

Part 8

Reporting to Fair Trading

This part of the guide covers the obligations of an incorporated association in New South Wales to report to Fair Trading, part of the NSW Department of Customer Service.



Caution

If you are a NSW incorporated association that is also registered as a charity with the Australian Charities and Not-for-profit Commission (**ACNC**), this fact sheet may not apply to you.

Reporting obligations for NSW incorporated associations that are also registered charities with the ACNC changed on 1 October 2018.

These associations no longer need to:

- lodge an annual summary of financial affairs with NSW Fair Trading (**Fair Trading**), or
- pay the summary of financial affairs lodgement fee to Fair Trading

Charities must lodge the association's Annual Information Statement (and financial statements if required) with the ACNC for each financial year. The ACNC will then send the information it has collected to Fair Trading. This change (exemption) does not apply retrospectively. For financial years that ended before 30 June 2018, an incorporated association must still provide separate annual summaries of its financial affairs to Fair Trading and the ACNC.

Incorporated associations in NSW still need to notify Fair Trading of changes to their name, details or rules. Refer to the ACNC website for a comprehensive summary of when to contact the ACNC or Fair Trading.

The exemption does **not** apply to charities that form part of an ACNC approved reporting group or have certain details withheld from the ACNC Charity Register. For more information, visit the ACNC website's pages on group reporting and withholding information.

For further information see our resources on reporting, refer to the Fair Trading website, or to the ACNC website.



Note

From 1 September 2016, the *Associations Incorporation Regulation 2016* (the **AI Regulation**) replaced the *Associations Incorporation Regulation 2010* and changes were made to the existing *Associations Incorporated Act 2009* (the **AI Act**).

These changes include certain things that an organisation's rules or constitution must cover. Unless they chose to change their constitution, organisations that were using the NSW Model Constitution now have a new Model Constitution that applies. This guide refers to the new Model Constitution and reflects the other changes made by the new legislation.

Summary of key points

What are the requirements for reporting to Fair Trading?

An incorporated association's committee must report to Fair Trading about certain matters, including the association's financial affairs. The requirements for reporting to Fair Trading are set out in the AI Act and the AI Regulation.

What documents the association must lodge with Fair Trading depends on which revenue category, or 'tier', an association falls into.

Accounting requirements

An incorporated association must maintain financial records that are correct, true and fair. These records form the basis for the association's financial statements. Accounting requirements depend on the 'tier' that an association falls into. An incorporated association's committee must make sure the association's financial statements (and the financial statements for any trust for which the association acts as trustee) are prepared as soon as practical after each financial year end and submitted to the association's annual general meeting (**AGM**).

Preparing and lodging financial statements

Each year, the association must submit its financial statements to the association's members at the AGM. The financial statements must include certain information and be presented to the AGM before lodging the required forms and financial documents with Fair Trading. The particular requirements for preparing and lodging the financial documents to Fair Trading depend on which 'tier' the association falls into.

Can 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 document lodged includes false or misleading information that is material to the form or context. This Part will explain the process if Fair Trading refuses to register a document.

What are the legal requirements for reporting to Fair Trading?



Note – arrangements during the COVID-19 pandemic

Check NSW Fair Trading's website for regulatory concessions that may apply due to the COVID-19 pandemic.

Preparing financial statements: 'Tier 1' and 'Tier 2' associations

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

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 than Tier 2 associations. A Tier 1 association is an association with an annual total revenue of more than \$250,000 or current assets of more than \$500,000.

Its financial statements must be audited by a certified auditor before they are submitted at the AGM. In addition, the financial statements must be prepared according to the Australian Accounting Standards set by the Australian Accounting Standards Board (**Accounting Standards**) and include:

- 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

Tier 1 associations with total revenue of less than \$2 million in a financial year do not have to comply fully with the Accounting Standards. However, their financial statements must satisfy a particular set of requirements set out in 'Class Order 11/01 financial reporting requirements' and include:

- a statement of income and expenditure that sets out appropriately classified individual sources of income and items of expenditure incurred in the operation of the association
- a balance sheet at the end of the financial year that sets out current and non-current assets and liabilities
- statements of movements in the equity section of the balance sheet, being movements in retained surplus or accumulated loss and movements in any reserves
- a statement of accounting policies appropriate to the association's transactions
- details of any mortgages, charges and other securities affecting any property owned by the association
- a separate income and expenditure statement and balance sheet for each trust for which the association is trustee, and
- a consolidated statement of income and expenditure and a consolidated balance sheet, which consolidates its investments in any subsidiaries, as defined by the Accounting Standards, except for any trusts for which it acts a trustee

Tier 1 associations not covered by the Class Order 11/01 must prepare full financial statements, including a statement of cash flows and all notes to the financial accounts in accordance with the Accounting Standards.

Financial statements must be audited in time for submission to the association's AGM. The auditor's report must:

- be prepared in accordance with the Australian Auditing Standards, and
- state whether the association has kept the financial records necessary to prepare financial statements in accordance with the Australian Accounting Standards

Find further information on the Australian Auditing Standards on the Auditing and Assurance Standards Board website and the Fair Trading 'Financial reporting and audit exemptions' page.

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 Fair Trading may declare it not to be a Tier 1 association.

Tier 2 associations must 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:

- 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
- a balance sheet at the end of the financial year, that sets out current and non-current 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

Under the AI Act, a Tier 2 association is not required to audit or review its financial statements independently. However, Fair Trading can require that an association audit all or part of its financial records, and lodge an auditor's report (stating that the association's financial records have been properly kept and give a true and fair view of the association's affairs) with them (section 51 of the AI Act).



Caution

If the committee doesn't prepare the financial statements and audit them as required, Fair Trading may issue the association a penalty notice setting out the penalty amount. As at February 2020, the AI Regulation prescribes \$200 as the penalty amount for this offence (Schedule 4 of the AI Regulation, offence under s 43(1) of the AI Act). If the penalty amount is not paid, a court may consider the offence and impose a penalty of up to 5 penalty units (as at February 2019, 5 penalty units is equivalent to \$550).

Fair Trading declaration that an association is not a Tier 1 association

Fair Trading may declare an association is not a Tier 1 association for the purposes of financial reporting requirements (Section 42(2) of the AI Act). Fair Trading may make this declaration if an association's total revenue for the last financial year was negligible, but its current assets are more than \$500,000 (ie. it would be a Tier 1 association if Fair Trading didn't declare it wasn't) (section 42(3)).

Exemption from financial reporting

On application, Fair Trading may exempt an association or any class of associations from preparing and auditing financial statement requirements under the AI Act (Section 53 of the AI Act). The association must pay a fee (\$196 as at February 2020) with an application. Fair Trading may put conditions or a time limit on an exemption (section 53(2) of the AI Act). Fair Trading has not provided any guidance on when it may grant an exemption.



Caution

If your association hasn't lodged financial documents as required under the AI Act in the last three financial years, Fair Trading may cancel your association's registration (section 76(1)(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, its committee must lodge the documents listed below with Fair Trading each year.

Documents Tier 1 associations must lodge

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 auditor's report for those statements (signed and dated)
- 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)



Note

If your association passed a resolution about the financial statements or the 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 Tier 2 associations must lodge

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 documents must be lodged within:

- one month after the AGM, if it falls after the end of a financial year, or
- seven months after the end of the association's financial year

whichever is earlier, or within such time as Fair Trading may allow

The association must pay a prescribed fee when it lodges the documents (\$196 for Tier 1 and \$47 for Tier 2 as at February 2020). An association may also apply for an extension of time to lodge documents by filing the prescribed application form and paying the application fee (\$33 as at February 2020).

See also the flowchart for preparing and lodging financial documents at the end of this part of the guide.



Caution

If the committee doesn't lodge the documents in time, Fair Trading may issue the association a penalty notice setting out the penalty amount. As at February 2020, the AI Regulation prescribes \$200 as the penalty amount for this offence (Schedule 4 of the AI Regulation, offence under ss 45(1) and 47(1) of the AI Act). If the penalty amount is not paid, a court may consider the offence and impose a penalty of up to 5 penalty units (as at February 2020, 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 certain situations. These include:

- within 28 days after a new public officer is appointed or when the public officer's address changes
- getting 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))
- getting approval from Fair Trading for an extension of time within which to hold an AGM (section 37(2)(b))



Caution

This Part of the guide deals with Fair Trading reporting requirements only.

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 constitution), 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).

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 so that the association may prepare financial statements in accordance with the Accounting Standards (section 50 of the AI Act)

These financial records form the basis for 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, the association's rules or constitution or contracts (such as funding agreements) may include particular accounting or auditing requirements. For example, the rules or constitution of a Tier 2 association may require the association's accounts to be audited each year, even if this 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 line with 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 conduct an audit are higher than a review.



Note – 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), a reviewer or auditor should be as independent as possible from those connected with the association. This is the policy reason behind these requirements in the AI Act.

An auditor must be an independent person

If your association requires an audit of its financial statements (ie. it's a Tier 1 association or Fair Trading has directed it to conduct an audit), 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 Chartered Accountants ANZ
- 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)

Unless Fair Trading approves in writing, an auditor can't be a person who has at any time in the past two 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. Fair Trading will provide approval if:

- the audit is conducted 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)



Note

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.

Preparing and lodging financial statements

Financial statements (submitted to the members at the AGM)

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 give members the opportunity to consider the statements before they are lodged with Fair Trading. This is also important so that 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 the flowchart for preparing and lodging financial documents at the end of this part of the guide.

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 (Tier 1 and Tier 2), and
- the auditor's report for those statements (Tier 1, and Tier 2 if directed by Fair Trading)

See also Part 5: Annual General Meeting in this guide.



Caution

If an association fails to submit its financial statements at the AGM, Fair Trading may issue the association a penalty notice setting out the penalty amount. As at February 2020, the AI Regulation prescribes \$200 as the penalty amount for this offence (Schedule 4 of the AI Regulation, offence under s 44 of the AI Act). If the penalty amount is not paid, a court may consider the offence and impose a penalty of up to 5 penalty units (as at February 2020, 5 penalty units is equivalent to \$550).

The AGM chairperson (or the chairperson of the next meeting) must sign off the minutes of the AGM and 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 the flowchart for preparing and lodging financial documents at the end of this part of the guide.

Also check your association's rules or constitution to see if there are any other 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.



Caution

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 five 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 February 2020, the AI Regulation prescribes \$200 as the penalty amount for this offence (Schedule 4 of the AI Regulation, offence under s 29(1) of the AI Act). If the penalty amount is not paid, a court may consider the offence and impose a penalty of up to 5 penalty units (as at February 2020, 5 penalty units is equivalent to \$550).

Lodging documents with Fair Trading

Lodgement by Tier 1 associations

Tier 1 associations may lodge the Annual summary of financial affairs, reports, documents of AGM resolutions and the prescribed payments by email, mail or in person. Details are listed on the Fair Trading website.

Lodgement by Tier 2 associations

Tier 2 associations may lodge the Annual summary of financial affairs and the prescribed payments by email, mail or in person. Details are listed on the Fair Trading website.

The lodgement of documents is detailed in the flowchart for preparing and lodging financial documents at the end of this part of the guide.



Caution

Documents submitted to members of an association at a general meeting and lodged with Fair Trading should give a true and accurate picture of your association. It is an offence under Part 5A of the *Crimes 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 February 2020, the penalty for these offences is up to \$22,000 (200 penalty units) or imprisonment for two years, or both.

Can 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:

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

If Fair Trading refuses to register a document for any of these reasons, it may ask that the association:

- alter the document appropriately
- replace it with a fresh document, or
- lodge a supplementary document in the approved form (if the document was incomplete)

Disputing Fair Trading's decision

Right to request reasons for a decision

If you are unhappy with a decision by Fair Trading, you can write to Fair Trading and ask for the reasons for the decision. You must do this within 28 days of the decision being given to you in writing, or within a reasonable time in any other case. Fair Trading should respond to your request, in writing, within another 28 days.

Internal review

You also have the right to apply to Fair Trading for a review of the decision. Your application must:

- be lodged in writing
- be addressed to the Secretary of Fair Trading
- include an address in Australia to which a notice of the result can be sent, and
- be lodged within 28 days after you received the original decision letter or the reasons for Fair Trading's decision

Fair Trading will conduct the internal review and notify you of the result within 21 days.

Review by the NSW Civil and Administrative Tribunal (NCAT)

If you are still unhappy with Fair Trading's decision, your association can request that Fair Trading reconsider the decision and the reasons for the decision. If Fair Trading reconsiders, and still decides not to



register the document, you can apply to NCAT. NCAT is an independent body that reviews 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’.

Assistance from the Ombudsmen

In some cases, you can also seek advice from the Ombudsman’s Office about a decision. The Ombudsman can investigate the conduct of government agencies if the conduct is alleged to be:

- illegal
- unreasonable, unjust or oppressive
- improperly discriminatory
- based on improper motives or irrelevant grounds
- based on a mistake of law or fact, or
- otherwise wrong

Investigation by the Ombudsman is free. For more information, contact the Office of the Ombudsman.

Further information



Related Not-for-profit law resources

- See Running the organisation for more information about positions in an incorporated association, governance, changes to rules or constitution, holding meetings, and documents and records



Related resources

Legislation

- The *Associations Incorporation Act 2009* (NSW) regulates incorporated associations in NSW.
- The *Associations Incorporation Regulation 2016* (NSW) includes additional requirements for incorporated associations in NSW.

Government

- The NSW Fair Trading website includes a variety of online resources, such as online access for incorporated associations.

Other links

- The Australian Accounting Standards Board website includes information about current accounting standards and other relevant information.
- CPA Australia's website includes information about accountants who are members of CPA Australia as well as practice standards and a range of accountancy publications.
- The Chartered Accountants ANZ website contains information about accountants who are members of the Institute as well as practice standards and a range of accountancy publications.
- The Institute of Public Accountants website contains information about accountants who are members, as well as practice standards and a range of accountancy publications.

Tools

Flowchart for preparing and lodging financial documents



