

Model Constitution for the Incorporation of Associations as adapted for the



New South Wales Fair Trading

Under the Associations Incorporation Act 2009

PART I – PRELIMINARY

1. DEFINITIONS

(1) In this constitution:

life member - means a member of the association who has provided exemplary service.

ordinary member - means a member of the committee who is not an office-bearer of the association, as referred to in rule 14 (2);

secretary - means:

- (a) the person holding office under this constitution as secretary of the association; or
- (b) if no such person holds that office – the public officer of the association;

special general meeting - means a general meeting of the association other than an annual general meeting;

the Act - means the Associations Incorporation Act 2009;

the Regulation - means the Associations Incorporation Act 2010.

(2) In this constitution:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

(3) The provisions of the Interpretation Act 1987 apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

PART II – MEMBERSHIP

2. MEMBERSHIP QUALIFICATIONS

(1) A person is qualified to be a member of the association if:

- (a) the person is a natural person, and
- (b) the person has been nominated and approved for membership of the association in accordance with clause 3.

(2) A person is taken to be a member of the association if:

- (a) the person is a natural person, and
- (b) the person was:
 - (i) in the case of an unincorporated body that is registered as the association – a member of that unincorporated body immediately before the registration of the association, or
 - (ii) in the case of an association that is amalgamated to form the relevant association – a member of that other association immediately before the amalgamation, or
 - (iii) in the case of a registrable corporation that is registered as an association – a member of the registrable corporation immediately before that entity was registered as an association.

(3) A person is taken to be a member of the association if the person was one of the individuals on whose behalf an application for registration of the association under section 6 (1)(a) of the Act was made.

3. NOMINATION FOR MEMBERSHIP

- (1) A nomination of a person for membership of the association:
 - (a) must be made by a member of the association in writing in the form set out in Appendix I to this constitution, and
 - (b) must be lodged with the secretary of the association together with a nomination fee as, from time to time set by the Committee.
- (2) The secretary must, on payment by the nominee of relevant fee, enter the nominee's name in the register of members and, on the name being so entered, the nominee becomes a member of the association.

4. CESSATION OF MEMBERSHIP

A person ceases to be a member of the association if the person:

- (a) dies; or
- (b) resigns membership; or
- (c) is expelled from the association; or
- (d) remains unfinancial for greater than 60 days after subscriptions fall due.

5. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE

A right, privilege or obligation which a person has by reason of being a member of the association:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's membership.

6. RESIGNATION OF MEMBERSHIP

- (1) A member of the association is not entitled to resign that membership except in accordance with this rule.
- (2) A member of the association who has paid all amounts payable by the member to the association in respect of the member's membership may resign from membership of the association by first giving to the secretary written notice of at least one month (or such other period as the committee may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- (3) If a member of the association ceases to be a member under clause (2) and in every other case where a member ceases to hold membership, the secretary must make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

7. REGISTER OF MEMBERS

- (1) The public officer of the association must establish and maintain a register of members of the association specifying the name and address of each person who is a member of the association together with the date on which the person became a member.
- (2) The register of members must be kept at the principal place of administration of the association and must be open for inspection, free of charge, by any member of the association at any reasonable hour.

8A. FINANCIAL YEAR

The financial year of the association is:

- (a) the period of time commencing on the date of incorporation of the association and ending on the following 30th September, and
- (b) each period of 12 months after the expiration of the previous financial year of the association, commencing on 1st October and ending on the following 30th September.

8. FEES AND SUBSCRIPTIONS

- (1) A member of the association must, on admission to membership, pay to the association a fee of \$1 or, if some other amount is determined by the committee, that other amount.
- (2) In addition to any amount payable by the member under subclause (1), a member of the association must pay to the association an annual membership fee of \$2 or, if some other amount is determined by the committee, that other amount:
 - (a) except as provided by paragraph (b), before 1st January in each calendar year; or
 - (b) if the member becomes a member on or 1st January in any calendar year – on becoming a member and before 1st January in each succeeding calendar year.

9. MEMBERS' LIABILITIES

The liability of a member of the association to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association is limited to the amount, if any, unpaid by the member in respect of membership of the association as required by rule 8.

10. RESOLUTION OF INTERNAL DISPUTES

Disputes between members (in their capacity as members) of the association, and disputes between members and the association, are to be referred to a community justice centre for mediation in accordance with the Community Justice Centres Act 1983.

11. DISCIPLINING OF MEMBERS

- (1) A complaint may be made by any member of the association that some other member of the association:
 - (a) has persistently refused or neglected to comply with a provision or provisions of this constitution; or
 - (b) has persistently and willfully acted in a manner prejudicial to the interests of the association.
- (2) On receiving such a complaint, the committee:
 - (a) must cause notice of the complaint to be served on the member concerned; and
 - (b) must give the member at least 14 days from the time the notice is served within which to make submissions to the committee in connection with the complaint; and
 - (c) must take into consideration any submissions made by the member in connection with the complaint.

- (3) The committee may, by resolution, expel the member from the association or suspend the member from membership of the association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved.
- (4) If the committee expels or suspends a member, the secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, or the reasons given by the committee for having taken that action and of the member's right of appeal under rule 12.
- (5) The expulsion or suspension does not take effect:
 - (a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned; or
 - (b) if within that period the member exercises the right of appeal, unless and until the association confirms the resolution under rule 12 (4), whichever is the later.
- (6) Where the committee has expelled a member for failure to comply with clause 8 the provisions of sub-clauses 11 (2), 11 (3), 11 (4) and 11 (5) shall not apply and such expulsion shall have immediate effect.

12. RIGHT OF APPEAL OF DISCIPLINED MEMBER

- (1) A member may appeal to the association in general meeting against a resolution of the committee under rule 11, within 7 days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a member under clause (1), the secretary must notify the committee which is to convene a general meeting of the association to be held within 28 days after the date on which the secretary received the notice.
- (4) At a general meeting of the association convened under clause (3):
 - (a) no business other than the question of the appeal is to be transacted; and
 - (b) the committee and the member must be given the opportunity to state their respective cases orally or in writing, or both; and
 - (c) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (5) If at the general meeting the association passes a special resolution in favour of the confirmation of the resolution, the resolution is confirmed

PART III – THE COMMITTEE

13. POWERS OF THE COMMITTEE

The committee is to be called the committee of management of the association and, subject to the Act, the Regulation and this constitution and to any resolution passed by the association in general meeting:

- (a) is to control and manage the affairs of the association; and
- (b) may exercise all such functions as may be exercised by the association, other than those functions that are required by this constitution to be exercised by a general meeting of members of the association; and
- (c) has power to perform all such acts and do all such things as appear to the committee to be necessary or desirable for the proper management of the affairs of the association.

14. COMPOSITION AND MEMBERSHIP OF COMMITTEE

- (1) The committee is to consist of:
 - (a) the office-bearers of the association; and
 - (b) 4 ordinary members, each of whom is to be elected at the annual general meeting of the association under rule 15.
- (2) The office-bearers of the association are to be:
 - (a) the President;
 - (b) the Club Captain
 - (c) the Treasurer; and
 - (d) the Secretary
- (3) Each member of the committee is, subject to this constitution, to hold office until the conclusion of the annual general meeting following the date of the member's election, but is eligible for re-election.
- (4) In the event of a casual vacancy occurring in the membership of the committee, the committee may appoint a member of the association to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the conclusion of the annual general meeting next following the date of the appointment.

15. ELECTION OF COMMITTEE MEMBERS

- (1) Nominations of candidates for election as office-bearers of the association or as ordinary members of the committee:
 - (a) must be made in writing, signed by 2 members of the association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination); and
 - (b) must be delivered to the secretary of the association at least 7 days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (2) If insufficient nominations are received to fill all vacancies on the committee, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.
- (3) If insufficient further nominations are received, any vacant positions remaining on the committee are taken to be casual vacancies.
- (4) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (5) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (6) The ballot for the election of office-bearers and ordinary members of the committee is to be conducted at the annual general meeting in such usual and proper manner as the committee may direct.

16. SECRETARY

- (1) The secretary of the association must, as soon as practicable after being appointed as secretary, lodge notice with the association of his or her address.
- (2) It is the duty of the secretary to keep minutes of:
 - (a) all appointments of officer-bearers and members of the committee;
 - (b) the names of members of the committee present at a committee meeting or a general meeting; and
 - (c) all proceedings at committee meetings and general meetings.
- (3) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.

17. TREASURER

It is the duty of the treasurer of the association to ensure:

- (a) that all money due to the association is collected and received and that all payments authorised by the association are made; and
- (b) that correct books and accounts are kept showing the financial affairs of the association, including full details of all receipts and expenditure connected with the activities of the association.

18. CASUAL VACANCIES

For the purpose of this constitution, a casual vacancy in the office of a member of the committee occurs if the member:

- (a) dies; or
- (b) ceases to be a member of the association; or
- (c) becomes an insolvent under administration within the meaning of the Corporations Law; or
- (d) resigns office by notice in writing given to the secretary; or
- (e) is removed from office under rule 19; or
- (f) becomes a mentally incapacitated person; or
- (g) is absent without the consent of the committee from all meetings of the committee held during a period of 6 months.

19. REMOVAL OF COMMITTEE MEMBERS

- (1) The association in general meeting may by resolution remove any member of the committee from the office of member before the expiration of the member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.
- (2) If a member of the committee to whom a proposed resolution referred to in clause (1) relates makes representations in writing to the secretary or president (not exceeding a reasonable length) and requests that the representations be notified to the members of the association, the secretary or the president may send a copy of the representations to each member of the association or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

20. COMMITTEE MEETINGS AND QUORUM

- (1) The committee must meet at least 3 times in each period of 12 months at such place and time as the committee may determine.
- (2) Additional meetings of the committee may be convened by the president or by any member of the committee.
- (3) Oral or written notice of a meeting of the committee must be given by the secretary to each member of the committee at least 48 hours (or such other period as may be unanimously agreed on by the members of the committee) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under clause (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the committee members present at the meeting unanimously agree to treat as urgent business.
- (5) Any 3 members of the committee constitute a quorum for the transaction of the business of a meeting of the committee.
- (6) No business is to be transacted by the committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (7) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (8) At a meeting of the committee:
 - (a) the president or, in the president's absence, an office bearer of the association is to preside; or
 - (b) if the president and the office bearers are absent or unwilling to act, such one of the remaining members of the committee as may be chosen by the members present at the meeting is to preside.

21. DELEGATION BY COMMITTEE TO SUB-COMMITTEE

- (1) The committee may, by instrument in writing, delegate to one or more sub-committees (consisting of such member or members of the association as the committee thinks fit) the exercise of such of the functions of the committee as are specified in the instrument, other than:
 - (a) this power of delegation; and
 - (b) a function which is a duty imposed on the committee by the Act or by any other law.
- (2) A function the exercise of which has been delegated to a sub-committee under this rule may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- (3) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.
- (4) Despite any delegation under this rule, the committee may continue to exercise any function delegated.
- (5) Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this rule has the same force and effect as it would have if it had been done or suffered by the committee.

- (6) The committee may, by instrument in writing, revoke wholly or in part any delegation under this rule.
- (7) A sub-committee may meet and adjourn as it thinks proper.

22. VOTING AND DECISIONS

- (1) Questions arising at a meeting of the committee or of any sub-committee appointed by the committee are to be determined by a majority of the votes of members of the committee or sub-committee present at the meeting.
- (2) Each member present at a meeting of the committee or of any sub-committee appointed by the committee (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (3) Subject to rule 20 (5), the committee may act despite any vacancy on the committee.
- (4) Any act or thing done or suffered, or purporting to have been done or suffered, by the committee or by a sub-committee appointed by the committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the committee or sub-committee.

PART IV – GENERAL MEETINGS

23. ANNUAL GENERAL MEETINGS – HOLDING OF

- (1) The association must hold its first annual general meeting within 18 months after its registration under the Act.
- (2) The association must hold its annual general meetings:
 - (a) within 6 months after the close of the association's financial year, or
 - (b) within such later time as may be allowed by the Director-General or prescribed by the Regulation

24. ANNUAL GENERAL MEETINGS – CALLING OF AND BUSINESS AT

- (1) The annual general meeting of the association is, subject to the Act and to rule 23, to be convened on such date and at such place and time as the committee thinks fit.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
 - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting;
 - (b) to receive from the committee reports on the activities of the association during the last preceding financial year;
 - (c) to elect office-bearers of the association and ordinary, members of the committee;
 - (d) to receive and consider any financial statement or report required to be submitted to members under the Act
- (3) An annual general meeting must be specified as such in the notice convening it.

25. SPECIAL GENERAL MEETINGS – CALLING OF

- (1) The committee may, whenever it thinks fit, convene a special general meeting of the association.
- (2) The committee must, on the requisition in writing of at least 5 per cent of the total number of members, convene a special general meeting of the association.
- (3) A requisition of members for a special general meeting:
 - (a) must state the purpose or purposes of the meeting; and
 - (b) must be signed by the members making the requisition; and
 - (c) must be lodged with the secretary; and
 - (d) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- (4) If the committee fails to convene a special general meeting to be held within 1 month after that date on which a requisition of members for the meeting is lodged with the secretary, any one or more of the members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.
- (5) A special general meeting convened by a member or members as referred to in clause (4) must be convened as nearly as is practicable in the same manner as general meetings are convened by the committee and any member who consequently incurs expense is entitled to be reimbursed by the association for any expense so incurred.

26. NOTICE

- (1) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be sent to each member in the manner provided in clause (1) specifying, in addition to the matter required under clause (1), the intention to propose the resolution as a special resolution.
- (3) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under rule 24 (2).
- (4) A member desiring to bring any business before a general meeting may give notice in writing of that business to the secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

27. QUORUM FOR GENERAL MEETINGS

- (1) No item of business is to be transacted at a general meeting unless a quorum of members entitled under this constitution to vote is present during the time the meeting is considering that item.
- (2) Five members present (being members entitled under this constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.

- (3) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
 - (a) if convened on the requisition of members, is to be dissolved; and
 - (b) in any other case, is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to members given before the date on which the meeting is adjourned) at the same place.
- (4) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least 3) is to constitute a quorum.

28. PRESIDING MEMBER

- (1) The president or, in the president's absence, an office bearer of the association is to preside as chairperson at each general meeting of the association.
- (2) If the president and the office bearers of the association are absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

29. ADJOURNMENT

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting is adjourned for 14 days or more, the secretary must give written or oral notice of the adjourned meeting to each member of the association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (3) Except as provided in clauses (1) and (2), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

30. MAKING OF DECISIONS

- (1) A question arising at a general meeting of the association is to be determined on a show of hands and, unless before or on the declaration of the show of hands a poll is demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (2) At a general meeting of the association, a poll may be demanded by the chairperson or by at least 3 members present in person or by proxy at the meeting.
- (3) If a poll is demanded at a general meeting, the poll must be taken:
 - (a) immediately in the case of a poll which relates to the election of the chairperson of the meeting or to the question of an adjournment; or
 - (b) in any other case, in such manner and at such time before the close of the meeting as the chairperson directs.
and the resolution of the poll on the matter is taken to be the resolution of the meeting on that matter.

31. SPECIAL RESOLUTIONS

A special resolution may only be passed by the association in accordance with section 39 of the Act.

32. VOTING

- (1) On any question arising at a general meeting of the association a member has one vote only.
- (2) All votes must be given personally or by proxy but no member may hold more than 5 proxies.
- (3) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (4) A member or proxy is not entitled to vote at any general meeting of the association unless all money due and payable by the member or proxy to the association has been paid, other than the amount of the annual subscriptions payable in respect of the then current year.

33. APPOINTMENT OF PROXIES

- (1) Each member is to be entitled to appoint another member as proxy by notice given to the secretary no later than 24 hours before the time of the meeting in respect of which the proxy is appointed.
- (2) The notice appointing the proxy is to be in the form set out in Appendix 2 to this constitution.

34A. POSTAL BALLOTS

- (1) The Association may hold a postal ballot to determine any issue or proposal (other than an appeal under clause 12).
- (2) A postal ballot is to be conducted in accordance with Schedule 3 to the Regulation.

Note: Schedule 3 to the Regulation provides detailed procedure for the conduct of a postal ballot.

PART V – MISCELLANEOUS

34. INSURANCE

- (1) The association must effect and maintain public liability insurance for a cover of at least \$2,000,000.
- (2) In addition to the insurance required under clause (1), the association may effect and maintain other insurance.

35. FUNDS – SOURCE

- (1) The funds of the association are to be derived from entrance fees and annual subscriptions of members, donations and, subject to any resolution passed by the association in general meeting, such other sources as the committee determines.
- (2) All money received by the association must be deposited as soon as practicable and without deduction to the credit of the association's bank account.
- (3) The association must, as soon as practicable after receiving any money, issue an appropriate receipt.

36. FUNDS – MANAGEMENT

- (1) Subject to any resolution passed by the association in general meeting-the assets and income of the association shall be applied solely in furtherance of the objects of the association and no portion shall be distributed directly or indirectly to the members of the association except as bona fide compensation for services rendered or expenses incurred on behalf of the association.
- (2) In the event of the association being dissolved, the amount remaining after such dissolution and the satisfaction of all debts and liabilities shall be transferred to any association with similar purposes which is not carried on for the profit or gain of its individual members.
- (3) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any 2 members of the committee or employees of the association, being members or employees authorised to do so by the committee.

37. ALTERATION OF OBJECTS AND CONSTITUTION

The statement of objects and this constitution may be altered, rescinded or added to only by a special resolution of the association.

38. COMMON SEAL

- (1) The common seal of the association must be kept in the custody of the public officer.
- (2) The common seal must not be affixed to any instrument except by the authority of the committee and the affixing of the common seal must be attested by the signatures either of 2 members of the committee or of 1 member of the committee and of the public officer or secretary.

39. CUSTODY OF BOOKS

Except as otherwise provided by this constitution, the public officer must keep in his or her custody or under his or her control all records, books and other documents relating to the association.

40. INSPECTION OF BOOKS

The records, books and other documents of the association must be open to inspection, free of charge, by a member of the association at any reasonable hour.

41. SERVICE OF NOTICES

- (1) For the purpose of this constitution, a notice may be served by or on behalf of the association on any member either personally on any member either personally or by sending it by post to the member at the member's address shown in the register of members or by any other means, electronic or otherwise as specified by the member.
- (2) If a document is sent to a person by properly addressing, prepaying and posting to the person a letter containing the document, the document is, unless the contrary is proved, taken for the purposes of this constitution to have been served on the person at the time at which the letter would have been delivered in the ordinary course of post.

42. RIDING RULES

- (a) The committee may, from time to time, determine and promulgate Riding Rules for members of the association.
- (b) Breach of the Riding Rules promulgated under this rule shall be treated as a breach of the rules of the association and render a member so breaching such Riding Rules liable to disciplinary action under clause 11.

43. CYCLING AUSTRALIA AFFILIATION

- . It is a condition of membership of the association that all members take out affiliation, at the time of renewal, with Cycling Australia through this association. This amendment to take effect from January 1, 2001.

APPENDIX 1 – MEMBERSHIP FORM - outstanding
APPENDIX 2
(Rule 33 (2))

FORM OF APPOINTMENT OF PROXY

I,
(full name)

of
(address)

being a member of the Sydney Cycling Club hereby appoint
(full name of proxy)

of
(address)

being a member of the Sydney Cycling Club, as my proxy to vote for me on my behalf at the general meeting of the association (annual general meeting or special general meeting, as the case may be) to be

held on the day of 20..... and at any adjournment of that meeting.

- My proxy is authorised to vote in favour of/against the resolution

.....
(To be inserted if desired.)

.....
Signature of member appointing proxy

Date.....

NOTE: A proxy vote may not be given to a person who is not a member of the association.