



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

22 April 2021

Per email: communications@rdansw.org.au

Questions to the Directors, RDA (NSW)

The RDA (NSW) Box Hill Tall Timbers Centre has submitted questions to be addressed by the Directors of RDA (NSW) at the Association's 2021 Annual General Meeting to be held on 1 May 2021.

A copy of these questions is attached.

Also attached are the responses of the Directors to the Centre's question.

For, and on behalf of the Board of RDA (NSW),

(Joseph Orland)

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



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

14th April 2021

To: Board of Directors, cc: State Network Committee, cc: Centres, cc: Life Members

Dear Board of Directors

We note the request of the Members at the **2020 AGM on the 25th July 2020**, in response to Tall Timbers Centre motions on the Incorporation of individual Centres, if they wish and the Board motion in relation to the possible restructure of RDA NSW, **has not been actioned**. Action items noted from the 2020 AGM;

- Special General Meeting to be called by 31st October 2020 detailing outcome from legal professional.
- In the interim a Working Group to be formed by the Board, to provide a brief on the questions that Members wished to be addressed, by the RDA NSW independent legal advisor, who specializes in re-structuring of Not for Profit entities from Member's perspective.
- It was also established at the 2020 AGM, that HWL Ebsworth - Christopher Connolly **did not** specialize in the Not for Profit sector or company structures and restructures and in fact his area of specialty is in Aged Care and Retirement Living, Government, Planning and Environment, Real Estate and Projects.

Subsequent Regional workshops were formed, where a clear request from Members present including Regional Representatives and spokesperson from multiple Accredited Centres, confirmed that Members wanted further detailed legal advice to be obtained by the Board in relation to the possible restructure of RDA(NSW) and the incorporation of Accredited Centres as per requested feedback provided to Margaret Norman on 1st September 2020 as outcome results of Metropolitan Regional Workshop held on 25th August 2020 (refer attached).

We refer to letter dated 29th October 2020 written on behalf of the board by Jan Pike where it was stated with apologies "*as at today's date, that legal advice has not been received*" further "*the board anticipates the meeting will be called 10days after the receipt and distribution of the legal advice*". The special general meeting deferred.

Nine months has now passed with no legal advice forthcoming, a new 2021 AGM upon us, the same questions and scenarios unanswered, we therefore request the following information;

1. **Has the board engaged a legal professional to address members concerns?** During the 2020 AGM, it was noted that Joseph Orland had stated that the Board had already started this process regarding the re-structure of the organization.
2. The name of the firm engaged by the Board to provide such advice?

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

3. The date the Members can expect the legal advice to be released for discussion?

The Member base can only make a decision on motions when they have all the information presented by the Board, including independent advice from legal specialist familiar with company structures within the Not for Profit sector.

The upcoming AGM evokes other questions;

1. How does the board plan to manage the secret ballot as per s.28 (e) of the constitution and remain fully transparent when the current Company Secretary and Chairperson are up for re-election?
2. How will the board manage an independent scrutineer?
3. Will the AGM be a hybrid meeting to allow for more inclusiveness of members in regional areas not able to travel?
4. Auditors Report and Financial Report have not been released as per s.16.1 of the constitution and Corporations Act 2001. The timeframe has now exceeded the 21days notice period. When can Members expect these?
5. Minutes from 2020 AGM have not been released to date. When can Members expect these?

We await response from the board.

Yours faithfully

Elaine van Es

Hon. President

On behalf of the Tall Timbers Centre Committee.

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Re: Working Group Outcomes for Incorporation & Re-structure

Request for written legal advice from and independent legal advisor who specialises in Re-structuring not for profit entities, from Members perspective, as discussed at Working Group.

The below is a list of questions that Member Centres are seeking legal advice on, from a member based perspective:

Current structure of RDA(NSW)

- 1. Delegation of Committees to manage Centres.** People in their respective local communities, rally together to form a “Member Centre” with the sanction/acceptance from RDA(NSW), following all policies and procedures set by RDA(NSW), which also gives them access to the use of “branding”.
 - a) are these “people/individuals/committees” acting in their own right forming an unincorporated entity being the Member Centre? If so
 - b) what level of protection do these people/individuals/committees have against personal litigation?
 - c) If not a), then what level of protection do these people/individuals/committees have against personal litigation?
 - d) Assuming that we all fall under the one Company, can these people/individuals/committees be held accountable under 2 separate constitutions? One being their Member Centre Constitution and the second being RDA(NSW) Constitution for the one organisation. Which would prevail?
- 2. Communication breakdown.** We have an overarching Company with a top down hierarchy chain of command. We also have a bottom up member base where local RDA(NSW) Member Centres, members vote in their committees to manage operations and liaise with the company and be their voice. Member Centres form the member base of RDA(NSW). Member Centres vote in the board of directors of the Company on behalf of their members. A fracture appears when the top down and bottom up collide. How does our current structure bridge this gap? or can our current structure bridge this gap?
- 3. Perceived interpretation from external governing bodies as to “our fit” for their requirements.**
 - a) ACNC report with bulk lodgement as one entity, although we appear as separate business units.
 - b) Fair Trading recognise Company Structure.
 - c) ATO recognises separate business units.
 - d) How do we streamline our structure from an external perspective?

Proposed structures with holding company as per attachments 2, 3 & 4 on letter to solicitor dated 12th May 2020

1. **Ethical debate –**

- a) Is it ethical for a not for profit charity to place assets in a holding company/ safe harbour structure?
- b) Who are we protecting the assets from?
- c) Society and communities provide these assets to support RDA movement in achieving our mission and goals in their respective areas, which in return RDA(NSW) Member Centre provide a service to their respective communities. How does putting these assets away in a holding company support the local communities?
- d) It appears from these suggested subsidiary structures that RDA(NSW) Company is putting these assets in the one basket to preserve them as oppose to utilise them. Is this a viable strategy for a not for profit charity?

2. **Communication and functionality of proposed new structure.** Board members of RDA(NSW) also holding management positions, this places an increased workload on volunteer directors. How do we structure the organisation to allow for growth and streamline work load's, whilst maintaining functionality, increase timeliness of responses between board/management and Centre on issues like grants, spending funding and entering into contracts ie: rental agreements?

3. **Incorporation of Member Centres.** Will this remove some of the issues in structure that we are currently experiencing? Can we have a hybrid structure where some Member Centres are Incorporated and others forming part of the Company?

RESPONSE TO QUESTIONS TO BE PUT TO THE RDA (NSW) DIRECTORS AT THE RDA (NSW) 2021 AGM

By letter dated 14 April 2021, the RDA (NSW) Box Hill Tall Timbers Centre put forward questions to be directed to the Board of RDA (NSW) at the RDA (NSW) 2021 AGM. The Centre also re-sent questions which had been sent previously. A copy of each of those letters is attached to this document.

The Directors of RDA (NSW) consider it appropriate to provide a written response to each of those questions. Accordingly, the Centre's Questions and the Board's Response are contained below in the appropriate columns.

<u>Centre Question</u>	<u>Board Response</u>
<p>1. Has the board engaged a legal professional to address members concerns? During the 2020 AGM, it was noted that Joseph Orland had stated that the Board had already started this process regarding the re-structure of the organization.</p> <p>2. The name of the firm engaged by the Board to provide such advice?</p>	<p>The Board notes that the answers to questions 1 and 2 have already been provided a number of times, and that solicitor, a partner in a large, commercial law firm that operates throughout Australia, has spoken to the Members at the 2020 AGM in relation to the issues under consideration.</p>
<p>3. The date the Members can expect the legal advice to be released for discussion?</p> <p>The Member base can only make a decision on motions when they have all the information presented by the Board, including independent advice from legal specialist familiar with company structures within the Not for Profit sector.</p>	<p>The Board has provided available information but it is noted that, in the interests of ensuring that all matters were able to be considered, as the RDA (NSW) Box Hill Tall Timbers Centre had informed the Board that it was acting on advice it had received, the Board requested the Centre to supply the Board with a copy of the advice received by the Centre.</p> <p>This request was made in the light of the Regional Workshops which were being held in anticipation of the Workshop of 31 October 2020. By letter dated 6 September 2020, the Board of RDA (NSW) asked the RDA (NSW) Box Hill Tall Timbers Centre to supply a copy of that advice and details of the provider of that advice so that advice could be taken into account.</p> <p>A reminder was subsequently issued as time was running out for the planned Workshops and the final Meeting originally planned for 31 October 2020. The RDA (NSW) Box Hill Tall Timbers Centre Committee replied on 28 September 2020. Part of the Centre's response stated:</p> <p style="padding-left: 40px;">“In response to your letter dated 6th Sept 2020.</p> <p style="padding-left: 40px;">The Tall Timbers Centre Committee fails to see the relevance of this line of questioning and how it will place the Board of RDA(NSW) in a better position to refer the results of the Regional Workshops to the RDA(NSW) solicitor, in relation to the possible restructure of RDA(NSW) and the Incorporation of Centres.</p>

	<p>We therefore decline from responding to your line of questioning, as outlined in your letter, as it appears to be oppressive in nature towards the voice of Members.”</p> <p>The RDA (NSW) Box Hill Tall Timbers Centre refused another request by the Board of RDA (NSW) for a copy of the advice received by the Centre.</p> <p>For reasons consistent with those stated by the RDA (NSW) Box Hill Tall Timbers Centre (in the questions in the column to the left), the Board of RDA (NSW) considers that it may not have all of the information which may be needed in order for a decision to be made and for the matter to be referred to the RDA (NSW) solicitors for further advice.</p> <p>Accordingly, the Board considers that any further action on this issue will depend on full and open discussion and the disclosure of all facts and issues as it would not be in the best interests of RDA (NSW) to proceed in such a complex matter under current circumstances.</p> <p>Also, the Board considers that the expenses of obtaining any further legal advice to advance this matter are best reserved until the matter is able to be progressed when the RDA (NSW) Box Hill Tall Timbers Centre provides a copy of the advice to the Directors of RDA (NSW).</p>
1. How does the board plan to manage the secret ballot as per s.28 (e) of the constitution and remain fully transparent when the current Company Secretary and Chairperson are up for re-election?	<p>The Board proposes to manage the secret ballot for the election of Directors at the RDA (NSW) 2021 AGM in the same way as it was done for election at the 2020 RDA (NSW) AGM.</p> <p>At that 2020 AGM, the Chairperson and the Company Secretary each delegated others, independent of the Board, to perform the roles that they are ordinarily required to perform under the RDA (NSW) Constitution. Also, independent scrutineers were selected by others who were not associated with the Board.</p>
2. How will the board manage an independent scrutineer?	<p>Historically, volunteers have been selected from amongst the attendees at the AGM who volunteer to undertake the task. Those persons must be independent of the process. The same process will be used for the elections to be held at the RDA (NSW) 2021 AGM.</p>
3. Will the AGM be a hybrid meeting to allow for more inclusiveness of members in regional areas not able to travel?	<p>Yes. Enquiries have been made in relation to organising such Meeting and the Board has recently been advised that appropriate facilities will be available to allow this to happen.</p>
4. Auditors Report and Financial Report have not been released as per s.16.1 of the constitution and Corporations Act 2001. The timeframe has now exceeded the 21days notice period. When can Members expect these?	<p>The finalisation of the Reports was unavoidably delayed, but have been circulated to all Centres. Should Centres consider that they have not been given sufficient time to consider the Auditor’s Report and the Financial Report in order to be able to vote on them, it is proposed that final voting will be deferred to a subsequent Special General Meeting.</p>

5. Minutes from 2020 AGM have not been released to date. When can Members expect these?	The [Draft] Minutes of the RDA (NSW) 2020 AGM were circulated to all Centres on 13 August 2020. A copy is ordinarily also sent in conjunction with the Agenda for the following RDA (NSW) AGM.
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In other correspondence to the Board of RDA (NSW), that Centre has raised questions in relation to various matters, namely:

1. The current structure of RDA (NSW) and
2. The proposed restructure of RDA (NSW).

The Centre's questions and the responses of the RDA (NSW) Board are contained below.

CURRENT STRUCTURE OF RDA (NSW)

1. Delegation of Committees to manage Centres. People in their respective local communities, rally together to form a "Member Centre" with the sanction/acceptance from RDA(NSW), following all policies and procedures set by RDA(NSW), which also gives them access to the use of "branding".

<u>Centre Question</u>	<u>Board Response</u>
a) are these "people/individuals/committees" acting in their own right forming an unincorporated entity being the Member Centre?	<p>Under the RDA (NSW) Constitution, those who are interested in becoming involved with RDA (NSW) in the forming of a Centre have a definite process which needs to be followed. The important first step in answering this question is to look at the definition section of the RDA (NSW) Constitution, with the relevant definition in relation to this question being that of "Member".</p> <p>"Member" is defined as:</p> <p>"a person or organisation who joins or renews as a member of the Company in one of the following membership categories of the Company:</p> <p>.....</p> <p>(f) Steering Committee;"</p> <p>Therefore, a Steering Committee (which is the very first step along the way to forming a fully Accredited Centre), those that form the Committee are part of as a "Member" of RDA (NSW).</p> <p>Under the RDA (NSW) insurance policies, cover taken out by RDA (NSW) includes:</p> <p>"all affiliated Centres, Clubs, Members, Participants/Riders, Volunteers, Officials, Directors, Committee Members and Coaches,"</p>

<p>b) If so what level of protection do these people/individuals/committees have against personal litigation?</p>	<p>As a RDA (NSW) Steering Committee is a Member of RDA (NSW) participants are considered to be volunteers of a Members of RDA (NSW) under the RDA (NSW) Constitution, the insurance policies taken out by RDA (NSW) specifically identifies that they are covered by RDA (NSW) insurances (see copies circulated to all Centres).</p> <p>Accordingly, being volunteers of an RDA (NSW) Member under the RDA (NSW) Constitution, those volunteers have the same cover as all other volunteers of RDA (NSW).</p> <p>However, it must be remembered that this insurance cover does not provide any protection from any action that may be taken against those persons where, for example, their actions are part of any criminal activities, fraud, intention to mislead, causes loss or damage through false or misleading statements, theft, illegal activities, etc.</p> <p>It is trusted that those who want to become involved with RDA (NSW) are not intending to undertake any criminal, fraudulent or other form illegal or improper activities.</p>
<p>c) If not a), then what level of protection do these people/individuals/committees have against personal litigation?</p>	<p>See previous response.</p>
<p>d) Assuming that we all fall under the one Company, can these people/individuals/committees be held accountable under 2 separate constitutions? One being their Member Centre Constitution and the second being RDA(NSW) Constitution for the one organisation. Which would prevail?</p>	<p>The RDA (NSW) Constitution is the primary operative document for RDA (NSW) and its Member Centres. That Constitution takes precedence over any other Constitution of a Member Centre whenever any conflict occurs.</p> <p>The “Centre Constitution” can have alternate titles, such as “Constituent Document”, “Governing Document”, “Governance Standards Document” or similar title. It is, in effect, an agreement between RDA (NSW) and those in RDA (NSW) Centres and, as such, Members of Centres are to abide by both documents – the RDA (NSW) Constitution governs matters affecting the whole organisation, while the Centre document governs the operations of the Centre, but in the event of any inconsistencies, the RDA (NSW) Constitution must be followed.</p> <p>The title of the document is not the important factor, the role that the document performs is what is important.</p>

2. Communication breakdown. We have an overarching Company with a top down hierarchy chain of command. We also have a bottom up member base where local RDA(NSW) Member Centres, members vote in their committees to manage operations and liaise with the company and be their voice. Member Centres form the member base of RDA(NSW). Member Centres vote in the board of directors of the Company on behalf of their members. A fracture appears when the top down and bottom up collide.

<u>Centre Question</u>	<u>Board Response</u>
How does our current structure bridge this gap? or can our current structure bridge this gap?	<p>With respect, the premise upon which this question is based is not agreed with.</p> <p>The example used in introducing this issue highlights that Centres themselves are in a similar situation, but in a smaller scale, that RDA (NSW) is in.</p> <p>Under the current RDA (NSW)/Centre structure, Centres are considered to be branches of RDA (NSW). From a structural point of view, a Centre Committee, in relation to its members (who vote in the Centre Committee) perform a similar role to the Board of RDA (NSW), the members of whom are voted into office by the Member Centres to manage the Centre.</p> <p>The respective roles that Centre Committees and the RDA (NSW) Board play are, procedurally, not all that much different from each other.</p> <p>Via the interaction of the RDA (NSW) Constitution and the Centre Constitution, the Committee of a Member Centre is delegated powers for the management and governance of the Centre and have carriage of the Centre's operation.</p> <p>In between these two "layers" (Centre Committees and the Board are the Regional Representatives.</p>

3. Perceived interpretation from external governing bodies as to "our fit" for their requirements.

<u>Centre Question</u>	<u>Board Response</u>
a) ACNC report with bulk lodgement as one entity, although we appear as separate business units.	<p>Under provisions that apply to organisations such as RDA (NSW), RDA (NSW) and each of its Centres are procedurally able to be treated as "separate business units", even though they are, legally, part of the one organisation, with the Centres being Branches of RDA (NSW) under the present structure of the organisation.</p> <p>The term "Bulk Lodgement" <u>for ACNC purposes</u> refers to the ability for organisations such as RDA (NSW) and its Centres to report with all information being submitted together but with separate Annual Information Statements for RDA (NSW) and for each Centre. From the ACNC point of view, there is only one document, but up to 40 totally separate reports.</p> <p>It is still possible to lodge separate Statements, one for each Centre plus one for RDA (NSW), but it takes a lot longer to achieve the same result.</p>

b) Fair Trading recognise Company Structure.	Yes. As do other administrative authorities which, for example, allows RDA (NSW) and its Centres to use the same Charity Fundraising Number.
c) ATO recognises separate business units.	This is correct, even though RDA (NSW) and Centres (and other charitable not-for-profit entities) are part of the same organisation, for practical purposes they are treated as being separate, even though they are recognised, and accepted, as being part of the same organisation. The important factor here is the term “business unit”. There are laws that specifically allow for this in order to greatly simplify reporting and it applies to charities and not-for-profit.
d) How do we streamline our structure from an external perspective?	It needs to be noted that each of a), b) and c) above have their own criteria and each of those Statutory bodies accept organisations such as RDA (NSW) under their own specific laws, regulations and general provisions. These provisions apply to organisations such as RDA (NSW) and its Centres as they streamline operations..

PROPOSED RESTRUCTURE OF RDA (NSW)

1. Ethical debate

<u>Centre Question</u>	<u>Board Response</u>
a) Is it ethical for a not for profit charity to place assets in a holding company/ safe harbour structure?	It is submitted that there is nothing unethical about wanting to protect the assets of a not-for-profit charity. One would ordinarily think that the protection of the assets of a charity is one of the very important roles of those who are charged with the responsibility, at law, of managing and administering the assets of a not-for-profit charity in order to allow that charity to continue to provide the services for which it was established and operated.
b) Who are we protecting the assets from?	This is one of the proposals that has been put to the solicitors for advice relating to the possible restructure of RDA (NSW) to have RDA (NSW) assets in a “holding company”. The reason for this is that, under the current structure, if the Committee of a Centre does not abide by its requirements under the RDA (NSW) Constitution and the Centre Constitution, that Committee can put the whole of RDA (NSW), including all of the assets of the whole organisation (as well as all of the assets of all of RDA (NSW) Centres) at risk. This risk, which can take many forms, can be greatly reduced, and even eliminated, if those assets are held in a properly structured “holding company” arrangement. It will help ensure that the assets of Centres, as well as of the whole organisation, are better protected against “misadventure” and can continue to be used to provide services to those who use the services of RDA (NSW).

<p>c) Society and communities provide these assets to support RDA movement in achieving our mission and goals in their respective areas, which in return RDA(NSW) Member Centre provide a service to their respective communities. How does putting these assets away in a holding company support the local communities?</p>	<p>Having assets held by a company helps protect those assets in the event of an issue that is referred to in the response to the previous question. Having assets in a holding company is NO DIFFERENT from the current situation from an operational perspective. Those assets are still able to be used as now for the purposes for which those assets are held.</p> <p>The only thing that changes is that those assets are better protected, from a legal perspective, than they are now.</p> <p>If this question was a correct representation of reality, no company which uses this arrangement, which is common commercial practice, could operate as, based on the assumptions contained in this question, they would not be able to use their assets for the conduct of their business activities.</p>
<p>d) It appears from these suggested subsidiary structures that RDA(NSW) Company is putting these assets in the one basket to preserve them as oppose to utilise them. Is this a viable strategy for a not for profit charity?</p>	<p>Assets that are currently used by Centres will physically remain with Centres so that they can continue to use them for the conduct of normal Centre operations. This is no different from a business that is being conducted at different locations but the assets (such computers, trading stock, equipment, etc), while held by the one company, continue to be used by the different branches of the business.</p> <p>It is a very viable strategy if it means that the assets have an increased level of protection. That additional protection helps ensure that those assets may be retained, and not risk being lost to RDA (NSW) and its Centres, as a result of circumstances such as those referred to earlier in this section.</p>

2. Communication and functionality of proposed new structure.

<u>Centre Question</u>	<u>Board Response</u>
<p>Board members of RDA(NSW) also holding management positions, this places an increased workload on volunteer directors. How do we structure the organisation to allow for growth and streamline work load's, whilst maintaining functionality, increase timeliness of responses between board/management and Centre on issues like grants, spending funding and entering into contracts ie: rental agreements?</p>	<p>This is clearly something that needs to be adopted, and it is requested that volunteers from Centres work with the Board to develop the process.</p> <p>The Board is prepared to set up Committees to deal with these issues, in much the same as the Board has in place many other Committees which report to the Board, such as CASP, the Horse Welfare Committee, the Finance Committee, RTO, Dressage Committee, Regional Representatives, Carriage Driving Committee, Mounted Games Committee, EFMH&L Committee and the Riders Committee.</p> <p>If there are sufficient volunteers who are prepared to undertake these procedural tasks, leaving the Directors responsible for the oversight of the particular matters rather than actually having to do the work, tasks can be allocated to those volunteers and matters referred to can be dealt with in the matter suggested.</p> <p>The Board is willing to discuss this with those who are promoting this and are, hopefully, prepared to volunteer take on the tasks which are referred to in the question.</p>

3. Incorporation of Member Centres.

<u>Centre Question</u>	<u>Board Response</u>
Will this remove some of the issues in structure that we are currently experiencing?	<p>It is assumed that this question is asking about the situation should an RDA (NSW) Centre commence to be conducted via an incorporated entity.</p> <p>If a Centre commences to be operated via an incorporated entity, while some issues may be reduced in importance, they can be expected to be replaced by other issues.</p> <p>As advised by the RDA (NSW) solicitor, the proposal to set up a Centre in the form of an incorporated entity actually means setting up an entity which is totally separate from RDA (NSW) and its Centres. This greatly increases the regulatory provisions for the Centre as there needs to be various contractual relationships entered into between the new incorporated entity and RDA (NSW) as well as other regulatory requirements to be met by the new incorporated entity.</p>
Can we have a hybrid structure where some Member Centres are Incorporated and others forming part of the Company?	<p>As has been advised by the RDA (NSW) solicitor, there is nothing stopping someone setting up an incorporated entity and entering into contractual relationship with RDA (NSW) for that incorporated entity to conduct operations similar to those conducted by an RDA (NSW) Centre once that incorporated entity enters into various agreements with RDA (NSW).</p> <p>This is a legal requirement because an incorporated entity is legally a totally separate entity from RDA (NSW) and is not a branch as now.</p> <p>As advised by the solicitor, there needs to be a contractual arrangement between RDA (NSW) and the incorporated entity for that incorporated entity to be able to use the copyright name of “RDA (NSW)” as part of its operating name, as well as to be able to use the copyright material and training, and much more.</p> <p>Also, being, at law, a totally separate entity from RDA (NSW), the incorporated entity would not have any legal right to take over any assets that were used by the former RDA (NSW) Centre, that Centre being a branch, and therefore a part of, of RDA (NSW) without purchasing or leasing them at the appropriate rates. In this regard, Clause 6.2 of the State Constitution states:</p> <p style="text-align: center;">“No portion of the income and property of the Company may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever to any Member.”</p> <p>Even without that provision, as also advised by the solicitor, at law being a separate organisation from RDA (NSW), that incorporated entity cannot benefit from the assets of RDA (NSW), which is a totally separate organisation under the law.</p> <p>On the other hand, Centres that are branches of RDA (NSW) continue as they do now.</p>

Directors,
RDA (NSW)