

Our Ref: CJC: 759229

24 July 2020

Margaret Norman
Hon. Director/Chairperson
Riding for the Disabled Association (NSW)

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Dear Margaret

Annual General Meeting - 25 July 2020
Notice of Motions

We refer to our telephone conference yesterday and confirm our advice as set out in this letter.

We have reviewed the following documents provided by you:

1. Constitution (5 May 2018)
2. Notice of Annual General Meeting;
3. Letter from Riding for the Disabled Association (NSW) Tall Timbers Centre dated 13 March 2020 proposing Motion 1; and
4. Letter from Riding for the Disabled Association (NSW) Tall Timbers Centre dated 13 March 2020 submitting Motions 2-5.

We comment on the Notice of Motions for the company Riding for the Disabled Association (NSW) (RDA) as follows:

Notice of 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.

We note the reference to "Member Centres" is not a term used in the Constitution and is unclear. It may be a reference to "Centre Member" defined in clause 2.1. However, this may not be appropriate as it includes "a member who has been accorded Honorary Life Membership of that Centre". There may also be some concern as to whether it should extend to a Provisional Centre.

From the Explanatory Note for the Motion, it may be the motion is aimed at the individuals involved in an Accredited Centre. My understanding is that each Accredited Centre operates

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as part of Riding for the Disabled (NSW). They are branches of the company not separate legal entities or an unincorporated association.

If the motion refers to Accredited Centres which operate as part of RDA it makes no sense to suggest that they could "become" an incorporated association. If the motion refers to the individuals associated with an Accredited Centre it also makes no sense as RDA cannot "authorise" or "empower" those individuals to apply for an incorporated association as they have an ability to do this under the *Associations Incorporated Act 2009*.

On this basis, we recommend that Motion 1 be withdrawn.

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 Association Incorporated Act 2009, provided the new Incorporated Association continues to deliver RDA (NSW) to their local communities.

We note the motion refers to the "unincorporated Member Centres". As noted above, "Member Centres" is not a term used in the Constitution and currently the operation of Accredited Centres are part of the company being RDA. These terms are unclear and likely to create uncertainty in the operation of a resolution adopting this Motion.

We are instructed that all assets recorded for an Accredited Centre in the Financial Statements are assets of RDA as a company. It makes little sense to suggest that the assets "remain with the newly formed Incorporated Association entity". If an Incorporated Association was formed, it would be a matter for RDA as a company to transfer the assets to the new Incorporated Association.

We note that any proposal to dispose or transfer the property RDA would need to consider, among other things, the following:

- how the transfer of the assets is promoting the Objects of RDA: clause 6.1 of the Constitution; and
- if the transfer is in breach of clause 6.2 of the Constitution.

In practice, where the individuals involved in an Accredited Centre established an Incorporated Association, that Incorporated Association may apply to RDA for membership. This application can be considered in accordance with clause 10 of the Constitution. In other not-for-profit organisations such applications by an Incorporated Association are accepted where it has the same objects as the parent company, it has a Constitution approved by the parent company and complies with the Policies and Procedures of the parent company.

In the circumstances, we would recommend that Motion 2 be withdrawn.

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. Costs for such transfer, will be at the member centre cost.

We note the difficulties with the reference to "unincorporated Member Centre" as noted above.

We note that the transfer of property held by RDA is subject to the Constitution clause 6 *Application of Property*. We note that each parcel of land will need to be properly considered with respect to the basis it is held, the terms of the trust and the request for a transfer to a new legal entity such as an Incorporated Association.

We recommend this motion be withdrawn.

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.

We note that this Motion if passed will not be binding on a separate legal entity being an Incorporated Association.

An Incorporated Association is a different legal entity to RDA and the winding up of an Incorporated Association must be done in accordance with the provisions of the *Associations Incorporation Act*. The Incorporated Association must follow the requirements of the *Associations Incorporation Act Part 6 External Administration and Winding Up*.

The concern that surplus property be transferred to RDA can be properly dealt with in considering an application by an Incorporated Association to be a member and the terms of the Constitution of that Incorporated Association.

We recommend this motion be withdrawn.

Motion 5

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

We note that this is a matter for the persons applying to establish an incorporated association to submit a name as part of the application: Section 15-18 *Associations Incorporation Act 2009*. In particular, a name will not be acceptable if the public would be likely to be misled in relation to an existing Association: Section 18(1)(d)(ii). This would usually be resolved in an application for membership to the parent company.

We recommend that this Motion be withdrawn.

If you have any questions, please do not hesitate to contact me.

Yours faithfully

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