability of the members is limited to the amount they have guaranteed.

The RSLNSW SB Model Constitution addresses these requirements, and provides the rules for operation of the company.

### **Benefits & Detriments (Pros and Cons) of Incorporation**

In consideration of the option of transitioning the SB from an Unincorporated Association to an Incorporated CLG, there are pros and cons to be examined in terms of the short and longer term, in terms of organisation and personal risk, in terms of costs avoided and incurred, and in terms of opportunities lost and gained in support of the charitable purpose.

#### **The Pros of Incorporation**

There are several advantages for the SB moving to incorporate as a CLG:

1. **Limited Liability:** the principal advantage of an incorporated company is that it has limited liability. A company may only be forced to pay creditors up to the extent of its own assets and capital. A company is a separate legal entity in its own right - separate from its Members and Directors. This means Members bear no personal liability for the debts and obligations of the company.

The SB currently as an Unincorporated Association leaves its Executive and Members exposed to significant risk through exposure to personal liability in the event of litigation, breach of contract, or incurring debts despite having SB assets and insurance, amounts are limited in terms of money and extent of indemnity.

In an increasingly litigious world where compensation is a significant risk, as long as Directors of a company are meeting the regulatory requirements (including insolvent trading provisions) and acting in good faith, their personal assets cannot be used to meet outstanding debts of the company. The SB is active undertaking a range of initiatives in support of the charitable purpose which exposes the SB to risks.

2. **Holding of Property and Financial Assets:** The City of Albury SB currently has no property trustees

Incorporation will enable the SB as a legal entity to own and deal with its property and other assets representing the legacy of over 100 years of local efforts supporting ex-service veterans and their families in our community. It will obviate the need for

Trustees under the *Trustees Act* and RSL Custodian Pty Ltd to hold SB property thus eliminating exposure to legal responsibilities and costs associated with Trustees.

3. **Access to Funding Grants:** the SB is currently limited in its access to funding grants and amount of funding to support its charitable purpose. For larger grants, currently the SB must be under auspice of another incorporated organisation to secure funding, and therefore do not have ownership of the project.

Increasingly, it is government policy and policy of other non-government funders that potential grant recipients are an incorporated entity to be eligible to apply for funds. Incorporation as a CLG will enable the SB to access a greater range of government and non-government funding grants to support its operations in the local community.

4. **Enhance Status and Credibility as a Charity:** the SB is currently an Unincorporated Association, defined by the ACNC as 'simply a group of people who have come together to pursue a common charitable purpose'. This sells the SB and its importance as a local charitable ex-service organisation somewhat short.

Government take organisations more seriously if they are an incorporated CLG rather than an Unincorporated Association, particularly important for competitive funding grants, donations and sponsorship, fundraising, and making submissions in support of the charitable purpose.

Incorporation will assist in strengthening the ability to attract sponsorships and donations, as well as assist marketing in fundraising activities.

5. **Streamline Regulatory Obligations:** as an ACNC Registered Charity the SB already reports to the ACNC as the national regulator. Most obligations for incorporated CLGs under the *Corporations Act 2001 (Cwth)* for CLGs 'switch off' when it is a Registered Charity and only need to report to the ACNC, and NSW has made provision to exempt charities from duplicate reporting.

In terms of compliance reporting requirements, in moving to a CLG there is likely to be minimal change as the SB already conducts its business in accordance with the relevant legislation and regulations, and has over a long period of time followed the general conventions of organisation governance and financial management accountability and transparency under constitution, policies and procedures set out by RSLNSW and in Australian Accounting Standards.

6. **Enter into Contracts & Employ Staff:** The SB currently cannot enter into contracts as an entity, which then falls onto individual Office Bearers to assume responsibility (and liability) for the contract. This places limitations on the organisation in terms of funding grants for projects or other undertakings which is dependent on how much personal risk an individual Office Bearer is prepared to assume.

Incorporation as a CLG will enable the SB to enter into contracts as a company, removing the personal risks for Office Bearers and for larger, longer term contracts to be entered into in relation to major projects that the SB may decide to undertake.

7. **Continuity & Succession:** The SB is currently has no Trustees overseeing its operation and legal changes to Trust Deeds which are cumbersome and expensive. An incorporated CLG exists indefinitely (unless wound up) irrespective of the removal, resignation, retirement or death of its managers, directors, or members.

The GLG structure facilitates any desired changes in the day to day control and management of the company and its business activities, operating within the Constitution of the incorporated organisation and relevant legislation. In the SB case, this would be the approved RSLNSW SB Model Constitution to be used in the incorporation process.

### The Cons of Incorporation

1. **Change from an Unincorporated Association to an Incorporated CLG:** will change the status of the organisation and the nature of the entity from just a group of people with shared interest to a company as a separate entity.

As the SB already follows standard conventions of formal governance and financial procedures, and is subject to RSLNSW Constitution, Policy and SOPs it is not anticipated there will be significant changes to the conduct of business of a CLG.

2. **Time & Effort:** the change to an incorporated CLG will take time and effort to make happen. Fortunately, we have been assisted by State Branch as well as Sussex Inlet SB where there are SB Members who have a range of skills and experience to volunteer including those who have owned and operated their own companies and are familiar with the ASIC governance and financial reporting requirements who are willing to contribute time and effort to the process.

### Cost Estimates

1. **Legal Costs:** the legal costs incurred in forming a CLG will need legal advice and support to prepare the required documentation and to manage the transfer of property and assets to the new entity.

Bowen Legal, who are also State Branch's Legal Firm have comprehensive specialised experience in establishing CLGs and have offered to support the SB in undertaking the transition in the short term. There are no longer term recurrent legal costs associated with forming the CLG. The cost estimate for establishment of the CLG is \$7,500.00 plus GST \$750.00 (recoverable).

2. **Financial Accounting Costs:** the financial costs include the transfer of financial arrangements for the SB from the current Unincorporated Association to the new entity.

The current SB independent accountants, Stewart, Tracy and Mylon, have offered to support the SB in establishing the CLG at an estimated cost of \$1,500. SB accounts are already structured in compliance with ASIC requirements and Australian Accounting Standards, so no additional ongoing costs are required in that regard.

3. **Australia Securities & Investment Commission (ASIC) Costs:** There are short term establishment costs for what is defined as a 'small' CLG: Company Name

(\$351), Application for Registration as a CLG (\$417). There is an ongoing Annual Review Fee for CLG (ACNC \$0, ASIC \$51), estimated cost \$1,000.

### **Conclusions and Recommendation**

With the significant changes in the management of organisations over the past 100 years, greater accountability and transparency in governance and financial arrangements, more formalised with greater checks and balances the SB cannot afford not to incorporate as a CLG due to the significant personal exposure to risk of Trustees, Executive and Members. The SB also needs to be able to take the opportunities to secure greater levels of funding support to undertake its charitable activities in the local community.

There are short term costs in moving to establish a CLG but the significant benefits to Members outweigh these in supporting the longer term future and success of the organisation. Given that the SB already operates in ways consistent with an ACNC registered charitable not for profit CLG, changes in governance and financial management would be focused on improvements rather than significant overhauls of SB operations.

Following this assessment, it is recommended that the SB becomes an incorporated entity as a Company Limited by Guarantee (CLG) under the *Corporations Act 2001* (Cwth).

### **Resolution: Approval of Members to Incorporate**

'That in accordance with Clauses 15.25 and 15.26(a) of the RSLNSW Constitution, City of Albury RSL Sub-Branch members resolve to:

(a) Provide approval to cease operating as an Unincorporated Association and incorporate the sub-Branch as a Company Limited by Guarantee (CLG) under the *Corporations Act 2001 (Cth)*.'

(b) Request RSLNSW to transfer the Sub-Branch Charter to the incorporated sub-Branch.'

Correct at time of submission to members 24 October 2023.