

# Voluntary cancellation or winding up of an incorporated association

Legal information for NSW 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 organisations in New South Wales operate through a legal entity known as an incorporated association. The circumstances of the organisation are relevant when determining whether the organisation can voluntarily cancel its registration or whether the members need to wind up the organisation. Outlined below are the circumstances your organisation 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 its members and committee. Often this will be the case where an association has been set up for a particular cause (e.g. 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 New South Wales, *Associations Incorporation Act 2009* (NSW) (**AI Act**) provides for two ways to voluntarily end an incorporated association. These are:

- voluntary cancellation, and
- voluntary winding up.

The method you choose will depend on the size of the organisation and its financial position, including how much debt it has.

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

An application for voluntary cancellation is appropriate for small incorporated associations that have:

- no outstanding debt and liabilities
- lodged all outstanding annual summaries of financial affairs for 3 years before the application is made, and

### NOTE

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

- properly passed a special resolution to approve making an application to cancel its registration and to approve the proposed distribution of its surplus assets

If an association does not meet the above criteria, it may not be able to apply for voluntary cancellation and must be wound up (see below).

## How do we voluntarily cancel our association?

An association must pass a special resolution to approve making an application to cancel its registration and to approve the proposed distribution of its surplus assets before it can make an application for voluntary cancellation.

The following are the requirements under the AI Act for a special resolution:

- The resolution must be passed at meeting of the association where notice has been given to its members no later than 21 days before the date of the meeting;
- The resolution must be supported by at least 75% of the members who are entitled to vote on the proposed resolution under the association's constitution

The following should be included in the notice of a meeting where the special resolution is to be passed:

- the time and date of the meeting
- the terms of the proposed resolution
- a statement that the proposed resolution is intended to be passed as a special resolution

After the special resolution has been passed, the association must lodge a form (Form A8) with Fair Trading NSW to apply for the voluntary cancellation of the association. The form must include:

- the terms of the special resolution which has been approved by members
- a detailed list of the surplus assets (such as cash and money held in bank accounts), the monetary values of the surplus assets and the proposed distribution of the assets
  - this list should also identify surplus assets supplied by any government authority and any assets held on trust
- a statement which is verified by statutory declaration that the association does not have any outstanding liabilities, and
- the association's certificate of incorporation, or a statement that it has been lost or destroyed

After application is lodged, Fair Trading NSW will consider the application and, if approved, will cancel the association's registration. Fair Trading NSW will notify the party who lodged the application in writing of the cancellation and publish a notice of the association's cancellation in the NSW Gazette.

## Voluntary winding up

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An incorporated association that does not meet the criteria for voluntary cancellation may be wound up voluntarily instead. This might be necessary where the incorporated association has outstanding debts or other liabilities that it cannot pay. The process of winding up can be complex and parties

seeking to wind up incorporated associations voluntarily should seek legal advice. In New South Wales an association can be wound up via the following mechanisms:

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

#### NOTE

Under the *Associations Incorporation Act 2009* (NSW), 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 organisation 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 organisation 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

Associations that are voluntarily winding up must appoint a registered liquidator. The Australian Securities & Investments Commission (**ASIC**) [website](#) provides a list of registered liquidators.

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

The incorporated association should hold a meeting and pass a special resolution which confirms that the association should be wound up. The requirements for a special resolution and the requirements for a notice of meeting are set out above.

### Step 3: Notify Fair Trading NSW

Once a special resolution has been passed to wind up the incorporated association, the association or the liquidator must lodge certain forms with Fair Trading NSW which are:

- a 'Declaration of Solvency' - Form 520 (available from the ASIC [website](#)). Note: this should only be lodged if the association is solvent
- 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 statement' – Form 524 (available from the ASIC [website](#))
- a 'Notification of final meeting convened by liquidator' – Form 523 (available from the ASIC [website](#))

## Step 4: The liquidator completes the winding up process

In the process of liquidation, the liquidator will obtain control of the association, realise (i.e. sell) its assets, pay any outstanding debts and distribute surplus assets. The AI Act states that surplus property is to be distributed in accordance with a special resolution of the association, and distribution of surplus property:

- must be approved by Fair Trading NSW
- is not to be made to the benefit of any member (or former member) of the association, unless the member or former member is an association which prohibits distribution of property to its own members
- is not to be made to a person who would hold the property on trust for a member or former member, and
- is subject to any trust affecting the property.

### 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](http://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 with Fair Trading NSW within one month, and notify the members, if they have requested in writing, to be notified of lodgement of the final return. Fair Trading NSW 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 it 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 may 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. An application to the Supreme Court to wind up the association may also be made by another party, including Fair Trading NSW, a member of the association or a creditor,

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 winding 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

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## Related Not-for-profit Law Resources

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

✔ Amalgamation and Mergers – [www.nfplaw.org.au/amalgamationmergers](http://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](http://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](http://www.nfplaw.org.au/runningtheorg)

This section of the Not-for-profit Law website provides resources on governance, rules or constitution, holding meetings, documents and records and a guide on running an incorporated association in NSW..

## Legislation

✔ [Associations Incorporation Act 2009 \(NSW\)](#)

✔ [Corporations Act 2001 \(Cth\)](#)

## Other related resources

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

✔ [Fair Trading NSW Associations Forms](#)

✔ [Fair Trading NSW Associations Fees Table](#)

✔ [Fair Trading NSW information on Incorporated Associations](#)

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