

AGREEMENT TO AMALGAMATE—PASSING OF A SPECIAL RESOLUTION

Amalgamating corporation name: _____

ICN: _____

Minutes of general meeting of members

Date: _____

Location: _____

Time: _____

Present: see attached attendance list

Apologies: see attached list of apologies

Chairperson: _____

Quorum: A quorum of members entitled to vote on the resolution was present at all times during the meeting.

Notice of meeting: The notice of the meeting of members was, with the permission of the members, taken as being read.

Resolution: The following special resolution was passed by at least 75 per cent of members attending the meeting.

THE MEMBERS RESOLVED:

- to authorise the applicant to apply for the registration of **[insert name of proposed amalgamated body]** (the body) as an Aboriginal and Torres Strait Islander corporation to replace **[insert name of amalgamating corporation]** and **[insert name of amalgamating corporation]**
- that the proposed rule book provided to the Registrar of Indigenous Corporations under subsection 29-20(2) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) was approved as the rule book to be adopted by the body when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3 of the CATSI Act
- that the attached list of replaceable rules will apply to the body when it becomes registered as an Aboriginal and Torres Strait Islander corporation, unless any rules are changed or replaced in the proposed rule book
- that the person specified in the application will become directors of the body when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3 of the CATSI Act
- that the person specified in the application as the person who will become the contact person/secretary **[delete the position that does not apply]** of the body when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3 of the CATSI Act.

Closure: There being no further business the meeting was declared closed at _____ .

Confirmed: _____
(Signature of chair) (Name of chair)

Further information website: www.oric.gov.au
freecall: 1800 622 431 (not free from mobiles)
email: info@oric.gov.au

Note: This fact sheet contains basic information only and is not a substitute for legal advice.

Fact sheet



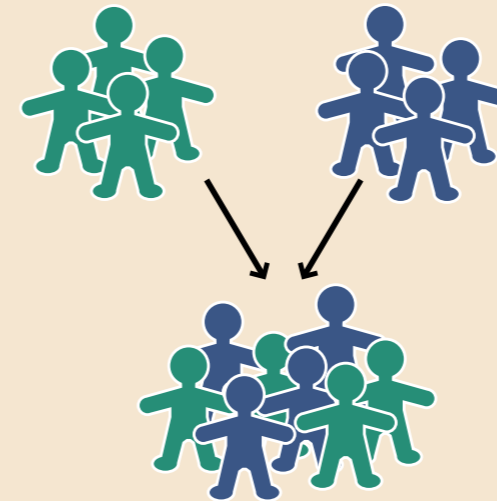
Australian Government
Office of the Registrar of Indigenous Corporations

Amalgamation—information for existing corporations

What is amalgamation?

Under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) two or more existing Aboriginal and Torres Strait Islander corporations can apply to form a new Aboriginal and Torres Strait Islander corporation. This is called amalgamating.

Corporation A Corporation B



Amalgamated corporation

How to amalgamate

To amalgamate, the members of each corporation must agree to it. They do this by passing a special resolution at a general meeting—at least 75 per cent of members' votes must agree to it.

They also have to send a statement to any substantial creditor. This is a requirement under the CATSI Act.

A substantial creditor is anybody that is owed more than \$2000 by the corporation.

It is a good idea to:

- let your funding body know before you amalgamate
- speak to an accountant if your corporation has significant assets.

Notice of intention to apply for registration form

To amalgamate two or more existing Aboriginal and Torres Strait Islander corporations the person authorised to apply for registration must:

- fill in the form *Notice of intention to apply for registration of an amalgamated corporation* and send it to the Registrar—this form is available on the ORIC website at www.oric.gov.au
- within 14 days of sending the Registrar the above notice, publish a statement to substantial creditors and a copy of the notice in a national newspaper or a daily newspaper in each state or territory where the amalgamating corporations have a registered office or carry out their business.

The newspaper notice could use wording like this:

STATEMENT TO SUBSTANTIAL CREDITORS—

NOTICE OF INTENTION TO APPLY FOR REGISTRATION OF AN AMALGAMATED CORPORATION

The corporations listed in the form *Notice of intention to apply for registration of an amalgamated corporation* (see below) intend to amalgamate. A substantial creditor of any of the amalgamating corporations may, within 21 days, object to the Registrar, under section 29-18(3) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, to the grant of the application.

[A copy of the form must also be included.]

- each of the amalgamating corporations has 21 days after the notice is published to take reasonable steps to inform substantial creditors about the proposed amalgamation and their right to object to it. ORIC suggests that in most cases this would mean, at least, writing to each creditor about the proposed amalgamation.

Using their own letterhead, each amalgamating corporation might use wording along the following lines:

[insert corporation name and ICN]
[insert corporation address]

To: [insert name of substantial creditor]
[insert address of substantial creditor]

Statement to substantial creditors under section 29-18(1)(c) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

The following corporations intend to amalgamate under the CATSI Act to form a new Aboriginal and Torres Strait Islander corporation to replace the amalgamating corporations:

- [insert amalgamating corporation name, Indigenous Corporation Number (ICN)]
- [insert amalgamating corporation name, Indigenous Corporation Number (ICN)]

On [insert date], the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) was given a notice of intention to apply under section 23-1 of the CATSI Act to register the amalgamated corporation.

Under section 29-18(1)(c) of the CATSI Act, I am required to take reasonable steps to bring to your attention the proposed amalgamation and the right that substantial creditors of any of the amalgamating corporations have under section 29-18(3) of the CATSI Act to object to the grant of the application.

Under section 29-18(5) of the CATSI Act and regulation 29-18.01(2) of the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007* (CATSI Regulations), a person is a substantial creditor of an amalgamating corporation if the amalgamating corporation owes the person more than \$2000.

The objection period is 21 days after the notice referred to above is published.

Under section 29-18(3) of the CATSI Act, if you are a substantial creditor, you may object to the grant of the application by:

- (a) lodging a written objection with the Registrar that contains the information prescribed by regulation 29-18.01(1) of the CATSI Regulations and
- (b) giving the applicant identified in the notice a copy of the objection within the objection period.

It is proposed that an *Application for registration (amalgamated corporation)* will be made within 14 days after the end of the objection period.

[insert signature block of signatory for the amalgamating corporation]
[insert position of signatory]
[insert date]

REMEMBER

Each amalgamating corporation needs to show it took reasonable steps to let substantial creditors know about the proposed amalgamation. If a creditor later says that reasonable steps were not taken to let them know about the proposed amalgamation, the amalgamation may not be allowed. If you are sending substantial creditors a letter, use registered mail.

Application for registration form

The person applying for registration must fill in a form called *Application for registration (amalgamated corporation)*—available on the ORIC website at www.oric.gov.au. You will have to include a few documents with this form. See the checklist below.

Checklist

When you lodge your *Application for registration (amalgamated corporation)* form with the Registrar, include:

- a copy of the proposed rule book of the proposed amalgamated corporation
- if applicable, any application for exemption under the CATSI Act.
- if applicable, any outstanding reports that need to be lodged under the CATSI Act.

You need to also include the following things for each amalgamating corporation:

- a copy of the signed minutes and the resolution from the general meeting (see attachment)
- a copy of the creditors' notice published in the newspapers
- evidence that each corporation has taken reasonable steps to inform creditors of the amalgamation.

See the forms called *Application for registration (amalgamated corporation)* and *Notice of intention to apply for registration of an amalgamated corporation* for further details of other required documents.

Passing a special resolution— at a general meeting

Each amalgamating corporation needs to agree to the special resolution. This means they each need to do the following:

1. The directors need to prepare a notice of the general meeting. The notice must include what the special resolution is about and the final wording of it.

The CATSI Act has a number of rules called 'replaceable rules'. In the resolution you have to include an agreement that the replaceable rules will apply to the new corporation when it becomes registered, except if the members agree to change or replace some of these rules in the proposed rule book.

You can use the wording in point 3 of the **attachment** (Minutes of general meeting of members) and attach a list of the replaceable rules as part of the resolution.

2. Directors need to send the notice to all members at least 21 days before the meeting. Check your rule book (constitution) to see if you have other requirements about giving notice. It might say you can send the notice by mail, put it on community noticeboards, the radio or in the local newspaper. You can also ask the Registrar for an exemption for a shorter time.
3. Make sure a quorum is present at the general meeting according to your current rule book (constitution).
4. Count and write down the number of votes for and against the resolution, so that you can be sure that at least 75 per cent of the members at the meeting agreed to it.
5. Keep minutes of the meeting or fill in the **attachment** and keep it as a record. Make sure the chair signs the minutes.

Send your *Application for registration (amalgamated corporation)* form to ORIC after your general meeting and include all the documents mentioned in the checklist.