



Transition to Company Limited by Guarantee

Reply to Member Feedback June 2021

Background:

Thank you to the Members who responded to the Committee's request for feedback on the proposed transition by Hi Noon Ski Club Inc from an Incorporated Association to a Company Limited by Guarantee (CLBG) and the proposed new Constitution.

We remind you that at the last AGM it was agreed that if the Club wishes to continue with sale of memberships then it must cease as an Incorporated Association and move to a Company Limited by Guarantee (CLBG).

If the Club stays as an Incorporated Association it will have to change current practices so that Members are no longer able to sell their memberships. New membership fees would have to be paid to the Club and be non-refundable.

If the Club moves to the CLBG model, payment will be between the outgoing and incoming Members. Based on legal advice the Club will also be ceasing the Administration fee and will introduce a non-refundable joining fee for all new Members.

Incorporating as a Company Limited by Guarantee means there is no restriction on the jurisdictions in which the Club is permitted to operate in Australia. As an Incorporated Association registered in the ACT, the Club is by rights only permitted to operate in the ACT. Importantly, as a CLBG the Club remains a not-for-profit organization and so will fit within the Club's existing KT sublease.

The new Constitution prepared by Myers Vanderburg legal firm has been approved by NSW Parks and Wildlife Service (NPWS) and Kosciusko Thredbo (KT) so therefore it cannot be changed without additional legal fees and another lengthy wait for approval by NPWS and KT. This would further delay the process to CLBG.

The revised By-laws and Guidelines for the new CLBG structure can be found in the secure Member section of the Hi Noon website - <http://www.hinoonskiclub.asn.au/> - Protected Members Area Password: hinoonmember2021! We strongly recommend Members read the documents before the Special General Meeting.

We trust the following information addresses your questions.

Trading of Memberships:

The majority of questions related to the trading of memberships.

Members of the Club hold a “membership”, not a “share”. In the CLBG structure present Members will be required to resign their memberships and the new Member - if accepted by the Board - will be issued with a new membership number. At present new Members are given the outgoing Member’s number.

To quote from legal advice received from Meyers Vandenberg on the issue of membership trading:

“In our advice and our discussions, we have referred to a process of ‘sale’ of memberships, as this process is easy to understand. The incoming member, as the buyer, pays money to the outgoing member, as the seller, and after the sale completes the membership of the Club has been changed such that the incoming member is now a member of the Club in place of the outgoing member.

However, that is not what is happening on a legal level. It is correct that membership cannot be transferred or sold and membership is personal to each member. What is occurring for these ‘sales’, on a legal level, is that the outgoing member is resigning their membership on payment of a fee to them by the incoming member. The Club accepts this by accepting the incoming member (as opposed to any other party who has been waiting for membership but does not pay the outgoing member) as the new member to replace the outgoing member. So both memberships are different and as such are not transferred or sold (as opposed to a share sale in a private company, where the shares are the same shares), but as they have the same rights, for ease and so your members understand the process we have been calling it a sale.

What you can say to your members is that technically, memberships can’t be sold, however they are able to go through the process and receive money for their membership in the same way. Practically, there is no difference, as the Club will recognise these sales by approving the party who paid the outgoing member as the new member in their place.”

The process for trading of memberships falls within the By-Laws to the Constitution. These By-Laws can be viewed on the Hi Noon website Member secure pages.

Death of a Member:

On the death of a Member, the membership is dealt with by the family or estate and will be treated by the Board on a case-by-case basis.

Winding up the Club:

Whether the Club is an Incorporated Association (as it now stands) or a Company Limited by Guarantee (as proposed), if the Club is wound up then surplus assets cannot be paid out to Members. These assets must be passed on to a like-minded organisation i.e. a not-for-profit entity with similar intentions as Hi Noon Club.

One of the CLBG principles is that the liability of Members is limited to the amount they agree to contribute if the company is wound up. This amount (the Guarantee) is typically nominal and set out in the company's constitution.

4. *The guarantee:*

Each Member must contribute an amount not more than \$10.00 (the guarantee) to the property of the company if the company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

- (a) debts and liabilities of the company incurred before the Member stopped being a Member, or*
- (b) costs of winding up.*

Honorary Memberships:

Honorary and Life Members are one and the same. There is no cap on Honorary Members however after 48 years of Club operation there are only seven Honorary Members. (Refer to the Honorary Membership Guidelines on the Hi Noon website Member secure pages.)

Declaring a Majority Vote:

Chairperson declares the fact of a majority vote with numbers counted by the Secretary/Chair/Committee and the outcome noted in the Minutes of the Meeting.

Privacy:

A Member's personal details such as address are not made available to another Member.

Number of Members and Who Can Be a Member:

The Board has sensible jurisdiction on who can be a member and who qualifies as a member. The number of Members (110 Members at present) can only be varied by a vote at a General Meeting. (More information can be found in the Constitution within the Members' resolution and statements section.)

Annual Fees:

Annual fees are set by the Board after sound deliberation and any increase has been considered reasonable to date.

By-Laws:

There will be By-Laws and Guidelines in place. These will be published on the Members' secure page on the Hi Noon website together with the Constitution. These By-Laws will cover issues additional to the Constitution such as:

- Defining the process of trading of memberships (refer Resigning Member Process By-Law 5 and Information for Prospective Members on Hi Noon website).
- Current membership numbers, setting the number of memberships and the process to change the number of memberships
- Removing a Member from Club membership and recovering funds owing (refer By-Law 1 and 2)
- Board positions

Information regarding the Special General Meeting and the Special Resolutions is expected to be sent to Members by the end of next week 3rd July.

Committee of Hi Noon Ski Club Inc

25 June 2021