

Voluntary cancellation or winding up of an incorporated association

Legal information for Victorian 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 its organisation.

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 organisation 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 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 Victoria, the *Associations Incorporation Reform Act 2012* (Vic) (**AIR 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.

The AIR 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 'voluntary cancellation'.

Voluntary cancellation is available to small associations with few assets, or groups that are no longer active and wish to formally end the affairs of the organisation. An application for voluntary cancellation may only be made where an incorporated association:

- has a total of assets worth less than \$10,000

NOTE

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

- does not have any outstanding debts or liabilities
- has paid all relevant fees and penalties applying to it under the AIR Act, and
- is not a party to ongoing legal proceedings.

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?

The steps for voluntary cancellation will depend on whether an organisation is still active, or if it has ceased to operate by the time it attempts to end its operations.

For associations that meet the above criteria and are still operating up to the date of cancellation, the organisation must pass a special resolution which agrees to the voluntary cancellation of the incorporation.

The following are the statutory requirements 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
- at least 21 days' notice of the proposed resolution must be given to all members, in the manner provided by the association's rules
- 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' (see below) 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.

If the association is no longer active, then an application for voluntary cancellation may be made by a member or former member of the organisation without the need for a special resolution. This can only occur where it is clear that the operations of the association have ended, and the group is no longer operating.

Once a special resolution has been passed which confirms that the association wishes to cancel its incorporation, or, if the association is no longer active, a member or former member wishes to apply for voluntary cancellation, an application must be made to the Registrar which includes the following:

- an 'Application for cancellation of incorporation' Form (available from Consumer Affairs Victoria (CAV))

- any annual statements and fees that may be outstanding prior to the time the association ceased operating (together with the lodgement fee for each of those annual statements)
- if a special resolution was passed relating to the distribution of assets, a copy of the full set of meeting minutes, and
- proof of distribution of assets.

Once a valid application for cancellation has been made to the Registrar, the Registrar will give public notice of the intention to cancel the organisation (usually by publishing in the newspaper and Government Gazette), inviting any interested parties to make a written objection to the cancellation within 28 days. If no objections to the cancellation are received, the Registrar will proceed to cancel the association.

Voluntary winding up

If your organisation wishes to end, but does not meet the criteria for cancellation, then it must be wound up voluntarily by special resolution. This option is available to any incorporated association in Victoria, regardless of size. Below is a summary of the steps involved in a voluntary wind up of an incorporated association.

NOTE

Winding up is a highly technical process that requires a good understanding of the provisions of the *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.



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 organisation must first pass a special resolution which confirms that the association is to be wound up. See above for information on how to pass a special resolution.

Step 3: Notify CAV

Once a special resolution has been passed at a general meeting of the association, the association must lodge certain documents with CAV, 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 organisation's cash and has sold all its assets, the liquidator pays all outstanding debts and then distributes any surplus assets. Section 132 of the AIR Act sets out the framework for distributing surplus assets (ie. those assets which remain once all debts and liabilities are settled). Section 132 states that surplus assets are to be distributed in accordance with:

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

NOTE

An association's rules must provide for the distribution of any surplus assets on the winding up or dissolution of the incorporated association.

An association should therefore 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 organisation' then there is a discretion on the association to choose how and where the assets are placed.



What happens if the organisation cannot pay its debts?

In the case where the organisation does not have enough cash or assets to pay all its debts, certain debts (for example, the liquidator's fees and expenses and employee entitlements) are paid first, and if there is money left after these debts are paid, all remaining debts are paid in equal proportions until the money runs out.

How often must the liquidator report to the members?

If the winding up is still going on after 1 year, the liquidator must within 3 months of the end of the first year (and each succeeding year), convene a general meeting of members and provide to that meeting a report about the winding up. The report must include details of what the liquidator has been doing in the preceding year. The report must also be lodged with the Registrar.

What else does the liquidator do?

In addition to collecting and selling the assets of the organisation etc, the liquidator is also required to investigate the way in which the activities of the organisation have been conducted in the period leading up to the winding up. If the liquidator becomes aware of any misconduct by officers or other wrongdoing, a liquidator has wide ranging powers to enquire into those matters and can bring legal proceedings on behalf of the organisation or report any concerns to the Registrar (or both).

What happens when the winding up process is complete?

As soon as an organisation is fully wound up, the liquidator must prepare a final account and report of the winding up and convene a general meeting of members for the purposes of providing the liquidator's account and report to the meeting.

The liquidator must within 7 days after the meeting, lodge a return of the meeting and a copy of the liquidator's account and report with the Registrar.

CAV may cancel the incorporation of an incorporated association that has been wound up or has commenced to be wound up by notice published in the Government Gazette.

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 it is not necessary when you apply to cancel your registration.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub (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 Information Hub provides resources on governance, rules or constitution, holding meetings, documents and records and a Secretary's Satchel.

Legislation

✔ [Associations Incorporation Reform Act 2012 \(Vic\)](#)

Other Related Resources

✔ [Consumer Affairs Victoria \(CAV\)](#)

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

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

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

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