

## Section 86 Committees as Tourism Organisations

Fact Sheet 07  
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Regional and Local Tourism Organisations can be set up using a number of different legal frameworks. Some examples of legal frameworks include:

- Special Committee of Council as delegated under Section 86 of the Local Government Act, 1989
- Incorporated Associations registered under the Associations Incorporation Act, 1981; or
- Company under an Act of Federal Government such as a Company Limited by Guarantee.

The main purposes of a legal structure are:<sup>1</sup>

- 1 To provide clear guidelines about the operation and management of the organisation
- 2 To provide a legal framework in which Committee Members can operate. This provides legal protection for members of the Committee.

### Section 86 Committees

A number of Tourism Organisations within Victoria have been established as a Section 86 Committee of Council. Section 86 refers to a Section of the Victorian Local Government Act which allows for Councils to delegate some of its functions, duties or powers under this or any other Act to a special committee. Examples of Section 86 Committees of Council, in Victoria which are Tourism Organisations are: Alpine Region Tourism, Surf Coast Tourism Board, and Ballarat Tourism.

When a Council delegates its authority under Section 86 of the Local Government Act, this means:

- Lawful actions of the Section 86 Committee are in effect actions of the Council
- Section 86 Committees do not need to be incorporated
- Committees are protected by insurance applicable to Council.

- Section 86 Committees must only act within the area in which power has been delegated to them by Council. This is called a Deed of Delegation.
- Section 86 Committees must keep records in accordance with the Local Government Act ie minutes of meetings and appropriate financial records.

In addition to a Deed of Delegation, Council may wish to establish an MOU with a Section 86 Committee to outline agreed shared roles and responsibilities. Guidelines for establishing a Deed of Delegation and an MOU Template follow.

<sup>1</sup> Cardinia Shire Council, Committee's Handbook, March 2002

## Guidelines for establishing a Deed of Delegation for a Section 86 Committee of Council

It is suggested that A Deed of Delegation should set out:

### 1 The Purpose of the Section 86 Committee

**2 Section 86 Committee Obligations:** i.e. Lawful actions of the Section 86 Committee are in effect actions of the Council, Section 86 Committees must only act within the area in which power has been delegated to them by Council and Section 86 Committees must keep records in accordance with the Local Government Act i.e. minutes of meetings and appropriate financial records.

**3 Council Obligations:** (as set out in the Local Government Act) in establishing a Section 86 Committee i.e. "Council may appoint members to a special Committee and may at any time remove a member from a special committee" and Council will provide insurance protection for Section 86 Committee members

### 4 Section 86 Committee Objectives

### 5 Section 86 Committee Duties, Functions and Powers as delegated by Council

**6 Dispute Resolution Clause:** agreed process of resolving any disputes between Council and its Section 86 Committee.

## Sample template for a Memorandum of Understanding

### Memorandum of Understanding

Organisation X  
&  
Organisation Y

#### 1 INTRODUCTION

This Memorandum of Understanding ("MOU") records an agreement between Organisation X, Address XXX, and Organisation Y, Address XXX for the provision of XXX services as set out in Appendix A.

#### 2 BACKGROUND

ORGANISATION X is XXX type of organisation with X role and X responsibilities.  
ORGANISATION Y is XXX type of organisation with X role and X responsibilities.  
ORGANISATION X have agreed to provide XXX services to ORGANISATION Y.

#### 3 AGREEMENT TERMS

The term of this agreement is X Month 200X- X Month 200X.

ORGANISATION Y may terminate this Agreement immediately by written notice:

- a) if, in the reasonable opinion of ORGANISATION Y, ORGANISATION X, after having been given 14 days notice in writing, fails to carry out its obligations under this Agreement; or
- b) if ORGANISATION X goes into liquidation, or a receiver and manager, administrator or mortgagee or chargee's agent is appointed, or becomes subject to any form of insolvency administration or arrangement.

Either party to this Agreement may without cause terminate this Agreement by giving 21 days' notice in writing to the other party. Such termination by either party shall be without liability to pay damages to the other party and without prejudice to the accrued rights of either party.

#### 4 OBLIGATIONS

ORGANISATION X will provide the following services:

XXX

XXX

ORGANISATION Y will provide:

XXX

#### 5 DISPUTE RESOLUTION

If a dispute should arise between the parties under this MOU, the parties shall agree to meet to resolve the dispute. For the purpose of this agreement, a dispute will be deemed to exist where one party informs the other in writing that a dispute exists.

Should the dispute not be resolved in the first instance then both parties shall agree to meet to resolve the dispute by mediation, with both parties agreeing on a mediator.

If both parties cannot agree upon whom shall be the independent mediator, then a mediator will be appointed by the President of the Law Institute of Victoria. The mediator appointed shall be binding on both parties. Both parties shall contribute to the cost of the mediation in equal proportions and otherwise bear their own costs.

#### 6 REPORTING

Within 14 days of the Date of Commencement, ORGANISATION X will provide ORGANISATION Y with a detailed Plan of Services including outputs, key performance indicators and a reporting schedule.

#### 7 FINANCIAL AGREEMENT

A total sum of X (plus GST) is payable for the term of this agreement as a service fee for ORGANISATION X to provide the above listed services to ORGANISATION Y.

ORGANISATION Y shall not be obliged to make payment under this agreement unless ORGANISATION X has fully complied with its obligations to the date of claim or final claim as the case may be.

The payment of X will be made according to the following quarterly instalments:

1 Month 200X	\$XXX	(for period X Day X Month-X Day X Month 200X)
1 Month 200X	\$XXX	(for period X Day X Month-X Day X Month 200X)
1 Month 200X	\$XXX	(for period X Day X Month-X Day X Month 200X)
1 Month 200X	\$XXX	(for period X Day X Month-X Day X Month 200X)

Signed by :

ORGANISATION X

.....

NAME

TITLE

ORGANISATION X

ORGANISATION Y

.....

NAME

TITLE

ORGANISATION Y

Date:                    /   /

Date:                    /   /

**Excerpt from Local Government Act 1989****Local Government Act 1989 - Sect 86<sup>2</sup>**

## Special committees of the Council

## 86. Special committees of the Council

(1) In addition to any advisory committees that a Council may establish, a Council may establish one or more special committees of the following:

- (a) Councillors;
- (b) Council staff;
- (c) other persons;
- (d) any combination of persons referred to in paragraphs (a), (b) and (c).

(2) A Council may appoint members to a special committee and may at any time remove a member from a special committee.

(3) Except as provided in sub-section (4), a Council may by instrument of delegation delegate any of its functions, duties or powers under this or any other Act to a special committee.

(4) A Council cannot delegate to a committee the following powers:

- (a) this power of delegation;
- (b) to declare a rate or charge;
- (c) to borrow money;
- (d) to enter into contracts for an amount exceeding an amount previously determined by the Council;
- (e) to incur any expenditure exceeding an amount previously determined by the Council;
- (f) any prescribed power.

(5) A Council may require a special Committee to report to the Council at intervals determined by the Council.

**Definitions**

“Council” means a municipal Council (including the Council of the City of Melbourne and the Council of the City of Geelong) whether constituted before or after the commencement of this section; “Councillor” means a person who holds the office of member of a Council; “person” in relation to Part 3, means a person who has attained the age of 18 years but does not include: (a) a corporation; or (b) a Council or any other body incorporated or constituted by or under this Act.

<sup>2</sup> [http://www.austlii.edu.au/au/legis/vic/consol\\_act/lga1989182/s86.html](http://www.austlii.edu.au/au/legis/vic/consol_act/lga1989182/s86.html)

## SNAPSHOT OF ALPINE REGION TOURISM



### Alpine Region Tourism Board

The Alpine Region Tourism (ART) board operates within the Alpine Shire. The Alpine Shire is located in North East Victoria and covers an area of 4,839kms. It encompasses Mount Buffalo and the Bogong High Plains, Dinner Plain, as well as the major townships of Mount Beauty, Bright, and Myrtleford. Whilst Mount Hotham and Falls Creek are in the Alpine region, they are not part of the Shire, and are instead managed by resort management boards, who are appointed by the Minister for Tourism.

Approximately 92% of the Alpine Shire is public land, including large tracts of the Alpine National Park, as well as the whole of the Buffalo National Park and encompassing the Ovens and Kiewa Rivers and Lake Buffalo. Visitors can enjoy a variety of nature based activities in the region all year round; including skiing, bushwalking, water related activities and scenic drives.

Tourism is a significant industry in the Alpine Shire, with the latest research by Tourism Research Australia indicating that

the Shire has attracted an average of 432,000 domestic overnight visitors annually since 1998. Its accessible location to Melbourne, as well as its close proximity to NSW and ACT, means it is a popular destination for both intrastate and interstate visitors.

### Structure

The ART board comprises 5 members and is a Section 86 Committee of Council. The tourism sector is one of the biggest contributors to the local economy, with over \$125 million spent in the Shire annually by visitors. ART board members provide advice to Council in the following portfolios:

- Business development
- Tourism
- Infrastructure development
- Business management
- Marketing

The Alpine Shire employs 5 full-time and 1 part-time employees who contribute to the development and growth of tourism and business in the region.

### Partnerships / Relationships

ART is a Local Tourism Association (LTA). The North East Victoria Regional Tourism Organisation (RTO) provides funding and joint marketing. The Alpine Shire collaborates with the other Shires in the region in

promoting the area, including information about living, investing and working in the region, through the Provincial Victoria campaign.

Alpine Shire Council, Economic Development and Tourism Marketing staff work closely with the ART board and together provide strategic direction, management and professional advice to Council.

### Funding

The Alpine Shire Council generates income by applying a Commercial and Industrial Special Rate. The income generated goes towards producing local tourism information, the running of two of the Visitor Information Centres (VICs), a comprehensive marketing program, a training calendar and an annual exit survey (which compliments the National Visitor Survey).

Tourism operators from throughout the State can also become members of the accredited VIC's operated by Council. A fee is paid by tourism operators, in return for broader exposure of their business. Different levels of membership exist: platinum, gold, silver and bronze, and depending on the type of membership, a business receives different levels of exposure and information or product placement at the VICs.

## Tourism Business Plan

ART is currently operating to its 2005-2008 tourism strategy plan, with a new tourism strategy planned for 2009-2011. The tourism business plan outlines ART's vision, mission, values and priorities. An annual action plan will be derived from the strategic plan.

## Key Tourism Projects

A number of key tourism projects that ART are currently focusing on include:

**Cycle Tourism** - The emergence of cycle tourism has prompted the Alpine Shire, Indigo Shire and Wangaratta Shire to employ a Cycle Tourism Officer, based in Wangaratta. Working for all three Shires, the Officer's role includes marketing the 98kms Murray to Mountains Rail Trail, assisting with the many down hill and mountain bike events that are held in the Shires and promoting the Shires as a premier cycling destination.

## Australian Alps/Adventure Tourism -

The Australian Alps has just been announced as one of Tourism Australia's National Landscapes. The Australian Alps comprises ranges from Canberra, through NSW to Eastern Victoria, including the Alpine National Park, Victoria's largest national park, which sits partly in the Alpine Shire. This recognition provides opportunities for increased marketing of adventure tourism and expansion into indigenous and sustainable tourism markets.

**Great Alpine Road** - The Great Alpine Road runs 309kms from Wangaratta in the High Country to Bairnsdale in East Gippsland. The touring route runs right through the Alpine Shire. The Great Alpine Road is a significant tourist attraction in the Alpine Shire and is part of the Sydney Melbourne Touring Route.

**Mount Buffalo Chalet** -The closure of Mount Buffalo Chalet in December 2006 has significantly impacted on tourism in

the Alpine Shire. The ART board continues to work with Council, Parks Victoria and the State Government to ensure it is reopen, for the 100th anniversary in 2010.

**Food and Wine** - The Alpine Shire is home to outstanding produce, wineries, cafes and restaurants. Myrtleford boasts The Age Good Food Guide Country Restaurant of the Year with Range and Bright features chef hat winner Simone's of Bright. Many of the Shires wineries are award winning, including the Tourism Victoria Winery of the Year, Gapsted. ART supports North East Valleys Food & Wine and Alpine Valley Vignerons, who continue to marketing and promote local products to a wider market.

For further information:

Alpine Region Tourism board links:  
[www.visitalpinevictoria.com.au](http://www.visitalpinevictoria.com.au) or  
[www.alpineshire.vic.gov.au](http://www.alpineshire.vic.gov.au)