

Voluntary cancellation or winding up of an incorporated association

Legal information for Australian Capital Territory community organisations



This fact sheet covers:

- cancellation, and
- the steps involved in a voluntary winding up.

There are a number of reasons why an incorporated association may wish to voluntarily cancel its registration or wind up.

Many community associations in the Australian Capital Territory (ACT) operate through a legal entity known as an incorporated association. The circumstances of the association are relevant when determining whether the association can voluntarily cancel its registration or whether the members need to wind up their association. Outlined below are the circumstances your association needs to consider when determining which approach to take.

How do we end our association voluntarily?

On many occasions, the ending of an incorporated association will be done with the consent of the members and committee. Often, this will be the case where an association has been set up for a particular cause (eg. a group set up to oppose a planning development), and that cause is no longer relevant. Alternatively, a group may wish to simply end its association as it no longer wishes to pursue its objectives as an association.

In the ACT, the *Associations Incorporation Act 1991* (ACT) (**AI Act**) provides for two ways to voluntarily end an incorporated association. These are:

- voluntary cancellation, and
- voluntary winding up.

The method you use will primarily depend on the size and status of your association. Further information on these two methods can be found below.

The AI Act allows some incorporated associations to end their operations without having to go through the formal steps of winding up. This process is called 'voluntary cancellation'.

Voluntary cancellation is available to associations that are no longer active and wish to formally end the affairs of the association. An application for voluntary cancellation may only be made where an

NOTE

Always check your association's rules to see whether there are additional requirements to winding up as these are likely to affect how you must undertake this process.

incorporated association has no assets, liabilities or interest in land. If an incorporated association has assets, it must dispose of those assets before cancellation.

How do we voluntarily cancel our association?

In order for an incorporated association to be cancelled voluntarily, the association must pass a special resolution which agrees to the voluntary cancellation of the incorporation.

The following are the statutory requirements for a valid special resolution for an incorporated association:

- a special resolution can only be passed at a general meeting of members. This can either be the annual general meeting or a special general meeting
- at least 21 days' notice of the proposed resolution must be given to all members, in the manner provided by the association's rules
- the notice must:
 - specify the date, time and place of the general meeting
 - state the text of the proposed special resolution, and
 - state the intention to propose the resolution as a special resolution. Preferably, use words along the following lines:
 - it is intended that the following resolution be proposed as a special resolution, or
 - the following resolution will be proposed as a special resolution, and
- the special resolution will only be passed at the general meeting if at least 75% of those members who vote on the resolution, vote in favour. This includes members who are not actually present themselves but whose 'proxies' cast votes on their behalf, only if the rules of the association permit voting by proxy. It excludes those members who abstain from voting. If the association has any additional requirements relating to the passing of special resolutions, these must also be met.

Once a special resolution has been passed which confirms that the association wishes to cancel its incorporation, it must distribute all its assets. The AI Act states that surplus assets are to be distributed to an association that has been nominated in the rules of the incorporated association or if no association is nominated in the rules, an association nominated by special resolution of the former association). The nominated association must:

- have objects that are substantially the same objects as the incorporated association;
- not be carried on for the object of trading or securing pecuniary gain for its members; and
- have a provision in its rules requiring any surplus property of the association to be passed, on the dissolution or winding up of the association, to another association that:
 - has objects substantially the same as the incorporated association; and
 - is not carried on for the object of trading or securing pecuniary gain for its members.

Once the assets have been distributed, the incorporated association can write to the Registrar-General explaining that a special resolution has been passed to cancel its incorporation and that it has no assets. This letter should specify the details of the special resolution and when it was passed. The

letter should also be signed by at least two committee members or one committee member and the public officer.

Once a valid application for cancellation has been made to the Registrar-General, the Registrar-General may serve a notice on the association and give public notice of the intention to cancel the association (usually by publishing in an ACT newspaper (the Canberra Times) and/or the Government Gazette).

Voluntary winding up

If your association wishes to end then it can be wound up voluntarily by special resolution. This option is available to any incorporated association in the ACT, regardless of size. Below is a summary of the steps involved in a voluntary winding up of an incorporated association.

In the ACT an association can be wound up via the following mechanisms:

- by special resolution of the association, or
- by application to the Supreme Court of the ACT (**the Supreme Court**).

NOTE

Under the *Associations Incorporation Act 1991* (ACT), winding up of an incorporated association is to be undertaken under the procedure and provisions of Commonwealth corporations legislation (*Corporations Act 2001* (Cth)). It will be difficult for an association to be sure that it has completed all the necessary steps without first obtaining legal advice or assistance from an accountant with experience in voluntary winding up.

This information is intended to provide only a general summary of the options open to an association and what is involved in each of those options. It should not be relied on as a complete guide to undertaking a winding up or any of the other options discussed.



By members resolution

Step 1: Find a liquidator

All associations that are voluntarily winding up must appoint a registered liquidator (see the ASIC [website](#) for a list of registered liquidators).

Step 2: Hold a meeting of members and pass a special resolution

To voluntarily wind up an incorporated association, the association must first pass a special resolution which confirms that the association is to be wound up. See above for information on how to pass a special resolution.

Step 3: Notify the Registrar-General

Once a special resolution has been passed at a general meeting of the association, the association must notify the Registrar-General that a special resolution to voluntarily wind up the association has been passed within seven days and publish a notice about the resolution.

The association or the liquidator must lodge the following forms with the Registrar-General:

- a 'Declaration of solvency' – Form 520 (available from the Australian Securities and Investments Commission (**ASIC**) [website](#))
- a 'Notification of resolution' – Form 205 (available from the ASIC [website](#))
- a 'Notification of appointment or cessation of an external administrator' – Form 505 (available from the ASIC [website](#))
- a 'Presentation of accounts and statements' – Form 524 (available from the ASIC [website](#)), and
- a 'Notification of final meeting convened by liquidator' – Form 523 (available from the ASIC [website](#)).

! CAUTION

There are certain time frames in which these forms must be completed and late fees may apply.

Step 4: The liquidator completes the winding up process

Once the liquidator has control of the association's cash and has sold all its assets, the liquidator pays all outstanding debts and then distributes any surplus assets. The AI Act sets out the framework for distributing surplus assets (ie. those assets which remain once all debts and liabilities are settled). The AI Act states how surplus assets are to be distributed (this is explained in the voluntary cancellation section above).

NOTE

An association should look to its rules to ensure that any distribution of surplus assets is in accordance with this document.



FURTHER READING

For more information on what happens if an organisation cannot pay its debts or the role of a liquidator, including how often a liquidator must report to members of an association go to Not-for-profit Law's fact sheet on "Voluntary deregistration or cancellation of a companies limited by guarantee" at www.nfplaw.org.au/windingup.



What happens when the winding up process is complete?

Once the winding up of an association is complete, the liquidator must lodge a final return (Form 5603) with the Registrar-General within one month, and notify the members if they have requested in writing to be notified of lodgement of the final return. The Registrar-General must then deregister the association 3 months after the end of administration return is lodged.

If your association is a charity registered with the Australian Charities and Not-for-profits Commission (**ACNC**), you should fill in and submit a "Form 5A: Application to revoke charity registration" (available

from the ACNC [website](#)). Before applying to cancel your association's registration as a charity, you must submit your most recent annual information statement, or explain why that is not necessary when you apply to cancel your registration.

If your association has an Australian business number (**ABN**), you should also consider cancelling this with the Australian Business Register (**ABR**). This will also cancel your registration for goods and services tax (**GST**) and other tax registrations.

Voluntary winding up via Supreme Court application

An incorporated association, or other party including the Registrar-General or a creditor, may also apply to the Supreme Court for it to be wound up. To do so, the association must pass a special resolution resolving to be wound up by the Supreme Court. The process of passing a special resolution is detailed above.

Before making an application to be wound up by the Supreme Court, it is recommended that the incorporated association seek legal advice from a practitioner that has experience in the area of insolvency and winding up. This practitioner can represent the association at the relevant hearings of the association's wind up application.

Upon the Supreme Court granting the incorporated association's request to be voluntarily wound up, it will appoint a liquidator who will oversee the winding up process (as summarised above).

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law website (www.nfplaw.org.au) has additional information on the following topics:

✔ Amalgamation and Mergers – www.nfplaw.org.au/amalgamationmergers

This page features resources on the legal issues to consider when amalgamating or merging with other organisations.

✔ Changing or ending your organisation – www.nfplaw.org.au/changingorending

This page looks at some legal issues that community organisations should think about when things change.

✔ Running the organisation – www.nfplaw.org.au/runningtheorg

This section of the Information Hub provides resources on governance, rules or constitution, holding meetings, and documents and records.

Legislation

✔ [Associations Incorporation Act 1991 \(ACT\)](#)

✔ [Corporations Act 2001 \(Cth\)](#)

Other Related Resources

✔ [Access Canberra](#)

✔ [Australian Securities and Investments Commission \(ASIC\)](#)

✔ [Australian Restructuring Insolvency & Turnaround Association](#)

✔ [Australian Charities and Not-for-profits Commission \(ACNC\)](#)

A Not-for-profit Law resource. Access more resources at www.nfplaw.org.au

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