

Copy:

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NEWTOWN.

19th May, 1977

The Secretary,
Victorian Amateur Volleyball Association,

Dear Sirs,

Report on proposal to have an amendment to the Constitution submitted for the members to vote upon.

The present constitution is of a type that could be loosely classified as one used by a club or association or more correctly defined as an unincorporated members' club i.e. an association of persons for the purposes of sport with no design to make the venture one of a profit making nature. If any profit is made by accident, as it were, then this would not destroy the character or the intent.

Having identified the character as developed by its constitution it is then seen to be not a partnership nor does it require to be registered as a company but also as it is not so constructed its existence is unrecognised by law.

It is rightly understood that persons joining an unincorporated members' club do not intend to incur any liability beyond the subscription as long as they remain members. Disputes frequently arise as to who should pay for contracts professedly made on a club's behalf.

The answer is simple. The members of the committee which manages the affairs of the club or association are personally liable to be sued on contracts made by them and that the committee has no authority to make contracts binding on individual members. Even if a member of the committee acts on the committee it does not make him liable for deeds done when he is not present. In the absence of an express clause in the constitution no official or committee can bind the members personally.

Members of the committee have no power to pledge the credit of other members of the committee and even where the committee is to have full power to deal with and conduct the domestic and other arrangements of the club, it is not empowered to pledge the credit of other members.

The general principle of clubs is that the committee is only permitted to purchase and pay for goods or services out of the funds in hand.

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The ordinary members may be liable on contracts where it can be proved and shown that such member has sanctioned or subsequently ratified the particular transaction, or to have as individual member shown that they authorized the committee in their actions.

Where one person contracts on behalf of the members, if he is given the authority, then the members so authorising are liable. Interestingly if the person is then sued without reference to the members the members cannot be forced to pay nor can their liability be revived. Where an agent contracts outside the scope of his authority club members cannot be bound by a subsequent ratification

A members resignation after an event will not cancel his liability in connection with such event.

Upon a further reading of the present constitution I consider it to be lacking in depth and clarity and am reluctant to proceed with a more detailed report at this stage without obtaining instructions from the committee on their genuine desire to have the present form of constitution amended and from the V.C.V.C. as to whether they wish me to highlight the present deficiencies contained therein (in the opinion of some).

To round off this report I shall now make note of the existence of a form of association or club known as an incorporated club limited by guarantee. By changing to such a registration the members, while retaining as between the members the atmosphere of a club obtain the distinction and advantage of becoming a recognizable legal entity. A members liability is limited to the amount of his guarantee.

Yours sincerely,

T.B.CAREY