

Discussion Paper: Review of Governance Arrangements for Community Health Centres

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1. Background: Victorian Community Health Services

Community health services (CHSs) in Victoria are now a major vehicle for the delivery of a wide range of state funded, community based health and human services.

In primary health, CHSs manage and deliver services focusing on health promotion and illness prevention, early detection, intervention, assessment and treatment.

Other primary health services provided by CHSs include allied health services (such as audiology, occupational therapy, physiotherapy, podiatry and speech therapy), counselling, dental, nursing and (in some instances) general practitioner services.

CHSs also provide a platform for the delivery of a range of other services funded by the Department of Human Services. These include home and community care, disability, drug and alcohol services, child protection, post acute care, maternity, mental health, housing assistance, juvenile justice, community rehabilitation and day centres. In addition, CHSs deliver some services funded by other state government and Australian government departments.

The type of services provided, their scope, funding sources and funding levels have changed significantly since the *Health Services Act* ('the Act') was created in 1988. Further, given the increasing prevalence of chronic disease and the contribution of lifestyle factors to poor health, primary and community health is growing in importance in the overall health system.

In Victoria there are approximately 100 community health services operating from 400 sites. Organisationally these services may be either:

- Integrated community health services. There are approximately 60 integrated services that are generally units or divisions of larger health services or hospitals. They are covered by the public hospital and public health services provisions of the *Health Services Act 1988*.
- Stand alone community health centres (CHCs). There are 40 stand alone community health centres. They are essentially community driven, being independent bodies established under the *Associations Incorporation Act 1981*. CHCs are defined by the *Health Services Act 1988* as 'registered funded agencies.' They are currently covered by specific provisions in Part 3, Division 6 of the *Health Services Act 1988*.

The legislative framework that governs CHCs has been amended over time, resulting in the sector's operations, governance and management being significantly controlled by the Secretary of the Department of Human Services and in some instances the Minister for Health. This legislative framework may no longer be appropriate for the current and future scope and role of CHCs, given their wider engagement across the range of human services.

CHCs have previously been classified by the Australian Taxation Office (ATO) as charities for tax purposes. Most were classified by the ATO as health promotion charities and a small number as public benevolent institutions. These classifications entitled them to a range of tax concessions including exemptions from paying tax on fringe benefits provided to employees as part of a remuneration package, subject to a capping threshold.

The ATO recently undertook a review of CHCs and determined that provisions of the *Health Services Act 1988* disqualify them from being charities or public benevolent institutions. Were these agencies to cease being charitable or public benevolent institutions it would have a significant adverse impact on their overall financial well being and management, particularly the ability to attract and retain staff. Following the Victorian government's decision to undertake a review of CHC governance arrangements (see page 4), the ATO has decided not to proceed with the revocation of CHC charitable status, pending the progress of the review.

The governance of thirty eight CHCs¹ are included in the department's review, which considers broad issues regarding governance of stand alone CHCs. The following provides background information in relation to the 38 CHCs.

Characteristics and Governance

CHCs are structurally unique. They are neither 'classic' public statutory bodies like public health services that are established and incorporated under the *Health Services Act 1988*, nor are they conventional non government organisations.

CHCs are diverse in terms of:

- size – for example the number of full time staff employed ranges from 1 to more than 300;
- their financial and asset position – for example annual state government funding provided varies from around \$80,000 to around \$16m, depending on the range and volume of services provided;
- service profile – both in terms of the level and type of services provided and the size and nature of the area they service; and
- location – roughly half are located in rural and regional areas and the remainder in metropolitan areas.

The thirty eight affected CHCs are incorporated under the *Associations Incorporation Act 1981*.

Incorporated associations are separate legal entities which are not for profit and have limited liability.

Disclosure and governance requirements for incorporated associations include:

- holding annual general meetings;
- keeping accounting records;
- preparing a statement of accounts;
- auditing; and
- lodgment of annual returns.

In addition the funding and service agreement between the department and each CHC requires them to provide the department with an:

- annual indicators statement – containing audited information about cash flows, assets and liabilities; and
- organisational certificate – which confirms for example that the CHC has delivered services and met performance targets outlined in the funding and service agreement and that the CHC is financially viable.

The *Health Services Act 1988* currently provides for significant direct government control of CHCs, including through:

- requiring that at least two board members be appointed by the Governor in Council – s.46(2)(b);
- requiring that the Secretary of the Department approve the appointment of the CHC's chief executive officer – s.25(2);
- providing that the Governor in Council may remove a member of the board – s.50(3);

¹ One, the Western Region Health Centre is not declared under the Act. The second, Peninsula Community Health, is being amalgamated with Peninsula Health Service. Neither are affected by the ATO ruling.

- providing that the Secretary of the Department may direct the CHC to amend or alter its constitution, objects, purposes, or by-laws - s.24(2); and
- the capacity for involuntary amalgamations - s.65.

State Government Investment

Community health centres receive substantial funding from the Victorian government. Total departmental funding to Victoria's CHCs in 2007-08 is \$247m. About half of this funding, or \$121 m, is provided through the department's community health and dental health programs. CHCs may access additional funding through other areas of the department including home and community care, mental health and drug and alcohol services as well as disability services and housing. Provision of this funding to CHCs recognises their role as a significant provider in the overall human services system.

CHC funding is indexed annually. Indexation arrangements vary slightly across the sector depending on the profile of the services provided. However it is generally based on a combination of estimated salary and non salary costs. Public sector enterprise bargaining costs in excess of salary indexation have historically been applied to some staff categories, most particularly nursing staff.

The sector can apply for government funding for capital works. Funding for major capital works depends on departmental service planning priorities and available funding. CHCs are also eligible for annual funding for minor capital works to a maximum of \$100,000.

Ownership arrangements of land and buildings occupied by CHCs vary. It is estimated that 24 CHCs (60 per cent) operate at least some of their services from Crown land, department owned freehold land or a combination of these with a combined asset value in excess of \$70m.

CHCs are required to obtain the approval of the Minister for Health and the Treasurer for any financial borrowings; approved borrowings are guaranteed by the Victorian government.

The sector's insurance, including medical indemnity, professional indemnity and public liability insurance is funded by the department through the state government insurer, the Victorian Managed Insurance Authority.

2. Victorian Government Review of CHC Governance and Accountability

Government has determined to undertake a review of CHC governance and accountability. The decision to undertake a review recognises that the role of CHCs in the health service system has changed over time, and that the provisions in the *Health Services Act 1988* which were historically appropriate in the context of CHCs, may no longer represent an appropriate regulatory framework.

The review seeks to establish an appropriate regulatory environment to ensure good governance, accountability, transparency and ensure that public funds are appropriately distributed. This outcome is required because the state provides the sector with significant funding and capital assets as well as driving the sector's strategic direction.

In relation to the ATO's findings, government considers a regulatory regime should be established which enables CHCs to maintain their status as charities and/or public benevolent institutions. However as such a regime would require the removal of existing legislative controls this must be balanced with the simultaneous need for an appropriate regulatory and purchasing environment.

The review's terms of reference are to:

- Explore necessary legislative amendments with a view to allow arrangements for CHCs to be consistent with the Full Federal Court findings regarding charitable status;
- Consider necessary mechanisms to ensure DHS has sufficient power to effectively manage risk related to the expenditure of public funds;
- Identify strategies to ensure appropriate management of capital assets and other potential liabilities or assets; and
- Offer advice on the practical implications of CHCs choosing between options presented.

Government is committed to providing ongoing support to community health services. Government has significant investment in the community health services sector and current policies and practices supporting the allocation of funds to this sector will continue independent of the review.

3. State Government Risk and CHC Accountability

Community health services have an important focus on health promotion, illness prevention and early intervention for the general population they service and play a significant role in achieving the government's overall health policy objectives. Given the increasing prevalence of chronic disease and the contribution of lifestyle factors to poor health, preventative health services such as those delivered through the primary and community health service system are growing in importance in the overall health service system. Community health services are a key service provider to vulnerable, disadvantaged and low-income groups.

Government's ability to appropriately manage its financial risk (as outlined on page 3) and to drive the health policy agenda through the community health sector are critical to any consideration of a new accountability and governance framework.

In developing such a framework the following factors inform consideration of appropriate accountability and control mechanisms:

- the need to ensure adequate accountability for the use of significant public funding;
- the need for government to protect its significant investment in CHC capital assets such as land, building and equipment;
- the degree of risk to services or government should problems arise regarding governance or management;
- the strategic importance of CHCs in the state's health service system and as a tool to advance the government's preventative health agenda; and
- the vulnerable nature of some clients serviced by CHCs.

Wider community expectations about accountability in the context of state government funded agencies and the need to ensure ongoing community confidence in community health services are also relevant factors in considering a new accountability and governance framework.

4. Discussion

The review recommends legislative changes to the *Health Services Act 1988* as a means of meeting the objectives outlined on page 5. Proposed legislative changes will give effect to three potential models for CHCs into the future:

- Option 1: A new legislative model: become a registered community health service;
- Option 2: Charitable non government organisation not registered under the *Health Services Act 1988*; or
- Option 3: Amalgamate with a Public Hospital/Public Health Service Under the *Health Services Act 1988*

The review has also considered a proposal by the sector to use the powers available in section 11 to exempt CHCs from the provisions of the *Health Services Act 1988*.

The model as proposed by the Victorian Healthcare Association presents two problems. The first relates to the limited number of sections to be exempted. The department has confirmed previous legal advice that the proposal from the sector is insufficient to satisfy the ATO requirements for charitable status as it does not address all of the controls within the legislation that are deemed excessive.

Secondly, regardless of whether the specific sections are sufficient, exemption is not an appropriate permanent solution. The use of exemption powers of the Act may be appropriate as an urgent, short term measure however a long term measure is what is required. Although technically possible, exemption is not appropriate and creates a legislative framework that no longer applies to CHCs, the result of which is clearly inconsistent with Parliament's original intent in passing the Act. Moreover exempt organisations are not governed or protected by an Act from which they have been exempted.

In addition the government's review is a broad review of CHC governance. It has been commissioned in the context of the changing nature and role of CHCs and an Act whose overall legislative framework may no longer be appropriate for CHCs. Simply exempting CHCs from the Act or repealing those sections of the Act applying to CHCs would not be consistent with that intent.

In developing the three options the following issues have been considered:

- government policy and risk management;
- governance and accountability;
- management and protection of state government assets;
- eligibility for fringe benefit tax concessions;
- eligibility for recurrent and capital funding;
- indexation and other funding supplementation;
- insurance arrangements; and
- borrowing arrangements.

Appendix 1 summarises the impact of each option for CHCs.

In some instances there will be little to no change in relation to each of the identified options. This is the case in relation to:

- **Eligibility for fringe benefit tax concessions:** However the maximum value of fringe benefits paid to employees that are exempt from fringe benefits tax will vary for some options;
- **Indexation:** Future indexation would be consistent with existing arrangements;
- **Supplementation for any enterprise bargaining costs above indexation levels:** Enterprise bargaining agreement costs will continue to be funded on a policy basis, at the discretion of government;

- **Capital funding:** Major and minor capital funding will continue to be provided on a policy basis, at the discretion of government; and
- **Insurance arrangements:** These will continue to be consistent with current arrangements. That is, the Victorian Managed Insurance Authority will continue to cover medical, professional indemnity and public liability insurance costs.

There will be differential impacts under each option in relation to eligibility for recurrent funding, governance arrangements and the management of capital assets.

The following provides an outline of each option and where relevant, changed arrangements compared with existing circumstances.

Option 1: A New Legislative Model: Become a Registered Community Health Service

In the context of developing a new legislative model CHCs must be independent but also subject to regulation. The following principles will guide the development of the new model:

- removing existing legislative controls by the Secretary and Minister;
- creating a regulatory environment ensuring accountability for state government funding and rights of appeal by CHCs to the Victorian Civil and Administrative Tribunal (VCAT);
- facilitating a compliance and regulatory environment that supports CHCs in performing their duties;
- linking community health and dental health funding to the performance of key policy outcomes using normal purchasing arrangements, while otherwise not affecting the range, scope, type of services normally provided by a CHC; and
- establishing an environment which supports CHCs to pursue other funding sources.

Summary of Key Features of New Model

Under this option existing provisions in the *Health Services Act 1988* relating to CHC governance, accountability and control would be removed. CHCs would no longer be defined as ‘registered funded agencies’ under the *Health Services Act 1988*.

A new section would be inserted into the Act to allow for CHCs to participate in a voluntary registration scheme, subject to a regulatory and monitoring framework, that facilitates good governance and management of public funds.

Registration and Eligibility for Recurrent Funding

Under this model, the CHC would be required to register to access community health and dental health funding. On registration, information required to be provided by the CHC could include:

- providing evidence demonstrating the CHC is a company limited by guarantee;
- details of all assets which are held by the CHC;
- the capacity in which assets are held;
- the extent to which they are encumbered;
- full details of all directors and officers;
- a copy of the relevant constitution or rules;
- a declaration by the relevant public officer of the CHC to the effect that the agency has met its reporting obligations and taxation requirements.

The Secretary could refuse an application for registration in some circumstances, for example if s/he was not satisfied that the appropriate corporate structure was in place. If an application for registration were refused the CHC could apply to have the decision reviewed by an independent third party, VCAT.

It is anticipated registration would not be time limited. However CHCs would be required to update information provided on registration periodically and to notify the department of significant changes to information within 30 days of such changes occurring.

It is important to note that the scheme would be voluntary however registration would be a condition of accessing community health and dental health funding. In addition many CHCs currently access funding provided through other departmental programs, for example home and community care. This in part recognises the role of CHCs as a significant provider of primary care services and the opportunities this affords for providing integrated services through existing infrastructure. It cannot be assumed that non-registered CHCs would continue to receive the same consideration for those funds.

Performance Standards

Registered community health services would be subject to a range of performance standards covering governance, management, probity considerations, financial viability and risk management.

Standards could require for example that the CHC:

- develop a risk management plan addressing Victorian Managed Insurance Authority requirements;
- demonstrate adequate insurance coverage; and
- have an appropriate policy in place to manage the potential for any perceived conflicts of interest.

Response Where Regulatory Requirements are not Met

The Secretary may take action where regulatory requirements are not being met by the CHC. This could include where a CHC does not meet specified performance standards, no longer meets one or more criteria for registration, does not properly apply and protect state property or does not follow proper prudential requirements.

In these circumstances options available to the Secretary are likely to include:

- providing mandatory instructions to a CHC, for example to prevent them entering into any agreements with third parties;
- appointing an administrator to wind up the agency and distribute its assets; and
- revoking CHC registration.

Such actions would be subject to review by VCAT.

Governance Arrangements

Registered community health services will be required to be companies limited by guarantee.

Companies limited by guarantee are subject to the Australian government's *Corporations Act 2001*.

A company limited by guarantee is a separate legal entity distinct from its members. This Act contains more onerous governance and reporting obligations than state laws covering incorporated associations, which currently affect CHCs.

The higher level of accountability is warranted due to two factors:

- the state government invests heavily in CHCs in terms of recurrent funding and their asset base; and
- existing accountability and control mechanisms in the *Health Services Act 1988* will be removed.

Key requirements of the *Corporations Act 2001* relate to:

- **Reporting and administrative processes:** Companies limited by guarantee are required to:
 - Maintain financial records consistent with relevant accounting standards and retain records for seven years;
 - Prepare a financial report and directors' report;

- Obtain an auditor's report each year, consistent with relevant accounting standards;
 - Hold an annual general meeting at least five months before the end of the financial year;
 - Keep records including maintaining a register of members, minuting meetings held and documenting any resolutions passed.
- **Limited liability:** The liability of members is limited to a guaranteed amount. That is if the agency is wound up and its assets are less than its liabilities, the amount each member is required to contribute to the short fall is previously specified in the company's constitution and is often set at a nominal amount.
 - **Governance structure:** There must be at least three directors and at least one secretary. There can be an unlimited number of members. Directors' duties are similar to those applying to committee members managing an incorporated association.

The *Corporations Act 2001* is administered by an independent Australian government agency, the Australian Securities and Investments Commission. In general penalties for breaching the *Corporations Act 2001* are much higher than those for the *Associations Incorporation Act 1981*.

Some non government organisations receive significant government funding and are not required by government to have a particular governance structure. However in general the non government sector does not operate from a significant state owned asset base in the form of land, buildings and/or equipment as characterises the CHC sector. The development of the new governance and accountability framework as proposed for the CHC sector recognises the difference in the magnitude of the financial risk and the need to have a more stringent risk management strategy.

Management and Protection of State Government Assets

Recurrent Funding

The state government provides significant recurrent funding to CHCs and considers the provision of ongoing service delivery is a key priority. The department therefore intends to secure its interest in community health and dental health funding provided to registered CHCs, through applying a fixed charge over CHC assets. The charge will be specified in the funding and service agreement and represents the call the department has over CHC assets in the event of the CHC changing its service delivery profile or winding up.

Capital Assets

The manner in which the department manages its interest in land and buildings occupied by the CHC will depend on ownership arrangements in place. These matters are relevant in terms of the department managing and protecting its ongoing investment in CHC assets. In addition if a company limited by guarantee established for charitable purposes is wound up, surplus net assets are required to be distributed to another charity. However before this were to occur the department would need to quantify and protect its contribution to CHC assets provided through capital and recurrent funding.

Currently there are a number of options available to government to protect its asset base. These arrangements would continue.

Government assets currently operated by the CHC and any assets on Crown land would continue to be government owned.

Borrowing Arrangements

Government guarantees on existing loans that have government's approval will continue for the duration of the loan. A registered CHC will not be required to seek permission from government to enter into any new loans. New loans will not be guaranteed by government.

Option 2: Charitable Non Government Organisation not Registered Under the *Health Services Act 1988*

Eligibility for Recurrent Funding

Under this option CHCs could choose to become an independent non government organisation. The agency would not be a registered community health service and would therefore not be eligible for community health and dental health funding. It would continue to be eligible for other funding streams currently provided to CHCs. However it should be noted the current approach regarding access to other departmental funding streams, for example home and community care, recognises the existing role of CHCs as a significant provider of primary care services and the opportunities this affords for providing integrated services.

Governance Arrangements

In this option the agency's governance arrangements would not be a matter for the department.

Management and Protection of State Government Assets

If the CHC ceased to provide community health or dental health services while using departmental capital assets, the department would seek to negotiate an outcome that would ensure service continuity for the community. See also discussion on page 10.

Borrowing Arrangements

Government guarantees on existing loans that have government's approval will continue for the duration of the loan. A non government organisation will not be required to seek permission from government to enter into any new loans. New loans will not be guaranteed by government.

Option 3: Amalgamate with a Public Hospital/Public Health Service Under the *Health Services Act 1988*

Amalgamation Before New *Health Services Act 1988* Takes Effect

Introduction

Division 9 of the *Health Services Act 1988* provides for and sets out the respective processes for amalgamations between registered funded agencies. Any amalgamation in response to the department's review would be voluntary.

Eligibility for Recurrent Funding

Current policies in relation to funding community health activities would remain the same. That is the agency would have a funding and service agreement with the department for primary health services. They would report activity level information relating to the community health and dental health output group, consistent with existing arrangements.

Governance Arrangements

The amalgamated agency would be subject to the governance and accountability arrangements applying to the public health service or public hospitals as provided for in the *Health Services Act 1988*. They would also be subject to control mechanisms outlined in yearly health service agreements and the department's performance monitoring framework.

Public health services and public hospitals are covered by the *Financial Management Act 1994* and are required to submit an annual report to Parliament and audited financial statements. Information about the governance and financial performance of community health services provided as part of an amalgamated service would be required to be submitted as part of the reporting process.

All board appointments to the health service or hospital are made by the Governor in Council on the recommendation of the Minister for Health.

It should be noted that fringe benefit tax concessions under this option are lower than for options 1 and 2, however the outcomes for individual employees may vary depending on which other concessions are accessed.

Management and Protection of the State Government's Asset Base

Any state government buildings or equipment previously used by the CHC will continue to be state government owned.

Borrowing Arrangements

Any loans by the public health service or hospital require the prior approval of the Minister for Health and Treasurer. Any loan would be guaranteed by the Victorian government.

Amalgamation After Proposed Changes to *Health Services Act 1988* Take Effect

The current provisions for amalgamation between CHCs and public health services/hospitals would no longer apply if the Act is changed as proposed however the option will continue to be available under proposed new provisions.

Amalgamation would be a voluntary process between the two parties. The nature of any amalgamations would be at the discretion of the CHC and undertaken pursuant to the relevant governance requirements.

The implications of the amalgamation are the same as those set out above.

Feedback

The Victorian government seeks your comment on:

- the implications of each of the options outlined in the discussion paper;
- transition issues; and
- timelines required to transition to the new governance model.

Please provide written comments on the discussion paper to:

Ms Jan Norton
Community Health Centre Review
Rural and Regional Health and Aged Care Services
Department of Human Services
Level 16
50 Lonsdale Street
MELBOURNE VIC 3000

Or via email at: chcreview@dhs.vic.gov.au

Comments must be received at the above address by 20 June 2008.

Appendix 1: Summary of Implications

	New legislative model: become a registered community health service	Charitable non government organisation not registered under the Health Services Act 1988	Amalgamate with a public hospital/ public health service under the Health Services Act 1988
Eligibility for fringe benefit tax concessions ²	Yes. Fringe benefits tax exemptions will apply to a maximum of \$30,000 of grossed up benefits paid to employees. Fringe benefit tax exemption for meal entertainment uncapped.	Yes. Fringe benefits tax exemptions will apply to a maximum of \$30,000 of grossed up benefits paid to employees. Fringe benefit tax exemption for meal entertainment uncapped.	Yes. Fringe benefits tax exemptions will apply to a maximum of \$17,000 of grossed up benefits paid to employees. Fringe benefit tax exemption for meal entertainment uncapped.
Eligibility for charitable status with ATO ²	yes	yes	No, but some exemptions apply
Organisational structure and governance	Company limited by guarantee	Choose its own organisational structure such as incorporated association or company limited by guarantee.	Public health service or hospital
Eligibility for community health/ dental health funding	yes	no	yes
Eligibility for other departmental program funding	yes	yes	yes
Eligibility for major and minor capital funding	Funding would continue to be allocated on a policy basis, at the discretion of the department.	Funding would continue to be allocated on a policy basis, at the discretion of the department.	Funding would continue to be allocated on a policy basis, at the discretion of the department.
Asset management	State owned assets and assets operated on Crown land will continue to be state government property.	State owned assets and assets operated on Crown land will continue to be state government property. Continued use of Government owned assets would be negotiated having regard for on going delivery of key services.	State owned assets and assets operated on Crown land will continue to be state government property.
Indexation	No change	No change	No change
Enterprise bargaining agreement supplementation	Policy decision at discretion of government	Policy decision at discretion of government	Policy decision at discretion of government
Insurance – funded through Victorian Managed Insurance Authority	yes	yes	yes
Borrowings	Government guarantees on existing loans obtained with government approval will continue. New loans will not be guaranteed by government. Permission to borrow would not be required from government.	Government guarantees on existing loans obtained with government approval will continue. New loans will not be guaranteed by government. Permission to borrow would not be required from government.	Any loans by the public health service or hospital require the approval of the Minister for Health and Treasurer. Any loan would be guaranteed by the Victorian government.

² Tax concession eligibility is based on existing ATO policy. DHS is not responsible for the implications associated with taxation policy.