

Voluntary winding up of an incorporated association

Legal information for Queensland community organisations



This fact sheet covers the steps involved in a voluntary winding up.

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

Many community organisations in Queensland 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 their 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.

NOTE

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

In Queensland, the *Associations Incorporation Act 1981 (Qld)* (**AI Act**) provides for only one way to voluntarily end an incorporated association. This is the voluntary winding up process.

Voluntarily winding up an association

The process of winding up can be complex and parties seeking to wind up incorporated associations voluntarily should seek legal advice. In Queensland, an association can be wound up via one of the following mechanisms:

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

NOTE

Under the *Associations Incorporation Act 1981* (Qld), winding up of an incorporated association is to be undertaken under the procedure and provisions of Commonwealth corporations legislation (*Corporations Act 2001* (Cth)), with some additional requirements included in the AI Act itself.

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.



Step 1: Determine solvency and find a liquidator

You may only voluntarily wind up your association if it is still **solvent**, meaning it still has sufficient assets to cover its debts and liabilities.

To voluntarily wind up, you need to appoint 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: Call a general meeting

A general meeting must be called (in accordance with your association's rules) to close down your incorporated association. The incorporated association must be solvent.

Two separate special resolutions must be passed at the general meeting. These are:

- a special resolution resolving to wind up the association, and
- a special resolution resolving that any remaining surplus assets of the association will be distributed and how those surplus assets will be distributed.

Under the AI Act, for a special resolution to be valid, it must:

- be passed at a general meeting of the association where notice has been given to its members in accordance with the association's rules, and
- be supported by at least 75% of the members who are present at the meeting and are entitled to vote on the proposed resolution.

Written notice of a proposed special resolution, as well as the time and place of the general meeting at which special resolution will be moved, must be given as required under the association's rules. This notice must be given before the general meeting, to each member who has a right to vote on the resolution, and it must set out the terms of the proposed special resolution. To abide by the applied provisions of the *Corporations Act 2001* (Cth), it is recommended to give at least 21 days' notice of the proposed special resolution to all members, in the case that your association's rules do not provide for this.

The second special resolution resolving the manner in which surplus assets are to be distributed must be in line with the association's rules, for example, if the association's rules have any limitations on the

manner of how surplus assets can be distributed, or the type of entity that the assets may be distributed to.

Please note that if this second special resolution is not passed, surplus assets may be vested in and dealt with by the Public Trustee.

NOTE

If the association uses the model rules contained in schedule 4 of the *Associations Incorporation Regulations 1999 (Qld)* (**the model rules**) then the following constraints will apply:

- the surplus assets must not be distributed amongst the members of the association
- upon winding up, if the association has any surplus assets, those assets must be given to another entity that has similar objects to the association's objects, and
- that entity's rules must prevent that entity from distributing its assets and income to its members.

Step 3: Lodge Documents with Fair Trading Queensland

The association has one month from the general meeting to lodge the following documents with Fair Trading Queensland:

- 'Application for voluntary winding up of an incorporated association' form ([Form 9a](#))
- a copy of the special resolution to close down, signed by two office bearers
- copies of the receipts for your surplus assets
- certificate of incorporation – **this must be the original, or a statutory declaration that the original has been destroyed must be lodged**, and
- your association's final financial statement.

Form 9a should be completed by the association's president, secretary or treasurer.

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 first and then distributes any surplus assets. The liquidator should obtain receipts from any entity that receives the association's surplus assets.

Section 92 of the AI Act sets out the framework for distributing surplus assets of the association (ie. those assets which remain once all debts and liabilities are settled). Section 92 states that surplus assets are to be distributed in accordance with:

- the special resolution relating to the distribution of the association's surplus assets, which will need to comply with the association's rules, or the model rules if the association doesn't have its own rules, or
- where no special resolution has been passed:
 - the Queensland Government may by regulation vest the surplus assets of the association in the Public Trustee, and

- the Public Trustee must apply the funds for the purpose upon which they were held prior to being vested in the Public Trustee unless the Queensland Government prescribes by regulation for the funds to be vested in another person or incorporated association.

NOTE

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

The association's rules must provide for the distribution of any surplus assets on the winding up or dissolution. If the association has used the model rules as the basis of the association's rules then the surplus assets will need to be distributed to another entity having similar objects to the association's objects and the rules of that association prohibit the distribution of the association's income and assets to its members.

If the association's rules are silent on how the surplus assets will be distributed then the surplus assets will be distributed on the basis of the mechanism described in the model rules.



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

Fair Trading Queensland must cancel the registration within 3 months after the liquidator has lodged the return.

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.

Voluntary winding up via Supreme Court application

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 passing of two special resolutions will also be required in these circumstances (as described 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 website provides resources on governance, rules or constitution, holding meetings, and documents and records.

Legislation

✔ [Associations Incorporation Act 1981 \(Old\)](#)

✔ [Corporations Act 2001 \(Cth\)](#)

Other Related Resources

✔ [The Queensland Office of Fair Trading](#)

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

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

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

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