



# AMALGAMATION

## A Guide for Recreation and Sporting Organisations

JUNE 2003

### INTRODUCTION

Amalgamations and mergers are playing an increasingly important role in determining how recreation and sport is organised and administered in South Australia.

This document has been prepared to assist recreation and sporting organisations to better understand the issues and processes involved in amalgamation. It is hoped this document will provide guidance for those organisations considering amalgamation, mergers or other strategic alliances. It should not be considered to be specific professional or legal advice or to be exhaustive in respect of amalgamation issues.

Organisations are strongly encouraged to obtain independent legal advice from a solicitor on legal matters related to amalgamation and mergers.

**Amalgamations are a process, not just an event and there is no single model that suits all circumstances.**

### WHAT IS AMALGAMATION?

Strictly speaking, amalgamation (more commonly called "a merger" in the business environment) is the joining together of two or more organisations incorporated under the same legislation. An association cannot legally amalgamate with a company as different legislation applies to each of the groups. [Throughout this document the terms amalgamation and merger are used interchangeably.]

In the recreation and sport industry, amalgamation generally takes on two forms:

- 1) A merger is when two or more organisations cease to exist in their own right and their resources, assets and roles are consolidated into a new entity which satisfies the needs of the stakeholders.
- 2) A takeover is when one or more organisations cease to exist in their own right and their resources, assets and roles are consolidated into an existing entity. Often a takeover occurs where a larger, more powerful body takes control of a smaller body. Takeovers are generally more commonplace in the business world rather than in the recreation and sport industry. Importantly however it should be noted that amalgamations often occur between organisations of different sizes.

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## WHY AMALGAMATE?

The current recreation and sporting environment is one of change - with reduced access to sponsorship, a decreasing number of volunteers, population shifts, deregulated trading hours and greater accountability expected from funding bodies, all of which are impacting on the need to rationalise the number of organisations within a particular sport, facility or activity.

In addition, international sporting bodies also seem to favour amalgamation in order to simplify their own communication processes with national bodies. For example prior to the Sydney 2000 Olympics, hockey's international governing body indicated that unless the Australian men's and women's associations amalgamated they would risk disaffiliation and both national teams would be ineligible to participate in the Games.\*

In many cases financial viability is a strong driver of amalgamation. The cost of insurance policies such as public liability, is one example where financial savings or economies of scale, may be achieved through amalgamation.

On the positive side, many see that amalgamation can be a strategic way to grow their particular sport, facility or activity. This is particularly critical given both the increased demands of participants and accountability required by stakeholders.

Organisations can no longer assume that their current structures, systems and practices are relevant and appropriate. Given the changing nature of the industry and a desire to deliver quality services and programs, many organisations are considering mergers and other types of cooperative arrangements such as formal partnership agreements.

In summary, some of the benefits of amalgamation can include:

- Increased marketing opportunities
- Decreased costs through economies of scale
- Development of a cohesive strategic approach
- Simplified administration at club level
- Spreading of risk
- More effective allocation of resources
- Increased quality or quantity of services
- Improved government or corporate support

### CASE STUDY – TWO STATE BODIES

The SA Gymnastic Association and the Kindergym Association of SA merged in early 1998 to form "Gymnastics SA" after pressure from the national body (SA was the only state with a separate kindergym body) and funding bodies questioning why they should fund two organisations. A sub committee was set up with three persons from each Association who met monthly for approx 9-10 months. A formal agreement was developed and signed by both organisations in July 1997 to progress the merger. A special general meeting was conducted at the end of 1997 with both Associations' members voting on motions for the merger to take place. On 31/12/1997 both old Associations were dissolved and the new organisation commenced on 1/1/1998.\* In March 1998 both Associations held AGMs (in adjoining rooms) to receive final reports and financial statements, etc and then the first joint AGM of the new Association was conducted to appoint the new Board of Management. A new name, constitution and board format (5 directors) was developed for the amalgamated body. Some of the major issues that have arisen in the past five years include:

- After 12 months, one of the non-negotiable requirements (a neutral office location) was no longer honoured.
- Removal of the popular brand name "Kindergym SA" from the marketplace.

Some of the barriers have included:

- Unrealistic expectations that all kindergym members would then become part of the sport of gymnastics.
- Kindergym being seen as a legitimate part of the gymnastic community.

The major positive benefit of the merger is securing ongoing government funding.

\* Changes to legislation no longer require organisations to dissolve prior to amalgamation - see page 5 for details of the process required.

\* from "How Hockey Avoided Merger Meltdown" by Sharon Phillips, Australian Sports Commission, 2000

# WHAT CAN GO WRONG WITH AMALGAMATION?

One only has to look to the business world to see that not all mergers and takeovers are successful and many do fail. Mergers/amalgamations can be stressful - jobs and roles often change and programs are altered or discontinued. Considering strategies for managing change during this process is highly recommended.

As each amalgamation is a unique, complex exercise, there will be a large range of issues that can arise. However the most common problem areas identified by amalgamated recreation and sporting bodies are:

**Financial** – Ownership of assets and liabilities (particularly where there is a significant difference in financial positions), membership and capitation fees, how funds are brought into the new body and allocations are made to various programs and services, monitoring and accounting systems.

**Mistrust** – This revolves around the idea that one organisation would dominate over the other and often includes clashes over facilities, access to resources, preservation of heritage and board representation.

**Equity** – Lack of representation at decision-making level, access to facilities and resources and the transfer of existing life memberships and memorabilia such as honour boards and trophies are all sensitive issues.

**Boundaries** – Definitions of regions or zones, structure and responsibilities for clubs or areas, particularly where there will be a reduction in numbers, is often a major area of conflict.

Other issues that can arise and may affect the new organisation in a negative way include:

- Loss of jobs due to more efficient use of human resources in a merged organisation.
- Less flexibility to respond to requests from participants/clients due to larger size.
- More standardised responses as part of a new structure.
- Loss of volunteers or members.
- Clashes of cultures – potentially different management styles or values of men's and women's groups.

## Moral and ethical issues

Effective communication is the key in any successful relationship and an amalgamation between organisations is no different. The success of a merger can be totally dependent upon the development of good personal relationships between key people. Open and honest communication will help this develop.

It would appear important to create a new organisation from scratch, without preconceived ideas, and based on a common vision. Keep asking - "What is best for the sport/activity/facility?" The new structure should build on the perceived strength of the individual partners in order to achieve an improved organisation. For this to occur, a level of trust must be established so that information can be shared - all parties will need to review potentially sensitive administrative and financial records. It is important that these be treated in the strictest confidence, and there should be agreement about how far the information can be disclosed (board/staff/members).

Safeguards that ensure fairness and equity should be incorporated into the process and the new rules/constitution. The new organisation needs structures that both protect the rights of, and offer benefits to, all parties. This is particularly important as various parties may have had a strong loyalty to existing bodies and be reluctant to embrace the new one.

# THE AMALGAMATION PROCESS

It is important to understand that any amalgamation or merger is a living system that will evolve progressively. Again, amalgamations are a process, not just an event and there is no single model that suits all circumstances. The process is a lot like the stages in the development of a relationship between two people:

- Courtship - commonalities and mutual needs are explored.
- Planning - once a connection has been established, formal plans start to be developed. This is often where lawyers and accountants become involved.
- Commitment – the relationship is formalised and legally recognised.
- Housekeeping - where both parties must learn to live together. Over time they develop new ways of working together as one.
- Partnership - eventually as long-term partners they live comfortably and are changed internally.\*

Remember that whatever stage you are at, communication is critical – at every step – to all concerned. It is a good idea to use "track changes" in Word so people can be clear about what is changing with each redraft of any documents. The process outlined on the following pages may assist you to adapt to your own specific circumstances.

\* Adapted from "The Art of Alliances" by Rosabeth Moss Kanter

## STAGE ONE - SELF ANALYSIS

This is the courtship stage where you need to find out about yourself and your prospective partners.

Identify the reasons for amalgamation. This might include the possible benefits, but you might also identify concerns. Once you have identified potential partners – conduct a compatibility check. Compare objectives, structures, systems, culture, assets, income and expenses. Look for common ground, as well as areas of strength and weakness. When there is agreement that amalgamation is desired, then it is advisable to develop a pre-merger, cooperative arrangement. This is where the parties resolve to act cooperatively on all matters of mutual interest and benefit. In addition resources (financial and human) should be allocated to the amalgamation process.

## STAGE TWO - PREPARATION & PLANNING

This stage is where you start to plan how best to formalise the relationship.

Establish an independent task force or committee to oversee the amalgamation process. You need to think carefully about the composition of this committee to ensure there is adequate representation from all parties and sufficient expertise to complete the task. The terms of reference (responsibilities and limitation of powers) for the committee should clearly state the required outcomes. It is best to appoint an independent chair that has no allegiance to any of the proposed partners in the amalgamation. Develop a shared vision and/or principles that should underpin any proposed amalgamation. This provides the point of reference for the task force.

*The role of the task force should be to:*

1. Review the background and history of each organisation.
2. Compare the constitution and by-laws of all parties.
3. Receive proposals for the new amalgamated body from each organisation involved.
4. Make recommendations covering the following areas:
  - › Governance (including voting rights, advisory/standing committees, representation and board composition)
  - › Organisation name and structure (boundaries/regions/clubs/members)
  - › Staffing (paid & volunteer)
  - › Programs and services (including events and competitions, Technical/High performance)
  - › Administration (due diligence enquiries)
  - › Finance (including fees and levies, sponsorship, assets)
  - › Facilities usage, location and ownership
  - › Promotion and marketing
  - › Process for implementation including legal requirements
  - › Equity
  - › Memorabilia and life membership
  - › Transition issues
  - › Time line for implementation

Allow time for discussion and feedback on the taskforce recommendations for the proposed new organisation. Consultation with all stakeholders (which may include government and state or national bodies) as well as members is important to avoid issues later on that could derail the amalgamation process.

### CASE STUDY – MULTI-USE FACILITY

The Cove Sports and Community Club was incorporated in 1994, but never really functioned effectively as an overall management support body for the eight clubs located there. Other issues such as financial sustainability and operational efficiency also drove the formation of a new amalgamated structure.

The process was a 12-month project that also saw the Cove Sports and Community Club change its image from traditional, smoky, sports clubrooms to a smoke-free centre connecting to all sectors of the community.

The City of Marion played a facilitator role with the clubs embracing the concept for a new 'management group/committee' taking ultimate control. In February 2003 the incorporated body made some constitutional changes and formed a management committee made up of local business people, community members and some representation from the clubs.

Some of the barriers included some negative response due to the project needing to overcome some difficult hurdles (financial, mistrust and lack of confidence that the complex would achieve goals). A major issue has been the re-imagining of the complex as a leisure club that responds to the leisure consumer, yet still balancing the needs of traditional, structured sports such as football, cricket and netball. Positive outcomes have included increased community ownership of the whole facility with a focus towards self-sufficiency.

## STAGE THREE – COMMITMENT

This is when the relationship is formalised legally once you have agreed on the way forward.

Once the decision to amalgamate is taken it is suggested you formalise this by all parties signing a Memorandum of Understanding (MOU). This document is evidence of the parties' intentions and records important details such as the basic terms and conditions. After this an implementation plan will need to be developed to cover aspects such as:

- Legal issues - Constitution, name, resolutions to create new body and wind up existing groups, notification to the Office of Consumer and Business Affairs (OCBA).
- Financial issues - Budget, accounting system, bank accounts, pre-amalgamation transactions, finalising contracts.
- Governance issues - Transitional board, voting rights, board functions, advisory committees, equity issues.
- Management and staffing issues - Location, industrial issues, staff requirements, transitional arrangements, human resource policy and procedures.
- Timeline issues - Deadlines and issues to be addressed prior to merge, and after incorporation of new body.

In order to amalgamate two or more incorporated associations, a special resolution is needed of their respective members to resolve to form a new association. An application for amalgamation must also be made on the appropriate forms from the Office of Consumer and Business Affairs. These include "Form 4 - Application for Amalgamation" which must be accompanied by the completed "Checklist for the Proposed Rules of an Association" form. A fee is also payable to OCBA. Lodgement must be made within one month of the earliest resolution passed by the amalgamating associations otherwise late fees can apply.

In addition to the documents referred to in Form 4, the Certificate of Incorporation of the amalgamating associations must accompany the applications. If lost, an appropriate statement should be given in writing. One of the documents referred to in Form 4 is Rules of the Proposed Amalgamated Association. These rules must be typed on single sheets of A4 white paper. The Public Officers of both (or all) the amalgamating associations are required to sign the application. All debts, liabilities and property of the incorporated associations being amalgamated transfer across to the newly amalgamated body, unless there are specific provisions to deal with them in some other legally accepted way. Time will need to be allowed to establish new bank accounts for the amalgamated association and finalise existing accounts prior to closing them off.

If both organisations have an Australian Business Number (ABN) and/or are registered for Goods and Services Tax (GST), the following process needs to occur:

- Once the amalgamated association is a new legal entity, an application should be made for an ABN and to register for GST (if required). This can take about 28 days, however applications over the internet may be able to obtain an ABN much quicker.
- The two parties to the amalgamation should finalise outstanding income tax instalments, GST payments and Business Activity Statements (BAS) BEFORE cancelling their individual ABN and GST registrations. Application to the Australian Taxation Office (ATO) must be made on the appropriate form.

It is recommended you seek independent legal advice on the process of amalgamation.

Don't forget to celebrate the winding up of the old and commencement of the new organisation. It is important to honour the contributions of those people who have created and developed the original associations. One suggestion is to create an "Honour Roll" that includes a set number of nominees from all original bodies - with the names and original organisations listed on a plaque that can then be displayed prominently in the home of the new body.

### CASE STUDY – CLUB

The Brighton and Seacliff Hockey Clubs were located close together, with each having advantages the other didn't (one had strong membership and Premier League status, the other facilities with a new artificial playing surface). Financial viability would have been an issue for both clubs if they continued to operate separately.

Meetings between clubs, in addition to separate meetings of each club's members, occurred during 1994 resulting in various constitution drafts and planning proposals. The final constitution included provision for an inaugural committee with equal membership from each parent club and the future management structure. This was followed by a final combined "vote" meeting, allowing amalgamation to occur in 1995.

Both club management committees, along with strong support from Council and the state peak body drove the process to create one strong club with long-term viability. Club uniforms were an issue, along with change of traditional colours, new fee structures, differences over the new club's name, cultural differences – one club being elite player oriented, the other more socially oriented, and there was some loss of members from both sides. However, since amalgamation there has been growth in membership (exceeding that of the two parent bodies) and a stronger volunteer base to ensure long-term viability of the club.

## STAGE FOUR - INTEGRATION

Once the formal processes have been completed, the post-amalgamation integration begins where all parties have to learn how to work together in a new structure.

Often this is the stage when mergers can fail, despite all the best planning. During this transition stage it is easy to get bogged down with minor issues and lose sight of the big picture - the reason you amalgamated in the first place. Remember the shared vision developed in stage 2?

There are three areas of action that are critical during this stage:

1. Obtaining buy-in, which simply means getting people on side and supporting the new organisation. This needs to happen as early as possible.
2. Clear orientation, everyone needs to be well informed and have clear direction in order to support the vision of the amalgamation.
3. Expectations (both internal and external) need to be managed in a proactive way. Open and honest information needs to be provided up front and continue as the integration process progresses.

To give any amalgamation the best chance of success, here are six key factors you need to consider.\*

- 1) **Vision** - It is important to remember that the new organisation should be modified to fit the vision, rather than trying to make the vision fit the organisation. It may help to develop a business plan for the new organisation and then determine operational structures. Your vision should be clear and realistic so it is easily understood.
- 2) **Leadership** - Should be an urgent priority. Someone needs to take control and quickly. Both the president/chair and key staff should have been identified at the time, or prior to the amalgamation taking place. Otherwise uncertainty and anxiety will grow, and power struggles can destroy goodwill on both sides.
- 3) **Focus on growth** - Rather than cost cutting. Opportunities should follow from the vision and business plan of the new organisation. Efficiency savings may well be taken up by the costs of implementing the amalgamation in the early stages.
- 4) **Positive action** - Try to get some early wins on the board - these should be actual achievements and not just words. Work out whether your priority is internal (staff) or external (stakeholders/clients).
- 5) **Communication** - Lack of commitment is the biggest barrier to successful integration, whereas effective communication will persuade people to believe in the vision and act to make it happen. Leaders in the new organisation need to determine their communication goals and plan their strategy carefully.
- 6) **Organisational integration** - Assess the differences between the amalgamating organisations (assumptions, rules and the way things are done). Decide whether you will adopt one culture or preferably create a joint culture, which takes the best from the individual partners. You need to set up a system of incentives and penalties to reinforce the new culture. Understand that it will take time for people to adjust.

### CASE STUDY – ALTERNATIVE TO AMALGAMATION

Historically soccer has developed a number of controlling bodies each looking after a different part of the sport. Over time this has led to duplication of activity and resources and difficulties in gaining funding or sponsorship. Whilst there has been support from government and other agencies for a peak body, the process has been driven by the soccer community to address these issues and attempt to repair the public perception and media profile of soccer in South Australia.

Discussions about a peak body started over four years ago with initial meetings of representatives from various soccer bodies, chaired by an independent, high profile, soccer identity. The outcome was that four key soccer organisations (South Australian Soccer Federation, South Australian Amateur Soccer League, South Australian Junior Soccer Association and South Australian Women's Soccer Association) formed a new body - 'Soccer SA'.

Initially, all four partners retain incorporation and control of their own affairs, but have agreed to work together on particular elements of business (namely sponsorship and marketing, common registration database and better coordination of events and fixtures). The SA Soccer Federation retains its status as the member to the national body, but must consult with the other partners on any decisions to be taken. The arrangement is detailed in a Memorandum of Understanding signed by all partners in December 2002 for a one-year period. Following the signing of the MOU, an independent chair was nominated and endorsed by the partners.

It has taken time to build trust amongst the group, share commercial in confidence information and put aside the history between many of the partners. Whilst work has begun on a number of projects (common database, sponsorship) progress has been hampered by the upheaval in soccer at a national level. At the end of the MOU term, a more lasting arrangement is envisaged which includes the development of a business plan and incorporation of Soccer SA. Whilst there are still issues to be resolved, the parties are now sitting around the table, with a formal agreement outlining how they can work together, discussing their collective future.

\* Adapted from "After the Merger" by Habeck, Kröger and Träm.

## ALTERNATIVES TO AMALGAMATION

Total integration of separate bodies (particularly men's and women's sporting groups) may not provide the best outcomes for all concerned and other options may be more appropriate. For example a structure may be developed that allows for funding, insurance and corporate identification to be handled by a joint committee, whilst leaving separate bodies to manage participation development, program and competition management. A Memorandum of Understanding could be developed to formalise the functions and tasks to be managed jointly.

An auspicing or partnership agreement may also allow for a smaller group to operate independently, but exist legally under the banner of a larger organisation. This may be suitable in the case of the management of specific activities or in the sharing of a facility.

These options should be considered when looking at the functions and roles of each body and determining the best structure to achieve the desired outcomes. A final solution that has aspects of both integration and separation may well be the best model for some clubs or associations.

The case studies also provide examples of some different structures that organisations have used to operate effectively.

## SUMMARY

It is possible to create successful amalgamations in the sport and recreation industry, but they require careful planning, negotiation and a willingness to keep an open mind about the final outcome.

Strong leadership is required and also an understanding that some people will need to take a backseat.

The time it takes will vary according to the commitment, resources and unique requirements of the organisations involved. It is common for the process to take a year or more to allow adequate time for discussion, debate and planning. Timelines should be set, and followed wherever possible to keep the process moving. Drawn out processes result in lost momentum and make it harder to gain commitment and support.

Amalgamation should not be seen as the answer to financial and operational difficulties - even the best planned mergers can fail due to external pressures and unforeseen circumstances.

In the case where there are "take-overs" by larger, more powerful organisations, or mergers where a large body unites with a smaller one, it should not be assumed that the larger body's ways of operating should be adopted automatically. It is important to take an approach which adopts the best practices of both organisations. To avoid disputes and disappointment, careful thought will need to be given to ways of providing a voice for the smaller organisation in future decision making.

Only where there is full commitment on both sides will the arrangement last long enough to be successful and create value for all the partners involved. Successful amalgamations are the result of honest self-analysis, chemistry and compatibility. The best results come from people who believe in the outcome, have a shared vision and a philosophy of creating a new organisation that takes the best from all the individual partners.

## References:

Australian Sports Commission Amalgamation of National Sporting Organisation Guidelines, 1997

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Phillips, Sharon "How Hockey Avoided Merger Meltdown", Australian Sports Commission, 2000

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## KEY ASPECTS OF THE AMALGAMATION PROCESS

1. Determine what you are trying to achieve. Be truthful in your self-evaluation and realistic in your expectations of merger partners.
2. Encourage the development of good personal relationships between key people with clear and honest communication.
3. Establish a working party to create a common vision of the “new” organisation without preconceived ideas.
4. Make a formal commitment to the new vision and keep an open mind to the outcomes. Document your desired outcomes.
5. Agree on a process and timeline that suits your circumstances and requirements. Allow adequate time for planning and consultation, but keep things moving.
6. Develop a business plan for the new organisation (based on the vision and agreed principles) and then determine structures accordingly.
7. Incorporate fairness, equity and “non-negotiables” into formal agreements and new governance structures. (Remember the process is one of give and take – be clear about what is non-negotiable and what concessions you can live with.)
8. Seek independent advice to ensure you meet all the legal requirements - including industrial relations, tax and corporate affairs.
9. Once the formal process is complete, aim for early positive achievements to get everyone on side. Allow time for cultural integration – creating a culture that takes the best from all partners.
10. Above all, communicate to everyone concerned at all steps along the way. A well developed communication strategy can help you do this most effectively.

## Further help

### Business Registration and Association Incorporation enquiries

Office of Consumer and Business Affairs      Tel: 1300 138 91      Web: [www.ocba.sa.gov.au](http://www.ocba.sa.gov.au)

### GST and ABN registrations and cancellations

Australian Taxation Office      Tel: 132 478      Web: [www.ato.gov.au](http://www.ato.gov.au)

### General legal enquiries

The Law Society of South Australia      Tel: 08 8229 0222      Web: [www.lssa.asn.au](http://www.lssa.asn.au)



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