



Transitioning an OSHC Service to a School Based P&C

November 2022

Transitioning an OSHC Service to a P&C

Out of School Hours Care Services

- The NSW Department of Education is required to ensure it meets its obligation under the tenets of Administrative Law and the Independent Commission Against Corruption's 'Direct negotiations: guidelines for managing risk' guidelines, which recommend government agencies avoid direct negotiation with external parties.

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- Category A is now limited to Parents & Citizens Associations incorporated under the *Parents and Citizens Associations Incorporation Act 1976*.
- There are several factors which the Department has considered in ensuring it is meeting the requirements and guidelines in directly negotiating with Parents & Citizens Associations incorporated run OSHC Services.

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1. P&C Associations are established with objects and functions outlined in the Education Act that are intertwined with the core responsibilities and priorities of the school.
2. The principal is always a member of the P&C Association and teachers are also often members.
3. P&C Associations must have its annual accounts audited and must submit these accounts to the P&C Federation.
4. The annual general meeting and other reporting requirements also ensure that all members have access to financial information and key decision making.

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5. The involvement of the principal as a member also provides an additional level of oversight.
6. The income generated from operating an OSHC service belongs to the P&C Association and may be used for purposes that are in line with its objects and functions. These purposes benefit the school, teachers, students, parents and community.
7. P&C Associations have a moderate turnover in members and its executive committee but is relatively stable.
8. All P&C Associations must have the same constitution as prescribed by the Minister. A P&C Association cannot change its constitution in any way or create any by-laws that would be in conflict with the prescribed constitution.

The Asset Sale Agreement Template

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The Asset Sale Agreement Template

- Background: The Department is providing support for OSHC providers seeking to transition to a Parents & Citizens (P&C) Association. This will involve moving assets and the business from the OSHC Provider to the P&C Association.
- A tool for you: A template has been prepared to assist with the legal transaction of transitioning an OSHC service.
- Template available: This template will be made available to you following this session.

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Some considerations

- Need to conduct due diligence:

As part of any transfer – undertaking a thorough due diligence exercise will be a key step. This will help everyone understand what is involved and needed for the service – and any potential risks.

- Important - You will need your own advice:

The Department and its advisors cannot provide advice for you. This presentation does not constitute legal advice. You should seek individual legal, financial and taxation advice as appropriate for your circumstances.

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How the template is structured

- Agreement Details (Schedule 1): This section allows you to input key details (e.g. party names, purchase price, 'excluded assets' – things that are not been transferred).
- Other Schedules: The other schedules set out things to be considered or included – like the list of assets that will be transferred (e.g. contracts, IP, Plant and Equipment). Also, details of the employees.
- Core Terms (clauses 1 to 25): This means that the core terms should require minimal changes, as the Agreement Details and schedules mostly used for the variables and description. However, this is only a template and changes may be needed.

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Using the Agreement Template

- Fill in Variables:

The template has various **[yellow]** boxes which are variables to be filled in or confirmed by the parties as part of the agreement.

- Guidance Notes:

The template also using includes some **[grey]** sections which are guidance notes to assist with using the document.

- Ability to include Special Conditions: In the Agreement Details you can also include '*Special Conditions*' – which will take priority over all other parts. This section allows you to include bespoke requirements for your arrangement.

[Template] Asset Sale Agreement

[Guidance Note: This document is a template only. Each party should seek legal, tax and financial advice to ensure its specific requirements are covered/considered.]

Parties

The Buyer's details are as set out in the Agreement Details (**Buyer**)

The Seller's details are as set out in the Agreement Details (**Seller**)

Background

- A The Seller carries on the Business as owner and operator.
- B The Seller has agreed to sell the Assets to the Buyer and the Buyer has agreed to buy the Assets from the Seller on the terms set out in this agreement (**Agreement**).

1. Definitions and Interpretation

1.1 **Definitions**

- Agreement Details** means the details set out in Schedule 1
- Authorisations** includes any accreditation, consent, ~~authorisation~~, registration, filing, ~~lodgement~~, permit, franchise, agreement, ~~notarisation~~, certificate, permission, licence, approval, direction, declaration, ~~authority~~ or exemption from, by or with a government agency
- Assets** means the assets owned by the Seller and used for conducting the Business at the Completion Date, including:
 - (a) the plant and equipment as set out in the Asset Schedule
 - (b) the intellectual property (e.g. business names, domain names) as set out in the Asset Schedule
 - (c) the Business Contracts
 - (d) the leases and ~~licences~~ as set out in the Asset Schedule
 - (e) the Business Records; and
 - (f) **[insert other]** **[Guidance Note: insert details of any other specific assets to be transferred. This could include, for example, cash at bank]**

[Guidance Note: If the Business involves a building that is owned by the Seller, then the Buyer and Seller must consult with the Department of Education's School Infrastructure NSW about any specific requirements and arrangements for the building.]

Schedule 1 –Agreement Details

Seller	[Insert seller full legal name including Incorporated Association Registration Number and ABN]
Seller Address	[Insert seller address for the purposes of a Notice]
Buyer	[Insert buyer full legal name including ABN]
Buyer Address	[Insert buyer address for the purposes of a Notice]
Business	Business means [the Business operated by the Seller, as at the Completion Date, of [insert description]]
Purchase Price	(Price) [Insert Purchase Price e.g. \$1] [Guidance Note: The Price will be a nominal amount]
Completion Date	[Insert the completion date for the sale] [Include date e.g. 24 March 2023] or such other date as mutually agreed by the parties in writing which must be no later than the date that is [5 business days] after the date of this Agreement. [Guidance Note: The Conditions Precedent set out in clause 2.1 must be satisfied/ completed before 'Completion' of the asset sale can occur. Some conditions may take longer than others (e.g. a few days, weeks or even months). It is important that the parties consider each of the conditions and the time and effort required to complete each. In this section, the parties can include a target Completion Date. And if conditions cannot be satisfied before then, the parties can agree in writing to mutually vary that date.]
Cap	[Insert – this amount is the total maximum liability of the Seller if there is a breach of the Seller Warranties. e.g. an amount equal to [insert]] [Guidance Note: The example here says that the maximum liability of the seller, for a breach of the short list of warranties, is limited to an amount to be decided. Whether a liability cap is specified should be considered on a case by case basis. This could be an amount that can reasonably cover the significant liabilities that may arise in a breach of a warranty. The parties may consider whether funds should be kept by the Seller in a separate account to deal with special issues – this will require negotiation on a case by case basis – see Special Conditions where there is guidance of possibly including a contingency fund to deal with liabilities after Completion.]
Warranty Period	[Insert – this period is the time period during which a Seller will remain liable to the Buyer for potential breaches of the Seller Warranties. e.g. [12 months] after the Completion Date.]
Excluded Assets	[The Assets do not include the following assets: - [insert] [Guidance Note: If there are any assets that will not be part of the sale, they should be listed here. These excluded

Regulatory Approvals

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Regulatory Approvals

- The Department's Early Childhood Education Directorate has provided information for early childhood education and outside school hours care services and providers on gaining approvals and notifying the department.
- The information is intended to clarify what constitutes a complete and valid application in respect to various types of applications.
- Information is on the Department's [website](#)

P&C Transition Grant Program

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P&C Transition Grant Program

- Applications will be accepted from:
 - Approved parent-run BASC services that are transitioning to P&C ownership, or
 - P&Cs who are taking on responsibility for transitioning BASC services.
- Up to \$10,000 (GST inclusive).
- Only one application per service will be considered.
- This is a non-competitive grant.
- Each application will be assessed upon receipt.

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P&C Transition Grant Program

- Funding for mandatory one-off costs directly associated with the transition to P&C ownership.
 - Costs could include legal, accounting or regulatory fees.
- The following documentation must be included with the application:
 - Evidence of the transition of ownership of the approved service;
 - Evidence of the transfer of the Provider Approval;
 - Evidence of the amount of expenditure in the form of itemised and dated formal quotations or receipts of payment.

OSHC Provider Category Review

Questions

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Thank you