

Voluntary cancellation or winding up of an incorporated association

Legal information for Western Australian community organisations

This fact sheet covers:

- ▶ voluntary cancellation, and
- ▶ voluntary winding up

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

An incorporated association's circumstances are relevant when determining whether the association can voluntarily cancel its registration 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 management 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 to see whether there are additional requirements to winding up as these are likely to affect how you must undertake this process.

In Western Australia, the *Associations Incorporation Act 2015 (WA)* (**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 association.

'Voluntary winding up', is a formal process, however, it may be more appropriate where there are legal issues or risks associated with ending the association, such as where the association is having difficulties identifying or locating assets, is a party to unresolved legal proceedings, has any outstanding contractual obligations, or has disputed debts.



The AI Act allows for 'voluntary cancellation', for associations with few assets, or groups that are no longer active and wish to formally end the affairs of the association. An application for voluntary cancellation may only be made where the association:

- is solvent, and
- resolves by special resolution that it should be cancelled voluntarily

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'.

How do we voluntarily cancel our association?

The method of voluntary cancellation varies depending on whether the association holds any surplus assets. Surplus assets are any property of the association left over after the payment of all outstanding debts and liabilities, including the costs of winding up or cancelling the association.

For both methods of cancellation, the Department of Mines, Industry Regulation and Safety (**the Department**) allows for an association to make its application through the [Department's online platform, AssociationsOnline](#).

Alternatively a member or agent of the management committee of the association may complete and submit a form to the Department. You can download the relevant form from the [Department's forms webpage](#).

Voluntary cancellation without assets

The first step in cancelling an association is for the management committee to pass a resolution declaring that it's of the opinion that the association has satisfied all of its debts and liabilities (ie. it's solvent) and there is no surplus property of the association to be distributed.

The association must then pass a special resolution approving the application to cancel the incorporated association.

The AI Act sets out the requirements for a valid special resolution:

- a special resolution can only be passed at a general meeting of the association
- written notice of both the special resolution and the general meeting must be given in line with the association's rules. The notice must:
 - detail the wording of the proposed special resolution
 - state the time and place of the general meeting
 - comply with the rules of the association, and
 - be given to each member of the association
- a member of the association can vote on the special resolution if they have a right under the association's rules to vote on the resolution and they:
 - vote in person, or
 - where postal or proxy votes are permitted under the associations rules, they vote by proxy or postal vote
- the special resolution must be passed by at least 75% of members who vote on the resolution

If the notice requirements outlined above are not followed, the special resolution will have no effect.

Once the above resolutions have been validly passed, the association must then lodge its application for cancellations with the Commissioner for Consumer Protection (**the Commissioner**). This should be done through the AssociationsOnline portal.

The application for cancellation must include:

- a copy of the resolution of the management committee,
- a copy of the special resolution, and
- a statement signed by a member of the management committee that the special resolution was valid

The association must also provide any further documentation that is requested by the Commissioner.



If the Commissioner is satisfied that the above requirements have been met, they may cancel the incorporation of the association. The date of cancellation is effective from the date specified by the Commissioner and will be confirmed in writing to the association.

Voluntary cancellation with assets

In circumstances where the association has surplus assets or property there are additional steps that must be completed by the association before it can be cancelled.

The management committee must first resolve that it is solvent. The management committee must then also prepare a 'distribution plan' that sets out how the surplus assets will be distributed (they can't be distributed until the plan is approved by the Commissioner, see below).



Note

There are strict requirements as to the entities that may receive the surplus assets of the association. Care should be taken to ensure that these requirements are complied with as penalties apply for failure to do so.

The association must then pass two special resolutions:

- one resolving to voluntarily cancel the incorporation, and
- one approving the distribution plan

The distribution plan must take into account the following:

- distribution in accordance with the association's rules and the provisions of the AI Act
- where an association has received funds or property under a government contract, it must ensure the distribution plan provides for distribution of those funds or property in accordance with the contract, unless the relevant government body decides otherwise, and
- that the AI Act also implies into the rules of every incorporated association that the surplus assets of the association may only be distributed to:
 - an incorporated association
 - a company limited by guarantee registered under the *Corporations Act 2001* (Cth) (**the Corporations Act**)
 - an association that holds a current licence under the *Charitable Collections Act 1946* (WA)
 - an association or trustee of an association:
 - that is a member or a former member of the association being cancelled, and
 - at the time of the distribution of the surplus property has rules that prevent the distribution of the surplus property to its members, or
 - a non-distributing co-operative as defined and registered under the *Co-operatives Act 2009* (WA)

These implied rules apply to all incorporated associations, regardless of whether or not the association's rules allow for a distribution contrary to the above provisions. If there is any inconsistency between the association's rules and the above provisions, the above provisions apply over the association's rules.



Note

The distribution plan doesn't come into effect unless it has been approved by the Commissioner. The association should not distribute assets until the plan is approved, otherwise penalties may apply.



Once the two special resolutions have been made (and are compliant with the requirements of a special resolution set out above), the association must then lodge an application for cancellation with the Commissioner. This should be done through the AssociationsOnline portal.

The application for cancellation must contain:

- the resolution of the management committee resolving to voluntarily cancel the association
- a copy of the distribution plan passed by the special resolution of the members
- a copy of the special resolutions passed by the members, resolving to voluntarily cancel the association, and approving the distribution plan, and
- a statement signed by a member of the management committee of the association that the special resolution was passed in accordance with the provisions of the AI Act – a copy of the relevant statement is available from the [Department's forms webpage](#)

These documents must be lodged within 28 days of the passing of the special resolution. If the association requires a longer period of time to lodge the documents, it should seek an extension of time from the Department. The association must provide any further documentation that is requested by the Department in writing.

Once the relevant documentation has been lodged with the Department, the Commissioner may approve the distribution plan. The Commissioner may refuse the distribution plan where:

- the distribution plan does not comply with the AI Act, or
- the Commissioner is of the view that the association should be wound up because of:
 - the scale or nature of the activities of the association
 - the value or nature of the property of the association, or
 - the extent or nature of the dealings that the association has with the public

If the distribution plan is approved, the Commissioner will prescribe a time period in which it is to be completed. The association must ensure that it complies with the distribution plan and this time period.

Once the assets have been distributed, the association should prepare a certificate certifying that the surplus property has been distributed in accordance with the distribution plan. The contents of this certificate should be determined by a resolution of the management committee or association at a general meeting. The certificate must be lodged with the Commissioner. This can be done through the AssociationsOnline portal.

After these steps have been completed, the Commissioner may cancel the incorporation of the association. The date of cancellation is effective from the day specified by the Department and will be confirmed in writing to the association.

Voluntary winding up

An association may opt to be wound up (rather than be voluntarily cancelled) if the association:

- has difficulty identifying or locating its assets
- is a party to legal proceedings
- has outstanding contractual obligations
- has disputed debts, or
- the Commissioner has refused to cancel the association because they are of the view that the association should be wound up

This option is available to any incorporated association in Western Australia, regardless of size, as long as it has surplus assets. In WA, an association can be wound up via the following mechanisms:

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



Note

Under the *Associations Incorporation Act 2015* (WA), 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.

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 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.

Step 3 – Notify the Department

Once a special resolution has been passed at a general meeting of the association, the association must lodge certain documents with the Department, 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 association's cash and has sold all its assets, the liquidator pays all outstanding debts and then distributes any surplus assets. The liquidator must distribute its assets in accordance with the association's rules, including the rules implied by the AI Act, detailed above.



Note

An association should look to its rules to ensure that any distribution of surplus assets is in accordance with this document. If an association has used the model rules as the basis for its rules then the surplus assets will need to be distributed only to certain types of entities listed, discussed above.



What happens when the winding up process is complete?

Once the winding up of an association is complete, the liquidator must lodge a final return (Form 5603) with the Commissioner within one month, and notify the members if they have requested in writing to be notified of lodgement of the final return.

The Commissioner must then deregister the association 3 months after the end of administration return is lodged.

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.

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.

Voluntary winding up by application to the Supreme Court

An incorporated association, or other party including the department or a creditor, 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 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).

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

- ▶ [Department of Mines, Industry Regulation and Safety](#)
- ▶ [Australian Securities and Investments Commission \(ASIC\)](#)
- ▶ [Australian Restructuring Insolvency & Turnaround Association](#)
- ▶ [Australian Charities and Not-for-profits Commission \(ACNC\)](#)

Legislation

- ▶ [Associations Incorporation Act 2015 \(WA\)](#)
- ▶ [Corporations Act 2001 \(Cth\)](#)