



A GUIDE TO THE NECESSARY DOCUMENTS OF AN ASSOCIATION & THEIR RETENTION

GENERALLY

SOURCES: <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/running-an-association/management-committee/association-records>, © State of New South Wales (NSW Fair Trading). For current information go to [fairtrading.nsw.gov.au](https://www.fairtrading.nsw.gov.au);
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https://www.nfplaw.org.au/sites/default/files/media/Keeping_and_accessing_documents_records_and_registers_NSW_0.pdf © 2017 Justice Connect.

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

CURRENT as at August 2019.

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NOTE: failure to comply with the provisions of the AI Act may attract a pecuniary penalty identified as a penalty point. Section 91 of the AI Act provides:

Offences by committee members.

(1) If an association contravenes, whether by act or omission, any provision of this Act or the regulations, each committee member of the association is taken to have contravened the same provision if he or she knowingly authorised or permitted the contravention.

...

(5) For the purposes of this section, an association's public officer (not otherwise being a committee member) is taken to be a committee member.

As of January 2019 one penalty point equates to \$110 (s 17 of the *Crimes (Sentencing and Procedure) Act 1999 (NSW)*).

Charities registered with the ACNC have particular record keeping requirements. Depending on the state or territory of incorporation, for incorporated associations, these are in addition to record keeping requirements under state laws for incorporated associations, outlined below. See <https://www.nfplaw.org.au/recordkeeping>.

A. LEGAL REQUIREMENTS

The conduct of NFP's in NSW is governed by the AI Act and the AI Regulations. NFP's must generate, keep up to date and retain the following documents:

- a) A Register of Members;
- b) A Register of Committee Members;
- c) Its Constitution; and
- d) All records, books and other financial documents of the association, including minutes of all committee meetings and general meetings of the association, a record of its authorised signatories, record of disclosure of interests, and a record of its current public officer and official address.

An incorporated association must include its full corporate name including the word "Incorporated" or the letters "Inc" on all documents issued by the incorporated association. These include letters, statements, invoices, notices, publications, order for goods or services or receipts in connection with its activities. The incorporated association's registration number should be included in all documentation, correspondence or contact with NSW Fair Trading.

B. A REGISTER OF MEMBERS

The Register of Members should include the name, contact details, the date the member joined the association and, when applicable, the date the member ceased to be a member of the association. The latter 2 items are of particular importance for the association's insurance cover (see comments below). See Part 7 of the Model Constitution.

C. REGISTER OF COMMITTEE MEMBERS

The Register of Committee Members must contain the following particulars:

- a) The name, date of birth and residential address of each committee member;
- b) The date on which each committee member takes office and vacates office;
- c) The name of any committee members who hold the positions (if any) of president, vice-president, secretary or treasurer; and
- d) The date on which those committee members were appointed or elected to those positions and the date those appointments ceased.

This Register must be updated within 1 month after any change in the committee's membership occurs; be kept at the main premises of the association or the association's official address, which must be in NSW; and be made available for inspection, free of charge, by anyone (Part 4, clause 29 (5) of the AI Act).

Failure to comply attracts a maximum penalty of 1 penalty point.

A sample register of committee members is available for an association's use at the above website of NSW Fair Trading.

D. FINANCIAL RECORDS

Associations **must** keep records that correctly record and explain their financial transactions and financial position. As a minimum that includes:

- a) Receipt books;
- b) Records of payments - with supporting documents and approvals;
- c) Invoices;

- d) Bank statements;
- e) Bank deposit books (if used); and
- f) Chequebooks.

Failure to comply attracts a maximum penalty of 5 penalty point.

TIER 2 ASSOCIATIONS: ANNUAL FINANCIAL STATEMENT

An association's reporting obligations under the AI Act is based on its status as either a Tier 1 (large) or Tier 2 (small) association.

U3A's are likely to be Tier 2 associations as they are associations whose total revenue as recorded in the income and expenditure statement (i.e. gross receipts) for a financial year is \$250,000 (excluding GST) or less and current assets are \$500,000 or less.

The committee must ensure the financial statements for the association, and any trust for which the association acts as a trustee, are prepared as soon as possible after the end of the association's financial year, for submission to the annual general meeting (AGM).

The financial statements must include:

- a) An income and expenditure statement that sets out appropriately classified individual sources of income and individual expenses incurred in the operation of the association;
- b) A balance sheet at the end of the financial year, that sets out current and non-current assets and liabilities;
- c) A separate income and expenditure statement and balance sheet for each trust for which the association is the trustee;
- d) Details of any mortgages, charges and other securities affecting any property owned by the association.

A Tier 2 association must lodge *An Annual summary of financial affairs – Tier 2* (form A12 – T2) for the financial year with Fair Trading within 1 month of the AGM and no later than 7 months after the end of the association's financial year: *An Annual summary of financial affairs* is not considered to be lodged until a correctly completed form and the set fees have been received.

For larger U3A's falling within Tier 2 it may be desirable to obtain an independent "limited scope audit report" The committee should determine the scope of the report and engage the person to conduct the review. The management committee would need to identify an appropriate person to do the audit and its scope.

U3A'S REGISTERED AS A CHARITY.

From 1 October 2018, most incorporated associations that are also registered with the Australian Charities and Not-for-profits Commission (ACNC) will only need to submit annual financial reports to the ACNC. The ACNC will share the information with NSW Fair Trading. However, if an Annual summary of financial affairs is outstanding, it must still be lodged with Fair Trading.

ASSET REGISTER /REGISTER OF AUTHORISATIONS

It is also appropriate for associations to maintain an asset register. This is important for maintaining control of major assets when there are changes in the committee. If, appropriate-

MINUTES OF MEETINGS

An association must:

- a) Keep minutes of the proceedings of all committee meetings and general meetings; and
- b) Ensure that the minutes set out a clear, concise and accurate summary of the proceedings of the meeting. This includes details of persons attending the meeting, documents submitted to the meeting and any passed or failed resolutions.

Failure to comply attracts a maximum penalty of 5 penalty point.

E. DISCLOSURE OF INTERESTS

Committee members have an obligation to disclose to the committee any interest (direct or otherwise) in conflict with the proper performance of the committee members' duties in relation to a particular matter.

Failure to disclose attracts a maximum 60 penalty point fine.

Details of such disclosures must be recorded by the committee in a book kept for that purpose. That book must at all reasonable hours be open for inspection by any member of the association

on payment of the fee determined by the committee but not exceeding the maximum fee prescribed by the AI Regulation. Currently must not exceed \$5.00.

F. AUTHORISED SIGNATORIES

It is important that an association keeps accurate records of its authorised signatories. These records be kept with the register of committee members.

Note: The association's public officer is an authorised signatory of the association.

The particulars recorded should include:

- a) name of the authorised signatory;
- b) nature and limits of appointment;
- c) position (e.g. public officer, committee member);
- d) date of appointment and the date appointment ceased; and
- e) reason appointment ceased (e.g. ceasing to be committee member, resignation, removal from position of public officer by general meeting); and
- f) reference in minutes to track the relevant appointment or revocation.

G. WHO IS RESPONSIBLE FOR MAINTAINING THE ASSOCIATION'S RECORDS?

The AI Act does not specify who is responsible for keeping and maintaining records, registers and documents. It does require that every incorporated association must have a constitution and that it includes provisions (Schedule 1 of the AI Act) about certain matters including:

- a) the register of member,
- b) who is responsible for the custody of books, documents and securities, and Keeping and accessing documents, records and register; and
- c) the procedure for inspection of the incorporated association's "books and documents" by members.

The committee is responsible for ensuring that the association keeps and maintains the required records. Check your constitution!

Committee members must deliver all documents in their possession that belong to the association to the public officer within 14 days after vacating office.

The public officer is responsible for:

- a) Collecting all association documents from former committee members and delivering the documents to the new committee; and
- b) Returning all association documents in his or her possession to a committee member within 14 days upon vacating office.

H. WHO CAN INSPECT THE ASSOCIATION'S RECORDS?

The Register of Committee Members must be made available for inspection, free of charge, by any person. The record of disclosure of interests must be kept with the register of committee members and must be available for inspection by any member of the association upon payment of a fee determined by the committee which must not exceed \$5.

Inspection of other documents of the association is governed by the association's constitution. See clauses 7 (3) & (4) and 45 of the Model Constitution.

I. HOW SHOULD FINANCIAL RECORDS AND MINUTES OF MEETINGS BE KEPT?

Records and minutes must be kept in written or electronic form. If the records and minutes are kept in electronic form, they must be able to be converted into hard copy. If a person is entitled to inspect the records, a hard copy of the record must also be made available within a reasonable time.

J. HOW LONG DO WE HAVE TO KEEP THE ASSOCIATION'S RECORDS?

Financial records: a minimum of 5 years after they were made: <https://www.ato.gov.au/search/#>.

Minutes of Meetings: need to be retained indefinitely.

Register of Members: needs to be retained indefinitely.

Documents that provide title to assets such as title deeds or evidence relating to intellectual property should also be retained indefinitely.

There are a number of other factors that may impact on the period for which an association may need to maintain its records. For example:

- a) The requirements of any other legislation that may apply to the association;
- b) Associations that have employees also need to comply with any statutory requirements for retaining records concerning work, health and safety or superannuation legislation;
- c) Documents that might relate to potential litigation should not be destroyed; and
- d) Documents that might record any liability for capital gains tax should not be destroyed.

If the association is unsure how long it should keep particular records, it should seek its own legal advice.

English Language

Where records and documents are kept in a language other than English, an English language copy must be kept with the documents.
