

Keeping and accessing documents, records and registers

Legal information for incorporated associations in Queensland



This fact sheet covers:

- ▶ the legal requirements for keeping registers, records and official documents
- ▶ the types of registers an incorporated association must and may keep
- ▶ who may inspect registers, records and documents
- ▶ the power of the Office of Fair Trading to inspect and seize documents and records, and
- ▶ official and business documents of an incorporated association.

Documents, records and registers are key assets of an incorporated association. They should be kept up to date and stored securely by the management committee and other officers of the organisation.

This fact sheet addresses particular requirements about documents and records of incorporated associations. In addition to these requirements, there are many other sources of obligations regarding documents and records including relating to employees, tax, under governance standards for charities and in relation to potential litigation. This fact sheet covers obligations that apply to incorporated associations under their state-based regulatory framework.

Incorporated associations in Queensland must comply with laws setting out what records, documents and registers they must keep and for how long. Members of an incorporated association and the Office of Fair Trading (OFT) both have rights to access an organisation's documents and records in certain circumstances. Further, the law requires that documents that are submitted to the OFT or are intended for the public must contain certain details about the incorporated association.

NOTE

There are particular record keeping and reporting requirements for charities that apply in addition to requirements under the AI Act. You can read more at www.nfplaw.org.au/charityreporting

The key legal requirements about keeping relevant documents, records and registers for an incorporated association in Queensland are set out in:

- the *Associations Incorporation Act 1981* (Qld) (**the AI Act**)
- the *Associations Incorporation Regulation 1999* (Qld) (**the Regulations**), and
- the organisation's rules (sometimes called 'the constitution').

Who is responsible for keeping documents and registers?

Usually the secretary of an organisation is responsible for overseeing the keeping of documents, records and registers of the organisation. However, you should check your own organisation's rules, policies and procedures - sometimes the treasurer or other members of the management committee also have important roles in record-keeping (or at least, an obligation to provide documents to the secretary for safe keeping).

Even if the secretary delegates some or all of the tasks involved (for example, to a volunteer or staff member), they must still supervise to ensure the tasks are properly carried out, as the secretary remains responsible for these tasks.

RELATED RESOURCES

Other rights and responsibilities relating to the keeping of documents and registers are discussed in the following Not-for-profit Law fact sheets on the Information Hub at www.nfplaw.org.au:

- [charities reporting](#) (for incorporated associations that are registered as charities with the Australian Charities and Not-for-profits Commission)
- [fundraising](#), and
- [members' rights](#).



Keeping documents and records

Legal requirements – retaining records and documents

Under the AI Act, your incorporated association needs to keep both:

- financial records, and
- meeting records.

Your organisation can be penalised if it does not keep records as required under the AI Act.

Financial records

All of the financial records of the incorporated association must be kept for at least **7 years** after the final entry in each record.

The Regulations require incorporated associations to maintain 'accurate financial records', including:

- a cash book that records all cash or cheque amounts received or paid by the association
- a receipt book that contains receipts for all monies received by the association
- all association bank statements (your incorporated association must hold an account in the Queensland branch of a financial institution), which must be approved or ratified by the management committee
- a register of assets that records details of all assets acquired and owned by the incorporated association since incorporation, and
- a petty cash book.

Financial records should be maintained in a way that:

- correctly records and explains the transactions and financial position of the organisation
- enables a financial statement for the association to be prepared, and
- enables the financial statement to be properly and conveniently audited.

! CAUTION

If your organisation does not keep any of these documents for at least 7 years, the OFT can fine your organisation. The maximum penalty for failing to do so is \$471.20 (as at 1 July 2015).

The AI Act requires the financial records of some incorporated associations to be audited or verified for each financial year.

RELATED RESOURCES

You can read more about the financial reporting obligations of incorporated associations (including whether an audit is required) in Not-for-profit Law's Incorporated Association or CLG? Guide on the Information Hub at <http://www.nfplaw.org.au/legalstructure>.



The annual financial statement and other annual financial reporting submitted to members at the annual general meeting and to the regulator will also be a financial record of the association.

Meeting records

The AI Act requires an incorporated association to keep:

- the certificate signed by the president or treasurer about the financial statement submitted to members at the annual general meeting, and
- a minute book that records full and accurate minutes of all questions, matters, resolutions and other proceedings occurring in management committee meeting and general meetings.

The AI Act does not specify how long these records should be kept for, so your organisation should keep them indefinitely. This is also good practice, as sometimes it is important to have older records. This was shown at the recent Royal Commission into Institutional Responses to Child Sexual Abuse where records of not-for-profits from many years ago were examined.

RELATED RESOURCES

For further information on financial reporting obligations for Queensland incorporated associations go the Information Hub page at www.nfplaw.org.au/annual-reporting-government.



Access to financial documents and minute books

The members of an incorporated association may ask to inspect or receive copies of the financial documents of the association. The IA Act requires the secretary to comply with such a request within 28 days.

The 'financial documents' of an incorporated association are different to the association's 'financial records' (though there may be some overlap). Financial documents are documents prepared as a part of an association's financial reporting, such as:

- the association's financial statement
- any audit report (prepared in relation to the association's annual reporting)
- any statement of an auditor, accountant or approved person (prepared in relation to the association's annual reporting), and
- any statement of the association's president or treasurer (prepared in relation to the association's annual reporting).

! CAUTION

If the secretary does not provide copies of financial records to a member within 28 days of receiving a request, they can be fined up to \$471.20 (as at 1 July 2015).

FURTHER READING

You can find out more about the financial reporting obligations of your incorporated association in Division 2 of the IA Act.



Members of incorporated associations may also request to inspect the minute book for a particular general meeting, or request copies of the minutes. The secretary must allow the member to inspect or copy the minutes within 28 days after receiving the request to do so.

The IA Act provides that the incorporated association may require the member to pay the reasonable costs of providing copies of the financial documents or minutes.

Keeping registers

A register is a list (or database) which contains information kept by the incorporated association. Every incorporated association must have:

- a register of members, and
- an asset register

Both of these registers are discussed below in more detail.

Your organisation may choose to have a range of other registers, depending on the size of the organisation, the length of time it has been running, and how the organisation is run.

CAUTION

If your organisation holds 'personal information' (such as names and addresses of members), care should be taken to secure that information and comply with privacy law obligations. You can read more about privacy law on the Not-for-profit Law Information Hub at <http://www.nfplaw.org.au/privacy>



Members register

Your organisation must keep a members register. Your organisation is required to include rules about the keeping of a members register in its rules.

EXAMPLE

If your organisation uses the Model Rules set out in Schedule 4 to the Regulation, your organisation will be bound by model rule 13, which requires that:

The secretary must keep and maintain a register of members containing:

- the full name of the member
- the postal or residential address of the member
- the date of admission as a member
- the date of death or time of resignation of the member
- details about the termination or reinstatement of membership, and
- any other particulars the management committee or the members at a general meeting decide.

Members must be able to inspect the register at all reasonable times (on request made to the secretary).

Check your organisation's own rules about the members register. You may have different and/or extra requirements. For example, your organisation's rules may require the secretary to enter in the register each member's class of membership (if there are different classes of membership), and the fee each member pays, and date they paid it.



What is the purpose of the members register?

The register of members (and the proper maintenance of it by the secretary) is important because, it helps the secretary to work out:

- who should be sent notices of the organisation's meetings
- who is eligible to vote at meetings of your organisation
- the number of members at the end of each financial year (for the purposes of the details to be contained in your organisation's annual statement to the OFT), and
- the number of members in different classes of membership (if your rules allow different classes).

Withholding information from the members register

Model rule 14 also allows the management committee to, on the application of a member of the association, withhold information about the member (other than the member's full name) from the register available for inspection if the management committee has reasonable grounds to believe the disclosure of the information would put the member at risk of harm.

If your organisation has adopted the model rules (or a rule like model rule 14), your incorporated association may need to create policies and processes to enable restricting access to certain members' details (if requested by a member). Secretaries may need to keep two (or more) versions of the members' register – one with all the members and their details, that is stored securely, and a second that does not contain the details of members who have special circumstances and have requested their details be suppressed.

Access should only be provided to the second register (with details of members suppressed where necessary). The second version of the members register must be open for inspection by members. This enables transparency about who belongs to the organisation.

Asset register

Your organisation's rules must set out requirements for keeping an asset register. The asset register is a place for your incorporated association to record the details of all assets acquired and owned since incorporation.

You need to include details such as the date of acquisition, cost, depreciation, location (if applicable) and disposal of assets. This register will assist your management committee to keep track of your association's assets, and will also be needed at audit time.

Other optional registers

Relevant documents register

Even if the rules don't require your organisation to maintain registers of relevant documents, it is good corporate governance practice to ensure that the incorporated association has policies about keeping such registers, including policies about when and how access to information is provided to stakeholders.

In some organisations (particularly small, recently incorporated associations) it may be sufficient for the secretary to keep:

- a members register
- an assets register, and
- a simple register of other relevant documents of the organisation.

Further registers

In larger organisations, or those that have been running for several years, it can be difficult for a secretary to keep track of all the organisation's relevant documents in a single register. It is therefore recommended that the secretary also maintains "sub-registers". These may include:

- common seal register
- insurance policies register
- investments register, and
- a relevant documents register

When setting up registers, it is a good idea to discuss them (and record keeping generally) with your organisation's auditor (if it has one) and/or the treasurer, to make sure that effective practices are in place.

NOTE

There is no requirement for your organisation to keep specific registers, other than a members register and an assets register. However, depending on the size of the organisation and complexity of its activities, registers may be a good way of tracking important assets and documents.



Matters which must be covered by the organisation's rules

The Regulations require the rules of an incorporated association to include provisions about:

- a register of the organisation's members
- the organisation's custody (safe keeping) of the books, documents, instruments of title and securities of the incorporated association, and
- the rights of members to inspect the organisations minutes of general meetings.

The OFT's powers of inspection, entry, search and seizure

If serious concerns are raised about an association's compliance with the AI Act or how funds are being used, the Chief Executive of the OFT may consider using his or her powers of inspection, entry, search and seizure of documents in order to establish whether your organisation is complying with the AI Act and the Regulations (see the Resources section).

What are the OFT's powers?

While the OFT's powers under the AI Act are rarely used, they are extensive. The OFT has power to give a "relevant person" from your organisation a written notice requiring the incorporated association (or anyone involved in its activities) to provide:

- "information in the person's knowledge" about a stated matter relating to the incorporated association, and/or
- any document/s in the person's possession or control about a stated matter.

A "relevant person" is defined by the AI Act as being a person who is or was:

- a member of the management committee of the organisation, or
- an auditor, accountant or approved person that the OFT believes, on grounds that are reasonable in the circumstances, has information or documents relevant to the complaint.

Although there are no express powers granted to the OFT to search premises and or/seize property,

the AI Act limits the civil liability of the department for acts related to their powers under the AI Act. Criminal liability is not limited.

Where a request is made to a relevant person, the person may seek an extension of time to comply with the request. The Chief Executive of the OFT and will consider whether there are "special circumstances" and has discretion to agree or refuse to grant the extension

Can an organisation be penalised for failing to comply with the OFT?

Yes. Under the AI Act it is an offence for a person to:

- refuse or fail to comply with any requirement of an inspector (for example, to produce relevant documents), unless they have a reasonable excuse, or
- knowingly give false or misleading information or false or misleading documents to an inspector.

CAUTION

The penalties for these offences are large. As at 1 July 2015, the penalty for each offence is between \$1,178 and \$2,356.

It is also an offence for anyone to give the OFT a document that they know is false or misleading, (unless they inform the OFT at the time they give the document over as to how the document is misleading, and provide the correct information).

At the time the OFT requests documents or information from a person, it must also warn the person to whom the request is being made, that it is an offence to fail to give the information or produce the document without a reasonable excuse.

One example of what will amount to a "reasonable excuse" is where a person would incriminate themselves if they complied with the request. There may be other situations in which a "reasonable excuse" will arise but it is difficult to provide any clear examples as they will depend on the circumstances of each case.

Required information to be included on incorporated associations' documents

Incorporated associations must ensure that any official document has the associations' registered name on the document in legible English characters. This includes letters, invoices and receipts and advertising material. Penalties can apply if an incorporated association does not comply with this requirement.

CAUTION

The maximum penalty for failure to comply with the requirement to endorse documents with the organisation's registered name is \$589.

NOTE



Incorporated associations must include the word “Incorporated” or the letters “Inc” at the end of their name (section 29 of the AI Act) as well as their registration number (and can be fined for failing to do so).

Associations can apply for an exemption from this requirement; the approved form is available on the OFT website.

Other laws, like tax and fundraising laws, require further information to be included on official documents, such as fundraising license numbers, and the association’s ABN (if your association is required to have one for tax purposes).

If your association is also a Registered Australian Body, there are further requirements under the *Corporations Act 2001* (Cth).

RELATED RESOURCES



For further information on fundraising requirements for Queensland incorporated associations go the Information Hub page at <http://www.nfplaw.org.au/fundraising>

The organisation's seal

A common seal is a rubber stamp that is used when signing documents in the name of the incorporated association. The organisation's seal must have the the full registered name of the incorporated association (which must include the word “Inc” or “Incorporated” as the last word) included, in legible characters. If the name does not appear, the use of the seal is not effective.

Resources

Related Not-for-profit Law Resources

- ▶ Reporting to government <http://www.nfplaw.org.au/reporting>

This page on the Not-for-profit Law Information Hub contains information about community organisations' reporting obligations

- ▶ Fundraising - <http://www.nfplaw.org.au/fundraising>

This page on the Not-for-profit Law Information Hub contains further information about the legal obligations arising in relation to their fundraising activities.

- ▶ Charities reporting - <http://www.nfplaw.org.au/charityreporting>

This page on the Not-for-profit Law Information Hub outlines the reporting requirements for charities.

Legislation

- ▶ [Associations Incorporation Act 1981 \(Qld\)](#)
- ▶ [A New Tax System \(Goods and Services Tax\) Act 1999 \(Cth\)](#)
- ▶ [Corporations Act 2001 \(Cth\)](#)
- ▶ [Income Tax Assessment Act 1997 \(Cth\)](#)

Government Agencies

- ▶ [Office of Fair Trading'](#)

The government agency responsible for regulating associations that are incorporated in Queensland.

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

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