

CLUB MEMBERSHIP APPLICATIONS AND RENEWALS GUIDELINES FOR CLUB COMMITTEES

The following guidelines should be considered and followed by your club (**Club**) and its committee (**Committee**) when considering any new applications for membership of the Club as well as any applications to renew existing memberships of the Club. The following guidelines, if followed, will increase the likelihood that any decision to reject or fail to renew a membership is made lawfully and limits the risk such decision may be subjected to a legal challenge by the declined applicant.

For the purposes of these guidelines, unless indicated otherwise, an application refers to both an application to become a new member of the Club as well as an application to renew an existing membership of the Club.

1. Requirements for a lawful rejection of membership application

For the lawful rejection of a membership application by the Club, the position at law in Australia requires:

- (a) the rules (i.e. Constitution) of the Club to allow for rejection of membership applications;
- (b) that the decision to reject is taken strictly in accordance with the rules;
- (c) that the decision to reject is made in good faith; and
- (d) that the decision to reject is made in accordance with the objects of the Club.

2. Rules of the Club must allow rejection

As the Club, under clause 5.6 of its rules (**Rules**), has absolute discretion in relation to memberships, (which includes the power to refuse memberships), this requirement will be satisfied.

3. Decision to refuse must be in accordance with the Club's Rules

The Rules do not provide a procedure for making decisions on membership, except for requiring the refusal of any renewal applications to be made in good faith. Therefore, as long as the good faith requirement (see paragraph 4) is fulfilled, this requirement will also likely be fulfilled.

4. Decision to refuse must be made in good faith

It is a requirement under the law in Australia that membership applications be considered by the Club in good faith. Consideration 'in good faith' means that the Committee must act honestly and without malice or fraud in making its decision. The exact requirements of 'good faith' in any situation will be guided by the circumstances, however provided a Club can show that it was fair when considering a membership application, assessed the application on its merits and was open to accepting the application then the good faith requirement will generally be satisfied.

5. Decision to refuse must be made in accordance with the objects of the Club

The objects of the Club are provided in the Rules and are as follows:

TO ENCOURAGE young people to ride and to learn to enjoy all approved kinds of sport connected with horses and riding.

TO PROVIDE instruction in horsemanship and to instil in members the proper care of their animals.

TO PROMOTE the highest ideals of fellowship, citizenship and loyalty and to cultivate strength of character and self-discipline in the members.

TO SUBSCRIBE to become a member of an affiliate with the Pony Club Association of New South Wales Incorporated.

TO DO all such other things as are expedient or conducive to the attainment of all or any of the above objects.

When refusing a membership application, the Club must be able to show how a refusal is in some manner consistent with the objects of the Club. Examples of circumstances where the rejection of a membership application is likely to be consistent with the above objects include:

- (a) where an applicant has previously failed to comply with the objects; and
- (b) where admission of the applicant would hinder (or prevent) the Club achieving one or more of the objects.

6. Anti-discrimination legislation

Anti-discrimination legislation (both NSW and Commonwealth) also prevents a Club from rejecting a person's membership application based solely or substantially on a prescribed attribute of the person as defined under the specific legislation (i.e. a person's race, gender, disability etc.). Clubs should never make a decision solely or predominantly on the basis of such an attribute or they risk exposure to legal challenge by the unsuccessful applicant and in some instances penalties.

7. Further requirements that exist when refusing applications to renew an existing membership

If the Committee considers a renewal application and decides it should be rejected, the member must first be afforded an opportunity to lodge written submissions to the Committee regarding their renewal of membership prior to the Committee confirming its decision. The Committee must consider the submissions (if any) and subsequently reach a final decision on whether to accept or refuse the renewal application, whilst complying with all other requirements contained in these guidelines.

8. Record keeping of disapproved membership applicants

We recommend that the Club keeps records of the Committee's consideration of disapproved membership applicants to evidence its compliance with the requirements above and to refute any allegation by a disapproved candidate that it has breached general law requirements or anti-discrimination legislation. Ideally, the records of the Committee's consideration of disapproved applicants should contain the reasons for the Committee's decision. In circumstances where the Club's refusal was challenged in court, it would be entitled to rely on the minutes/records as evidence that the Committee had exercised the decision in good faith, in accordance with the objects of the Club, and in accordance with anti-discrimination legislation.

EXAMPLES OF LEGITIMATE GROUNDS FOR REFUSAL OF A MEMBERSHIP

1. Safety - maximum membership reached

Pony clubs need to ensure that the safety of their participants is never jeopardised by increased membership numbers. Where a club is operating at maximum capacity, an increase in members may lead to a dangerous amount of riders riding at any given time. Where a club's facilities are unable to safely handle an increase in riders, a denial of membership on this basis is likely to be a reasonable and good faith refusal to grant a membership.

2. Safety - Instructors per rider

Another safety factor clubs need to consider when admitting members is the club's ability to retain a safe and suitable number of instructors per rider. If the number of riders increases to a point where instructors are not able to adequately supervise all of the riders, then safety risks could arise (particularly where inexperienced riders are present).

Clubs should strive to ensure the membership is limited to ten riders per instructor (and aim for eight riders per instructor where inexperienced riders are involved).

3. Facilities at capacity

Some clubs may be limited by the size of their facilities. A club may find itself restricted due to the size of yards, number of suitable carparks and available horses. In these situations, clubs may need to restrict admission of membership due to its facilities being at capacity.

If a club's resources are unable to cater for an increase in membership, then refusal on this basis is likely to be a legitimate reason to deny membership.

Note: Decisions to refuse to grant a membership to a rider on any of the above grounds must still be made in good faith, in accordance with the club's objects and actually made for the stated reason (i.e. a denial stated to be made for one of these reasons cannot be used as a veil to hide a denial of a membership that was actually made for another, improper reason).

Dated January 2016