

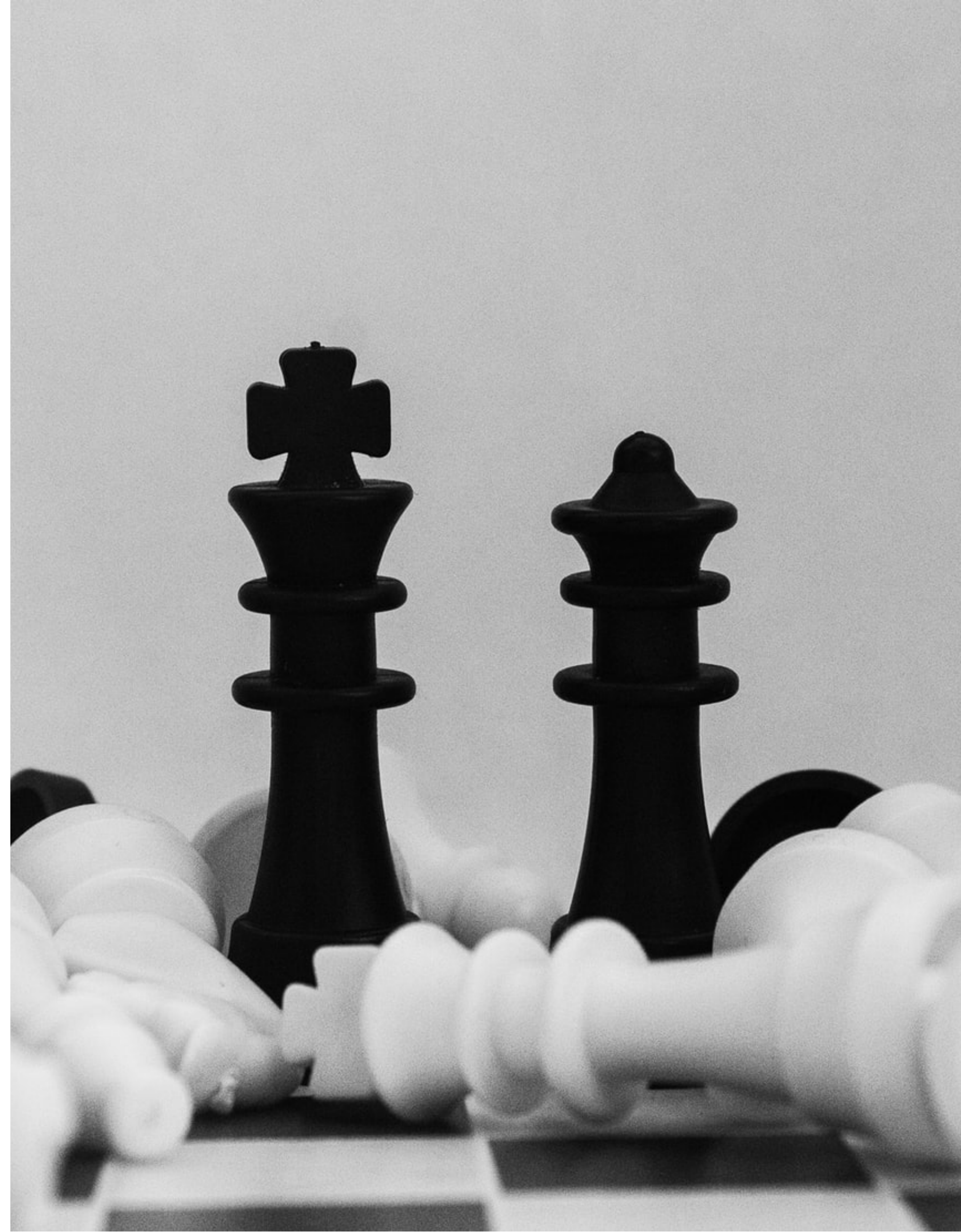
Our Community

Finishing well

Winding up your NFP or charity

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Practice Leader

24 August 2020





What we will cover today


- When is it time to wind up
- COVID-19 update
- Procedure for winding up
- Handling assets
- Protecting your Board members
- Questions



Terminology

- Winding up
- Deregistration/Cancellation
- Constitution
- Board
- Members
- Charity





Time to pull up stumps?



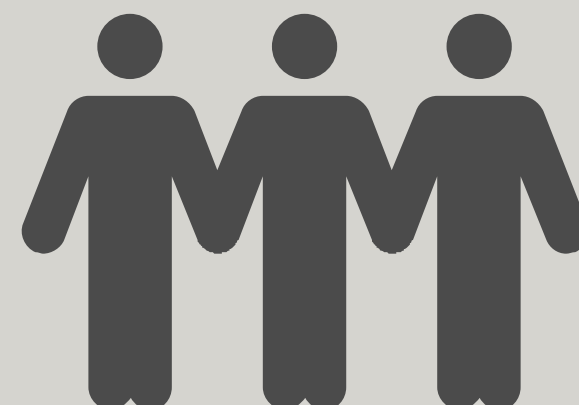
When is it time to wind up?



**Purpose
related**



**Not financially
viable**



**Lack of
people**



**Compulsory
wind up**

Insolvency



- Unable to pay debts when they fall due
- Personal liability and penalties
- Red flags
 - Overdue payments
 - Repeated operating losses
 - Unable to pay for goods received
- **Monitor your financial position**





Is there an alternative to winding up?

- Restructuring
- Merger or amalgamation
- Commercial activities and other income generation



COVID-19 Update

Winding up

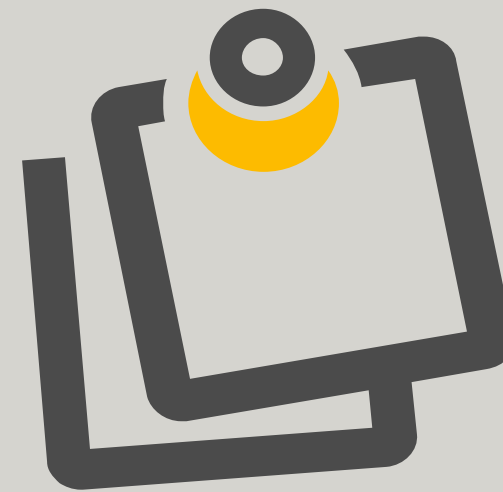




Regulatory Relief



**Regulation
and Compliance**



**Statutory Demands
(companies)**



**Insolvency
Safe Harbour**



Insolvency safe harbor provisions

Application to incorporated associations

- **Victoria** – safe harbor protection applies
- **Northern Territory**
Safe harbor protection applies, but separate offence exists (incurring debts not likely to be paid)
- **NSW, South Australia, Western Australia** Corps Act doesn't apply and separate offence exists (incurring debts while insolvent)
- **Queensland, Tasmania and ACT** – Corps Act doesn't apply and no separate offence

Procedure

Winding up





NON
PROFIT
CHARITY



Ending an organisation

- Removing all assets, ceasing operation, ending recognition of legal identity by government
- Process will depend on:
 - Type of entity
 - Tax status
 - Constitution
 - Financial position
 - People involved

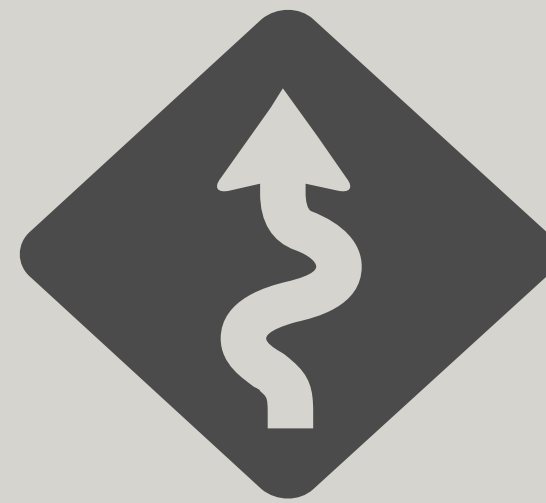


Voluntarily ending an organisation



Cancellation/deregistration

- Simple process to end registration of an entity
- Not formally “wound up”
 - Eligibility/Threshold requirements



Winding up

- Formal winding up
- Liquidator or administrator
- Paying or settling debts
- Distributing surplus assets



Amalgamating

- Combining two or more associations
- Legal identities combine – no formal “end” of an organisation



Who makes the decision

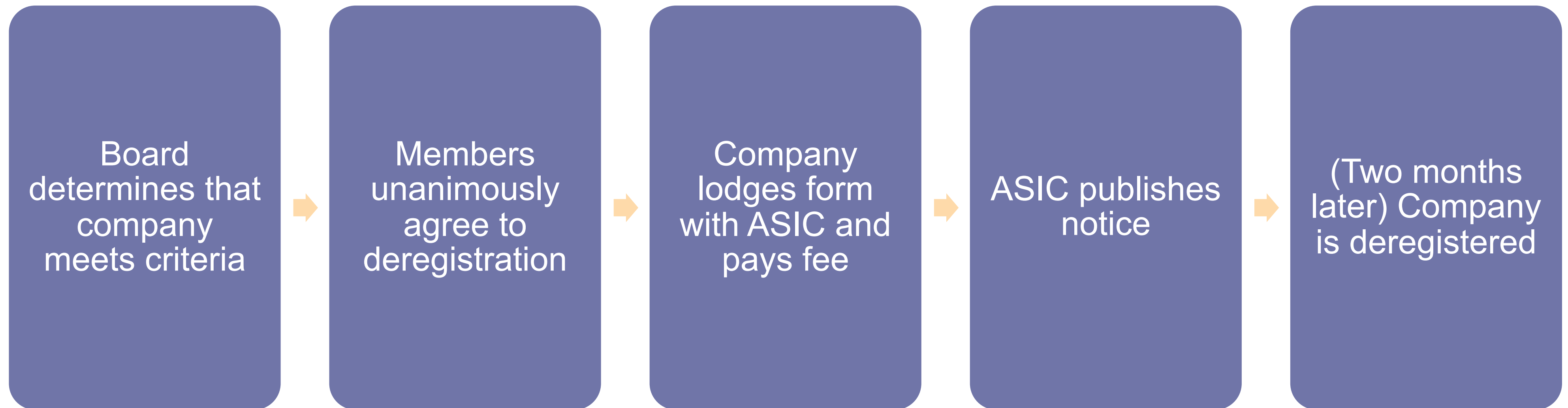
- Board
- Members
- Regulator
- Courts

Remember to follow the proper process to make decision.

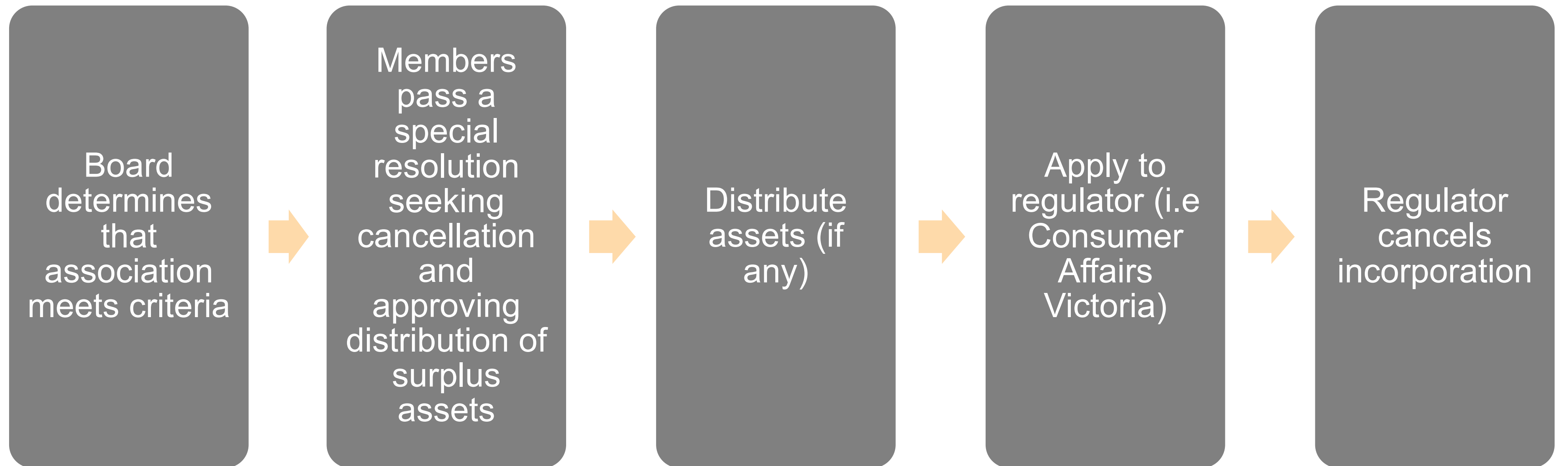
Example – Winding up a solvent company



Example – Voluntarily deregistering a company



Example – Voluntary cancellation of association





Other matters



Records



Accounts, contracts
and bank accounts



ACNC and other
regulators



Notify stakeholders
and the public



Transferring assets

- Where do leftover assets go?
- Who decides?
 - Associations
 - Companies
 - Trusts
- What characteristics must recipient have?
- Can you impose obligations on recipient?
(Community foundation subfund? Trust?)
- Does liability attach to assets?



Protecting Board members

Winding up





- **Do the numbers**
- **Follow the process**
 - Constitution
 - Legislation
- **Pass supporting resolutions**
- **Consider ongoing liability**
 - Will liability outlast the entity?
 - Winding up vs deregistration
 - Insurance



Questions?

Winding up



Search



Save Our Sector

Helping the not-for-profit sector
to survive, reinvent and sustain.

#SaveOurSector

SOS

DAMN GOOD ADVICE

Creating a COVID-19-Safe Workplace

A comprehensive 44-page guide to the steps your organisation must take to create a pandemic-safe workplace. Includes essential checklists!

Download the FREE guide for NFP boards and managers

Help Sheets

Scroll through 20+ COVID-19-focused help sheets | [More ICDA Tools & Resources](#)

Top not-for-profit thinkers spell out your priorities for COVID-19

Members of the Community Directors
Council (L-R) Pablo Alfredo Gimenez, Jodi
Kennedy, Susan Pascoe

FAQs about your not-for- profit's AGM

The COVID-19 pandemic has changed the
way not-for-profits are run, and AGMs will
never be the same....

How to us to help yo through C

No matter which
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your

 **Get in touch**

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