

Community Sector – Mergers, Takeovers and Acquisitions – Fact Sheet

What is the Role and Involvement of DHHS in Community Sector Mergers?

The Department of Health and Human Services (DHHS) understands that mergers, takeovers and acquisitions within the community sector are normal and expected as organisations make business decisions in response to changing service delivery and financial environments.

While DHHS aims to work collaboratively with Community Sector Organisations (CSOs) to support them to deliver services and outcomes in accordance with their Funding Agreements, as independent entities, CSOs are responsible for making their own decisions and running their organisations as they deem appropriate.

When a CSO funded under the DHHS Central Grants Program is involved in a merger or acquisition, DHHS will offer support and practical advice to assist the organisation through this process; without interfering in business decisions or applying scrutiny beyond what is necessary to ensure the interests of the funder and the consumer are maintained.

As a key stakeholder, DHHS will have a role in monitoring the impact of a merger or acquisition on funded services and the consumers of those services. The level of this involvement will depend on the individual circumstances and risks of each case.

What is the Purpose and Definition of Mergers, Acquisitions or Takeovers?

In a general sense, mergers and acquisitions (or takeovers) are very similar actions with similar goals. They both combine two previously separate organisations into a single legal entity for the purpose of improving organisational performance, efficiency and viability.

However, the underlying business rationale and method for each action is substantially different.

- A **merger** is a mutual decision by two entities to combine and become one entity. It is a decision made by two equals for the benefit of both organisations and their stakeholders.
- An **acquisition, or takeover**, on the other hand, is characterised by the appropriation of one entity by another. It does not necessarily have to be a mutual decision; the organisation actioning the takeover may initiate a hostile takeover while the other is resisting that takeover.

Although some actions may have the attributes of an acquisition, it is important to note that the majority of CSOs are incorporated associations and mutual consent is required under the *Associations Incorporations Act 1964* before a merger or acquisition can take place.

What are the Merging Options for Tasmanian CSOs?

Tasmanian CSOs may incorporate under the State-based *Associations Incorporations Act 1964* or they may elect to register under the *Commonwealth Corporations Act 2001*.

This presents the following merging options:

- One incorporated association may agree to transfer all of its property to another association and then cease to exist.
- Two incorporated associations may decide to merge to form a new incorporated association, following which, both original organisations cease to exist.
- An incorporated association may transfer its property to a public company limited by guarantee (whereby the original incorporated association ceases to exist).
- Two public companies limited by guarantee may decide to merge.

The legislation that incorporates an entity also regulates any mergers involving that entity.

What Should CSOs Consider when Merging with another Organisation?

There are a number of practical considerations that CSOs might like to think about when considering, planning and executing mergers.

Considering the Merger

- Is it in the best interests of the organisation and their consumers? Is it likely to improve the quality of services delivered?
- Is the proposed partner organisation compatible in terms of its objectives, vision, culture, values, governance arrangements, organisational structures and funding base?
- Have all of the risks and benefits of the merger been considered and weighed up?
- Have strategies been developed to manage or moderate these risks and issues?

- Have the wider impacts on the organisation, staff, services and consumers been considered (i.e. loss of community representation, branding, reputation)?
- Have full financial costs of merging been calculated (e.g. staff time, rebranding, professional fees, relocation expenses, industrial costs)? Has this been compared to the savings achieved by merging?
- Are there any other forms of collaborative working that could be explored that might achieve the same outcomes/benefits?

Financial and Legal Considerations

- Has appropriate professional legal and/or financial advice been sought?
- Has the appropriate legal structure for the merged organisations been determined?
- Have any tax implications been considered (e.g. stamp duty, capital gains tax, and the tax status of the merging organisations)?
- Are there any industrial issues that you need to consider (e.g. redundancies, entitlements, compliance with industrial laws or consultation with unions)?
- Do any contracts or leases need to be assigned?

Planning and Communication

- Has there been communication and consultation with all stakeholders early and throughout the process, including partners, employees, consumers and funding entities?
- Does the organisation have members? If so, does the governing document require the consent of the members in order to merge?
- Has necessary consent been obtained from other parties involved in the merger, funding entities and consumers?
- Is there a plan about how the merger process will be managed? Is there a project manager/team/plan/governance body?

Transition, Execution and Evaluation

- Will there be interim governance arrangements in place during the merger?
- What are the transitional arrangements for consumers? How will continuity of care for existing consumers be maintained?
- How will assets and resources be transferred/combined (i.e. relocation of services, organisational restructures)?
- How will administrative/consumer records be transferred and privacy maintained?
- How will cultural changes be managed (i.e. training, information sessions)?
- Are there mechanisms to monitor and evaluate the success of the merger?
- Are there any contingency strategies if the merger is unsuccessful?

While DHHS can offer advice and support about these practical considerations, it is ultimately the responsibility of the CSO to consider, undertake and manage these activities.

For more information and advice you may also like to refer to the following resources:

- [Associations Incorporations Act 1964](#) – particularly section 25
- [Corporations Act 2001](#)
- [Competition and Consumer Act 2010](#) – particularly section 50
- [Australian Securities and Investments Commission \(ASIC\) website](#)
- [Australian Competition and Consumer Commission \(ACCC\) website](#)
- [ACCC Merger Guidelines](#)

The [UK Charities Commission](#) website has a range of resources that may also be helpful.

What Does DHHS Expect from CSOs Involved in a Merger or Acquisition?

Planning, Consultation and Initiation

Where discussion is occurring and decisions are being made about mergers and acquisitions involving a DHHS funded CSO, as a key stakeholder, the Department should be notified and consulted **early and throughout the process**. This can be done through your usual Funding Agreement Manager within DHHS.

DHHS will also **need to consent to the transfer of its grant funding** from one CSO to another. Importantly, DHHS does not need to consent to the merger or acquisition actually taking place, as this is the decision of the CSO; this consent relates to whether DHHS funding will be continued under the new arrangement.

Ongoing Monitoring and Management

DHHS Funding Agreement Managers will continue to monitor the impact of a merger or acquisition through usual monitoring processes, such as reporting, site visit meetings, service reviews and quality and safety audits.

When monitoring the impact of these undertakings, DHHS is primarily interested in how they impact on the Department's funded services and any consumers of those services.

If a merger or acquisition compromises the delivery of funded services, DHHS will initiate appropriate performance management sanctions and actions in line with normal Funding Agreement management practices.

For more information on DHHS policy and expectations, CSOs funded by the Department should contact their respective Funding Agreement Managers.

What are the Different Roles and Responsibilities at a Glance?

Community sector Organisations

If you receive grant funding from DHHS:

- Consider the information and advice about practicalities in this fact sheet when thinking about, planning and executing mergers.
- Notify and consult with DHHS (via your Funding Agreement Manager) early on and throughout the merger.
- Obtain formal delegated consent from DHHS to transfer grant funding.

Funding Agreement Managers

- Have knowledge and understanding of the policy context, position and guidelines.
- Be the key point of contact for CSOs when notifying DHHS and obtaining consent.
- Offer information and advice to assist the CSO throughout the process, without unnecessary scrutiny or interference.
- Coordinate internal communications, approvals and consent including:
 - advising the DHHS' Community Sector Relations Unit (CSRU) and the relevant program area management and stakeholders as early as practical about the proposed merger,
 - seeking advice from the CSRU as early as possible,
 - ensuring that appropriate delegates consent to transfer grant funding, and
 - being the point of liaison between the CSO, CSRU and the program area.
- Ensure that the interests of the funder and consumers are maintained, and continue to monitor the impacts on funded services.
- Identify and respond to any resulting issues.

Program Management & Executives

- Have knowledge and understanding of the policy context, position and guidelines.
- Appropriately resource and support the work of Funding Agreement Managers within their program area of responsibility, in relation to mergers and acquisitions.
- Program managers and/or executives may also need to consent to transfer funding where they are the authorised delegates.

Community Sector Relations Unit

- Support program areas with policy advice and high level information and guidance.
- Liaise with other agencies and program areas where there are multiple entities funding the organisations in question.
- Liaise with crown law on behalf of program areas about any legal matters for government arising from the merger, and coordinate appropriate legal advice and activities (e.g. Deed of Novation).
- Coordinate the Grants Funding Review Committee (where it is necessary to seek approval through this mechanism).
- Have an overarching role in monitoring and assessing the impact of mergers on organisational viability, quality and safety.

Crown Law

Provide advice to DHHS about any legal matters arising for Government from the merger, where requested by the CSRU.

DHHS Corporate

Some executives will consent to transfer grant funding where they are the authorised delegate.