



Accounts and Audit Requirements of an Incorporated Association

This information is intended to assist committee members and other persons involved in administering the affairs of their incorporated associations. It explains in general terms, some requirements of the Associations Incorporation Act, 1985 (hereafter referred to as "the Act"). It also provides suggestions on how problems that commonly occur might be avoided. It is not intended to be a document offering legal advice and no person should rely on its contents without first obtaining advice from a qualified professional person. References to section numbers in this brochure correspond to sections of the Act.

ACCOUNTS REQUIREMENTS

The accounts and audit requirements of Division 2 of Part 4 apply to a prescribed association in relation to a financial year.

1. Checklist

The procedure for a prescribed association to enable its accounting obligations to be fulfilled would be as follows:

- (a) Accounts are prepared (clause 4).
- (b) Committee's statement is prepared (clause 5).
- (c) Committee's report is prepared (clause 6).
- (d) Accounts with the committee's statement attached are submitted to the auditor (clause 4).
- (e) Auditor's report is furnished to the committee (clause 12).
- (f) All of the above documents are laid before members at the AGM within five months after the end of the financial year (clause 7).
- (g) Annual (periodic) return, accompanied by all of the documents referred to above, is lodged with the Office of Consumer and Business Affairs within six months after the end of the financial year (clause 8).

Each of these requirements are discussed in more detail below.

2. Prescribed Associations (section 3)

A prescribed association is defined as an incorporated association that had gross receipts in excess of \$500,000 per annum in the association's previous financial year.

3. Gross Receipts (section 3)

“Gross receipts” is defined as the total amount of receipts including any government grants or subsidies received from local, State or Commonwealth governments. The following money received may be excluded from the calculation of gross receipts:

- (a) Subscriptions, membership fees, levies or other fees paid by a member;
- (b) Money received as a devise or bequest, ie, by operation of a will; or
- (c) Proceeds from the sale of assets which were not originally purchased for resale.

An example of “other fees” which may be excluded from the calculation of gross receipts are those fees paid by a member which are inextricably related to the full benefits of membership.

The following receipts should be included in the calculation of gross receipts:

- (d) Those of a commercial nature such as receipts from bar sales; and
- (e) Gifts and donations from activities such as appeals to the public from door knocks etc.

4. Preparation of Accounts (section 35)

After the end of a financial year (as defined in section 3), a prescribed association must arrange for accounts for the year to be prepared that present fairly the operations of the association. The accounting records must be kept in such a manner to enable this to occur (section 35(1)). The accounting records must be kept for seven years after the completion of the transactions to which they relate (regulation 8). The accounts (and the committee's statement discussed below) must be submitted to the auditor in sufficient time to enable the auditor to audit and furnish a report on the accounts (section 35(3)).

“Accounts” is defined in section 3 as either:

- (a) cash accounts - an account of receipts and payments and a statement of assets and liabilities, or
- (b) accrual accounts - an account of income and expenditure and a balance sheet,

together with such statements, reports and notes, other than auditors' reports, as are attached to and intended to be read with the accounts. A combination of cash and accrual accounts is not acceptable.

If a profit and loss account is prepared in accordance with accounting standards, in order to comply with the Act, the total income and total expenditure for the period should also be recorded in the account, or notes intended to be read with the account, and (at least) all major items of income and expenditure should also be recorded in, eg. the notes.

5. Committee's Statement (section 35(2)(c))

Before the accounts are submitted for audit, they must have a statement by the committee attached to them. It must be made out in accordance with a resolution of the committee and signed by two or more members of the committee and state:

- (a) whether or not the accounts present fairly the results of the operations of the association for the financial year and the state of affairs of the association as at the end of the financial year;
- (b) whether or not the committee has reasonable grounds to believe that the association will be able to pay its debts as and when they fall due; and
- (c) particulars of any subsidiaries of the association and of any trust of which the association is a trustee.

The committee should make sufficient inquiries before signing the report to satisfy itself that the association has sufficient funds to pay all its debts. If a positive statement cannot be made, the situation should be clearly explained and the committee members should carefully consider whether trading should continue in the context of incurring possible liabilities in relation to the insolvent trading offence (section 49AD).

In relation to an association acting as trustee, it is recommended by the Office of Consumer and Business Affairs that the rules of the association refer to the establishment of the relevant trust and that the functions of the association in its capacity as trustee are enshrined in a deed of trust for that purpose. The periodic return (Form 9) provides for brief particulars of any alterations to any trusts affecting the rules of the association which have not yet been lodged for registration. Form 9 also provides for the names of subsidiary bodies corporate to be disclosed.

6. Committee's Report (section 35(5))

The committee must prepare a separate report on any benefits received directly or indirectly by officers. It must be made out in accordance with a resolution of the committee and signed by two or more members of the committee. Where no benefits exist a report to that effect must still be prepared referring to the provisions of section 35(5) of the Act.

"Officer" includes a person who is a committee member, or the secretary, treasurer or public officer, or a person who acts in such positions, or a person who participates in management. This applies whatever title the person holds and even if the person is not validly appointed or authorised to act in the position. If the committee is accustomed to act in accordance with the directions or instructions of any person, that person is deemed to be an officer of the association. The definition of officer in section 3 should be referred to before commencing the report which must state, in relation to each officer of the association, the:

- (a) general nature of any benefits received by the officer, as a result of a contract between the officer and the association;
- (b) general nature of any benefits received by a firm of which the officer is a member, or a body corporate in which the officer has a substantial financial interest, as a result of a contract between any of those "related parties" (hereafter referred to as "related parties") and the association; and
- (c) general nature and extent of any payments or other benefits of a pecuniary value received directly or indirectly by the officer from the association.

Some examples of benefits or payments to be reported are:

- (d) Any transactions between the association and an officer, or between the association and a related party, for particular services or facilities provided to the association. An example is legal advice provided to the association by a firm of solicitors of which a committee member or other officer is a partner. Disclosure should include whether the service is provided on commercial terms or not.
- (e) Any fees paid to committee members in relation to managing the affairs of the association. This may be reported by disclosure in a note to the accounts of the amount received, in a similar manner to disclosure of income of company directors, ie., in bands of \$10,000, and by including in the committee's report a cross reference to the particular note. Insubstantial fees paid to committee members as an honorarium need not be reported.
- (f) Any remuneration received by officers who are also employees of the association as a result of individual employment contracts with the association. It is not intended that confidentiality should be breached and the specific amount of remuneration received need not be reported. The fixed salary of officers employed under general awards and conditions need not be reported.
- (g) Any premiums paid by the association in respect of a contract of insurance with the association, indemnifying an officer against liability for neglect, default, or breach of duty or of trust. These payments constitute an indirect benefit received by an officer.
- (h) Any payments made by an insurance company as a result of successful claims in respect of a contract of insurance with the association indemnifying an officer against liability for neglect, default, or breach of duty or of trust, or any payments made by the association in relation to defending any proceedings against an officer.
- (i) Any other payments or monetary benefits received by officers, even though not relating to managing the affairs of the association, eg. any fees of a private nature paid by the association to an officer for entry to sporting events. Amounts in payment or reimbursement of out of pocket expenses incurred for the benefit of the association need not be reported.

7. Accounts and Reports to be laid before Members at Annual General Meeting (section 35(6))

Unless the rules do not provide for membership, a prescribed association must hold an annual general meeting within five months after the end of the financial year (section 39(1)). However the first annual general meeting may be held within 18 months after incorporation (section 39(2)).

The accounts of a prescribed association that has members, together with the auditor's report on the accounts, the committee's statement and the committee's report, must be laid before members at the annual general meeting within 5 months after the end of the financial year. If the first annual general meeting is not to be held within this period by operation of section 39(2), the accounts and other documents must still be laid before members within 5 months after the end of the financial year.

8. Annual Return (section 36(1))

An annual (periodic) return of a prescribed association (Regulation 9, Form 9), must be lodged with the prescribed fee with the Office of Consumer and Business Affairs, Ground Floor, Chesser House, 91-97 Grenfell Street, telephone 8204 9779, within six months after the end of each of the association's financial years. It must be accompanied by a copy of the accounts, the auditor's report, the committee's statement, and the committee's report.

Please contact the Office of Consumer and Business affairs to discuss on-line lodgement of annual returns.

AUDIT REQUIREMENTS

9. Qualifications of Auditor (sections 35(2)(b) and 35 (4))

The auditor of a prescribed association must be either a:

- (a) registered company auditor;
- (b) firm of registered company auditors;
- (c) member of the ASCPA (Australian Society of Certified Practicing Accountants) or the ICA (Institute of Chartered Accountants); or
- (d) person approved by the Corporate Affairs Commission.

An application to the Commission seeking approval for a person to act as the auditor of a specified prescribed association should be made by the association and be accompanied by the prescribed fee. The Approval of Auditor "questionnaire" (refer to the brochure titled How to Apply for Approval of Auditor), providing details relating to the proposed auditor, should accompany the application.

Each application is considered on its merits having regard to, among other things, the qualifications and experience of the proposed auditor relevant to the complexity of the audit and the operations of the particular association. A person who is a member of the NIA (National Institute of Accountants) and has substantial previous relevant public audit experience would normally be given favorable consideration. Where a person has little or no public audit experience, very special circumstances would be required to exist in order to be granted approval.

On the basis that an auditor must be in a position to perform his or her duties independently, the following persons are precluded from being appointed as an auditor:

- (a) an officer;
- (b) a partner, employer or employee of an officer;
- (c) an employee;
- (d) a partner or employee of an employee,
of a prescribed association (section 35(3)).

10. Access and Explanations (section 37(1))

An auditor has a right of access at all reasonable times to the accounting and other records of the association and is entitled to require from any officer such information and explanations as he or she thinks are necessary for the purpose of the audit.

11. Obstruction of Auditor (section 37(2))

An officer must not, without lawful excuse, refuse or fail to allow an auditor access to accounting or other records, or refuse or fail to give any information or explanation required by the auditor, or hinder, obstruct or delay an auditor in the performance of his or her duties.

12. Auditor's Report (section 37(3))

The auditor must furnish a report to the committee in sufficient time for the association to lay the accounts before members within five months after the end of the financial year of the association (clause 6). The report must state:

- (a) whether or not the auditor is satisfied that the accounts present fairly the results of the association's activities for the financial year and the financial state of the association at the end of the financial year. This requirement applies even if the accounts have been prepared on a cash basis of accounting as determined by the committee of management,
- (b) whether the auditor has examined the accounts and auditors' reports of each subsidiary of the association and each trust of which the association is a trustee. In addition, the conclusions drawn from these examinations must be reported, and
- (c) whether the auditor has obtained all of the information and explanations required from the association.

13. Duties of Auditor (sections 37(4) and (5))

An auditor must immediately report certain matters in writing to the Commission as follows:

- (a) If an auditor is satisfied it is likely that there has been a contravention of, or failure to comply with, a provision of the Act or a rule of the association. This duty to report will arise, eg., in relation to a failure to keep proper accounts (section 39C), or if the auditor becomes aware that the committee has not held an AGM or that the audited accounts and committee's statement and report have not been laid before members (section 35(6)), or a prohibited distribution of any profits or assets has been made to a member or an associate of a member (section 55);
- (b) If an auditor is satisfied there is a deficiency in relation to the accounts or information in respect of the activities of the association. This does not apply if the auditor is of the opinion that the matter will be dealt with adequately by bringing it to the notice of the committee of the association;
- (c) If an auditor is removed or dismissed as auditor and the circumstances of the removal or dismissal. The outgoing auditor retains a duty to comply with this requirement, even after the removal or dismissal takes effect.

14. Qualified Privilege (section 37(6))

As the Act imposes on an auditor an obligation to report any defaults by the Association or its officers in compliance with the Act etc., an auditor (including a person who has been removed or dismissed as auditor) is provided with statutory protection, where there is no malice on his or her part, in relation to any action for defamation concerning any statements made in the course of performing duties under the Act.

15. Payment of Auditor (section 37A)

The reasonable fees and expenses of an auditor are payable by the association.

RELIEF FROM REQUIREMENTS

16. Power of Exemption (sections 38 and 39)

An objective of the statute is the obligation of financial disclosure which accompanies incorporation. That is, adequate disclosure of the financial affairs should be available to members at the annual general meeting, and to creditors and to any persons with an interest in seeing them. The legislation has coverage which includes associations formed for a wide variety of purposes. In recognition of the nature and spectrum of activities of associations, the legislation permits exemptions from the accounts and audit provisions to be granted by the Corporate Affairs Commission.

An application seeking relief from strict compliance, which may be granted for a particular period or generally and with or without conditions, must be made by the association in writing to the Commission addressing in full the reasons for the exemption sought and be accompanied by the prescribed fee. The matters considered by the Commission, particularly in relation to exemptions from obligations which apply in relation to more than one financial year, include:

- extent of relief sought;
- any unique reasons or special circumstances that apply;
- whether and how full compliance with the Act would place an unreasonable burden on the association; an applicant must demonstrate not only that there is a burden, but also that the burden is unreasonable;
- the extent of the impact on the interests of members and creditors of the association and how determined;
- the size, activities and structure of the association;
- the number and location of the association's members;
- the extent of any public interest;
- what alternative financial reporting methods are proposed;
- reasons why the association should be given a preferment in relation to other incorporated associations that include purposes that are similar to the association;
- whether compliance would be inappropriate to the circumstances because an external administrator has taken over all, or a significant part of, the day to day operations of the association;
- if relief is sought in respect of particular activities, the nature and size of the activities and their relationship to the association as a whole, and the extent of any government grants utilised in respect of those activities.

Disclaimer of Liability

The information contained in this document has been prepared to provide guidance in relation to the accounts and audit requirements of the Act. The Office of Consumer and Business Affairs is not providing legal advice and disclaims any liability arising from the use of this document. Members of the committee and other officers should familiarise themselves with the Associations Incorporation Act 1985 and Regulations and seek professional advice when applying it to their own situation.

IF YOU NEED MORE INFORMATION CONTACT:

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