

Voluntary cancellation or winding up of an incorporated association

Legal information for Tasmanian 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 Tasmania 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 by the consent of the 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.

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.

In Tasmania, the *Associations Incorporation Act 1964* (Tas) (**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 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 an incorporated association that:

- has assets worth less than \$1,000
- is not currently carrying on operations, and

- has paid all relevant fees and lodged all documents applying to it the department of Consumer, Building and Occupational Services (CBOS) up until the date of cancellation.

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

How do we voluntarily cancel our association?

For associations that meet the above criteria, the association must first pass a special resolution which agrees to request that the incorporation be voluntarily cancelled by the Commissioner for Corporate Affairs (part of CBOS).

The following are the requirements under the AI Act 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
- notice of the proposed resolution must be given to all members, in the manner provided by the association's rules
- the notice should:
 - 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. 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 the following documents should be provided to the CBOS:

- a [Notice of Special Resolution for Deregistration](#), and
- the association's final Annual Return covering the period up to the date of cancellation.

The Notice of Special Resolution must indicate where the remaining assets of the association have been distributed. The assets, property or cash reserves of an incorporated association cannot be distributed to current or former members.

On receipt of the Notice of Special Resolution, the CBOS may approve the cancellation and within 14 days publish notice of the cancellation in the Government Gazette. The association will also be notified. Cancellation takes effect when the notice of cancellation is published (in the Government Gazette).

Voluntary winding up

If your association wishes to end, but does not meet the criteria for cancellation, then it must be wound up. In Tasmania an association can be wound up via the following mechanisms:

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

Both of these options are available to any incorporated association in Tasmania, regardless of size. Below is a summary of the steps involved in voluntarily winding up of an incorporated association.

NOTE

Under the *Associations Incorporation Act 1964* (Tas), 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

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 the information on how to pass a special resolution).

Step 3: Notify CBOS

Once a special resolution has been passed at a general meeting of the association, the association must lodge certain documents with the CBOS, which are:

- 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

! CAUTION

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

- a 'Notification of final meeting convened by liquidator' – Form 523 (available from the ASIC [website](#)).

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.

NOTE

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

If the rules of the association are broad, and only provide that surplus assets are to be distributed to a 'likewise association' then there is some discretion on the association to choose how and where the assets are placed (as long as it is also consistent with the AI Act requirements, as set out above).



What happens when the winding up process is complete?

Once the external administration of an association is complete, the liquidator must lodge a final return with ASIC and notify the members if they have requested, in writing, to be notified of lodgement of the final return.

When the winding up process is complete the liquidator will lodge an end of administration return with the CBOS who 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.

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.



Winding up by application to the Supreme Court

An incorporated association, or other party including the department 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 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).

The incorporated association may pass a resolution setting out the manner in which it wishes the Supreme Court to distribute its surplus assets. This resolution must be passed by at least two thirds of the members of the association.

If the Supreme Court is of the view that distribution of the surplus assets in accordance with the resolution is unjust, or the association has not passed a resolution setting out the manner in which the surplus assets are to be distributed, then the Court may decide how to distribute these assets. In doing so the Supreme Court will have regard to the objects and purpose of the association.

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 website provides resources on governance, rules or constitution, holding meetings, documents and records and a Secretary's Satchel.

Legislation

✔ [Associations Incorporation Act 1964 \(Tas\)](#)

✔ [Corporations Act 2001 \(Cth\)](#)

Other Related Resources

✔ [Consumer, Building and Occupational Services](#)

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

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

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

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