

# Keeping and accessing documents, records and registers

Legal information for incorporated associations in Tasmania



## 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 for Corporate 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 Tasmania must comply with laws setting out what records, documents and registers they must keep and for how long. Members of an incorporated association, members of the public, and the Commissioner for Corporate Affairs (CCA) 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 Consumer Affairs and Fair Trading (CAFT) or are intended for the public must contain certain details about the incorporated association. This fact sheet covers obligations that apply to incorporated associations under their state-based regulatory framework.

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

- the *Associations Incorporation Act 1964* (TAS) (**Associations Act**), and
- the organisation's rules (sometimes called 'the constitution').

An association incorporated in Tasmania may, by special resolution, adopt as its rules all, or any of, the Model Rules (or a modified version of the Model Rules) set out in the *Associations Incorporation (Model Rules) Regulations 2007* (**Model Rules**).

You should also be aware that the Model Rules may be deemed part of the rules of your association if

### NOTE

There are particular record keeping and reporting requirements for charities that apply in addition to requirements under the Associations Act. You can read more at [www.nfplaw.org.au/charityreporting](http://www.nfplaw.org.au/charityreporting)

your association's rules are not inconsistent with, or do not expressly exclude or modify, the Model Rules.

### EXAMPLE

Some circumstances in which the Model Rules could apply to your organisation in addition to its own rules are where your organisation's rules:

- are silent on an issue addressed in the model rules, or
- do not go into as much detail as the model rules on a topic addressed in the model rules.

If your organisation does not want the Model Rules to apply, your organisation's rules can state that the Model Rules are excluded in their entirety, or are modified and not intended to apply in relation to a specific issue (or issues).



## Who is responsible for keeping documents and registers?

Usually the Public Officer of an incorporated association in Tasmania is responsible for keeping documents and registers of the organisation. However, you should check your own organisation's rules, policies and procedures - often the secretary, 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 Public Officer for safe keeping).

Even if the 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 Public Officer remains responsible for these tasks (unless the organisation's rules provide otherwise).

### 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 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

### Accounting records and documents

The Associations Act requires an incorporated association in Tasmania to keep accounting records of the association for 7 years after the completion of the transactions to which they relate. Your organisation and the members of its committee can be penalised if they do 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, and working papers and other documents necessary to explain the methods and calculations by which accounts are made up.

Your organisation should also keep a record of any annual returns, including any financial statements, lodged with CAFT.

### Maintaining accounting records

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

- 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.

The Associations Act requires that the incorporated association’s accounting records are kept:

- in writing in the English language, and
- at the place within Tasmania which is “considered appropriate” by the association (this could be a number of places, including the association’s office, or at the home or office of the organisation’s Public Officer).

If your organisation has adopted the Model Rules (or they are deemed part of your rules) your organisation will need to comply with additional requirements for maintaining accounting records. The Model Rules (rule 7) require true accounts to be kept of:

- each receipt or payment of money by the association and the matter in respect of which the money was received or paid, and
- each asset or liability of the association.

The Model Rules (rule 7) also require:

- the treasurer of the association to keep all accounting books, and general records and records of receipts and payments, connected with the business of the association in the form and manner determined by the committee, and
- the accounts to be open to inspection by the members of the association at any reasonable time determined by the committee.

## CAUTION

If your organisation does not comply with the requirements under the Associations Act for:

- maintaining accounting records, or
- retaining these records for 7 years.

CAFT can issue a fine on the organisation and the committee members responsible for complying with these requirements. The penalty can be up to \$795(as at September 2017).



## FURTHER READING

For further information on financial reporting obligations for incorporated associations in Tasmania see here [www.nfplaw.org.au/annual-reporting-government](http://www.nfplaw.org.au/annual-reporting-government).



## Minutes of meetings

The minutes of a meeting are the notes recording the conduct of meetings. There are no requirements in the Associations Act for an incorporated association to keep minutes of either:

- general meetings, or
- meetings of the committee.

However, it is considered good governance for an organisation to keep meeting minutes of both general meetings and meetings of the committee. The Public Officer or secretary is usually responsible for maintaining the books containing the minutes and it is preferable that these records be kept at the place at which the association is situated or established, to ensure they are easily accessible.

The Model Rules (rule 11) require minutes of general meetings, including annual general meetings to be taken and for the minutes relating to meetings held throughout each year to be confirmed at the next annual general meeting held by the association.

## Inspection of records

The Associations Act allows any person to inspect, or request a copy of, the records held by the CCA relating to the association following payment of the prescribed fee.

## Keeping registers

A register is a list (or database) which contains information kept by the organisation. In Tasmania, the law does not require incorporated associations to keep registers or records other than mandatory accounting records (discussed above). However, it is recommended that every incorporated association have:

- 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. The Model Rules contain provisions dealing with members registers.

If your organisation has adopted the Model Rules (or they are deemed part of your rules), the Public Officer must record the name of each member on a register of members on receipt of payment of the member’s first annual subscription (rule 5).

If the Model Rules apply, it is important that the Public Officer comply with the requirement to enter the name of every new member on the member’s register because they will not officially become a member of the organisation until their name is entered on the register. Similarly, under the Model Rules (rule 5), a member will only cease to be a member of the organisation when their name is removed from the register.

Some organisations have rules that also require the Public Officer to record on the register:

- the member’s address and date of becoming a member
- the class of membership (where there are different classes), and
- the date on which each member ceases to be a member.

### TIP

Check your organisation’s own rules about the members register. You may have different or extra requirements to those in the Model Rules.

Remember that the Model Rules can apply to your organisation even if your organisation has adopted its own rules, if your organisation’s rules are not inconsistent with the Model Rules or do not expressly exclude or modify the Model Rules.



## What is the purpose of the members register?

The register of members (and the proper maintenance of it by the Public Officer) is important because, among other things, it helps the Public Officer 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, if it is required to provide such an annual statement), and
- the number of members in any or all classes of membership (if your rules allow different classes).

## NOTE – INCORPORATED ASSOCIATIONS & REGISTERED CHARITIES



If your incorporated association is also registered with the Australian Charities and Not-for-profits Commission (ACNC) you do not have to provide an annual report to CCA. However, it is important to note Tasmania incorporated associations have different financial obligations at the state level and with the ACNC: all incorporated associations with revenue over \$250,000 are required to audit accounts. This compares to the ACNC requirements that only charities with revenue of \$1m and over are required to have accounts audited (with charities with revenue between \$250,000 and \$1m being able to undertake a 'review' of their accounts).

So, the result for Tasmanian incorporated associations that are registered with the ACNC is an exemption from preparing and lodging an annual return with the Tasmanian regulator, but medium-sized charities (those above \$250 000) will still need to undertake an audit, even if they are not required to by the ACNC.

Incorporated associations that are not charities and who have an annual revenue of less than \$250 000 are also not required by the Act to have an audit of their accounts (however, the organisations rules may specify otherwise). They are still required to an annual return to CCA.

Note these reporting requirements do not, however, change your obligations under the Act in relation to the keeping and accessing of documents and records.

All incorporated organisations (including those that are registered with the ACNC) are required to keep their organisation's contact details up to date with CCA.

## Relevant documents register

Even if it is not a requirement under your organisation's rules 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

In larger organisations, or those that have been running for several years, it can be difficult for the Public Officer (or secretary) to keep track of all the organisation'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, 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 Associations Act does not require an organisation to keep specific registers.

Depending on the size of the organisation and the complexity of its activities, registers may be a good way of tracking important assets and documents so you may want to consider including a suitable provision in your rules.

Rules 5, 7 and 10 of the Model Rules provide a good example of suitable rules. These Model Rules may be deemed part of the rules of your association if its rules are not inconsistent with, or do not expressly exclude or modify, the Model Rules.



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

The Associations Act contains a "Special Investigation" provision which allows the CCA to exercise the powers of inspection and investigation held by the Australian Securities and Investments Commission (**ASIC**) pursuant to the *Corporations (Ancillary Provisions) Act 2001* (TAS).

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 CCA's powers?

CCA has the same powers in relation to incorporated associations as ASIC does in relation to companies under the *Corporations Act 2001* (Cth).

While the CCA's powers are rarely used, they are extensive. The CCA has the following powers:

- a general power to investigate your organisation to ensure it is complying with the Associations Act. The CCA can also require, by written notice provided, a person whom it reasonably believes has information in relation to an investigation to give information to the CCA or to answer questions asked by the CCA
- a power to inspect and copy records and books if it is of the belief that there has been a contravention of the Associations Act
- a power to require the production, by the incorporated association or any person involved with the association, of records and books of the association in relation to its operations, accounts and other affairs
- a power to take possession and seize any records or books of an incorporated association on the application and grant of a warrant
- a power to report on any audit deficiencies in contravention of the Associations Act, and
- a power to hold hearings in relation to its investigations, and
- the CCA can commence criminal and civil proceeding against relevant persons and associations after it has completed its investigation

## Can an organisation be penalised for failing to comply with CCA?

Under the Associations 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 the CCA in relation to inspection, production and investigation of an association's books or records (for example, to produce relevant documents)
- knowingly give false or misleading information or false or misleading documents, or
- obstruct or hinder the CCA or a person authorised by the CCA who is exercising their powers under the Associations Act.

### CAUTION

The penalties for these offences are significant. For example, the penalty for giving information, or making a statement, that is false or misleading in a material particular is: 100 penalty units (\$210 000 at September 2017), 2 years imprisonment, or both.



## Information to be included on association documents

The Associations Act requires that the name of the incorporated association include the word "Incorporated" or the abbreviation "Inc." at the end of its name. Associations must also ensure that every notice, advertisement, bill of exchange, cheque, promissory note, endorsement, order, receipt or other document given, published, drawn, endorsed or issued by contains the name of the association in legible characters.

The Public Officer (but also, often employees) is often responsible for organising these documents and notices, and must make sure that the various legal requirements are met, and the committee members will also be personally responsible.

### CAUTION

Members of the committee can be held personally responsible if there is a contravention of this requirement in the Associations Act. The amount of the penalty as at September 2017 is a maximum of \$318 per committee member.



Other laws, like tax and fundraising laws, require further information to be included on official documents, such as the association's ABN (if your association is required to have one for tax purposes).

If your association is also a Registered Australian Body (RAB), there are further requirements. You can find out more about a RAB in our factsheet "Incorporated Association or Company Limited by Guarantee" at [www.nfplaw.org.au/legalstructure](http://www.nfplaw.org.au/legalstructure) or by visiting the Australian Securities and Investments Commission [here](#).

### RELATED RESOURCES

For further information on fundraising requirements in Tasmanian see our page [www.nfplaw.org.au/fundraising](http://www.nfplaw.org.au/fundraising)

## The common seal

Your association can 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 common seal is only effective if the full name of the incorporated association is inscribed on the seal in legible characters although it is sufficient for the abbreviation Inc. to be used in place of the word “Incorporated” on the common seal. If your association is using the Model Rules, they prescribe (rule 35) how the seal is to be used by the association.

# Resources

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## Related Not-for-profit Law Resources

### ✔ [Reporting to government](#)

This page contains information about community organisations' reporting obligations

### ✔ [Fundraising](#)

This page contains further information about the legal obligations arising in relation to fundraising activities

## Legislation

### ✔ [Associations Incorporation Act 1964 \(TAS\)](#)

### ✔ [Associations Incorporation \(Model Rules\) Regulations 2007 \(TAS\)](#)

### ✔ [Corporations \(Ancillary Provisions\) Act 2001 \(TAS\)](#)

### ✔ [Penalty Units and Other Penalties Act 1987 \(TAS\)](#)

## Other related resources

### ✔ [Consumer Affairs and Fair Trading](#)

The government agency responsible for regulating Tasmanian incorporated associations.

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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