



# CAMS CLUB RESOURCE GUIDE

## CHAPTER 10: LEGAL



Australian Government  
Australian Sports Commission

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CONFEDERATION OF AUSTRALIAN MOTOR SPORT

MEMBER OF



**Contents**

**1. Introduction ..... 3**

**2. Incorporation ..... 4**

    2.1 Club Incorporation..... 4

    2.2 Not-For-Profit Clubs ..... 10

**3. Constitution ..... 11**

    3.1 Constitution of a Car Club ..... 11

    3.2 Public Officer..... 15

**4. Contracts and Agreements ..... 17**

    4.1 Contracts..... 17

    4.2 Agreements..... 18

**5. Intellectual Property Protection..... 19**

**6. Data Protection ..... 23**

    6.1 Privacy ..... 23

    6.2 CAMS Private Policy Binding on Affiliated Car Clubs ..... 24

**7. Social Media Policy..... 25**

# 1. Introduction

## The Law and Sports

The law is not separate from sport and recreation. Therefore car clubs and CAMS members are subject to the same legal responsibilities as any other entity.

Increasing levels of commercialisation and awareness of individual rights make legal action in the sport and recreation environment more likely than was the case a decade ago.

It is important that club administrators maintain and try to increase their knowledge of the law, particularly sports law, to protect the rights of the Clubs and therefore their Members.

## Contents of this Section

This section of the Club Management Handbook sets out a brief overview of the major legal matters affecting clubs. This chapter contains information about:

- incorporation
- constitution and articles of association
  - contracts and agreements
  - intellectual property protection
  - data protection
  - social media policy

## Advice

At all times the content of this document is advice only. Matters that may arise should be referred to the Club's legal advisor.

## 2. Incorporation

### 2.1 Club Incorporation

**Club Incorporation**

A decision that faces a club when it is being formed is one of incorporation.

The law does not recognise a club as having any legal existence in its own name unless it is incorporated by law. There is no need for a club to become incorporated if it remains a voluntary association.

A voluntary association (also called an unincorporated association, common-interest association, or just an association) is a group of individuals who enter into an agreement as volunteers to form a body (or organisation) to accomplish a purpose. Common examples include trade associations, trade unions, learned societies and professional associations, environmental groups, and various other types of groups. Membership is not necessarily voluntary, as it may be effectively required in order to work, which has led to a preference for the term common interest association to describe groups which form out of a common interest. Any group of persons may work as an association but in such case, the persons making a transaction in the name of the association all take responsibility for it.

If the Club is not incorporated in law then legal rights and obligations can fall onto individual members. In litigious times it is prudent for a club to be incorporated.

**Options of Legal Status**

If a club wants legal status, there are a number of options. The options may be to:

- Form a cooperative society, which is suitable for some purposes, but probably not suitable for a car club.
- Become a company limited by guarantee. Limited companies are highly regulated and setting one up is complicated and expensive and then ongoing compliance requirements are quite onerous.
- Be an incorporated association under the Associations Incorporation Act, which is comparatively cheap and simple.

## 2.1 Club Incorporation – Continued

### Own Identity

Put simply, incorporation of a club means that the Club takes on its own legal identity that is financially and legally separate from the individual members of the Club.

### Legal Identity

Once a club is incorporated, the Club has its own legal identity. Therefore, in the event of litigation, the Club will be the party which engages in the action. If liability is proven against the Club, the assets of the Club – not the assets of the individual members (unless any member(s) have been willfully negligent) will be at risk. This gives Office Bearers and members some peace of mind to carry out their duties and activities.

Upon incorporation, a club will have the power to enter into binding legal contracts. It may enter into tenancy agreements and may buy, sell and hold property.

Additionally, the Club will be able to sue third parties and be sued.

### What is Incorporation?

Incorporation means registering a club with a relevant State Government to be a legal body in its own right.

### Advantages of Incorporation

In summary, compared with being a company, as a legal body in its own right, an incorporated club can:

- be easier and less expensive to set up
- have less onerous regulatory obligations and office-holder duties
- create a legal entity that is separate from the individual members
- provide a certain amount of liability protection for members
- continue to exist regardless of changes to membership
- mostly appoint committees to run affairs

## 2.1 Club Incorporation – Continued

### **Advantages of Incorporation** (continued)

- enjoy greater certainty and acceptability to potential contracting parties such as lenders, lessors, employees and suppliers of goods and services; including the power to hold, acquire and deal with property
- have the ability to sue (and be sued) in the name of the association
- open a bank account in its own right
- have the ability to invest and borrow money
- enjoy greater eligibility to apply for grants and to receive gifts and loans

### **Disadvantages of Incorporation**

- Some of the disadvantages of becoming incorporated include:
- the expense of becoming incorporated and meeting ongoing statutory obligations
  - the necessity to comply with legal formalities and the possibility of penalties for inadvertent breaches of the law
  - restrictions on the ability to carry on business or trade
  - less flexibility to cope with changed circumstances

### **Further Information**

Further details of the advantages and disadvantages can be found on various websites. For more information, see your state government's agency for Incorporated Associations. If you are unable to locate this agency, contact the CAMS Sport and Club Development Officer in your state / territory.

## 2.1 Club Incorporation – Continued

### Liability

The existence of a separate legal entity means that the club bears liability for its acts. Briefly, this means that claims made against a club, either as debts or compensation for negligence, are answerable by the Club and not the individual members.

Members of an incorporated club have limited liability. In general terms, this means that they are only liable for the amounts each member owes the Club in respect of his / her membership. For most clubs this means the fees or subscriptions due to the Club. Members of the Committee<sup>1</sup> of a club also have limited liability for the debts of a club as long as they follow accepted business and community standards.

Clubs seeking government grants will frequently find that it is a condition of their grant that they be incorporated.

### Incorporated Club Responsibilities

The responsibilities that must be met by an incorporated club include:

- Public liability insurance is no longer compulsory (July 2008). However, the removal of this requirement does not mean that clubs are immune from public liability. The question of a club's potential liability and the appropriate insurance to be taken out is a matter for each club. In dealing with most, if not all, councils and similar associations, these require a club to hold a public liability insurance policy, which is available through affiliation with CAMS.
- Certain obligations in terms of reporting to club members.
- Obligations in terms of financial reporting.
- Not altering its statement of purpose or the rules as set down in the Club's constitution, except by special resolution by procedures listed in the constitution.
- Holding an Annual General Meeting and submitting a statement regarding the finances of the Club.

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<sup>1</sup> Committee means the Main or Management Committee.

## 2.1 Club Incorporation – Continued

### Appointment of Public Officer

Some jurisdictions require the appointment of a Public Officer as a requirement of incorporation. This position's legal responsibilities include:

- lodging documents with relevant organisations
- being the primary contact for the Club

### Members Subscribing to Constitution

When members join a club, they generally subscribe to a constitution and a set of by-laws.

By-laws are rules made by the Club for its regulation, administration and management, which are binding on all persons who come within their scope.

### Eligibility for Incorporation

A sport or recreation club is eligible to be incorporated under the relevant Associations Incorporation Act, if it has five or more members (check the requirements in your state / territory). However, a club trading for purposes of securing pecuniary profit to the members from the transactions of the Club is not eligible for incorporated association status in many, if not all, states & territories of Australia.

Incorporation is not something that can be carried out 'at the drop of a hat'. There are a number of steps to be followed over a period of time before incorporation can take effect. In broad terms, these steps, spread over several months or more, are as follows:

- the Club needs to determine if it is eligible to be incorporated
- the Club has to develop a constitution and have this adopted at a club meeting
- the name of the Club to be constituted has to be advertised before application can be made for incorporation
- the Club will be incorporated
- a common seal has to be obtained for the Club
- to incorporate, a club needs to contact the Department of Consumer Affairs / Fair Trading / Commerce or the equivalent, in the state in which incorporation is to take place for full details

## 2.1 Club Incorporation – Continued

### Procedure for Incorporating a Formed Club

If the club is already formed but is not incorporated, it needs to pass a special resolution at a formal meeting, then follow these steps:

- Step 1
  - Apply to the relevant state organisation for incorporation. See below.
  - Approve a statement of the club’s objectives.
  - Approve rules that are consistent with the objectives.
  - Authorise a person, who must be 18 years of age or older and a resident in the state of incorporation, to apply for incorporation.
- Step 2
  - Reserve a name by lodging, with the appropriate fee, an ‘Application to Reserve the Name’ with the relevant state organisation.
- Step 3
  - Once the reserved name has been approved, lodge an ‘Application for Incorporation’ with the relevant state organisation.

### Procedure for Incorporating a Club That Has Not Yet Been Formed

If the Club has not been formed, then Step 1 is to have five or more persons to:

- authorise a person, who is 18 years of age and over and a resident in the state of incorporation, to apply for incorporation;
- approve a set of objectives and rules; and
- nominate at least two people to be the first committee members of the proposed incorporated association.

Then follow Steps 2 and 3 of the procedure for incorporation for a club that has been formed.

### State Incorporation Organisations

The various state organisations for incorporating a club can be found on any search engine by searching for “How to incorporate a body in (*state / territory*)”.

## 2.2 Not-For-Profit Clubs

### Not-For-Profit Clubs

Not-for-profit clubs can be:

- unregistered and unrecognised clubs acting under their own rules
- formally recognised bodies – through incorporation – with a legal personality of their own

A not-for-profit club is one that is prohibited under its rules from distributing profits to its members. It does not signify that a club cannot make a profit, but it indicates that there are restrictions on what the organisation can do with its profits.

## 3. Constitution

### 3.1 Constitution for a Car Club

#### Club Rules

Working with others in a car club can be informative, provide personal development, be fun, but it can also be hard.

Not everyone thinks the same way. Very often people within a club will think differently, and want to do things differently. Therefore, a club requires a relatively strict set of rules on how it will be run. These rules are set down in a document called a constitution.

#### What is a Constitution?

A constitution is a document establishing a group and setting out the purposes / objectives for which it has come together.

No two clubs are the same in their aims and objectives.

A constitution outlines all the rules under which it proposes to operate. Therefore a club constitution is established to provide guidance to its club members.

Each club should have a constitution setting out members' rights and liabilities. It is a basic set of rules for the daily running of a club. It details for members the name, object, methods of management and other conditions under which the Club will operate and the reason for its existence.

#### Affiliation With CAMS

When a club wishes to affiliate with CAMS, one of the pre-requisites is that its constitution must be acceptable to CAMS. This is not particularly onerous.

A copy of the constitution must be lodged with CAMS when a club affiliates, and when changes are made an updated copy lodged.

### 3.1 Constitution for a Car Club – Continued

#### What Does a Constitution Do?

A constitution:

- reminds Office Bearers and club members of the aims and objectives of the Club
- provides rules that tell members how things should be done
- provides rules that set down how to arrive at decisions
- provides a structure for calling and conducting meetings

A constitution is also a legal necessity if the Club is to become incorporated and seek resources from another organisation, e.g. a government agency through a grant.

A constitution also allows the Club to apply for a liquor licence if one is needed at any stage.

#### Two Parts of a Constitution

Almost anything can be placed within a constitution. A constitution can be made up of two parts:

- The rules, which include the basic principles of the Club. These can be changed only by voting at a General Meeting.
- The regulations, or by-laws, which can be changed by the Committee. The regulations should relate to the administration of the Club, and not relate to the conduct of the activities of the Club.

### 3.1 Constitution for a Car Club – Continued

#### Content of a Constitution

In any constitution, there are certain matters which are common and which should always be included for the protection of Members. A constitution should specify:

- Qualification for membership of the Club, including:
  - Who is entitled to be a member.
  - Whether applications should be in writing and whether referees are required.
  - Who decides on the applications for membership. This is usually the Committee.
- Classes of membership, and their rights. For example; honorary life members who have all the entitlements of ordinary members but who may not be eligible to vote.
- The manner in which membership can be cancelled other than by resignation, e.g. overdue membership subscriptions, and the reasons why a person can be expelled or suspended from the Club.
- The manner in which a general meeting can be called to resolve an issue.
- The powers of the Committee, which enables that committee to manage the day-to-day running of the Club.
- Whether the Secretary and Treasurer can be the same person. Ideally, they would be separate to maximise accountability.
- The number of members of the Committee, their roles, the regularity of meetings and the number of Committee Members required for a quorum.
- The manner and circumstances for Committee Members to be indemnified out of the Club's funds, in the event they incur liability on behalf of the Club.
- The manner in winding up the Club and the distribution of its assets.

### 3.1 Constitution for a Car Club – Continued

<b>Changes to the Constitution</b>	Changes to the constitution are usually required to be debated and voted upon at an annual general meeting, or at a special (or extraordinary) general meeting.
<b>Keep the Constitution Updated</b>	<p>The constitution should be kept up to date by the Secretary so there can be no confusion as to the rules at a certain time.</p> <p>The version / date and other relevant details should be listed in the page footer to assist with version control.</p>
<b>Sample Constitution</b>	Clubs are advised to contact the relevant government agency to obtain a copy of the Model Rules.
<b>Model Constitution Available From State Authorities</b>	All states and territories provide their own model constitution which comply with the underlying incorporations legislation, and can be found on the website by searching for “How to incorporate a body in ( <i>state / territory</i> )”.

## 3.2 Public Officer

### Appointment of Public Officer

The Committee is required to manage, or oversee, the statutory obligations of the Club are met.

The Committee is required to appoint a Public Officer who is the main contact between the Club and the state's regulatory body. The Public Officer may hold any other office in the Club.

This is not a requirement in all jurisdictions within Australia, you are best advised to contact your relevant government agency to determine whether your state / territory requires the appointment of this position.

### Public Officer Responsibilities

The responsibilities of the Public Officer include:

- to notify the state incorporation organisation of the appointment of the Public Officer and address within 14 days of the change
- to notify the state incorporation organisation of the change of any club address within 14 days of the change
- to lodge with the state incorporation authority, within one month of the holding of an Annual General Meeting, an Annual Statement by Public Officer, and other required financial documents

## 3.2 Public Officer – Continued

### Matters to be Aware Of

A summary of matters which need to be handled by the Public Officer in relation to the Incorporation Acts are as follows. Full details can be found by searching the relevant state incorporation organisation. Here are some important duties of a Public Officer:

- Calling of Annual General Meeting

Each incorporated club is required to hold an Annual General Meeting within a stipulated period after the end of each financial year of the Club. For example; within 6 months for New South Wales; 5 months for Victoria. An extension of time for holding the meeting may be granted by the appropriate state authority.

You may also require to check the Club's constitution, as it may dictate that the AGM is held within a shorter timeframe after the completion of the Club's financial year.

- Reports to be made annually

The Public Officer of the Club must lodge the Annual Statement, together with the prescribed fee, within one month of the Annual General Meeting, using the approved form. Penalties are applied for late or non-submission of the form.

Clubs may also risk losing their 'Incorporated Association' status, should they disregard their obligations to their relevant government agency (e.g. non-submission of annual returns over consecutive years).

- Alteration of Objectives or Rules

A form must be lodged within one month of the meeting at which a club passes a special resolution to change its objectives or rules, and this alteration will take effect when the notice is accepted for lodgement.

## 4. Contracts and Agreements

### 4.1 Contracts

**What is a Contract?**

The law of contracts is concerned with the rules governing legal agreements.

A contract is a particular type of agreement between two parties containing promises by each party that they intend to be enforceable at law. The parties involved in a contract must intend to create a legally binding agreement. It is possible that a verbal agreement could be held up to law as a contract.

It should be noted that many aspects of conducting motor sport actually involve contracts:

- applying for and obtaining a Permit to conduct a motor sport event creates a contract between the Club / organisers and CAMS
- issuing Supplementary Regulations for an event and accepting an entry creates a contract between the Club / organiser and the competitor

Therefore, the Club, when wanting to have a binding agreement, should make that agreement in writing. There are standard contract forms available that can easily be adapted for use in a particular situation.

## 4.2 Agreements

### What is an Agreement?

An agreement is a form of cross-reference between different parties, which may be written (preferable) or oral and relying upon the honour of the parties for its fulfillment rather than being legally enforceable.

Organising an event involves a whole range of agreements with a number of organisations and individuals, including sponsors, venues, suppliers, competitors, staff and officials / volunteers.

It is desirable that all agreements be in writing, this ensuring that each party understands exactly what is expected of them.

## 5. Intellectual Property Protection

### Intellectual Property

Intellectual property (IP) rights are legally recognised exclusive rights to creations of the mind. Common rights types include copyright, trademarks, patents, industrial design rights, trade dress and trade secrets and can be of considerable value to clubs.

Assets such as events and their logos, colours and emblems hold commercial value and are essential components of branding and merchandising programs. With the growth of commercialisation of sport, clubs need to understand the basic concepts of intellectual property so they can develop, protect and exploit their assets.

### Key Concepts of Intellectual Property Protection

Keep in mind these key concepts:

- IP has many of the same ownership rights as physical property.
- Effectively manage your IP to ensure you get the best protection and the most out of your idea / invention.
- The creator of IP is not necessarily the owner. Ownership can be addressed through appropriate contractual arrangements, especially with employees, suppliers, distributors and manufacturers.

### Intellectual Property Rights Exist

Intellectual property rights exist in:

- copyright
- trademarks
- designs
- patents
- industrial design rights
- trade dress
- trade secrets

## 5. Intellectual Property Protection – Continued

### What is Copyright?

Copyright is a legal concept that provides exclusive rights, for a limited period of time, to the creator of an original work. It is literally 'the right to copy', but also gives the holder the right to be credited for the work, to benefit financially from the work, and other related rights. It is distinct from patents and trademarks.

The Club should be aware of the basis of copyright and seek legal opinion if there is any doubt as the legitimate use of material it intends to adopt. Copyright also protects material created by the Club.

Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed.

The creator owns the copyright, unless commissioned by another, until they assign or license their rights to another individual or company. Copyright might be used to protect:

- copyright
- regulations, reports and other materials used in the administration and promotion of the sport
- programs
- published results
- photographs of events, cars, competitors, officials
- recorded visual images or commentaries of events;
- computer programs

A copyright notice serves to notify people that the work may be protected and identifies the person / organisation claiming the rights. Owners of copyright can put the notice which usually consists of the symbol © followed by the name of the copyright owner and the year of first publication.

Copyright is infringed if a club, not being the owner and without authority, uses a work that compromises the copyright. For example, a club publishing a photo in its magazine or newsletter without permission from the owner or copyright holder.

With the use of logos, the conduct and naming of special events, and increases in merchandising opportunities the Club must ensure that they are not breaching copyright.

Copyright Acts and design acts provide substantial protection for the authors of artistic works, drawings and photographs.

## 5. Intellectual Property Protection – Continued

### Copyright for Photographers

This is one area of copyright that can regularly affect a club and its events.

When does copyright protection begin?

Photographs are protected from the moment they are taken. What's more, this protection is free and automatic and does not have to be registered.

Who owns the copyright in photographs?

The Copyright Act 1968 (the Act) contains provisions that determine who owns copyright. In the case of photographs, the photographer is generally the first owner of copyright. There are however a number of important exceptions. These are:

- When an agreement has been made to the contrary. A photographer is free to make an agreement with a client or employer to determine who will own copyright and for which purposes. A prior agreement will also override any of the following exceptions. It is generally a good idea to ensure this agreement is in a written form.
- Photographs taken in the course of employment. Generally, freelance photographers own copyright in their work. It should also be noted that the organisation that commissioned the photograph will still be entitled to use it for the purpose for which it was commissioned.
- Working for a newspaper or magazine. With photographers working for newspapers or magazines (excluding freelancers) copyright is split between the employee and employer. The photographer owns the copyright for the purposes of photocopying and book publication. The employer however owns the copyright for all other purposes including online and magazine publishing, and digital copying.
- Commissioned photographs. The photographer owns the copyright. The only exception to this rule is if the photograph was commissioned for a private or domestic purpose (like a wedding or christening). In this case the client owns the copyright, unless otherwise agreed.

## 5. Intellectual Property Protection – Continued

### Trademarks

A trademark can be a word, phrase, letter, number, sound, smell, shape, logo, picture that is used to distinguish the goods and services of one organisation from those of another.

*Examples: name of event, logo, mascot.*

A registered trademark provides exclusive right to use, license or sell it for the goods and services for which it is registered. A club could register trademarks in names, logos, shapes, images and other distinctive elements.

### Other Property Rights (Not So Relevant to Clubs)

- Designs. Registration of a design gives the owner protection for the visual appearance of the product, not how it works.
- Patents. An inventor has the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the public disclosure of the invention.
- Industrial design rights. An industrial design right protects the visual design of objects that are not purely utilitarian.
- Trade dress. Refers to characteristics of the visual appearance of a product or its packaging (or even the design of a building) that signify the source of the product to consumers.
- Trade secrets. Is a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers.

## 6. Data Protection

### 6.1 Privacy

#### Privacy

In Australia, privacy law generally relates to the protection of an individual's personal information. Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable.

The Privacy Act 1988 is a law which regulates the handling of personal information about individuals. This includes the collection, use, storage and disclosure of personal information, and access to and correction of that information. It places certain obligations on organisations which process personal data. This includes car clubs, which may hold information on members, employees, volunteers, competitors and contractors. In particular, it regulates how an individual's personal information should be used and protects people from misuse of their personal details.

The definition of personal data is wide as it covers any information through which a living individual is identifiable. It includes name, address, date of birth and so on. The definition of processing is also quite wide and it covers almost anything to do with personal data including organising, adapting, amending, retrieving, consulting, using, disclosing, erasing, destroying and storing it.

## 6.2 CAMS Privacy Policy Binding on Affiliation Car Clubs

### CAMS Privacy Policy

CAMS recognises that privacy is important and that individuals have a right to access their personal information held by CAMS. CAMS acknowledges that providing personal information is an act of trust and CAMS takes that seriously.

CAMS is committed to protecting personal information. CAMS is also committed to complying with the Australian Privacy Principles set out in the *Privacy Act* 1998 (Commonwealth and state and territory equivalents).

This policy is created in accordance with the Australian Privacy Principles and is binding on CAMS and its related bodies corporate in the CAMS group.

The policy can be found on the CAMS website and covers:

- what personal information may be collected
- how personal information is collected
- indirect collection of personal information
- use of personal information
- disclosure of personal information
- non-disclosure of information
- data security
- marketing
- access and correction
- disclosure of personal information outside of Australia
- complaints, further information and future changes

To view the most up-to-date version of the CAMS Privacy Policy, please visit: <http://www.cams.com.au/about/administration/policies>

## 7. Social Media Policy

### Social Media

Social media is defined as websites and other online means of communication that are used by large groups of people to share information and to develop social and professional contacts.

While social networking has gone on almost as long as societies themselves have existed, the unparalleled potential of the internet to promote such connections is now being fully recognised and exploited, through web-based groups established for that purpose groups such as:

- Facebook
- Twitter
- Google
- LinkedIn
- personal web sites
- content sharing include Flickr (photo sharing) and YouTube (video sharing)

Social networking sites allow photographs, videos and comments to be shared with thousands of other users and it must be recognised that it may not be appropriate to share them in this way. For example, there may be an expectation that photographs taken at a motor sport event will not appear publicly on the internet.

### CAMS Social Media Policy

CAMS has a Social Media Policy, which is binding on all affiliated clubs, can be found on the CAMS website, as well as Guidelines For The Use Of Social Media.

A breach of the CAMS policy may also amount to breaches of other CAMS policies, including the Member Protection Policy and the CAMS Anti-Discrimination, Harassment and Bullying Policy.