

# Voluntary cancellation or winding up of an incorporated association

Legal information for Victorian community organisations



## This fact sheet covers:

- ▣ cancellation of incorporation
- ▣ voluntary winding up, and
- ▣ issues following cancellation.

## Overview

In Victoria, the *Associations Incorporation Reform Act 2012* (Vic) (**AIR Act**) provides for two ways to voluntarily end an incorporated association. These are:

- voluntary cancellation, and
- voluntary winding up.

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 the association. The method you use will primarily depend on the size and status of your incorporated association.

## Voluntary cancellation

In some instances, the AIR Act allows some smaller incorporated associations to end their operations without having to go through the formal steps of winding up. This process is called 'voluntary cancellation'. On many occasions, the ending of an incorporated association will be done with the consent of the members. Often, this will be the case where an organisation 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 or the association no longer wishes to pursue the objectives for which it was formed.

### 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.

An application for voluntary cancellation may only be made where an incorporated association:

- has a total of assets worth less than \$10,000 (or such other amount that may be prescribed by the regulations from time to time)
- does not have any outstanding debts or liabilities
- has paid all relevant fees and penalties applying to it under the AIR Act, and
- is not a party to ongoing legal proceedings.

If an association fails to meet any of the above criteria, then it is unable to apply for voluntary cancellation and must instead be 'wound up'.

If an association does meet the relevant criteria, an application to cancel the association may be made to Consumer Affairs Victoria by:

- the association itself (if members have passed a special resolution approving the making of the application (if the association is still operating))
- a member or former member of the association (if the association is no longer in operation)
- a statutory manager of the association appointed under the AIR Act, or
- the administrator of the association (if the association is under voluntary administration).

### What are the steps to voluntarily cancel an association?

The steps for voluntary cancellation will depend on whether the association is still active, or if it has ceased to operate by the time it attempts to end its operations.

As noted in the section above, for associations that meet the above criteria and are still operating up to the date of cancellation, the association must pass a special resolution which approves the making of the application for the cancellation of the incorporation of the association. The requirements for a valid special resolution for an incorporated association are as follows:

- it must 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. Depending on the rules of the association, this may include members who are not present at the meeting themselves but whose 'proxies' cast votes on their behalf. It excludes those members who abstain from voting. If the association's rules have any additional requirements relating to the passing of special resolutions, these must also be met.

Once the special resolution approving the making of the application for cancellation of incorporation has been passed, the association must make an application to Consumer Affairs Victoria. If the association is no longer in operation, an application for cancellation of incorporation may be made to Consumer Affairs Victoria by a member or former member. In either case, the following must be lodged with Consumer Affairs Victoria:

- a completed 'Application for cancellation of incorporation' form (available from the Consumer Affairs Victoria website). This form requires certain declarations to be made by the application, for example, a declaration that the association has gross assets of less than \$10,000 and is not a party to any legal proceedings
- any annual statements that may be outstanding prior to the time the association ceased operating (together with the lodgement fee for each of those annual statements)
- if a special resolution was passed relating to the distribution of assets, a copy of the full set of meeting minutes, and
- proof of distribution of assets.

Once a valid application for cancellation has been made to Consumer Affairs Victoria, Consumer Affairs Victoria will give public notice of the intention to cancel the incorporation of the association (usually by publishing in the Government Gazette and the Consumer Affairs Victoria website), and invite any interested parties to make a written objection to the cancellation within 28 days. If no objections to the cancellation are received, Consumer Affairs Victoria will proceed to cancel the association's incorporation.

Once the association's incorporation is cancelled, the Registrar of incorporated associations must:

- notify the applicant in writing that the association's incorporation has been cancelled, and
- confirm the date of cancellation.

If your association is endorsed as a deductible gift recipient (**DGR**), any surplus assets will need to be distributed to another fund, authority or institution that is also endorsed as a DGR. If the organisation is also registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**), it will also need to ensure that the DGR to which the surplus assets are transferred is also a registered charity.

## Voluntary winding up

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If your association wishes to end, but does not meet the criteria for voluntary cancellation, then it must be wound up voluntarily by special resolution. This option is available to any incorporated association, regardless of its annual revenue.

'Winding up' involves the appointment of a person (usually a specifically qualified accountant) called a 'liquidator' who takes over the running of the incorporated association, gets control of the association's assets and then sells or distributes those assets to pay the association's creditors. This is a complex process undertaken in accordance with specific provisions of the *Corporations Act 2001* (Cth) and will require professional advice. Members will need to pass a special resolution approving the winding up of the association.

If there are any surplus funds left over after the creditors of the association are paid, the liquidator will pay or distribute those funds in accordance with the association's rules. You should refer to the comments above about distribution of surplus assets if your organisation is endorsed as a DGR and/or registered with the ACNC as a charity. The liquidator must lodge certain forms with Consumer Affairs Victoria (including a declaration of solvency, a presentation of accounts and statements).

Note that in some cases, associations may be compulsorily ended by order of the Victorian Supreme Court. The court may order a compulsory winding up where:

- the association has by special resolution resolved that it would be wound up by the court
- the association suspends its operations for a whole year
- the association is unable to pay its debts
- the association has secured pecuniary profit for its members
- the association has, as trustee, secured pecuniary profit for its members
- the association has acted outside the purposes stated in its rules, or
- the court considers it is just and equitable to do so.

Consumer Affairs Victoria also has the power to wind an association up in certain circumstances, including where an association has failed to lodge financial statements for two successive years or the incorporation of the association was obtained by fraud or mistake.

## Following cancellation

The AIR Act requires an association to keep all financial records for a minimum of seven years that:

- correctly record and explain its transactions and financial position and performance, and
- enables true and fair financial statements to be prepared.

### Other obligations

The Australian Taxation Office and the ACNC also regulate not-for-profit associations. If your association is ending, you will need to check with these bodies whether there are any additional requirements that must be satisfied.

# 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 website provides resources on governance, rules or constitution, holding meetings, and documents and records.

## Legislation

- [Associations Incorporation Reform Act 2012 \(Vic\)](#)

- [Corporations Act 2001 \(Cth\)](#)

## Consumer Affairs Victoria

- [Consumer Affairs Victoria \(CAV\)](#)

- [Consumer Affairs Victoria - Forms](#)

## Other Related Resources

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

- [Australian Securities and Investments Commission](#)

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://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](http://www.nfplaw.org.au)

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