

Merging with other organisations

Legal information for community organisations

This fact sheet covers:

- ▶ what is a merger?
- ▶ mandatory merger control regime
- ▶ effects of a merger
- ▶ advantages and disadvantages of a merger
- ▶ merger process
- ▶ post-merger requirements



This fact sheet summarises legal issues for community organisations to consider before deciding to merge with another organisation.



Disclaimer

This fact sheet provides information on merging with other organisations. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to the [full disclaimer](#) that applies to this fact sheet.

What is a merger?

A merger involves the formal combination of two or more entities to form one legal entity. A merger is a contractual agreement between two or more organisations to form a single organisation. It is a significant process that can be difficult to undo. For this reason, all parties should have confidence in the proposed merger and obtain independent legal advice before signing any binding agreements.



Note

If you are an incorporated association looking to merge with another incorporated association in the same state or territory, the statutory process of 'amalgamation' may also be available (except in the Northern Territory, where a statutory property transfer process can be used instead).

This fact sheet does not cover the amalgamation process. You can read more about amalgamation on [our amalgamation and mergers webpage](#).



A merger can happen in a variety of ways, depending on the preferences and structures of the organisations involved, including:

- one organisation becoming a part of another organisation, or
- two or more organisations merging to create a new organisation

Factors that may influence merger structure include:

- **strategic considerations** – for example, whether one organisation has a stronger brand than the other
- **legal considerations** – for example, whether one approach is simpler to implement
- **tax considerations** – for example, whether a particular approach produces more favourable tax outcomes



Note

Organisations considering a merger should obtain independent legal, financial and tax advice before deciding to merge and throughout the merger process. Professional advisers can assist with:

- drafting the documents required for the merger, and
- advising on the legal, financial and tax implications of the merger

Seeking appropriate advice before entering into a merger will help ensure your organisation understands the likely consequences and outcomes of the proposed arrangement.

The two most common merger structures

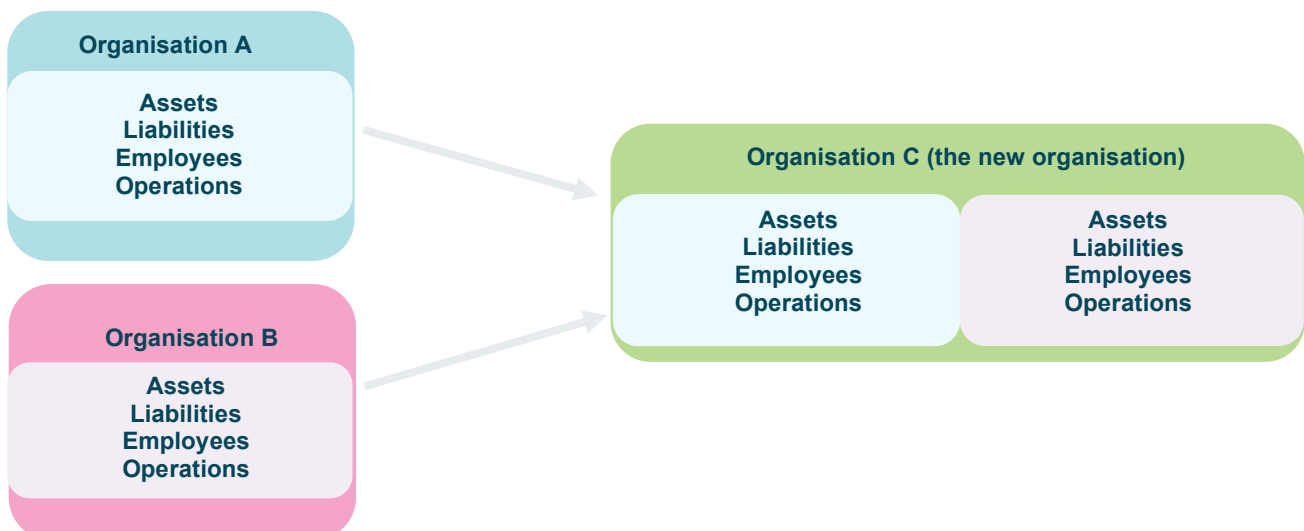
We've set out a high-level summary of the two most common merger structures used in Australia. It is important to seek legal advice about the structure that is most appropriate for the merger you are considering.

Option 1 – two or more organisations combine to create a new organisation

The existing organisations enter into an agreement to merge, a new organisation is incorporated, and the merging organisations transfer their assets, liabilities, employees and operations to the new organisation.

Once this occurs, the merging organisations are usually wound up and deregistered after all assets, liabilities, and legal obligations have been transferred to the new organisation.

The newly merged organisation is often established under a new name and brand. Members of the former organisations are usually given an opportunity to become members of the new organisation.





Organisation A and Organisation B create new Organisation C and transfer all assets, liabilities, employees and operations to Organisation C. Following completion of the merger, Organisation A and Organisation B are wound up and deregistered.

Organisation C may have purposes that encompass those of both Organisation A and Organisation B. However, the organisations should seek advice about the merger if Organisation C's purposes differ from their own (this is particularly relevant from a taxation perspective and for assets held on trust).

Because the parties must transfer everything that is held by Organisation A and Organisation B to Organisation C, it is important to understand exactly what is required to complete the transfer.

Organisations will commonly conduct due diligence on the other organisation (or organisations) involved in the merger. This helps identify significant liabilities or risks, such as litigation, outstanding debts or tax liabilities which may affect the merged organisation.

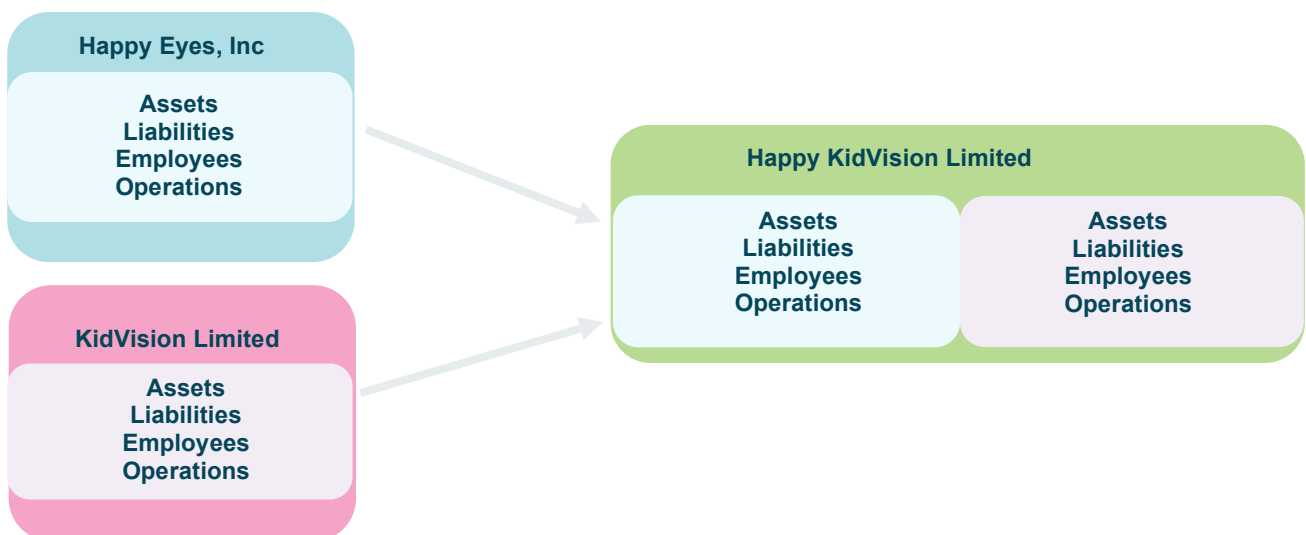


Example – Happy Eyes, Inc and KidVision Limited

Happy Eyes, Inc (**Happy Eyes**) is a small, incorporated association that provides educational programs for parents of young children with vision impairment. KidVision Limited (**KidVision**) is a larger company limited by guarantee that also supports young children with vision impairment.

The organisations deliver complementary programs to many of the same families at Melbourne's Royal Children's Hospital. When Happy Eyes learns that the government funding supporting 80% of its operations will stop at the end of the financial year, its committee becomes concerned about the organisation's future and approaches KidVision to discuss a merger.

KidVision sees benefits in combining the organisations' staff, programs and resources. After obtaining independent legal and tax advice, the organisations establish a new entity, **Happy KidVision Limited**, and transfer the assets, liabilities, employees and operations of both organisations to it. Happy Eyes and KidVision are then wound up and deregistered.

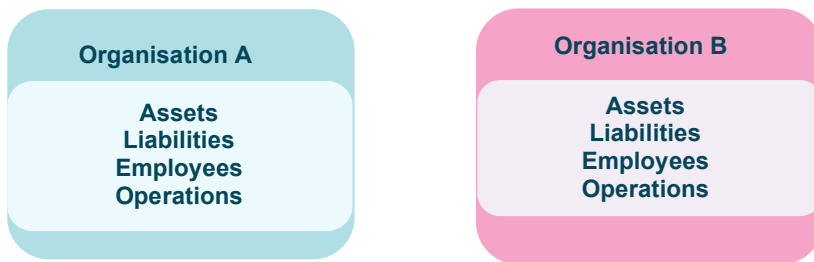


Option 2 – one organisation becomes a part of another organisation

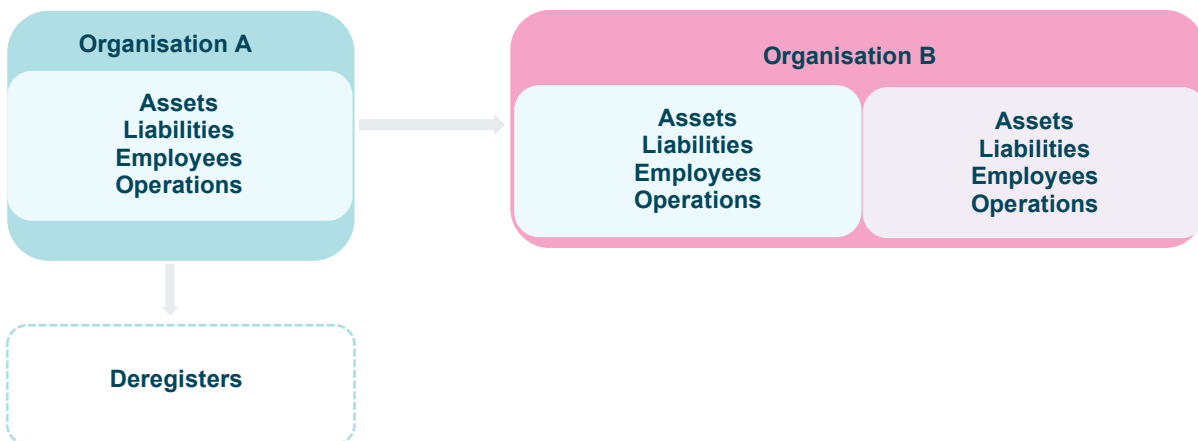
One organisation takes on the assets, liabilities, operations and employees of another organisation, which is then wound up and deregistered.

Following the merger, the organisations operate together under the name and brand of the continuing organisation.

Before the merger:



After the merger:



Mandatory merger control regime

The *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024 (Cth)* (**Merger Act**) introduced a new merger regime in Australia. The regime became mandatory on 1 January 2026 and applies across all sectors, including incorporated associations.

A proposed merger must be notified to the Australian Competition and Consumer Commission (**ACCC**) and cleared before it proceeds if the organisations:

- are incorporated in Australia
- meet the relevant monetary and asset thresholds, and
- will undergo a change of control (subject to certain exceptions)

The ACCC will grant clearance if it is satisfied that the proposed merger is not likely to substantially lessen competition. The ACCC may also impose conditions that the organisations must comply with if the merger proceeds. Once clearance is granted, the merger must be completed within 12 months.

If a merger meets the notification thresholds and the organisations do not obtain ACCC clearance, the merger will be invalid. The organisations may also be subject to substantial penalties for non-compliance with the Merger Act.

Although many smaller mergers may fall below the notification thresholds, organisations should obtain legal advice as early as possible to determine whether ACCC notification and clearance are required.

Effects of a merger

A merger is a contractual agreement between two or more organisations to form a single organisation. The legal and practical effects of a merger will depend on how the merger is structured and the terms agreed between the organisations.

When organisations merge:

- only those assets that the organisations decide will become assets of the merged organisation will transfer to it, and each organisation will need to legally transfer ownership of those assets (in most cases, all assets will be transferred unless there are reasons not to)



- only those debts and liabilities that the organisations decide will become the debts and liabilities of the merged organisation will transfer to it, and each organisation will remain responsible for any debts and liabilities that are not transferred
- the organisations can decide which activities of the merging organisations will continue after the merger
- staffing arrangements may be restructured, including through redundancies. Organisations should consider any applicable employment law requirements when making staffing decisions
- the purposes of the merged organisation will need to be carefully considered, and
- members of the merging organisations may not automatically become members of the merged organisation. In most cases, the members will be given the option to become members of the merged organisation. However, members may unanimously agree to give up their membership rights as part of the merger process



Tip

When dealing with membership issues it's important to seek legal advice to ensure that members are not treated in a way that contravenes any applicable

Advantages and disadvantages of a merger

Potential advantages of a merger include:

- reduced overheads and costs by achieving economies of scale and eliminating duplicated functions
- shared property, infrastructure and other assets
- reduced risk through diversification
- shared knowledge, skills and management experience
- access to a larger network of stakeholders, contacts and service users
- the ability to offer additional services or operate across a broader geographic area (for example, moving from a state-based focus to a national focus)
- access to new board or committee expertise, experience and leadership
- improved ability to seek and obtain funding
- a stronger brand and greater influence, and
- increased organisational sustainability and viability

Potential disadvantages of a merger include:

- legal, due diligence, accounting and tax costs associated with the merger process
- ACCC notification and clearance costs (if the proposed merger is captured by the mandatory merger control regime)
- management and staff time spent planning and implementing the merger
- loss of an existing name, brand or organisational identity
- member disengagement or a decline in membership
- integration costs, delays and operational disruptions
- difficulties transferring key contracts, such as funding agreements, subcontracting arrangements and leases
- reduced autonomy or disagreements about governance and management of the merged organisation
- impacts on employees, volunteers and members, including potential redundancies or resignations
- cultural incompatibility between the merging organisations
- loss or variation of existing funding arrangements



- loss of existing tax endorsements or charitable registrations, with consequential impacts on funding and tax concessions
- changes to salary packaging arrangements, and
- post-merger administrative requirements, including notifying relevant stakeholders such as the Australian Taxation Office (ATO), banks, superannuation funds, councils, lessors, utility providers and suppliers

Merger process

Every merger is different and will depend on the merger structure adopted and the arrangements negotiated between the organisations.

A typical merger process may involve the following steps:

Exploring a merger – the board or committee of an organisation decides to explore a merger as a strategic priority and identifies one or more organisations to approach. In some cases, the organisation may approach an existing partner or collaborator. The organisations may enter into a confidentiality or non-disclosure agreement to facilitate the exchange of confidential information.



Preliminary discussions and due diligence – the boards or committees of the organisations hold preliminary discussions about the proposed merger. They will usually obtain legal advice and conduct due diligence to identify and assess the risks associated with the merger.



Resolving due diligence issues – any issues identified during due diligence should be addressed by:

- requiring the organisation with the issue to resolve it before the merger, or
- addressing the issue through appropriate terms in the merger documentation.



Approving the merger proposal – once the organisations decide to proceed, each will usually hold a board or committee meeting to formally approve the proposed merger and, where required, seek approval from members. This may include passing a special resolution.



Preparing merger documentation – the documents required to implement the merger are prepared and negotiated. Organisations should obtain independent legal, financial and tax advice during this stage.



Implementing the merger – after the relevant documents have been signed and any required approvals obtained (including ACCC clearance, if required), the organisations can begin transitioning their activities, assets, liabilities, employees and operations. The organisation that will no longer operate is then wound up and deregistered in accordance with applicable legal requirements.



For more information about the due diligence process and key legal issues for merging organisations, see our [webpage on working with other organisations](#).

Post-merger requirements

Once your organisation completes a merger, you may need to:

- **Apply for an Australian Business Number (ABN)** for the merged organisation (if a new organisation has been established)
- **Notify relevant stakeholders** of the merger and any new organisation name or ABN, including:
 - the Australian Taxation Office (**ATO**)
 - the Australian Charities and Not-for-profits Commission (**ACNC**)
 - the Australian Securities and Investments Commission (**ASIC**)
 - workplace injury insurer (for example, WorkCover) and other insurers
 - superannuation funds
 - funding bodies
 - banks
 - fundraising regulators (if applicable)
 - lessors (for example, of equipment, properties, vehicles)
 - local councils
 - suppliers (for example, utility providers, telecommunications providers and office suppliers)
 - the relevant road and traffic authority for any motor vehicles (for example, VicRoads, the Department of Transport)
 - the relevant land titles office for any land holdings
 - lenders
 - employees
- **Update administrative materials**, including the organisation's letterhead, logo, website and printed materials
- **Wind up and deregister** any organisation that will no longer operate
- **Review taxation endorsements and concessions.** If the merger affects existing tax endorsements or concessions, obtain advice about any new applications or endorsements that may be required, including endorsement as a deductible gift recipient (**DGR**) or tax concession charity (**TCC**).

This checklist is intended as a guide only.

The post-merger steps required will depend on the structure of the merger and the organisations involved. You should obtain independent legal advice to ensure that all necessary steps are identified and completed in your particular circumstances.