Mergers and amalgamations

A guide for community housing providers considering their strategic future.

Please note:

It is important that organisations considering whether to merge or amalgamate, seek independent legal and financial advice. There will be questions that you need to consider and answers that will require specialist expertise and an informed opinion to help with key decisions and milestones. This opinion and expertise needs to be tailored to the specific needs of your organisation and situation. The contents of this document cannot act as a replacement for legal and financial advice which takes into account the unique features of your agency and is intended as an assistive tool only.

Contents

1. Introduction

1.1 The scope of this resource

This document is intended to provide community housing organisations with some resources and tools to assist in the process of considering merging or amalgamating with another provider organisation (s).

The decision to merge or amalgamate with another provider is a serious one which requires many process steps to work through all of the decisions and actions that are required. Exploring the option of merging or amalgamating with another organisation can raise a lot of questions about how the organisation is going, what its strengths and challenges are, and what its future should be.

Community organisations nearly always have their own unique history. Invariably this history includes large amounts of voluntary work and input by people invested in the purpose of the organisation. There can be significant attachment to history and to the unique ways an organisation seeks to address the needs of people. For everyone involved there can be a sense of ownership and belonging. Serious and lasting decisions about the structure of the organisation and its identity may raise many feelings and challenges, especially for those people who have lived through this history, and who have given their time and commitment through all of the ups and downs associated with community-based work.

At the same time, the context of human services provision through not-for-profit associations and companies is rapidly changing. New compliance frameworks, reforms to funding provision and increasing costs of service provision all impact on the capacity of organisations to meet their objectives, and still be viable and sustainable. A decision to merge with another entity will involve deep exploration of many practical and legal matters as well as discussions about the core purpose and meaning of the work that is being done.

While a merger or amalgamation involves some known steps, this human element also needs significant care and attention. This resource aims to provide tools and prompts that may assist. It is intended as a starting point to guide process as well as strategic discussions and decisions.

1.2 About Q Shelter: how we can help

Queensland Shelter has existed since the mid-1980s and is a state-wide housing organisation working to achieve improved access to, and quality of, housing programs delivered to vulnerable Queenslanders.

Queensland Shelter's current role is focussed on capacity building support to deliver improved housing outcomes. This includes a role supporting community housing providers with registration under the National Regulatory System for Community Housing (NRSCH). Q Shelter also has a wider role to develop and deliver products and services which more generally build the capacity of the

community housing provider sector. This can include delivering and brokering training, facilitation, organisational development, and regional networking activities.

Q Shelter provides a Capacity Building Team with business development managers and capacity development coordinators; all focussed on providing services and products to help develop the sector.

Please note:

o   If you require more information or clarification about this document, please contact the capacity building team on 3831 5900.
o   You can find more resources on our website at: www.qshelter.asn.au.
o   We are continually developing our offerings to better meet the needs of our clients and members. Please let us know of any further assistance you need and we can assist either by linking you with the people and/or tools that may be able to help or explain more about the role we can play directly.

2. The context of community housing provision: the drivers for questioning the future

A wide range of contextual factors may drive an organisation to consider the future and how it can best deliver services to clients and meet its core purpose.

Most strategic planning processes map the environment in which an organisation operates. Strategic plans examine those factors which are most likely to pose opportunities and threats into the future as a basis for ensuring that the most important goals are identified and achieved.

The current and emerging context of community housing provision includes a number of key factors which help to formulate questions and decisions for the future. Australian Strategic Services (2013) have identified the following framework of key drivers which determine the challenges and opportunities an organisation might consider:

Figure 1: Drivers that influence the future of organisations
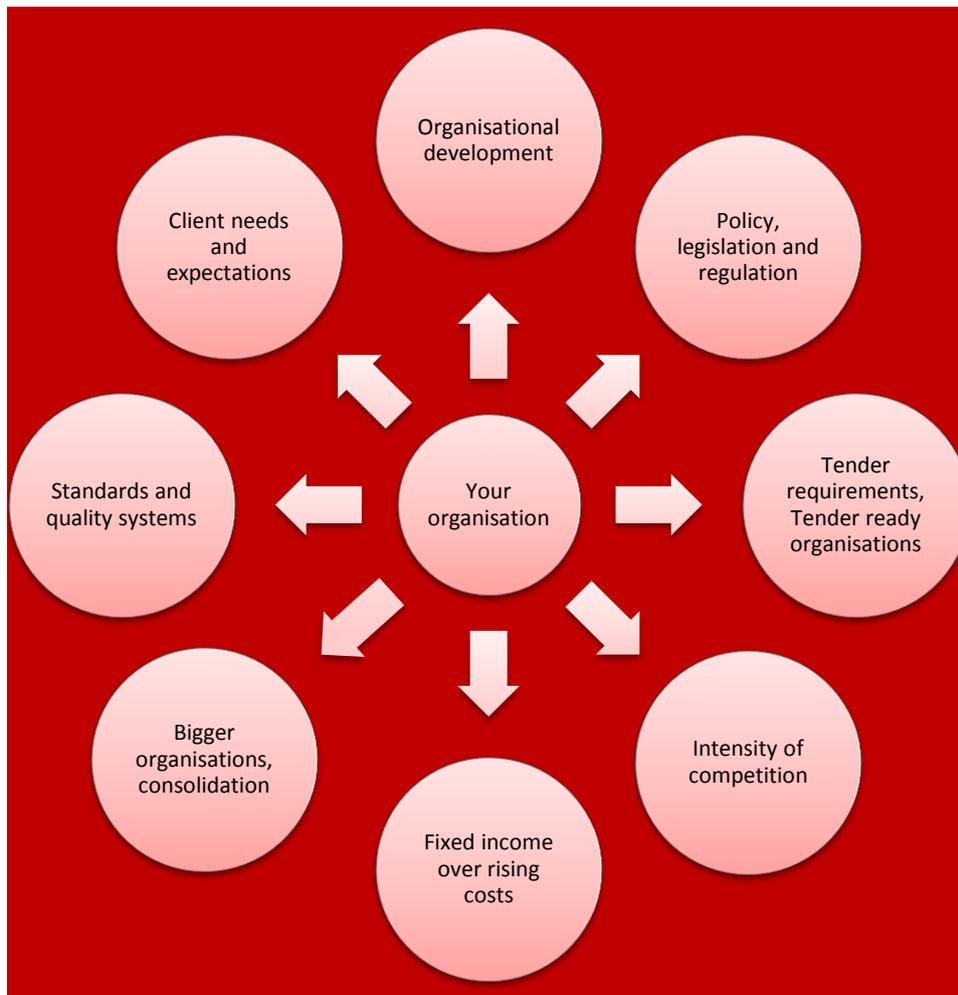
SOURCE: Australian Strategic Services, 2013.

Reflective activity: As a management committee/board and/or staff team, brainstorm ways in which the following drivers impact on your agency:

Driver	Discussion prompts
Organisational development	What organisational development activities have you undertaken? What organisational development activities are needed to help strengthen your capacity for the future?
Policy, legislation and regulation	What policies, legislation and regulations impact on governance, management and service delivery? What aspects of governance, management and service delivery might need to change to fit the requirements of service delivery and regulations?
Tender requirements, tender ready	Has your organisation got the internal capability and capacity to write tenders? If not, is budget allocated to tender writing activities? Who would you ask to help you if a funding opportunity came along?
Client needs and expectations	What unmet needs do current and prospective clients have? What do you know about client needs? What do clients say about your service? How do you engage clients in giving feedback about your service?
Intensity of competition	Who do you work with now? Who are your main competitors? What strategies are in place to collaborate in strategic ways?
Rising costs outstripping income sources and levels	What is your business and strategic plan? How diverse are your funding sources? What strategies do you have in place to improve your revenue base? Is your revenue base growing?
Trend towards bigger organisations, consolidation	What consolidation activities are you aware of that impact on your service? What consolidation activities have you considered as part of a strategic future?
Standards and quality	Are you compliant with all quality requirements? Are you ready for / up to date with the NRSCH?
Our people	What are the thoughts, feelings, and concerns of our clients? What are the thoughts, feelings, and concerns of our staff and volunteers?
Others....	What other drivers might impact on our future?

What does this reflection tell us about our readiness and capacity in the face of these contextual factors?

Some of the specific drivers impacting on community housing provision in Queensland and Australia include:

o   The introduction of a national system of regulation (NRSCH)
o   Increased competition from diverse housing providers including some with a national/international footprint
o   Increasing costs of service provision including increasing wages, increasing costs of insurance and utilities etc.
o   Government policy to transfer the management of public housing to non-government providers
o   Legislative requirements and funding policies which place certain requirements and expectations on all community housing providers
o   Evolving eligibility criteria including the prioritisation of people registered as having high or very high needs.
o   Greater pressure for higher qualified staff in specialist roles.

Reflective questions:

Which of these specific drivers are having the greatest impact on our future?

How are we currently working to address them?

What are the limiting factors that might prevent us retaining viability and addressing the needs of our clients?

What else could we do?

3. Merging and amalgamating: the spectrum of organisational development activities

3.1 The scope of organisational development activities

Most organisations undertake organisational development and maintenance activities which are aimed at strengthening the capacity of agencies to:

o   meet a range of strategic objectives
o   achieve high levels of viability and sustainability
o   meet the needs of people who need services.

There are many definitions of organisational development. The following definition highlights some of the activities encompassed by the term:

> "Organisational Development interventions are inclusive methodologies and approaches to strategic planning, organisation design, leadership development, change management, performance management, coaching, diversity, team building, and work/life balance."

> *Matt Minahan, MM & Associates, Silver Spring, Maryland from the Organisation Development Network Website:* http://www.odnetwork.org/?page=whatisod.

As such, organisational development includes a range of tasks and functions including the following examples:

o   Reviewing and addressing an organisation's performance
o   Reviewing and changing an organisation's human, management and governance structures
o   Reviewing and changing service delivery models
o   Developing strategic, business and operational plans
o   Developing and formalising partnerships, alliances and collaborative ventures
o   Developing policies and procedures
o   Team building
o   Leadership development
o   Change strategies and management
o   Changing or developing the organisational culture.

Reflective questions:

1.   What organisational development activities have you undertaken as an agency?
2.   What organisational development activities might be needed?
3.   If you have a strategic plan, what does it say about how your organisation should grow or develop into the future?
4.   What would we define our organisational culture as? Is this compatible with the current operating environment?

Some organisation development activities are performed by staff and the governing body and sometimes organisations may seek the assistance of a contractor or consultant to facilitate the process.

Organisation development activities invariably involve several stakeholders in collaborative processes including dialogue, discussion, planning and decision making. There is also a significant role for leadership with governing bodies and senior staff playing particular roles in driving the need for development and in the implementation of resulting plans of action. This is because they have a special role and responsibility in the organisational structure to ensure future capacity, sustainability and viability.

Sometimes in the process of developing an organisation, fundamental questions about the future emerge. Some agencies are seriously struggling for viability and sustainability in the light of various contextual and environmental drivers. Others realise the strategic benefit of pursuing a new structure altogether as a proactive measure aimed at increasing market share, and enhancing overall capacity and capability to meet the needs of clients.

As such, mergers and amalgamations are within the scope of organisational development activities. They represent a particular set of activities aimed at addressing questions of viability, sustainability and capacity. They have significant legal implications because they impact on the fundamental structure of the agency as a legal entity.

The reasons why an agency may consider a merger or amalgamation strategy include:

o   Improving services to clients
o   The desire to address increasing costs of service provision without an expanding funding base
o   Poor economies of scale (not enough critical mass to justify specialist resources)
o   The cost of compliance
o   Opportunities to synergise the strengths of more than one business
o   Opportunities to expand services to new clients and/or locations
o   Opportunities to improve competitiveness in a challenging market place

Reflective questions:
1.   Which of these factors or reasons are impacting on your agency's thinking about the future?
2.   What other factors are specifically driving the consideration of whether to merge or amalgamate with another entity?

3.2   Definitions

The concept of merging or amalgamating exists along a spectrum of activities that could be termed strategic alliances (Yankey et al, 2001). Yankey et al (2001) define what they term a 'strategic alliance continuum'. The following diagram highlights some of the different types of strategic alliances that agencies might consider:

Figure 2: Spectrum of strategic alliances
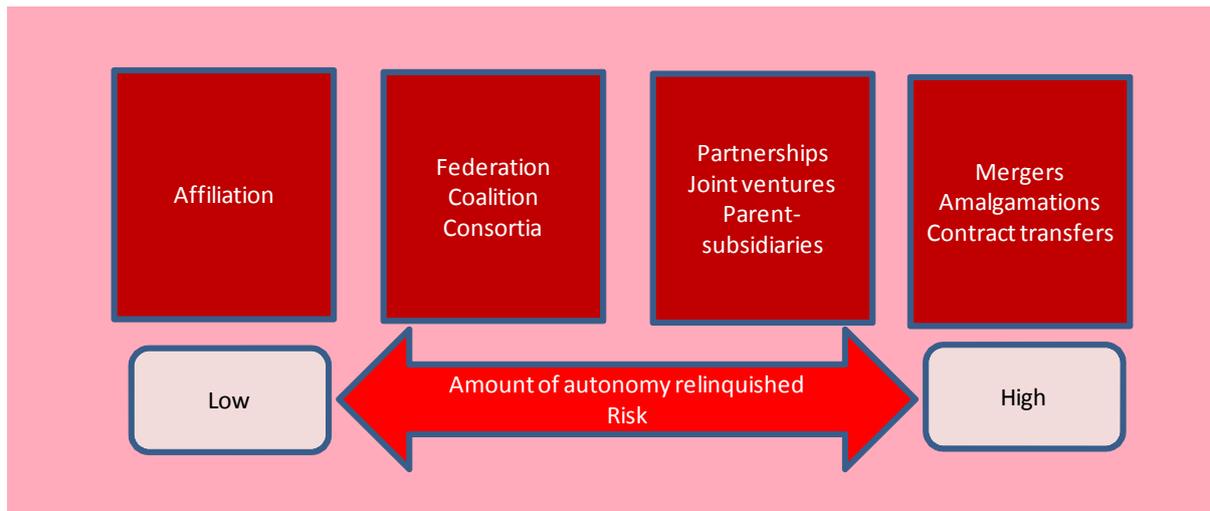
Source: Adapted from Yankey et al, 2001 and Australian Strategic Services, 2013.

The terms merger and amalgamation are often used interchangeably. A merger or amalgamation is usually where both/all entities agree to create another legal entity and then both organisations transfer everything to that entity and then both dissolve.

A take-over is essentially where one of the organisations continues to exist at the end of the transaction and the other(s) transfer everything to it and then dissolve.

It is important that organisations consider the full spectrum of strategic alliances and fully assess the relative benefits of a chosen course of action. The balance of this resource document includes some activities and structured discussions which may help organisations in this process.

3.3   Mergers and amalgamations: critical steps

Mergers and amalgamations are on the more formal end of the spectrum of alliances and involve a significant number of steps and milestones including legal processes that must be carefully considered and followed.

3.3.1   Driving forces leading to the development of strategic alliances

Yankey et al (2001) have developed a framework of factors to assess in considering whether to form strategic alliances as part of the future of the organisation. Whether this leads to a merger or amalgamation is not the only consideration. Most funded programs require agencies to demonstrate their capacity for collaboration. The following work sheet may help agencies to consider whether

they need new, strategic alliances and the extent that the particular drivers are impacting on the agency as a beginning step in considering what that alliance/s might be.

This framework is an opportunity to assess the range and intensity of driving forces confronting an organisation as a basis for considering alliances:

Table 1: Assessing the forces leading to the development of strategic alliances

Environmental factors		
Factor	Likelihood of shaping the future (High, Medium, Low)	Assessment of how this factor impacts on your agency in a specific way
Existing collaborative work with other agencies represents opportunities.		
Increased competition among not for profit agencies	E.g. High	Several other CHPs are active in our geographical area.
Increased competition between not for profit agencies and for profit agencies		
Threat of being acquired, merged or amalgamated		
Increased compliance management requirements		
Pressure from funders		
Lack of available appropriately skilled staff in sector		

Programatic factors		
Factor	Likelihood of shaping the future (High, Medium, Low)	Assessment of how this factor impacts on your agency in a specific way
Need to diversify mix of products	E.g. High	Organisation only manages one program on behalf of a single funding body.
Need to gain greater share of business in particular geography		
Improve quality of programs or services		
Associate with a high quality organisation		
Assure survival of an important community service		
Mandated business share		
Managerial		
Factor	Likelihood of shaping the future (High, Medium, Low)	Assessment of how this factor impacts on your agency in a specific way
Strengthen the administrative structure and/or leadership		
Utilise human resources more effectively		
Provide better opportunities for specialisation		
Obtain state of the art technological capacities		
Establish the organisation's strategic position		
Financial		
Factor	Likelihood of shaping the future (High, Medium, Low)	Assessment of how this factor impacts on your agency in a specific way
Gain access to increased or more reliable funding		
Gain access to capital funds		
Improve the organisation's profit margin		
Reduce costs through economies of scale		
Maximise the organisation's and/or community's resources		

Other considerations		
Factors unique to your agency	Likelihood of shaping the future (High, Medium, Low)	Assessment of how this factor impacts on your agency in a specific way
Difficulty recruiting a governing body	High	Leadership is not secure in a context where many factor impact negatively on a sustainable future.
Organisational people culture		

SOURCE: Adapted from Yankey et al, 2001.

3.3.2 When to consider and decide a merger or amalgamation? Strategic planning as a way to decide timing.

There are many factors involved in the decision to merge or amalgamate including:

o   The agency's internal and external environment and circumstances
o   The availability of a suitable agency/agencies to advance the prospects of a merger or alliance
o   The extent of external factors seriously impacting on sustainability and viability.

Taking a long time to address contextual factors and drivers can leave agencies in a precarious state with fewer options for securing a viable future. Usually the forces that drive strategic alliances are moving ahead, sometimes at a fast pace, even if an agency is struggling to make timely decisions about the future.

It is better to consider merging or amalgamating whilst all parties are in a position of relative good health.

Embracing organisational development activities and opportunities is a way of taking greater control over the future. As a range of contextual drivers are already present in relation to community housing provision, it is really important that all providers consider the future in a strategic way:

Reflective questions:

o   Do we intend to remain as we are?
o   If we want to grow, how do we want to grow?
o   What alliances do we already have?
o   What alliances might we need in the future?
o   Can we survive the current trends and issues impacting on community housing provision and the not for profit sector more generally?
o   If we have serious concerns about our viability and sustainability then do we want to consider a merger or amalgamation?
o   What are the implications for our people (clients/staff/volunteers) if we do or don't action a merger or amalgamation?
o   If yes, who might we commence discussions with to explore the options?

Many of these types of questions may be considered in strategic and business planning activities which are an important part of organisational development. Yankey et al (2001) suggest some generic questions that leaders in not for profit agencies confront including:

1. *How can we make sense of our place as non-profit organisations in the current business environment?*
2. *Do we have the capabilities to keep pace with current trends and respond to changes in the environment?*
3. *Who else, if anyone, offers the same, similar or complementary programs and services?*
4. *How can we acquire capabilities required to continue delivering necessary, quality services for our consumers into the future?*

Yankey et al, 2001.

An up to date strategic plan is essential as a starting point. It enables organisations to consider key questions about their strengths, challenges and opportunities. It can help to establish a mindful, conscious decision to pursue strategic alliances at any point along the spectrum of options outlined in figure 2.

3.3.3 Structuring the work of merging or amalgamating

There are a number of steps involved in considering whether to merge or amalgamate. Depending on the size of your agency, and its legal structure, it will be important to consider how you will give the question of merging or amalgamating focussed attention, time and energy. Some agencies may decide this requires a sub-committee of the governing body. This can include staff, members of the governing body and other people with key skills or capacities depending on your agency's location, size and purpose. Some agencies, if they have paid staff, will task the CEO or most senior worker with specific actions as part of the process.

Regardless of size or scope, an agency will need to structure the work of considering mergers or amalgamations. This requires a conscious decision and delegation from the governing body about how the work of considering this step will progress and who will do it. One example is as follows:

> Practice example:
> Helping Hand emerged from their strategic planning process having identified one of their priorities as exploring opportunities for a merger. The governing body decided that for them, the first step would be to form a task force to progress a plan of action, including some criteria for selecting potential merger partners. Source: Yankey et al, 2001

Structuring this work can include the following key elements:

o   A plan for what needs to happen
o   A structure or group to progress the plan established by delegation of the governing body
o   Terms of reference for this group and how they relate to the governing body

- o Clarity about how decisions will be made
- o Specific roles for staff, volunteers and expert helpers such as lawyers – i.e.: due diligence
- o A budget for any expenses (legal help, consultants, facilitators etc.).

If progress is made and a preferred partner for discussing a merger or amalgamation emerges, then this structuring can involve a sub-committee or task force across the two organisations. In addition to your agency's own plan, a joint plan of action can be developed as well, reflecting what each agency needs to do as part of the process and what joint activities are also needed to make progress.

Practice example:

As Helping Hand and Waybright progressed their discussions about a merger, a joint task force emerged. A consultant helped the agencies to think about the different areas of exploration that needed to happen from which a list of key considerations emerged (such as governance, HR, etc.). A series of sub-committees were formed to progress exploratory activities in relation to a range of key areas. These sub-committees reported to the joint task force. The sub-committees involved staff and governing body members and as such were also a way of engaging key stakeholders including staff at an early stage. This is an example of 'structuring' the process of making progress towards a merger (in this case) or amalgamation.

Source: Yankey et al, 2001

3.3.4   Identifying our strengths: what do we bring to an alliance?

No matter the size, scope or history of an organisation, it will inevitably have strengths and capacities to bring to an alliance. As you consider what options there are, it is important to know and understand what your agency brings to an alliance in an explicit way. This might include elements such as:

- o Particular understanding of a client group
- o Particular understanding of a geographical location or region
- o Physical infrastructure including a shop front/s in key locations
- o A reputation for particular types of service delivery
- o Members of the governing body with key skills that could contribute to a skills-based approach to governance in an alliance
- o Staff with particular skills and capacities
- o Contracts to deliver specific products and/or services
- o Community networks
- o Sources of funding
- o Strategic relationships in a combination of government, business and community sectors.
- o Clearly defined values

You may be able to identify other things that are the key strengths of an agency. It is important to enter into any negotiations understanding what these strengths are and being able to articulate them in a way that can positively shape the discussion. You could even document these as a

statement and as a way of focussing on what you bring and helping other entities understand what you have to offer as you commence dialogue and negotiations.

3.3.5   Engaging with funding bodies

If you have contracts with funding bodies, it is important to understand what their requirements are as you commence discussions with other agencies about merging or amalgamating. Questions to ask or consider may include:

1. What are the Department's requirements as we commence negotiations with other entities about a possible merger or amalgamation?
2. Do we require Departmental approval to undertake a merger or amalgamation?
3. Who makes the final decision in the Department about our merger/amalgamation plans?
4. What is the process of transferring contracts that we current manage, to another entity?
5. Who is our key contact person and what is their role?

It is a good idea to ensure that these discussions result in formal communication about critical issues such as contract transfers and approvals for specific merger/amalgamation plans. The most important thing is to understand very clearly, what your funding bodies require from you and what level of decision making and approvals are required by them. If you have more than one funding body, these negotiations need to be factored into any time line so that the timing of other key steps involved is planned appropriately.

3.3.6   Legal requirements

The legal process of embarking on a merger or amalgamation will be determined by which type of entity you are and what your constitution says. At an early stage, it is important to understand what your status as an entity is and what the legislation and constitution says about mergers or amalgamation.

Community housing providers may be:

o   A company limited by guarantee
o   A company limited by shares
o   A cooperative
o   An incorporated association.
o   Brought into being by "letters patent"
o   Incorporated under their own act (some faith based organisations and Indigenous bodies)
o   An unincorporated association

You may require legal assistance to interpret the specific requirements within both the relevant legislation and your own constitution (if you have one). It may be important to recruit a lawyer who can assist you either for a fee or as a pro bono contribution to your organisation. Many organisations ensure they have a lawyer on their governing body so they also have an internal source of advice and information about this and other legal issues they may have to consider.

If plans to merge or amalgamate also involve winding up the existing entity, then this is also guided by the relevant legislation and constitution for that form of organisation. While these steps may not be the first steps you have to take, there should be an understanding early in the process as a good understanding of the legal process for this can help to plan an effective overall course of action. Early legal advice can help to ensure that the timing of key milestones is helpful and constructive and that legal processes are followed accurately, preventing other risks from emerging later down the track.

3.3.7   Choosing an agency to merge or amalgamate with

One step involved in considering a merger or amalgamation is to scan the environment to understand which organisations you may consider discussions with. You may want to consider a range of criteria such as:

Table 2: Criteria for considering a merger/amalgamation partner

Criteria	Potential merger/amalgamation partners	Assessment of the specific ways in which they meet this criteria
Does the potential partner have similar mission and values?		
Does the potential partner have a compatible vision for the future?		
Is the potential partner likely to survive into the future?		
Can constructive and respectful relationships be established between the governing bodies and staff? Do these already exist?		
Does the potential partner provide opportunities to deliver services to existing or potential client groups and as such address unmet or established needs?		

Criteria	Potential merger/amalgamation partners	Assessment of the specific ways in which they meet this criteria
Does the potential partner have diversified programs funded in a range of ways?		
Are there opportunities to maintain the brand and identity of your organisation?		
The potential partner has clearly identified strengths and a positive reputation.		
Is the potential partner registered under the NRSCH? Are they successfully maintaining their registration?		
Others….		

SOURCE: Adapted from Yankey et al, 2001.

The consideration of these various criteria helps to generate a short list of potential partners or even a clear 'front-runner' as a basis for commencing discussions and negotiations. It is important to note that there may still be more steps involved in actually getting to a decision about whether to progress the legal process of amalgamating/merging. This may be a milestone in deciding to at least pursue options in more detail with one or a few potential partners that best fit with your purpose and vision for the future.

3.3.8   Initial discussions

At some stage, initial discussions will need to be undertaken to explore the possibilities. This is most often by a CEO or most senior worker in an organisation. In the case that an agency only has a voluntary governing body and no paid staff, then someone from the governing body should be

delegated to have some initial discussions. At this stage, gauging interest, exploring possibilities and identifying some next steps are all important.

At the stage of initial discussions, it is probably important to agree that the discussion is a confidential one, only to be discussed within each organisation and not more generally or publicly.

3.3.8   Agreement to undertake further analysis and planning

If at this stage, there is agreement to undertake further analysis or planning, it is important to consider whether to formalise the process at this stage. As organisations usually progress to sharing a lot of information about their business with each other, it may be important to develop and sign a Memorandum of Understanding or formal agreement to guide the conduct and scope of the work that will happen. This type of agreement should cover things like the scope of the work to be done, the structures that will support the work, confidentiality and other key matters. A template for an MOU is included in the appendix. This is a guide only. You need to be sure that you include any matters important to your organisation as a way of protecting your reputation, market share and future opportunities.

3.3.9   Deeper analysis and planning

It is important that all parties involved undertake a deeper analysis and planning about what a combined future might look like and achieve. This could be called a 'side by side analysis' where the approach to a merger or amalgamation is subjected to a very structured comparison of some key features as a basis for establishing that:

o   There is a good fit between the agencies in terms of vision, values, purpose and goals.
o   There is potential to strengthen the combined strategic vision for the future
o   There is enough trust and good will to undertake a rigorous assessment and ultimately the merger/amalgamation process.

> Adapted from Yankey et al, 2001 based on reflections from a consultant involved in the Waybright and Helping Hand Merger.

The earlier discussion about structuring is important here: there will need to be a structured way to advance this level of analysis and it may be a critical time for ensuring there is a joint task force, sub-committee or working group. The role of this structure should be documented and agreed prior to commencement.

A 'side by side' analysis may explore and document information about:

o   Governance
o   Perceived Values
o   Culture
o   Structures
o   Staffing
o   Program areas
o   Services
o   Infrastructure including service outlets

- Geographical reach
- Scope of skills within the governing bodies
- Strategic plans
- Policies and procedures
- Quality systems including standards and accreditation
- Leadership (current and potential)
- Financial health
- Risks
- Shared strategic goals should a merger/amalgamation go ahead
- Non-negotiable points for each agency
- Due diligence (legal, financial)

3.3.10   The decision to progress a merger or amalgamation

Once the information needed is assembled, a joint working group or key workers such as CEOs could develop a recommendation for consideration by each respective board. This is a key decision making step as each governing body needs to formally decide whether to progress a merger or amalgamation based on the available information. The deeper analysis may have revealed issues and challenges that cannot be resolved. The deeper analysis may have also built a clear picture of opportunities and synergy which is the basis for recommending that a merger or amalgamation be progressed. A recommendation like this could be accompanied by conditions such as key points of negotiation that would need to be resolved to get to a final stage of planning and decision making.

It is important that key stakeholder matters are revisited at this point. Many organisations experience serious unrest in terms of staff and members/clients at this point unless the root cause for merger/amalgamation consideration is effectively communicated.

3.3.11   Detailed planning

If there is a decision to proceed, the structural arrangements to progress key steps need to be affirmed or redesigned. With clear structures in place, a joint working group can generate a detailed merger or amalgamation plan of action. This should include:

- A shared vision
- Values
- Rationale
- Known risks and a plan to mitigate or manage those risks
- Strategic objectives
- Strategies
- Actions
- Responsibilities
- Time frames
- Key performance indicators.
- Constitutional or legal requirements

3.3.12 Communications and engagement

As mentioned above several key stakeholders will need to be kept informed. There is an important question of timing for communications. Part of a detailed plan should include how staff and external key stakeholders including members will be kept informed. Timing for sharing information should be agreed between the agencies. Other key stakeholders may include donors, other strategic alliances, elected members of government, community leaders and known champions of the agency. Information briefings, fact sheets, decision making time lines and opportunities to have a say are all important to maintaining the health of broader relationships as the process progresses.

In an association with a large membership, it is important to consider early how to engage those members. It is important to understand the difference between communications and engagement. Communications shares information while engagement actually involves people in participatory processes. Where organisations have grown and developed through high levels of member and stakeholder participation, it is important to consider ways to ensure that members and key stakeholders do not become alienated in the process.

Key decision makers and leaders will be faced with challenging questions about the timing of communications and engagement, with the need for confidentiality. An agreed communications and engagement plan may help make conscious and explicit the approach that will be taken.

Options for member and stakeholder engagement might include:

- o   Workshops
- o   Focus groups
- o   Visioning exercises
- o   Information papers
- o   Surveys
- o   Structured interviews
- o   Shared planning involving members and stakeholders from both agencies together.

Engagement should aim to ensure members and stakeholders concerns are considered and that their levels of support are understood and harnessed for any final vote to merge/amalgamate and wind up.

Communications and engagement are not one linear step in this process but need consideration all of the way through. They can make a significant difference to the level of broader support for a merger and amalgamation and will at least help to alert key decision makers to serious doubts and concerns which may prevent final decision making from achieving the mandate to pursue a merger or amalgamation.

3.1.13 Final decision making

It is important that the legal steps are understood and inform the timing of a members' vote if needed. A governing body needs to form a clear resolution in this case and observe all of the requirements of their constitution and relevant legislation to ensure that the process is 'legal' and all decisions binding.

3.1.14 Celebrate history and milestones

Community based organisations inevitably involve a lot of human capital, and enormous amounts of voluntary effort and therefore ownership. Many organisations only exist because of the pre-cursor of social capital in a community and people willing to spend time and effort forming a legal entity, bidding for contracts and harnessing various contributions of time, funds and expertise. This process is invariably driven by deeply held values and commitment to addressing vulnerability and disadvantage.

A planned and careful approach to the celebration of history and decision making milestones may be essential to address the feelings that can accompany the transitions towards a merger or amalgamation. There can be a lot of grief and fear. Time, effort and budget should be allocated to the process of ensuring that history is acknowledged and celebrated, grief expressed and the new future heralded for all its strengths and opportunities. Beyond ritual celebrations, the new structures should maintain opportunities for member participation and include tangible expressions of history such as using historically meaningful names, maintaining service outlets and using physical symbols that acknowledge the previously existing entity. Artefacts and documentation should be carefully preserved wherever possible.

4.   Summary

Merging or amalgamating is a very formal type of organisational development. It will involve assessing the broader strategic environment to identify if this is a direction your agency wants to explore. It requires a strategic decision to head in this direction as well as a thorough consideration of what your agency offers and can contribute to a venture of this type.

Identifying the legal requirements driven by legislation and your constitution, as well as the requirements of any funding bodies is a critical step in outlining the time frames and critical milestones. Deciding criteria for choosing who to explore a merger or amalgamation with is also essential.

SHELTER
because housing matters

Analylse the drivers influencing the future of your organisation

↓

Put structures in place to progress plans to consider a merger or amalgamation?

↓

Engage with funding bodies to determine any special requirements.

↓

Establish legal requirements and get legal advice.

↓

Consider which agencies you might merge or amalgamate with?

↓

Conduct initial discussions and identify a preferred partner.

↓

Reach an agreement to undertake further analysis and planning together

↓

Consolidate a joint governance structure to oversee implementation

↓

Final decision making

↓

Legal restructure

Stakeholder engagement and communication

Celebrate history and milestones

5.   References

Australian Strategic Services (2013) Amalgamations and Mergers: 10 steps to the altar, Australian Strategic Services. http://asspl.com.au/wp-content/uploads/2013/06/3-amalgamations-and-mergers.pdf

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Matt Minahan, MM & Associates, Silver Spring, Maryland from the Organisation Development Network Website, Website accessed 30 July 2014, http://www.odnetwork.org/?page=whatisod.

J.A. Yankey, B.W. Jacobus, K.M. Koney (2001) Merging nonprofit organizations: The art and science of the deal, Cleveland, OH: Mandel Center for Nonprofit Organizations.

Appendix 1: Merger checklist

The following resource has been developed by Mills Oakley Lawyers. The original is available at http://asspl.com.au/wp-content/uploads/2013/06/3-amalgamations-and-mergers.pdf. The following table is provided with a few amendments relevant to the community housing provider sector, with scope for including notes about the progress of the process to explore a merger.

Please note: This document is intended to be an assistive tool only in managing the process of considering merging or amalgamating with another organisation. It is not intended to be an exhaustive list of considerations and any organisation considering such a step is encouraged to take formal professional advice.

Each organisation involved would be encouraged to consider the series of questions outlined from their own perspective as well as add their own questions based on the prevailing circumstance. This tool (and Q Shelter) does not espouse one form of collaboration/merger as better than any other and the final form of any partnership would need to be negotiated between the parties.

Question	Notes	Complete
A. Concept Phase		
Considering Merger		
Have we properly considered what our purpose is as a NFP?		
Is our proposed partner compatible in terms of its objects, strategic vision, culture, values, governance arrangements, organisational structures and funding base?		
Is a merger in the best interests of our organisation and its beneficiaries? Will a merger enable us to achieve cost savings as well as improve the quality and/or quantity of service we offer?		

	Question	Notes	Complete
	Have we considered what this company/association can contribute to our company/association? - Research and development - Members/beneficiaries/accounts - Service range - Market segment (geography, industry, price point, etc.) - Specialised technology - Human capital - Revenue stream - Financial assets - Distribution channel - Strength to lobby Government		
	Have we considered the options for obtaining the capabilities this company/association has? - Merger/acquisition - Joint venture - Joint marketing/distribution agreement - Strategic alliance agreement - Licensing - Commission/royalty agreement - Consulting services - Patent/technology - Internal development		
	Does the final structure/entity have the required registrations? Are they transferable?		

	Question	Notes	Complete
	Have we approached our staff for their views? If not, how and when are we going to?		
	Have we approached our stakeholders and beneficiaries for their views? If not, how and when are we going to?		
	What will be the risks and benefits for our organisation as a consequence of a formal merger? Have we considered the wider impacts on our organisation?		
	Are there any other forms of collaborative working we could explore that might achieve the same benefits?		
	Have we estimated the full cost of merging? This should include issues such as staff time, rebranding, professional fees, relocation and unanticipated costs.		
	Does our governing document or the law require the consent of the members in order to merge?		
	Are we carrying out a due diligence exercise? Can we do it in-house or do we need professional advice?		
	What level of local engagement/ownership is desired post-merger?		
B. Exploration			
Financial Considerations			
	Have we considered the financial strength of the other company/association? - Assets - Liabilities - Revenue streams - Strength of balance sheet		

	Question	Notes	Complete
	Have we checked their financial projections for the next 1-3 years?		
	What will the combined balance sheet, P&L picture be?		
Culture Considerations			
	Have we considered what is the prevailing culture of the other company/association? - Bureaucratic - Autocratic - Entrepreneurial - Egalitarian - High performing - Market drive/technology driven		
	How do we retain desired level of local ownership?		
	Would there be any potential cultural conflicts during integration?		
	What is the best way to deal with these?		
Legal Considerations			
	Do we have the relevant legal powers to achieve our plan, or will we need help from a Government regulator?		
	Do we need funder approval?		
	Have we decided on a legal structure for the merged organisations?		
	Are we taking the appropriate professional advice and in what areas?		

	Question	Notes	Complete
	Are there any employment issues we need to consider? These could include issues such as superannuation, liabilities and compliance with employment law.		
	Have we considered the impact on any tax endorsements or other grants that we may have?		
	Are there restrictions on our organisation's sources of income? These could include special trusts, restricted funds, bequests or permanent endowments.		
C. Due Diligence Examination			
Financial Records			
	Have we conducted a more detailed examination of financial records, including an examination of the following: - Patterns of maintenance and capital expenditures - Patterns of marketing, sales, general and administrative expenses - Unexposed liabilities - Valuation methods of assets - Determination of goodwill		
	Executive compensation		
Legal Exposure			

Question	Notes	Complete
Have we checked the following: - Pending, probable or possible litigation - Trademark/patent protection/violation - Environmental exposure (real estate, compliance record) - Safety and health practices and exposure - Potential actions by employees - Tax exposure		

Visual / On Site Inspections

Have we conducted a detailed examination of any contracts (terms, length, termination provisions etc.)		

Services

Have we conducted a detailed examination of the current services provided?		
Have we considered their future service plans: - Extension of current service line (enhancements) - New service line?		
Have we considered what resources have been allocated to future service/product development: - Capital (equipment, buildings or acquisitions) - Personnel (headcount) - Technology		

	Question	Notes	Complete
Human Resources Administration			
	Have we examined their compensation philosophy? How do their pay structures compare to ours? Will there be internal equity issues that we will have to address?		
	Have we considered how their benefit plans compare to ours? - Education reimbursement - Vacation/holidays - Leave/time off policies - Superannuation		
	What is the best management structure of existing staff who will be retained?		
	Will we need to maintain separate benefits plans or can they be integrated with ours?		
	Is this company/association in compliance with major State and Federal regulations? This includes wage and labour standards.		
	Have we examined their OH&S policies, assessment processes and reports?		
Workforce Competency			
	Have we examined the technical competence of the workforce?		
	Have we examined the areas of technical competence and technical weakness?		

Question	Notes	Complete
Have we examined the educational level of the workforce? Are there concentrations of well-educated or poorly educated?		
Have we considered the managerial competence level of this organisation? - Planning / budgeting - Leadership - Project management - Financial stewardship		
Have we considered who the key technical, managerial and executive people are? Why are they considered key? What would happen if one or more of them left?		
Culture		
Have we considered decision-making processes in the company/association? - What is the predominant style of making decisions? - Who makes what decisions? With what input and from whom? - What is the risk taking quotient? - How are failures/mistakes dealt with?		
Are there cross-functional structures (Steering Committees, Project Teams, temporary teams etc.)? How well do they work?		

Question	Notes	Complete
Have we considered their reward structure? - What do people get formally rewarded for? - On what basis do people get promoted or otherwise recognised? - What is most important to this company/association? - Is this likely to change post-merger?		
Have we considered the general norms of this company/association? - How are mediocre/poor performance dealt with? - To what degree is conflict encouraged or tolerated? - What are the typical responses to conflict? - How well are deadlines set and met? - How detailed is project planning? - How is input from various parties obtained and used? - What are the general modes of communications (written, verbal, phone etc.)? - How are various stakeholders dealt with (members, volunteers, employees, etc.)?		
Have we considered the general values of this company/association? For example, quick response/flexibility, creativity, etc.		

D. Preliminary Integration Plan

Preliminary Plan

	Question	Notes	Complete
	Have we considered what areas of this company/association are unique and should be maintained? What are the core competencies we are trying to access? What areas/competencies of this company/association are redundant with ours?		
	What is the appropriate structure for this relationship? - Merger/acquisition - Joint venture - Joint marketing/distribution agreement - Strategic alliance agreement - Exclusive partnering agreement - Licensing - Commission/royalty agreement - Consulting services - Patent/technology option - Internal development		
	Have we considered the costs associated with different options: - Severance costs - Relocation expenses - Licensing fees - Commissions/royalties		
Planning and Communicating			

	Question	Notes	Complete
	Have we identified an individual to manage the overall process?		
	Do we have a project plan with milestones in place to manage the process?		
	Have we established a project board, committee or group to oversee the project and to link into the respective governing bodies?		
	What interim governance arrangements should we put in place during the merger process?		
	Have we conducted a stakeholder analysis and established a communications plan that covers all existing and new stakeholders and audiences? This should cover communicating the merger to existing funders and staff.		
	Have we identified the risks associated with merging, such as reputational or operational risks, and put systems in place to mitigate those risks?		
	Have we identified ways to monitor the success of the merger and how it will be evaluated?		
Information Systems			
	What is the basic structure of the information system? How compatible is it with ours?		
	What are the basic data models used? How compatible are they with ours?		

	Question	Notes	Complete
	What metrics do they use and how are they tracked? How compatible are they with ours?		
	What information systems/linkages will need to be established between the two companies?		

E.   Documents to Exchange during Due Diligence

Corporate Documents

	Incorporation Papers		
	Tax Exemption letters		
	Constitution and By-Laws		

Financial Documents

	Most recent internal financial statements and budget		
	Lists of significant assets (e.g. property, major equipment and major intangible assets such as copyrights)		
	Lists of insurance coverage		
	Claim against property (mortgage lien)		
	Statement regarding any current or anticipated debt		
	Statement regarding pending, anticipated or threatened litigation		

Fundraising Documents

	Question	Notes	Complete
	Lists of foundation and corporate funders with amounts, restrictions and expiration dates		
	Lists of government grants and contracts with amounts, restrictions and expiration dates		
	Grant acquittal		
	Description of individual donor gifts		
Personnel Documents			
	Lists of employees, titles and pay rates		
	Personnel policies		
	Employment contracts		
	Enterprise agreements, if relevant		
	Schedule of employee benefits, costs and utilisation rates		
	OH&S assessment reports		
Contracts			
	Supplier contracts		
	Service contracts		
	Leases of premises		
	Grant contracts including transferability		
Asset Documentation			
	Asset condition report		