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| Notice of a change of control involving a merger, acquisition or amalgamation |
| For child and family, community building, domestic and family violence, and homelessness programs |
| FUNDED CONTRACT MANAGEMENT | Form | 25 November 2019 |
|  |

Instructions

Before filling in this form, thoroughly read [*Mergers, acquisitions and amalgamations — responsibilities of service providers*](https://www.facs.nsw.gov.au/providers/funded/resources/mergers-acquisitions-and-amalgamations/) on our website.

Read and follow all instructions (red text) in this form.

The form is in three parts. You must complete **all** parts.

When you have completed the form and signed the declaration, send the form by email to your Department of Communities and Justice (DCJ) contract manager. You may delete the red instructions before submitting the form.

We strongly recommend you obtain independent legal advice in relation to this form.

# Part 1. Notice details

## Your organisation

|  |  |  |
| --- | --- | --- |
|  | Date of notice |  |
|  | Service provider name | <Name or organisation> |
|  | Service provider IDThis can be obtained from the DCJ portal. |  |
|  | Service provider’s representativeThe contact person for this matter. | Name: Position: Phone number: Email address:  |
|  | Name of your DCJ contract managerIf you have multiple contracts with us, state the name of the lead (organisation-level) contract manager. |  |

## About the change of control

|  |  |  |
| --- | --- | --- |
|  | Names of the other parties involvedList the names of all other organisations involved. If you know they have a contract with the department, indicate it as shown.If you are unable to disclose the names of some or all of the organisations, indicate the number that are involved, the reasons for the non-disclosures and when their names can be disclosed. | * <Organisation name> <ABN and/or ACN>
* <Organisation name> <ABN and/or ACN> (contracted)
* <add or delete names, as required>
 |
|  | Explain the arrangementsDescribe the reasons for, and the nature of the change of control, and how each of the other parties are affected. |  |
|  | Has the change of control occurred? 1. If ‘yes’
 | [ ]  Yes [ ]  No |
|  | * 1. On what date?
 |  |
|  | * 1. How was the change effected?

Describe the process, including approvals by the governing body. |  |
|  | 1. If ‘no’
 |  |
|  | * 1. When is it planned to occur?
 |  |
|  | * 1. Are there any changes to your organisation’s governing documents (for example, constitution) or composition of the governing body that have, or are planned to take place prior to the change of control?
 |  |
|  | Are any of the members of the governing body of the organisation gaining control (Incoming Members) also a member of your organisation’s governing body? | [ ]  Yes [ ]  No |
|  | If ‘no’, are there plans for any Incoming Members to become members of your organisation’s governing body? | [ ]  Yes [ ]  No [ ]  Unsure |
|  | Has there been a change to your organisation’s authorised signatories and/or delegated signatories?[Information about authorised signatories](https://www.facs.nsw.gov.au/download?file=546279) is explained on our website. | [ ]  Yes [ ]  No |
|  | If ‘yes’, have you provided the necessary documents to your DCJ contract manager?This means a copy of your organisation’s constitution, power of attorney or authorised delegations such as a certified copy of the relevant minutes of the meeting. |  |
|  | Will the change of control affect your ability to deliver the services as agreed in the contract?If ‘yes’ or ‘unsure’, explain: | [ ]  Yes [ ]  No [ ]  Unsure |
|  | 1. How the services are/ might be affected
 |  |
|  | 1. The measures you have in place or planned to address the effects
 |  |
|  | Will the change of control provide any benefits in relation to delivering the services as agreed in the contract? | [ ]  Yes [ ]  No [ ]  Unsure |
|  | If ‘yes’, provide detailsState any expected benefits to the department, our clients and/or the sector, |  |
|  | Does the change of control give rise to any conflicts of interest?A conflict of interest can be actual, potential or perceived.Actual: a direct conflict exists between current official duties and existing private interests.Perceived: it appears or could be perceived that private interests are improperly influencing the performance of official duties, whether or not that is actually the case.Potential: private interests are not, but could come into direct conflict with official duties.If ‘yes’: | [ ]  Yes [ ]  No [ ]  Unsure |
|  | 1. Provide details.

State the names of the individuals involved, and the nature of the conflict of interest. |  |
|  | 1. Have the conflicts of interest been declared within both organisations?
 | [ ]  Yes [ ]  No |
|  | If ‘yes’, how are the conflicts of interest being or planned to be managed? |  |
| 1.
 | AttachmentsList the attachments to this notice.Include:* certified copies of minutes of the governing body that document discussions of the reasons for change, the due diligence conducted, the scope and method of change, relevant dates and approvals
* a copy of all information that was submitted to the Department of Fair Trading, if applicable
* a certified copy of the governing document (for example, constitution) if the arrangement involves:
	+ changes to your organisation’s governing document, or
	+ a newly created legal entity with a new ABN.
 | * <Title of attachment>
 |

# Part 2. Request to novate a contract

|  |  |  |
| --- | --- | --- |
| 1.
 | Do you want to transfer one or more of your contracts to another party?[Requesting to novate your contract](https://www.facs.nsw.gov.au/providers/funded/resources/mergers-acquisitions-and-amalgamations/chapters/requesting-to-novate-your-contract) is explained on our website. | [ ]  Yes [ ]  No |

If you answered ‘no’, go to Part 3.

If you answered ‘yes’, the information you provide in this part of the form is crucial to helping us decide whether to transfer the contract/s to the party you nominate or if it’s necessary to put the contract/s to tender.

## Applicable contracts

|  |  |  |
| --- | --- | --- |
| 1.
 | Identify the: |  |
|  | 1. Applicable contracts

List the contracts to be novated, as well as their start and end dates.The program contract ID can be obtained from the DCJ portal. |

|  |  |  |
| --- | --- | --- |
| Program contract ID | Start date | End date |
| <Program contract ID> | <Start date> | <End date> |

 |
|  | 1. DCJ contract managers

If there are multiple contracts to be novated or transferred, nominate our contract manager for each contract listed at 16a. |

|  |  |
| --- | --- |
| Program contract ID | Contract manager |
| <Program contract ID> | <Name> |

 |

## About the Substitute Party

|  |  |  |
| --- | --- | --- |
|  | Substitute PartyThe Substitute Party is the organisation the contract will be transferred to. | <Organisation name> |
| 1.
 | Is the Substitute Party a new entity to be created as a result of the change of control? | [ ]  Yes [ ]  No |
|  | If ‘yes’, at what stage is this at? |  |

If you answered ‘no’ to item 18, you must fill in the requested information for **all** items 19–40.

If you answered ‘yes’ to item 18, fill in the requested information for as many of items 19–40 as possible.

|  |  |  |
| --- | --- | --- |
| 1.
 | Trading name |  |
|  | Parent company or subsidiariesProvide details of the relationships.If the organisation does not have a parent or subsidiary companies, write ‘Not applicable’. |  |
|  | Australian Company Number (ACN)Or write ‘Not applicable’. |  |
|  | Australian Business Number (ABN) |  |
|  | Website address |  |
|  | Address of registered office |  |
|  | Postal address |  |
|  | Years in business |  |
|  | Names and roles of members of the governing body | * <Name>, <Role>
 |
|  | Names of principal shareholdersName parties with >= 20% shareholding.If the organisation does not have shareholders, write ‘Not applicable’. |  |
|  | Number of staff | Total: Full-time: Part-time and casual: |
|  | Names and roles of authorised signatories | * <Name>, <Position>
 |
|  | Substitute Party’s representativeThe contact person for this matter. | Name: Position: Phone number: Email address:  |
|  | What are the objectives of the organisation, as stated in the governing document?Include a certified copy of the governing document in the attachments to this notice, and list it at 14. |  |
|  | What are the core capabilities of the organisation? |  |
|  | Is the organisation funded by DCJ?If ‘yes’: | [ ]  Yes [ ]  No |
|  | 1. What services is the organisation funded to provide?

State the services as they are specified in the contract. |  |
|  | 1. Is there a DCJ *Performance Improvement Plan* or *Service Development Plan* in place?
 | [ ]  Yes [ ]  No |
|  | Is the organisation funded by other agencies?If ‘yes’: | [ ]  Yes [ ]  No  |
|  | 1. Provide details.

List the agencies, the amount of funding, how long the organisation has been receiving funding, and what services they are funded to provide. |  |
|  | 1. Are there any performance concerns and/or is there a plan in place to improve performance?
 |  |
|  | Does the organisation have joint working arrangements with any other organisations? | [ ]  Yes [ ]  No |
|  | If ‘yes’, provide detailsState the nature of the joint working arrangement, and the names of the organisations involved. If possible, include a diagram depicting the relationships. |  |
|  | Is there any outstanding legal action against the organisation, or any members of the governing body or partners? | [ ]  Yes [ ]  No |
|  | If ‘yes’, provide detailsState the nature of the legal action and who or what is affected by it. |  |
|  | Is the organisation anticipating other mergers, acquisitions or amalgamations? | [ ]  Yes [ ]  No |
|  | If ‘yes’, provide detailsState whether a merger, acquisition or amalgamation is being considered or planned, and the names of the organisations involved (if the names are not confidential). |  |
|  | Does the organisation or is the organisation planning to subcontract any of the services? | [ ]  Yes [ ]  No |
|  | If ‘yes’, provide detailsState whether subcontracting is in place or being considered or planned, the names of the organisations involved, and the applicable services or activities. |  |
| 1.
 | Is the organisation, or any of its staff nominated to provide the services, in a position which may or does give rise to any conflicts of interest in relation to the services to be delivered?A conflict of interest can be actual, potential or perceived.Actual: a direct conflict exists between current official duties and existing private interests.Perceived: it appears or could be perceived that private interests are improperly influencing the performance of official duties, whether or not that is actually the case.Potential: private interests are not, but could come into direct conflict with official duties.If ‘yes’: | [ ]  Yes [ ]  No [ ]  Unsure |
|  | 1. Provide details.

State the names of the individuals involved, and the nature of the conflict of interest. |  |
|  | 1. Have the conflicts of interest been declared within the organisation?
 | [ ]  Yes [ ]  No |
|  | If ‘yes’, how are the conflicts of interest being or planned to be managed? |  |

# Part 3. Service provider declaration

1. As authorised signatories\* of <Name or organisation>, we confirm that:
	1. our governing body is aware of the possible contractual and funding implications of the change of control;
	2. our governing body is aware of, and approved the information in this form being submitted to the Department of Communities and Justice;
	3. the Department of Communities and Justice has strongly recommended we obtain independent legal advice in relation to this form; and
	4. we warrant that all information provided by us in this form is true and correct.
2. In addition, **if we indicated ‘Yes’ in item 15** of this form:
	1. we have requested to transfer the contract/s with the Department of Communities and Justice nominated in this form to the Substitute Party nominated in this form;
	2. we understand that:
		1. a request to transfer the contract/s does not automatically guarantee the department will consent to the request; and
		2. the department may choose or be required to go to the sector and procure the contracted services through a formal tender process;
	3. if the department consents to novate the contract/s, we understand that:
		1. a *Deed of Novation* or a new deed will be used to transfer the assets and liabilities, rights and obligations of the contract/s to the Substitute Party; and
		2. the funding related to the contract/s will be relinquished by us and will be paid to the Substitute Party.
3. In addition, **if we indicated ‘No’ in item 15** of this form:
	1. we have not requested to transfer the contract/s with the Department of Communities and Justice nominated in this form to another party; and
	2. we understand that the department may terminate the contract/s with us, and we will no longer receive the funding related to the contract/s.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|       |  |       |  |       |
| *Name\** |  | *Name\** |  | *Witness name* |
|       |  |       |  |       |
| *Position* |  | *Position* |  | *Position* |
|  |  |  |  |  |
| *Signature* |  | *Signature* |  | *Signature* |
|  |  |  |  |  |
| *Date* |  | *Date* |  | *Date* |

\* Must be an authorised signatory of the organisation, or their delegate.