

# Amalgamating or merging incorporated associations

## Information for Victorian incorporated associations

This information 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 information 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.

### This information sheet covers:

- ▶ What is the effect of amalgamation?
- ▶ Is amalgamation the best option for your organisation?
  - ▶ Some issues to consider before amalgamating
  - ▶ Benefits and costs of amalgamating
- ▶ The amalgamation process, and
- ▶ What your organisation needs to do after amalgamating.

## What is amalgamation?

Amalgamation is the process of two separate legal entities becoming a single entity. Generally, when two legal bodies amalgamate, one must wind up and transfer assets to the other. The *Associations Incorporation Reform Act 2012* (Vic) (the Act) sets out a process that allows two 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. However, this information sheet assumes that only two are considering amalgamation.

This information 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 for this to occur, a traditional merger is required where one organisation is wound up (for more information go to [Ending an Organisation](#)), 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 (for more information go to [Working with other organisations](#)).

## What is the effect of amalgamation?

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The amalgamation process for incorporated associations is governed by the *Associations Incorporation Reform Act*. The effect of an amalgamation is that:

- ▶ the amalgamated incorporated association will have a new name and ABN
- ▶ 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
- ▶ new rules will apply and a new committee of management and secretary are appointed.

## Is amalgamation the best option for your organisation?

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Committee members need to remember when considering an amalgamation that they must act in the best interests of their organisation (for more information go to [legal duties of incorporated association committee members](#) and the Resources section at the end of this document).

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.

## Some issues to consider before amalgamating

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- ▶ If your organisation has been endorsed by the 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 both the amalgamation and the amalgamated association's rules (including the statement of purposes). Before proceeding, each Committee should consider whether the amalgamation is likely to obtain member approval, and what level of consultations with your members and other stakeholders may be desirable.
- ▶ What will be the impact 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?
- ▶ 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?, and
- ▶ Does the other organisation have any potential or actual liabilities or debts you need to consider?

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

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### Possible benefits of an amalgamation

These include:

- ▶ reduced overheads – benefiting from economies of scale and eliminating duplicated functions
- ▶ shared managerial experience
- ▶ knowledge sharing
- ▶ 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 (for public benevolent institutions and health promotion charities), and
- ▶ administrative steps post amalgamation (see below).

## The amalgamation process

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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 CAV (the Registrar) a 'Notice of Special Resolution Approving Amalgamation of Incorporated Associations' (form available on [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.

## What do we need to do following amalgamation?

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- ▶ Apply for an ABN for the new entity
- ▶ Notify all stakeholders of the new entity name and ABN, including:
  - ▶ ATO – to discuss how tax concessions can be transferred to the new entity
  - ▶ 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

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### PilchConnect resources

For online legal information resources for Victorian community organisations about:

- ▶ working with other organisations (joint ventures, MoUs), see [www.pilch.org.au/workingwithothers](http://www.pilch.org.au/workingwithothers)
- ▶ passing special resolutions, see PilchConnect's Secretary's Satchel [www.pilch.org.au/secsguide/](http://www.pilch.org.au/secsguide/) (Chapters 5 and 6) and [www.pilch.org.au/changestoconstitution](http://www.pilch.org.au/changestoconstitution)
- ▶ the duties of committee of management members in an incorporated association, see [www.pilch.org.au/duties](http://www.pilch.org.au/duties)

## Legislation

- ▶ Associations Incorporation Reform Act 2012 (Vic)
- ▶ Corporations Act 2001 (Cth)

## Consumer Affairs Victoria (CAV)

- ▶ [Amalgamate an incorporated association](#)