

Proposal to adopt the Model Rules as the constitution for the Hackett Community Association March 2018

Purpose

To outline a proposal for the Hackett Community Association (HCA) to adopt the 'model rules' as its new constitution.

Background

Incorporated associations are required to be registered with the ACT Government under the *Associations Incorporation Act 1991*. As part of this registration, an association has two options to adopt in relation to how it will operate i.e. its rules/constitution:

1. adopt the 'model rules' prescribed under the *Associations Incorporation Regulation 1991*; or
2. adopts its own rules.

With the formation of the HCA in 2003, an application was submitted to the business licensing area of the ACT Government. A box was ticked indicating that the HCA would adopt the 'model rules' and that the constitution was lodged.

However, a review of the HCA constitution in September 2017, by the Chair (Chris Mobbs) showed that the existing constitution was different to the model rules. The table in **Attachment A** summarises the differences.

In order to confirm what documentation was lodged, in September 2017, Chris Mobbs applied to the Business and Industry Licensing (BIL) section, ACT Government and requested all copies of documents associated with the application lodged in 2003.

They subsequently provided a copy of the original "*Application to Incorporate an Association*" lodged on 8 April 2003. Under Qs 9(b). "*Declaration by the applicant - Are the model rules as set out in the schedule of the Associations Incorporation Regulations being adopted as the rules of the Association?*" the **Yes box has been ticked**. The BIL also advised that they did not have any copies of the HCA actual constitution.

Over the years, amendments have been made to the constitution at several Annual General Meetings of the HCA. Any changes to the constitution must be lodged with the Business and Industry licensing section, however, its records show that none of these amendments were ever lodged.

Issues

Based on this information, it would appear that the HCA has been operating under different rules than those lodged with the government when first incorporated in 2003. As such it is probable that the HCA has been operating contrary to the *Associations Incorporations Act 1991*. A copy of the current HCA constitution can be viewed on the HCA website, <https://www.hackett.org.au/wp-content/uploads/2017/05/Constitution-original-optimised.pdf>.

A comparison of the current constitution and the model rules shows that overall the current constitution is largely similar however, as highlighted in **Attachment A**, there are the following areas for which there are significant differences:

- Financial year, objectives, membership, minimum age, level of fees, Committee structure, AGM quorums and auditing.

Options

Option 1 - Continue with the existing constitution

This would seem the easiest course of action, however the main differences with this and the model rules are:

- the different reporting years (January-December in current constitution, versus the standard July-June in the model rules)
- no requirements for auditing

- Quorum of 20 for AGM, versus 5 in the model rules.

Furthermore, continuing with this constitution may be in breach of the Act, given we originally indicated we would use the model rules.

Option 2 – adopt new constitution based on the model rules

Given that the original application lodged in 2003 indicated that the HCA would adopt the model rules, the overriding document should be the model rules. This would be consistent with the Act.

As shown in Attachment A, the operation of the HCA bears little resemblance to the requirements of the current constitution and in some respects has unnecessarily made the work more difficult e.g. the requirement to have 20 members at an AGM, and our reporting being done on a normal financial year basis instead of the calendar year stated in the current constitution. Given the other major differences it would be prudent and practical to adopt the model rules.

A copy of the proposed HCA constitution based on the model rules is at Attachment B (separate document).

In order to “alter the association's rules, objects or purposes”, the *Associations Incorporation Act 1991* requires:

- “A special resolution must be passed at a general meeting of the association.
- At least twenty-one days’ notice of the meeting must be given to the members of the association together with a notice of intention to propose the resolution as a special resolution.
- At the meeting the special resolution must be passed by at least three-quarters of association members who are entitled to vote, either in person or by proxy (if proxy voting is allowed under the rules of the association). It is not required that three quarters of the total membership pass the resolution, only those that attend the meeting or vote by proxy.”

Recommendation for the special meeting

The special resolution to be put to the special meeting of the HCA on 27 March 2018 is as follows:

The Hackett Community Association agrees to adopt a new constitution based on the model rules prescribed under the *Associations Incorporation Regulations 1991*.

Attachment A

HCA current constitution	Current model rules
<p>2.(1) Financial year means commencing on 1 January and ending on 31 December</p>	<p>Part 1.1 financial year means the year ending on 30 June. Comment – financial reporting has been done in the past based on the July to June FY</p>
<p>3. Objectives these set out the aims of the HCA</p> <p>Comment - The current Mission and Purpose on the website are not identical to the Objectives set out in the constitution.</p>	<p>No specific reference to objectives in the rules though s 32 and 33 refer to the objects of the association Comment – we use ‘Purpose’ wording on the website as the ‘Objects’ of the HCA. If the objectives are not included then they would need to be placed on the website.</p>
<p>4.(1) membership – must be a resident or work in or have a business or property in Hackett</p> <p>4.3 at each meeting the names of applicants must be tabled Comment – the tabling of applicants would appear to have not been done</p>	<p>Part 1.2. membership The membership conditions are generic but the key point is that nominations must be referred to the committee who must decide to approve or reject it. Comment – given the unlikelihood that we would receive lots of applications from outside of Hackett, the committee can assess these on a case by case basis</p>
<p>4(3) minimum age for membership is 16 years</p>	<p>New rules do not specify a minimum age. It is unlikely people under 16 years of age would apply to become members.</p>
<p>6. Fees The committee may set an application fee and/or annual fee</p> <p>Comment – the fees were set at \$2, 5 or \$7.50 and payable annually. However, due to the administrative difficulty in seeking annual renewals and the small levels of funds through these fees, at its October 2017 meeting, the Committee agreed to have no fees to join, or an annual renewal fee.</p>	<p>7. refers to an entrance fee of \$1 or any other amount determined by the committee An annual fee of \$2 or any other amount determined by the committee Comment – the decision by the Committee to have free membership is not contrary to this clause.</p>
<p>14. Structure of committee The office-bearers of the HCA shall be-</p> <ul style="list-style-type: none"> (a) the Chair; (b) the Deputy Chair; (c) the Honorary Treasurer; and Deputy Treasurer; (d) the Honorary Secretary; and Deputy Secretary; (e) the Archives and History Officer; and (f) the Public Officer. <p>Comment – at the 2015 AGM, it was agreed to remove the position of the Archives and history officer from the constitution but this was not done.</p>	<p>12 Constitution and membership</p> <ul style="list-style-type: none"> (1) The committee consists of the office-bearers of the association and 3 ordinary committee members; (2) The office-bearers are: <ul style="list-style-type: none"> (a) the president; and (b) the vice-president; and (c) the treasurer; and (d) the secretary. <p>Comments – the public officer is not prescribed as an office bearer. Chairs and vice chairs are referred to as president/vice president</p>

<p>20. Committee meetings and quorums</p> <p>1. shall meet at such times and places as specified by the committee</p> <p>2. five members for a quorum</p>	<p>18 Committee meetings and quorum</p> <p>(1) The committee must meet at least 3 times in each calendar year.</p> <p>(5). 3 members for a quorum</p> <p>Comment – we will continue holding meeting every month (except for July and January)</p>
<p>General meetings</p> <p>23. must have AGM by end of September</p>	<p>21 (1) must hold AGM within 5 months of end of FY i.e. by end of November</p> <p>Comment – we would continue with an AGM in September</p>
<p>General meetings – quorums</p> <p>27(2) quorum of 20 members</p> <p>Comment – has been very difficult to get 20 people to AGM</p>	<p>General meetings – quorums</p> <p>25(2) quorum of 5 members</p> <p>Comment – 5 members would be far more practical than the current 20 members</p>
<p>42. At AGM a person who is a non-committee member must be appointed as an auditor</p>	<p>The new rules have no requirements for auditing</p> <p>The publication <i>Incorporated Associations In The Act: A Guide</i> states that auditing is not required where funds are Less than \$400,000 and there are less than 1,000 members</p> <p>Comment – not having to engage an auditor will require less work for the Treasurer</p>

References

Associations Incorporation Regulation 1991 SL1991-31 made under the Associations Incorporation Act 1991 Republication No 10 Effective: 18 June 2013 <http://www.legislation.act.gov.au/sl/1991-31/current/pdf/1991-31.pdf>

Incorporated Associations in the Act: A Guide (July 2017) [associations+in+the+ACT+guide.pdf](#)