**AMALGAMATION**

INDUSTRIAL RELATIONS ACT 2016 – Chapter 12 Part 14

INDUSTRIAL RELATIONS REGULATION 2018 – Part 13

INDUSTRIAL RELATIONS (TRIBUNAL) RULES 2011 – Part 14 – Division 9

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| **An application for a proposed amalgamation -** | **Act, Regulation, Tribunal Rule section** | **Document filed?** |
| Application for a declaration of a community of interest – Form 56 | **Reg 53** |  |
| Scheme of amalgamation | **Reg 56 & 57(1)** |  |
| Outline of scheme of amalgamation | **Reg 60** |  |
| Application to submit proposed amalgamation to a ballot | **Reg 61** |  |
| Amalgamation ballot exemption – number of members | **Reg 63** |  |
| Amalgamation ballot exemption - recognising federal ballot | **Reg 64** |  |
| Rules | **Reg 80(1)(e)** |  |

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| **Community of interest declaration for amalgamation** | **Act, Regulation, Tribunal Rule section** | √ or X or  n/a |
| Existing organisations for a proposed amalgamation may jointly apply to the commission for a declaration under this section | **Reg 53(1)** | |
| **The application must**: | **Reg 53(2)** | |
| State the grounds on which it is made, and | **(a)** |  |
| Nominate 1 of the applicants as the person authorised to receive on the applicants’ behalf service of documents for the application, a proposed amalgamation and each proposed alternative amalgamation; and | **(b)** |  |
| Be signed by the president or secretary of each joint applicant; and | **(c)** |  |
| Be accompanied by a copy of each resolution for the proposed amalgamation under Reg 56(4), signed by the president or secretary of the applicant whose management committee passed it; and | **(d)** |  |
| Be filed in the Registry before or with the ballot application for the proposed amalgamation. | **(e)** |  |
| If the application is filed before the ballot application, the commission must promptly fix a time and place to hear submissions on the application. | **Reg 53(4)** | |

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| **Amalgamation and withdrawal schemes** | **Act, Regulation, Tribunal Rule section** | √ or X or  n/a |
| **Management committee approval** | **Reg 56** | |
| A scheme for a proposed amalgamation and any changes to the scheme must be approved by each existing organisation the scheme is about. | **(1)** |  |
| A scheme for a proposed withdrawal and any changes to the scheme must be approved by the constituent part seeking to withdraw. | **(2)** |  |
| An approval under subsection (1) may be given only by the organisation’s management committee. | **(3)** |  |
| The management committee’s approval must be by resolution. | **(4)** |  |
| Despite an existing organisation’s **rules**, the following are taken to have been made under its **rules** if approved by its management committee’s resolution - | **(5)** | |
| A scheme; | (a) | |
| A scheme amendment | (b) | |
| Any proposed amendment of its **rules** in a scheme | (c) | |
| **The scheme for a proposed amalgamation must state the following:** | **Reg 57(1)** | |
| The general nature of the amalgamation, showing - | **57(a)** |  |
| * The existing organisations; and | 57(a) (i) |  |
| * If an existing organisation is the proposed amalgamated organisation - that fact; and | 57(a) (ii) |  |
| * If an association proposed to be registered as an organisation is the proposed amalgamated organisation – that fact and its name; and | 57(a) (iii) |  |
| * The organisations that are proposed to be deregistered. | 57(a) (iv) |  |
| That all members of the proposed deregistering organisations are to become, on amalgamation, without payment of an entrance fee, members of the amalgamated organisation; | 57(b) |  |
| If it is proposed to change an existing organisation’s **name** – particulars of the proposed change; | 57(c) |  |
| If it is proposed to amend an existing organisation’s **eligibility and other rules** – particulars of the proposed amendments; | 57(d) |  |
| If an association is proposed to be registered as an organisation – its eligibility and other rules; | 57(e) |  |
| The arrangements that will exist on amalgamation in relation to the property of the proposed deregistering organisations; | 57(f) |  |
| If it is proposed to change an existing organisation’s list of callings, particulars of the proposed change; | 57(g) |  |
| The arrangements that will exist on amalgamation in relation to the liabilities of the proposed deregistering organisations. | 57(h) |  |
| A scheme outline must have no more than 3000 words, unless the commission approves otherwise. | **Reg 60(1)** | |
| The outline may, if the commission approves, include things other that words including, for example, diagrams, illustrations, and photographs. | **60(2)** |  |
| **Applications about ballots** | **Act, Regulation, Tribunal Rule section** | √ or X or  n/a |
| **Application to submit proposed amalgamation to a ballot** | **Reg 61** | |
| Form 56 | **Tribunal Rule 208** |  |
| An application may be made to the commission for an amalgamation ballot. | **Reg 61(1)** |  |
| The application must be made jointly by the existing organisations and any association proposed to be registered as an organisation under the amalgamation. | **61(2)** |  |
| The ballot application must: | **61(3)** | |
| Be accompanied by  (i) a copy of the scheme for the proposed amalgamation; and  (ii) a written scheme outline | 61(3)(a) |  |
| Nominate 1 of the applicants as the person authorised to receive on the applicants’ behalf service of documents for the application, proposed amalgamation and each proposed alternative amalgamation; and | 61(3)(b) |  |
| Be signed by the president or secretary of each joint applicant; and | 61(3)(c) |  |
| Be accompanied by a copy of each resolution for the proposed amalgamation under Reg 56, signed by the president or secretary of the existing organisation whose management committee passed it; and | 61(3)(d) |  |
| Be accompanied by an affidavit by a member of each existing organisation’s management committee stating that subsection (5)(b) has been complied with. | 61(3)(e) |  |
| An application may be made only if each existing organisation’s management committee has: | **61(5)** | |
| Resolved to make the application; and | 61(5)(a) |  |
| Notified each member of the making of the resolution by:  (i) giving the member a copy of the resolution; or  (ii) including the resolution in a publication that the organisation gives to its members free of charge. | 6215)(b) |  |

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| **Amalgamation ballot exemption – number of members** | **Reg 63** | |
| A proposed amalgamated organisation may apply to the commission for an exemption (a ***ballot exemption***) from the requirement to hold a ballot for the amalgamation. | 63(1) | |
| The application may be made only on the ground that the number of persons that could become members of the proposed amalgamated organisation is not more than 25% of the number of members of the applicant when the applicant’s management committee resolved to make the application. | 63(2) |  |
| The application must— | 63(3) | |
| be filed in the registry together with the ballot application for the amalgamation; and | 63(3)(a) |  |
| state the ground on which it is made; and | 63(3)(b) |  |
| be signed by the president or secretary of the applicant; and | 63(3)(c) |  |
| be accompanied by an affidavit by a member of the applicant’s management committee stating that subsection (4)(b) has been complied with. | 63(3)(d) |  |
| An application may be made only if the applicant’s management committee has— | 63(4) | |
| resolved to make the application; and | 63(4)(a) |  |
| notified the organisation’s members of the making of the  resolution by— | 63(4)(b) | |
| giving each member a copy of the resolution; or | 63(4)(b) (i) |  |
| including it in a publication the organisation gives to its members free of charge. | 63(4)(b) (ii) |  |

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| **Amalgamation ballot exemption - recognising federal ballot** | **Reg 64** | |
| This section applies if -  (a) an organisation’s counterpart federal body has amalgamated with another organisation’s counterpart federal body under the Commonwealth Registered Organisations Act; and  (b) the organisations propose to amalgamate under the Act. | 64(1) |  |
| The organisations may apply to the commission for an exemption from holding an amalgamation ballot. | 64(2) |  |
| The application must -  (a) be filed in the registry with the ballot application for the amalgamation; and  (b) state the grounds on which it is made; and  (c) be signed by the president or secretary of each organisation; and  (d) be accompanied by an affidavit by a member of each applicant’s management committee stating that subsection (4)(b) and (c) has been complied with. | 64(3) |  |
| An application may be made only if the management committee of each organisation has -  (a) resolved to make the application; and  (b) notified each member of the making of the resolution by -  (i) giving the member a copy of the resolution, or  (ii) including the resolution in a publication that the organisation gives to its members free of charge; and  (c) notified each member of the member’s right to object to the application under section 74 either -  (i) personally; or  (ii) by post, addressed to the member’s residential address; or  (iii) by including notice of the right in a publication the organisation gives to its members free of charge. | 64(4) |  |
| **Objection to amalgamation ballot exemption - recognising federal ballot**  A member of an organisation that has applied for an exemption from holding a ballot for a proposed amalgamation under section 64 may object to the application on the ground that the exemption would detrimentally affect the member’s interests. | **Reg 74** |  |
| **Notice of objection**  A notice of objection under section 73 must be filed -  (a) by the day fixed by the commission; or  (b) if the commission substitutes a later day for the fixed day - by the substituted day; or  (c) if no day is fixed - within 28 days after a notice under section 81 for the proposed amalgamation is first published. | **Reg 76**  (1) |  |
| A notice of objection under section 74 or 75 must be filed within 28 days after a notice of the application is given under section 78. | 76(2) |  |
| The notice must state -  (a) the objector’s name and address; and  (b) the grounds of the objection; and  (c) particulars of the grounds. | 76(3) |  |
| A noticed of objection from an organisation must -  (a) be under the organisation’s seal; or  (b) be signed by the organisation’s authorised officer. | 76(4) |  |
| The person who files the notice must serve a copy of it on each applicant within 7 days after the filing. | 76(5) |  |

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| **Effect of amalgamation** | **For Registry use only** |
| **This section applies on the amalgamation day for an amalgamation** | **Act s 842** |
| If the proposed amalgamated organisation for the amalgamation is not already registered, the registrar must - | **(2)** |
| * Enter in the register its name and the amalgamation day; and | (a) |
| * Give it a certificate of registration in the approved form – Form 64 | (b) |
| If the amalgamated organisation was not incorporated before the entry in the register, section 611 applies to the organisation as if the commission had granted a registration application under part 2 on the amalgamation day. | **(3)** |
| Despite part 6, a proposed amendment of the rules of an existing organisation for the amalgamation takes effect. | **(4)** |
| If there is a proposed deregistering organisation for the amalgamation - | **(5)** |
| * Sections 888 to 890 and 893 apply to the organisation as if a deregistration order had been made for it; and | (a) |
| * Its property and liabilities vest in the amalgamated organisation; and | (b) |
| * Its members become members of the amalgamated organisation, without requirement to pay an entrance fee. | (c) |
| The amalgamated organisation must take all necessary steps to give effect to the amalgamation. | **(6)** |
| **Holding office after amalgamation** | **Act s 843** |
| This section applies to the **rules** of an amalgamated organisation or proposed amalgamated organisation for a proposed amalgamation if the organisation is not a corporation. | **(1)** |
| Despite parts 3 and 4, the **rules** may allow an officer (***an existing officer***) of a proposed deregistering organisation or existing organisation who holds office immediately before the amalgamation day for the amalgamation to be an officer of the proposed amalgamated organisation | **(2)** |
| However, the **rules** must not allow the existing officer to hold office in the amalgamated organisation without an ordinary election for more than the longer of: | **(3)** |
| * The existing officer’s unexpired term immediately before the amalgamation day; or | (a) |
| * 2 years from the amalgamation day. | (b) |
| The **rules** must make reasonable provision for synchronising the election with elections for other offices in the organisation. | **(4)** |
| Section 621 *(filling casual vacancies)* applies to an office in an amalgamated organisation held by an existing officer of a deregistered organisation for the amalgamation. | **(5)** |
| Section 624 *(maximum office term – 4 years can be extended by 1 year)* does not apply to an office in an amalgamated organisation held by an existing officer. | **(6)** |