

Voluntary deregistration or winding up of an incorporated association

Legal information for South Australian community organisations

This fact sheet covers:

- ▶ voluntary deregistration, and
- ▶ voluntary winding up

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

An incorporated association's circumstances are relevant when determining whether the association can voluntarily deregister or whether the members need to wind up their association.

The circumstances your association needs to consider when determining which approach to take are outlined below.

How do we end our association 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 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.



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 South Australia, the *Associations Incorporation Act 1985 (SA)* (**AI Act**) provides for two ways to voluntarily end an incorporated association. These are:

- deregistration, and
- voluntary winding up

The method you use will primarily depend on the size and status of your association. Further information on these two methods can be found below.

The AI 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 'deregistration'.



Deregistration is available to small associations with few assets, or groups that are no longer active and wish to formally end the affairs of the association.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

- has a total of assets worth less than \$5,000
- does not have any outstanding debts or liabilities
- has paid all relevant fees and penalties applying to it under the AI Act, and
- is not a party to ongoing legal proceedings

If an association is unable to meet any of the above criteria, then it can't apply for voluntary deregistration and must be 'wound up' (see sections on winding up below).

How do we voluntarily deregister our association?

The steps for deregistration will depend on whether an association is still active 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 deregistration, the association must pass a special resolution authorising a person to apply to Corporate Affairs Commission (**the Commission**) which is part of South Australian Consumer and Business Services (**CBS**).

The following are the requirements under the AI Act for a valid special resolution:

- written notice of the intention to propose a special resolution must be given to all members of the association 21 days prior to the meeting
- the resolution must be passed by 75% of the members of the association entitled to vote on the resolution, either by vote, or if permitted, proxy, and
- in circumstances where the associations rules do not provide for what constitutes a 'member of the association' then the resolution must be passed by 75% of the associations committee

If the association no longer has an active membership the Commission may accept an application for deregistration so long as it is signed by two people – each must be either:

- an officer of the association
- a member of the association, or
- a person that has a proper interest in the application

An application for deregistration can be made on a form available from [the CBS website](#) (also at pages 27-29 of the [Associations Incorporation Regulations 2008 \(SA\)](#)).

The form covers the following information that the AI Act requires an application for deregistration include:

- a declaration stating that the association has no liabilities and is not a party to any legal proceedings
- a statement setting out the proposed manner of distribution of the associations surplus assets
- if the associations assets have already been distributed the details upon which the distribution was made (see below)
- if the associations rules provide for the distribution of surplus assets, a copy of the associations rules
- the names and residential addresses of each committee member of the association, and
- the prescribed fee

Once a valid application for deregistration has been made to the Commission, it will publish in the newspaper a notice inviting members of the public to make written submissions on deregistration of the association. Public submissions can be made for a period of one month after the publication of the notice.

The AI Act contains the following specific requirements for the distribution of surplus assets:

- the assets must not be distributed (or proposed to be distributed) to members or former members of the association, unless the member or former member is also an incorporated association and the Commissioner has provided his consent
- the assets must be distributed in accordance with the rules of the association, or if there are not relevant rules, in accordance with the special resolution of the association, and
- distribution is (or proposed to be) done in a way that will not cause any member of the public to suffer undue hardship as a result of the deregistration of the association



If the association has already distributed its assets and these (above) requirements are met the Commission must cancel the registration. If the association has not distributed its assets, the Commission will only approve the application for deregistration if the proposed distribution complies with these requirements.

If the application for deregistration is approved a notice will be published in the Government Gazette stating that the association is deregistered within a month of approval. Upon publication of the notice the association will be considered dissolved.

Voluntary winding up

If your association wishes to end, but doesn't meet the criteria for deregistration, then it must be wound up voluntarily. In South Australia an association can be wound up via the following mechanisms:

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

Both of these options are available to any incorporated association in South Australia, regardless of size.

A summary of the steps involved in a voluntary wind up of an incorporated association is below.



Note

Under the *Associations Incorporation Act 1985 (SA)*, winding up of an Incorporated Association is to be undertaken under the procedure and provisions of Commonwealth corporations legislation (*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.

Voluntary winding up by members resolution

Step 1 – Find a liquidator

All associations that are voluntarily winding up must appoint a registered liquidator at a general meeting of the association (see the ASIC [website](#) for a list of registered liquidators).

The Commission may approve the appointment of a liquidator who is not a registered liquidator, on application to the Commission. There is no prescribed form for this request, and it's recommended to contact the Commission if you are seeking to appoint an unregistered liquidator.

Step 2 – Committee to declare that the association is solvent

Before any resolution to wind up the association can be put to its members for approval, a majority of the association's committee members may make a written declaration in relation to the organisation's solvency. This declaration may state that the committee has made inquiries into the affairs of the association at one of its meetings and have formed the opinion that the association will be able to pay all of its debts within a month of the winding up commencing.



Caution

Fines or imprisonment apply to a member of the committee that makes a declaration without having reasonable grounds to do so.



The declaration must be in the prescribed form, which can be found on [the CBS website](#). Unless approved otherwise by the Commission, the declaration must be lodged with the Commission before notice is sent to members of the special resolution to be held at a general meeting.

Step 3 – Hold a meeting of members and pass a special resolution

To voluntarily wind up an incorporated association, the association 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).

This meeting to pass the special resolution must be held within five weeks of the association's committee making the written declaration of solvency (referred to in step 2 above), unless the Commission has provided a further period in which the meeting may be held. If the association fails to do so, the declaration of solvency will be void.

An association is unable to resolve to be voluntarily wound up if an application has already been made to wind up the association on the grounds that it is unable to pay its debts.



Related Not-for-profit Law resource

Further information on insolvency (not being able to pay debts when they fall due) refer to [Not-for-profit Law's fact sheet Insolvency and your organisation](#).

Step 4 – Notify the Commission

Once a special resolution has been passed at a general meeting of the association, the association must lodge with the Commission a 'Notification of resolution' – Form 205 (available from the ASIC [website](#)) within seven days.

Step 5 – 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 and then distributes any surplus assets. Surplus assets are to be distributed in accordance with:

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



Note

An association should 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 association' then there is some discretion on the association to choose how and where the assets are placed (as long as it is also consistent with the AI requirements, as set out above).

What happens when the winding up process is complete?

Once the external administration of an association is complete the liquidator must lodge a final report return (Form 5603) with the Commission and notify members, if they have requested in writing to be notified of lodgement of the final report with the Commission.

The Commission must cancel the registration within three 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 it is not necessary when you apply to cancel your registration.

If your association has an Australian Business Number (**ABN**), you should also consider cancelling this with the Australian Business Register (**ABR**). This will also cancel your registration for goods and services tax (**GST**) and other tax registrations.



Related Not-for-profit Law resource

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 companies limited by guarantee](#).

Winding up by Supreme Court application

An incorporated association 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's 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 wind up application.

When the Supreme Court grants 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).

Resources

Not-for-profit Law resources

The [Not-for-profit Law website](#) has additional information on the following topics:

▶ [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 Not-for-profit Law website provides resources on governance, rules or constitution, holding meetings, and documents and records.

Other related resources

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

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

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

Legislation

▶ [Associations Incorporation Act 1985 \(SA\)](#)

▶ [Associations Incorporation Regulations 2008 \(SA\)](#)