

# To merge or not to merge?

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## **Disclaimer**

The information contained in this presentation is intended as general commentary and should not be regarded as legal advice. Should you require specific advice on the topics or areas discussed please contact the presenter directly.



## Summary

- When is the right time?
- Key drivers of change
- The spectrum of strategic responses
- Organic development vs other options
- Minimising the risk – preparation & setting objectives
- Due diligence
- Making it happen – legal structures & resources
- Vision Australia – a case study



**When is the right time  
to merge, not merge,  
or do something in  
between?**

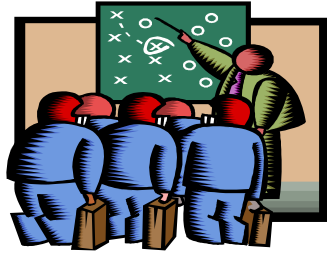




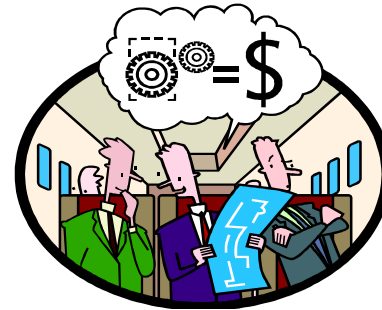
**I DON'T KNOW.....**

**IT DEPENDS**





That's why the time  
to *consider* and  
*plan* to merge (or  
something else) is  
**NOW**



# Why now?

- Climate Change is real in the sector
  - 15% of Victoria DSOs have merged or closed in the last 5 years
- Opportunities are few and far between
- The **right** opportunities are fewer and further between
- You may be approached unexpectedly – don't let the opportunity pass without proper consideration
- Preparation will reduce the risk of picking the **wrong** opportunity



## Key drivers of change



### Environmental Factors

### Catalysts

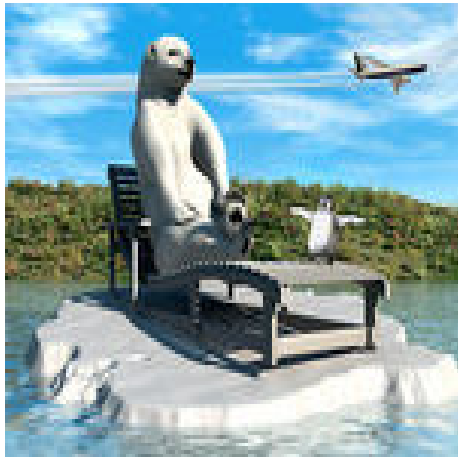
'Climate change' in the sector	Departure of key personnel
Funding gap	Sudden 'road block'
Regulatory burdens	Unexpected events
Lack of scale/resources	Unsolicited approach
Cost pressures	





# Climate Change

## The Funding Gap



- Squeeze on government funding
- Increasing unfunded overheads
- Fundraising is harder and more competitive
- The rise of private philanthropic funds and sophistication in that sector
- Equal pay reforms – much needed but who pays?



# Climate Change



## Client demand

- Ever growing but also changing

## Government Disability Policy

- Shifting towards individual choice, competition, personalised and customised services



# Climate Change

## NFP Regulatory Reforms

- Increasing accountability and standards
- Higher and more onerous directors' duties
- Taxation reforms
- Compliance & quality assurance on an ever increasing scale – with associated cost
- Charitable fundraising reforms on the way



# Climate Change

National  
**disabilityinsurance**  
Scheme

- Shifts the power back to the clients – choices & control
- Will inevitably increase competition and drive the commoditization of some services
- Transition costs to be borne by providers
- Cash flow implications – payment in arrears
- No payment for admin overheads – only per hour of service delivered



# Climate Change

National  
**disabilityinsurance**  
Scheme

- Long way to go in pricing and understanding 'reasonable & necessary' supports
- The Agency's primary relationship is with the client, not the provider
- Sector rationalisation is part of the agenda
- But forward thinking organisations see it as an OPPORTUNITY

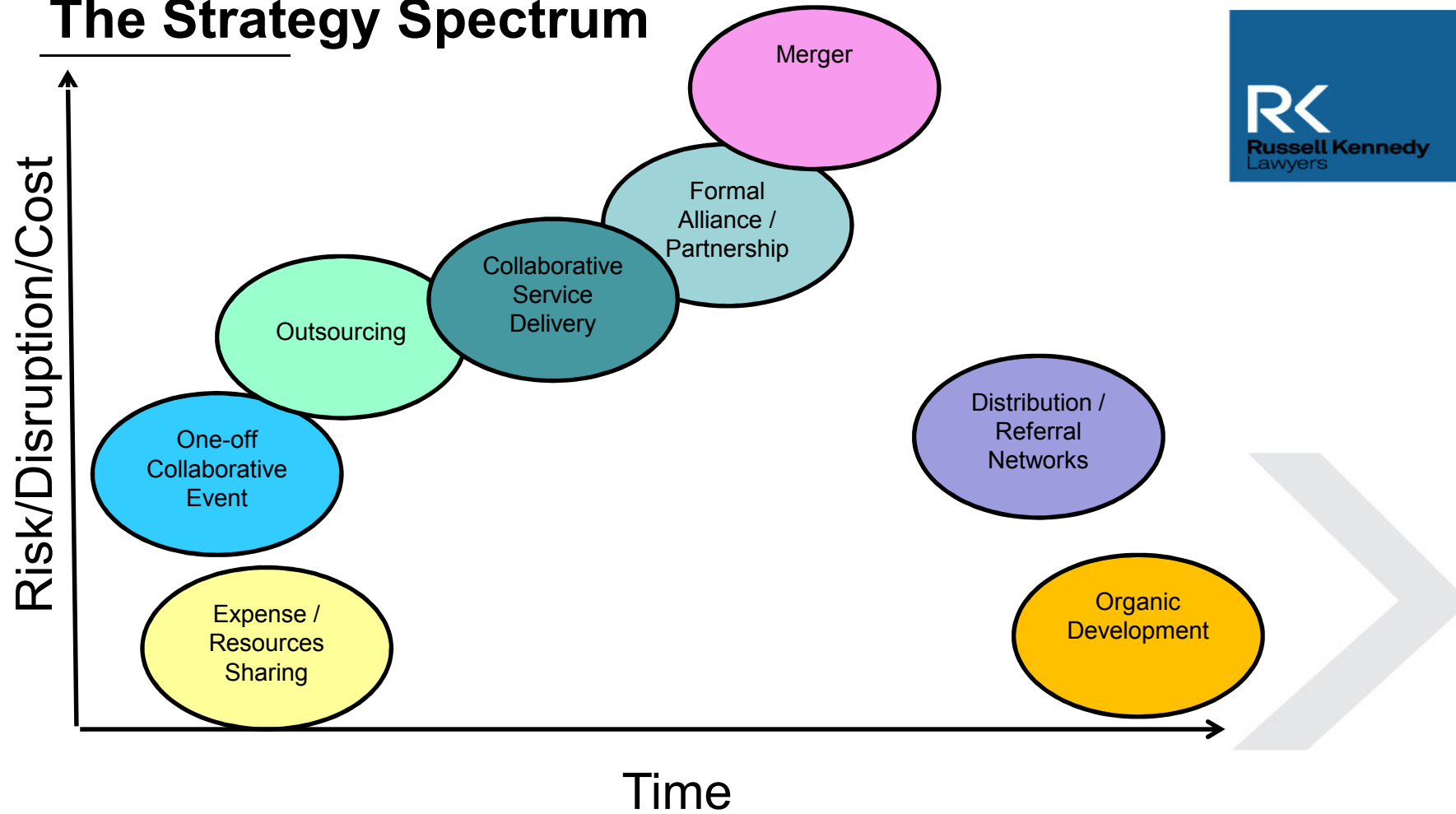


## A Matter of Strategy

- If any of these factors sound familiar, your strategy should address the possibility of a merger, partnership or collaboration of some sort
- Strategy is a series of integrated *choices* that position your organisation to the advantage of your clients and stakeholders
- 'Do nothing' can be a legitimate strategy but this is increasingly rare



# The Strategy Spectrum



# What do we mean?

<b>Expense and Resource Sharing</b>	Some shared overheads of premises, back office and of general resources
<b>Distribution / Referral</b>	Referral of services from other sources – not just competitors Usually no joint liability for service delivery Can be exclusive or non-exclusive
<b>Collaborative Service Delivery</b>	Closer alignment of services around individual clients or types May be some shared responsibility for combined outcomes Closer information sharing
<b>Formal Alliance/ Partnership</b>	Separate organisations carrying on all or part of their operations together Closer integration of people and some shared responsibility for outcomes Could be a federated model
<b>Merger</b>	Multiple organisations form a single entity Different ways to achieve this– acquisition, scheme of arrangement, merger of incorporated associations, federation





## Organic Development as an option

- Safe – lower risk and controllable
- Home-grown culture
- Can be managed more effectively
- Less disruptive
- The ‘devil you know’

If it meets your objectives –  
the safest option



# Why not organic development?

<b>When size matters</b> <ul style="list-style-type: none"><li>▪ Scale</li><li>▪ Reserves – survival of the fittest</li><li>▪ Infrastructure and back office</li><li>▪ Economics / leverage assets</li><li>▪ Geographic spread</li></ul>	<b>Speed</b> <ul style="list-style-type: none"><li>▪ Faster transition to future state</li><li>▪ Organic development takes years</li><li>▪ Higher energy</li></ul>
<b>Efficiencies and Savings</b> <ul style="list-style-type: none"><li>▪ Temporary and permanent</li><li>▪ Maximise spend on service delivery</li></ul>	<b>Quality</b> <ul style="list-style-type: none"><li>▪ Combine IP and the best people</li><li>▪ Combines best of ??</li><li>▪ Attract better people</li></ul>
	<b>Synergies</b> <ul style="list-style-type: none"><li>▪ Shared links &amp; contacts</li><li>▪ Fundraising</li><li>▪ Brand building</li><li>▪ Networks &amp; influence</li></ul>



# Quicker Options/Mergers – Risk Factors

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- Reputational risk
- Pace and degree of change can be overwhelming
- Loss of focus on mission
- Inevitable need to change and adapt mission
- Cost
- Failure to achieve stated objectives
- Loss of donor support
- Loss of volunteer / stakeholder engagement
- Savings and synergies don't materialise
- Loss of key personnel
- It still can take a long time

***Some of these can be managed, but you must be prepared to lose some things in order to gain***



## The Call to Action

*“Will this be of benefit to our clients?”*

OR SPECIFICALLY

*“Will this result in a better, more sustainable organisation that will better service our clients?”*



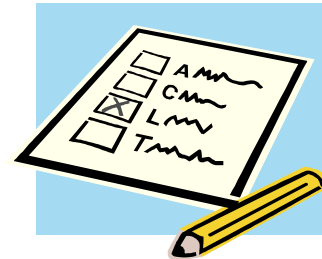
## Where do we start?

- Self analysis
- Establish the objectives
- Identify key issues
- Set the non-negotiables
- Due diligence
- Determine the right legal structure and process
- Dedicate sufficient resources



# Self Analysis

- Determine and document:
  - What are the choices open to us?
  - What is our desired future state?
  - How do we want to get there? When?
  - What are our key drivers / catalysts?
  - How does this benefit our clients?
  - What are our 'non-negotiables'?



Engage Board and key stakeholders in this process but be selective – confidentiality is usually critical at this stage



## Establish the Objectives

- Build a business case
- Benefits, costs and risks to be stated and measurable
- Establish key performance objectives and timelines – what does the future state look like?
- Establish base line for measurement
- Engage external assistance where appropriate



# Identify Key Issues



- Identify key 'people', structural, legal and financial issues
- Anticipate the main practical issues to be met, key risks and general approach to managing them
- Anticipate key stakeholders' reactions and be ready to respond to concerns
- Anticipate who, if anyone, needs to approve the type of transaction you have in mind





## Key issues in detail

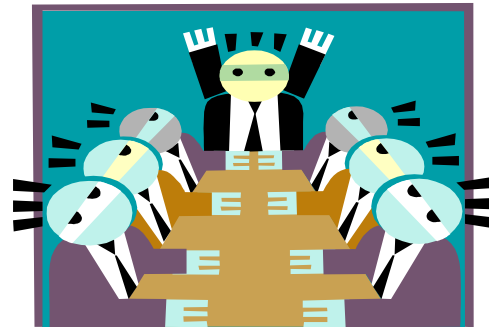


How much integration is needed? <ul style="list-style-type: none"><li>• Pre and post mergers</li></ul>	Do we have the right skills / people? <ul style="list-style-type: none"><li>• Management of integration</li><li>• Post-merger needs</li><li>• Differing Employment terms/EBAs, Awards etc</li></ul>
How will integration occur? <ul style="list-style-type: none"><li>• Preliminary plans, timetables</li><li>• Systems, premises, IT</li><li>• Processes &amp; functionality</li><li>• Policies and procedures</li></ul>	Board and Management <ul style="list-style-type: none"><li>• who is to stay?</li><li>• What does new team look like?</li><li>• Management of egos, passions and ambitions</li><li>• Governance structures must be designed to achieve new goals</li></ul>
Cultural alignment – how compatible? <ul style="list-style-type: none"><li>• Management of change</li><li>• New culture created / desired?</li></ul>	Risks <ul style="list-style-type: none"><li>• Evaluate key risks</li><li>• Evolving risk management</li><li>• Minimisation &amp; exit strategies</li></ul>



# The Non-Negotiables

- These are the things that are *absolutely essential* for the welfare of your clients or to make the transaction happen – everything else is negotiable
- Keep the list short and meaningful - too many will deter others
- Be prepared to test them when needed
- Consider:
  - Name
  - Geographic coverage
  - Assets and liabilities
  - Financial performance
  - Service delivery model
  - Core services / clients
  - Key personnel and management
  - Board and governance
- Establish other 'negotiables' and your preferred and minimum position



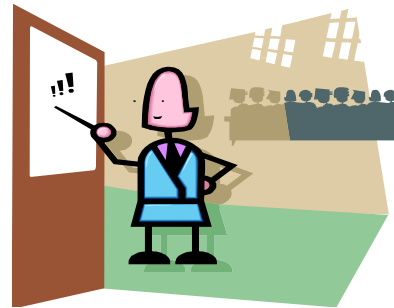
## Due Diligence – The Approach

- Be prepared to ask the hard questions
- Be prepared to answer the same questions about your own organisation – it's a two way process
- Define scope of due diligence
  - Merger is more extensive than other transactions
  - If less than a merger, ensure questions are relevant – respect boundaries
- Evaluate the other party's motivations and state of readiness
- Answers to key questions in writing
- Access source material where critical, eg financials, documents of title
- Look for latent liabilities, claims, potential future problems
- Key personnel to meet



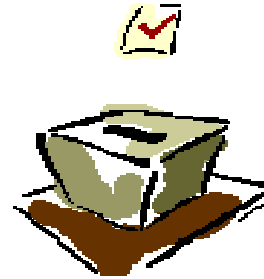
## Due Diligence – Detail

- Will depend on the type of transaction
- Some common themes:
  - Organisational structure
  - Governance
  - Service delivery
  - Assets, liabilities
  - Financial performance
  - Employment
  - Compliance and risks
  - General operational matters



# Determine the Legal Structure

- Establish a vision for both organisations post completion
- Legal entity should match this
- Establish best method to get to that vision:
  - Acquisition
  - Scheme of arrangement
  - MOU
  - Joint venture
  - Collaboration agreement
  - Services contract
  - Federation agreement/charter
- Understand votes/consents needed and how to achieve this
- Quarantine legacy liabilities where possible
- Protect assets from operational risks
- Accommodate key stakeholders – board, management, donors, volunteers, members
- Keep it as simple as possible – fill in the blanks post transaction



## Resourcing

- Don't underestimate the time and distraction of a merger or significant collaboration
- Dedicate the right people in sufficient numbers and with enough resources to make it happen
- Often this means that those persons' 'normal' jobs must be back-filled while the transition occurs
- True consolidation post merger is essentially cultural and can take a long time to evolve – find ways to help it along
- You will need – DETERMINATION, FOCUS, INTEGRITY, PRAGMATISM, and PATIENCE (at the very least!)



**VISION AUSTRALIA -**  
***A CASE STUDY***



## What is Vision Australia?



*“Vision Australia is a leading provider of blindness and low vision services in Australia. We work in positive partnership with Australians who are blind or have low vision to help achieve the possibilities they choose in life”*





## What is Vision Australia

- Company limited by guarantee
- Formed in July 2004 as a result of the merger of:



RVIB



National  
Information  
Library  
Service

- NILS was a Joint Venture of RBS, RVIB, & VAF and was the precursor of the merger



vision  
australia



# What is Vision Australia?

## Further mergers

2006	Royal Blind Foundation of Queensland
2007	Hear a Book (Tasmanian Audio Book Producer)
2008	Seeing Eye Dogs Australia
2012	5RPH



- 28 Service Centres in NSW, QLD, VIC, & ACT
- Clinics in 29 other locations
- Outreach services in Tas & NT
- Information Library Services and Seeing Eye Dogs provided across most of Australia



# Key drivers for merger

## **SYSTEMIC**

- Fragmentation of services Australia wide
- No single national service organisation
- Competition and overlap between service providers
- Fragmented and inconsistent approach to fundraising
- Competing philosophies between organisations

## **FINANCIAL**

- Squeeze on government funding
- Governments looking for rationalisation in the disability sector
- Cost of digitisation of library
- Diminishing donor pool and competition from other causes
- Mix of real estate and financial assets between organisations



# Key drivers for merger

## **SYNERGIES**

- National reach of services
- Economics of scale/savings
- Better utilisation of pooled assets
- Potential for international presence and to benefit from overseas connections
- Better quality people
- New services
- Consistent and wider reaching service model
- Strong national brand
- Fundraising potential

**A BETTER RESULT FOR CLIENTS IN THE MEDIUM TO LONG TERM FROM A HIGH QUALITY, SUSTAINABLE SERVICE PROVIDER**



# The merger approach

## FOCUS

- The key drivers and aspirations were all documented into a jointly prepared comprehensive business case, and key assumptions were vigorously tested, eg integration savings
- Concentrated on high level detail only. Second level detail, while critical post merger, may have prevented us from getting the 75% majority needed in each founding organisation
- Framework governance model was established only, with detail to follow post merger



# The merger approach

## INTEGRITY

- Robust dialogue
- 'Non-negotiables' were tested – some shifts occurred
- Individual differences acknowledged & respected
- Continual consistent communication to stakeholder groups



# The merger approach

## PRAGMATISM

- Working group was established whose members had focus on achieving the merger by reference to agreed overall driving factors
- Differences in expectations and stakeholder engagement were addressed only at structural level pre-merger. A lengthy workshop held post merger with manager and board representation
- CEO appointed post merger
- Potentially distracting issues such as the name of the organisation were decided post merger



## The merger approach



### **PATIENCE**

- It was acknowledged that the merger was highly desired but not life or death for any organisation
- Merger discussions took place over several years and the merger was well prepared from an organisational, philosophical, financial and legal perspective before it was put to the members





## Post merger

### **CULTURAL AND GOVERNANCE**

- Worked to abandon allegiances to the legacy organisations and talk the language of a single organisation
- Board members were selected to meet organisational needs
- Continuing evaluation, development and evolution of Board, CEO and management team



## Post merger

### FINANCIAL CONSIDERATIONS

- The key financial driver - **SUSTAINABILITY**
- Establishment of and measurement against KPIs by reference to original business case
- Preservation and build up of strong balance sheet
- Rationalisation of some assets and acquiring new ones in better locations or better suited to meet client demands
- Investment in continuous improvement and in growth of client services



## Post merger

### **FINANCIAL CONSIDERATIONS**

- Preventing costs blow-outs preserving merger benefits
- Generating more revenue from traditional sources – investments , fundraising, government
- Building and leveraging brands and donor bases



## Lessons learnt

- Prior to the merger, establish, agree and document primary drivers
- Acknowledge and respect competing philosophies and ideas, find the common ground, and use that as the springboard for the merger
- Concentrate on enough detail to get the merger to happen, then fill in the gaps post merger
- Evaluate strengths and weaknesses of each organisation, identify gaps, and plan to address those gaps, and take advantage and build on strengths



## Lessons learnt

- Once the governance structures are in place, then selection of a CEO and management team will occur over time
- Initial board should be representative of founding bodies (political process) but there must be a defined sunset period after which everyone speaks the language of a single body
- Look back at the past to measure your progress, but only for that purpose – don't reminisce
- Communicate your achievements, but be honest about the challenges
- Continually survey the external environment and be prepared to adjust to meet the challenges – the merger is only the beginning



## Conclusions

- Don't sit around and wait
- Consider the impact of climate change on you and your clients
- There are many possible responses but few opportunities, so be prepared
- Proper self-analysis and goal setting will minimise the risk of getting it wrong
- Mergers are time consuming and require discipline, and proper resourcing
- Ultimately, it's about what's best for the people that you are privileged to serve

