

COLIN HILES ASSOCIATES

LAWYERS

MEMO

To:	PSPLRG Committee
From:	Colin Hiles
Subject:	PSPLRG memo on PSPL Proposed Constitution
Date:	3 June 2016

Committee Members

Thank you for your Bulletin entitled “PSPL’s Proposal for Constitutional Revision and Your Club’s Part” dated 21 May 2016 which addresses changes PSPL propose to make to their Constitution. I note Clubs must comment before 30 June 2016.

The Bulletin adequately covers the undemocratic selection of Board members, consequential lack of accountability, the restrictive qualifications required of Directors, serious escalation in fees, poor communication and secrecy, and the emasculation of State Probus Associations.

However I believe the issue of Clubs becoming members of PSPL is complex and requires further explanation. Accordingly I provide the following analysis. I authorise this memo to be released to other Probus Clubs if you so wish.

I think that Probus Clubs should have their attention focussed on the problems and disadvantages associated with becoming a Member of PSPL under the proposed new constitution. These are the issues I would like to see emphasised:

1. **AN EXECUTIVE SUMMARY**

- 1.1 The PSPL proposal offers Probus Clubs token membership – no vote, no right to attend meetings, no right to call for a general meeting of members.

In fact no rights at all, except for a convoluted process to elect Representatives

- 1.2 The election process is designed to ensure that PSPL controls the composition of the board of directors;
- 1.3 If Clubs become members they will have no cause for complaint if PSPL abides by its constitution other than to resign their membership pursuant to Rule 13(b)(ii) of the proposed constitution. The draft constitution makes no mention of what happens to a Club's accreditation if the member resigns.

2. **WHAT SHOULD CLUBS DO?**

The Reform Group should emphasise that it believes it is very important that clubs respond to PSPL on this matter. It also should recommend that Clubs should decline the offer of membership until PSPL complies with the matters suggested in the Bulletin.

3. **THE CRITICAL QUESTION?**

- (a) Will Clubs be better off or worse off by becoming members of PSPL?
- (b) Does the proposed constitution remedy the current situation where Clubs have no say in the election of the directors of PSPL?
- (c) In order to properly evaluate whether or not Clubs should decide to become members of PSPL it is important to compare the existing position of Clubs compared to what their position would be with the proposed changes.

3.2 **What was the position under Probus Centre – South Pacific Inc**

- (a) This was an organisation established by Rotary International as a low cost umbrella organisation to promote the establishment of Probus Clubs and provide a basic service to clubs.
- (b) THE PROBUS CONCEPT as set out in the Certificate of Accreditation 1993 for the traditional Probus Club states”

“Probus clubs provide the opportunity for those who have retired to meet regularly without pressure and with minimum cost, in circumstances which provide new interests and new friends

They are autonomous, simple in structure, non-political, non sectarian and non-fund raising”

- (c) An extract from “THE DAWN OF PROBUS” states: “...*may it always be remembered that the original aim of the founders is just as valid today, namely ‘KEEP PROBUS SIMPLE’*”.
- (d) Probus Centre – South Pacific Inc itself was a low-cost debt-free association which promoted the PROBUS CONCEPT and the ideal of simplicity.

3.3 What is the Present Position?

- (a) Clubs are not members of PSPL, which is a public company limited by guarantee. That is PSPL’s status under the Corporations Act, 2001 (“Act”).
- (b) As they are not members, Clubs have no vote in the affairs of PSPL and consequently have no say whatsoever in the election of the directors and therefore, how PSPL is run (*imagine what Probus Clubs’ members would say if they had no vote in the election of their Committee of Management? – it is also somewhat ironic*
- (c) Clubs are accredited by PSPL. This entitles Clubs and Club Members to:
 - (i) use the Probus name and logo;
 - (ii) the benefits of the insurance; and
 - (iii) access to travel insurance and some other commercial benefits.
- (d) To continue with accreditation, Club’s must pay the annual capitation fee set by PSPL. Because Clubs cannot control the composition of the board of PSPL, they have no control over the amount of the capitation fee which has increased exponentially over the last few years – from \$5.00 to \$12 + since 2010 (an increase of more than 140% when the CPI has increased by less than 13.65%).

3.4 What is the Proposed Position?

- (a) Clubs may become members of PSPL;

- (b) This membership is token only in that Clubs will be without the normal powers of members of a company, which I have set out below
- (c) The method of electing the directors is convoluted and results in PSPL effectively controlling who can become directors.

3.5 **What is the usual position of members of a company?**

- (a) In companies incorporated under the Act, members have the following rights and obligations:
 - (i) The right to attend general meetings;
 - (ii) The right to vote at general meetings;
 - (iii) The power to requisition a general meeting;
 - (iv) The right to elect and remove directors from office;
 - (v) Members must abide by the constitution of the company; and
 - (vi) In companies limited by shares, the obligation to pay the amount subscribed for a fully paid share and in a company limited by guarantee, an obligation to pay the amount of the guarantee if the company is wound up.

3.6 **What should the new constitution have provided?**

- (a) In our view the answer is simple – all of the normal rights and obligations of a member of a company! (*It is somewhat ironic that PSPL's model constitution for Club provides for all members to have a vote!*)
- (b) An election process that is simple. The suggestion in the Bulletin is a good one.

3.7 **What is the down-side of becoming a member under the proposed constitution?**

- (a) Members of a company enter into a legally binding contract
 - (i) between each individual member and the company; and
 - (ii) between each individual member and every other member

- (b) This contract is governed by the terms of the constitution of the company i.e. each member and the company agree to be bound by the constitution. A member cannot complain later that he or she is being oppressed if the company abides by the agreed contract (constitution). A member's remedies lie in the Act or if a director breaches common law fiduciary duties.
- (c) An important consequence of this is that members will have no control over the costs of running PSPL and therefore capitation fees which will inevitably continue to rise as PSPL builds its bureaucracy; and
- (d) Because members have no vote they can never change the constitution! If they are unhappy, all that they can do is resign pursuant to Rule 13(b)(ii) of the proposed constitution which is silent on the subject of accreditation if a member resigns.



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