

AGA Incorporation Proposal

That the AGA register with the NSW Department of Fair Trading as a Tier 2 Incorporated Association using the existing constitution under the NSW Associations Incorporation Act 2009 No 7.

That the AGA committee prepare a revised constitution should the existing constitution be rejected by the NSW Department of Fair Trading and submit that constitution to an EGM no later than 31st March 2018.

Proposed – David Mitchell;
Seconded – Neville Smythe

Voting

Voting will occur at the AGM, in addition the AGA Constitution allows for absentee voting.

If you wish to vote by email, please use your AGA registered email address and send your name and if known your AGA membership number along with your vote of either 'Yes' or 'No' to Secretary@australiango.asn.au by midnight on 28th September 2017.

Background

The Australian Go Association has a little over 300 members and has had a similar number for many years. The potential number of Go players is much higher, probably around 20,000 (taking into account the number of people with Japanese, Korean and Chinese heritage)

The AGA can continue as it is or it can prepare itself to grow and develop. The proposal to incorporate the AGA and making it a legal entity is a small but necessary step to enable the AGA to apply for grants, to engage in agreements in its own right and to protect its members from legal action.

The proposal does not change the aims or governance of the organization. It will require a more professional approach to meeting and records keeping but all of the requirements of Incorporation seem to be straightforward. For example, keeping the names and addresses of all members.

The reason for incorporating in NSW is simply that I accepted the task of investigating and preparing the proposal. Incorporation the AGA in NSW covers the whole of Australia and indeed the rest of the world.

Supporting information

The AGA is currently a common law association. This means that all actions by and against the AGA are the responsibility of the officers and committee members from year to year.

Members of an unincorporated association are, subject to the powers of the association's constitution, capable of entering into contracts and doing things on behalf of other people in the association. Every member is individually and personally responsible for any debts incurred in the name of the association. Where an unincorporated organization enters into a contract or other commitments individual members are responsible and may be sued¹.

If adopted this change will make the AGA a 'legal person' who can enter into and enforce contracts, open a bank account, hold, acquire and deal with property, can sue or be sued and exists in if the members, officers and committee change.

This year the AGA was asked to back the Ing Foundation's University Tournament. This is a great opportunity but any commitments given to the Ing Foundation are those of individual AGA members. A similar situation exists with obtaining rights to show 'The Surrounding Game' movie to AGA clubs and members. Because the AGA is not a legal entity individuals must give their backing to the Ing Corporation, similarly commitments to the producers of the movie on copyright protection must also come from individuals.

It is hard to say what could go wrong in either case but the concerns of most committee members is that AGA members may be held liable and whether it's civil, criminal, a Tax Office investigation or similar the committee members will be the defendants and will have to defend themselves from their own resources. Even if there is no case to answer there will still be legal costs for the officers, committee members and perhaps other AGA members which could be substantial.

The AGA Committee is fully aware of this situation and pass a motion that the AGA should be Incorporated as soon as possible. The vote was 7 in favour, 1 abstained and 1 didn't vote. The rest of this document is an extract of the key issues, there is also a complete list of information sources and associated document reading order are at the end of this document. I encourage everybody to read this material and make an educated decision.

Note: there is a list of supporting documents – details can be found at the end of this document.

¹ <http://www.lawhandbook.sa.gov.au/ch08s02.php>

<http://betterboards.net/non-profit-fact-sheets/unincorporated-association/>

The impact on the AGA

Summary of Outcomes

A successful application would establish the AGA as its own legal identity separate from its members, providing protection to members in legal transactions. An incorporated association:

1. Is a 'legal person'
2. Can enter into and enforce contracts in its own name
3. Can open a bank account
4. Can hold, acquire and deal with property in its own name
5. Can sue and be sued
6. Continues, even though its members may change, and
7. Has to modify its name to Australian Go Association Inc.
8. Can take out public liability insurance
9. Pays fees to register documents (less than \$100 pa – see below for details)
10. Is subject to penalties for non-compliance
11. Has a public officer resident in NSW

State or National organization

Incorporating in one state, in this case NSW means the organization is Incorporated for all of Australia, there is no legal requirement to Incorporate in each state. The only commitment is that the AGA will have a person in NSW who is the 'Public Officer' for the association. The responsibilities of the Public Officer are detailed in the Incorporation Act.

Governance processes

A key requirement of Incorporation is transparency of decision making as well as finances and financial management. Minutes must be kept of all committee meetings and the AGM and must detail all decisions. Those records must be freely available to members within one month of the meeting and may be subject to inspection by the Department of Fair Trading.

Note: The AGA currently keep minutes of the AGM and all committee meetings and the Treasurer maintains the financial records but these are not currently published as required by the Incorporation Act. The AGA Facebook group contains some of the documents but it is unclear if this is enough to be 'open to inspection, free of charge, by a member of the association at any reasonable hour.

AGA Membership records

Incorporation requires membership records to be kept up to date and accurate. The minimum requirement is that membership records contain the member name & address. Internet information such as email addresses, Facebook id etc. are optional. A member may also request that all information except their name is kept private. (It should be noted this is the current default position and will not change with Incorporation).

There are 315 people register as AGA members (as 11th June 2017), the registration database has postal addresses for 110 of those members. Whether the association is incorporated or not this situation should be rectified.

Clubs

There is no change to the constitution, so the status of clubs, state organizations etc are unchanged.

Audit of Finances

Section 47 of the Act covering the annual summary of financial affairs does not require an independent audit for a Tier 2 organisation (less than \$250k revenue p.a.). The Act does require the Tier 2 financial report to be true and fair but it does not say how that is judged.

Insurance

Once the AGA is a legal entity it may choose to take out some sort of public liability insurance, this would be a matter for each committee to decide.

Costs

The fee for lodging the application is \$168.00. There is also an annual fee to lodge the financial statements of \$44 if lodged within a month of the AGM, if the records are not lodged within a month the cost rises to \$78.

Impact on members

Reduced legal liability

Officers, committee members and ordinary members are significantly reduced legal liabilities. Officers and committee members must not be negligent or act in a fraudulent manner but even if they occur such actions do not impact ordinary members.

Increased Costs

The association's costs increase (see above). There may be an insurance payment for public liability should the committee decide to take out a policy.

Administration

All members will have to supply their name and address, where possible an email address.

Members will be able to view the records of AGM and committee meetings, both the preliminary and approved versions.

The AGA will be able to apply for grants from local, state and federal government bodies as well as from other commercial and charitable organizations.

The AGA will be able to receive donations and bequests in its own right.

At least one of the management team must be a resident in NSW.

People standing for a management role or committee membership will have greater protection from legal action.

Administrative obligations and penalties

The Act requires the officers to fulfil the requirements of the Act. Offences for which a penalty notice may be issued and the amount of the penalty from the Schedule 4 of the Associations Incorporation Regulation 2016 are as follows:

- section 13(1): Notification of change of official address \$200
- section 28(5): Former committee member to hand over documents \$50
- section 29(1): Register of committee members to be kept \$50
- section 34(1): Public officer to be appointed \$50
- section 34(6): Public officer to notify Secretary of appointment \$50
- section 35(2): Former public officer to hand over documents \$50
- section 35(3): Vacancy in office of public officer to be filled \$50
- section 37(1): First AGM to be held within 18 months \$50
- section 37(2): AGM to be held within 6 months of end of financial year \$50
- section 41(1) Where name must appear \$50
- section 43(1): Tier 1 financial statements to be prepared and audited \$200
- section 44: Submission of statements and reports to AGM \$200
- section 45(1): Tier 1 documents to be lodged with Secretary \$200
- section 47(1): Tier 2 financial statements to be prepared \$200
- section 48: Submission of financial statements to AGM \$200
- section 49(1): Tier 2 financial statements to be lodged with Secretary \$200
- section 50(1): Records and minutes of proceedings to be kept \$200
- section 51(3): Direction by Secretary to audit must be complied with \$200
- section 90(1): Offence to use certain names \$50
- section 101(2): Documents to be brought to attention of committee \$50

How to relinquish Incorporation

If the AGA enter into Incorporation and at some time in the future find the process onerous or too complex then we can unincorporated the association in the following manner.

We must pass a special resolution at an AGM or EGM that:

- approves the cancellation of the AGA's registration, and
- proposes the distribution of its assets, consistent with the association's constitution.

An Application for voluntary cancellation of registration of an association (form AP4550G - un-incorporation form.pdf) must be completed and lodged with Fair Trading. The application must include:

- a copy of the special resolution that was passed
- a detailed list of the surplus assets and their proposed distribution for Fair Trading approval
- a statement, verified by statutory declaration by a committee member, that the association has no outstanding liabilities, and
- the association's certificate of incorporation (if still held), or a statement that it has been lost or destroyed.

There is no fee for an application to voluntarily cancel incorporation.

Information sources

The information I've collected comes from -

http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/About_associations.page; http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/Incorporating_an_association.page? and <http://www.legislation.nsw.gov.au/#/view/act/2009/7>

The un-incorporation information is from the following URL.

http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/Closing_an_association/Voluntary_cancellation.page?

The NSW Department of Fair Trading have been contacted to clarify some of the finer points.

The following documents are available at <http://aga.baduk.org.au/category/aga-documents/> - please click on 'Read more' and you will see a list of all documents.

My suggested reading order of the attached documents is:

- About_associations.pdf
- Before_incorporating_a_new_association.pdf
- 2009-7.pdf – the 2009 Act
- About_the_constitution.pdf
- Current AGA Constitution.pdf
- Issue_of_penalty_notices_policy.pdf
- AP4550.pdf – Application Form 2
- AP4550l.pdf – Tier 2 Application
- AP4550G – un-incorporation form.pdf