

# Keeping and accessing documents, records and registers

Legal information for ACT 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 Access Canberra to inspect documents, and
- ▶ requirements for official 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 committee and other officers of the association.**

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 in relation to employees, tax and potential litigation.

Incorporated associations in the ACT must comply with laws setting out what records, documents and registers they must keep and for how long. Members of an incorporated association and Access Canberra (formerly the Officer of Regulatory Services) both have rights to access an association's documents and records in certain circumstances. Further, the law requires that documents that are submitted to Access Canberra or are intended for the public must contain certain details about the incorporated association.

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

- the *Associations Incorporation Act 1991* (ACT) (**the AI Act**)
- the *Associations Incorporation Regulation 1991* (ACT) (**the AI Regulation**) which includes the model rules, and
- the association's rules (sometimes called "the constitution").

### 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](http://www.nfplaw.org.au/charityreporting).

## Who is responsible for keeping documents and registers?

Usually the association's secretary is responsible for overseeing the keeping documents and registers of the association. If your organisation's rules do not create the position of 'secretary,' the public officer of the association will be the person responsible for keeping documents and registers. You should check your association's rules, policies and procedures. Sometimes the treasurer or other

members of the committee also have important roles in record-keeping (or at least, an obligation to provide documents to the secretary or public officer for safe keeping). For example, if you are on the ACT 'Model Constitution' (Schedule 1 to the AI Regulation) then the secretary has certain duties including to keep minutes of meetings (rule 35) and the treasurer has the duty to ensure correct accounts and books are kept showing the financial affairs of the association (rules 15).

However, even if the secretary or public officer 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 or public officer remains responsible for these tasks

### NOTE: CHANGES TO REPORTING REQUIREMENTS FOR INCORPORATED ASSOCIATIONS IN THE ACT REGISTERED AS CHARITIES



Under 2017 Red Tape Reduction amending legislation to the AI Act and the *Charitable Collections Act 2003* (ACT) (**Charitable Collections Act**), incorporated associations in the ACT that are registered with the Australian Charities and Not-for-profits Commission (**ACNC**) (called ACNC registered entities in the AI Act) are requirements no longer need to lodge annual returns, change of committee forms and change of registered office forms with both Access Canberra and the ACNC.

It means that incorporated associations in the ACNC who are ACNC registered entities:

- are exempt from the accounts, audit and annual returns requirements under Part 5 of the AI Act and only need to provide annual reports to the ACNC
- are exempt from notifying Access Canberra of changes in their committee and registered office, and
- are not required to hold a Charitable Collections Licence under the Charitable Collections Act or report to Access Canberra in respect of their fundraising activities, and

These changes are a part of the ACT Government's first stage of red tape reduction reforms. For more information, visit the Access Canberra [website](#).

## Keeping documents and records

### Accounting records and Annual Returns

#### CAUTION

The following does not apply to ACT incorporated associations that are an "ACNC registered entity" which means a registered entity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).



### Accounting Records

The AI Act requires an incorporated association that is not an ACNC registered entity, to retain its "accounting records" for at least 7 years after the transactions to which they relate were completed.

The AI Act defines 'accounting records' as including:

- invoices
- receipts

- orders for the payment of money
- bills of exchange
- cheques
- promissory notes
- vouchers, and
- other documents of prime entry, books and records which record documents of prime entry, and any working papers and documents that are necessary to explain the methods and calculations by which accounts are made up.

### ! CAUTION

If your association is required to retain accounting records and does not keep them for at least 7 years, Access Canberra can fine your association.

An incorporated association in the ACT that is not an ACNC registered entity must maintain accurate accounting records that:

- correctly record and explain its transactions (including any transactions as trustee) and financial position
- enable “true and fair” accounts to be prepared from time to time, and
- allow a statement of the accounts to be conveniently and properly audited.

### ! CAUTION

The penalty for an organisation failing to maintain financial records where required may be up to \$15, 000 (as at September 2017).

## Annual Returns

An incorporated association in the ACT that is not an ACNC registered entity must lodge an annual return with Access Canberra together with a prescribed fee where applicable. The annual return includes:

- an audited statement of the association's accounts
- a copy of the auditor's report in relation to those accounts, and
- a completed annual return form (available at Access Canberra's website).

### RELATED RESOURCES

For further information on financial reporting obligations for incorporated associations in the ACT go the Not-for-profit Law Information Hub page at [www.nfplaw.org.au/annual-reporting-government](http://www.nfplaw.org.au/annual-reporting-government).



## Access to books and documents

Members of an incorporated association (regardless of whether the incorporated association is an ACNC registered entity) have the right to inspect books and documents of an association. Therefore, it is important that relevant documents are easily accessible.

Relevant documents for inspection by members include:

- the association’s members register and other membership records
- statements of the objects of the association, copy of the rules and any trust deeds of the association.

- Depending on your association's rules relevant documents for inspection by members may also include:
  - documents relating to transactions, dealings, business or property of the association
  - financial records and statements
  - the original application for and certificate of incorporation (these may also be obtained directly from Access Canberra)
  - originals of documents lodged with Access Canberra and related correspondence (these may also be obtained directly from Access Canberra), and
  - notices and minutes of meetings of members and the committee.

The following are additional documents which may be important to your association:

- 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 AI Act requires incorporated associations to adopt rules regarding members access to the books and documents of an association, there are some cases where an association 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 association.



## Matters which must be covered by the organisation's association's rules

An incorporated association may adopt the model rules (set out in the AI Regulation) as the rules of the association or other rules that comply with the AI Act. The AI Act requires that the rule include provisions about a range of matters, including:

- the custody and use of the common seal
- a register of the organisation's members
- the organisation's custody (safe keeping) of any books, "relevant documents or securities", including records and securities of the association, and
- members' rights to inspection of any books or documents of the association organisation's "relevant documents".

The model rules comply with these requirements. If your organisation has adopted rules that are not based on the model rules, you should ensure that all matters that the AI Act requires be addressed in an organisation's rules are addressed in your organisation's rules.

## Keeping registers

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

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

### Members register

An incorporated association in the ACT must keep and maintain a register of its members. The following information must be included in the register of members:

- the name of the association
- the name and address of each member
- the date of becoming a member, and
- the date (if any) each member ceased to be a member.

#### TIP

Check your association's own rules about the members register. You may have different and/or extra requirements to those in the AI Act and AI Regulation. For example, your association's rules may require the public officer or 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) is important because, among other things, it may help your association to work out:

- who should be sent notices of the association's meetings
- who is eligible to vote at meetings of your association
- the number of members at the end of each financial year, and
- the number of members in any or all classes of membership (if your association's rules allow different classes).

### Inspection of the members register

An association must ensure that the register of members is available for inspection by members at reasonable times or at times specified in the association's rules, at:

- the address of the public officer,
- the registered office of the association (if any), or
- at another place in the ACT nominated by the committee.

If an incorporated association is required to make an annual return (ACNC entities are exempt) it must state the place where the register is available for inspection.

## Other registers

Your organisation may wish to maintain other registers as a part of good governance (and to help ensure your association meets the requirements of the AI Act).

### Documents register

Even if your association's rules do not require your organisation to maintain a register 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 associations (particularly small, recently incorporated associations) it may be sufficient for the public officer or secretary to keep:

- a members register, and
- a simple register of other documents that are relevant to the organisation.

### Further registers

In larger associations, or those that have been running for several years, it can be difficult to keep track of all the association's relevant documents in a single register. It is therefore recommended that the public officer or 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 association's auditor (if it has one) and/or the treasurer, to make sure that effective practices are in place.

#### NOTE

The AI Act does not require an association to keep specific registers, other than a members register. However, depending on the size of the association and the complexity of its activities, registers may be a good way of tracking important assets and documents.



# Access Canberra's powers of investigation

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If serious concerns are raised about an association's compliance with the AI Act or Access Canberra has reasonable grounds for believing that an offence has been committed under the AI Act, Access Canberra may consider using its powers of inspection, search and copy of documents in order to establish whether your association is complying with the AI Act and the AI Regulation.

## What are Access Canberra's powers?

Access Canberra's powers under the AI Act include the power to give your association a written notice requiring:

- the incorporated association (or anyone involved in its activities) to provide any books relating to the affairs of the association that are specified in the notice to Access Canberra for inspection
- any current or former officers or employees of the association or any person who has acted for the association in any capacity (such as an agent, banker or lawyer) to give Access Canberra any books relating to the affairs of the association mentioned in the notice, and
- a person to produce any books relating to the affairs of the incorporated association that are in the custody or control of the person.

If the books requested are not produced, Access Canberra can require the person to inform Access Canberra to the best of their knowledge where the books may be found or who last had custody of the books.

If any books are produced, Access Canberra has the power to take possession for as long as is necessary for the books to be inspected and any copies or extracts to be taken. Accompanying the production of the books, Access Canberra may also require the person producing the books or any other person involved in compiling the books to explain matters relating to how the books were kept or any other matter to which the books relate.

Access Canberra may also require a person to identify any property owned by the association and explain how the association kept account of the property.

## Can an association be penalised for failing to comply with Access Canberra directions?

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

- refuse or fail to comply with any requirement of Access Canberra (for example, to produce any books relating to the affairs of the association), unless they have a reasonable excuse
- knowingly give false or misleading information or explanation or provide a false or misleading statement to Access Canberra, or
- obstruct or hinder a representative of Access Canberra who is exercising powers under the AI Act, unless they have a reasonable excuse.

### ! CAUTION

The penalties for these offences are large. As at September 2017, the penalty for each offence may be up to \$7,500 for individuals.

# Information required to be included on an association's documents

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Under the AI Act, the name of an incorporated association must appear legibly on association documents including:

- every business letter
- statement of account
- invoices
- official notices and publications
- bill of exchange, promissory notes, endorsement, cheque or other negotiable instrument order, and
- orders, receipts and letters of credit issued by the association.

The name and registration number (if any) of the incorporated association must also be included on the first page of any document submitted to Access Canberra. Additionally, the members register must also include the name of the association.

The secretary or public officer (but also, often employees) is often responsible for organising these documents and must make sure that the legal requirements are met.

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.

## REMEMBER

Incorporated associations must include the word "Incorporated" or the letters "Inc." at the end of their name.

## RELATED RESOURCES

For further information on fundraising requirements for ACT incorporated associations go the Information Hub page at [www.nfplaw.org.au/fundraising](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. In the ACT an incorporated association is required to have 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

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## Related Not-for-profit Law Resources

### ▀ [Reporting to government](#)

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

### ▀ [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

## Legislation

### ▀ [Associations Incorporation Act 1991 \(ACT\)](#)

### ▀ [Associations Incorporation Regulation 1991 \(ACT\)](#)

## Government Agencies

### ▀ [Access Canberra](#)

The government agency responsible for regulating ACT Incorporated Associations is Access Canberra (formerly the Office of Regulatory Services).

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