

3.2 Incorporation

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Benefits and responsibilities of incorporation

Incorporation offers a relatively cheap and easy mechanism for a group with a common interest to form a legal entity and a 'corporate identity' that is separate from the members who belong to it. In return the incorporated association accepts certain legal responsibilities.

An incorporated association can:

- > Sue and be sued in its own name
- > Enter into contracts
- > Acquire and deal with property

Liability for members is limited.

Many government bodies and charitable foundations will only fund incorporated associations.

Responsibilities:

- > The association must comply with the Act and Regulations under the Act.
- > The association must have a Public Officer who notifies the Office of Consumer and Business Affairs of changes to the organisation.
- > The association's full name (including the word "incorporated" or "inc") must appear on all documents and publications.
- > The association must have a registered address. This can be the address of the Public Officer.
- > The association may need to submit an annual audited financial statement of their affairs to the Office of Consumer and Business Affairs. In general, this applies to organisations with gross receipts over \$200,000.

Applying for incorporation

The Office for Consumer and Business Affairs is responsible for incorporation and their website has comprehensive information about how to apply for incorporation, copies of the forms needed and an example set of *Rules of an Incorporated Association*. A generic copy of the *Rules* can be downloaded from their website (see below).

Rules of Incorporated Association (constitution)

The *Rules of Incorporated Association*, often called the constitution, outline such things as the purpose of the organisation, its membership, the powers and duties of the committee and procedures at general meetings.

In the case of a farmers' market the constitution governs the organising body not the actual week-to-week running of the

market itself. This is covered by a set of Market Rules (see *5.3 Market Rules*).

Based on the Willunga Farmers Market experience, some of the important aspects of the rules of the association to consider are:

> Name

Generally the name reflects either the place that the market will be held (eg Willunga Farmers Market) or the region that the produce comes from (eg Barossa Farmers Market).

Increasingly, there are moves overseas to regulate the use of the term 'farmers' market'. Make sure that if you adopt the name you understand and follow the underlying values.

The Willunga Farmers Market Experience

Our supportive local lawyer, John Rodgers gave us advice about different organisational structures.

John explained the benefits of becoming a not-for-profit incorporated body and pointed us in the direction of the Office for Consumer Affairs website that was full of information about how to apply for incorporation. We printed a generic copy of the rules from their website and went through each point deciding what additions or changes we needed to make.

Working on the *Rules of Incorporation* forced us to clarify our aims and to make a range of decisions.

One of the key points for us was defining the purpose of the association, which we decided was:

1. to ensure the successful establishment and continued development of the Willunga Farmers Market
2. to support by means of the Market the production and sale of fresh local seasonal produce of the Fleurieu Region.
3. to promote by means of the Market wherever possible the practice of sustainable food production in the Fleurieu Region.

> Definitions

You need to define terms used that have specific meaning for your association. For example the Willunga Farmers Market Inc *Rules of Incorporated Association* include the following definitions:

“Market” means Willunga Farmers Market

“Willunga Farmers Market” means the venue for the trading of Fleurieu Peninsula regional farm produce by the growers and producers of those products direct to consumers.

“farmer” means a primary producer of a product offered for sale at the Market.

“producer” means an individual who has value added to a primary product and who offers it for sale at the Market.

“community stakeholder” means any individual who does not meet the criteria to be farmer or producer but who supports the Market concept.

> Objects and purpose of the Association

Think carefully about these – it is the crux of why you are setting up the association and why you want to start a farmers’ market.

> Membership

We chose to have equal membership – all members pay the same fees and have equal rights. This is one way of enshrining the importance to the market of both customers and stallholders.

> The Committee

We specified that the committee should be comprised of not less than 50% of producers and/or farmers.

Checklist

> Call a meeting to:

decide on a name

appoint a Public Officer

determine aims and objectives of the organisation

approve a set of *Rules of the Incorporated Association* (the constitution)

> Complete Forms 1 *Application for Incorporation of an Association* & Form 2 *Statutory Declaration to Accompany Application*.

Form 2 needs to be witnessed by a Justice of the Peace.

> Lodge application and pay fees

Costs for incorporation in 2005 are \$134 and it takes about two weeks from the lodgement of the application.

Websites

Information about incorporation, forms, contact details:
<http://www.ocba.sa.gov.au/businessadvice/associations/>