

# Voluntary cancellation, winding up or administration of an incorporated association

Legal information for incorporated associations in Queensland

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**This fact sheet covers the steps involved in closing down an incorporated association through voluntary cancellation, winding up or administration.**

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**There are a number of reasons why an incorporated association may wish to close down.**

Many community organisations in Queensland operate through a legal entity known as an incorporated association. The circumstances of the association are relevant when determining how it can close down. 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 (for example, 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.

In Queensland, the *Associations Incorporation Act 1981* (Qld) (**AI Act**) provides for several ways to voluntarily end an incorporated association. These are:

- voluntary cancellation of incorporation (only available where the association has no outstanding debt)
- voluntary winding up by special resolution (only available where the association is solvent)
- voluntary winding up by application to the Supreme Court of Queensland (**Supreme Court**) (available regardless of the association's financial situation), and
- voluntary administration (only available where the association is or will soon be insolvent. This does not always result in the association closing down – it can help the association to get back on its feet)

The above processes can be complex and parties seeking to close down incorporated associations voluntarily should seek legal advice.

## Voluntarily cancelling the incorporation of an association

The ability to apply for cancellation of the incorporation of an association is a new process introduced in June 2020 (under the *Associations Incorporation and Other Legislation Amendment Act 2020* (Qld)), and is intended to be simpler than the other more formal processes discussed below in this fact sheet.

Since the process is new, incorporated associations should consult with the OFT or seek legal advice before making an application for cancellation to better understand their options and confirm the steps involved.



## Step 1: Determine eligibility for cancellation

You may only voluntarily cancel your association's incorporation if:

- it has no outstanding debts or liabilities
- it has paid all fees and penalties applying to it under the AI Act, and
- it is not a party to any legal proceedings

## Step 2: Call a general meeting

A general meeting must be called (in accordance with your association's rules) to cancel the incorporation of your incorporated association.

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

- a special resolution resolving to apply to cancel the incorporation of the incorporated association, and
- a special resolution providing for the distribution of the surplus assets of the association



### Note

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.

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, any limitations must be followed relating to how surplus assets can be distributed, or the type of entity that the assets may be distributed to.

'Surplus assets' are the assets that will remain after the liabilities of the association have been discharged and the costs and expenses of the cancellation have been paid. The association will be required to give the OFT evidence of the distribution of the surplus assets in accordance with the special resolution in order for the cancellation to take place.



### Note

An association must ensure that the distribution of surplus assets is in accordance with its rules.

The association's rules may provide for the distribution of any surplus assets on its winding up or dissolution. If the association uses the model rules contained in schedule 4 of the *Associations Incorporation Regulations 1999* (Qld) (**model rules**) then the following constraints will apply to the distribution of any surplus assets:

- the surplus assets must not be distributed among the members of the association, and
- the surplus assets must be given to another entity:
  - that has similar objects to the association's objects, and
  - that has rules preventing that entity from distributing its assets and income to its members

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

## Step 3: Lodge Documents with the Office of Fair Trading (OFT)

The association has one month from the general meeting to lodge the following documents with the OFT:

- 'Application for cancellation of an incorporated association' form ([Form 9a](#))
- a copy of the special resolution to close down, signed by two office bearers
- copies of receipts from the organisations receiving your surplus assets (or provide reasons why the remaining assets have not been distributed), and
- certificate of incorporation – this must be the original, or a statutory declaration that the original has been destroyed

Form 9a should be completed by the association's president, secretary or treasurer. There is no fee charged for submitting Form 9a.

## Step 4: OFT cancels incorporation

The OFT may ask further questions about the application to help it decide whether or not the cancellation should take place.

The OFT can only cancel the incorporation of the association if the association has provided evidence of the distribution of its surplus assets. If this evidence has been provided, and the eligibility criteria in Step 1 are met, the OFT will cancel the incorporation of the association.

## Voluntarily winding up via special resolution



### Note

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



### Caution

Under the AI Act, winding up 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 conducting a winding up.

## Step 1: Determine solvency and find a liquidator

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

To voluntarily wind up, you need to appoint a liquidator. See the [ASIC website for a list of registered liquidators](#).

## Step 2: Call a general meeting

Similar to the process to apply for cancellation, a general meeting must be called (in accordance with your association's rules) to voluntarily wind up your incorporated association. The incorporated association must be solvent.

Two separate special resolutions are ordinarily passed at this general meeting. These are:

- a special resolution resolving to wind up the association (this **must** be passed), and
- a special resolution resolving that any remaining surplus assets of the association will be distributed and how those surplus assets will be distributed (this **may** be passed)

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

If this second special resolution is not passed, surplus assets may be vested in and dealt with by the public trustee.

## Step 3: Lodge Documents with the Office of Fair Trading (OFT)

The association has one month from the general meeting to lodge the following documents with the OFT:

- 'Application for voluntary winding up of an incorporated association' form
- 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

The form 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 OFT may by gazette notice 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 OFT prescribes by gazette notice for the funds to be vested in another person or incorporated association



### Related Not-for-profit Law resource

For more information on what happens if an organisation can't pay its debts or the role of a liquidator, go to Not-for-profit Law's [Ending an organisation webpage](#)

## Step 5: OFT cancels incorporation

Once the winding up process (also called the 'external administration' of an association) is complete, the liquidator must lodge a final return with the OFT and notify the members if they have requested, in writing, to be notified of lodgement of the final return.

The OFT must cancel the incorporation of the association within three months after the liquidator has lodged the return.

## Voluntary winding up via Supreme Court application

An incorporated association or other party including the OFT (or a creditor if the association is insolvent), may also apply to the Supreme Court for the incorporated association to be wound up. To do this voluntarily, the association must first pass a special resolution resolving to be wound up by the Supreme Court, and may also pass a special resolution determining how its surplus assets should be dealt with. 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).

## Voluntary administration of an association



### Note

Under the AI Act, the voluntary administration 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 administration.

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 conducting a voluntary administration.

As of June 2020, incorporated associations experiencing financial difficulties may now place themselves into 'voluntary administration'.

This does not always result in the association being closed down. Instead, it allows incorporated associations to appoint a voluntary administrator to assist in overcoming financial difficulties, or optimising the outcome for the association's creditors and members if the association is closed down.

### Step 1: Determine insolvency and find an administrator

You may only voluntarily wind up your association if it is insolvent, or likely to become insolvent at some future time. This means that it does not have (or will not have) sufficient assets to cover its debts and liabilities.

You will need to appoint an administrator of the association, who must be 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 appoint an administrator of the incorporated association.

To appoint an administrator, the management committee must also pass resolutions that:

- in the opinion of the voting members of the management committee, the incorporated association is insolvent, or is likely to become insolvent at some future time, and
- an administrator of the company should be appointed

### Step 3: Administrator takes control of the incorporated association

The key steps in a voluntary administration involve the administrator:

- taking control of the association's property
- holding a meeting of the association's creditors (within 8 business days after the administration begins) to decide whether:
  - a committee of creditors should be formed, or
  - the creditors want to replace the administrator with an administrator of their choice
- investigating the incorporated association's business, property, affairs and financial circumstances (and the association's management committee must assist the administrator by providing a report to the administrator about these matters),
- providing a report of its findings to the creditors of the association, and



- holding a second meeting of creditors to decide the association's future (generally within 20 business days after the administration begins, or 25 business days if the administration starts around Christmas or Easter)

## Step 4: Administration ends

At the second meeting of creditors, the creditors may decide that:

- the administration should end (ie. the association can continue to operate under the control of the management committee)
- the association must execute a deed providing for how the association will pay all or part of its debts, or
- that the association be wound up (ie. a liquidator should be appointed to sell all of the association's assets and close it down through a formal winding up process)

The AI Act also allows the administrator to apply to the OFT for incorporation of the association to be cancelled if the eligibility criteria for cancellation discussed above are met.

Once the voluntary administration process is complete, the administrator must lodge an end of administration return with the OFT and notify the members if they have requested, in writing, to be notified of lodgement of the final return.

## What happens when the closing down process is complete?

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.



# Resources

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## Not-for-profit Law resources

▶ [Amalgamation and mergers](#)

This page features resources on the legal issues to consider when amalgamating or merging with other organisations.

▶ [Changing or ending your organisation](#)

This page looks at some legal issues that community organisations should think about when things change.

▶ [Running the organisation](#)

This section of the website provides resources on governance, rules or constitution, holding meetings, and documents and records.

## Legislation

▶ [Associations Incorporation Act 1981 \(Qld\)](#)

▶ [Associations Incorporation Regulations 1999 \(Qld\)](#)

▶ [Corporations Act 2001 \(Cth\)](#)

▶ [Associations Incorporation and Other Legislation Amendment Act 2020 \(Qld\)](#)

## 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 \(ACNC\)](#)