



Riding for the Disabled Association (N.S.W.)

Address: PO Box 710 Sydney Markets NSW 2129 **Phone:** 02 8736 1256
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7 July 2020

Per email: centres@rdansw.org.au
lifemembers@rdansw.org.au
regions@rdansw.org.au
stateoffice@rdansw.org.au

TO: RDA (NSW) Family,

Re: Riding for the Disabled Association (NSW) 2020 AGM – Notices of Motion

Please find attached to this letter are the following documents:

- Schedule 1: Notice of Motion 1 presented by RDA (NSW) Box Hill (Tall Timbers) Centre;
- Schedule 2: Notices of Motion 2 to 5 presented by RDA (NSW) Box Hill (Tall Timbers) Centre.
- Schedule 3: Notices of Motion presented by RDA (NSW) Board.
- Schedule 4: Comments by Board on Notices of Motion 1 to 5 of RDA (NSW) Box Hill (Tall Timbers) Centre.

Yours sincerely,

(Joseph Orland)
Honorary Director, Finance Officer, Company Secretary
Riding for the Disabled Association (NSW)

Founded: 1972 by Pearl Batchelor OAM. **Joint Patrons:** Her Excellency The Honourable Margaret Beazley AO QC, Governor of NSW and Mr Dennis Wilson
ABN 50 001 823 267 • CFN 12295 Charitable Fundraising Act 1991 **All donations of \$2 or more are tax deductible**

"RDA (NSW) is a volunteer organisation that provides horse - related activities to enrich the lives of people with disabilities"





Riding for the Disabled Association (NSW) Tall Timbers Centre

Address: 125 Old Pitt Town Road Box Hill NSW 2765 **Phone:** 02 9679 1246 **Fax:** 02 9679 0638
e-mail: talltimbers@rdansw.org.au **website:** www.talltimbers.rdansw.org.au

13 March 2020

RDA(NSW) BOARD OF DIRECTORS
 PO BOX 710
 SYDNEY MARKETS NSW 2129
 Attention: The Executive Officer

CC: RDA(NSW) Centres

Dear All,

RDA(NSW) Tall Timbers Centre submits the following motion for consideration by Members at the upcoming Annual General Meeting on 2nd May 2020.

Motion 1:

That the Member Centres be authorised and empowered to choose whether to remain as an unincorporated entity or to apply to become an Incorporated Association in the state of NSW, under the provisions of the Associations Incorporation Act 2009.

Explanatory Note:

To be clear, there is no obligation for any member centre to change its structure, but rather Member Centres are enabled to make the appropriate choice for their Centre with regard to their size, complexity, growth strategy and operating model. The intention of this motion is to enable Member Centres to make the choice for themselves. Smaller centres may wish to retain the current structure, for the larger centres or those Centres that have a growth strategy in their business model, they may wish to change the structure.

The reason for wanting the change is that times have changed. The current structure of unincorporated entities does not allow Members Centres to fund raise in their own name; to apply for grants and to enter into contracts for services. It is no longer "fit for purpose". A precedence was set with the Eurobodalla Centre establishing itself as an Incorporated Association.

There are liabilities that are placed on committee members personally of unincorporated associations (Reference below)

<http://www.domantaylegal.com.au/wp-content/uploads/sites/813/0001/01/Should-Unincorporated-Associations-Consider-Incorporation-1.pdf>

Difficulties with Unincorporated Associations As unincorporated associations are not regarded as legal entities, members should consider the particular range of difficulties associated with their informal status, including:

- The unincorporated association cannot hold assets in its own name or enter into contracts or employ people in its own name.
- It may have difficulties opening bank accounts or obtaining insurance.
- Funding bodies such as the Government and most Foundations usually require an organisation to be incorporated, before accepting application for grants.
- If real property and other assets are "owned" by the unincorporated association, or rather, held on behalf of its members, there may be confusion as to who owns those assets.

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Patron: His Excellency General The Honourable David Hurley AC DSC (Ret'd) Governor of NSW

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- Gifts and donations made to the non-legal entity also present a problem. Gifts may fail, unless the gift is specified as being for present or future members beneficially.
- **If the organisation faces a legal claim based on contractual relations or tortious liability it is possible the committee members may be sued and face liability personally.**
- Unexpected issues with respect to Dissolution of the unincorporated association may arise, especially if considerable assets.....

Further reading can be found on the following documents/websites.

<https://www.acnc.gov.au/factsheet-unincorporated-associations-and-acnc-registration>

For those Centres that would wish to apply to become an Incorporated Association, there are two key legislative instruments in NSW.

The Associations Incorporation Act 2009 is the relevant NSW legislative instrument that provides for the registration of clubs, societies and other non-profit associations; and provides for the regulation of those associations after registration; and for other purposes.

The Associations Incorporation Regulation 2016 provides a Model Constitution which could be adopted directly by any Member Centre. This would minimise the effort required to update their Constitution and most importantly would also ensure that the Constitution for any Member Centre would be clearly aligned with the NSW legislation.

Kind regards

Elaine van Es

Elaine van Es
Hon. President

Jennifer Walden
Hon. Secretary



Riding for the Disabled Association (NSW) Tall Timbers Centre

Address: 125 Old Pitt Town Road Box Hill NSW 2765 **Phone:** 02 9679 1246 **Fax:** 02 9679 0638

e-mail: talltimbers@rdansw.org.au **website:** www.talltimbers.rdansw.org.au

13 March 2020

RDA(NSW) BOARD OF DIRECTORS
PO BOX 710
SYDNEY MARKETS NSW 2129
Attention: The Executive Officer

CC: RDA(NSW) Centres

Dear All,

RDA(NSW) Tall Timbers Centre submits the following motion for consideration by Members at the upcoming Annual General Meeting on 2nd May 2020.

Motion 2:

a) All assets recorded in Financial Statements held by the unincorporated Member Centres entity, at the time of transfer to Incorporated Association in the state of NSW, remain with the newly formed Incorporated Association entity under the provisions of the Associations Incorporation Act 2009, provided the new Incorporated Association continues to deliver RDA (NSW) services to their local communities.

Explanatory Note:

Member Centres fundraise from their local communities to enable delivery of service for Riding for the Disabled Associations (NSW). As historically the local communities of centres have financially supported this cause. To have funds returned to Riding for the Disabled Association (NSW) would hinder the delivery of this community backed service. This would also ensure the continuity of service delivery to rider participants and ensure the good work follows. The above motion also ensures that funds remain in NSW to support the RDA(NSW) movement.

Further, there is a continuity of business, whereby current bank account held by the unincorporated Member Centre will be retained by the Member Centre in the newly formed Incorporated Association name with the recording of a name change lodged with the relevant authorities. Along with advising ACNC of change of legal structure by completing Form 3B: Change of charity details.

Motion 3:

Land holdings held in trust by RDA(NSW) on behalf of an unincorporated Member Centre for the benefit of Member Centre under Sect 3.1 (n) of RDA(NSW) Constitution dated 5 May 2018, prior to the Member Centre becoming an Incorporated Association in the state of NSW, be transferred to the Incorporated Centre upon completion of obtaining status. Cost for such transfer, will be at the member centre cost.

Motion 4:

Upon ceasing or winding up of Incorporated Centre, all property will be transferred to RDA(NSW) in line with Section 9 of RDA(NSW) Constitution dated 5 May 2018.

Motion 5:

Name of Incorporated Association of a Member Centre be - Riding for the Disabled Association (NSW) (*insert Centre name*) Incorporated.

Kind regards

Elaine van Es

Elaine van Es
Hon. President

Jennifer Walden
Hon. Secretary

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Address: PO Box 710 Sydney Markets NSW 2129; **Phone:** 02 8736 1256
Email: stateoffice@rdansw.org.au **Website:** www.rdansw.org.au

18 March 2020

Per email: stateoffice@rdansw.org.au

Jan Pike, EO, RDA (NSW)

Notices of Motion for presentation at the 2020 AGM of RDA (NSW)

On behalf of the Board of RDA (NSW) I move the following motions for presentation at the 2020 Annual General Meeting of RDA (NSW):

Motion 1.

"That the legal opinion which will be received from RDA (NSW)'s solicitors by the Board in respect of the issue of converting the RDA (NSW) Centres to incorporated entities be brought to an Extraordinary General Meeting of RDA (NSW) to be called by the Board of RDA (NSW) for discussion and decision by the Members of RDA (NSW)."

Reason:

The Board supports the proposal that the RDA (NSW) Centres be incorporated. However, there are two main ways that this can be achieved. The first is under the Associations Incorporation Act 2009 and the other is under the Corporations Act 2001. The reason for this motion is that the structure of RDA (NSW) and its Centres may be more suitable to one form of incorporation than the other and the advice could also give guidance on how the process could be best achieved.

Motion 2.

"That the motions as put by the RDA (NSW) Box Hill (Tall Timbers) Centre relating to the incorporation of Centres be adjourned to the Extraordinary General Meeting of RDA (NSW) until after a legal opinion on the issue is received from the RDA (NSW) solicitors."

Reason:

The advice which will be provided is expected to provide more information on which decisions on the incorporation of Centres and related matters could be based.

Joseph Orland
Honorary Director, RDA (NSW)

Response by Directors of RDA (NSW) to Notices of Motion

The Board of RDA (NSW) has received Notices of Motion from the RDA (NSW) Box Hill (Tall Timbers) Centre. These Motions were submitted for discussion at the 2020 AGM of RDA (NSW).

The Board of RDA (NSW) has reviewed these Motions and considers it appropriate to make comments on the various Motions.

Motion 1

That the Member Centres be authorised and empowered to choose whether to remain as an unincorporated entity or to apply to become an Incorporated Association in the state of NSW, under the provisions of the Associations Incorporation Act 2009

RDA (NSW) Board Comments on Motion

The Board supports this motion but is seeking legal advice on what the requirements are for Centres (lodgements, general requirements, costs, etc.), how the process is to be implemented, whether the incorporation of Centres affects the whole of RDA (NSW), whether there are any issues that need to be addressed in relation to the implementation of the process and the on-going administration of RDA (NSW) with incorporated Centres and/or a mix of incorporated and unincorporated Centres.

It needs to be noted that RDA (NSW) Centres are not “stand alone” groups or associations. They are part of RDA (NSW), and RDA (NSW) is a company. That means each Centre is a part of that company and not independent of, or separate from, RDA (NSW). Centres are “hybrid” organisations. They are not themselves companies, but they are part of a company – that is, they are branches of RDA (NSW). This needs to be kept in mind when talking of “unincorporated associations” in the context of RDA (NSW) Centres. Therefore when we refer to RDA (NSW) Centres are “unincorporated”, this needs to be understood in the context of the relationship between RDA (NSW) and the RDA (NSW) Centres – they are not separate from each other.

Explanation by Centre of Motion

The reason for wanting the change is that times have changed. The current structure of unincorporated entities does not allow Members Centres to fund raise in their own name; to apply for grants and to enter into contracts for services.

RDA (NSW) Board Comments on Centre Explanation

The Board agrees that times have changed. This is why the Board has again sought legal advice on the matter. That request for advice is not limited to just the Centres. As times have changed, the advice being sought is whether the current structure of RDA (NSW) (the company itself) is still appropriate and whether changes need to be made (while still retaining its “not for profit” nature and remaining as a “company

limited by guarantee"). This request for advice therefore covers the organisation as a whole as well as the interaction between RDA (NSW) and Centres and between Centres.

It is not correct to say that unincorporated RDA (NSW) Centres are not allowed to raise funds. Centres are still able to raise funds in their own name even if they remain unincorporated, just as they have been doing.

It is partially correct that Centres cannot apply for grants in their own name. However, this statement is true only in relation to some grants because of policies of the grant providers, but that does not mean that this rules out Centres from applying for certain grants.

In those instances where the terms of the grant are that the application can only be made by a separately incorporated entity, it is simply a matter for the Centres to send the completed application to the Board for signing off on the application by Directors. This is what happens now. The process also satisfies a number of other provisions, including that the Board is made aware of what is happening at Centres – as is required under the Corporations Act and will still be a requirement if Centres are incorporated, even if Centres apply for the grants in their own name.

It is also wrong to say that unincorporated RDA (NSW) Centres cannot enter into contracts for services.

If this statement were to be correct, Centres would not be able to engage contractors such as farriers, vets, horse dentists, electricians, plumbers, etc. They would also not be able to purchase insurance policies over Centre assets nor would they be able to purchase horse feed, riding helmets, horse equipment, etc.

However, the statement is correct in relation to the ownership of shares and land. In NSW land and shares are only allowed to be directly held by individuals and companies.

Explanation by Centre of Motion

As unincorporated associations are not regarded as legal entities, members should consider the particular range of difficulties associated with their informal status, including:

- ☐ The unincorporated association cannot hold assets in its own name or enter into contracts or employ people in its own name.
- ☐ It may have difficulties opening bank accounts or obtaining insurance.
- ☐ Funding bodies such as the Government and most Foundations usually require an organisation to be incorporated, before accepting application for grants.
- ☐ If real property and other assets are "owned" by the unincorporated association, or rather, held on behalf of its members, there may be confusion as to who owns those assets.
- ☐ Gifts and donations made to the non-legal entity also present a problem. Gifts may fail, unless the gift is specified as being for present or future members beneficially.
- ☐ **If the organisation faces a legal claim based on contractual relations or tortious liability it is possible the committee members may be sued and face liability personally.**
- ☐ Unexpected issues with respect to Dissolution of the unincorporated association may arise, especially if considerable assets.....

RDA (NSW) Board Comments on explanation

While these statements may be correct, they need to be seen in the context of the relationship between RDA (NSW) and the RDA (NSW) Centres. And, in that context, those statements are not entirely correct.

The important thing to note is that RDA (NSW) Centres are not stand-alone organisations. They are part of RDA (NSW) and RDA (NSW) is a company. That is why, for example:

- The Board of RDA (NSW) is to be informed of expenditure in excess of \$5,000 – under the Centre Constitutions Centre Committees are delegated by the Board of RDA (NSW) to manage Centres and spend funds up to that amount; the Board needs to approve expenditure above that amount.
- The Board is ultimately responsible for the actions of Centres under the Corporations Act.
- Centres are required to submit accounts to the Directors of RDA (NSW) to help the Board comply with its obligations under the Corporations Act.

The Board understands that some Centres, have paid employees. All Centres purchase and hold assets in their own name. In the context of the RDA (NSW) structure, the statement that “The unincorporated association (when referring to RDA (NSW) Centres) cannot hold assets in its own name or enter into contracts or employ people in its own name” is not strictly correct.

It is true that unincorporated organisations can have difficulties opening bank accounts, but it is suggested that this problem is not restricted to unincorporated associations. It is understood that all Centres have accounts with financial institutions.

It is true that, under NSW law, unincorporated associations cannot own land. Nor can they hold interests in land. However, as RDA (NSW) Centres are part of RDA (NSW), the land and leases on land on which Centres are located are held by RDA (NSW).

It is also true that gifts made to unincorporated associations can present a problem in certain circumstances. However, again, this is not the case with RDA (NSW) and its Centres. The issues referred to do not apply in the context of our organisation. Any gifts, donations and bequests made for a Centre have always been forwarded to that Centre and will continue to be forwarded to the proper Centre.

Gifts and donations to RDA (NSW) and to the RDA (NSW) Centres are regulated, including by the Australian Charities and Not for profit Commission (ACNC) and the same provisions would apply whether Centres are separately incorporated or unincorporated.

Again, it is correct that “If the [unincorporated] organisation faces a legal claim based on contractual relations or tortious liability it is possible the committee members may be sued and face liability personally”, but that depends on the facts. However, again, this statement must be seen in the context of RDA (NSW) and its Centres, with Centres being part of RDA (NSW). RDA (NSW) is a company and, it is submitted, provides the protection of companies to Centre Members. However, even if Centres were incorporated, directors or managers of the incorporated entity can still, depending on the facts, be subjected to legal claims in respect of their own actions which led to the instigation of legal action.

Finally, it is, again, correct to say “Unexpected issues with respect to Dissolution of the unincorporated association may arise, especially if considerable assets.” However, again this must be seen in the context of RDA (NSW) and the RDA (NSW) Centres as that statement does not apply in relation to RDA (NSW) Centres. One only needs to look at the Centre Constitution: on the dissolution of a Centre, the assets are to be held

by the Association (ie, the company known as RDA (NSW)). It also needs to be noted that the policy is that such assets are to be held for other Centres in the Region or, if not needed in that Region, to Centres in other Regions with the most need.

Explanation by Centre of Motion

The Associations Incorporation Regulation 2016 provides a Model Constitution which could be adopted directly by any Member Centre. This would minimise the effort required to update their Constitution and most importantly would also ensure that the Constitution for any Member Centre would be clearly aligned with the NSW legislation.

RDA (NSW) Board Comments on explanation

Agreed. There is already a strong correlation between the Model Constitution as found in the Associations Incorporation Regulation and the existing Centre Constitution. However, that document which is in the Regulations is only a guide and can apply in many “stand-alone” situations. But it does not have certain provisions that are necessary for an organisation such as RDA (NSW) and its Centres. Even if separately incorporated, Centres remain an integral part of RDA (NSW) and do not operate separately from RDA (NSW).

Work is well underway to develop and update the Centre Constitution. It is envisaged that the updated Centre Constitution will be suitable for both incorporated and unincorporated Centres.

Motion 2

All assets recorded in Financial Statements held by the unincorporated Member Centres entity, at the time of transfer to Incorporated Association in the state of NSW, remain with the newly formed Incorporated Association entity under the provisions of the Associations Incorporation Act 2009, provided the new Incorporated Association continues to deliver RDA (NSW) services to their local communities.

RDA (NSW) Board Comment on Motion

This is the understanding of how assets are now held by Centres. This means that the proposal will continue to apply and there is not expected to be any change from the current situation should Centres become separately incorporated.

Motion 3

Land holdings held in trust by RDA(NSW) on behalf of an unincorporated Member Centre for the benefit of Member Centre under Sect 3.1 (n) of RDA(NSW)Constitution dated 5 May 2018, prior to the Member Centre becoming an Incorporated Association in the state of NSW, be transferred to the Incorporated Centre upon completion of obtaining status. Cost for such transfer, will be at the member centre cost.

RDA (NSW) Board Comments on Motion

Whether or not land held by RDA (NSW) is held “in trust” for an RDA (NSW) Centre is a moot point at law. However, there are numerous other legal issues to be considered and dealt with and this is part of the legal advice which has been sought to ensure that everything is done correctly. It involves more than a signature on a piece of paper and is too important an issue to be rushed without proper legal advice.

This motion relates to, and potentially affects, two RDA (NSW) Centres. One parcel of land was donated to RDA (NSW) by a Government instrumentality for use by a Centre while another parcel of land was bequeathed to RDA (NSW) for use by a Centre.

In addition to those two parcels of land, it is noted that RDA (NSW) owns one other parcel of land, that at Box Hill. That land cannot be said to be held “in trust”, as it was purchased by RDA (NSW) for the use of RDA (NSW). It is just as much an RDA (NSW) investment as was the previously owned land at Kellyville and any other asset acquired and owned by RDA (NSW). As a result, that property cannot come under the provisions of this Motion 3.

Motion 4

Upon ceasing or winding up of Incorporated Centre, all property will be transferred to RDA(NSW) in line with Section 9 of RDA(NSW) Constitution dated 5 May 2018.

RDA (NSW) Board Comments on Motion

This mirrors current provisions and demonstrates, and is based on, the inter-relationship between Centres and the company that they are a part of – RDA (NSW).

Motion 5

Name of Incorporated Association of a Member Centre be - Riding for the Disabled Association (NSW) (*insert Centre name*) Incorporated

RDA (NSW) Board Comments on Motion

The Board supports this Motion.



(Joseph Orland)

Honorary Director, Company Secretary, Finance Officer
RDA (NSW)