

Ending an incorporated association

Legal information for NSW community organisations

This fact sheet covers:

- ▀ involuntary deregistration
- ▀ voluntary deregistration, and
- ▀ issues following deregistration.

Overview

An incorporated association in New South Wales ceases to exist when its incorporation is 'cancelled' by the Director-General of NSW Fair Trading. This can be based on action taken by the Director-General, or based on an application by the association to be wound up.

How an incorporated association ends will be dependent on a number of factors, including the extent of the assets held by the organisation, and whether the decision to end is voluntary (ie. the will of the members) or compulsory (ie. enforced by a court or NSW Fair Trading).

Involuntary deregistration

In some instances, an association will be wound up or cancelled without the consent of its members. The *Associations Incorporation Act 2009* (NSW) (**AI Act**) allows an organisation to be ended either by the Director-General, or by the courts in certain circumstances.

The circumstances in which compulsory deregistration may occur vary significantly, however it generally relates to a situation where the association is no longer able to operate, where it has repeatedly failed to meet its compliance and reporting obligations, or where there has been serious misconduct by the association.

The Director-General may involuntarily cancel an incorporated association's registration if:

- the association is not in operation
- the association has less than 5 members
- the association has failed to establish and maintain a committee
- the committee does not include 3 or more members over the age of 18 years and if it does not have at least 3 members resident in Australia
- the association has been providing a financial gain for its members
- the association has not held an annual general meeting for 3 years
- the association has not lodged an annual summary of financial affairs for 3 years
- the association has failed to comply with a direction to change its name, or

- the association was registered because of fraud or mistake.

In the event an involuntary cancellation occurs, the property of the association comes under the control of the Director-General. The Director-General will give directions in relation to payment of the association's surplus and distribution of any property and the winding up of the association's affairs.

Voluntary deregistration

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 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. Alternatively, a group may wish to simply end its association as it no longer wishes to pursue its objectives as an organisation.

In New South Wales, the 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 size and status of your organisation. Further information on these two methods can be found below.

To end an incorporated association by voluntary cancellation, the association must pass two special resolutions:

- approving the cancellation of registration, and
- proposing a distribution of the assets of the organisation.

The assets will need to be distributed in accordance with the organisation's constitution. This means that if the organisation 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.

To make the application to NSW Fair Trading the association must then lodge an 'Application for voluntary cancellation of registration of an association' form. The form must include details of:

- the special resolutions passed by the association
- a statement on the distribution of assets, to be approved by the Director-General of NSW Fair Trading
- a statement confirmed by two committee members noting that the association doesn't have any outstanding liabilities, and
- the certificate of incorporation (or if it has been lost or destroyed, a statement to that effect).

An incorporated association which is unable to pay its debts is unable to apply for voluntary cancellation. If your association is unable to pay its debts you should seek independent advice from a solicitor or accountant. If your organisation wishes to end, but does not meet the criteria for cancellation then it must be 'wound up' by special resolution.

'Winding up' involves the appointment of a person (usually a specially qualified accountant) called a 'liquidator' who takes over the running of the incorporated association, gets control of the company's assets and then sells or distributes those assets to pay of the association's creditors.

If there are any funds left over after the creditors are paid, the liquidator will pay or distribute those funds in accordance with the association's constitution. 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.

Following deregistration

If deregistration of an incorporation is approved by the Director-General, the Director-General will send notice to the incorporated association giving notice of the deregistration, and may publish a notice in the Gazette.

While there is no specific requirement in the AI Act or *Associations Incorporation Regulation 2010* (NSW) requiring the association to keep a copy of its books and records, NSW Fair Trading recommends that they are kept for a minimum of 7 years. The books and records may include, but are not limited to:

- the register of committee members
- the register of disclosed interests
- minutes of meetings, and
- financial records of the association.

Resources

Legislation

- ▀ [Associations Incorporation Act 2009 \(NSW\)](#)

NSW Fair Trading

- ▀ [NSW Fair Trading Associations Forms](#)
- ▀ [NSW Fair Trading Associations Fees Table](#)

NSW Fair Trading is the organisation responsible for regulating incorporated associations.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

© 2016 Justice Connect. You may download, display, print and reproduce this material for your personal use, or non-commercial use within your not-for-profit organisation, so long as you attribute Justice Connect as author and retain this and other copyright notices. You may not modify this resource. Apart from any use permitted under the *Copyright Act 1968* (Cth), all other rights are reserved.

To request permission from Justice Connect to use this material, contact Justice Connect at PO Box 16013, Collins Street West, Melbourne 8007, or email nfplaw@justiceconnect.org.au.