

Keeping and accessing documents, records and registers

Legal information for Victorian community organisations

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 Consumer Affairs Victoria 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.

Both members and Consumer Affairs Victoria (CAV) have rights to access an organisation's documents and records in certain circumstances.

Documents that are submitted to CAV or are intended for the public must contain certain details about the incorporated association.

1. Legal requirements for keeping documents, records and registers

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

- the *Associations Incorporation Reform Act 2012 (Vic)* (**the AIR Act**), and
- the organisation's rules (sometimes called 'the constitution').

Usually the secretary (formerly known as the Public Officer) of an organisation is responsible for keeping documents 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.

AIR Act requirements about records and document retention

Specific documents to be kept for 7 years

The AIR Act requires an incorporated association to keep:

- the financial statement submitted to members at the annual general meeting for at least 7 years after it was submitted
- the certificate signed by a management committee member about the financial statement submitted to members at the annual general meeting for at least 7 years after the date it was signed, and
- the original of any document the association has lodged with CAV (including documents lodged electronically) for at least 7 years after the date it was lodged.

! CAUTION

If your organisation does not keep any of these documents for at least 7 years, CAV can fine your organisation.

FURTHER READING

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



Maintaining financial records

Incorporated associations must maintain accurate financial records that:

- correctly explain its transactions, financial position and performance, and
- allow for “true and fair” financial statements to be prepared.

The penalty for failing to do so is approximately \$1470 (as at 1 December 2014).

Matters which must be covered by the organisation’s rules

The AIR Act requires the rules of an incorporated association to include provisions about:

- a register of the organisation’s members
- the organisation’s custody (safe keeping) of “relevant documents”, including records and securities, and
- members’ rights to inspection of the organisation’s “relevant documents”.

Access to “relevant documents”

“Relevant documents” is defined in the AIR Act to mean all records and other documents – however they are compiled, recorded or stored – relating to the incorporation and management of the incorporated organisation. Members have the right to inspect relevant documents of an association. Therefore, it is important that relevant documents are easily accessible.

Relevant documents include:

- the organisation’s members register and other membership records
- financial records and statements
- documents relating to transactions, dealings, business or property of the association

- the original application for and certificate of incorporation
- originals of documents lodged with CAV and related correspondence, and
- notices and minutes of meetings of members and the management committee.

The definition of relevant documents is very broad, and may also include the following types of documents:

- certificates of title, documents relating to property (such as leases) and to other transactions, dealings, business activities or property of the association
- government licences and certificates
- insurance policies (including workers' compensation)
- trust deeds
- contracts and other documents relating to transactions
- mortgage and loan agreements, and
- Australian Taxation Office correspondence and documents.

IMPORTANT

While the AIR Act requires incorporated associations to provide members with access to the relevant documents of an organisation, there are some cases where an organisation can refuse to provide access, such as where providing access would breach a law (like privacy law) or would be prejudicial to the interests of the organisation.



Your organisation's policies

Your organisation's rules must address how relevant documents are to be kept, and how members can inspect and copy them. Your organisation does not have to keep a register of relevant documents but it is generally a good idea.

FURTHER READING

This fact sheet does not cover the legal requirements for record keeping relating to fundraising activities. For information on fundraising activities and records, visit the Information Hub's Secretary's Satchel page and read the section on Registers, Records and Official Documents at www.nfplaw.org.au/secretaryguide.



2. Registers (compulsory and optional)

A register is a list (or database) which contains information kept by the organisation. Every incorporated association must have a register of members (see below). 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.

What registers must be kept?

Members register

Your organisation's rules must include provisions for a members register. Many organisations have rules dealing with a members register. For example, model rules 18 and 75 provide that:

- the secretary must keep and maintain a register of members containing:
 - the name and address of each member, and
 - the date of becoming a member.
- members must be able to inspect the register free of charge (on request), and
- a member may make a copy of entries in the register.

The model rule also requires the secretary to record on the register:

- if the member is an associate member, or a note to that effect
- the date on which each member ceases to be a member, and
- any other information determined by the Committee.

TIP

Check your organisation's own rules about the members register. You may have different and/or extra requirements to those in the model rules. For example, your organisation's rules may require the secretary to enter in the register each member's class of membership (if any), 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, among other things, 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 CAV), and
- the number of members in any or all classes of membership (if your rules allow different classes).

The AIR Act contains a provision (s59) that allows members to request access to their personal information on the register in special circumstances. This is a new requirement (since November 2012) and will mean an incorporated association may need to create new policies and processes to enable the suppression of 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 for members suppressed where necessary). The second version of the members register must be open for inspection by members

(because it is a “relevant document”). This enables transparency about who belongs to the organisation.

What registers should be kept?

As part of good governance practice (and to help ensure your organisation meets the requirements of the AIR Act), the secretary should maintain a register of the “relevant documents” of the organisation.

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

- a members register, and
- a simple register of other “relevant documents” of the organisation.

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.

Other registers (optional)

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”. Such specific registers may include:

- common seal register
- assets 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.

REMEMBER

The AIR Act does not require an organisation to keep specific registers, other than a members 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.



3. CAV's powers of inspection, entry, search and seizure

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

What are CAV's powers?

While CAV's powers under the AIR Act are rarely used, they are extensive. CAV has power to give your organisation a written notice requiring:

- the incorporated association (or anyone involved in its activities) to provide any "relevant documents" to CAV for inspection, and
- any person involved in the association's activities to answer an inspector's questions about any of the association's transactions, dealings, membership and other matters relevant to an alleged breach of the AIR Act or the Regulations.

An inspector from CAV may also enter any place and search for and seize any relevant documents or anything that the inspector reasonably believes to be connected to an offence against the AIR Act. This can be done either with the consent of the occupier, or without consent in certain circumstances, or in accordance with a search warrant issued by a magistrate.

Can an organisation be penalised for failing to comply with CAV?

Yes. Under the AIR Act it is an offence for an incorporated association (or anyone involved in its activities) to:

- refuse or fail to comply with any requirement of an inspector (for example, to produce relevant documents), unless they have a reasonable excuse
- knowingly give false or misleading information or false or misleading documents to an inspector
- obstruct or hinder an inspector who is exercising their powers under the AIR Act, unless they have a reasonable excuse, or
- impersonate an inspector.

It is also an offence for anyone to, in a document required under the AIR Act:

- knowingly or carelessly make a false or misleading statement, or
- knowingly or carelessly leave out any relevant matter or thing from the document without which the document is misleading.

CAUTION

The penalties for these offences are large. As at December 2014, the penalty for each offence is around \$8800.



4. Required information to be included on “official and business documents”

Essentially, “official and business documents” of an incorporated association are documents which:

- are prepared in the name of, and on behalf of, the association, and
- are issued to the association’s members and/or to the general public in the name of the incorporated association.

These include documents with association letterhead, advertisements, meeting notices, flyers, webpages, invoices and stationery for the organisation.

! REMEMBER

Incorporated associations must include the word “Incorporated” or the letters “Inc” at the end of their name (section 22 of the AIR Act) as well as their registration number (and can be fined for failing to do so).

The secretary (but also, often employees) is often responsible for organising these documents, web pages and notices, and must make sure that the various legal requirements are met.

The AIR Act requires certain information to be included on these documents, like the registered association name (including “Inc”), and its registration number (you can ask CAV for this number if you do not know what it is).

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.

Requirements for official documents are discussed in more detail in Part 4: A Secretary’s Satchel – Guide for Secretaries at www.nfplaw.org.au/secretaryguide.

If the organisation has a common seal

A common seal is a rubber stamp that is used when signing documents in the name of the incorporated association. If your organisation has a common seal, the full name of the incorporated association (which must include the word “Inc” or “Incorporated” as the last word) must be included on the common seal.

Resources

Related Not-for-profit Law Resources

✔ [Not-for-profit Law Information Hub](#)

The Not-for-profit Law Information Hub at www.nfplaw.org.au contains many fact sheets and guides on different issues including setting up organisation, reporting and tax issues.

✔ [A Secretary's Satchel – Guide for secretaries](#)

The Not-for-profit Law Secretary's Satchel contains detailed information on keeping registers and records, information that needs to be included on official documents, and when reporting to CAV.

Legislation

✔ [Associations Incorporation Reform Act 2012 \(Vic\)](#)

✔ [A New Tax System \(Goods and Services Tax\) Act 1999 \(Cth\)](#)

✔ [Corporations Act 2001 \(Cth\)](#)

✔ [Income Tax Assessment Act 1997 \(Cth\)](#)

Government Agencies

✔ [Consumer Affairs Victoria \(CAV\)](#)

The government agency responsible for regulating Victorian Incorporated Associations.

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

© 2014 Justice Connect. You may download, display, print and reproduce this material for your personal use, or non-commercial use within your not-for-profit organisation, so long as you attribute Justice Connect as author and retain this and other copyright notices. You may not modify this resource. Apart from any use permitted under the *Copyright Act 1968* (Cth), all other rights are reserved.

To request permission from Justice Connect to use this material, contact Justice Connect at PO Box 16013, Collins Street West, Melbourne 8007, or email nfplaw@justiceconnect.org.au.