

Keeping and accessing documents, records and registers

Legal information for incorporated associations in the Northern Territory



This fact sheet covers:

- ▶ the legal requirements for keeping records
- ▶ the types of registers an incorporated association should keep
- ▶ who may inspect registers, records and documents
- ▶ the power of the Commissioner of Consumer Affairs to inspect and seize documents and records, and
- ▶ the general requirements relating to the content of 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 and potential litigation.

Incorporated associations in the Northern Territory (NT) must comply with laws setting out what records, documents and registers they must keep and for how long. Members of an incorporated association, the Commissioner of Consumer Affairs (CCA), Licensing NT and auditors have rights to access an organisation's documents and records in certain circumstances. Further, the law requires that documents that are submitted to the CCA or are intended for the public must contain certain details about the incorporated association.

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

- the *Associations Act* (NT) (**the Associations Act**)
- the *Associations Regulations* (NT) (**the Associations Regulations**), and
- the organisation's rules (sometimes called 'the constitution'), and where applicable, the *Associations (Model Constitution) Regulations* (NT) (**the Model Constitution Regulations**).

The Act also allows an incorporated association in the NT to adopt rules which are based on the customs and traditions of the ethnic community to which its members belong. If this situation applies to you, there may be additional customary rules that apply to keeping and accessing the association's records.

Who is responsible for keeping documents and registers?

Usually the Public Officer or secretary 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 Public Officer or 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 Public Officer or secretary remains responsible for these tasks.

Keeping documents and records

An incorporated association in the NT must keep:

- accounting records, and
- minutes of meetings.

Each type of record are discussed further below.

Accounting records and documents

The Associations Act requires an incorporated association to keep 'accounting records' of the association for 7 years after the completion of the transactions to which they relate. Your organisation can be penalised if it does not keep records as required.

What are accounting records?

'Accounting records' are defined in the Associations Act to include:

- 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 the documents necessary to explain the methods and calculations by which accounts are made up.

Your organisation should also keep with your accounting records any audited statements of accounts lodged with the CCA in accordance with the Associations Act.

Maintaining accounting records

Incorporated associations must maintain accurate accounting records in such a manner that:

RELATED RESOURCES

This fact sheet does not cover the legal requirements for record keeping relating to fundraising activities. For information on fundraising activities and records, visit Not-for-profit Law's Fundraising page at www.nfplaw.org.au/fundraising

- correctly records and explains the transactions and financial position of the association
- enables the preparation of accounts that are “true and fair”, and
- enables the accounts to be conveniently and properly audited in accordance with the Associations Act.

FURTHER READING

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



Minutes of meetings

The minutes of a meeting are the notes recording the conduct of meetings. The Associations Act requires an incorporated association to keep minutes of general meetings and meetings of the committee. The books containing these minutes must be kept:

- by the association at the place at which the association is situated or established, or
- in the custody of an officer of the association in accordance with the organisation’s rules or a resolution of the committee of the association.

FURTHER READING

For further information on an incorporated association’s obligation to record minutes of meetings go the Information Hub page at <http://www.nfplaw.org.au/meetings>.



CAUTION

If your organisation does not comply with the rules for:

- maintaining accounting records and minutes of meetings, or
- retaining accounting records for 7 years,

Licensing NT can fine your organisation. The penalty can be up to \$15,300 (as at February 2016).

Officers of an association can also be personally liable if they fail to take all reasonable steps to secure compliance by the association with the legal requirements relating to maintaining and keeping accounting records.



Keeping registers

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. The Associations Act and the Associations Regulations require a register of members to be kept which records:

- the date on which each member became a member of the association
- the date on which each member ceases to be a member, and
- the name and the address of each member of the association.

By way of example, model rule 36 of the Model Constitution Regulations requires the secretary to keep and maintain the register of members in accordance with the Associations Act.

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), the fee each member pays and the 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 the 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 CCA), and
- the number of members in any or all classes of membership (if your rules allow different classes).

Depending on your organisation's own rules about the details that should be recorded in the members register, the secretary may need to keep two (or more) versions of the members register:

- one with all the details required by the Associations Act and the Associations Regulations, and
- a second register that also contains the additional details of members which must be kept pursuant to your own rules.

In these circumstances, your organisation may decide that members will only have access to the first register (with the additional details for members suppressed, where appropriate).

What other registers should be kept?

As part of good governance practice (and to help ensure your organisation meets the requirements of the Associations 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 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

In larger organisations, or those that have been running for several years, it can be difficult for a secretary or Public Officer 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
- 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 Associations 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.

Storing records and registers

The Associations Act requires that the members register and other records of information including accounts or accounting records to be kept and prepared by either:

- making entries in a bound or looseleaf book, or
- recording or storing the matters concerned by means of a mechanical, electronic or other device so long as the matters recorded or stored are capable of being reproduced in written form or a reproduction of those matters is kept in a written form.

The organisation must take all reasonable precautions to safeguard against damage, destruction or falsification of its records. This means your organisation should take steps to protect its registers and records, which could include keeping hard copy documents in a locked drawer, or password-protecting computers and/or electronic documents.

Inspection of records and registers

The Associations Act allows members to inspect:

- the minutes of the association's general meetings without charge
- the audited statements of accounts within at least 14 days of the association's annual general meeting, and copies of these documents (the number of which is prescribed by the Associations Regulations) must also be available for inspection by members immediately before and during the annual general meeting, and
- the association's register of members at the time specified in the association's constitution or at a reasonable time, at:
 - the address of the Public Officer
 - the place, if any, which the association is situated or located, or
 - another place in the NT nominated by the association's committee.

TIP

Under the Associations Act, officers of the organisation are allowed to inspect the minutes of the association's committee meetings without charge.

The Associations Regulations allows any person to inspect any or all documents filed with the CCA on payment of the prescribed fee.

Your organisation's rules

Your organisation's rules should address how relevant documents are to be kept and how members and officers can gain access to inspect them. The Model Constitution Regulations contain model rules which allow for this.

The CCA's powers of inspection, production, investigation and seizure

The Associations Act contains provisions that allow the CCA to exercise certain powers of inspection and investigation in relation to incorporated associations.

If serious concerns are raised about an association's compliance with the Associations Act or how funds are being used, the CCA may consider using its powers of inspection, production, investigation and seizure of documents in order to establish whether your organisation is complying with the Associations Act.

What are the CCA's powers?

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

- the incorporated association (or anyone involved in its activities) to produce the books of the organisation to the CCA, and

- any person involved in the association’s activities to answer questions from an authorised officer of the CCA about any of the association’s transactions, dealings, membership and other matters relevant to an alleged breach of the Associations Act, the Associations Regulations or the Model Constitution Regulations.

The written notice must specify the grounds for conducting the investigation.

The CCA may take possession of any books or records of the association and may make copies of, or take extracts from, those documents. An authorised officer from the CCA 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 under the Associations 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 the CCA?

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

- refuse or fail to attend before the CCA, or refuse or fail to answer a question put to them by the CCA
- knowingly give false or misleading information when appearing before the CCA
- obstruct, hinder, resist or attempt to obstruct, hinder or resist the CCA in the exercise of their powers of entry, search and seize, or
- conceal, destroy, mutilate or falsify books relating to or affecting affairs of the association.

CAUTION

The penalties for these offences are significant. As at February 2016, the penalty for each offence is a maximum of \$15,300 or imprisonment for 6 months.



Information to be included on association documents

The Associations Act requires that the name of the incorporated association includes the word “Incorporated” or “Inc.” at the end of their name. The name of the incorporated association’s name should be clearly printed, stamped or endorsed on any document or thing published, drawn, endorsed or issued by the association.

Essentially, all “official” and/or “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, web pages, invoices and stationery for the organisation.

REMEMBER

Incorporated associations must include the word “Incorporated” or the letters “Inc.” at the end of their name (see section 15 of the Associations Act).

The secretary or Public Officer (and sometimes employees) is often responsible for organising these documents, web pages and notices, and must make sure that the various 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.

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 and must be legible.

Resources

Related Not-for-profit Law Resources

- Reporting to government - www.nfplaw.org.au/reporting

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

- Fundraising - 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.

- Holding meetings - www.nfplaw.org.au/meetings

This page on the Not-for-profit Law Information Hub contains further information about conducting meetings, including the taking of meeting minutes.

Legislation

- [Associations Act \(NT\)](#)
- [Associations Regulations \(NT\)](#)
- [Associations \(Model Constitution\) Regulations \(NT\)](#)
- [Penalty Units Act \(NT\)](#)

Other related resources

- [Northern Territory Government Department of Business](#)

The government department of which Licencing NT is part of and which is responsible for regulating incorporated associations in the Northern Territory.

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

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