



# **Clubs SA**

## Roles & Responsibilities For Licensed Clubs

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## 1. INTRODUCTION

Welcome to Clubs SA's ***Roles and Responsibilities for Licensed Clubs*** on-line resource.

As a licensed Club you have numerous regulatory instruments you need to comply with as well as providing a safe, responsible venue for your members, guests and local community.

As a director/committee member of a licensed Club, or if you are about to become one, you need to understand your role and the responsibilities involved. You also need to be aware of the various regulatory instruments and abide by them. You should not take your role as a director/committee member lightly, there are hefty penalties for non compliance and you may find yourself personally liable if you do not act with due diligence.

This on-line resource will provide you with an overview of your roles and responsibilities for operating a licensed Club but it is not exhaustive. The environment Clubs operate in is always evolving and the government is regularly changing the goal posts. It is important that you keep abreast of changes in the industry and prepare/adapt accordingly.

If your Club is a member of Clubs SA we will keep you informed of developments in the industry and any required action on your behalf. Clubs SA can also assist members with interpretation of the content in this resource and provide further support if required.

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## 2. CLUBS IN SOUTH AUSTRALIA

Clubs in South Australia are largely diverse. At the lower end are small volunteer-run Clubs, which while having limited socio-economic impact are diverse in their distribution. At the upper end are the larger gaming Clubs, which are very few in number but have a comparatively large socio-economic impact on the community. As a whole these Clubs provide the community with over \$37 million worth of tangible and intangible support, including maintenance of sporting facilities.

There are over 1,250 licensed Clubs in South Australia. Clubs can either hold a *limited club licence*, a *club licence* or a *special circumstances licence*. These liquor licence types are detailed in this resource.

There are hundreds of Clubs in South Australia purely operated by volunteers. A recent study undertaken by KPMG on our industry (*Club Census 2011*) illustrates that licensed Clubs had over 52,000 volunteers contributing over 1,065,000 hours in our state. Licensed Clubs are also a significant employer in this State, employing over 8,500 staff.

### 3. CLUBS SA

Clubs SA is the peak body for licensed Clubs in South Australia. Founded in 1919, Clubs SA is the trading name for the Licensed Clubs' Association of South Australia - the official industry body representing the interests of licensed Clubs in this state. Clubs SA's major platform has been to effect changes to government legislation to enable Clubs to become more self sufficient over the long term, and to provide a recognised infrastructure for the active support and promotion of sport and community events across the Club industry.

As an overall philosophy, Clubs SA's mission is to preserve, promote and advance the interests of member Clubs and the Club industry as a whole. Clubs SA's membership comprises sporting, ethnic, social and community Clubs. The Association works to promote and protect the interests of its members by providing a number of direct services to the Club movement of South Australia, including:

- Free on-site liquor licensing & OH&S compliance check-ups;
- Free legal advice relating to compliance with liquor licensing & gaming legislation c/o Donaldson Walsh Lawyers & Wallmans Lawyers;
- Free information seminars with speakers related to issues facing the industry;
- Free Liquor Price Guides;
- Free publications informing members on changes to legislation and compliance requirements;
- Access to networking events where Club delegates can meet with suppliers and learn of new products and services on the market;
- Free legislation advice and updates; liquor licensing, OH&S, governance, food safety, training, gaming;
- IR advice and advocacy; wage rate interpretation and advice, discipline and grievances, redundancies, honorariums, dismissals, long service leave, annual leave, unfair dismissal and underpayment of wages claims;
- Discounted manuals; HR manuals, Responsible Service of Alcohol manual, and the free Volunteer Clubs OH&S manual (with free updates);
- Discounted training courses; Responsible Service of Alcohol (on-line & classroom), Liquor Licensing Laws, gaming courses, certificate courses and more...

## 4. THE LAW

The challenges of operating a licensed Club in today's business world are compounded by litigation, regulatory restrictions, corporate governance and changing legislation. Licensed Clubs need to adhere to various pieces of legislation, the main ones being:

- *Associations Incorporations Act 1985*
- *Liquor Licensing Act 1997*
- *Fair Work Act 2009*
- *Occupational Health, Safety & Welfare Act 1986*
- *Equal Opportunity Act 1984*
- *Food Act 2001*
- *Tobacco Products Regulations Act 1997*
- *Registered and Licensed Clubs Award 2010* (if relevant)
- *Gaming Machines Act 1992* (if relevant)

Further to the above legislation there are various regulations and codes of practice that are relevant and need to be adhered to. Clubs SA members can access this information from Clubs SA.

A Club's *constitution* is also a critical document for licensed Clubs. It needs to be regularly reviewed and updated accordingly.

Clubs must understand the core roles and responsibilities of a director and their respective board, including reporting obligations, elections and voting, the working and operational relationship between the board, management and employees and decision making.

Clubs must also be aware of the broad legal implications of negotiating contracts and contractual relationships.

## 5. CORPORATE GOVERNANCE

*Corporate governance* is a widely discussed topic in the modern business world and there are literally volumes of information on it.

Basically, *corporate governance* is the system by which your Club is controlled. It is about how your Club manages its resources for the benefit of both members and stakeholders.

Good *corporate governance* involves:

- **Planning** – Developing strategic goals and objectives and determining how these can be achieved.
- **Organisational performance** - Monitoring the performance of the Club against performance targets to ensure the goals and objectives are achieved.
- **Leadership** - Ensuring the Club is governed responsibly with the best interests of members and stakeholders at the core of decision making.

Good *corporate governance* allows:

- **Better management** - Good governance encourages better managed and more efficiently organised Clubs.
- **Improved communication** - A well-run Club facilitates better informed members and volunteers.
- **Sustainability and growth** - Careful business planning and implementation of policies and procedures helps sustain and develop your Club.
- **Attracting sponsors** - Sponsors are more likely to link up with efficiently run organisations.
- **Appealing to insurers** - Generally insurers have a higher regard for Clubs with good governance practices. This may result in reduced premiums.
- **Increased membership** - Parents are more likely to enrol children in a Club that is being well managed.
- **Enhanced reputation** - Through satisfied members the profile and reputation of your Club can be raised.

For licensed Clubs, your *corporate governance* strategies should include:

- Having a full understanding of the directors' roles and responsibilities;
- Understanding your Clubs obligations under the various pieces of legislation, regulations and codes relevant to licensed Clubs;
- Operating in accordance with the *Associations Incorporations Act 1985* and your constitution i.e. conducting meetings, AGM's, taking minutes, reporting etc;
- Creating internal controls for administration and finance i.e. two signatories;
- Creating clearly defined policies on roles, responsibilities and accountability.

You must be transparent in all aspects of your Club's operations.

## 6. DIRECTOR'S/COMMITTEE'S ROLES AND RESPONSIBILITIES

A Club is an independent legal entity, established under the *Associations Incorporation Act 1985* and *Associations Incorporation Regulations 2008*. As an *incorporated association*, the Club enjoys certain privileges and protections under law, however with that comes certain responsibilities for the people who run the Club.

A Club is managed by a group of like-minded people that form the *committee*. It is the *committee's* job to ensure that the affairs of the Club are conducted lawfully and in line with the Club's constitution.

Most Clubs have some members of the *committee* to perform specific roles:-

- a chairperson (or president), to preside at meetings
- a secretary, to manage correspondence, record minutes of meetings etc.
- a treasurer, to manage the Club's money and financial affairs

As directors/committee members are appointed to act on behalf of the Club, a high level of trust is placed on them to act appropriately. Under the law, directors/committee members have fiduciary duties to the organisation. This means that directors/committee members are required to act with a high degree of trust, honesty, care and diligence and in the best interests of the Club at all times.

Essentially, directors/committee members must:

- act with good faith and honesty in the best interests of the Club
- act with reasonable care and diligence

Ideally, directors/committee members will have management and/or business experience and some legal understanding. The following skills and attributes are desirable:

- Effective communication and interpersonal skills
- Basic financial understanding
- Sound legal knowledge
- Ability to plan and think strategically
- Commitment to the Clubs objectives
- Ability to think analytically and critically
- Understanding of human resource management etc

There is also another important role – the *public officer*, every Club must have one. The *public officer* is the official connection between the Club and the rest of the world. Certain documents, statutory returns and reports must be received, signed or issued by the Club's *public officer*.

The directors/committee members are responsible for the proper running of the Club and for complying with the obligations of an *incorporated association*. The directors/committee members must make sure that the Club satisfies those obligations, for example:-

- maintaining the rules of the association (the constitution)
- proper record-keeping
- payment of bills and invoices
- preparing financial accounts
- mandatory accounting obligations (if your gross receipts are in excess of \$500,000 per annum in the associations previous financial year)
- providing financial oversight
- identifying conflicts of interest
- settling disputes with members
- dealing with suspected breaches of the rules
- legal compliance with all aspects of the law
- obtaining required approvals of directors
- conducting an annual general meeting (AGM) including preparation of financial reports and minutes
- preparing official minutes of committee meetings
- notifying authorities of changes to rules, *public officer* etc.
- submitting an auditor's report to Consumer and Business Services (if your gross receipts are in excess of \$500,000 per annum in the associations previous financial year)
- preparing an annual return (Form 9) to Consumer and Business Services (if your gross receipts are in excess of \$500,000 per annum in the associations previous financial year)
- strategic planning
- risk management
- organisational performance
- succession planning etc...

Being part of a Club's committee and making contributions toward the management of the Club's activities can be extremely satisfying, however failure to comply with the requirements of the *Associations Incorporation Act 1985* and *Associations Incorporation Regulations 2008* can result in offences against the Club and individual directors/committee members.

It is recommended that Clubs obtain a copy of the *Associations Incorporation Act 1985* and *Associations Incorporation Regulations 2008*. Clubs SA members can obtain further advice and support, including a copy of the legislation.

Further information can be accessed from [www.ocba.sa.gov.au/Associations](http://www.ocba.sa.gov.au/Associations)

## 7. CONSTITUTION

Clubs develop their own set of rules (also known as a *constitution*) which identifies the objectives or purposes of the Club and explains how the Club will be operated. The *constitution* details how the Club will deal with matters such as membership, the management of the Club, elections, meetings, record-keeping, reporting and many other aspects of the Club's ongoing activities.

A copy of your Club's *constitution* must be lodged with Consumer and Business Services. The association's rules are available to the public from Consumer and Business Services for payment of a fee. Your Club's *constitution* must be accessible to all its members. Many Clubs provide their members with a personal copy and have found that this helps with the effective management of the Club.

A Club may develop its own *constitution* or seek professional assistance. Either way, there are specific matters that must be provided for. The *constitution* must not contain any provision that is contrary to or inconsistent with the *Associations Incorporation Act 1985*.

Your Clubs *constitution* must cover the following matters:

- the name of the association
- the objects or purpose of the association
- the powers of the association and by whom and in what manner they are exercised
- membership (if there are members) including types of:
  - membership
  - subscriptions
  - resignations
  - expulsions, and
  - register of members;
- who has the management and control of the funds and other property of the association
- the powers, duties and manner of appointment of the committee, including the:
  - composition
  - terms of office of members of the committee
  - notice of proposed appointments/elections to the committee
  - filling of casual vacancies occurring on the committee
  - proceedings of committee
  - disqualification of committee members;

- the calling of and procedure at general meetings, including:
  - annual general meetings
  - special general meetings
  - notice of meetings
  - proceedings at meetings
  - voting at meetings
  - poll at meetings
  - special and ordinary resolutions
  - whether members are entitled to vote by proxy;
- appointment of an auditor of a *prescribed association*
- the manner in which the rules of the association may be altered
- winding up.

Once completed, the agreed version of the *constitution* must be submitted to Consumer and Business Services. A copy of the *constitution* must be kept for the association's records.

As many Clubs' *constitutions* are out of date and not in sync with current legislation, it is recommended that Clubs review their *constitution* at least annually and compare it with a model *constitution*. Clubs SA can assist members with this if required.

*If you print out this resource and place it in a folder, it is recommended you place a copy of your Clubs constitution here.*

## 8. INSURANCE

Insurance is used to lessen risks and cover the financial losses should those risk events occur. Your Club needs insurance to cover risks associated with your liabilities, assets and income.

Insurance does not change the law or reduce your fault. It simply shifts the onus of paying for any liability from you to the insurer.

Generally, there are three broad categories of insurance needed to protect your Club:

- Liabilities insurance
- Assets insurance
- Income insurance

### 1. Liabilities insurance

- **Workers' compensation**

Accident and sickness insurance cover must be provided for employees through an approved insurer. In South Australia, the approved insurer is the Workers Rehabilitation and Compensation Scheme which ensures South Australian workers can access professional health care, claims management and financial support for workplace injury.

Some of the major entitlements under the *Workers Rehabilitation and Compensation Act 1986* are:

- weekly payments of income maintenance
- returning to work
- medical and associated expenses
- lump sum compensation for permanent disability
- redemption lump sum payment.

If you have any questions about your obligations or your employees' entitlements, check with WorkCover SA or call the WorkCover information line on **13 18 55**.

- **Liabilities to customers or the public**

This may arise from the operation of your Club, from products sold, or from professional negligence.

Types of liabilities insurance include:

- product liability
- public liability
- professional indemnity

Public liability insurance is considered essential for all Clubs. It provides cover for bodily or personal injury and damage to property.

- **Association Liability Insurance**

It's the key responsibility of a Club and its directors/committee members to steer the Club to accomplish its mission, while fulfilling a legal duty to utilise the Clubs assets prudently.

These assets could include:

- People (eg. Board members, volunteers, employees, clients and the general public)
- Property (eg. buildings, equipment, materials and facilities)
- Income (eg. grants and contributions)
- Goodwill (eg. the Club's reputation and its ability to appeal to prospective volunteers and raise funds)

Clubs do run the risk of being sued for alleged transgressions such as:

- Incompetent supervision
- Ineffective administration
- Misuse of assets
- Discrimination and / or harassment
- Employee wrongful termination
- Employee theft
- Plus many more

Minimising risk through carefully defined organisational and board processes can assist greatly, but it's still important to ensure your Club is protected with appropriate insurance, in the unfortunate event of a legal action.

Association Liability Insurance is essential. It offers financial peace of mind and helps to ensure your Club will be able to continue to operate long into the future, doing what it does best, supporting the community.

## **2. Assets insurance**

This takes many forms and each policy is designed to stand alone and not overlap any other policy.

Types of assets you may wish to insure include:

- building and contents - may include losses incurred as a result of fire, impact, storm and tempest, malicious damage and theft
- cash - including loss of cash held on the Club's premises, in transit or held at home
- glass - it is common to insure plate glass against breakage
- machinery breakdown
- computer damage - including reinstating data and increased cost of working
- motor vehicles

Premiums depend on the underlying risk.

## **3. Income insurance**

This covers areas such as:

- Loss of profits or revenue - your Club must be able to survive after damage. A profits policy helps maintain the trading result regardless of the loss. Remember that after a fire wages must be paid or employees laid off (losing key staff can be a problem), customers may go elsewhere, records could be lost, and loan repayments, leases and other debts continue.
- Key person insurance - life assurance providing a lump sum upon the death or total disablement of a key employee. The money provides financial support until a replacement skilled employee is found and trained, which may take many months.

### **Arranging business insurance**

Once your insurance needs are assessed, you need to arrange your insurance cover. This can be done directly with an insurance company or through a broker or agent. The choice is yours, but consider choosing insurance companies and brokers that are locally represented. This enhances personal contact and speedy settlement of claims.

Here are the key points to remember when assessing your insurance needs:

- There are several important principles when choosing an insurance policy.
- It pays to read the small print on insurance proposal forms.
- One of the most important types of business insurance is public liability insurance.
- What other insurances you take out will depend on your assessment of the risk against the cost.
- Always consult an expert in the field to help you determine and obtain the covers you require.

## 9. LIQUOR LICENSING

Licensed Clubs can hold one of three types of Liquor Licences:

- club licence
- limited club licence
- special circumstances licence

The size and nature of your Club will determine which type of licence is most suitable.

In general, small Clubs would have a *limited club licence* and larger Clubs would have a *club licence*. A *special circumstances licence* is only granted to Clubs who do not traditionally suit the other licence types, e.g. AAMI stadium.

Clubs with a *club licence* or a *special circumstances licence* are able to trade to the general public. Clubs with a *limited club licence* are restricted to five guests per member.

The conditions for *club licences* and *limited club licences* are detailed under section 36 of the *Liquor Licensing Act 1997*. Clubs SA can provide this information to members.

The conditions for *special circumstances licences* are detailed under section 40 of the *Liquor Licensing Act*. Clubs SA can provide this information to members.

### Permitted trading hours

The permitted trading hours for the Clubs premises operating under a *club licence* or a *limited club licence* are as follows:

Monday to Saturday	between 5am and midnight
Sunday	between 11am and 8pm; or If the Sunday is New Year's Eve, between 11am and midnight
New Year's Day	between the hours of midnight and 2am (in addition to normal trading hours for that day)
Christmas Day	between 9am and 11am
Good Friday trading in liquor	at any time with a meal provided by the licensee for a diner in a designated dining area, for consumption in that area.

The permitted trading hours for Clubs operating under a *special circumstances licence* are unique to the venue and will be detailed on the Club's liquor licence.

Further to the above your Club may have outside areas eg verandas, ovals, greens that may be licensed by an extended trading authorisation (explained below). If so, you will need to check your Clubs individual licence to determine what areas are licensed and under what conditions?

You can find a copy of your Clubs licence at: [www.olgc.sa.gov.au](http://www.olgc.sa.gov.au) However, copies of your Clubs plans are not available from this website, you will need to ring the Office of Consumer and Business Services to request a copy, and a fee will be applicable.

*If you print out this resource and place it in a folder, it is recommended you place a copy of your Club's liquor licence and plans here.*

Further to the core hours mentioned above, Clubs can also apply for the following consents to be added to their licence:

- Extended trading authorisation (ETA) - **Outlined in pink on your plans**

If a Club wishes to trade between midnight and 5 am Monday to Saturday, or between 8 am or 11 am or 8 pm and midnight on a Sunday, or between midnight and 2 am on Christmas Day, the licensee may apply for an *extended trading authorisation*. This authorisation cannot operate on Good Friday, the day after Good Friday or the day after Christmas Day.

- Entertainment consent – **Outlined in blue on your plans**

If a Club intends to provide entertainment on the licensed premises, the licensee must apply for *entertainment consent*.

- Extension of trading area – **Licensed areas, included an extension of trading area are outlined in red on your plans**

If a Club intends to trade in an area adjacent to the licensed premises, then an *extension of trading area* authorisation is required, for example drinking and/or dining on the footpath adjacent to the premises.

- Designated dining area – **Outlined in green on your plans**

The designation of a dining area allows the sale of liquor at any time to a diner for consumption with or ancillary to a meal provided by the licensee in that area.

- Designated reception area – **Outlined in brown on your plans**

A *designated reception area* allows the sale of liquor at any time to a person attending a reception for consumption in that area.

Clubs with a *club licence* or a *special circumstances licence* can apply for a *gaming machine licence* but Clubs with a *limited club licence* are not eligible to hold a *gaming machine licence*.

There are significant differences in compliance requirements and costs between the licence types.

### **Committee approvals**

One of the main differences between a *limited club licence* and the two other licence types concerns committee approvals:

- *Limited club licence* – when committee members change you only need to send in the appropriate form with the relevant details to Consumer and Business Affairs. There is no cost involved.
- *Club licence and special circumstances licence* – every member of the committee needs to be approved as *fit and proper*. This requires each and every committee member to complete a *Personal Information Declaration Form* (Police check) at a cost of over \$100 per person. Further to that, the committee members may need to complete mandatory training courses.

With any of the licence types, if your committee members are not approved by Consumer and Business Affairs, you are committing an offence under the *Liquor Licensing Act 1997*.

Members can contact Clubs SA for the relevant forms.

### **Responsible persons**

Unless your Club has an exemption under section 97(2) of the *Liquor Licensing Act*, you are required to have a badged *responsible person* on duty at all times.

A *responsible person* is a person approved by the licensing authority, as fit and proper to be actively involved in the supervision or management of the business conducted under the licence.

A *responsible person* can be:

- (i) the licensee or a director of the licensee, who has the appropriate knowledge, experience and skills for supervising and managing; or
- (ii) any other person approved under section 71 of the *Liquor Licensing Act 1997* by the licensing authority.

A *responsible person* must, while acting in the role of a *responsible person* on the licensed premises, wear in a prominent place the authorised identification badge provided by the Commissioner.

*Note: An approval of a person under the Liquor Licensing Act 1997 as a 'responsible person' only authorises the person to supervise and manage the liquor operations of the business. It does not authorise the person to supervise and manage the gaming operations of the business - this requires a separate approval as a 'gaming machine manager' or a 'gaming machine employee' under the Gaming Machines Act 1992.*

### Liquor licensing fees

In 2012 the government brought back in annual liquor licensing fees.

The structure is as follows:

- Clubs with a *limited club licence* – exempt
- Clubs with a *club licence*:

<i>CLUB TRADING</i>	<i>BASE FEE</i>	<i>AFTER 2AM</i>	<i>AFTER 4AM</i>
Close before 2am and capacity less than 1,000	\$100		
Close before 2am and capacity more than 1,000	\$700		
Close after 2am and capacity less than 1,000	\$700	\$700	\$700
Close after 2am and capacity more than 1,000	\$700	\$2,500	\$7,500

- Clubs with a *special circumstances licence* (same fees as for hotels):

<i>CLUB TRADING</i>	<i>BASE FEE</i>	<i>AFTER 2AM</i>	<i>AFTER 4AM</i>
Close before 2am and capacity less than 200	\$100		
Close before 2am and capacity more than 200	\$700		
Close after 2am and capacity less than 200	\$700	\$700	\$700
Close after 2am and capacity more than 200 but less than 400	\$700	\$1,400	\$1,400
Close after 2am and capacity more than 400	\$700	\$2,500	\$7,500

- *Limited licence i.e one off licence (generally):*

\$700

- *Limited licence i.e one off licence for an existing licence holder with the function held at their licensed premises:*

No fee

Clubs SA can provide members with further advice on liquor licensing requirements as well as a free liquor compliance check.

*Remember – It is a legal requirement to display your liquor licence at or near the front entrance of your venue.*

## 10. OCCUPATIONAL HEALTH & SAFETY

Occupational Health, Safety and Welfare (OHS&W) is the maintenance of a safe working environment by protecting people in the workplace from possible hazards in the workplace and the improvement of the physical and mental health of people at work.

Legislative requirements imposed on employers include a duty of care to employees, which is more onerous than the general duty of care one citizen owes to another. Employers also have a moral obligation to prevent injury at work. High standards of occupational health and safety contribute to the effectiveness of employer/employee relations and consultation with employees on these issues is required under legislation. The cost of managing work place injury is significant and can leave employers financially vulnerable.

Even if your Club is not technically an *employer*, your Club still has a duty of care to provide a safe and hazard free environment for your members, volunteers, patrons, visitors etc.

Each state has its own act and regulations in place to impose occupational health and safety obligations. In South Australia our regulatory instruments are:

- *Occupational Health, Safety and Welfare Act 1986*
- *Occupational Health, Safety and Welfare Regulations 2010*

The objects of the *Occupational Health, Safety and Welfare Act and Regulations* include:

- to secure the health, safety and welfare of persons at work
- to eliminate, at their source, risks to the health, safety and welfare of persons at work
- to protect the public against risks to health or safety arising out of or in connection with the activities of persons at work or the use or operation of various types of plant
- to involve employees and employers in issues affecting occupational health, safety and welfare
- to encourage registered associations to take a constructive role in promoting improvements in occupational health, safety and welfare practices and assisting employers and employees to achieve a healthier and safer working environment.

**Does the *Occupational Health, Safety and Welfare (OHSW) Act* apply to volunteer based organisations?**

The OHSW Act places a duty on employers who utilise the services of volunteers, and requires them to provide protections to volunteers, as if they were employees. This can be found in section 4(3) of the Act which reads:

*4(3) For the purposes of this Act, where a person, in connection with a trade or business carried on by the employer, performs work for an employer gratuitously, the person will be taken to be employed by the employer.*

This means where a person performs work for an employer free of charge, if the work is in connection with that employer's trade or business, then the employer owes that volunteer the same duty of care as their employees. In other words, the OHSW Act deems the volunteers to be employees of the employer, for the purposes of the Act, and affords the equivalent status to employees.

For volunteers to be deemed as employees, the Club needs to employ a person (in any capacity, not necessarily doing duties associated with the particular event) and require volunteers involved in the event to perform duties directly associated with the trade or business carried on by the employing organisation.

Whether volunteers are *deemed* as employees is thus a practical matter to be determined after a case-by-case assessment. If a Club, being an employer, conducts commercial activities on a regular basis (buying or selling goods or services, conducting events which charge a fee) and its volunteers participate in that activity it may wish to seek legal advice about whether its volunteers are *deemed* to be employees.

If we assume that the volunteers working for your Club perform work for free in the normal course of business, the next key question to ask when determining whether the OHSW Act and Regulations apply to the Club is:

Is the Club an employer?

To answer this, you will need to understand how the OHSW Act defines an *employer*. In section 4(3) the Act defines employers as follows:

— *employer means a person by whom an employee is employed under a contract of service.*

A contract **of** service (not to be confused with a contract **for** service) is also defined in the OHSW Act. It reads,

*A contract of service means –*

- (a) a contract under which one person is employed by another;*
- (b) a contract of apprenticeship;*
- (c) a contract, arrangement or understanding under which a person receives on-the-job training in a trade or vocation from another*

This means, if your Club employs *anyone* under a contract of service, then you are considered to be an *employer* under the OHSW Act, and all of the legislative duties under the OHSW Act and Regulations apply toward all staff, employees and/or volunteers.

Sometimes however, things may not be so clear. There are many Clubs that provide some compensation or reimbursement to particular members who perform time consuming or costly duties.

In this type of situation, the following question often arises:

- Does payment of expenses or an honorarium to volunteers count as employment or a contract of service?*

Such payments will not usually define volunteers as employees.

### **Duties of the employer (the Club)**

Section 19 of the OHS&W Act provides the duties of employers as follows:

1. An employer shall, in respect of each employee employed or engaged by the employer, ensure so far as is reasonably practicable that the employee is, while at work, safe from injury and risks to health and, in particular—
  - (a) must provide and maintain so far as is reasonably practicable—
    - (i) a safe working environment;
    - (ii) safe systems of work;
    - (iii) plant and substances in a safe condition; and
  - (b) must provide adequate facilities of a prescribed kind for the welfare of employees at any workplace that is under the control and management of the employer; and
  - (c) must provide such information, instruction, training and supervision as are reasonably necessary to ensure that each employee is safe from injury and risks to health.

2. Without derogating from the operation of subsection 1, an employer must so far as is reasonably practicable—
- (a) monitor the health and welfare of the employer's employees in their employment with the employer, insofar as that monitoring is relevant to the prevention of work related injuries; and
  - (b) keep information and records relating to work related injuries suffered by employees in their employment with the employer and retain that information and those records for such period as may be prescribed; and
  - (c) provide information to the employer's employees (in such languages as are appropriate) in relation to health, safety and welfare in the workplace (including the names of persons to whom the employees may make inquiries and complaints about matters affecting occupational health, safety or welfare);
  - (d) ensure that any employee who is to undertake work of a hazardous nature not previously performed by the employee receives proper information, instruction and training before he or she commences that work; and
  - (e) keep information and records relating to occupational health, safety or welfare training undertaken by any of the employer's employees during their employment with the employer; and
  - (f) ensure that any employee who is inexperienced in the performance of any work of a hazardous nature receives such supervision as is reasonably necessary to ensure his or her health and safety; and
  - (g) ensure that any employee who could be put at risk by a change in the workplace, in any work or work practice, in any activity or process, or in any plant—
    - (i) *is given proper information, instruction and training before the change occurs; and*
    - (ii) *receives such supervision as is reasonably necessary to ensure his or her health and safety; and*
  - (h) ensure that any manager or supervisor is provided with such information, instruction and training as are necessary to ensure that each employee under his or her management or supervision is, while at work, so far as is reasonably practicable, safe from injury and risks to health; and
  - (i) monitor working conditions at any workplace that is under the management and control of the employer; and

- (j) ensure that any accommodation, or eating, recreational or other facility, provided for the benefit of the employer's employees while they are at work, or in connection with the performance of their work, and under the management or control of the employer (either wholly or substantially), is maintained in a safe and healthy condition.

### **Responsible officer**

There is a requirement under the *Occupational Health, Safety and Welfare Act 1986* (the Act) that each body corporate that carries on business in South Australia (which includes Clubs) must appoint one or more *responsible officers*.

In summary, the legislation;

- Requires relevant organisations to appoint a *responsible officer*;
- Requires a *responsible officer* to undertake training within the required period;
- Confirms an obligation for the *responsible officer* to take reasonable steps to ensure that the body corporate complies with its OHS&W obligations; and
- Sets the level of penalty for breaches; and

deems each of the officers of the body corporate to be liable as if they were the *responsible officers*, if no *responsible officer* is appointed. In general terms the *responsible officer* makes sure that a Club complies with its obligations under the Act.

### **Policies and procedures**

Whether the legislation is relevant to your Club or not, your Club should have policies / procedures and documentation relating to:

- Occupational health & safety requirements at your Club
- Fire and emergency response
- Violence in the workplace
- Manual handling
- Hazardous and dangerous substances
- Electrical safety
- Slips, trips and falls

- First aid
- Working at heights
- Risk management
- Accident / injury investigation and reporting
- Personal protective equipment
- Material safety data sheets
- Contractors
- Bullying and workplace violence
- Employee / volunteer training records

Even if you are a volunteer based Club your Club should still develop an OH&S manual addressing the above topics. The contents of the OH&S manual should be communicated to all volunteers at the Club so they are aware of the Clubs health and safety requirements and procedures.

Clubs SA provides a free OH&S manual to volunteer based member Clubs.

Clubs SA also has resources and templates to assist members with developing the necessary documentation.

## 11. FOOD SAFETY

Most Clubs or associations providing food as a service to members or visitors will need to adhere to the appropriate food safety standards.

Food safety standards were developed to provide more effective and nationally uniform food safety legislation for Australia. Standard 3.3.1, 3.2.2 and 3.2.3 are mandatory for all food businesses. A guide to the three Standards, called Safe Food Australia is available from [www.foodstandards.gov.au](http://www.foodstandards.gov.au)

Community groups that sell food or provide food as part of a service that is paid for, are a food business for the purpose of the *Food Act 2001* and are required to comply with the requirements of the *Australia New Zealand Food Standards Code*. The code allows a number of exemptions to the standards for charities and community groups.

The definition of *sell* includes activities such as a sports Club selling cakes or pies, or selling donated food. *Sell* also includes requesting a donation for a food or charging for food as part of a service, such as supper provided at the Club.

The preparation of food by volunteers in their homes for sale at a fund raising event is not covered by food law, though volunteers may nonetheless find information on food safety useful.

If you are not certain whether your Club operates as a food business, check with your local council or the Department of Health.

To assist you in understanding how the food legislation applies to your Club, a *Food Safety Information Kit for Charities and Community Groups* has been prepared. The kit includes information prepared by the Department of Health and Food Standards Australia New Zealand (FSANZ).

The content of the *Food Safety Information Kit for Charities and Community Groups* includes:

- Introduction to Charities and Community Groups kit
- Food borne illness (cause and prevention)
- An introduction to food safety standards
- Skills and knowledge
- Labelling
- Temperature control

- Sausage sizzles and barbeques
- Preparing and cooking food
- Transporting food
- Camping
- Health and hygiene for food handlers
- Health and hygiene responsibilities of food businesses
- Receiving food safely
- Food safety fundamentals pamphlet and wall chart
- *Bug Buster* DVD
- Food safety posters

Clubs SA can provide members with the links to the above topics.

Printed copies of the kit are also available from Clubs SA or your local council (if not a member of Clubs SA).

For further advice on the food safety standards contact the Environmental Health Officer at your local council office.

## 12. SMOKING

In South Australia the sale, distribution, use of tobacco and areas where smoking is prohibited is regulated by the *Tobacco Products Regulation Act 1997*.

For the hospitality industry, all enclosed licensed hospitality venues (pubs, Clubs, bingo venues and the Adelaide Casino) in South Australia became completely smoke-free on 1 November 2007.

Employers have a legal responsibility to protect the health of their employees. Non-smokers exposed to second-hand smoke in the workplace are approximately 20% more likely to develop lung cancer than non-smokers working in smoke-free environments.

There is increasing community support for smoke-free, safe and healthy environments. By making all enclosed workplaces, including pubs, Clubs, bingo venues and the Adelaide Casino, smoke-free we are making a positive step towards a healthier future for all South Australians.

### **Some tips for making the laws clear to patrons include:**

- Do not provide ashtrays or other things designed to facilitate smoking in areas where smoking is not permitted.
- Clearly display no-smoking signage.
- Train staff and have procedures in place so that staff will know what to do if they see a patron smoking inside.

### **Can I promote that I have an area for smoking?**

Under Section 45 of the *Tobacco Products Regulation Act* a business must not display signs or engage in a practice of any kind, designed to promote a business as welcoming or permitting smoking on its premises.

### **How are the smoking laws enforced?**

The Department of Health has officers authorised to enforce smoking bans. The *Occupational Health Safety & Welfare Act 1986* also requires that workplaces implement all legislation as it relates to their premises.

### **What are the penalties?**

The maximum fine for employers or business operators is \$1,250. For the person smoking, whether an employee or customer, the maximum fine is \$200. On-the-spot fines can be issued.

## **Smoking signage**

SA Health provides free signage. Info Line: 1300 363 703 (9am to 5pm, Monday to Friday).

## **Enclosed outdoor areas**

Many Clubs have outdoor areas (such as verandas or courtyards) where patrons have been able to smoke. Since November 2007, smoking in these areas is no longer permitted if these areas are more than 70% enclosed. The dimensions of the space, or the use of plastic blinds or other structures to weatherproof outdoor areas, may cause the area to be considered enclosed. If the area is enclosed smoking is not permitted. This ban on smoking in outdoor areas that are enclosed has applied to restaurants, cafes, car parks and other workplaces since December 2004.

### **What is meant by enclosed?**

An area is enclosed if it is fully enclosed or partially enclosed by a ceiling/roof and walls such that the combined area of the ceiling (includes shade sails and umbrellas) and wall surface exceeds 70% of the total ceiling/wall area. An area without a ceiling/roof will not be considered enclosed.

### **How do I work out if the space is enclosed or unenclosed?**

To be unenclosed, at least 30% of the area must be open and allow the free flow of air. To work out whether an area is enclosed, you need to compare the *total open area* with the *total notional surface area*. As layouts in each establishment are different you might wish to seek advice from an architect when calculating the area of your space.

### **Can I have smoking if the blinds or other structures can be moved or opened?**

Blinds or other moveable or opening structures used to weatherproof outdoor areas may be considered to enclose an area depending on their use. Where blinds or other structures are open, smoking is permitted if their opening results in the area being less than 70% enclosed. Closed blinds or other structures are considered the same as walls and where they enclose more than 70% of the area, smoking is not permitted.

### **How can I get more information on enclosed outdoor areas?**

Department of Health officers can provide advice on how to assess if an outdoor structure is enclosed or unenclosed. Businesses should be aware that the officer's opinions may not be the final assessment of the government or a court of law and businesses are encouraged to seek their own independent advice if they are unsure if an existing or proposed structure complies with the legislation.

## **Declared smoke-free outdoor areas and events**

As of 31 May 2012, local councils and other incorporated bodies are now able to apply to have an outdoor area or event declared smoke-free.

### **What is the purpose of this law?**

Section 51 of the *Tobacco Products Regulation Act 1997* allows for local councils and other incorporated bodies to identify and apply to make a certain outdoor area or event declared non-smoking. This will allow the area or event's non-smoking status to be enforceable under the Act.

### **Who can apply to declare smoke-free areas?**

Applications will only be accepted from local councils and other incorporated bodies. Individuals can seek declarations through their local council.

Incorporated bodies include groups that run major events such as festivals, shows and music events.

### **Can declared smoke-free outdoor areas or events include smoking zones?**

Local councils and other incorporated bodies that apply to have an area or event declared smoke-free can specify areas where smoking will continue to be allowed.

Areas that have not been declared smoke-free will be considered as part of the application.

### **What does the application process involve?**

Short or long-term applications can be made.

The Minister for Mental Health and Substance Abuse has the power to declare a smoke-free area for a period of up to three days. Examples include football carnivals, fetes, pageants and other community events. Completed applications for an event of three days or less should be received at least eight weeks before the event.

Major and longer-term areas and events will be declared smoke-free by regulation. Due to cabinet and parliamentary processes required to introduce a regulation, an application is required at least six months before it is introduced.

Before applying, please contact the Tobacco Control Unit on ph: 8274 3451 to discuss your proposal.

Applications need to be made in writing and include:

- The period that the smoke-free areas will apply.
- A clear rationale for why the declaration is sought.
- A detailed description of the area or event for which the declaration is sought, including a map. The area may not include any seated outdoor drinking or dining areas that are part of the normal day-to-day operations of a premises.
- Evidence of consultations with stakeholders, including industry groups affected and the relevant community.
- Documentation of any other impacts on the area and its environs that may be caused by the declaration and how these will be addressed.
- A communication strategy showing how the public will be notified of the smoke-free status of the area or event, including signage and enforcement strategies.
- An enforcement plan.
- Evidence of evaluation to inform future declarations.

For more information about the application process an *Application Guide* been developed and can be downloaded from:

[http://www.tobaccolaws.sa.gov.au/Portals/0/OA\\_DAE\\_ApplicationGuide.pdf](http://www.tobaccolaws.sa.gov.au/Portals/0/OA_DAE_ApplicationGuide.pdf)

**For more information:**

For further information call the Department of Health Info Line: 1300 363 703.

The Department of Health also has a policy guide for sporting and recreation organisations going smoke free:

[http://www.tobaccolaws.sa.gov.au/Portals/0/WPA\\_SR\\_Guidelines.pdf](http://www.tobaccolaws.sa.gov.au/Portals/0/WPA_SR_Guidelines.pdf)

## 13. CHILDREN

### Child safe environments

All children have a right to be safe and cared for. Keeping them safe is everyone's responsibility.

In order to keep children safe when they are accessing services in the community, the *Children's Protection Act 1993* requires that organisations providing certain services to children create and maintain a child safe environment. In this context, a child safe environment is one which protects children from abuse and harm.

All organisations providing health, education, welfare, sporting and recreational, child care, or residential services wholly or partly for children must ensure that they have a child safe environment policy in place to promote the safety and well-being of children.

A child safe Club must be committed to protecting children from physical, sexual, emotional and psychological harm and from neglect. This commitment should be embedded in the Club's culture and reflected in the policies and procedures of the Club and is understood and practiced at all levels of the Club.

A Club can do this by:

- reviewing how well it protects children
- having a child safe policy in place
- taking steps to ensure that staff, volunteers and contractors are safe people to work with children and have undertaken the necessary criminal history assessment (i.e. police check)
- listening to children and respecting their rights
- making sure that everyone knows how to report concerns about child safety

Child safe environment policies and procedures should be established by the Club's committee and communicated to all relevant personnel (such as members, employees (including contractors and sub-contractors) and volunteers who work with, or have contact with children).

Child safe environments policies and practices will vary according to the size, nature and resources of a Club but must reflect the standards and principles of good practice developed by the Chief Executive, Department for Families and Communities.

Important elements of developing and implementing a child safe policy include:

- **Consult** – Involve all the members of your Club in the development of your child safe policy and code of conduct, as this will make it more likely that they will be used, and that people will understand their purpose and support them.
- **Statement of your commitment** – Your policy should clearly state your Club’s commitment to the safety and well-being of children and the protection of children from harm. This statement might be quoted on newsletters, wall posters and in other contexts to ensure that this commitment is understood by everyone in your Club.
- **Legislation** – In preparing your policy you should ensure that you understand your legal obligations and that the policy reflects those obligations. The policy should refer to this legal context.
- **Review your risk** – Identify, assess and takes steps to minimise risks of harm to children that could arise from the actions of someone in your organisation, including members, (adults and children), employees and volunteers. Your policy should make reference to your risk management plan.
- **Choosing and developing the right people** – Have in place safe recruitment and selection processes with employees, volunteers, contactors and sub-contactors including comprehensive screening processes and exclusion of those who are assessed as posing an unacceptable or high risk, or unsuitable for working with children. Where it applies, your policy should make reference to conducting a criminal history assessment (i.e a police check) as Clubs are required to conduct criminal history assessments on employees, volunteers, contractors and sub-contactors who are working with children.
- **Developing a code of conduct** – A code of conduct should promote child safe and positive work practices and provide guidance about the behaviour, relationships, attitudes and responsibilities expected from employees and volunteers, and outlines what will happen if the code is not observed.
- **Reporting child abuse** – Your staff and volunteers may be mandated notifiers and required by law to report any suspicions of child abuse and neglect. Your policy needs to outline your process for reporting suspicions of child abuse and neglect.
- **Bullying and harassment** – Your policy should contain a statement about how your Club will address bullying by, or against, children in your Club.

- **Understanding privacy and data protection** – Remember that information about people needs to be treated with respect for their privacy so have safeguards in place around the collection, retention, use and disclosure of personal information.
- **Complaints management and disciplinary action** - Establish a child safe process for complaints management and disciplinary proceedings and refer to it in your policy.
- **Children’s participation** – Where children are involved in planning and decision making, they will feel empowered and are more likely to let people know when they feel unsafe. Include in your policy an undertaking to encourage children to express their views and make suggestions.
- **Review, update and refine** – Set a review date for your policy that will give you the opportunity to update and refine your child safe environment practices.

Clubs SA can supply members with a sample child safe environment policy.

Further to the above, your Club may be required under the *Children’s Protection Act 1993* to lodge a *Child Safe Environment Compliance Statement* with the Department for Families and Communities.

The 12 topics which need to be addressed in a *Child Safe Environment Compliance Statement* are:

1. My organisation has a documented risk management plan that identifies, assesses and takes steps to minimise and prevent risk of harm to children because of the action of an employee, volunteer or another child.
2. My organisation has a documented child safe environment policy that outlines our commitment to children’s well-being and safety.
3. My organisation's child safe environment policy is supported by guidelines and procedures that are relevant to our specific business and activities.
4. My organisation communicates its child safe policy and procedures to all relevant persons (such as staff, volunteers, members, families and children).
5. My organisation has a code (or codes) of conduct for adults and children.
6. My organisation knows its obligation to conduct criminal history assessments on staff and volunteers who are working with children in prescribed positions, as required by the *Children’s Protection Act 1993* (s.8B).

7. My organisation has a policy and/or procedures for assessing and dealing with criminal history information where this information is required by law. The policy and/or procedures comply with the *Child Safe Environments: Standards* for dealing with criminal history information of employees and volunteers working with children.
8. My organisation has a procedure for recruiting suitable staff and volunteers to work with children that includes, as a minimum, basic screening.
9. Staff and volunteers are actively supported and supervised by my organisation.
10. My organisation provides training and development opportunities for staff and volunteers to maintain their knowledge of child protection and child safe environments.
11. My organisation actively encourages the participation and involvement of children and young people (where appropriate).
12. My organisation educates its staff and volunteers about their role and responsibilities to report and respond appropriately to suspected abuse and neglect (refer to s.11 of the *Children's Protection Act 1993*).

**Further information**

<http://www.dcsi.sa.gov.au/> *Department for Communities and Social Inclusion*

[www.families.sa.gov.au/childsafe](http://www.families.sa.gov.au/childsafe) *Families SA*

[www.recsport.sa.gov.au](http://www.recsport.sa.gov.au) *Office for Recreation and Sport*

[www.ofv.sa.gov.au](http://www.ofv.sa.gov.au) *Office of Volunteers*

[www.aussport.gov.au](http://www.aussport.gov.au) *Australian Sports Commission*

## 14. INDUSTRIAL RELATIONS / HUMAN RESOURCE MANAGEMENT

### Awards

From 1 January 2010 most workplaces across Australia have been covered by modern awards. The Club industry is covered by the *Registered & Licensed Clubs Award 2010*.

An *award* is an enforceable underpinning document containing minimum terms and conditions of employment in addition to any legislated minimum terms. In general, an *award* applies to employees in a particular industry or occupation and is used as the benchmark for assessing related enterprise agreements.

Modern awards, together with the *National Employment Standards (NES)* and the national minimum wage orders made by Fair Work Australia, make up the safety net for employees covered by the national workplace relations system.

### Pay rates under modern awards

The commencement of modern awards means that there have been changes to minimum terms and conditions for many employees. The changes vary by state, industry and employer.

Transitional arrangements in most modern awards mean that new pay rates (including loadings and penalties) commenced on the first full pay period on or after 1 July 2010.

Transitional arrangements in most modern awards give employers and employees time to adjust to the changes by allowing new pay rates to be phased in over a period of four years until the full modern award rates apply from the first full pay period on or after 1 July 2014.

To work out pay rates in this period, you need to refer to the pre-modern award entitlement that used to cover the employee before 1 January 2010 as well as the relevant modern award entitlement. Where there was no existing loading or penalty applying under the existing instrument then the new loading or penalty in the modern award is also progressively introduced. The Fair Work Ombudsman's website has a very comprehensive and easy to read tool entitled *Paycheck Plus* that enables employees to confirm their particular pay rate at any given time.

Clubs SA provides pay rates to its members.

### National Employment Standards (NES)

Under the NES, employees have certain minimum conditions. Together with pay rates in modern awards and minimum wage orders, the NES makes up the safety net that cannot be altered to the disadvantage of the employee.

The NES are set out in the *Fair Work Act 2009* and comprise 10 minimum standards of employment. In summary, the NES involve the following minimum entitlements:

1. **Maximum weekly hours of work** - 38 hours per week, plus reasonable additional hours.
2. **Requests for flexible working arrangements** - allows parents or carers of a child under school age or of a child under 18 with a disability, to request a change in working arrangements to assist with the child's care.
3. **Parental leave and related entitlements** - up to 12 months unpaid leave for every employee, plus a right to request an additional 12 months unpaid leave, and other forms of maternity, paternity and adoption related leave.
4. **Annual leave** - four weeks paid leave per year, plus an additional week for certain shift workers.
5. **Personal / carer's leave and compassionate leave** - 10 days per annum paid personal / carer's leave, two days unpaid carer's leave as required, and two days compassionate leave (unpaid for casuals) as required.
6. **Community service leave** - unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.
7. **Long service leave (LSL)** - a transitional entitlement for employees who had certain LSL entitlements before 1 January 2010 pending the development of a uniform national long service leave standard.
8. **Public holidays** - a paid day off on a public holiday, except where reasonably requested to work.
9. **Notice of termination and redundancy pay** - up to four weeks notice of termination (five weeks if the employee is over 45 and has at least two years of continuous service) and up to 16 weeks redundancy pay, both based on length of service.
10. **Provision of a Fair Work Information Statement** - employers must provide this statement to all new employees. It contains information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, right of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsman.

### **What kinds of awards and agreements do the NES apply to?**

The NES applies to all employees covered by the national workplace relations system regardless of the award, agreement or contract of employment that applies to an employee.

### **Employees covered by awards and agreements**

Award and agreement-based transitional instruments may supplement the NES by providing entitlements that do not disadvantage employees in comparison with the NES.

A certain amount of flexibility is also allowed in the operation of the NES. For example, awards and agreements may specify terms that are flexible in relation to:

- averaging an employee's ordinary hours of work
- the cashing out of and taking paid annual leave
- the cashing out of paid personal / carer's leave
- the substitution of public holidays
- situations in which redundancy pay entitlements do not apply.

### **Employees not covered by awards and agreements**

Employers and employees who are not covered by an award, agreement or a transitional award or agreement (award/agreement-free employees) may also make agreements that vary the operation of the NES in certain ways.

They may make agreements about the following:

- averaging of hours of work
- the cashing out of or taking paid annual leave
- the substitution of public holidays
- extra annual leave in exchange for foregoing an equivalent amount of pay
- extra personal / carer's leave in exchange for foregoing an equivalent amount of pay.

In all other cases, employment contracts can only provide entitlements that are equal to, or more favourable to the employee.

### **The NES are guaranteed minimum standards**

An employer cannot provide an employee an agreement with entitlements that are less than the NES.

Employers who contravene provisions of the NES may face penalties of up to \$6,600 for an individual and \$33,000 for a corporation.

## Maximum weekly hours

An employer must not request or require an employee to work more than the following hours of work in a week, unless the additional hours are reasonable:

- for a full-time employee - 38 hours; or
- for an employee other than a full-time employee - the lesser of 38 hours or the employee's ordinary hours of work in a week.

When calculating the number of hours an employee has worked per week, any authorised leave, such as personal leave, should be included.

## The difference between *full-time, part-time and casual*

To determine what pay and conditions an employee is entitled to, you need to know whether they are regarded as full-time, part-time or casual.

- **Full-time:** employees generally work 38 hours a week, and have a continuing contract of employment. Benefits such as paid sick leave, annual leave, holiday pay, long service leave and carers or other types of leave apply.
- **Part-time:** employees work between 15 and 35 regular hours each week. They're usually given the same basic entitlements as full-timers, based on the hours worked (this is called *pro rata*).

If working full-time or part-time, any accrued entitlements such as annual leave should be paid when the employee leaves. If they're dismissed or made redundant, they may be entitled to notice of termination or payment in lieu of notice (except in cases of serious misconduct) and redundancy pay.

- **Casual:** employees are usually employed on an hourly or daily basis and don't get paid sick leave or annual leave. Under the *Registered and Licensed Clubs Award 2010* they receive a casual loading of 50% to make up for this (schedule B under the Award – valid until 31 December 2014). Casual workers are also less likely to have regular or guaranteed hours of work. Notice periods do not apply to casuals upon termination of employment.

Casuals that have been engaged on a regular and systematic basis for a period of at least 12 months may apply for conversion to regular full-time or part-time employment.

Where a casual employee seeks to convert to full-time or part-time employment, the employer may consent to or refuse the request, but only on reasonable grounds (see the *Registered and Licensed Clubs Award 2010* for further details).

## **Contracts of employment**

Every employment relationship where an employee performs work for a wage, salary or commission is underpinned by a contract of employment. This is a legally enforceable agreement, either oral or written, (or partly written and partly oral), between an employer and an employee that defines the terms and conditions to which both parties must adhere. *Terms and conditions of employment in writing is a prudent practice for most businesses.*

Regardless of whether there is a written employment contract, the terms of the relevant statutes and awards apply.

## **The benefits of having employment contracts in your Club**

Having well-drafted employment contracts within your Club ensures that:

- your employees are clear about what is required of them and their entitlements
- as an employer, you can avoid the costs associated with disputes over terms and conditions of employment
- as an employer you are in a stronger position to justifiably terminate employment if an employee does not meet the contract's requirements.

Each contract is individual in the sense that content will vary between the individual employee and employer.

Every contract will have at its core, the rights and liabilities between an employer and an employee, and will prescribe certain terms or set minimum standards.

As an employer it is your responsibility to ensure that the terms and conditions of employment are clear to your employees.

## **Enterprise agreements**

Enterprise agreements can be made by an employer with a group of employees, or by more than one employer with groups of employees.

Enterprise agreements can also be made by one or more employers and one or more unions for a genuine new enterprise before any employees that would be covered by the agreement are employed (these are called *greenfields* agreements).

Before you start to make an enterprise agreement, there are several things you need to understand and consider. Clubs SA can assist members with creating or revising enterprise agreements.

Clubs SA provides members with comprehensive industrial relations and human resource management advice, support and resources.

## 15. FUNDRAISING AND LOTTERIES

### Fundraising

For numerous Clubs it is extremely difficult to achieve a surplus. Traditional forms of income such as membership, bar sales and food takings are often not enough to cover expenses. Therefore, many Clubs look at fundraising activities. If coordinated correctly, fundraising activities can provide your Club with a healthy income.

When developing fundraising activities, you should:

**1) Set a firm goal.** Goal setting the **SMART** way involves:

**Specific** – well defined and clear

**Measurable** – in terms of progress towards the goal

**Agreed** – all key stakeholders agree to the goal and have a stake in it

**Realistic** – don't be too ambitious

**Timely** – a time frame is built in

Knowing absolutely how much money is needed and how it will be spent provides *motivation* and *focus* for volunteers and supporters.

**2) Appoint a fundraising coordinator**

Behind every successful fundraising event is a well organised designated fundraising coordinator. Most committees have a president, secretary and treasurer. A fundraising coordinator is as central to the committee as those three positions.

This person should not only be well organised they should be a great communicator and imaginative too.

**3) Use your *Fundraising Manual***

What, your committee doesn't have one? This is your next **MUST** do.

Clubs must recognise the cost of lost *intellectual property* when staff or volunteers move on. If you don't have a *Fundraising Manual*, create one now. It doesn't need to be complicated, you just need to document items such as; records of past activities, contact details of suppliers, contact details of volunteers, what worked well, what didn't work well, outcomes etc.

A *Fundraising Manual* will save you stress, anxiety and time.

#### **4) Set your fundraising calendar**

Tips for setting your fundraising calendar:

- It pays to go for a mix of fundraisers
- Take note of calendar events, e.g. Easter, Mothers Day etc.
- Stay away from school holidays
- Keep your fundraising activities short and sweet, about three weeks is a good time frame.

#### **5) Educate people about why the fundraiser is needed and how they can play a part?**

Pre-event publicity is vital. If you can tell people what the purpose of the fundraiser is for and what benefit it has to them, they are more likely to engage in the fundraiser.

#### **6) Launch the fundraiser and spread the word**

Create excitement about the fundraiser, launch it with a bang and don't lose momentum for the period the fundraiser is running. To be successful your fundraiser needs to be out there and in the limelight.

#### **7) Share the outcome with the community**

Too often a fundraiser just fades away. Share the outcome with your committee, your members and the community. Let people know how their contribution is valued. Place a notice in your newsletter or website etc.

## Lotteries

If you choose to undertake a lottery, you must be aware of our legislation and regulations in South Australia.

The Liquor and Gambling Commissioner is responsible for ensuring all lotteries conducted are fair and equal to all those who participate and that they are conducted in accordance with the *Lottery and Gaming Act 1936* and the *Lottery and Gaming Regulations 2008*.

The *Lottery and Gaming Act 1936* protects the public from nuisance lotteries and other forms of gambling by prohibiting all lotteries and gambling unless otherwise authorised or exempt by legislation.

The *Lottery and Gaming Regulations 2008* allow the following classes of lotteries:

- minor lotteries;
- major lotteries;
- minor bingo sessions;
- major bingo sessions;
- instant lotteries;
- sweepstakes;
- Calcutta sweepstakes;
- non-fundraiser lotteries;
- minor trade promotion lotteries; and
- trade promotion lotteries.

For the rules and fact sheets on each of the above lotteries, click on the Liquor and Gambling tab on the following website: [www.cbs.sa.gov.au](http://www.cbs.sa.gov.au)

Clubs SA can assist members with the requirements of the above lotteries.

## 16. GAMING

Gaming machines (or *pokies*) were first introduced into South Australian hotels and Clubs in 1994. Today around 560 venues operate 12,700 gaming machines across the state.

South Australian gaming machines have a maximum bet of \$10 per game, a maximum prize of \$10,000 and a minimum return to player (RTP) rate of 87.5%. All gaming machines in South Australia are operated by inserting \$1 coins – there are no bill acceptors and no linked jackpots.

Only the holder of a *hotel licence* or *club licence* (not a *limited club licence*) can be granted a gaming machine licence, allowing it to operate up to forty (40) gaming machines.

Gaming is a highly regulated activity – your gaming area, the layout of the machines, the types of machines and games available and the staff who will attend to the machines and customers must all be approved by the Liquor and Gambling Commissioner.

The licensee and gaming staff must also have their fingerprints taken during the approval process.

To operate gaming machines, you need more than just a gaming machine licence; you will also need *gaming machine entitlements* (GMEs). GMEs are a bit like registration plates - you need one for every gaming machine you intend to operate. GMEs can only be bought and sold through a government-run trading system or from a special organisation called *Club One*. *Club One (SA) Limited* is the only holder in South Australia of a *special club licence* that enables it to buy and place Gaming Machine Entitlements (GMEs).

Approved gaming machines can only be purchased from a licensed gaming machine dealer such as Aristocrat, IGT, Konami, Ainsworth and Shufflemaster.

In South Australia, all gaming machines in hotels and Clubs are connected to a central computer monitoring system operated by the Independent Gaming Corporation (IGC). The IGC is owned by the peak industry bodies – the AHA|SA and Clubs SA. Gaming machine operators pay a monthly monitoring fee of around \$50 per machine. Apart from covering the costs of operating the IGC's computer monitoring system, this fee also contributes \$2 million annually to the Gamblers Rehabilitation Fund, another \$760,000 to various charities and community service groups and funding for the industry's responsible gambling agencies – Club Safe and Gaming Care.

Gaming staff can only perform a small amount of maintenance on their gaming machines, e.g. cleaning, clearing coin jams, changing some light globes etc. Only the holder of a gaming machine service licence can service the machines.

Operators must keep extensive gaming records, as determined by the Commissioner. Records are required for cash clearances, hand payments, hopper fills, monthly cash flow reconciliations, gaming machine door opening, hopper weighs, and soft and hard meter readings.

The revenue from gaming machines is subject to state gaming tax. The rate of tax is lower for not-for-profit licensees such as Clubs and community hotels. Gaming tax is calculated on a sliding scale – the higher the revenue, the higher the tax rate - the highest rate for gaming tax is 65%.

While obtaining a gaming machine licence and GMEs for your Club can appear quite challenging, a successful gaming operation can be an entertaining and rewarding addition to your Club's hospitality facilities.

For more information on obtaining a gaming machine licence, members can contact Clubs SA.

If your Club already has an existing gaming machine licence you can contact Club Safe (Ph: 8290 2200) with any queries regarding operating your gaming venue.

## 17. CONTACTS

### **Clubs SA**

ph: 8290 2200

fax: 8290 2222

email: [admin@clubssa.com.au](mailto:admin@clubssa.com.au)

web: [www.clubssa.com.au](http://www.clubssa.com.au)

### **Consumer and Business Services (*for liquor, gaming and lotteries*)**

ph: 8226 8512

email: [olgc@agd.sa.gov.au](mailto:olgc@agd.sa.gov.au)

web: [www.olgc.sa.gov.au](http://www.olgc.sa.gov.au)

### **Consumer and Business Services (*for incorporated associations, constitutions etc*)**

ph: 131 882

fax: 8204 9771

email: [businessnames@agd.sa.gov.au](mailto:businessnames@agd.sa.gov.au)

web: [www.ocba.sa.gov.au](http://www.ocba.sa.gov.au)

### **SafeWork SA**

ph: 1300 365 255

fax: 8204 9200

email: [help@safework.sa.gov.au](mailto:help@safework.sa.gov.au)

web: [www.safework.sa.gov.au](http://www.safework.sa.gov.au)

### **Tobacco Control Unit**

ph: 8274 3451

fax: 8274 3399

web: [www.tobaccolaws.sa.gov.au](http://www.tobaccolaws.sa.gov.au)

### **SA Health**

ph: 8226 6000

fax: 8226 6899

web: [www.sahealth.sa.gov.au](http://www.sahealth.sa.gov.au)

### **Fair Work Ombudsman**

ph: 13 13 94

fax: 1800 618 366

web: [www.fairwork.gov.au](http://www.fairwork.gov.au)

### **Food, Tourism & Hospitality Skills Council**

ph: 8362 6012

fax: 8362 1455

email: [info@fthskillscouncil.com.au](mailto:info@fthskillscouncil.com.au)

web: [www.fthskillscouncil.com.au](http://www.fthskillscouncil.com.au)