

# Keeping and accessing documents, records and registers

Legal information for incorporated associations in Western Australia

## 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 the Commissioner of Consumer Protection to require production of documents and records, and
- ▶ 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 obligation regarding documents and records including relating to employees, tax, governance standards for charities and potential litigation. This fact sheet covers obligations that apply to incorporated associations (**AI**) under their state-based regulatory framework.

Incorporated associations in Western Australia 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 Commissioner for Consumer Protection (the **Commissioner**) both have rights to access an organisation's documents and records in certain circumstances.

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

- the *Associations Incorporation Act 2015 (WA)* (**the AI Act**)
- the *Associations Incorporation Regulation 2016 (WA)* (**the Regulations**), and
- the organisation's rules (sometimes called 'the constitution').

### NOTE

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

### NOTE

This fact sheet refers to the Model Rules (**MR**). The model rules cover all the matters that the IA says must be included in the rules of an incorporated association (these matters are set out in Schedule 1 to the IA Act) and any other matter.

The model rules are set out in the Regulations (Schedule 2).

Consumer Protection has produced a document that sets out the Model Rules and also includes additional information on the obligations set out in the IA Act along with other explanatory material, which may be useful to you and your organisation in understanding the legal requirements (in the IA Act). You can access the document [here](#).

# Who is responsible for keeping documents and records?

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The AI Act does not specify a particular person has to be responsible for the keeping of documents and registers. It is a matter for the association, and should be set out in the association's rules.

Usually the secretary of an organisation is given responsibility for overseeing the keeping of documents, records and registers of the organisation. However, you should check your own organisation's rules, policies and procedures; sometimes 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 safekeeping). For example, often the treasurer is responsible for keeping the financial records of an association.

Even if the secretary (or other person with responsibility for keeping documents, record and registers) 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 they remain responsible for these tasks.

## EXAMPLE – MODEL RULES

If your association is using the Model Rules the:

- secretary has responsibility for the keeping of certain documents, including the books of the association (other than financial records). Rule 29 sets out the specific responsibilities, and
- the treasurer has responsibility for the keeping of financial records, statements and reports. Rule 30 sets out the specific responsibilities of the treasurer.



## 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 [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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Under the AI Act, incorporated associations in Western Australia need to keep:

- financial records
- committee meeting records
- office holders records, and
- a members register (see the section on registers).

Your organisation can be penalised if it does not keep these records.

## Financial records

All incorporated associations in Western Australia must keep financial records that:

- correctly record and explain its transactions and financial position and performance, and
- enable true and fair financial statements to be prepared in accordance with the IA Act (Division 3).

Generally, 'financial records' include:

- invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers
- documents of prime entry, such as a petty cash book, purchase records, debtors journal, and bank account statements, and
- working papers and other documents needed to explain:
  - the methods by which financial statements are prepared, and
  - adjustments to be made in preparing financial statements.

'Financial records' also include financial reports prepared as a part of an association's financial reporting obligations (see below) such as:

- financial statements
- any notes to the financial statements
- any audit report (prepared in relation to the association's annual reporting), and
- any management committee declaration (prepared in relation to the association's annual reporting).

Incorporated associations must keep their financial records for at least 7 years after the transactions covered by the financial records are completed.

### ! CAUTION

If your incorporated association does not keep its records for the required time it can be subject to an offence under the Regulations and given an infringement notice with a penalty of \$300. The IA Act also provides for organisations to be fined \$2750.

## Financial statements and reports

The types of financial statements and reports required of an incorporated association depend on its annual turnover. The IA Act sets out the categories of association as follows:

	<b>Definition</b>
<b>Tier 1</b>	Incorporated associations with annual revenue less than \$250,000
<b>Tier 2</b>	Incorporated associations with annual revenue over \$250,000 but less than \$1 million
<b>Tier 3</b>	Incorporated associations with annual revenue of \$1 million or more

The Commissioner can also make a declaration that an incorporated association be a Tier 1 or Tier 2 association in certain circumstances.

### Requirements for Tier 1 incorporated associations

Tier 1 incorporated associations are those with annual revenue of less than \$250 000. They must prepare a financial statement that provides a true and fair view of the organisations financial position and performance. A review or audit of these financial statements are not required unless a majority of members vote for a review or audit at a general meeting, or the Commissioner directs the association to undertake a review or audit.

### Requirements for Tier 2 and Tier 3 incorporated associations

Tier 2 and Tier 3 incorporated associations are those with annual revenue of more than \$250 000 (Tier 2) and more than \$1 million (Tier 3). These organisations must prepare a financial report for each financial year which includes:

- the financial statements for the year
- the notes to the financial statements (which include any disclosures as set out in the Regulations, any notes required by the accounting standards), and
- the management committee's declaration about the statements and notes. This is a declaration by the management committee stating in their opinion there are reasonable grounds to believe that the association is solvent (it is able to pay its debts as and when they become due and payable) and statements and notes have been prepared consistent with what is required under the IA Act. It must be made by resolution of the committee, dated and signed by at least 2 members of the management committee who are authorised to do so by the management committee.



#### TIP

References to '*accounting standards*' used in this fact sheet means the current accounting standards issued by the Australian Accounting Standards Board (which is the same meaning used in the IA Act). You can access the standards [here](#).

Tier 2 organisations must have the financial statements 'reviewed' unless a majority of members or Consumer Protection directs the association to undertake an audit.

Tier 3 organisations must have the financial reports audited.

### RELATED RESOURCES

Not-for-profit Law is currently in the process (at December 2017) of preparing a separate fact sheet on financial powers and reporting obligations of Western Australian incorporated associations. Once published you will find it at: [www.nfplaw.org.au/annual-reporting-government](http://www.nfplaw.org.au/annual-reporting-government).

Consumer Protection's Guide for Incorporated Associations in Western Australia also has information on financial reporting obligations. Access it here: [www.commerce.wa.gov.au/consumer-protection/inc-guide](http://www.commerce.wa.gov.au/consumer-protection/inc-guide).



## Meeting Records

The AI Act requires an incorporated association to have a rule about the making and keeping of records of committee meetings (Schedule 1 to the IA Act), which has the effect of requiring the association to keep minutes of committee meetings.

There are no requirements for an association to keep minutes of general meetings. However, it is good practice to keep records of all general meetings, as well as committee meetings as they are evidence of what happened at a meeting.

Minutes typically record matters such as:

- attendance
- business discussed
- correspondence received
- reports tabled
- decisions made, and
- resolutions adopted.

### ! CAUTION

A member is required under the IA Act to make the disclosure of a material personal interest in a matter being considered at a meeting. This must be recorded in the minutes of the committee meeting. For more information on this requirement refer to the IA Act, section 42.

The minutes should be recorded, approved and filed in a way that is easy to retrieve.

The AI Act does not specify how long these records are kept for. Your organisation may wish to keep them for a 7 years (similar to financial record requirements), or indefinitely because sometimes it is important to have older records.

## EXAMPLE – MODEL RULES

If your association is using the Model Rules the relevant rule for minutes of committee meetings is rule 47. It sets out that minutes must be taken, certain things must be included (like names of those attending, business discussed, motions and their outcomes) and that they must be reviewed and also signed as being correct. They should be entered into a minute book. The rule for general meetings is rule 60 and it is similar to that of 47 with additional requirements relevant to general meetings, like results of votes and use of proxies.

Rule 67 also sets out the 'books' of the association (which the Model Rules says includes any document or record of information) must be kept for 7 years.



## Office holder record

Incorporated associations in Western Australia must keep a record of office holders. The record must provide the names and addresses of:

- members of its management committee
- other office holders (as set out in the rules of the association)
- those authorised to use the organisation's common seal (if it has one), and
- any person who is appointed or acts as trustee on behalf of the association.

### ! CAUTION

If your incorporated association does not keep this record it can be subject to an offence under the Regulations and given an infringement notice with a penalty of \$300. The IA Act also provides for the organisation to be fined \$2750.

The address can be a residential or business address, a post office box address, or an email address.

## EXAMPLE – MODEL RULES

If your association is using the Model Rules the secretary is responsible for maintaining these records, unless another person has been authorised to do so (Rule 30).

The records must be kept under the secretary's custody or under his or her control (Rule 68).



## Access to financial reports, meeting minutes and office holder records

An incorporated association in Western Australia must have a rule about members' access to the association's records and documents (Schedule 1 to the IA Act). The extent of access should be set out in the association's rules.

In addition:

- **Financial records:** Members must be provided financial accounts showing the financial position of the association (as outlined above) at the annual general meeting of the association. Reviewers and auditors of an association's financial reports must also be given access to the books of the association. A failure to allow access is an offence under the Regulations with a penalty of \$300 and the IA Act also provides for a fine of \$2750. You should also refer to your organisations rules about any specific requirements of access to financial records.
- **Office holder records:** the IA Act requires an association to make the record available to a member if they request to see it. The member may make a copy or take an extract from the record. They are not allowed to remove a record. A failure to allow access is an offence under the Regulations with a penalty of \$400 and the IA Act also provides for a fine of \$5000. A person who uses, or discloses information on the record is only allowed to do so if is connected with the affairs of the association or is related to the administration of the IA Act. If the person uses the information for another purpose they are subject to a penalty of \$10 000.

You should also note that the Commissioner has certain powers in relation to access to an association's documents which is set out below.

## EXAMPLE – MODEL RULES

If your association is using the Model Rules, you should refer to rule 69. It deals with inspection of reports and documents. A member who wants to inspect financial reports and minute books must contact the secretary to arrange access. Inspection is to be free of charge. The member may take a copy of the report or minute book, but cannot remove the document. The rules also restrict the use to which the information obtained by the member is to be used (see rule 69(6)), which prevents a committee member from disclosing information in a record or document unless the disclosure is directly connected with the affairs of the association or required by the IA Act).



## Keeping registers

A register is a list (hard copy or database) which contains information kept by the incorporated association. In Western Australia, the law requires an incorporated association to keep a members register (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 association is run. It is good practice for an incorporated association to have a register of 'relevant documents'.

## Members register

An incorporated association in Western Australia must keep and maintain a register of members. The following must be included on the register:

- the members name, and
- their address (this can be a residential, postal or email address).

Any change to the association's membership must be recorded in the register within 28 days.

### EXAMPLE – MODEL RULES

If your association is using the Model Rules, you should refer to Rule 13. It sets out what is to be included, which also includes the class of membership (if your rules allow for different classes). It also sets out where the register must be kept and access arrangements (see below).



## What is the purpose of the members register?

The register of members is important because it helps the association to work out:

- who should be sent notices of the organisation's general meetings
- who is eligible to vote at general meetings of your 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 the Commissioner), and
- the number of members in different classes of membership (if your rules allow different classes).

### 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 website at <http://www.nfplaw.org.au/privacy>.



## Access to the members register

An incorporated association in Western Australia must make the register available to a member upon a request of the member. The member may make a copy of the register, or take an extract from it, but cannot remove it. Alternatively, the member may request, in writing, a copy of the register.

The IA Act allows an organisation to make a rule that requires

- a request be accompanied by a statutory declaration setting out the purpose for the request and that the purpose is relevant to the organisation's affairs,
- a reasonable fee be paid (to inspect or copy the register)

An organisation is taken to comply with a request if they provide copies or extracts in electronic form.

### ! CAUTION

If your incorporated association does not comply with the request it is an offence under the Regulations and the organisation can be given an infringement notice with a penalty of \$300 and subject to a penalty under the IA Act of \$2750.

## Other registers

There is no requirement for your incorporated association in Western Australia to keep specific registers other than a members register.

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

Such registers might include:

- an asset register
- a risk register
- an insurance policies register
- a common seal register (if your organisation has one)
- an investments register, and
- a simple register of other documents relevant to the association (for example, contracts and important agreements, licences, certificates and correspondence with regulators like Consumer Protection, the Australian Charities and Not-for-profits Commission and the Australian Taxation Office).

## The Commissioner's powers of inspection, entry, search and seizure

One of the Commissioner's general functions is to receive complaints and information concerning non-compliance with the Act. If necessary, those complaints will be investigated and the Commissioner will take whatever action is required. That may include using his or her powers to ensure compliance, including powers of inspection, entry, search and seizure of documents.

The powers given to the Commission to investigate complaints and enforce compliance with the AI Act can be found in the *Fair Trading Act 2010* (WA) (FTA).

### What are the Commissioner's powers?

Should the Commissioner have doubts about your organisation's membership, he or she has the power to request a copy of the members register.

If there are questions about your organisation's financial affairs, the Commissioner may require your organisation to produce specified documents. The request must be in writing and will set out the time and place for you to provide the documents, and details of the documents required. The documents must be produced, unless there is a reasonable excuse for not doing so, and there is a fine for non-compliance of \$2,750. The Commissioner may take an extract or make a copy, and return the document to your organisation as soon as practicable.

Other acts and regulations also give the Commissioner powers with respect to your organisation's documents. The Commissioner's general powers of investigation and enforcement are set out in the

#### FURTHER READING

You can access information on the *Fair Trading Act 2010* (WA), [here](#).

FTA, which provides that the Commissioner, or person authorised by the Commissioner, may require any person to give him or her:

- information related to the investigation by answering questions,
- producing documents
- entering and searching premises, and
- making copies or abstracts of documents.

The documents may be seized, at which point they are forfeited.

A person commits an offence if he or she does not cooperate with an investigation unless he or she has a reasonable excuse. Non-compliance includes:

- not giving information or answering a question as required
- giving false or misleading information or answers, or
- failing to produce a document as required

The penalty is a fine of \$10 000.

A person must not:

- refuse access to premises for the purpose of carrying out an investigation, or
- hinder the conduct of the investigation.

Doing either of these things is an offence, with a penalty of a **fine** of \$2,000 for each offence.

## CAUTION

“Person” may include an office holder where the office holder has been involved in the contravention, directly or indirectly. Involvement may include inducing a contravention, conspiring with others, and attempts to do any of these things. A “Person” includes an individual (a natural person), a corporation and a body corporate (such as an incorporated association): *Interpretation Act 1984* (WA), s 5.



At the time the Commissioner requests documents or information from a person, it must also warn the person to whom the request is being made, that it is an offence to fail to give the information or produce the document without a reasonable excuse. Note that self-incrimination is not a reasonable excuse for non-compliance. There is no definite definition of “reasonable excuse”, as just what that is will depend on the circumstances of each case

The Commissioner must give the person sufficient time to comply with any request made.

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

Yes. Under the AI Act, the organisation must:

- comply within 14 days with a request for a copy of the members register, or be fined \$5,000, and
- produce requested documents unless there is a reasonable excuse for not doing so, or be fined \$2,750.

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

Although there is nothing in the IA Act requiring particular endorsements on documents, it is good practice for incorporated associations to ensure that any official document includes the association's registered name (as stated on its certificate of incorporation). The organisation's name will end in 'Incorporated' or 'Inc'.

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 Australian Business Number (ABN), if your association has one (which it may be required to for tax purposes).

If your association is also a Registered Australian Body, there are further requirements under the *Corporations Act 2001* (Cth).

## The organisation's seal

An incorporated association in Western Australia may have a common seal (it does not have to). A common seal is a rubber stamp that is used when signing documents in the name of the incorporated association. If the association does have a common seal it must have rules about its custody and use (Schedule 1 to the IA Act).

### RELATED RESOURCES

For further information on fundraising requirements for Western Australian incorporated associations, go Not-for-Profit Law's fundraising webpage at [www.nfplaw.org.au/fundraising](http://www.nfplaw.org.au/fundraising).

### EXAMPLE – MODEL RULES

If your association is using the Model Rules, you should refer to Rule 65. It sets out that if the association has a common seal the name of the association must appear in legible characters. The rule also sets out how a document can be sealed using the common seal, that a record of when it is used must be made and arrangements for its custody.



# Resources

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## Related Not-for-profit Law Resources

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

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

- ✔ Fundraising - <http://www.nfplaw.org.au/fundraising>

This page on the Not-for-profit Law website 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 website outlines the reporting requirements for charities.

## Other related resources

- ✔ [Modified Model Rules](#)

Consumer Affairs (WA)'s document that sets out the Model Rules to the *Associations Incorporations Act 2015* (WA) and also includes additional information on the obligations set out in the law.

- ✔ [Guide for Incorporated Associations](#)

Consumer Affairs (WA)'s Guide for Incorporated Associations in Western Australia also has information on financial reporting obligations.

## Legislation

- ✔ [Associations Incorporation Act 2015 \(WA\)](#)
- ✔ [Fair Trading Act 2010 \(WA\)](#)
- ✔ [A New Tax System \(Goods and Services Tax\) Act 1999 \(Cth\)](#)
- ✔ [Corporations Act 2001 \(Cth\)](#)
- ✔ [Income Tax Assessment Act 1997 \(Cth\)](#)

## Government agencies

- ✔ [Department of Mines, Industry Regulation and Safety, Consumer Protection](#)

The government agency responsible for regulating incorporated associations in Western Australia.

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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