



STEWARDSHIP & RISK

Mergers and Amalgamations: When Joining Forces Makes Governance Sense

Your legal structure, chosen at formation, still determines how you can combine with another

Two associations deciding to join forces face a legal pathway that depends entirely on a decision this series examined all the way back in its first article: the legal structure each organisation holds. Incorporated associations and companies limited by guarantee follow meaningfully different roads to the same destination, and a board that assumes one process applies universally will find the assumption wrong at exactly the wrong moment.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

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The Incorporated Association Pathway: A Direct Statutory Mechanism

Most state and territory Associations Incorporation Acts provide a direct amalgamation mechanism, but only between associations incorporated under the same Act, so a cross-border combination cannot use it. Each association passes its own special resolution approving the amalgamation and the new joint constitution, and applies to the relevant state or territory regulator. Notice periods, voting thresholds and lodgement steps differ (South Australia, for example, requires 21 days' notice and a three-quarters vote), so follow your own regulator's guidance. Under the New South Wales scheme, for example, once registered the amalgamated association becomes the entity of record, automatically taking on the assets, liabilities, rights, and even pending legal proceedings of each of the original associations, which are then automatically cancelled. This is a clean statutory process, purpose built for exactly this scenario, and it removes much of the contractual complexity a commercial merger would otherwise require.

The CLG Pathway: No Equivalent Shortcut Exists

The Corporations Act 2001 (Cth) has no equivalent direct amalgamation mechanism for companies limited by guarantee. A combination between two CLGs, or between a CLG and an incorporated association, has to be structured contractually, most commonly as one organisation transferring its assets, operations, and often its staff and members to the other, followed by the transferring organisation winding up or becoming dormant. This is a fundamentally different, and generally more complex, process than the statutory amalgamation pathway available to incorporated associations, requiring commercial negotiation, asset transfer documentation, and separate winding-up steps rather than a single regulatory application. An incorporated association can sometimes transfer its registration to become a company

limited by guarantee first, where its state or territory Act allows, which changes the pathways available. Legal advice is needed to choose the route.

The legal structure your organisation chose, or inherited, back in the first article of this series has a direct, practical consequence years later: whether joining forces with another organisation is a relatively clean statutory process or a complex contractual undertaking.

The Governance Obligation Most Boards Miss Entirely

A merger or amalgamation frequently triggers a notification, and sometimes a consent, obligation to funding bodies and government contract partners, entirely separate from the internal member approval process. Government funding agreements commonly define a merger or change of control broadly, capturing scenarios well beyond the obvious full amalgamation, including one organisation gaining effective control over another's governing body. A board that focuses entirely on the member and regulatory approval process while overlooking these funding body obligations risks jeopardising the very funding relationships the merger may have been partly designed to strengthen.

- Confirm early which legal pathway applies, the statutory amalgamation mechanism or the contractual transfer route, since this shapes the entire timeline and complexity of the process.
- Identify every funding agreement, contract, or grant condition that could be triggered by a change of control, and consult the relevant funding body well before the process is finalised, not after.
- Treat the board's decision to pursue a merger as a fiduciary judgment requiring real due diligence, connecting to the directors' duty of care and diligence discussed earlier in this series (the business judgment rule applies only to company directors, and not to directors of charity CLGs, who are assessed under ACNC Governance Standard 5), and document that reasoning properly in the minutes.
- Before agreeing the structure, check each organisation's financial statements and liabilities, its winding-up and asset transfer clauses, any deductible gift recipient fund rules, ACNC and ATO notification requirements, and the Fair Work transfer of business rules for staff.
- Confirm what happens to each organisation's objects clause and membership structure in the combined entity, connecting directly to the Foundations quarter of this series, since a poorly reconciled constitution is a common source of post-merger governance dispute.
- Communicate with members throughout the process, consistent with the special resolution discipline covered earlier in this series, since a merger imposed with minimal consultation carries exactly the legitimacy risk that quarter warned against.

A merger, done well, can build an organisation considerably stronger than either predecessor alone. Done poorly, with the wrong legal pathway assumed, funding obligations missed, or member trust bypassed, it can create years of governance complexity the merger was meant to eliminate. The structural choice made at formation, examined all the way back at the start of this series, is still shaping outcomes at the very end of it.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

Annie Gibbins

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BOARDROOM ACTION WORKSHEET

Mergers and Amalgamations: When Joining Forces Makes Governance Sense

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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