

# Voluntary dissolution or winding up of an incorporated association

Legal information for Northern Territory community organisations



## This fact sheet covers:

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

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

Many community organisations in the Northern Territory operate through a legal entity known as an incorporated association. The circumstances of the association are relevant when determining whether the association can voluntarily dissolve 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 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.

In the Northern Territory, the *Associations Act* (NT) (**the Act**) provides for two ways to voluntarily end an incorporated association. These are:

- voluntary dissolution, 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 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 'dissolution'. In some other states, it may also be referred to as 'cancellation'.

Voluntary dissolution is only available to associations that are no longer active and wish to formally end the affairs of the association.

## How do we voluntarily dissolve our association?

The steps for voluntary dissolution will depend on whether an association has assets or not by the time it attempts to end its operations.

If the association is no longer active and **does not have assets**, the public officer of an incorporated association may apply to

[Licensing NT](#) to dissolve the association. The public officer is required to complete a statutory declaration to the effect that the association is no longer carrying out its objectives and is not in operation. The statutory declaration should also state that the association has no assets or liabilities. Licensing NT will publish a notice of intention to dissolve your association in the Northern Territory Government Gazette. After three months if there is no objection, a notice of dissolution is gazetted and your association will come to a formal end on the same day.

Before dissolution can take place, an association should first make sure it has complied with all audit requirements. The audit requirements are set out in the Act and explained on Licensing NT's website [here](#).

If an association **does have assets**, the association's members must pass a special resolution to dissolve the association and transfer its assets to:

- another association with similar or charitable objectives, or
- the local council within which the property is located.

The resolution will have no effect unless the public officer of the association within 14 days publishes the association's intention to transfer its assets in both a Northern Territory newspaper and publishes a notice in the Northern Territory Government Gazette.

The public officer must also within 14 days complete and lodge the following documents with [Licensing NT](#):

- resolution authorising the transfer of property of an association form
- notice of intention to transfer property of an association form, and
- a copy of the advertisement published about the intention for the association's property

If no objections to the publication of intention to transfer assets are received within 28 days of publication, then the association may transfer its assets.

Once the assets have been transferred, the public officer must immediately file a notice of the completion with the Licensing NT. After three months of this filing of the notice, the association is taken to be dissolved.

### ! CAUTION

Serious penalties apply for swearing a false statutory declaration.

## Voluntary winding up

If your association wishes to end by voluntarily winding up then it must resolve to do so by special resolution. This option is available to any association in the Northern Territory. Below is a summary of the steps involved in a voluntary winding up of an association.

## NOTE

Under the *Associations Incorporation Act* (NT), 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.

The following are the statutory requirements for a valid special resolution for an 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 constitution
- 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' (if the association's constitution allows for voting by proxy) cast votes on their behalf. 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.

## Step 3: Notify the Commissioner

Once a special resolution has been passed at a general meeting of the association, the association must lodge certain documents with the Commissioner, 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
- 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 Act sets out the framework for distributing surplus assets (i.e. those assets which remain once all debts and liabilities are settled). The Act states surplus assets are to be distributed in accordance with:

- the constitution of the incorporated association, or
- if there is no valid constitution dealing with distribution of surplus assets, by special resolution of the association.

### NOTE

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

### 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 (Form 5603) with Licensing NT within one month, and notify the members if they have requested in writing to be notified of lodgement of the final return. Licensing NT 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](http://www.nfplaw.org.au/windingup).



## Voluntary winding up by application to the Supreme Court

An incorporated association 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).

# 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, and documents and records.

## Legislation

- ✔ [Associations Act \(NT\)](#)
- ✔ [Corporations Act 2001 \(Cth\)](#)

## Other Related Resources

- ✔ [NT Government Incorporated Associations page](#)
- ✔ [Australian Securities and Investments Commission \(ASIC\)](#)
- ✔ [Australian Restructuring Insolvency & Turnaround Association](#)
- ✔ [Australian Charities and Not-for-profits Commission \(ACNC\)](#)

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