

Financial powers and reporting obligations

Legal information for New South Wales incorporated associations

This fact sheet covers:

- Who is responsible for overseeing your organisation's finances?
 - Do our accounts need to be audited?
 - What kind of financial information you need to provide at your AGM and to NSW Fair Trading?
 - What financial records must your organisation keep?
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Incorporated associations in New South Wales and their management committees must comply with the financial reporting and management requirements set out in the *Associations Incorporation Act 2009* (NSW) (the Act).

Who is responsible for overseeing our organisation's finances?

Each member of the committee (or board) of an incorporated association is jointly responsible for managing the finances of the organisation. This means all committee members need to understand the organisation's financial obligations and participate in making decisions about your organisation's finances.

What powers and duties do members of a committee have over an organisation's finances?

The committee of management (or board) of an incorporated association has powers relating to finances. Committee members of an incorporated association must comply with duties similar to the duties of directors of a company (under the Corporations Act 2001 (Cth)) when making decisions, including decision about finances.

In general, members of the committee of management of an incorporated association are jointly responsible for:

- investing and dealing with the organisation's money that is not immediately required for use by the organisation, as they see fit
- raising or borrowing money as they see fit
- providing securities for loans or debts of the organisation, by granting mortgages, charges or securities upon or over the property of the incorporated association, and
- doing other things that further the achievement of the organisation's purposes by exercising their powers.

Incorporated associations can restrict or amend committee members' powers through the rules of the association. For example, the rules may require that members approve investment plans through a vote at a general meeting.

Committee members have a legal duty to exercise reasonable care and skill in managing the affairs of the association (including the financial affairs), and a duty to prevent insolvent trading by the association.

NOTE

The rules (constitution) of an incorporated association must state the functions of the committee (see Schedule 1 of the Act). An association's rules will often state that the committee of management must manage and control the business and affairs of the association. Check whether your association's rules limit the powers of the committee of management.



Incorporated associations that are registered as charities also need to comply with the Australian Charities and Not-for-profits Commission Governance Standards, which include duties relating to the financial affairs of an association. For more information about the duties of committee of management members, go to Not-for-profit Law's Governance resources at www.nfplaw.org.au/governance.

Can't we just leave all this financial stuff to the Treasurer?

No – the law is clear that all members of the committee are responsible for managing the association's finances, not just the treasurer.

The treasurer (or financial officer – or whatever other name is given to the position) is generally charged with the task of ensuring that financial transactions are properly recorded and reported on. The treasurer usually presents financial reports at committee or board meetings. It is important that these reports are easily understood by all the committee members because they are all responsible for keeping a check on the finances of the organisation.

While the treasurer may not be able to do all the regular financial tasks personally, it is the responsibility of the treasurer to ensure that good systems are in place to allow these tasks to be properly and consistently completed (for example by employees of the association).

Other tasks for the treasurer may include:

- making sure finances are well planned by preparing an annual budget and then regularly monitoring this budget to make sure that the organisation is staying within it
- making sure that the accounting books are up to date and in order – there must be a proper record of all payments made and money received, and accounts should be reconciled at least once a month
- taking reasonable steps to prevent funds from being stolen or misused, and
- ensuring that records are easily accessible so that a financial statement can be prepared (and, if necessary, reviewed or audited) at the end of the year.

At each AGM the committee must submit the association's financial statements for the previous financial year. The financial statements must:

- be prepared in accordance with the Australian Accounting Standards

- include details of any mortgages, charges and other securities over the property of the association, and
- include a separate income and expenditure statement and balance sheet for each trust for which the association is the trustee.

TIP

An incorporated association must hold an AGM with 18 months of first incorporating. Then an AGM must be held every 12 months, within 6 months of end of the association's financial year. When incorporating, associations can decide when they want their financial year to begin and end (eg an association could choose for its financial year to end on 30 March instead of 30 June).



Carrying out an audit

Tier 1 incorporated associations must have their financial records audited as soon as possible after the association's financial year, for submission to the AGM. An audit:

- must be conducted by someone who is:
 - a registered company auditor or a firm of registered company auditors, or
 - a member of CPA Australia, the Institute of Chartered Accountants, or the Institute of Public Accountants, and
- must be conducted in accordance with Australian Auditing Standards.

Tier 2 incorporated associations do not need to have their financial records audited. However, there is a requirement that the financial records give a 'true and fair' view of the financial position of the incorporated association during and at the end of its last financial year.

What financial information needs to be provided to NSW Fair Trading?

NSW Fair Trading is the regulator of incorporated associations in New South Wales.

The Act says that **both Tier 1 and Tier 2** incorporated associations must lodge an 'Annual summary of financial affairs' (Form A12) for the financial year with the Commissioner of Fair Trading, together with the prescribed fee.

Tier 1 incorporated associations must additionally lodge:

- the audited financial statements for the financial year, as presented at the AGM,
- the auditor's report for the statement, and
- a copy of the terms of any resolution passed at the AGM, concerning the financial statements and the auditor's report.

The documents listed above must be lodged within 1 month of the AGM, or within 7 months of the end of the previous financial year, whichever is earlier. In some circumstances you can apply for an extension of time to lodge your financial statement, form and review or audit report. A link to the extension application form is included in the Resources section below. A small fee must be paid when seeking an extension.

CAUTION

If your organisation is a registered charity, it is required to lodge an Annual Information Statement with the Australian Charities and Not-for-profits Commission within 6 months of the end of its financial year. Depending on its size, it may also need to have the financial reports reviewed or audited.

Find out more at www.nfplaw.org.au/charityreporting



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Find out more about charity reporting on the Not-for-profit Law Information Hub at www.nfplaw.org.au/charityreporting.



What financial records does our organisation have to keep?

The Act requires incorporated associations to keep records which correctly record and explain its financial transactions and financial position. These records are intended to be kept for the preparation of appropriate financial statements. Where the records relate to a Tier 1 association, they must be sufficient to allow financial statements to be prepared in accordance with Australian Accounting Standards.

Resources

Related Not-for-profit Law Resources

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

- ✔ Registering as a charity – www.nfplaw.org.au/charity
- ✔ Charity reporting – www.nfplaw.org.au/charityreporting
- ✔ Governance and legal duties of office holders – www.nfplaw.org.au/governance
- ✔ Holding meetings – www.nfplaw.org.au/meetings

Other Related Resources

- ✔ [Australian Charities and Not-for-profits Commission \(ACNC\)](http://www.acnc.gov.au)

The [Report annually](http://www.acnc.gov.au) page of the ACNC website provides information on reporting requirements according to a charity's size.

- ✔ NSW Fair Trading
 - [Associations Forms](#) – the 'Annual summary of financial affairs' (Form A12) as well as the application form for extension of time to provide NSW Fair Trading with financial statement.
 - [Model Constitution](#) – some incorporated associations in NSW use the 'model constitution' published by NSW Fair Trading. You should check your association's rules to determine the financial and reporting requirements for your incorporated association.
- ✔ [Institute of Chartered Accountants \(ICA\)](#) – enhancing not-for-profit annual and financial reporting
- ✔ [Governance Institute of Australia](#) - The Governance Institute has a series of good governance guides, which includes information on financial reporting. They also provide a pro bono program to assist with things like governance audits, board paper templates and annual report preparation. Contact the Governance Institute for their guidelines on when a group is eligible for this free assistance.
- ✔ [CPA Toolkit](#) – CPA has a toolkit with two guides relevant to not-for-profit management.
- ✔ [QUT Approving Financial Statements](#) – The Australian Centre for Philanthropy and Nonprofit Studies at the Queensland University of Technology has a resource on nonprofit governance which includes a page on approving financial statements.

Legislation

- ✔ [Associations Incorporation Act 2009 \(NSW\)](#)
- ✔ [Associations Incorporation Regulation 2016 \(NSW\)](#)
- ✔ [Australian Charities and Not-for-profits Commission Act 2012 \(Cth\)](#)

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

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