

REPORTING TO NSW FAIR TRADING

Part 8: A guide to running a NSW incorporated association

New laws for NSW incorporated associations

On 1 September 2016, changes to the laws regulating NSW incorporated associations took effect. The *Associations Incorporation Regulation 2010* was replaced with the *Associations Incorporation Regulation 2016* and changes were made to the existing *Associations Incorporated Act 2009*. This Guide reflects those changes.

Important! Rules changes affecting all incorporated associations in NSW

From 1 September 2016, there are also new matters that must now be covered by an organisation's rules or constitution. Organisations that were using the NSW Model Constitution now have a new Model Constitution that applies (unless they chose to change their constitution). This Guide refers to the new Model Constitution.

REPORTING TO NSW FAIR TRADING

This part of the Guide to running an incorporated association covers the obligations of an incorporated association in New South Wales to report to NSW Fair Trading (**Fair Trading**), part of the NSW Department of Finance, Services and Innovation.

Key Points

1. What are the legal requirements for reporting to NSW Fair Trading?

The committee of an incorporated association is required to report to Fair Trading about certain matters, including the association's financial affairs. The requirement to lodge certain types of documents to Fair Trading is dependent on which revenue category, or "tier", an association falls into.

2. Accounting requirements

Each incorporated association must maintain financial records that are correct, true and fair. These records are the basis of the association's financial statements. Requirements differ for associations based on the "tier" they fall into. The committee of an incorporated association must ensure the financial statements for the association, and any trust of which it acts as trustee, are prepared as soon as practicable after the end of each financial year and are submitted to the association's annual general meeting (**AGM**).

3. Preparing and lodging financial statements

Every year, the association's financial statements must be submitted to members of the association at the AGM. The financial statements must contain certain information and be presented to the AGM before lodgement of the required forms and financial documents, and there are particular requirements for preparing and lodging the financial documents, depending on which "tier" the association falls into.

4. Can NSW Fair Trading refuse to register documents?

In some circumstances Fair Trading can refuse to register documents. This may occur when Fair Trading considers that a lodged document contains false or misleading information that is material to the form or context. This Part explains the process if Fair Trading refuses to register a document.

1. What are the legal requirements for reporting to NSW Fair Trading?

The main legal task of the committee of an incorporated association in NSW is to report to Fair Trading about the affairs of the association.

The legal requirements for reporting to Fair Trading arise under:

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

Preparing financial statements: “Tier 1” and “Tier 2” associations

The financial reporting requirements of an association depend on which tier it is categorised into. The tier classifications are based on an association’s gross receipts (total revenue) or its current assets for the financial year last ended, calculated in accordance with the AI Regulation.

In some cases, Fair Trading can declare an association not to be a Tier 1 association. Under the AI Regulation, ‘gross receipts’ are equal to the total revenue recorded in the association’s income and expenditure statement and ‘current assets’ are equal to the assets (including amounts held in banks, stocks and debentures) held by the association, excluding real property and depreciable assets.

Tier 1 associations

Tier 1 associations have more rigorous financial reporting requirements. A Tier 1 association is an association with total yearly revenue of more than \$250,000 or current assets of more than \$500,000.

It must have its financial statements audited by a certified auditor before the financial statements are submitted at the AGM. Additionally, the financial statements must be prepared in accordance with the Australian Accounting Standards set by the Australian Accounting Standards Board (**Accounting Standards**) and must including the following:

- details of any mortgages, charges and other securities affecting any property owned by the association, and
- a separate income and expenditure statement and balance sheet for each trust for which the association is the trustee.

The auditor’s report must also be prepared in accordance with the Accounting Standards and must state whether the association has kept the financial records necessary to enable financial statements to be prepared in accordance with the Accounting Standards.

Tier 2 associations

A Tier 2 association is any association which is not a Tier 1 association. It will have gross receipts of \$250,000 or less in a financial year and it will have current assets of less than \$500,000, or be declared not to be a Tier 1 association by NSW Fair Trading.

Tier 2 associations have an obligation to prepare financial statements that “give a true and fair view of the association’s affairs” (section 47(2) of the AI Act). The financial statements must include the following:

- an income and expenditure statement and a balance sheet setting out the appropriately classified individual sources of income and individual expenses incurred in the operation of the association and the assets and liabilities of the association,
- details of any mortgages, charges and other securities affecting any property owned by the association, and
- a separate income and expenditure statement and balance sheet for each trust for which the association is the trustee.

There is no requirement under the AI Act for a Tier 2 association to have its financial statements independently audited or reviewed. However, Fair Trading can direct an association to have the whole or part of its financial records audited, and for an auditor’s report to be lodged with them, which states that the association’s financial records have been properly kept and give a true and fair view of the association’s affairs (section 51 of the AI Act).

Remember!

If the committee fails to prepare the financial statements and have the statements audited (if required) as necessary, the association may be issued a penalty notice which sets out the amount of penalty payable. As at 27 February 2017, the AI Regulation has prescribed \$200 as the penalty amount for this offence (refer to Schedule 4 of the AI Regulation). If the penalty amount is not paid as per the notice, the offence may be determined by a court which can impose a penalty for the offence of up to 5 penalty units (ie. as at 27 February 2017, 5 penalty units is equivalent to \$550).

Fair Trading declaration of an association as not being a Tier 1 association

Section 42(2) of the AI Act provides that Fair Trading may declare any association as not being a Tier 1 association for the purposes of financial reporting requirements. Such a declaration may be made if an association’s total revenue for the financial year last ended was negligible, but its current assets are more than \$500,000, such that it would (but for the Fair Trading declaration) be a Tier 1 association (section 42(3)).

Exemption from financial reporting

Section 53 of the AI Act provides that Fair Trading may exempt an association or any class of associations from the requirements under the AI Act in relation to preparing and auditing financial statements. Applications for this exemption must be accompanied by the \$187 prescribed fee (as at 27 February 2017). An exemption can be given subject to conditions and may be limited as to time (section 53(2) of the AI Act). Unfortunately, there is no guidance on when Fair Trading may grant such an exemption.

Remember!

If your association has not lodged its financial documents as required under the AI Act during the last three financial years, your association's registration may be cancelled by Fair Trading (section 76(h) of the AI Act), and the association's property will vest in Fair Trading.

The AI Act requirements

Lodging documents with Fair Trading

Depending on the association's tier, every year its committee must lodge the following documents with Fair Trading.

Documents to be lodged by Tier 1 associations

A Tier 1 association must lodge the following with Fair Trading:

- a summary of the association's financial affairs for the previous financial year (in the prescribed form: *Annual summary of financial affairs – Tier 1* form A12-T1)
- the association's audited financial statements and any trusts it administered for that year
- the signed and dated auditor's report for those statements
- a document setting out the terms of any resolution passed at the association's AGM concerning the financial statements for that year and the auditor's report, and
- payment of the prescribed lodgement fee and late fee if applicable.

Remember!

If your association passed a resolution about the financial statements and/or auditor's report at the AGM (for example, approving the financial statements with some modifications), a copy of the terms of this resolution must be lodged with Fair Trading.

Documents to be lodged by Tier 2 associations

A Tier 2 association must lodge the following with Fair Trading:

- a summary of the association's financial affairs for the previous financial year (in the prescribed form: 'Annual summary of financial affairs – Tier 2' form A12-T2), and
- payment of the prescribed lodgement fee and late fee if applicable.

Time to lodge documents

The lodgement of documents must be done within one month after the AGM, if it falls after the end of a financial year, or seven months after the end of the financial year, whichever is the earlier, or within such time as Fair Trading may allow. An association may also apply for an extension of time to lodge documents by filing an extension application form and paying the requisite application fee of \$31 (as at 27 February 2017).

Documents will only be taken to have been lodged with Fair Trading if the relevant lodgment fee has been paid. As at 27 February 2017, the fee is \$187 and \$44, for Tier 1 and Tier 2 associations, respectively.

See also Tool 1: Flowchart for preparing and lodging financial documents.

Remember!

If the committee fails to lodge the necessary documents within the required time, the association may be issued a penalty notice which sets out the amount of penalty payable. As at 27 February 2017, the AI Regulation has prescribed \$200 as the penalty amount for this offence (refer to Schedule 4 of the AI Regulation). If the penalty amount is not paid as per the notice, the offence may be determined by a court which can impose a penalty for the offence of up to 5 penalty units (i.e. as at 27 February 2017, 5 penalty units is equivalent to \$550).

Other Fair Trading reporting requirements

The committee is also required to report to Fair Trading, and lodge relevant documents or forms, in other situations. These include:

- within 28 days after a new public officer is appointed or when the public officer's address changes
- to get approval from Fair Trading for changes to the association, after members have passed a special resolution to:
 - ▶ change the association's name (section 10(1) of the AI Act)
 - ▶ change the association's objects or constitution (section 10(1)), or

- ▶ voluntarily cancel the association's registration (section 72(1)), or
- to get approval from Fair Trading for an extension of time within which to hold an AGM (section 37(2)(b)).

These requirements are discussed in detail in other parts of this Guide.

Important:

This Part of the Guide deals with Fair Trading reporting requirements only. However your association may also have responsibilities to report to other institutions and government agencies (for example, under funding agreements or tax laws) about changes to its governing documents (rules), or changes to the people who are authorised to act on behalf of the association.

For example, associations should notify the Australian Tax Office of a change to their Public Officer [see [Part 2: Appointing and Removing a Public Officer](#) in this Guide].

2. Accounting requirements

An incorporated association must maintain financial records that:

- correctly record and explain its financial transactions and financial position, and
- in the case of a Tier 1 association, are sufficient to enable financial statements to be prepared in accordance with the Accounting Standards (section 50 of the AI Act).

These financial records are the basis of an association's financial statements submitted to members at the AGM, and the financial documents lodged with Fair Trading. The treasurer or financial officer of the association is generally responsible for overseeing and reporting on the association's financial affairs.

In addition to the AI Act's requirement that Tier 1 association financial statements be audited, there may be particular accounting or auditing requirements in the association's rules and any contracts (for example, funding agreements) that may also apply. The rules of a Tier 2 association may require the association's accounts to be audited each year, even if it is not a requirement of the AI Act.

What is the purpose of an audit?

The purpose of an audit is to confirm that an association (in this case, generally a Tier 1 association) has prepared its financial statements in accordance with the relevant accounting standards. As part of the audit process, the auditor must be satisfied (and declare in their report) that the association's financial statements are true, fair and free from any serious error.

This is in contrast to a review of financial statements, which is less detailed and less formal than an audit, and is normally cheaper than a full audit. Also, the qualification standards for professionals to undertake an audit are higher than a review.

An auditor must be an independent person

If your association requires an audit of its financial statements (i.e. it is a Tier 1 association or has been directed to conduct an audit by Fair Trading), your auditor must be an independent person with the correct qualifications.

A certified auditor (that is, a person qualified to review a Tier 1 association's financial records) is:

- a registered company auditor, or a firm of registered company auditors
- a person who is a member of, and holds a public practice certificate issued by, CPA Australia, the Institute of Public Accountants or the Institute of Chartered Accountants in Australia
- the Auditor-General of the Commonwealth of Australia or of a State or Territory, or
- any other person approved by Fair Trading as an auditor for this purpose (section 52(1)(b) of the AI Act).

Except with the written approval of Fair Trading, an auditor cannot be a person who has at any time in the past 2 years been a member of the association being audited, or an employee of, or provider of professional services (other than audit services) to, the association or to a committee member or public officer of the association. Approval will be given by Fair Trading provided that the audit is carried out in accordance with the code of conduct relating to independence in APES 110 Code of Ethics for Professional Accountants issued by the Accounting Professional and Ethics Standards Board, and the auditor's report includes an auditor's independence declaration (see Class Order 10/02 Auditor independence).

Why can't anyone be a reviewer or auditor?

As a matter of good practice (and to reassure members, funders and those dealing with your association that the auditor is not biased), they should be as independent as possible from those connected with the association. This is the policy reason behind these requirements in the AI Act.

Reminder!

The AI Act and AI Regulation require associations to keep certain documents, including financial records for five years (section 50(1) of the AI Act and section 14(1)(b) of the AI Regulation). See [Part 4: Registers, Records and Official Documents](#) in this Guide.

3. Preparing and lodging financial statements

Financial statements (submitted to the members at the annual general meeting)

Depending on how your association is run, financial statements may be prepared by the secretary, treasurer or other member of the association's committee or staff. The financial statements must be presented to members of the association at the AGM to provide the members the opportunity to consider the financial statements before the relevant financial documents are lodged with Fair Trading. This is also important so that the members can check the financial dealings and position of the association.

Your association's financial statements must include certain details required by the AI Act (section 43(2) and 47(2)). These are set out in Tool 1: Flowchart for preparing and lodging financial documents. Overall, the financial statements must "give a true and fair view" of the financial position of your association during and at the end of its last financial year.

At the AGM, the association, depending on its tier, must submit the following to members:

- financial statements (tiers one and two), and
- the auditor's report for those statements (Tier 1, and if directed by Fair Trading).

See also [Part 5: Annual General Meetings](#) in this Guide.

Remember!

If an association fails to submit its financial statements at the AGM, the association may be issued a penalty notice which sets out the amount of penalty payable. As at 27 February 2017, the AI Regulation has prescribed \$200 as the penalty amount for this offence (refer to Schedule 4 of the AI Regulation). If the penalty amount is not paid as per the notice, the offence may be determined by a court which can impose a penalty for the offence of up to 5 penalty units (i.e. as at 27 February 2017, 5 penalty units is equivalent to \$550).

The minutes of the proceedings at the AGM must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting and must state that the financial statements (and auditor's report if applicable) were submitted to members at the AGM as required under the AI Act.

For more details about actions which must be taken after the AGM, see Tool 1: Flowchart for preparing and lodging financial documents. Also check your association's rules to see if there are any extra requirements.

For more information about the timing of AGMs under the AI Act, see [Giving Notice of an annual general meeting](#) in Part 5: Annual General Meeting in this Guide.

Remember!

The AI Act and the AI Regulation require an association to keep:

- the financial statements (as submitted to members at the AGM) for *at least 5 years* after the date it was submitted to members (section 50(1)(a) of the AI Act and section 14(1)(b) of the AI Regulation), and
- minutes of the proceedings of committee and general meetings (section 50(1)(b) of the AI Act).

In addition, an association must keep a register of committee members, a record of disclosures of interest by committee members, and a register of members. As at 27 February 2017, the AI Regulation has prescribed \$200 as the penalty amount for this offence (refer to Schedule 4 of the AI Regulation). If the penalty amount is not paid as per the notice, the offence may be determined by a court which can impose a penalty for the offence of up to 5 penalty units (i.e. as at 27 February 2017, 5 penalty units is equivalent to \$550).

Lodging documents with Fair Trading

Lodgement by Tier 1 associations

The *Annual summary of financial affairs*, reports, documents of AGM resolutions and the prescribed payments can be lodged by email, mail or in person. The details are listed on the Fair Trading website.

Lodgement by Tier 2 associations

The *Annual summary of financial affairs* and the prescribed payments can be lodged by email, mail or in person. The details are listed on the Fair Trading website.

The lodgment of documents is detailed in Tool 1: Flowchart for preparing and lodging financial documents.

Remember!

Documents submitted to members of an association at a general meeting and/or lodged with Fair Trading should give a true and accurate picture of your association. It is an offence under Part 5A of the *Crimes AI Act 1900* to:

- knowingly make a statement that is false or misleading in a relevant detail, or
- knowingly leave out any matter or thing from the document, which makes the document misleading in a relevant detail.

This is a serious matter under the law. As at 27 February 2017, the penalty for these offences is up to \$36,000, or imprisonment for 2 years, or both.

4. Can NSW Fair Trading refuse to register documents?

Fair Trading can refuse to register or receive documents lodged by an association for a number of reasons (see section 99 of the AI Act), including:

- if the document does not comply with the requirements of the AI Act
- if the document is missing details or contains an error
- if the document contains matter that is false or misleading in a material way
- if the document contains matter contrary to law, or
- if the document has been submitted electronically in a form that is not accessible by Fair Trading.

If Fair Trading refuses to register a document because of any of the above reasons, Fair Trading may ask that:

- the document be appropriately altered
- a fresh document be submitted in its place, or
- if the document is incomplete – a supplementary document in the approved form be submitted.

If you are still unhappy with their decision, your association can request that Fair Trading reconsider the decision and the reasons why they came to their decision. If Fair Trading reconsiders, and still decides not to register the document, you can apply to the NSW Civil and Administrative Tribunal (**NCAT**), an independent body whose role includes reviewing certain administrative decisions of NSW government agencies. Time limits apply for reviews of decisions, requests for reasons of decisions and applications to NCAT – see the Fair Trading website for more information on '[Reviews of Fair Trading decisions](#)'.

Further information

Justice Connect Not-for-profit Law resources

The Not-for-profit Law Information Hub at www.nfplaw.org.au contains a variety of resources and fact sheets for community associations:

- See Running the organisation at www.nfplaw.org.au/runningtheorg for more information about positions in an incorporated association, governance, changes to rules or constitution, holding meetings, and documents and records.

Legislation

The [Associations Incorporation Act 2009 No 7 \(NSW\)](#) is the legislation that regulates incorporated associations in NSW. The [Associations Incorporation Regulation 2016 \(NSW\)](#) contains additional requirements for incorporated associations in NSW.

Government

The NSW Fair Trading website contains a variety of online resources, including online access for incorporated associations. See

http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/About_associations.page.

Other links

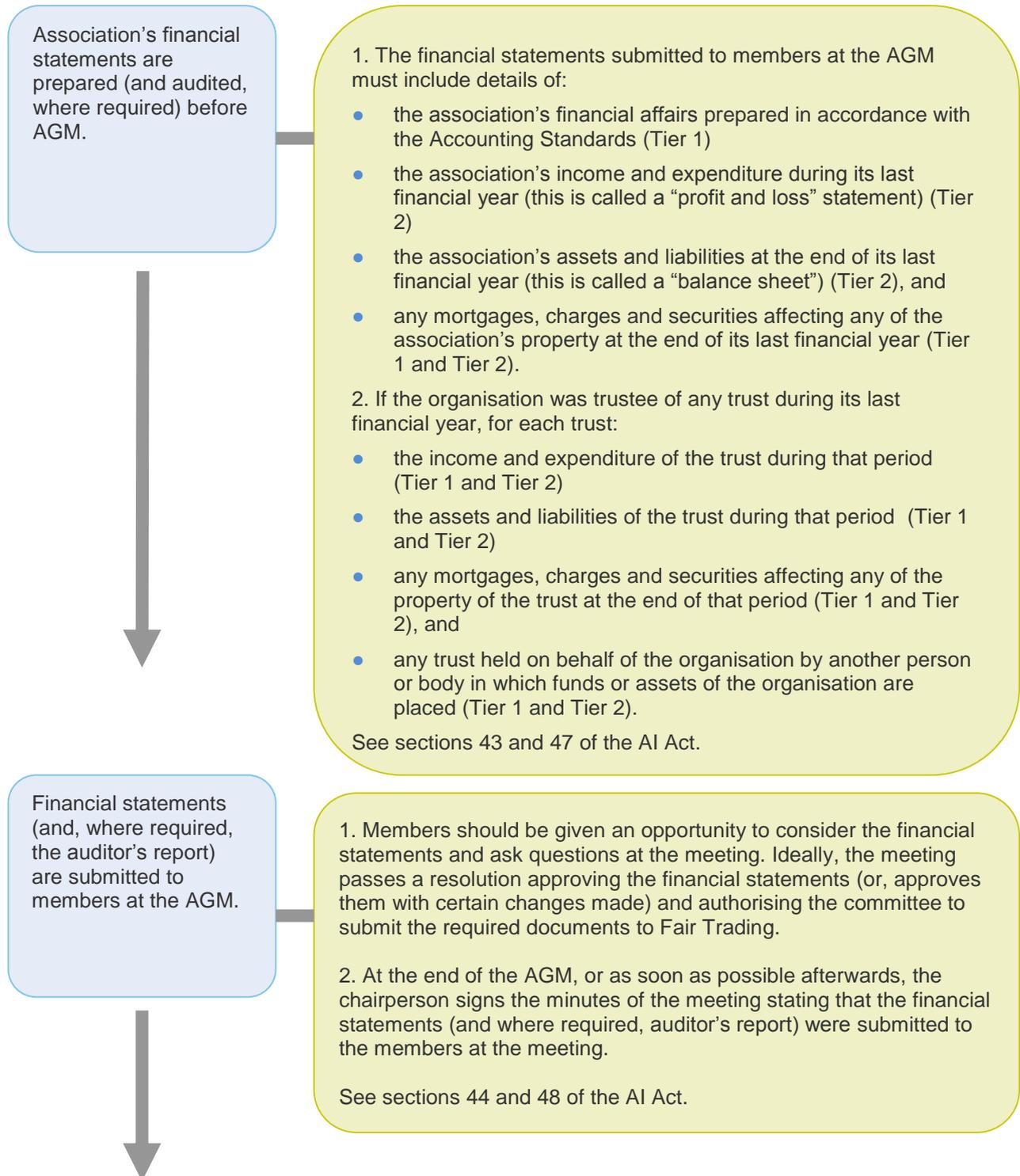
The Australian Accounting Standards Board website contains information about current accounting standards and other relevant information. See www.aasb.com.au.

CPA Australia website contains information about accountants who are members of CPA Australia as well as practice standards and a range of accountancy publications. See www.cpaaustralia.com.au.

The Institute of Chartered Accountants in Australia website contains information about accountants who are members of the Institute as well as practice standards and a range of accountancy publications. See www.charteredaccountants.com.au.

The Institute of Public Accountants website contains information about accountants who are members, as well as practice standards and a range of accountancy publications. See www.publicaccountants.org.au.

Tool 1: Flowchart for preparing and lodging financial documents



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Person authorised by the committee completes Fair Trading form A12 and collects documents to lodge with form.

1. Every year, an association must lodge documents with Fair Trading within one month of the AGM or 7 months after the end of the previous financial year, whichever is earlier unless further time is allowed by Fair Trading. Both Tier 1 and Tier 2 associations have to lodge annual summaries of financial affairs. This is done by lodging an “*Annual summary of financial affairs*” form (Fair Trading forms A12-T1 and A12-T2). The form sets out information required by the AI Act and the AI Regulation and the lodgment fee. A person authorised by the committee must sign a declaration confirming that certain requirements have been met.

2. When the association lodges the form with Fair Trading they must attach the following documents:

- the terms of any resolution passed at the AGM about the financial statements (Tier 1)
- the prescribed fee (which, as at 27 February 2017, is about \$187 for Tier 1 and \$44 for Tier 2 associations)
- a copy of the financial statements of the association prepared for that year (Tier 1), and
- a copy of the auditor’s report for those financial statements (Tier 1, or as directed by Fair Trading).

See sections 45 and 49 of the AI Act.

Association lodges Fair Trading form and attached documents with Fair Trading within required time period.

1. Association lodges form A12 and attached documents with Fair Trading within 1 month after AGM (or otherwise – see above text box).

2. Documents can be lodged with Fair Trading in person, by post, or by email (in PDF format).

3. An association can apply for an extension of time to hold its AGM or lodge form A12 by:

- downloading the “*Application for extension of time for holding annual general meeting or lodging annual summary of financial affairs*” form A11 from Fair Trading’s website, completing it, and delivering, posting or emailing it (PDF format) to Fair Trading, together with
- payment of the applicable fee. As at 27 February 2017, the fee is \$31.

See sections 37(2)(b), 45(2) and 49(2) of the AI Act.

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Association keeps documents for at least 5 years.

The association must keep financial records that correctly record and explain its financial transactions and position for at least 5 years after each record was made.

See section 50 of the AI Act and section 14(1) of the AI Regulation.

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