



**RSL NSW**  
**Cumberland**

RSL NSW sub-Branch  
**TRUSTEES**



**R S L N S W**

Respecting, supporting and remembering  
our veterans and their families

# Standard Operating Procedure 5

## Responsibilities and Duties of sub-Branch Executives, Committee Members and Trustees

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RSL NSW sub-Branch  
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SOP - 5

## 4. Trustees

### 4.1. General

Trustees must hold sub-Branch assets on trust for the sub-Branch in accordance with the Constitution, any applicable deeds of appointment and the obligations they hold as Trustees at law. Trustees are appointed in accordance with clause 16.2 of the Constitution.

Trustees have specific duties at common law and under the Trustee Act 1925 (NSW). The terms and parameters of their role and specific obligations are set out in their Deeds of Appointment and clauses 16.12 – 16.22 of the Constitution.

### 4.2. Trustees – Performance of Obligations

In performing their Trustee obligations, Trustees:

- a) may attend sub-Branch Executive meetings;
- b) must report periodically to the sub-Branch Executives on matters affecting their trusteeship and sub-Branch Property held on trust;
- c) may make enquiries as are necessary and relevant to matters affecting their trusteeship as they see fit to enable them to properly carry out their legal duties and obligations as trustees;
- d) must take all steps to ensure that they are properly and fully informed to exercise their powers, functions and discretions;
- e) must ensure that Trust Deeds are prepared and registered in a timely manner; and
- f) must act in accordance with any resolution, instruction or direction of the sub-Branch members;
- g) must ensure that a detailed handover is performed to their successor when they cease holding office.

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**CONSTITUTION**

## **16. TRUSTEES**

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### **Appointment of Trustees**

- 16.1 Each unincorporated sub-Branch must elect and at all times have either:
- (a) three Service Members;
  - (b) RSL Custodian; or
  - (c) two Service Members and RSL Custodian,
- as trustees of the sub-Branch to hold and receive sub-Branch Property on behalf of the sub-Branch, and to act in this regard strictly in accordance with the sub-Branch's duties and obligations as a sub-Branch under this Constitution.
- 16.2 The President of the sub-Branch will be the appointor and must formally appoint sub-Branch trustees as elected by a majority resolution of the sub-Branch Members at a general meeting.
- 16.3 Any sub-Branch Executive may be appointed to hold the position of, and act as a Trustee.
- 16.4 A sub-Branch may, at a general meeting of the sub-Branch nominate RSL Custodian as a Trustee or as the sole Trustee of sub-Branch property and the President as appointor may appoint RSL Custodian provided that RSL Custodian consents to being appointed.
- 16.5 A Trustee will continue to be trustee of the sub-Branch until their death, resignation, transfer to another sub-Branch, mental incapacity, bankruptcy, removal from office as a trustee by a sub-Branch or the Board in accordance with this Constitution or expulsion or suspension, cancellation or cessation of RSL NSW Membership.
- 16.6 A Trustee must not, directly or indirectly, receive any commission, remuneration or profit from their role as Trustee.
- 16.7 The requirement to appoint Trustees and for all sub-Branch Property to be held by Trustees does not apply to sub-Branches which are or become incorporated.
- 16.8 The terms upon which the Trustees appointed in accordance with clause 16.2 will hold sub-Branch Property are the terms set out in this Constitution.

### **Declaration of Trust**

16.9 Each Trustee must make a declaration of trust in respect to all sub-Branch property that they hold on trust for the sub-Branch.

16.10 The Trustees making a declaration must, if the declaration relates to:

- (a) land or interest in land under the Torrens Title system, or
- (b) other land or interests in other land,

lodge the declaration with the Registrar-General in accordance with the provisions of section 82 of Real Property Act.

16.11 The terms set out in the declaration of trust referred to in clause 16.10, read together with the terms of this Constitution constitute the terms upon which the Trustees hold sub-Branch Property.

## **Duties, Powers and Obligations of a trustee**

- 16.12 Trustees will hold sub-Branch Property on trust as joint tenants for the sub-Branch for the express purpose of pursuing the Charitable Purpose and must act at all times in the best interests of the sub-Branch.
- 16.13 Without limiting clause 16.12, the sub-Branch trustees must at all times deal with sub-Branch Property:
- (a) in the best interests of the sub-Branch and in accordance with and in a manner consistent with the sub-Branch's obligation to ensure that all sub-Branch Property is used only to further, support and pursue the Charitable Purpose and to apply sub-Branch Property to the Charitable Purpose;
  - (b) in accordance with any resolution, instruction or direction made by the sub-Branch in all matters relating to the Trust including, without limitation, the management and control of the Trust; and
  - (c) with the prior written approval of the Board where required under this Constitution.
- 16.14 The Trustees may in their capacity as Trustees:
- (a) sell, mortgage, lease (including to grant leases for terms which may exceed five years) and otherwise dispose of the sub-Branch Property in Trust in accordance with the Constitution;
  - (b) take, maintain or defend any legal action necessary to protect the sub-Branch Property.
- 16.15 Trustees must keep the sub-Branch Executives regularly and fully informed on all matters regarding sub-Branch Property held on trust and must attend at least three general meetings including the annual general meeting convened and held by the sub-Branch in a calendar year. The appointment of an RSL NSW Member as a Trustee will not otherwise affect their rights and obligations as an RSL NSW Member.
- 16.16 The Trustees must not deal with sub-Branch Property other than in accordance with the rights and obligations of a sub-Branch under this Constitution and it is a term of their appointment that the Trustees must act in their capacity as trustees in accordance with the direction of the sub-Branch provided that any direction of the sub-Branch must be in accordance with and comply with the obligations of the sub-Branch under this Constitution.
- 16.17 Each Trustee must ensure that:
- (a) detailed records of all transactions relating to any sub-Branch Property under their control are kept by the sub-Branch;
  - (b) all records including title documents, securities, mortgages, charges, leases, licences, agreements and all other records relating to sub-Branch Property are provided to the sub-Branch Executives;
  - (c) they provide all information requested by any auditor or reviewer appointed by the sub-Branch; and
  - (d) they attend any meeting of the sub-Branch to answer questions if requested by the sub-Branch Executives to do so.
- 16.18 The Trustees are entitled to be given access upon request to all Documents, records and information kept by the sub-Branch relating to any sub-Branch Property under their control.

16.19 Immediately upon ceasing to be a Trustee, the Trustee must:

- (a) sign all documents and do all things necessary to transfer all sub-Branch Property; and
- (b) to provide, produce and hand over all Documents and other information, documents of title, accounts, books or records held by the Trustee,

to the remaining or incoming Trustees (as applicable), or as otherwise directed by the sub-Branch, or to RSL NSW if the sub-Branch Charter has been terminated, revoked or surrendered and take all necessary and reasonable steps to ensure this occurs as soon as practicable.

16.20 In the event that a sub-Branch becomes an incorporated body, the Trustees must transfer all sub-Branch Property and hand over all documents of title, accounts, books or records held by the Trustee to the newly incorporated body upon confirmation of the transfer of the sub-Branch Charter to the newly incorporated body.

16.21 The duties and obligations of a Trustee under this Constitution and at law continue to apply in relation to all sub-Branch Property held on trust until the obligations in clause 16.20 are fulfilled.

### **Conflict of Interest**

16.22 The Trustees must adopt and apply the same conflict of interest principles as are set out in clauses 9.48 to 9.54 above.

## **Removal of Trustees**

- 16.23 The Trustees jointly and severally recognise the right of the President as appointor, the sub-Branch by Special Resolution and/or the Board to remove the Trustees (or any of them) from office at any time in accordance with the Constitution, and each of them agree to cooperate and act in accordance with any lawful or reasonable direction by the Board in the event of such removal.
- 16.24 A Trustee may at any time be removed as Trustee by the President acting upon a majority resolution of the sub-Branch at a general meeting of the sub-Branch.
- 16.25 A Trustee may also be removed by a resolution of the Board upon the suspension, expulsion, dissolution or termination or cessation of the sub-Branch in accordance with the disciplinary procedures set out in clause 17.2.
- 16.26 A Trustee will be deemed to have resigned as Trustee at the end of a calendar year, if the Trustee fails to attend at least three general meetings of the sub-Branch within that calendar year.
- 16.27 A Trustee may also be removed in accordance with the terms of any other document appointing the Trustee.
- 16.28 The Trustees agree, upon their removal from or other cessation of office:
- (a) to do all things necessary to deal with any sub-Branch property in accordance with the provisions of clause 16.19; and
  - (b) to execute all such documents and to perform and to attend to all such matters and things as the President or Secretary of the sub-Branch or any new trustee or trustees may reasonably require to enable vesting of the trust property in such new trustee or trustees.

## **Action against Trustees by RSL NSW**

- 16.29 Any Trustee who is in breach of his or her obligations as a Trustee under this Constitution or under any other trust instrument appointing the Trustee or at law will be liable for the loss suffered by the sub-Branch. RSL NSW may take action including legal proceedings against any Trustee on behalf of the sub-Branch seeking to recover any loss or damage suffered or incurred by the sub-Branch.