

Keeping and accessing documents, records and registers

Legal information for South Australian incorporated associations



This fact sheet covers:

- ▶ the legal requirements for keeping records
- ▶ the legal requirements for keeping minutes of meetings
- ▶ the types of registers an incorporated association should keep
- ▶ who may inspect registers, records and documents
- ▶ the power of the Corporate Affairs Commission 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 those relating to employees, tax, under governance standards for charities and in relation to potential litigation. This fact sheet covers the obligations that apply to incorporated associations under their state-based regulatory framework.

Incorporated associations in South Australia must comply with laws setting out what records, documents and registers they must keep and for how long. Both members and the Corporate Affairs Commission (CAC) have rights to access an organisation's documents and records in certain circumstances. Further, the law requires that documents that are submitted to CAC or Consumer and Business Services (CBS), or are intended for the public, must contain certain details about the incorporated association.

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 on the Not-for-profit Law Information Hub at www.nfplaw.org.au/charityreporting.

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

- the *Associations Incorporation Act 1985* (SA) (**the AI Act**)
- the *Associations Incorporation Regulations 2008* (SA) (**the AI Regulations**), and
- the organisation's rules (sometimes called 'the constitution').

NOTE

The AI Act permits the Governor to make regulations for model rules, however, there are currently no regulations prescribing model rules in South Australia. Rather, CBS has made available an example set of rules which incorporated associations may choose to adopt to assist them in complying with their obligations under the AI Act. Incorporated associations do not have to use the example rules – they can write their own rules.



RELATED RESOURCES

A copy of the South Australian example rules can be found on CBS's website here:

http://www.cbs.sa.gov.au/assets/files/02_association_rules.pdf

If you are considering using the example rules for your organisation, you should consider if the rules are appropriate for your organisation and make any modifications or amendments necessary. The example rules also contain some rules that require your organisation to insert further information.



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.

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:

- 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

A South Australian incorporated association is required by law to keep:

- accounting records, and
- meeting minutes.

The AI Act and AI Regulations specify a number of requirements for keeping these types of records, which are discussed below.

Accounting records

The AI Act and AI Regulations require an incorporated association to keep 'accounting records' of the association that correctly record and explain the transactions of the association and the financial position of the association.

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

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

For all incorporated associations, the relevant accounting records must be:

- kept for 7 years after the completion of the transactions that they relate to, and
- kept at the place where the association operates in South Australia, or in the custody of an officer of the association in accordance with the organisation's rules.

Your organisation can be penalised if it does not keep records as required by law.

Prescribed associations (larger associations) – additional requirements

The AI Act imposes additional requirements on 'prescribed associations'. An incorporated association becomes a 'prescribed association' whenever it has an income of more than \$500 000 in the previous financial year (as at February 2016).

A prescribed association must maintain accurate accounting records to enable:

- the preparation from time to time of accounts that fairly present the results of the operations of the association, and
- the accounts to be conveniently and properly audited in accordance with the AI Act.

CAUTION



An incorporated association can be fined up to \$1,250 (as at February 2016) if it does not keep 'accounting records' in the manner or for 7 years.

A prescribed association can be fined up to \$2,500 (as at February 2016) for failing to maintain the accounting records required by law. It can be fined up to \$1,250 (as at February 2016) for failing to keep these records for 7 years after the completion of the transactions to which they relate.

If a member of the management committee of an association fails to take all reasonable steps to secure compliance by the association with the above conditions, they commit an offence with a penalty of up to \$5,000. The penalties are higher for members of prescribed associations, who can be liable for up to \$5,000 or one year imprisonment (as at February 2016).

Audit and reporting requirements

Associations which are not prescribed associations

An incorporated association which is not a prescribed association (as defined above) is not required to have its accounts audited. However, the incorporated associations' rules may require the group to have an annual audit, even if this is not required by the AI Act.

Associations which are prescribed associations

The committee of a prescribed association must make sure that the association's accounts are audited. The qualifications that the auditor must have are set out in section 35 of the AI Act. The financial and other required documentation must be presented to members at the annual general meeting, which must be held within 5 months of the end of the financial year of the prescribed association.

Prescribed associations must also provide CAC with records that detail accounts and other information relevant to the affairs of the association. This information must be lodged within 6 months after the end of the association's financial year. It must follow the form set out in Schedule 1 of the AI Regulations. The penalty for failure to lodge these return can be up to \$5,000 (as at February 2016).

Your organisation should keep a record of any returns lodged with CAC or CBS.

RELATED RESOURCES



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

Meeting Minutes

The minutes of a meeting are the notes recording the conduct of meetings. The AI Act requires that all incorporated associations keep minutes of all proceedings of:

- general meetings, and
- meetings of the committee.

All meeting minutes should be entered into minute books and the association must ensure all meeting minutes are:

- confirmed by the members of the association present at a subsequent meeting, and
- signed by the member who presided at the meeting at which the proceedings took place or by the member presiding at the meeting at which the minutes are confirmed.

You should make sure that meeting minutes are carefully and correctly prepared, because meeting minutes are taken to be an accurate representation of a meeting and are considered to be proof of the outcomes of a meeting.

The AI Act provides strict requirements for the keeping of minutes:

- the books containing all meeting minutes must be kept at the place where the association operates or in the custody of an officer of the association in accordance with its rules or a resolution of the committee of the association, and
- the books containing the minutes must be made available for inspection by any member without charge.

CAUTION

Failure to comply with requirements for the keeping of meeting minutes is an offence for both the incorporated association and any officer of the association who is responsible for keeping minutes. Prescribed associations may face a penalty of up to \$2,500 while other incorporated associations could face penalties up to \$1,250.

Keeping registers

A register is a list (or database) which contains information kept by the organisation. In South Australia, it is not compulsory to keep registers or records other than mandatory accounting records and minutes of meetings (discussed above). However, it is recommended that every incorporated association have:

- a register of members (while the AI Act is silent, the [CBS website](#) says that the association's rules must cover membership and a register of members), and
- a register of 'relevant documents'.

Each of these registers is discussed below in more detail. Your organisation may also 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.

Members register

It is recommended that your organisation's rules include provisions for a members register.

CBS's example rules include a requirement that a member's register be maintained. The example rules provide that:

Rule 5.5

- the secretary or Public Officer must keep and maintain a register of members containing:
 - the name and address of each member
 - the date of becoming a member, and
 - if applicable, the date of and reason(s) for termination of membership.

Some organisations have different classes of member, and their rules also require the secretary or Public Officer to record on the register the member's class of membership .

What is the purpose of the members register?

The keeping of a register of members (and the proper maintenance of it by the secretary or Public Officer) 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 returns lodged with CAC), and
- the number of members in any or all classes of membership (if your rules allow different classes).

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 simple register of other "relevant documents" of the organisation. It is good governance practice to have policies about keeping any such registers, including policies about who is responsible, and when and how access to information held in the registers

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.



Other registers

In larger organisations, 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 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, and
- investments register.

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

REMEMBER

The AI Act does not require an association to keep specific registers. 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.



Inspection of records

A member of an incorporated association has a right to inspect the minutes of general meetings without charge. A member may also apply to the District Court of South Australia for an order authorising an inspection of the association's records on behalf of the member by an auditor or accountant.

Any person (including non-members) may approach CAC to inspect or obtain copies of documents held by CAC (including the register of incorporated associations and the certificate of incorporation). A fee will apply.

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

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

What are CAC's powers?

CAC has power to give your organisation a written notice requiring the incorporated association, or any person acting in any capacity for or on behalf of the association, to produce any "such books relating to the affairs of the association" to CAC, or person authorised by CAC, for inspection.

CAC also has the power to investigate incorporated associations. If CAC has requested the production of books and records as above and books and records are produced, CAC has the power to:

- take and/or may make copies of, or take extracts from books and records of the association, and
- require any person who was responsible for of the books, to make a statement as to any matter relating to the books.

CAC can require the person that they have requested books and records from (usually the public officer of the association) to:

- state, to the best of their knowledge and belief, where the books may be found, and
- identify the person who, to the best of their knowledge and belief, last had custody of the books and to state, to the best of their knowledge and belief, where that person may be found.

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

Under the AI 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 CAC in relation to inspection and investigation of an association's books or records (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, or
- obstruct or hinder CAC or a person authorised by CAC who is exercising their powers under the AI Act, unless they have a reasonable excuse.

CAUTION

The penalties for these offences are significant. As at February 2016, the penalty for a breach by a prescribed association can be up to \$5,000. The penalty for a breach in relation to all other incorporated associations is \$2,500.



Information to be included on association documents

The AI Act requires that the name of the incorporated association, including the word “Incorporated” or “Inc.” at the end of the name, to be clearly set out on all official documents (eg letters, notices, advertisements, etc) of the association. This requirement does not apply to receipts for an amount under \$10.

Other laws, like tax and fundraising laws, can 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.

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 Information Hub page at www.nfplaw.org.au/fundraising.



Your association should have a common seal. A common seal is a rubber stamp that is used when signing documents in the name of the incorporated association. The CBS example rules require an incorporated association’s name to appear on the seal in legible characters. It also requires that the seal can only be used with the express authorisation of the committee, and every use of the seal needs to be recorded in the minute book of the association.

Resources

Related Not-for-profit Law Resources

- Reporting to government - <http://www.nfplaw.org.au/reporting>

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

- 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.

- Charities reporting - <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 1985 \(SA\)](#)
- [Associations Incorporation Regulations 2008 \(SA\)](#)

Other related resources

- [Consumer and Business Services \(CBS\)](#)

The government agency responsible for regulating South Australian Incorporated Associations.

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

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