

# Amalgamating incorporated associations

Legal information for incorporated associations in Queensland

## This fact sheet covers:

- what is amalgamation?
- what is the effect of amalgamation?
- is amalgamation the best option for your organisation?
- do the anticipated benefits outweigh the costs
- the amalgamation process, and
- what your organisation needs to do after amalgamating.

**This fact sheet summarises some of the legal issues for a Queensland incorporated association to consider before deciding to amalgamate with another Queensland incorporated association under the *Associations Incorporation Act 1981 (QLD)* (the Act).**

To keep it simple, this fact sheet uses the term ‘amalgamate’ (which is used in the Act). However, you may have heard or used the term ‘merge’ to describe the same process.

### NOTE

There are other ways organisations can work together, including through a merger process. For more information about the alternative arrangements go to [www.nfplaw.org.au/workingwithothers](http://www.nfplaw.org.au/workingwithothers).



## What is amalgamation?

Amalgamation occurs when two or more separately incorporated associations become a single association by following a special statutory process. Generally, when two legal bodies merge, one must wind up and transfer assets to the other. However, the Act sets out a process that allows two or more incorporated associations incorporated in Queensland to join together to form a new legal structure, without either of them having to close down, and with their assets, liabilities and members automatically transferring to the new (amalgamated) group.

Incorporated associations can, but do not have to, follow the amalgamation process to merge. This fact sheet deals with the amalgamation of two Queensland incorporated associations, although the process can be used to amalgamate more than two associations.

There are a number of other possible scenarios in which not-for-profit organisations might want to join together and the amalgamating process is not available. These include:

- a Queensland incorporated association merging with a company limited by guarantee (a national not-for-profit legal structure formed under the *Corporations Act 2001* (Cth) (**Corporations Act**)). As there is no mechanism in the Act or the Corporations Act for this to occur, a traditional merger is required where one or both organisations are wound up. (For more information go to Ending an organisation on the Information Hub at [www.nfplaw.org.au/changingorending](http://www.nfplaw.org.au/changingorending))
- a Queensland incorporated association merging with an incorporated association registered in another state or territory, or
- organisations that are considering working closely together without ‘amalgamating’ or legally combining their structures. For example, through a joint venture arrangement or contractual agreements such as auspicing agreements. (For more information go to Working with other organisations on the Information Hub at [www.nfplaw.org.au/workingwithothers](http://www.nfplaw.org.au/workingwithothers)).

### FURTHER READING

For a simple overview of the amalgamation process, see the short video at [www.nfplaw.org.au/workingwithothers](http://www.nfplaw.org.au/workingwithothers).



## What is the effect of amalgamation?

The amalgamation process for incorporated associations is set out by the Act. The effect of an amalgamation is that:

- a new association is created that is an amalgamation of the amalgamating groups, that is a registered entity with a new name and ABN, new rules, a new committee of management and a new secretary
- the property of the individual incorporated associations becomes the property of the amalgamated incorporated association (this includes fixed assets such as office furniture, computers, equipment etc.). There is no need for formal transfers of ownership (the Secretary must ask the registrar of titles, in writing, to record in the appropriate register, the details of land or any interest in land gained by the new association because of its incorporation under the Act,)
- any mortgages or charges remain in effect and will apply to the amalgamated incorporated association
- all debts and liabilities, pending legal proceedings and contractual obligations of the individual incorporated associations become the debts, liabilities and obligations of the new amalgamated incorporated association
- members of the individual incorporated associations become members of the new amalgamated incorporated association, and
- each of the original incorporated associations is taken to have been dissolved and to have had its incorporation cancelled.

# Is amalgamation the best option for your organisation?

Committee members need to remember when considering an amalgamation that they must act in the best interests of their organisation.

If you are approached by another organisation suggesting an amalgamation, you should to ask for, at minimum:

- details of the proposed amalgamation
- the reasons for the proposal
- the expected costs, and
- benefits for your organisation and your clients, and your members.

This information should be used as a starting point for you to commence discussions and consider whether, in principle, you may be interested in amalgamating.

If you want to approach another organisation about amalgamating, you should make sure you have done your homework first and can provide the other organisation with information as to why they might choose to amalgamate with you.

If you do decide that you want to amalgamate, it is important that you go through a detailed due diligence process. The process should help you get your affairs in order and learn more about the association you are proposing to amalgamate with.

It is during the due diligence process that you can identify any potential issues or roadblocks and develop a plan to deal with them. Depending on the circumstances, it may be preferable for your existing, separate structures to remain in place, with the separate organisations entering into an agreement about working together, rather than fully amalgamating (go to [Working with other organisations](#)).

## FURTHER READING

For more information on acting in the best interests of an organisation go to the Not-for-profit Law Information Hub page on Governance at [www.nfplaw.org.au/governance](http://www.nfplaw.org.au/governance).

## NOTE FOR ASSOCIATIONS WITH GAMING OR LIQUOR LICENCE

If an association involved in the amalgamation has a gaming or liquor licence, it should seek particular advice on whether an amalgamation is an appropriate process to effect a merger.



### SOME ISSUES TO CONSIDER BEFORE AMALGAMATING

- If your organisation has been endorsed by the Australian Taxation Office (ATO) as a deductible gift recipient (DGR) or tax concession charity (TCC), will the amalgamated association be eligible for these endorsements? This should be discussed with the ATO or tax specialists early in the process.
- Do the organisations involved hold a gaming or liquor licence?
- The Act requires the members of each incorporated association approve the terms of the proposed amalgamation by passing a special resolution (including a statement of the objects of the new amalgamated association and the new amalgamated association's rules). Before proceeding, each incorporated association's committee should consider whether the amalgamation is likely to obtain member approval, and what level of consultation with your members and other stakeholders may be desirable.
- What will the impact be on your clients? Can your objectives still be met? Will you have to compromise?
- What is the culture of each organisation? Could there be a clash of cultures which may be disruptive for employees, volunteers and clients?
- How will each organisation's employees and volunteers be dealt with? Will they transfer over to the new organisation?
- Will there be a loss of existing name and "brand" recognition?
- What will be the size of the new organisation? What size of organisation is best suited to deliver your services?
- Where will the organisation be located? Will this impact on service delivery or activities?
- What will be the impact on your existing contracts and funding agreements? What will be the impact on your employees and existing employee agreements? How will the other organisation's agreements be affected?
- Does the other organisation have any potential or actual liabilities, debts, or significant risks you need to consider?
- How will the information held by each organisation be dealt with – are there legal privacy and confidentiality obligations you need to consider?
- What is the proposed timelines for the amalgamation (keep in mind any notice periods for meetings)?

# Do the anticipated benefits of the amalgamation outweigh the likely costs?

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## Potential benefits of an amalgamation

These include:

- reduced overheads – benefiting from economies of scale and eliminating duplicated functions
- shared managerial experience
- exploit links and contacts
- share knowledge and skills
- ability to offer more services or service a larger area
- better ability to seek and obtain funding, and
- stronger brand.

## Possible costs of an amalgamation

These include:

- accounting fees and due diligence fees (as part of the amalgamation process)
- legal fees for reviewing contracts and agreements etc.
- management time spent on the amalgamation negotiations, eg. negotiating the rules for the amalgamated incorporated association; negotiating committee representation; deciding the new name and brand; discussions with employees, volunteers, clients
- loss of existing name and “brand” recognition
- cost of any staff redundancies triggered by amalgamation
- impact on employees and volunteers of the change, uncertainty and any staff cuts
- loss of existing funding arrangements
- loss of existing tax endorsements – impact on funding and concessions
- changes in the ability to salary package (if status as public benevolent institutions or health promotion changes), and
- administrative steps post amalgamation (see below).

## The amalgamation process

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There are four main steps in the Queensland amalgamation process:

## Step 1

The associations wishing to amalgamate must each pass a special resolution (which means a positive vote from at least 75% of eligible votes cast at a general meeting of members) at a general meeting. The resolution must approve:

- the proposed amalgamation
- the adoption of the proposed rules of the new association, which could be the Model Rules provided in the *Associations Incorporation Regulation 1999* (QLD) or specifically drafted rules to comply with the requirements under Schedule 3 of the Regulation, and
- the election of interim office bearers for the new amalgamated association.

## Step 2

After each association has passed the special resolution, each must then (by passing a resolution of its members), appoint an individual to lodge an application for amalgamation on behalf of all associations wishing to amalgamate (Form 5 – see below).

Within 3 months of the general meeting and of the special resolution being passed, each association wishing to amalgamate must also notify the Office of Fair Trading (**OFT**) of their intention to do so by lodging 'Form 13 – Notice of Special Resolution for Amalgamation of Associations' with the OFT.

## Step 3

The associations wishing to amalgamate must jointly lodge through the individual appointed in Step 2 'Form 5 – Application for incorporation upon amalgamation' with the OFT (form available on the [OFT website](#)).

The application must include:

- a statement that the special resolutions of each amalgamating association (as described under Step 1) have been passed
- details of the new association – including the proposed name, address, the name and address of the nominated President, Treasurer and Secretary
- the prescribed fee (\$142.96 as at February 2016, see [OFT website](#))

The application must be accompanied by:

- the current certificate of incorporation of each association that resolved to amalgamate (or a statutory declaration by the secretary verifying that the current certificate has been lost or destroyed)
- if the new association proposes to adopt its own rules – a completed copy of Appendix A to Form 5 (including a copy of the proposed rules as well as a completed table providing which rules address the matters required to be addressed by incorporated associations' rules by the Act)
- if the new association proposes to adopt the Model Rules – a completed Appendix B to Form 5, which requires inclusion of the new association's statement of objects, as well as addressing a number of matters where associations are able to provide input into the model rules that will apply to them, such as classes of membership, and
- each Form 13 completed by the associations seeking to amalgamate (or copies of these forms, if already lodged with the OFT).

## Step 4

If, after considering the application, the OFT directs the associations to notify their creditors of the proposed amalgamation, each association must complete 'Form 6 – Notice to creditors prior to amalgamation'.

The Notice must include a statement that a creditor may notify the OFT in writing within 21 days after the Notice is given that the creditor opposes the amalgamation and the reasons for this opposition.

If the OFT is satisfied that each amalgamating association making the application has complied with the requirements of the Act set out above, and that the new association is eligible to be incorporated under the Act, then the new amalgamated association will be registered and issued with a certificate of incorporation.

The association that applied to be amalgamated will be deregistered and cease to exist.

### EXAMPLE



Two incorporated associations in Queensland have decided to amalgamate in order to receive Queensland government funding. Both organisations provide teaching and tutoring services to students with disabilities. One organisation tutors high schoolers, and the other tutors primary schoolers. They have decided that in addition to retaining government funding, another advantage to working together is that they will now offer tutoring services for students from prep to year 12. Neither organisation has any employees, but each has between 10-20 volunteers. Each organisation holds files on all its clients, and one of the organisations has an MOU with a much larger organisation, for client referrals. Neither organisation has any assets, apart from a website, logo and some promotional materials. The committees of each organisation have met together, and have decided that an amalgamation is the best way to go. They decide to start undertaking due diligence and seek professional advice before going ahead.

#### Step 1:

After undertaking due diligence and getting advice, each organisation holds a meeting of its members, and puts forward a resolution to amalgamate. Law firms have helped the organisations draft a new set of rules for the new amalgamated organisation, and the committees have worked together to select the members of the new committee. The members of each organisation unanimously vote in favour of the amalgamation, after each committee makes a presentation to their members about the merits of the amalgamation. The purposes of these organisations are very similar, so the amalgamation wasn't very hard to sell to the members. This isn't always the case.

#### Steps 2 & 3:

One of the law firms helps the organisations prepare and lodge all the required documents with the OFT. The organisations have to deal with a number of other issues:

- the organisations need to get the consent of each of their clients to move their files over to the new amalgamated organisation
- both organisations' volunteers move to being volunteers with the new amalgamated organisation, and the amalgamated organisation even decide to employ two of them to run the new, larger organisation
- the organisation with the MOU approaches the larger organisation and asks if they would be willing to sign a new MOU with the new amalgamated organisation. The law firm which helped the organisations amalgamate also prepares a new MOU for them, which all the parties happily sign
- the new amalgamated organisation has applied for a new ABN, chosen a new name, had a new website made, and had a new logo designed. The committee of the new organisation is now speaking with the law firm about the possibility of becoming a charity and getting deductible gift recipient tax status.

# What do we need to do following amalgamation?

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## AFTER AMALGAMATION CHECKLIST

- apply for an ABN for the new entity
- notify all stakeholders of the new entity name and ABN, including:
  - ATO – for PAYG and GST registrations
  - WorkCover and other insurers
  - superannuation funds
  - funding bodies
  - bank accounts
  - fundraising registrations
  - lessors (eg equipment, properties, vehicles)
  - suppliers (eg power, telephone, internet service provider, office supplies)
  - The Department of Transport and Main Roads in relation to any motor vehicles
  - Titles Registry (Department of Natural Resources and Mines) in relation to any real estate (land) holdings. Transfer forms will need to be completed. It is a requirement under the Act that the Secretary of the new association must, within 30 days after incorporation, ask the Registrar of Titles in writing to record in the appropriate register details of land or any interest in land gained by the new association because of its incorporation under the Act,
  - lenders, and
  - employees, and
- change letterhead, logo, website, printed materials.

# Resources

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## Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub ([www.nfplaw.org.au](http://www.nfplaw.org.au)) has further resources on the following topics:

- ✔ Working with other organisations - [www.nfplaw.org.au/workingwithothers](http://www.nfplaw.org.au/workingwithothers)
- ✔ Duties of committee members - [www.nfplaw.org.au/runningtheorg](http://www.nfplaw.org.au/runningtheorg)
- ✔ Governance - [www.nfplaw.org.au/governance](http://www.nfplaw.org.au/governance)

## Other relevant resources

- ✔ [The Office of Fair Trading](http://www.fairtrading.gov.au)

Visit the Office of Fair Trading website for relevant forms, fees and further information about amalgamation and incorporation.

## Relevant laws

- ✔ [Associations Incorporation Act 1981 \(QLD\)](#)
- ✔ [Associations Incorporation Regulation 1999 \(QLD\)](#)
- ✔ [Corporations Act 2001 \(Cth\)](#)

When accessing the legislation, care should be taken to ensure the current version is used.

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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