Financial powers and reporting obligations

Legal information for Northern Territory incorporated associations

This fact sheet covers:

- Who is responsible for overseeing your association's finances
- What are the requirements for preparing financial information, including auditing
- What kind of financial information needs to be provided at your associations annual general meeting
- What financial information needs to be provided to Licensing NT
- What financial records must your association keep

Incorporated associations in the Northern Territory and their management committees must comply with the financial reporting and management requirements set out in the *Associations Act 2003* (NT) (the Act) and the *Associations Regulations 2004* (NT) (the Regulations).

This fact sheet explains what those requirements are and is general information only. Your association may need to seek specific advice.

Who is responsible for overseeing our association's finances?

Each member of the committee (sometimes referred to as the committee of management, management committee or board) of an incorporated association is jointly responsible for managing the finances of the association. This means all committee members need to understand the association's financial obligations and participate in making decisions about the association's finances.

What powers and duties do members of a committee have over an association's finances?

The committee of management of an incorporated association usually has broad powers relating to the association's finances. Committee members of an incorporated association must comply with a range of duties under the Act and the Regulations as well as the association's rules, which include duties concerning the finances of the association.

Under the Act, each committee member owes the association duties, including to:

- fulfil obligations in relation to financial record keeping and reporting

© 2018 Justice Connect. This information was last updated on January 2018 and does not constitute legal advice, full disclaimer and copyright notice at www.nfplaw.org.au/disclaimer.

- not deceive or defraud the association, members or creditors in the exercise of their powers and duties
- not improperly use information gained from their position in the association to gain a monetary benefit of material advantage for themselves, and
- not improperly use their position in the association to gain a monetary benefit or material advantage for themselves.

The common law (judge made law) requires that committee members exercise their powers with the degree of care, skill and diligence reasonably expected given the circumstances and knowledge at the time.

Incorporated associations can restrict or amend committee members' powers through the rules of the association, as long as the restriction or amendment is not contrary to law. For example, the rules may require that members approve on association's annual membership fee, or the associations investment plans be agreed at a general meeting.

NOTE

The rules (constitution) of an incorporated association must state the powers of the committee (see section 21(1) of the Act). An association's rules will usually state that the committee of management is responsible for managing and controlling the business and affairs of the association. Check whether your association's rules limit the powers of the committee of management in any way.

An incorporated association that is registered as a charity with the Australian Charities and Not-for-profits Commission (the **ACNC**), will also need to comply with the ACNC's Governance Standards. These Governance Standards impose specific duties on committee members, for example, a duty to ensure that the financial affairs of the charity are managed responsibly. For more information about the duties of committee members under the Governance Standards, go to Not-for-profit Law's Governance resources at www.nfplaw.org.au/governance.

Can't we just leave all this financial stuff to the Treasurer?

No – the law is clear that all members of the committee are responsible for managing the association's finances, not just the treasurer.

The treasurer (or financial officer – or whatever other name is given to the position) is generally charged with the task of ensuring that financial transactions are properly recorded and reported on. The treasurer usually presents financial reports at committee meetings. It is important that these reports are easily understood by all the committee members because the committee members are all responsible for keeping a check on the financial position of the association.

While the treasurer may not be able to do all the regular financial tasks personally, it is the responsibility of the treasurer to ensure that good systems are in place to allow these tasks to be properly and consistently completed (for example by employees of the association).

Other tasks for the treasurer may include:

- making sure finances are well planned by preparing an annual budget and then regularly monitoring this budget to make sure that the association is staying within it

© 2018 Justice Connect. This information was last updated on January 2018 and does not constitute legal advice, full disclaimer and copyright notice at www.nfplaw.org.au/disclaimer.

- making sure that the association's accounting books and records are up to date and in order – there must be a proper record of all payments made, and money received, by the association, and accounts should be reconciled at least once a month
- taking reasonable steps to prevent funds from being stolen or misused, and
- ensuring that financial records are easily accessible so that a financial statement can be prepared (and, if necessary, reviewed or audited) at the end of the year.

What are the requirements for preparing financial information, including auditing?

The committee members are responsible for ensuring that a statement of the association's accounts is prepared annually and that it is not misleading. The statement of accounts (which will need to be presented at the association's AGM) must give a true and fair account of, among other things:

- the income and expenditure of the association during the last financial year
- the assets and liabilities of the association at the end of the financial year
- mortgages, charges or other securities of any description affecting property of the association at the end of the financial year, and
- a separate income and expenditure statement and balance sheet for each trust for which the association is the trustee, as well as mortgages, charges or other securities affecting the property of the relevant trust.

What are the requirements around carrying out an audit?

An incorporated association's annual accounts must be audited. The Act requires that an auditor must be chosen based on the size of the association's annual gross receipts, gross assets or activities.

Tier 1: An incorporated association is classified as 'tier 1' if:

- its annual gross receipts at the end of a financial year are less than $25,000, or
- it has gross assets at the end of a financial year of less than $50,000.

The accounts of a tier 1 association must not be audited by anyone who is any of the following:

- a member of the association
- a partner (spouse, de facto or business partner), employer or employee of a member of the association, or
- a partner (spouse, de facto or business partner) of an employee of a member of the association.

Tier 2: An incorporated association is classified as 'tier 2' if:

- its annual gross receipts at the end of a financial year are between $25,000 to $250,000
- it has gross assets at the end of a financial year between $50,000 to $500,000, or
- it holds a licence under the *Gaming Machine Act*.

A tier 2 incorporated association must ensure its accounts are audited by someone who is either of the following:

© 2018 Justice Connect. This information was last updated on January 2018 and does not constitute legal advice, full disclaimer and copyright notice at www.nfplaw.org.au/disclaimer.

- a member of an accountant's body, or
- a person approved by the Commissioner of Consumer Affairs NT.

Tier 3: An incorporated association is classified as 'tier 3' if:

- its annual gross receipts at the end of a financial year are more than $250,000
- it has gross assets at the end of a financial year of more than $500,000, or
- it has already been declared to perform local government functions.

A tier 3 incorporated association must ensure its accounts are audited by someone who is either of the following:

- certified for public practice by an accountants' body, or
- approved by the Commissioner of Consumer Affairs NT.

> **NOTE**
>
> Some incorporated associations may also be classified as tier 3 by virtue of a declaration under section 101 of the Act in force before 2007. Section 101 (which identified certain incorporated associations that were required to comply with *Local Government Act* NT) was repealed in 2007 but declarations made prior to its repeal continue to apply.

Note that if a tier 3 association has already been declared to perform local government functions, a registered auditor must be appointed.

What financial information needs to be presented at your associations Annual General Meeting (AGM)?

At each AGM, the committee must present the following documents for consideration of the meeting:

- the audited statement of the association's accounts in relation to the last financial year of the association
- a copy of the auditor's report to the association in relation to the association's accounts for that financial year, and
- a report signed by two members of the committee stating:
    - the name of each member of the committee of the association during the last financial year and, if different, at the date of the report
    - the principal activities of the association during the last financial year and any significant change in the nature of those activities that occurred during that financial year, and
    - the net profit or loss of the association for the last financial year.

The committee must take all reasonable steps to ensure that the audited statement of accounts is made available to members for inspection at least 14 days before the AGM. In the case of a Tier 3 association, members must be informed of the availability by notice (either published in a newspaper, sent to each member, or in any other manner approved by the Commissioner of Consumer Affairs NT).

© 2018 Justice Connect. This information was last updated on January 2018 and does not constitute legal advice, full disclaimer and copyright notice at www.nfplaw.org.au/disclaimer.

NOTE

An incorporated association must hold an AGM within 18 months of first incorporating. Then an AGM must be held every 12 months, within 5 months of end of the association's financial year. When incorporating, associations can decide when they want their financial year to begin and end (e.g. an association could choose for its financial year to end on 30 March instead of 30 June).

What financial information needs to be provided to Licensing NT?

Licensing NT is the regulator of incorporated associations in the Northern Territory.

An incorporated association must file a copy of the documents presented at its AGM with the Commissioner of Consumer Affairs NT (via lodgement with a Territory Business Centre) within 28 days after the association's AGM.

If the association has been exempted from the requirement to hold an AGM, it must file a copy of the documents with Licensing NT within 28 days after the documents are prepared. Payment of a small fee is required (and an additional fee will also be payable if lodgement is late).

NOTE

If your incorporated association is a registered charity, it is required to lodge an Annual Information Statement with the ACNC within 6 months of the end of its financial year. Depending on the association's size, it may also need to have its financial reports reviewed or audited.

Find out more about charity reporting on the Not-for-profit Law website at www.nfplaw.org.au/charityreporting.

What financial records must our association keep?

An incorporated association must keep accounting records that correctly record and explain the transactions (including any transactions as trustee) and the financial position of the association. These accounting records must be kept in such a way that true and fair accounts of the association can be prepared and a statement of the accounts of the association can be audited in accordance with the Act.

More specifically, a profit and loss statement, and a balance sheet, are generally required as part of the association's annual report presented at its AGM (and submitted to Licensing NT), so adequate records need to be kept to allow the preparation of these documents adequately.

A profit and loss statement and balance sheet can be found at Schedule 4 of the Regulations. Generally, the preparation of the profit and loss statement and the balance sheet require records of:

- income (including income from membership fees, fundraising, sale of assets or any other sales, or interest)
- expenditure (generally pertaining to operating costs)
- current assets (including cash on hand and in the bank, and accounts receivable)

© 2018 Justice Connect. This information was last updated on January 2018 and does not constitute legal advice, full disclaimer and copyright notice at www.nfplaw.org.au/disclaimer.

- non-current assets (such as land, plant and equipment)
- current liabilities (that is, money owed to creditors), and
- non-current liabilities (for example, loans)

The Act requires incorporated associations to retain their accounting records for at least 7 years after the transactions to which they relate were completed.

© 2018 Justice Connect. This information was last updated on January 2018 and does not constitute legal advice, full disclaimer and copyright notice at www.nfplaw.org.au/disclaimer.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub (www.nfplaw.org.au) has further resources on the following topics:

- Registering as a charity – www.nfplaw.org.au/charity
- Charity reporting – www.nfplaw.org.au/charityreporting
- Governance and legal duties of office holders – www.nfplaw.org.au/governance
- Holding meetings – www.nfplaw.org.au/meetings

Other Related Resources

- Australian Charities and Not-for-profits Commission (ACNC)

The Report annually page of the ACNC website provides information on reporting requirements according to a charity's size

- Northern Territory Government Information and Services – www.nt.gov.au
  - Associations Forms – a 'Financial Return Template' to provide to the Commission with the financial statement.
  - Model Constitution – some incorporated associations in the Northern Territory use the 'model constitution' template published by the Northern Territory Government while others draft their own. You should check your association's rules to determine the specific requirements for your incorporated association.
  - Fees – table of fees for filing financial statements (and other documents) with Licensing NT.
- Institute of Chartered Accountants (ICA) – enhancing not-for-profit annual and financial reporting
- Governance Institute of Australia - The Governance Institute has a series of good governance guides, which includes information on financial reporting. They also provide a pro bono program to assist with things like governance audits, board paper templates and annual report preparation. Contact the Governance Institute for their guidelines on when a group is eligible for this free assistance.
- CPA Toolkit – CPA has a toolkit with two guides relevant to not-for-profit management.
- QUT Approving Financial Statements – The Australian Centre for Philanthropy and Nonprofit Studies at the Queensland University of Technology has a resource on nonprofit governance which includes a page on approving financial statements.

Legislation

- *Associations Act 2003* (NT)
- *Associations Regulations 2004* (NT)
- *Associations (Model Constitution) Regulations 2004* (NT)
- *Australian Charities and Not-for-profits Commission Act 2012* (Cth)

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au. Justice Connect Not-for-profit Law acknowledges the generous support of our funders and supporters. Find out more at www.nfplaw.org.au

© 2018 Justice Connect. You may download, display, print and reproduce this material for your personal use, or non-commercial use within your not-for-profit organisation, so long as you attribute Justice Connect as author and retain this and other copyright notices. You may not modify this resource. Apart from any use permitted under the *Copyright Act 1968* (Cth), all other rights are reserved.

To request permission from Justice Connect to use this material, contact Justice Connect at PO Box 16013, Collins Street West, Melbourne 8007, or email nfplaw@justiceconnect.org.au.