

4. Some Important Parts of the *Associations Incorporation Act 1985*

Background

Incorporated Associations in South Australia, including the Adelaide Showgrounds Farmers Market Inc (**ASFM**), are bound by the provisions of the *Associations Incorporation Act 1985* (SA) (the **Act**). Under the Act, there are a number of obligations which an association, its members and committee members must abide by. This document sets out some of the key parts of the Act of which, as a committee member of ASFM, you should be aware.

Key Definitions

Under s 3 of the Act, there are lots of defined terms but there are some key definitions which are important for you to understand.

- A **member** is a person or body who is, under the rules of the association, a member of the association.
- An **officer** of an association is a committee member of the association but it can also include other people including office holders, a secretary, treasurer or public officer of the association or someone who takes part in the management of the affairs of the association.
- A **special resolution** is a resolution (or vote) of an incorporated association which is passed at meeting of the members of the association with at least 21 days written notice to members and which is passed by a majority vote of at least three-quarters of the association's members who have voted in person.

Powers of an Association

Associations have powers to do certain things in accordance with the association's objects and purpose. The specific powers are set out under s 25 (Part 3 Division 4) of the Act and include:

- Acquiring, holding and dealing with real or personal property;
- Investing or borrowing money;
- Appointing agents to transact any business on the association's behalf; and
- Entering into contracts.

Rules of an Association

Associations must exercise their powers in accordance with a document created by the association, called the 'Rules' (also sometimes called a 'Constitution'). The Rules are binding on all members and officers of the association.

Under Part 3 Division 3 of the Act, an association's rules must have regard to the nature and objects of the association and cannot be inconsistent with the Act. As a minimum, under s 23A of the Act, the Rules must include:

- The association's name;
- The details of the association's membership;
- The appointment, powers and duties of the committee;
- The appointment of an auditor;
- The calling of and the procedure at general meetings;
- Who has the management and control of the funds of the association;
- The powers of the association and how they can be exercised (and by who); and

- The process for altering the Rules.

Under s 24 of the Act, the Rules can be only be changed by *special resolution*. Any changes which are passed must subsequently be registered at the SA Office for Consumer and Business Services.

The Management Committee and your duties as a committee member

Duties under the Rules

The Rules set out specifically what the committee's powers are and what obligations are on the committee members. As a committee member, you should read ASFM's Rules (available on the website) and become familiar with your roles and duties in that document.

Other duties under the Act

In addition to the Rules, the Act also places specific duties on committee members of all associations under s 39A (Part 4, Division 1) of the Act. Breaches of duties under the Act carry financial penalties and can even result in imprisonment.

The key duties and penalties under s39A of the Act are summarised as follows:

- You cannot commit an act with intent to deceive or defraud the association – *Penalty \$20,000 or imprisonment for 4 years.*
- You cannot make improper use of your position or of information acquired by virtue of your position as an officer so as to gain (directly or indirectly) any benefit or advantage for yourself (or any other person) to the detriment of the association – *Penalty \$20,000 or imprisonment for 4 years.*
- You must at all times act with reasonable care and diligence in the exercise of your powers and the discharge of the duties of his or her office – *Penalty \$1,250.*

Conflicts of interest

Committee members also have a further duty to disclose any conflicts of interest which arise in the course of their role on the committee under s 31 of the Act.

A conflict of interest will arise where a committee member has a financial interest (either direct or indirect) in a contract or proposed contract with the association.

If a conflict of interest does arise, then this must be disclosed to the management committee as soon as you become aware of the issue. Further, it must also be raised with all members at the next AGM. You also cannot vote with respect to that matter, and it may affect your ability to be part of the deliberations with respect to that contract.

Failure to comply with these requirements can result in a \$5,000 fine.

Reliance on information from others

Under s 39AB, as a committee member, in general, it will be considered reasonable for you to rely on information or advice given to you by an expert, employee of the association, specialist committee member or specialist subcommittee if:

- The information or advice is within that person's expertise or competence;
- You relied on that person in good faith and after making an independent assessment of the information or advice; and
- Your reliance was reasonable, having regard to your knowledge of the association and the complexity of the structure and operations of the association.

Although these factors are only expressly relevant to determining whether an officer has complied with their duties under the Act in the course of legal proceedings, you may wish to use them as a guide when considering and relying on information or advice received from others in the course of your work as a committee member.

Other key provisions

Although the above covers the key provisions of which you need to be aware as a committee member, therefore some other sections of the Act of which you should be aware. These are:

Section of the Act	Key term	Description
Section 39	Annual General Meetings	In general, AGM's must be held within 5 months of the end of the financial year.
Section 39C and 39D	Record Keeping	An association must keep accurate accounting records which explain the transactions of the association and the financial position of the association. They must also be kept securely. Members can apply to the Supreme Court to inspect the records.
Section 51	Minutes	Minutes of all Annual General Meetings and Committee Meetings must be kept by the association. All minutes must be confirmed by members of the association at the next meeting.
Part 5	Winding Up and Dissolution of an association	There are a number of matters dealt with in this Part, but it is important to understand that an association can be wound up. This is can be done in a few ways, but two such ways is by order of the Supreme Court or voluntarily by the association after a special resolution.

Further Information

This document is intended to be a general summary of the provisions of the Act and is not a complete record in relation to the Act, nor is it legal advice.

If you need any further information, you should refer to the Act itself. The latest version can be downloaded [here](#). You can also find more information about incorporated associations on the SA Government's Associations [page](#) or by contacting the Office of Consumer and Business Affairs on 131 882 or associations@sa.gov.au.

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