

Amalgamating or merging incorporated associations

Legal information for Victorian incorporated associations

This fact sheet covers:

- ▶ what is the effect of amalgamation?
 - ▶ is amalgamation the best option for your organisation?
 - ▶ the amalgamation process, and
 - ▶ what your organisation needs to do after amalgamating.
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This fact sheet summarises some of the legal issues for a Victorian incorporated association to consider before deciding to amalgamate with another Victorian incorporated association under the *Associations Incorporation Reform Act 2012 (Vic)* (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.

What is amalgamation?

Amalgamation is the process of two separate incorporated associations becoming a single association. 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 to join together to form a new legal structure, without either of them having to close down, and with their assets automatically transferring to the new (amalgamated) group.

Incorporated associations can, but do not have to, follow this process to merge. More than two incorporated associations can amalgamate using the amalgamation process in the Act. This fact sheet deals with the amalgamation of two Victorian incorporated associations.

There are a number of other possible scenarios in which not-for-profit organisations might want to join together, including:

- a Victorian incorporated association ‘merging’ with a company limited by guarantee (a national not-for-profit legal structure formed under the *Corporations Act 2001 (Cth)*). As there is no mechanism in the Act or the *Corporations Act 2001 (Cth)* for this to occur, a traditional merger is required where one organisation is wound up (for more information go to [Ending an Organisation at www.nfplaw.org.au/changingorending](http://www.nfplaw.org.au/changingorending)), 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 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 governed by the Act. The effect of an amalgamation is that the new amalgamated association:

- becomes the registered entity
- will have a new name and ABN
- takes on any pending legal proceedings against each association
- 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 (except for changing records where necessary, such as completing a 'Transfer of Land' form for land held by the organisations)
- any mortgages or charges remain in effect and will apply to the amalgamated incorporated association
- all debts and liabilities and contractual obligations of the individual incorporated associations become the debts and liabilities and obligations of the amalgamated incorporated association
- members of the individual incorporated associations become members of the amalgamated incorporated association, and
- will have new rules, a new committee of management and a new secretary.

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 need to ask for:

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

This information should be provided in writing so that you can obtain your own independent legal advice on the proposal. Depending on the circumstances, it may be preferable for your existing structures to remain in place, with the separate organisations entering into an agreement about working together in the future, rather than fully amalgamate (go to [Working with other organisations](#)).

Another option may be for your organisation to be wound up (ie close down – end its services) with the services taken over by another organisation.

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.

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 early in the process.
- The Act requires the members of both incorporated associations to approve the amalgamation and the new amalgamated association's rules (including the statement of purposes). 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?

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

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
- 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

There are four main steps in the amalgamation process:

Step 1

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

- terms of the amalgamation
- name of the proposed amalgamated incorporated association
- first committee members of the proposed amalgamated incorporated association, and
- rules of the proposed amalgamated incorporated association (which could be the Model Rules, the Model Rules with amendments, or specially drafted rules).

Step 2

The associations wishing to amalgamate must each lodge with the Registrar of Incorporated Associations at Consumer Affairs Victoria (**CAV**) (the Registrar) a 'Notice of Special Resolution Approving Amalgamation of Incorporated Associations' (form available on the [CAV website](#))

Step 3

The Secretaries of the incorporated associations must collectively lodge with the Registrar:

- an 'Application for Amalgamation of Incorporated Associations'
- a copy of the rules of the proposed amalgamated association
- details of the first secretary, and
- the prescribed fee.

The form to lodge is available on the [CAV website](#).

Step 4

A Certificate of Incorporation will be issued by CAV for the amalgamated association after the application for amalgamation has been accepted. At this time, CAV will cancel the incorporation of the individual incorporated associations.

EXAMPLE

Two incorporated associations in Victoria have decided to amalgamate in order to receive Victorian 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 have approached Justice Connect, who have referred them to a law firm for assistance.

Step 1:

Each organisation holds a meeting of its members, and puts forward a resolution to amalgamate. The law firm 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:

The law firm helps the organisations prepare and lodge all the required documents with CAV. 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 moved to being volunteers with the new amalgamated organisation, and the amalgamated organisation even decided to employ 2 of them to run the new, larger organisation
- the organisation with the MOU approached the larger organisation and asked if they would be willing to sign a new MOU with the new amalgamated organisation. The law firm which helped the organisations amalgamate also prepared a new MOU for them, which all the parties happily signed
- the new amalgamated organisation applied for a new ABN, chose 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 getting deductible gift recipient tax status and possibly becoming a charity.

What do we need to do following amalgamation?

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)
 - VicRoads in relation to any motor vehicles
 - the Registrar of Titles at Land Victoria in relation to any real estate (land) holdings. Transfer forms will need to be completed
 - lenders, and
 - employees, and
- change letterhead, logo, website, printed materials.

Resources

Related Not-for-profit Law Resources

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

- ✔ Working with other organisations – www.nfplaw.org.au/workingwithothers
- ✔ Passing special resolutions – www.nfplaw.org.au/secretaryguide
- ✔ Duties of committee members – www.nfplaw.org.au/runningtheorg
- ✔ Governance – www.nfplaw.org.au/governance

Consumer Affairs Victoria

- ✔ Consumer Affairs Victoria – [Amalgamate an incorporated association](#)

Legislation

- ✔ [Associations Incorporation Reform Act 2012 \(Vic\)](#)
- ✔ [Associations Incorporation Reform Regulations 2012 \(Vic\)](#)
- ✔ [Corporations Act 2001 \(Cth\)](#)

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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