

Positions in an incorporated association

Legal information for South Australian incorporated associations

This fact sheet covers:

- what is a committee?
 - governance
 - positions in a committee, and
 - duties of committee members.
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If you are starting an incorporated association in South Australia, or are new to working with an incorporated association, it's a good idea to understand who runs the association and the legal duties that apply.

If you don't fully understand how your incorporated association works or what role different people play in its operation, it can often be useful to step back and look at the association as a whole.

This fact sheet provides an introduction to the key parts of, and people involved in, an association incorporated in South Australia.

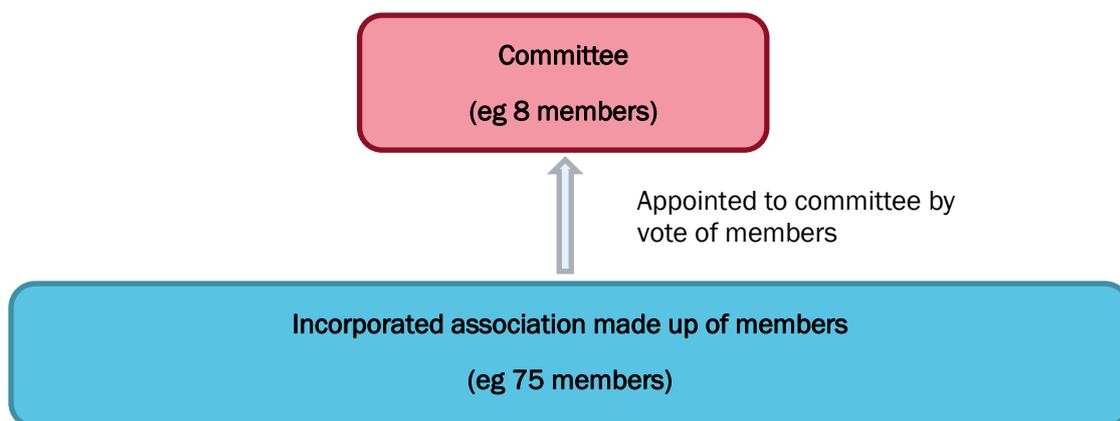
What is a committee?

Managing an incorporated association is the responsibility of an appointed committee. Sometimes other names are used for this governing body, such as the “board”, “council”, or “management committee”.

The committee is made up of those people who have the power to administer the association under the rules of the association. In SA, the law does not require a minimum number of committee members, however most associations will have a minimum of three. In many cases, the members of the association appoint a small group of people, who are themselves members of the association, to be on the committee (see Diagram 1 below).

Note, a person is not required to be a member of the association to be appointed to the committee by law, but it is reasonably common for an association's rules (also commonly known as a 'constitution') to make membership of the association part of the eligibility criteria for becoming a member of the committee.

Diagram 1: Appointing a committee (example only)



CAUTION

In South Australia, certain people are not allowed to be on the committee or take part in the management of the association unless they get permission from Consumer and Business Services. This includes a person who:

- has not been discharged from bankruptcy
- within the past five years has been convicted or imprisoned for committing one of the following offences:
 - any indictable offence (a serious criminal offence where a defendant has a right to trial by jury)
 - an offence involving fraud or dishonesty punishable on conviction by imprisonment for at least three months
 - an offence in connection with promotion, formation or management of a company, incorporated association or similar incorporated entity, or
 - breaching certain duties as an officer of an incorporated association or particular provisions of the *Associations Incorporation Act 1985 (SA)* (**AI Act**).

In some organisations, all the members of the incorporated association are also members of the committee. This is not against the law – it often happens in small associations or when the organisation first begins.

When all the members of an association are also on the committee, it can sometimes seem strange to separate the role of a member of the association from the role of a member of the committee. Further confusion can arise if the same people are also involved in actually operating the association (either employed or on a volunteer basis). However, it is important to understand the separate (legal) role of the committee.

Governance - how the committee differs from the “managers” of an association

Good governance practices are crucial to an association's ability to function, to achieve its objects and to comply with all of its legal, ethical and operational requirements. Community associations, especially small associations, often struggle to distinguish between:

- the role and responsibility of an association's committee (to make rules and set strategies, that is to govern the association), and
- the role and responsibility of the staff, “organisers” or key volunteers that are not on the committee (to “run things”, that is to operate the association).

While these two functions may be performed by the same group of people, distinguishing between issues of strategic governance and day-to-day management is important, as particular legal duties apply to the governance, but not the daily operation, of associations.

The 'governance' of an association is the responsibility of the committee, and generally refers to the direction and control of an association. This includes overseeing the affairs of the incorporated association and making sure its legal obligations are met.

Members of the committee of South Australian incorporated associations have particular legal duties under the AI Act and judge-made law, such as the duty of due care, skill and diligence, the duty to act in good faith in the best interests of the association and the duty to ensure that the association does not trade while insolvent. Committee members may also have duties imposed on them under the rules of the association. Note that the association may draft its own rules or otherwise adapt the template rules available on the Consumer and Business Services website.

For South Australian incorporated associations, committee members' functions under the AI Act include:

- ensuring an annual general meeting is held within five months of the end of the association's financial year
- keeping minutes of general meetings (formal meetings attended by members) and of meetings of the committee
- keeping accounting records that explain the transactions and financial position of the association
- ensuring annual financial statements are prepared and audited
- submitting audited financial statements and other relevant information to members at the annual general meeting
- lodging with Consumer and Business Services periodic returns containing accounts and other information relevant to the association (where required)
- overseeing the association's financial affairs. This includes making sure the association does not continue to operate if it is insolvent, and
- appointing a new public officer (a position discussed below) within one month of the previous one vacating office.

Consumer and Business Services, that is the SA entity overseeing incorporated associations, may get involved in any complaints that relate to a breach of the AI Act.

NOTE

If the association is also registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**) it will also need to comply with the requirements associated with being a charity. Some reporting requirements have been streamlined for SA registered charities meaning certain information only needs to be reported to the ACNC. This change to reporting requirements applies to registered charities from the 2017 reporting period.

For further information about the change to reporting requirements for SA registered charities see the ACNC's information page at www.acnc.gov.au/ACNC/Report/ReportingSA.aspx



In larger organisations, different people may be ‘managers’ (such as a CEO, finance manager or operations manager), and in smaller organisations, key volunteers may be responsible for making decisions about the day-to-day running of the association, based on the strategy decided by the committee. Normally these people do not need to comply with the legal duties that the committee must comply with, but occasionally, ‘managers’ or ‘key volunteers’ also need to comply with legal duties. This occurs where they are someone who takes part in making key decisions that affect the operations of an association or who is influential in the affairs (financial or otherwise) of the association (see discussion of “Committee members” and their duties below).

Are there special positions on the committee?

Commonly, there are a number of special positions on a committee. The people who take on positions on the committee are sometimes called “officers” or “office bearers” or “the executive” of the association. The titles of positions within a committee will vary between associations, however some common positions and their traditional roles are explained briefly below:

- the chairperson (or president) runs meetings and usually represents the organisation at public events
- the deputy chairperson (or vice-president) takes on the role of the chairperson when that person is not available
- the treasurer (or financial officer) deals with the financial affairs of the organisation, though note the financial affairs of the association are the responsibility of all committee members, and
- the secretary organises meetings, deals with documents and maintains records of the association and is normally responsible for all general correspondence.

The committee may have other members who do not hold a special position. These are sometimes called “ordinary committee members”. These ordinary committee members must also meet the duties that apply to officers of the committee.

Who is the public officer?

The AI Act requires every incorporated association to have a 'public officer'. The public officer of an incorporated association in South Australia has responsibilities under the AI Act and *Associations Incorporation Regulations 2008 (SA)* that include filing certain forms and documents with Consumer and Business Services including the financial returns of the association and any changes made to the association's rules. The public officer is the primary contact person for the organisation.

The public officer must be over 18 years old and must be a resident of South Australia. In most cases, the public officer is a member of the association but this is not a requirement. It is common for a public officer to have other responsibilities within the association such as being a member of the committee of management.

FURTHER READING

For further information about the role of public officer, see the following information page on Consumer and Business Services' website at www.cbs.sa.gov.au/associations-and-cooperatives/incorporated-associations/public-officer-responsibilities/.



"Committee members" and their duties

The AI Act uses the language of "officers" to describe the people in an association who have certain responsibilities that must be met. An "officer" is defined in the AI Act to encompass (among others):

- committee members
- the secretary
- the treasurer
- the public officer
- any person who takes part in the management of the affairs of the association, and
- any person whose instructions the committee typically follows.

Special legal duties apply to officers. Many duties that apply to officers are now listed in the AI Act, including:

- the duty to take all reasonable steps to comply with the AI Act
- the duty to exercise reasonable care and diligence
- the duty not to make improper use of information acquired by virtue of their position or to make improper use of their position to gain personal advantage or cause harm to the association
- the duty not to manage the association with the intention of securing a financial profit for members of the association
- the duty not to intentionally deceive or defraud the association, members or creditors of the association or creditors of any other person, and
- the duty to avoid 'insolvent trading'. This means that the committee should not allow the association to incur debts that the association cannot repay.

The AI Act also requires members of the committee:

- to disclose any personal interest in a contract or proposed contract with the association, and
- to refrain from taking part in any decision of the committee in relation to a contract or proposed contract that the committee member has a personal interest in.

There are also duties under the general (judge made) law that have been in existence for many years. The substance of these general law duties have not changed.

FURTHER READING

For more information about legal duties of office holders, see Not-for-profit Law's Guide to the Legal Duties of Not-for-Profit Committee Members on the Duties page of the Information Hub at www.nfplaw.org.au/governance.



The duties of committee members of incorporated associations would also include complying with the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the corresponding regulations (including the Governance Standards) if the association is registered as a charity with the ACNC.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub (www.nfplaw.org.au) has further resources on the following topics:

- ✔ Governance – www.nfplaw.org.au/governance
- ✔ Employees – www.nfplaw.org.au/employees
- ✔ Risk and insurance – www.nfplaw.org.au/riskinsurance
- ✔ Meetings – www.nfplaw.org.au/meetings
- ✔ Getting started – www.nfplaw.org.au/gettingstarted

Consumer and Business Services

- ✔ [Consumer and Business Services' website page on incorporated associations](#)

This is a link to the Consumer and Business Services' website that includes helpful commentary and further information regarding the incorporation and management of incorporated associations in South Australia.

- ✔ [Consumer and Business Services' guide to incorporation of an incorporated association](#)

This is a link to a guide published by Consumer and Business Services that sets out the processes to be followed to establish an incorporated association in South Australia.

For Treasurers

- ✔ [Our Community - Guide for Community Treasurers \(Westpac\)](#)

This is a link to the Our Community site which has developed a Guide for Community Treasurers in collaboration with Westpac bank.

Related Legislation

- ✔ [Associations Incorporation Act 1985 \(SA\)](#)

This is the Act that regulates incorporated associations in South Australia.

- ✔ [Associations Incorporation Regulations 2008 \(SA\)](#)

These Regulations set out the details of some laws that apply to incorporated associations in South Australia, including:

- the forms the association may need to submit to Consumer and Business Services, and
- the fees that the association may need to pay to Consumer and Business Services.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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