

ADVICE

The Boer Goat Breeders Association of Australia (“BGBAA”) is seeking advice on a proposal that state associations could be set up under the Associations Incorporations Acts in each state to allow greater independence and control of member activities at each state level.

The objective would be to establish state associations that would be:

- Legally independent of BGBAA and responsible for their own actions but licensed to use a state variation of the BGBAA name.
- Capable of raising their own funds and determining their own expenditure (but presumably not able to charge independent membership fees in addition to the membership fees charged by the BGBAA).
- Independently insured.
- Independently controlled and managed.

Clause 71 of the BGBAA Constitution could be expanded to provide that in addition to the current power of the BGBAA Board to establish local branches, the BGBAA could also recognise a state association in a state which could be established as an incorporated association with objects and rules in a form acceptable to the BGBAA Board.

The BGBAA Board could provide members interested in establishing a state association with an acceptable pro-forma set of objects and rules. That would ensure uniformity in how important issues are addressed (e.g. discipline procedures). The Rules could also acknowledge that the use of a variable of the BGBAA name was only with the consent of the BGBAA and could be withdrawn by the BGBAA.

Presumably one requirement for state association membership would be that the state members was also a BGBAA member. This would avoid a situation where people could decide to join their state association rather than join the federal body. Termination of federal BGBAA membership would then automatically disqualify a person from continuing as a member of their state association.

Subject to in principal confirmation from the BGBAA auditors, BGBAA could distribute funds to these state associations given the commonality of the objects

and purpose, and similar controls being in place upon the use and application of funds that would exist between the BGBAA Constitution and the Rules adopted by the state associations. The state associations themselves could not be BGBAA members, as BGBAA cannot pay funds to its members.

The basis of payments to be made from BGBAA to the state associations could be determined (and perhaps varied) from time to time by the BGBAA Board or could be fixed in some manner. The Board may take the view that it would need to retain a degree of flexibility in determining transfers of funds to allow for contingencies that may arise. On the other hand there may be concern at state levels if the state bodies do not have certainty of federal funding (particularly if they are not permitted to levy their own membership fees) and if they perceive that they could be subject to federal pressure at some time by a threatened removal or reductions of funding.

The possibility has been suggested of funding from the federal body to the state bodies being determined on a formula basis, such as a transfer to the state association of fixed percentage of all federal membership fees received from members within the relevant state.

Presumably, that would necessitate federal members nominating the state association they wished to join. (Note: some federal members may otherwise qualify for membership of more than one state body). If that were to be the funding method chosen, then a paid-up BGBAA member would automatically have membership without further payment to his/her/its nominated state association. This method of funding may create significant funding imbalances between the larger and smaller states, and there may be concerns about the ability of smaller states to function effectively with the funds available from a smaller membership base.

If the funding basis was to be a fixed proportion of the membership fees paid by federal members, then issues could arise concerning the status of those funds when received by BGBAA. It could be argued that BGBAA held the determined percentage of a member's fees on trust for the member's state association (i.e. as that member's state membership fees, collected by BGBAA as agent for the state body). Clearly, if the state bodies are to be receiving federal funds, careful thought need to be given to funding formula to apply. It may be that a mixture of fixed and discretionary federal funding would be appropriate.

The possibility has also been raised of representation for each state body on the BGBAA Board in addition to the continuation of the present procedures for direct election of directors.

That would require some quite significant amendments to the BGBAA Constitution.

The proposal would also necessitate an increase in the maximum number of directors that can hold office (presently only seven).

The board numbers may become unwieldy or cumbersome if there are to be some elected directors, plus one or more directors nominated by each state association. A more workable alternative might be for each state committee have the right to nominate an observer as a non-voting participant to attend federal board meetings and with the right to address the Board on any issue. That would enable the state body to change their nominated observer from time to time as they saw fit. The alternative of actually providing a mechanism to permit state associations to each appoint one or more federal directors also has other significant potential complications:

- Does the state association also have the power to remove a appointed federal director they have appointed? If so, can that be done by a resolution of the state committee or must it be by a special resolution of the members of the state association?
- Who has the power to fill a casual vacancy arising with the departure from the Board of a state appointee?
- Do the federal members have the right to remove a state appointee to the Board as they would with an elected director?
- Would state nominated directors be appointed by the state committees or elected by the state members?
- If the members of the state association vote to elect their state appointee to the federal Board, must that person also be a member of the Committee of Management of the state association?

If one reason for having state representations at the federal board is to ensure good communications in both directions, then it would seem important that the person appointed to represent a state association should be able to represent the position of the state committee of management to the federal board and to communicate federal board positions back to his or her state committee.

By providing state associations with federal board observer status, the intended two-way input and communication process can be achieved without the complications that would arise from amending the Constitution to provide for state appointed or state elected federal directors.

The other issues upon which the federal association would wish to either exercise control or at least have input (both at the establishment stage of the state associations and going forward) could be adequately covered without amending the federal constitution by ensuring that the Rules and objects of each state association satisfy pre-determined federal requirements. The acceptable state Rules could include provisions preventing the subsequent alteration of those Rules without federal board approval.

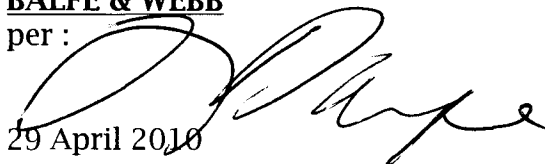
Amendments to Clause 71 of the current BGBAA Constitution as well as allowing for formal recognition of state associations could also permit the federal body to sever the connection, funding and recognition of state associations. Presumably that would only happen in the most serious of circumstances after complying with clearly prescribed procedures (e.g. perhaps by a special resolution at an EGM of the federal membership). However, it would obviously be a matter of fundamental importance to ensure that the connection with a state body could be severed in critical circumstances. In that event, it would also be essential to have the right to enforce a discontinuance by the state body of the use of any variable of BGBAA name.

Subject to the approval of the BGBAA auditors of any proposed federal funding of state bodies, the above proposal should enable state associations to be established and recognised by the federal association. The state associations could enjoy a considerable level of independence and responsibility, but consistent with an ongoing connection through funding, objects and name with the federal body. As indicated, this could be achieved in the manner suggested above without requiring major amendments to the existing BGBAA Constitution.

If the Board have any queries, or require any further information, we would be pleased to respond further to those.

BALFE & WEBB

per :

A handwritten signature in black ink, appearing to be 'D. Page', written over the text 'per :'. The signature is fluid and cursive.

29 April 2016