



From: Carmen Champion/Governance Officer

To: All U3A Presidents

Subject: Privacy Legislation

Date: 21/09/2019

PRIVACY LEGISLATION.

Too often one hears access to information being refused on the basis of “privacy” law when there is no legal basis supporting such an assertion.

U3A’s are not covered by either the federal or state privacy legislation: see below at paras B.7 – 10.

GENERALLY

A. Associations Incorporation Act 2009 No 7 (NSW) (the Act)

1. The Act requires that an association's constitution address the inspection by members of books and documents of the association. If an association's constitution fails to address that matter, then the relevant provisions of the 'model constitution' prescribed by the Act are taken to form part of the association's constitution: see clause 45 of the Model Constitution.
2. The Act affords members of incorporated associations certain rights, including relevantly the right to:
 - a) inspect the register of committee members; and
 - b) inspect disclosures of interests made by committee members.

https://www.nfplaw.org.au/sites/default/files/media/Members_rights_NSW.pdf

3. Register of Committee Members: Section 29 of the Act provides as follows:
 1. *An association must keep a register of committee members in accordance with this section.*

Maximum penalty: 1 penalty unit.
 2. *The register must contain the following particulars in relation to each committee member:*
 - (a) *the committee member's name, date of birth and residential address,*
 - (b) *the date on which the committee member takes office,*
 - (c) *the date on which the committee member vacates office,*
 - (d) *such other particulars as may be prescribed by the regulations.*
 3. *The register must be kept in New South Wales:*
 - (a) *at the main premises of the association, or*
 - (b) *if the association has no premises, at the association's official address.*
 4. *Any change in the committee's membership must be recorded in the register within one month after the change occurs.*
 5. *The register must, at all reasonable hours, be kept available for inspection, free of charge, by any person.*

<https://www.legislation.nsw.gov.au/#/view/act/2009/7/part4/div1/sec29>

4. The Model Constitution contains the following provisions regarding the Register of Members: *Register of members*
 - (1) *The secretary must establish and maintain a register of members of the association (whether in written or electronic form) specifying the name and postal, residential or email address of each person who is a member of the association together with the date on which the person became a member.*
 - (2) *The register of members must be kept in New South Wales:*
 - (a) *at the main premises of the association, or*
 - (b) *if the association has no premises, at the association's official address.*
 - (3) *The register of members must be open for inspection, free of charge, by any member of the association at any reasonable hour.*
 - (4) *A member of the association may obtain a copy of any part of the register on payment of a fee of not more than \$1 for each page copied.*

- (5) *If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection.*
- (6) *A member must not use information about a person obtained from the register to contact or send material to the person, other than for:*
 - (a) *the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the association or other material relating to the association, or*
 - (b) *any other purpose necessary to comply with a requirement of the Act or the Regulation.*
- (7) *If the register of members is kept in electronic form:*
 - (a) *it must be convertible into hard copy, and*
 - (b) *the requirements in subclauses (2) and (3) apply as if a reference to the register of members is a reference to a current hard copy of the register of members.*

<https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/starting-an-association/model-constitution>

5. The Register of Members is essential not only from the perspective of the necessary records of the association but also from the perspective of 3rd party liability insurance cover and the right and ability of members to communicate with each other relating to a matter of concern relating to the association, especially the conduct of the management committee.
6. Both the requirements of section 29 of the Act and the Register of Member provisions in the Model Constitution are addressed in the Template Constitution: clauses 9 – 21.

B. PRIVACY LEGISLATION

Cth Legislation: Privacy Act 1988 (CTH): <https://www.oaic.gov.au/privacy/the-privacy-act/>

7. The Australian Privacy Principles (APPs) need only be complied with by U3As that have an annual turnover of more than \$3m.
8. They also need to be complied with if your U3A has a funding arrangement with a government body. Where a U3A is required to follow the APPs only because it has a contract with government, the U3A will only be required to follow the APPs for personal information it is managing in relation to the activities under that contract.

NSW Legislation: <https://www.ipc.nsw.gov.au/guide-privacy-laws-ns>:

Privacy and Personal Information Protection Act 1998 (PPIP Act):

9. This Act only applies to NSW public sector agencies, including local councils and universities.

Health Records Information Privacy Act 2002

10. This Act applies only to:
 - a) NSW public sector agencies, including local councils and universities;
 - b) Public and private sector health organisations – e.g. a private or public hospital or medical centres;
 - c) Health service providers – e.g. your GP, dentist, therapist, physiotherapist, chiropractor, optometrist; and
 - d) larger-sized business with a turnover of over \$3 million that holds health information – e.g. an insurance company.

Note: This information was created in September 2019 using the above-identified sources. This material is of a general nature and should not be regarded as legal advice or relied on for assistance in any particular circumstance.

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