

# Ending an organisation - FAQs

Legal information for community organisations

## This fact sheet covers:

- What do we have to do with surplus assets?
- Can we wind up some parts of our organisation, and not others?
- If we are a registered charity, what do we need to do?
- How do people know our organisation has ended?
- If we are wound up, can we start up again later?
- If we have DGR status, does this make a difference to the process?

## Organisations often have a number of questions regarding ending an organisation.

There are different steps for ending an organisation, depending on the legal structure of your group (ie. whether you are an incorporated association or company limited by guarantee), the manner in which the end of the organisation is coming to an end (voluntarily or compulsorily), its size and location.

This fact sheet aims to answer the frequently asked questions and provide a little more guidance about the process. These FAQs are relevant to all organisations that are either incorporated associations or companies limited by guarantee.

### RELATED RESOURCES

For more detailed information on ending an organisation, see the Ending an organisation page on the Not-for-profit Law Information Hub at [www.nfplaw.org.au/windingup](http://www.nfplaw.org.au/windingup).

## 1. What is the process of distributing surplus assets?

### Incorporated associations

If you are an incorporated association, you will need to wind up your organisation in accordance with the laws that govern incorporated associations. The law that is applicable to you will depend on which state or territory your organisation was incorporated in.

Most provisions in the legislation that apply to the winding up of incorporated associations require you to distribute surplus assets in accordance with your rules or by special resolution. In most states, distributing surplus assets in accordance with your rules (or governing document) will ensure you are complying with the relevant incorporated association laws (this includes in VIC, SA, ACT and NT).

Some states require you to undertake additional steps such as special resolutions and/or approvals (NSW, QLD and WA).

The laws that apply to the distribution of surplus assets for incorporated associations are summarised in the table below.

| Location                     | Legislation   | Section   | The process of distribution of surplus assets  |
|------------------------------|---|---|--|
| Victoria                     | <i>Associations Incorporation Reform Act 2012</i> (Vic) | Section 132 – distribution of surplus assets        | <ul style="list-style-type: none"> <li>In accordance with the rules of the association, or by special resolution.</li> <li>Property supplied by a government department, authority or council must be returned.</li> </ul> |
| NSW                          | <i>Associations Incorporation Act 2009</i> (NSW)        | Section 65 – distribution of surplus property       | <ul style="list-style-type: none"> <li>By special resolution.</li> <li>Any distribution must be <b>approved</b> by the secretary.</li> <li>Property supplied by a government department must be returned.</li> </ul>       |
| Queensland                   | <i>Associations Incorporation Act 1981</i> (Qld)        | Section 92 – distribution of surplus assets         | <ul style="list-style-type: none"> <li>By special resolution in accordance with rules.</li> <li>Where there is no special resolution, Governor in Council may vest the surplus in the public trustee.</li> </ul>           |
| Western Australia            | <i>Associations Incorporation Act 2015</i> (WA)         | Part 10 – cancellation of incorporation             | <ul style="list-style-type: none"> <li>In accordance with a “distribution plan” that has been approved by special resolution.</li> <li>The distribution plan must be <b>approved</b> by the Commissioner.</li> </ul>       |
| South Australia              | <i>Associations Incorporation Act 1985</i> (SA)         | Section 43 – distribution of assets upon winding up | <ul style="list-style-type: none"> <li>In accordance with the rules of the association or by special resolution or Court order.</li> </ul>   |
| Australian Capital Territory | <i>Associations Incorporation Act 1991</i> (ACT)        | Section 92 – property of a defunct association      | <ul style="list-style-type: none"> <li>In accordance with the rules of the association (which requires distribution to an organisation with substantially the same objects) or by special resolution.</li> </ul>           |
| Northern Territory           | <i>Associations Act</i> (NT)                            | Section 76 – distribution of assets on winding up   | <ul style="list-style-type: none"> <li>In accordance with the rules of association, or by special resolution or Court order.</li> </ul>  |
| Tasmania                     | <i>Associations Incorporation Act 1964</i> (Tas)        | Section 33 – distribution of surplus assets         | <ul style="list-style-type: none"> <li>By resolution that has been <b>approved</b> by a Court order.</li> </ul>  |

## Companies limited by guarantee

If you are a company limited by guarantee, you will need to wind up your organisation in accordance with the process outlined in the *Corporations Act 2001* (Cth) and in accordance with your constitution.

The process for ending the organisation will depend on if it is voluntary (deregistration or winding up) or compulsory. For more information, see the ‘Ending an organisation’ page on the Not-for-profit Law Information Hub at [www.nfplaw.org.au/windingup](http://www.nfplaw.org.au/windingup).

## 2. Can we wind up some parts of our organisation and not others?

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Winding up is generally only necessary where you want to bring the entire organisation to an end. If you only wish to bring parts of your organisation to an end, how that is done will depend on your organisation's constitution. For example, if those parts are just a division or business unit of the organisation, then there are no special rules as to how you bring that division to an end (subject to any rules that may apply in your constitution). You may need to re-deploy staff or make them redundant, sell assets, terminate leases etc and while each of those steps will need to be carefully considered and each will involve legal issues, they do not affect the existence of the organisation.

## 3. If we are a registered charity, what do we need to do?

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If your organisation is a charity registered with the Australian Charities and Not-for-profits Commission (**ACNC**), you should also fill in and submit a "Form 5A: Application to revoke charity status", available on 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 it is not necessary when you apply to cancel your registration.

### FURTHER READING

For more information, see the ACNC's page 'Wind up my charity' at [www.acnc.gov.au](http://www.acnc.gov.au).

## 4. If we have DGR status, does this make a difference to the process?

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No, having deductible gift recipient (**DGR**) status does not change the process you must follow when winding up the organisation.

However, having DGR status will determine who you need to distribute your surplus assets to. All organisations that have been endorsed by the ATO as having DGR status are required to have a clause within their constitution (also referred to as governing rules) dealing with winding up the organisation.

This clause will require you to distribute all surplus assets to another DGR fund, authority or institution that has a similar primary purpose to your organisation. Therefore, if you have DGR status, you must check your organisation's constitution and make sure you are complying with this winding up clause and any other provisions in your constitution that deal with the transfer of surplus assets (for example, DGR endorsement will also require that your rules ensure profits are directed toward achieving your organisation's purpose and will generally prohibit distributions of profits to members – both whilst operating and when winding up).

### FURTHER READING

For more information on ending an organisation with DGR status see the Australian Tax Office website on [Ending your organisation](#).

## 5. How do people know our organisation has ended?

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If you are an incorporated association, and your organisation has ended, you must notify your regulator by lodging particular documents, who will generally place them on a public record (see the Resources at the end of this fact sheet for a list of regulators).

If you are a CLG, you must notify ASIC who will place them on the public record.

If a liquidator has been appointed to wind up the organisation, the organisation must include the words “in liquidation” immediately after its name where it first appears in all public documents (letters, cheques, reports etc).

## 6. If we are wound up, can we start up again later?

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Until an order for winding up is made by the Court, the application for winding up can be withdrawn by the person (or organisation) who lodged the application or by the consent of the Court.

If a winding-up order has already been made by the Court, a liquidator, creditor or member of the organisation that is being wound up can apply to the Court for an order to terminate the winding up.

However, in practice these applications are very difficult to make and a court will usually require compelling reasons before it will either terminate a winding up already ordered or reinstate an organisation that has been fully wound up. In many cases, it may be easier to start a new organisation than revive one that is being wound up or has ceased to exist.

If you are a company limited by guarantee, ASIC also has the power to reinstate the registration of an organisation if it is satisfied that it should not have been deregistered.

In some instances, the regulator of incorporated associations in your state or territory may also have the power to reinstate the registration of an organisation if it is satisfied that it should not have been deregistered (such as where there has been some administrative error).

| <b>Location</b>              | <b>Legislation</b>                                      | <b>Section</b>   | <b>The process of distribution of surplus assets</b>   |
|------------------------------|---|--|--|
| Victoria                     | <i>Associations Incorporation Reform Act 2012</i> (Vic) | Section 142<br>reinstatement of cancelled registration by Registrar<br>Section 143<br>reinstatement of cancelled registration by Supreme Court | <ul style="list-style-type: none"> <li>Registrar may reinstate where satisfied that registration should not have been cancelled</li> <li>Supreme Court has the power to reinstate registration (application to the Court must be made by a “person aggrieved” within 15 years of cancellation).</li> </ul> |
| NSW                          | <i>Associations Incorporation Act 2009</i> (NSW)        | Section 84<br>reinstatement of registration  | <ul style="list-style-type: none"> <li>Commissioner may reinstate where satisfied that registration should not have been cancelled.</li> </ul>   |
| Queensland                   | <i>Associations Incorporation Act 1981</i> (Qld)        | Section 94B(1)   | <ul style="list-style-type: none"> <li>Chief Executive may reinstate registration where satisfied that registration should not have been cancelled.</li> </ul>   |
| Western Australia            | <i>Associations Incorporation Act 2015</i> (WA)         | Section 151(1) – reinstatement of incorporation  | <ul style="list-style-type: none"> <li>Commissioner may reinstate where satisfied that registration should not have been cancelled.</li> </ul>   |
| South Australia              | <i>Associations Incorporation Act 1985</i> (SA)         | Section 44(3)  | <ul style="list-style-type: none"> <li>Commission may reinstate registration where satisfied that deregistration occurred through error.</li> </ul>  |
| Australian Capital Territory | <i>Associations Incorporation Act 1991</i> (ACT)        | Section 93(7) – cancellation of incorporation  | <ul style="list-style-type: none"> <li>Registrar General may reinstate registration if cancellation was made in error.</li> </ul>  |
| Northern Territory           | <i>Associations Act</i> (NT)                            | Section 71(1) – court may declare dissolution of association void  | <ul style="list-style-type: none"> <li>Only the Supreme Court has the power to reinstate registration (application to be made by an “interested person” within 5 years of cancellation).</li> </ul>  |
| Tasmania                     | <i>Associations Incorporation Act 1964</i> (Tas)        | Section 35 – review of cancellation  | <ul style="list-style-type: none"> <li>Only the Magistrates Court has the power to reinstate registration (application to be made by Public Officer, creditor or member).</li> </ul>   |

# Resources

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## Related Not-fo-profit Law resources

The Not-for-profit Law Information Hub ([www.nfplaw.org.au](http://www.nfplaw.org.au)) has further resources on the following topics:

### Ending an organisation

This page provides an overview of the process of ending an association, and includes links to our detailed guidance for incorporated associations and CLGs.

## Regulators of incorporated associations

- Victoria – [Consumer Affairs Victoria](#)
- New South Wales – [NSW Fair Trading](#)
- South Australia – [Consumer and Business Services \(CBS\)](#)
- Queensland – [Queensland Office of Fair Trading](#)
- Tasmania – [Consumer Affairs and Fair Trading](#)
- Australian Capital Territory – [Access Canberra](#)
- Northern Territory – [Northern Territory Government](#)
- Western Australia – [Consumer Protection WA](#)

## Australian Securities and Investments Commission (ASIC)

### Deregistration

This page on the ASIC website contains further information about deregistering and winding up companies (note that Parts 5.4B, 5.5 and 5.6 of the Corporations Act (as amended by the Associations Incorporation Act 1985) apply to the winding up of an Incorporated Association in South Australia).

## Australian Taxation Office (ATO)

### Ending your organisation

This page on the ATO's website guides you through the process for cancelling your registration for an ABN, GST, luxury car tax, wine equalisation tax, pay as you go withholding and fuel tax credits.

## Legislation

- Associations Incorporation Reform Act 2012* (Vic)
- Associations Incorporations Act 2009* (NSW)
- Associations Incorporations Act 1981* (QLD)
- Associations Incorporations Act 2015* (WA)
- Associations Incorporations Act 1985* (SA)
- Associations Incorporations Act 1991* (ACT)
- Associations Incorporations Act 1964* (Tas)
- Corporations Act 2001* (Cth)

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