

# Keeping and accessing documents, records and registers

Legal information for NSW community organisations

## This fact sheet covers:

- the legal requirements for keeping financial records, minutes, registers and other documents
- keeping financial records, minutes and registers
- accessing financial records, minutes and registers
- summary of important documents
- information to be included on public documents, and
- the power of NSW Fair Trading to inspect and seize documents and records.

**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 incorporated 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 relating to employees, tax, under governance standards for charities and in relation to potential litigation. This fact sheet covers an overview of obligations that apply to incorporated associations under their state-based regulatory framework. For a more detailed guide on legal requirements for various registers, records and documents (including official and business documents) prepared and kept by incorporated associations in New South Wales see Part 4 of our Guide on “Running an Incorporated Association in New South Wales” at [www.nplaw.org.au/runningtheorganisaion](http://www.nplaw.org.au/runningtheorganisaion).

Incorporated associations in New South Wales (**NSW**) 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 NSW Fair Trading (**NSW Fair Trading**) 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 NSW Fair Trading 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 New South Wales are set out in:

- the *Associations Incorporation Act 2009* (**the AI Act**)
- the *Associations Incorporation Regulation 2016* (**the AI Regulation**), and

### 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).

- the incorporated association's constitution (sometimes called 'the rules').

## Who is responsible for keeping documents and registers?

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The AI Act does not specify who is responsible for keeping and maintaining records, registers and documents. Sometimes the public officer of an incorporated association is responsible for keeping the incorporated association's documents and registers. However, you should check your constitution, policies and procedures. Sometimes the secretary, treasurer or other members of the management committee also have important roles in record-keeping (or an obligation to provide documents to the public officer for safekeeping). For example, if you are on the NSW 'Model Constitution' (Schedule 1 to the AI Regulation) then the secretary has certain duties including to keep minutes of meetings and the treasurer has the duty to ensure correct books and accounts are kept showing the financial affairs of the association (rules 16 and 17).

Even if the secretary, treasurer or other office holder delegates some or all of the tasks involved (for example, to the public officer, a volunteer or staff member), he or she must still supervise to ensure the tasks are properly carried out, as they remain 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](http://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

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### 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.

The AI Act also requires that every incorporated association must have a constitution and that it include provisions (Schedule 1 of the AI Act) about certain matters including:

- the register of members
- who is responsible for the custody of books, documents and securities, and

- the procedure for inspection of the incorporated association's "books and documents" by members.

## Financial records

All of the financial records of the incorporated association must be kept for at least **5 years** after the final entry in each record.

If the records are kept in a language other than English, an English translation of the records must also be kept with the originals. If records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

Incorporated associations must maintain accurate financial records that:

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

Requirements for financial statements depend on the revenue or assets of the incorporated association.

### Requirements for Tier 1 incorporated associations

Tier 1 incorporated associations are those whose total revenue for the previous financial year exceeds \$250,000 or whose current assets exceed \$500,000. Tier 1 incorporated associations must:

- prepare financial statements for each financial year:
  - as soon as practicable after the end of the financial year
  - based on the financial records of the incorporated association
  - in accordance with the Australian Accounting Standards, and
  - including details of any security affecting property and with separate statements for each trust.
- have those financial statements audited in accordance with the Australian Auditing Standards as soon as practicable after the end of the financial year
- submit the financial statements and auditor's report at the next AGM
- prepare a summary in the approved form (which is accessible [here](#)) of the incorporated association's financial affairs for each financial year
- lodge the summary, financial statements, auditor's report and a document setting out any resolutions passed at the AGM in connection with the financial statement and auditor's report with the Commissioner for Fair Trading within one month of the AGM or 7 months after the end of the previous financial year, and
- pay the lodgement fee of \$190.

## Requirements for Tier 2 incorporated associations

A Tier 2 incorporated association is any incorporated association which is not a Tier 1 incorporated association. A Tier 2 incorporated association must:

- ensure financial records are sufficient to allow for the preparation of financial statements
- prepare financial statements for each financial year:
  - as soon as practicable after the end of the financial year
  - which give a true and fair view of the association's affairs, and
  - including an income and expenditure statement, a balance sheet, details of any security affecting property and separate statements for each trust.
- submit the financial statements at the next AGM
- prepare a summary in the approved form of the incorporated association's financial affairs for the previous financial year
- lodge the summary with the Commissioner for Fair Trading within one month of the last AGM or 7 months of the end of the previous financial year, and
- pay the lodgement fee of \$45.

Incorporated associations should have a policy or process in place for authorising payments that are required to be made by the incorporated association (for example, authorisations may have to take place at committee meetings). This (how income is managed and spent) is another matter the AI Act requires an organisation to have a provision about in their constitution.

### ! CAUTION

If your organisation does not comply with financial reporting requirements it could face a penalty of \$550 (as at 5 April 2017).

## Meeting minutes

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The AI Act requires an incorporated association to keep minutes of the proceedings of its committee meetings and general meetings.

The minutes should include:

- the date and time of each meeting and who was in attendance
- the matters discussed and any documents submitted for consideration, and
- the outcome of each matter discussed and all passed or failed resolutions.

The AI Act also requires that if any minutes, or part of the minutes are kept in a language other than the English language, a copy of the document wholly in the English language must be kept with the document.

The Regulations also require that the record is kept for a period of not less than 5 years after it was made. If records and minutes are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

## EXAMPLE

If your organisation uses the Model Constitution set out in Schedule 1 to the Regulation, your organisation will be bound by model rule 45, which requires the following documents be open to inspection, free of charge, by a member of the association at any reasonable hour:

- records, books and other financial documents of the association
- constitution, and
- minutes of all committee meetings and general meetings of the association.

If they member wants a copy of the documents (above) they can do so on payment of a fee of not more than \$1 for each page copied.

The Committee can also may refuse to permit a member of the association to inspect or obtain a copy of records of the association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the association



# Registers

A register is a list (or database) which contains information kept by the incorporated association. Every incorporated association must have a register of its members, its committee members, and its committee members' disclosed interests. All compulsory registers must be kept in NSW at the main premises of the incorporated association or its official address. Your incorporated association may choose to have a range of other registers, depending on the size of the incorporated association, the length of time it has been running, and how the incorporated association is run.

## Compulsory registers

### Register of committee members

Incorporated associations must maintain a register of committee members. The register must contain the following information about each committee member:

- names of the president, vice-president, secretary and treasurer (if they exist)
- the name, date of birth and residential address of each committee member, and
- the date on which each committee member takes and vacates their respective office.

All changes to details recorded on the register must be updated within one month.

The register must be available for inspection free of charge to any person at reasonable hours.

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



## Register of disclosure of interests

Incorporated associations must maintain a register of interests 'disclosed' by committee members. All committee members are required to tell the committee about any direct or indirect interest which could conflict with their duties to the incorporated association.

### NOTE

The register of disclosures must be open at all reasonable hours for inspection by any member of the incorporated association. The committee may set a fee of up to \$5 for members to inspect the register (this is the maximum amount set by the IA Regulation).



## Register of members

Your incorporated association's constitution must include provisions about a members register.

### EXAMPLE

If your organisation uses the Model Constitution set out in Schedule 1 to the Regulation, your organisation will be bound by model rule 7, which requires that:

- the secretary must establish and maintain a register of members containing:
  - the name and postal, residential or email address of each member, and
  - the date on which the member became a member.
- members must be able to inspect the register free of charge at any reasonable hour
- a member may make a copy of entries in the register for a fee of not more than \$1 per page, and
- the incorporated association must comply with any member's request that information about the member (other than the member's name) not to be made available for inspection.

If members request that their information not be disclosed, the secretary may need to keep two versions of the members' register - one with all the details, stored securely, and a second that does not contain the details of members who have requested their details be suppressed. Access should only be provided to the register with details of suppressed information where necessary



### TIP

Check your incorporated association's constitution about the members register. You may have different and/or extra requirements to those in the model constitution. For example, your incorporated association's constitution may require the secretary to enter in the register each member's class of membership (if any), the fee each member pays and the date it was paid.



## Why keep registers?

Registers are important because, as well as being legally required, they help the incorporated association to:

- work out who should be sent notices of meetings (committee meetings or general meetings)
- work out who is eligible to vote at general and committee meetings
- prevent issues arising from real or potential conflicts of interests (of committee members)

- determine the number of members at the end of each financial year
- ensure members have access to accurate information regarding the incorporated association
- determine the number of members in any or all classes of membership (if your constitution allows different classes), and
- ensure that the incorporated association is conducted in a manner which reflects good corporate governance.

## 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 incorporated associations (particularly small, recently incorporated ones) it may be sufficient for the secretary or public officer to keep:

- the mandatory registers (see above), and
- a register of other important documents and records of the incorporated association.

### Further registers

In larger incorporated associations, or those that have been running for several years, it can be difficult for the secretary or public officer to keep track of all the incorporated association's important documents in a single register. It is therefore recommended that "sub-registers" be maintained. Such specific registers may include:

- common seal register
- register of authorised signatories (name and position held)
- assets register
- insurance policies register
- investments register, and
- keys register.



#### TIP

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

### RELATED RESOURCES

For sample template registers refer to Part 4 of our Guide on 'Running an Incorporated Association in New South Wales' on the Toolkits page of the Not-for-profit Law Information Hub at [www.nfplaw.org.au/secretaryguide](http://www.nfplaw.org.au/secretaryguide).



## Access to financial documents, meeting minutes and registers

The AI Act requires that:

- incorporated associations retain the records as detailed above
- members be given access to the register of disclosed interests and that the register of committee members be available to anyone, as explained below, and
- custody and inspection of documents be covered in an incorporated association's constitution.

If your constitution does not go into detail about custody and inspection, your incorporated association should have policies about custody and retention of important documents and policies about when and how access is provided.

### Summary of important documents to be kept

The important documents and records which should be kept by each incorporated association are set out in the following Table. The AI Act requires incorporated associations retain the compulsory documents and records detailed in the Table below

As also outlined above, the AI Act and AI Regulation prescribe that financial records and minutes of committee and general meetings must be kept for five years. In relation to other documents (and where the AI Act and the AI Regulation do not specify a particular period for which the records must be kept) the management committee should maintain all records as are needed for the efficient running of the incorporated association, such as:

- employee records for the purposes of workers compensation and superannuation, and
- documents that record liability for capital gains tax, provide title to assets such as real estate or intellectual property which should be retained indefinitely

### Important documents

<b>Compulsory documents</b>	<b>Recommended documents</b>
Constitution	The original application for and certificate of incorporation
Financial records, financial statements and auditor's reports (auditor's reports are only compulsory for Tier 1 associations)	Membership records
Minutes of meetings	Originals of documents lodged with NSW Fair Trading and related correspondence
Register of committee members	Notices of meetings of members and the management committee
Register of disclosure of interests	Government licences and certificates
Register of members	Insurance policies (including workers' compensation)
	Trust deeds

Compulsory documents	Recommended documents
	Australian Taxation Office correspondence and documents

## Required information to be included on incorporated association's documents

An incorporated association must include its full corporate name **including** the word "Incorporated" or the letters "Inc" on all documents issued by the incorporated association. These include letters, statements, invoices, notices, publications, order for goods or services or receipts in connection with its activities. The secretary or public officer is usually responsible for organising these documents and must make sure that the various legal requirements are met.

### NOTE

Incorporated associations can be fined for failing to include their names on all documents.

Other laws, like tax and fundraising laws, require further information to be included on official documents, such as fundraising license numbers and the incorporated association's ABN (if your incorporated association is required to have one for tax purposes). If your incorporated association is also a Registered Australian Body, there are further requirements under the *Corporations Act 2001*.

The incorporated association's registration number should be included in all documentation, correspondence or contact with NSW Fair Trading.

### If the incorporated association 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 incorporated association has a common seal, the full name of the incorporated association (which must include the letters "Inc" or the word "Incorporated" at the end of the name) must be included on the common seal.

## NSW Fair Trading's powers

### What are the powers of NSW Fair Trading?

While NSW Fair Trading rarely uses its powers under the AI Act, they are extensive.

NSW Fair Trading has power to give any person a written notice requiring that person to:

- produce any documents in that person's possession that relate to the affairs of an incorporated association, and
- furnish NSW Fair Trading with such information as the person possesses in connection with the affairs of an incorporated association.

An authorised officer from NSW Fair Trading may also enter any premises at which your incorporated association carries on any activity, and inspect and copy any document that relates to the business

carried on there to determine compliance with the AI Act. This can be done with 24 hours' notice to the occupier, without notice where notice would defeat the purpose of the entry, or in accordance with a search warrant issued by a magistrate.

## Penalties for not complying

It is an offence for an incorporated association (or anyone involved in its activities) to:

- refuse or fail to comply with a requirement of NSW Fair Trading to produce certain documents or information
- obstruct or hinder an authorised officer who is exercising their powers under the AI Act, or
- knowingly give false or misleading information or false or misleading documents to NSW Fair Trading.

### ! CAUTION

The penalties for these offences are large. As at 20 April 2017, the maximum penalty for the first two offences is \$6,600 and the maximum penalty for the third is \$22,000 and two years' imprisonment.

# Resources

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## Related Not-for-profit Law Resources

✔ Fundraising – [www.nfplaw.org.au/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.

✔ Reporting to Government – [www.nfplaw.org.au/reporting](http://www.nfplaw.org.au/reporting)

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

✔ Running an organisation – [www.nfplaw.org.au/runningtheorg](http://www.nfplaw.org.au/runningtheorg)

This page on the Not-for-profit Law Information Hub contains more detailed information about how to run an incorporated association in New South Wales

✔ Charities reporting – [www.nfplaw.org.au/charityreporting](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 2009 \(NSW\)](#)

✔ [Associations Incorporation Regulation 2010 \(NSW\)](#)

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

✔ [Corporations Act 2001 \(Cth\)](#)

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

## Government agencies

✔ [NSW Fair Trading](#)

NSW Fair Trading is the government agency responsible for regulating NSW Incorporated Associations. See the link to 'Co-operatives & Associations' for further information about incorporated associations.

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au). Justice Connect Not-for-profit Law acknowledges the generous support of our funders and supporters. Find out more at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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