

Auspicing guide (Commonwealth)

A guide for auspicing organisations and
those delivering auspiced projects

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Part 1

What is auspicing?

What is auspicing?

This section covers:

- ▶ auspicing in a nutshell
- ▶ who is involved in auspicing?
- ▶ common auspicing arrangements, and
- ▶ some examples of auspicing relationships

This section provides a brief overview of auspicing. There are many issues to consider before going ahead with an auspicing arrangement.

This guide is designed to highlight the key issues that groups requiring auspicing and groups offering auspicing should consider before entering into an auspicing agreement.

The guide mentions lots of risks, but don't be put off – as long as the right steps are taken, auspicing can be a great way to get a project up and running quickly and easily, or to trial a new idea without committing to incorporating. For an established organisation, auspicing can be a great way to mentor others in the same field and incubate new organisations or initiatives.

Auspicing in a nutshell

What is auspicing?



To 'auspice'

To 'auspice' means to provide support, sponsorship or guidance.

The group or person requiring support is known as the 'auspicee' and the incorporated organisation that auspices the group or person is known as the 'auspicator'.

When using an auspice arrangement, the relationship is often described as one where the auspicee will be carrying out the project 'under the auspices of' the incorporated organisation – the auspicator. The auspicator receives funding or enters into relevant agreements for the auspicee.

Another way to think of an auspicing arrangement is that it's a bit like a sub-contracting arrangement – the auspicator applies for funding or sponsorship for a project, and then sub-contracts the project to the auspicee. However, in most cases, the auspicee would normally approach an auspicator seeking assistance, rather than an auspicator looking for projects to auspice.

Auspicing evolved because an unincorporated group may find it difficult to obtain funding such as grants, because funding bodies generally prefer to deal with an incorporated legal entity rather than a group of people. In addition, some funding bodies restrict grants to organisations with Deductible Gift Recipient (**DGR**) endorsement or Tax Concession Charity (**TCC**) status (most often held by certain types of established organisations).

When an auspicing arrangement is set up, it's important to have a written auspicing agreement so that all parties understand their role and responsibilities in the auspicing relationship. An auspicing agreement must be drafted with care because the auspicor is taking legal and financial responsibility for the auspiced project.

Every auspicing relationship will be different and there may be specific or unusual issues that need to be covered in any particular auspice agreement in order to reflect the circumstances of the auspicee, the project and the requirements of the auspicor, the funding body, donors, sponsors, and the terms and conditions of the relevant funding (or other) agreement. Nonetheless this guide sets out information on some common issues and considerations, and guidance for parties in coming to an agreement on the terms of their arrangement.



Not-for-profit Law resources

For more information on incorporation go to our [Incorporation Decision webpage](#).

Common auspicing arrangements

Some common auspicing arrangements include auspicing:

- of one-off events such as art exhibitions, concerts, fairs or festivals by arts organisations
- of pilot projects or program trials
- to incubate start-up groups
- of local playgroups and study groups by a larger organisation
- of youth projects
- of sporting programs or competitions, and
- of fundraisers to attract donors with the benefit of DGR or TCC status

The following case studies illustrate some of the types of auspicing relationships and circumstances that give rise to auspicing arrangements.



Case study 1 – the study group

'Let's Study' is a local study group formed by parents to advance their children's educational development and provide support to each other. When Let's Study was first formed it had four children in total. Other parents soon heard about this idea and started sending their children to Let's Study sessions. The parents who are responsible for running the Let's Study sessions constantly worry about any personal liability they might have as a result of having the children under their supervision and care during the sessions.

The group currently holds its sessions in a school venue free of charge. However the school can no longer provide the space due to renovations. The study group has identified a council-owned location available free of charge for holding the study sessions. The council requires the groups using the venue to be incorporated and have insurance.

All of the parents running the session are in full-time employment and can't dedicate more time to the group. They realise that incorporating will take time, effort and involves ongoing reporting obligations, so they decide against setting up an incorporated entity.

Study Victoria is an incorporated association which has a purpose of promoting and engaging children in education from early stages of schooling. One of the ways in which Study Victoria achieves this purpose is through supporting study groups across Victoria. It recognises the need for parents throughout Victoria to network and support each other and their children's education, and is willing to auspice study groups.

Study Victoria has standard terms and conditions for auspicing. Its insurance covers auspiced groups, but requires groups to meet a set of safety standards. Let's Study decides to accept Study Victoria's terms and conditions, and adopt their safety measures to get the benefits of being auspiced, including access to the council venue.



Case study 2 – the water colour exhibition

A group of local watercolour painters wants to hold a community art exhibition featuring artwork of historic local Victorian houses. There are local council arts grants available for exhibitions like this, but the council will only provide grants to incorporated groups. The group looks into incorporating, but realises this could take some time, and involves ongoing obligations. This seems unnecessary as they only want to hold a one-off exhibition.

One of the group members discovers that there is a not-for-profit organisation, Urban Neighbours, which is dedicated to the preservation of heritage in the group's suburb, making the suburb more resident-friendly and generally improving relationships amongst community groups and the government. Urban Neighbours is an incorporated association.

The watercolour group approaches Urban Neighbours to see if they are willing to auspice the watercolour exhibition, explaining that the local council only makes grants to incorporated organisations. Urban Neighbours asks the group to send a document to them which sets out the details of the art exhibition, the relevant local council grant, and how the group thinks the exhibition will benefit the community. The group is then invited to the next Urban Neighbours committee meeting to present its idea to the committee members.

Urban Neighbours decides that the exhibition aligns with its aims, and agrees to auspice the project. Urban Neighbours and the people involved in the group sign an auspicing agreement which provides that:

- the people cover the costs of public liability insurance for the exhibition if the grant doesn't provide sufficient funds and payable excess of any claims are made in relation to the exhibition
- the people undertake to carry out the project in line with the grant application and conditions and will provide progress reports whenever requested, and
- the people will contribute to completing acquittal documents and providing relevant data to Urban Neighbours.



Case study 3 – the cycling challenge

A local amateur cyclist has a lifelong dream of cycling across the Simpson Desert and at the same time wants to raise money for children with learning difficulties.

Kids4Learning is a nationwide charity which helps children with learning difficulties and which has tax concessions including DGR status.

The cyclist asks Kids4Learning to auspice her in completing the cycling challenge and assisting with corporate sponsorships and tax deductible donations from the public. Kids4Learning agrees to auspice the cyclist and the parties enter into an auspicing agreement.

The auspicing agreement covers matters such as:

- an implementation plan and budget for the challenge
- responsibility for securing sponsorships and donations
- how the money raised will be used
- administrative and regulatory requirements (such as financial administration, the keeping or records and the issuance of receipts)
- insurance
- use of intellectual property, and
- public relations



Part 2

When is auspicing appropriate?

When is auspicing appropriate?

This section covers:

- ▶ appropriate circumstances for auspicing, and
 - ▶ when auspicing should **not** be considered
-

Auspicing allows people or organisations to access the tax concessions and protections of the auspicing organisation.

There are many situations where auspicing will be appropriate, however sometimes auspicing may not be the best solution for groups involved.

When to consider auspicing

The most common reason for a group or person to seek to be auspiced is a need to quickly and easily meet grant funding or donor requirements. Grant funders and donors often require that a recipient is incorporated, is a TCC, or has DGR endorsement (or is a mix of these things).



Not-for-profit Law resources

For more information about the different tax concessions that a group can be eligible for, go to our [webpage on tax](#).

Incorporation, tax concessions and endorsements

While it's possible for a group seeking to run a project to become incorporated and then make applications to access tax concessions and DGR endorsement, this can be a time consuming and expensive process. Where a group or person only wants to run a short term project, or is exploring a model and wants to trial an idea before committing to incorporation, auspicing offers a neat solution.

Completing a project under the auspices of the auspicing organisation provides quick access to tax concessions and DGR status.

Incorporated groups requiring an auspicator

Sometimes groups that have already incorporated may also seek to be auspiced. An example is where the funding body wants to see the project group establish a track record of successfully implementing projects before providing direct funding to the group.

When auspicing should not be considered

There are different circumstances in which entering an auspicing relationship may **not** be the appropriate solution for a group to carry out a project.

Long-term ambitions

Where the members of the unincorporated group that form the auspicee propose to have a long term working relationship, the group should consider whether to incorporate – that is, form a legal entity.

If that occurs, it may not be necessary to enter into an auspicing relationship. The legal entity formed by the group may be able to contract directly with funding bodies and be more independent.

The incorporation of a legal entity provides a legal structure through which to carry out some activity or enterprise and may also make accessing tax concessions easier. There are a number of different forms of legal entity. The choice as to the appropriate legal form will be influenced by different factors including where activities will be located and whether the entity is going to be a not-for-profit organisation or a for-profit organisation.



Related Not-for-profit Law Resource

The Not-for-profit Law website has lots of information on starting a not-for-profit group and the important decisions to be made along the way. Go to the [Getting Started webpage](#).

Relationships

An auspicing relationship is a collaborative relationship. The parties involved need to be able to work together, trust each other and communicate well. Before entering into an auspicing arrangement, it's a good idea to carefully consider whether the auspisor and auspicee:

- are going to be able to work together
- have common goals and understanding of the project aims, and
- a good base from which to resolve any disputes or communication problems that may arise during the project

Complex or risky arrangements

Where the project for which funding is required is particularly complex or involves a significant amount of risk or potential liabilities, it may be preferable to incorporate a separate legal entity to operate and manage the project. This will ensure that the risk associated with the project can be appropriately quarantined in the special-purpose legal entity.

Where the auspicee's project doesn't align with:

- the auspisor's purposes or powers (for example, where there are conditions or prohibitions on auspicing or fundraising for other persons in the constitution or by-laws), or
- the terms of the auspisor's tax concessions,

auspicing will not be appropriate.

Carefully considering these issues will ensure that the auspisor's viability is not put at risk (including its TCC and DGR endorsements).

Commercial arrangements

An auspicing relationship is not appropriate for for-profit activities. In circumstances where parties are seeking to pursue a project for commercial reasons, an alternative structure such as a joint venture, partnership or services agreement should be considered.



Part 3

Pros and cons of auspicing
arrangements

Pros and cons of auspicing arrangements

This section covers:

- ▶ pros of auspicing, and
 - ▶ cons of auspicing
-

This section outlines some of the pros and cons of auspicing relationships for both auspicators and auspicees.

Pros of auspicing

For the auspicator

Auspicing new projects can be an excellent way to:

- support new projects
- diversify your activities, and
- bring a fresh perspective and energy to your organisation

An auspicing relationship can be a satisfying way to promote the purposes of your organisation while providing mentoring to a less established group.

Auspicing a project may assist in building relationships with new funders.

For the auspicee

Being auspiced can be a great opportunity for a group or a person to benefit from the auspicator's tax status and operational and administrative support.

The auspicator may provide the auspicee with certain insurance and legal protection in relation to its activities.

Auspicing is especially useful for pilot projects or one-off projects, where the group or person may not yet be ready, or may not even need, to incorporate.

The auspicee can obtain the benefit of the auspicator's expertise, experience and reputation to successfully obtain funding grants, donations or sponsorships and deliver the project.

The auspicator may broaden the auspicee's network and profile and bring additional public exposure and awareness about the project or the activities of the organisation.

A person or group may only be eligible for certain funding grants if they have an auspicator.

Even if a group is incorporated, they may not have a track record of delivering on grants, and therefore can benefit from being auspiced to deliver on their first grants.

Cons of auspicing

For the auspicor

Auspicing introduces new risks, new personalities and extra administrative burdens to your organisation. The organisation needs to be prepared for this, and have in place a solid auspicing agreement and appropriate insurance, risk management protocols and other guidelines (such as policies around releasing grant funds to the auspicee in segments as the project progresses) to reduce risks as much as possible.

Some groups charge a fee for auspicing organisations to reflect the additional administrative burden of an auspicing relationship. However, in some instances the fee may be insufficient to cover all of the costs associated with the auspicing relationship and the relevant project.

If the relationship between auspicor and auspicee is problematic, this may result in a negative outcome for the auspicor, create extra stress, and potentially impact the relationship between the funding body, sponsors and the auspicor.

The auspicor will be responsible and accountable to any project funding body funding the auspiced project for the proper use and acquittal of the funding grant. This means they may be exposed to additional liabilities and risks associated with the project. This is particularly the case where the auspicee has significant control over the management of the project.

There may be multiple people who together form the auspicee, which may make it more difficult for the auspicor to negotiate and manage the auspicing arrangement, particularly where those people have conflicting views or opinions.

The relationship between the auspicee and the auspicor may also, in certain circumstances, give rise to an employment relationship which could impose additional legislative burdens on the auspicor.



Not-for-profit Law Resources

For more information on deemed employment relationships go to our [Employment webpage](#). If you are concerned about ensuring an employment relationship is not created, seek the advice of an employment lawyer.

The auspicee may be disorganised or lack the necessary resources required for it to comply with its obligations under the auspicing agreement. This may impose a heavier burden on the auspicor in respect of the completion of the project or affect the reputation of the auspicor if the project is not completed, including with respect to grant funding bodies, sponsors and donors.

Many of the risks described can be managed through an appropriately drafted auspicing agreement.

For the auspicee

The auspicee will lose a degree of ownership and control over the project, especially financial control. The auspicee will need to comply with the conditions of the auspicing arrangement, which could include administrative burdens such as keeping records, accounts and invoices for acquittals.

The auspicee may be required to follow certain policies and procedures that are implemented by the auspicor, which may affect the manner in which it is able to conduct or operate the project.

The auspicee may need to provide regular progress reports to the auspicor. If the relationship between auspicor and auspicee is problematic, this may result in a negative outcome and create extra stress.

The auspicee may need to agree to certain terms and conditions that create new burdens for the group, like risk management strategies or reporting.

There may be costs associated with the project which are incurred by the auspicee and which may not be recovered or reimbursed depending on the terms of the auspicing agreement. In most instances, the auspicee will be required to justify its spending in relation to the project.



The auspicee may have no direct access to deal directly with the funding body which may affect the auspicee's ability to develop a relationship with the funding body in circumstances where the auspicee is seeking to obtain a future funding grant.

The auspicator may be disorganised or lack (or dedicate) sufficient resources to provide the level of support required or desired by the auspicee to complete the project. This means investigating the auspicator's organisational style and track record in supporting organisations is important.



Part 4

Guidance for auspicees



Guidance for auspicees

This section covers:

- ▶ finding auspisors
 - ▶ what to look for in an auspicing body
 - ▶ common responsibilities, and
 - ▶ negotiating an auspicing agreement
-

This section sets out specific considerations which should be addressed by auspicees prior to entering into an auspicing agreement.

It's important to find the right auspisor to ensure that the objectives, goals, values and ideals of the auspicing parties align and that the parties can work together effectively to ensure the completion of the relevant project.

The auspicee may need to conduct research of possible auspisors to identify organisations who provide auspicing and who are an appropriate fit for the activities of the auspicee. In some instances, the auspicee may be able to approach funding bodies or corporate sponsors directly to obtain information and recommendations on possible auspisors.

Some key issues to consider are listed below.

Identifying potential appropriate auspisors

Similar purpose

An auspicing organisation will not be able to auspice your project unless your project is consistent with its purposes. You can look up the constitutions of charities on the [ACNC register](#).

In particular, the project needs to fall within the purposes of the auspisor organisation's constitution and must not be prohibited or limited. The board of the organisation may not be able to approve entry into an auspicing agreement if the project doesn't fall within the objectives. The auspicee should ask to see a copy of the auspisor's constitution before entering an auspicing agreement.

Tax concessions

Some funding is only available to organisations with specific tax concessions (such as Tax Concession Charities or DGR endorsement). You can check the tax concessions that an organisation has access to on the Australian Business Register, by using the [ABN lookup tool](#).

Incorporated structure

Although a group of people can be parties to an auspicing agreement, as there are certain risks and disadvantages of remaining unincorporated, the people may consider incorporating their group.

An incorporated structure can provide people with some legal and financial protection. Without incorporation, a group has no separate legal existence and a single member of the group may be deemed personally liable for the actions and omissions of the other members of the group.



Incorporating the project group may also help the members of the group to regulate their own relationship to ensure the successful completion of the project.

A group may wish to consider incorporating in circumstances where the people will have an ongoing relationship following the completion of the project or where the project will be particularly lengthy or involve a significant amount of risk.

However, while there are benefits to incorporation (including limited liability of the people in the group), being an incorporated group comes with other obligations and burdens. These obligations may include the requirement to maintain and keep certain records, paying registration and annual fees to government bodies and the compliance of the group with additional Commonwealth, State or Territory laws.

Common responsibilities for auspicees

Responsibilities can be set out differently in different auspicing arrangements.

Some common responsibilities of auspiced bodies (auspicees) are that they:

- comply with any grant conditions
- comply with project implementation and budget conditions
- deliver on project outcomes under the grant or other funding requirements
- notify the auspicator of any issues with the project and provide regular progress reports
- comply with any relevant legislation and requirements of any Commonwealth, State, Territory or local authority in relation to the funding and the auspicing agreement
- obtain and maintain relevant permits or licences, or arrange for the auspicator to obtain the relevant permits or licences on its behalf
- notify the auspicator of any suspected fraudulent events, or any other events or omissions that could affect the auspicing, and
- in some circumstances, provide an indemnity to the auspicator and/or evidence of appropriate insurance having been taken out for the project

Negotiating an auspicing agreement

Following the identification of an appropriate auspicator, the auspicing parties will need to consider the terms of their arrangement and relationship. From the perspective of an auspicee, an auspicing agreement is essential to ensure that the auspicee has a legal right to access and use the funds which are granted to the auspicator by the funding body or by donors or sponsor for the purposes of the project, or any benefits under any other agreement (for example, a lease).

In negotiating an auspicing agreement, the auspicee will need to:

- consider the level of control it requires over the project and to make sure this is clearly documented in the agreement, and
- ensure that it is able to comply with all of the obligations which are proposed in the auspicing agreement and should negotiate changes to obligations which it considers will negatively impact the successful completion of the project

The auspicee may need to seek legal advice before entering into an auspicing agreement to ensure it understands the full meaning of the agreement and the impact of its terms.



Part 5

Guidance for auspitors

Guidance for auspicators

This section covers:

- ▶ finding auspicees
 - ▶ important considerations
 - ▶ common responsibilities, and
 - ▶ negotiating an auspicing agreement
-

This section sets out a number of considerations which will need to be addressed by organisations seeking to provide auspicing.

Finding auspicees

In many cases, groups or people seeking auspicing will come to you. However, some organisations, particularly in the arts space, are specifically set up to provide auspicing services to projects aligning with their purposes, and actively seek projects to auspice. You could promote your willingness to auspice through a website, your local council, community centres or through a relevant peak or interest body.

Important considerations

If your not-for-profit organisation is incorporated, or has a certain tax status (for example, income tax exempt or DGR status), you may be approached by other organisations that want to enter into an auspicing arrangement.

Be careful – although a proposed auspicing arrangement may seem like a good opportunity to work with and help another organisation, there are many important legal issues you should consider (these are discussed further below).

In certain circumstances, entering into an auspicing agreement may jeopardise your organisation's ongoing eligibility for tax concessions or endorsements (for example, its TCC or DGR status). An auspicator may wish to speak with the ATO or ACNC (or both) to understand any impact on its concessions and status. An auspicator may also want to seek legal and tax advice before entering into an auspicing agreement to understand the implications for its organisation.

Consistency with purpose

In general, before agreeing to auspice another organisation the auspicator should ensure that it is satisfied that the project or activities for which the funding is sought for the project group, furthers the purposes of the organisation in some way.

If the activities don't align with your group's purposes, the board of the auspicator doesn't have power to approve the arrangements, and approval could potentially breach legal duties. In circumstances where a project involves several organisations, the project and activities will need to fall within the purpose of each respective organisation.

Consistency with tax concessions

Further, the auspiced activities need to align with the requirements of any tax concessions, for example, as to the tax deductibility and use of any donations. The ACNC and ATO consider an organisation's purposes

when making assessments of eligibility. The auspisor should ultimately ensure that its tax concessions are not jeopardized by the proposed auspiced activities. Such verification steps should be taken before entry into any auspicing agreement and before undertaking any project activities.

Power to auspice (or no clause prohibiting auspicing)

Check your organisation's constituent documents (constitution, rules, by-laws) to ensure that entering into the auspicing agreement is consistent with the purposes and powers of your organisation, and that there are no conditions, prohibitions or limitations on auspicing or fundraising for other persons.

For example, you should check that the organisation's constitution doesn't have any rules that restrict it from entering into arrangements or providing funding to other organisations, or any special conditions around auspicing. It's possible to change your rules if necessary, but the process can be quite involved and time consuming.

Legal duties of committee or directors

As with any decision, directors or committee members need to meet their legal duties to the organisation, including the obligation to act in the best interests of the organisation when making a decision about whether to auspice a group or not.

If:

- there is excessive risk involved in auspicing a project
 - the project doesn't comply with or further the organisation's purposes
 - the project may jeopardise its tax concessions, or
 - the relevant documents, due diligence or insurance are not given appropriate consideration,
- a breach of the directors' duties that apply to the management of the auspisor may result.



Related Not-for-profit Law resources

For more information on the steps involved in changing an organisation's rules or constitution go to our [Constitution webpage](#).



Related Not-for-profit Law resources

The Not-for-profit Law website has more information on the legal duties of directors or committee members on our [Governance webpage](#).

Auspicee's ability to deliver the project

It's very important to ensure the auspicee has the credentials, time and sufficient funding to deliver on the project in the agreed timeframe.

It may damage your organisation's reputation, and leave your organisation exposed under the auspiced project funding agreement if the project fails to complete. You may also consider putting protections into the auspicing agreement to cover what should happen should the auspicee fail to complete the project.

In considering whether a person or group of people are suitable for auspicing, you may want to conduct background checks including police checks, where appropriate Working With Children Checks, and also reference and other background checks.



Related Not-for-profit Law resources

The Not-for-profit Law website has more information background checks on our [Background checks webpage](#).

Common responsibilities

Being an auspisor brings responsibilities with it.

Auspicing organisations provide different levels of support. Some are set up and receive funding specifically to support auspiced projects. Others provide the minimum level of support.

Generally, at a minimum, auspicing organisations may need to:

- take in grant funding and negotiate the funding agreement
- either provide the funding to the auspicee or arrange for payments to be made as and when required
- provide administrative, operational and regulatory support to the auspicee
- provide information required for grant acquittals
- take in donations to provide funding for the project
- if applicable, assist with sponsorship funds and negotiate sponsorship agreements, and
- provide tax deductible receipts (if appropriate)

Sometimes auspicing organisations provide access to insurance or premises, and sometimes they require the auspicee to seek their own insurance and provide evidence of this.



Example

When Create NSW (a government agency of the Government of New South Wales) funds certain auspiced projects, the functions of the auspisor can include:

- entering into a written agreement with the auspicee before the project starts
- paying the funding to the auspicee in accordance with the Funding Agreement
- monitoring the use of the funding to ensure compliance with the purpose for which it was provided
- providing the auspicee with an itemised financial statement at the end of the project, which clearly identifies the funding and how it was spent
- ensuring that the financial statement for the funding acquittal is certified by a qualified accountant in public practice, and ensuring the required acquittal information is provided to Create NSW

Extracted from Create NSW's [fact sheet on auspicing](#).

Negotiating an auspicing agreement

As the auspisor will be a party to funding agreements related to the auspiced project, it will be directly responsible for the obligations which are imposed on it under that document.

To manage this risk, the auspisor should ensure that when negotiating an auspicing agreement, effective 'pass through' provisions are included that allow it to pass on or transfer this risk to the auspicee where it is appropriate to do so.

The auspisor will need to ensure that the terms of the auspicing agreement are consistent with the terms of any relevant funding agreements to ensure that it doesn't inadvertently breach the funding agreement.

The auspisor should ensure that the proposed auspicing agreement doesn't impose obligations which are contrary to the auspisor's governing documents (such as its purpose as set out in its constitution).



The auspicator, when negotiating the auspicing agreement, will need to determine the level of support it will provide to the auspicee in relation to the completion of the project. The obligations of the auspicator should be clearly identified in the auspicing agreement so that both parties are aware of the extent to which the auspicator is able to assist the auspicee.

From the perspective of an auspicator, an auspicing agreement is essential to ensure that the auspicee can deliver the project without jeopardising the auspicator organisation's endorsements or concessions (including DGR and TCC) or any rights or benefits under any other agreement.

The auspicator may need to seek legal advice before entering into an auspicing agreement to ensure that it understands the full meaning of the agreement and the impact of its terms on its organisation.



Part 6

**Issues to consider before negotiating
an auspicing agreement**

Issues to consider before negotiating an auspicing agreement

This section covers:

- ▶ issues for an auspicor, and
 - ▶ issues for an auspicee
-

Before entering an auspicing agreement, both parties must carefully consider if the agreement complies with their needs and their legal status.

Insurance

The parties need to consider whether there are any specific insurance requirements in relation to the activities of the project for which funding is being sought.

For instance, depending on the nature of the project, Workers compensation and public liability insurance may be necessary to mitigate risks associated with completing the project. Other categories of insurance may also be relevant, such as volunteer personal accident insurance and insurances to protect assets and equipment to be used in respect of the project.

In this regard, the parties need to determine whether the auspicee will receive the benefit of the auspicor's existing insurance coverage and whether those insurance policies are adequate to mitigate against the potential risks of the project. The auspicor will need to notify its insurance broker and review its insurance policies if it intends to extend its insurance protection to the auspicee. Alternatively, the parties may agree that the auspicee will purchase a specific policy to cover the auspiced project and that the auspicee will provide to the auspicor a valid certificate of currency for each insurance policy.

In addition, a party may agree to indemnify the other from and against loss, damage or liability suffered as a result of the project. If such agreement is given, the indemnity may be a continuing obligation, separate and independent from the other obligations of the parties of the auspicing agreement.

Organisational and administrative support

The parties need to determine the level of organisational or administrative support that will be provided by the auspicor to the auspicee. This will depend on the nature of the project and the resources of both the auspicee and the auspicor. The roles of the parties should be clearly defined before the auspicing relationship begins to ensure that the project can be managed effectively and that an undue or unexpected burden is not placed on one party.

For example, the auspicee may require financial administration support regarding funds raised, such as the establishment of a bank account, the issuance of receipts or compliance with financial accountability requirements of funding bodies.

The parties should also consider how to distribute surplus funds available, if any, at the conclusion of the project, taking into account compliance with relevant administrative and regulatory requirements. The parties should also consider how to manage any deficit in funds not received from any source of funding or for any expenditures incurred beyond the proposed budget for the project.

Office and project space

If any office space or other property is required for the project, the parties need to consider who is responsible for locating those premises and for paying any fees associated with the use of those premises (including any insurances, rent and utilities).

In some instances, as part of the auspicing relationship, the auspicor will provide the auspicee with access to and the use of its premises and facilities. The parties should consider the extent of that access before commencing the auspicing relationship and whether there will be any restrictions placed on the auspicee in respect of the use of those premises. The auspicor will need to ensure that any access it provides to the auspicee to its premises doesn't breach its applicable leasing documents relating to those premises. In some instances, the auspicor will need to obtain the consent of the landlord of the premises.

Occupational health and safety (OHS), confidentiality and privacy issues should also be considered in relation to the project space – for example, will confidential or sensitive personal information be accessible by the auspicee and is this appropriate or subject to existing restrictions in your policies or agreements with third parties or under applicable laws?

Grant administration

The parties need to consider what steps are required to secure funding from grants, donations or sponsorships and which party will be responsible for taking those steps. The parties need to ensure that they are able to comply with any terms and conditions of the funding which are required by the funding body.

In considering whether they are able to comply with the terms and conditions of the funding, the parties need to allocate specific tasks to each party. For instance, the parties need to consider a policy for obtaining reimbursements and for preparing reports and acquittals to be provided to the funding body.

While funding may, in some instances, be sufficient to complete the project, the parties need to carefully consider how to fund the project if there is a shortfall in the funding and who will be responsible for the shortfall.

Publicity

The parties need to decide how to manage announcements and communications with the media and other third parties. A media plan and communications strategy should be considered by the parties if there is likely to be significant contact with the media or other third parties (including the community). This will ensure that the parties can manage the publicity relating to the project and that publicity is consistent with the parties' intentions before, during and after the implementation of the project.

Parties should also consider and agree how the project will be described and branding of the project (also see the intellectual property section below).

Intellectual property

Intellectual Property created as a result of the project (Project IP)

If any intellectual property is created as a result of the project, for example – content, trade marks, patents, designs or other intellectual property like artistic works or website content, consideration will need to be given as to whether registration of that intellectual property is necessary to ensure its protection against use by a third party. This is particularly the case if the relevant intellectual property is intended to be used as part of the activities of either party after the completion of the project.

In addition, the parties need to determine who owns the intellectual property produced as part of the arrangement and the manner in which that intellectual property can be used by both parties. For instance, the auspicee may be entitled to the ownership of the intellectual property, but the auspicor may be provided with a licence to use the intellectual property to promote their involvement in the project.



Not-for-profit Law Resources

For further information on intellectual property go to Not-for-profit Law's [Intellectual property webpage](#).

Other Intellectual Property (Background IP)

The parties also need to ensure that the intellectual property that they are proposing to use to complete the project doesn't infringe the intellectual property rights of a third party.

The auspicator and the auspicee need to plan how the intellectual property they are proposing to use to complete the project will be used by the other party. If appropriate, both parties may simply retain their respective ownership of intellectual property rights which existed at the date of execution of the auspicing agreement or which were, are or will be developed independently of the auspicing agreement.

The use of the intellectual property rights may be subject to an exclusive or non-exclusive licence on a fee or royalty free basis. The parties will also need to agree on the purpose and the extent of the use of the intellectual property rights necessary to perform the auspicing agreement.

Occupational health and safety

The law imposes strict obligations in relation to occupational health and safety (**OHS**). There are severe penalties (including civil and criminal penalties) that flow from a party's failure to observe its OHS obligations. This is to ensure that workers have a safe and healthy work environment.

In this regard, the parties need to consider what OHS procedures or policies are necessary to ensure the safe completion of the project, and any necessary insurances (see part 6 of this guide). This is particularly the case in industries which have a high incident of workplace accidents, such as construction, transportation, manufacturing, agriculture and health and community services.

Termination and non-completion

The parties need to consider how to manage their relationship in circumstances where the project doesn't complete or if a party is unable to complete the project for any reason.

The auspicing agreement should clearly set out an exit mechanism which provides the parties with guidance on how to terminate their arrangement if the project is incapable of being completed and the consequences of termination including what is to occur with respect to funding.

In any case, the parties will need to make sure the exit mechanism is consistent with the terms of any funding agreements to ensure that the auspicator doesn't breach those agreements and become liable in any way if the project fails to complete.

Unwanted employment arrangements or partnerships

Sometimes the auspicee undertakes nearly all the work, but other times the auspicator and the project group work closely together to complete the funded project. In these situations, it's important that the auspicator and the auspicee don't inadvertently fall into a partnership or an employment relationship. Such relationships can arise under law, even if the parties didn't intend this. The result may be unwanted obligations on the parties.

An auspicing agreement will usually confirm that the parties acknowledge that nothing in their agreement creates any relationship of partnership or employment between the parties. However, even though the parties expressly state the intention of their relationship, this may not prevent the relationship from being classified as a partnership or employment relationship at law.

If the parties are concerned that their relationship creates a partnership or employment relationship, the parties should seek legal advice to determine the impact this has on the obligations of both parties.



Not-for-profit Law resources

For further information on the employment relationship visit our [Employees webpage](#).

For further information on issues to consider when working with others visit our [Working with others webpage](#).

Checklist to complete before starting the project

Checklist to complete before starting your project

- Insurance:** All types of insurance required are held and extend to everyone and thing involved in the project.
- Governing documents:** The governing documents of the auspisor (and if applicable, the auspicee) permit the auspicing relationship.
- Notification of relevant staff and volunteers:** The auspisor may need to be notified of relevant people for security and insurance purposes.
- Auspicing agreement:** Agreement signed and copies provided to all relevant parties.
- Reporting timeline:** Dates for when money and reporting are due, including who is responsible for each element.
- Project budget:** The parties have set a realistic budget of the income and expenses of the project.
- Project timeline:** The key dates for the implementation, completion and progression of the project have been agreed between the parties.
- Key contacts:** All parties have key contact details for emergencies and for assistance.
- Security and OHS:** Orientation around buildings or equipment is provided and any security including in respect of confidential or personal information.



Part 7

Coming to an agreement

Coming to an agreement

This section covers:

- ▶ what to include in an auspicing agreement, and
 - ▶ when members of the project need an agreement between themselves
-

An auspice agreement sets out each party's obligations. These may vary greatly from one auspicing relationship to another. Examples of typical obligations associated with each party are set out in the part of the guide.

Although putting together an agreement can sometimes seem unnecessary if all the parties understand each other and have a good working relationship, writing your agreement down is an important step and will ensure that each party is aware of its rights and obligations.

Further, auspicing agreements often involve the application for and use of third party funds (sometimes themselves involving funding agreement). Accordingly, having a written agreement is a matter of good contractual governance. Also, things can change, people can move on, unexpected events can occur, and an agreement can be a very helpful reference point in these situations.

What to include in an auspice agreement

Here are some essential issues to address in an auspice agreement:

- When** – Set out the period of the agreement either with specific dates or by reference to events (for example, the project's completion) and set out the term of the agreement.
- What** – Specify each party's obligations, in particular in relation to:
 - **Financial administration**
 - How will the auspicator manage the funds and dispense them to the auspicee?
 - How will the auspicee help the auspicator obtain these funds and record their expenditure?
 - How will possible surpluses be distributed and how will shortfalls in the funding be managed?
 - How will receipts be issued?
 - Is a bank account required?
 - **Fees**
 - How much, if at all, will the auspicator charge for its services?
 - Will this fee (if any) be payable or refundable if the auspicing agreement is terminated or the project not completed?
 - **Intellectual property**
 - Acknowledge whether the parties retain intellectual property rights in the material they create or own and set out any entitlements to use those intellectual property rights.
 - Will intellectual property rights be assigned or licensed?



- **Recognition**

How will the roles of the auspicee, auspisor and funders be recognised in promotional material and public communications, and who will be responsible for preparing any promotional material?

- **The project**

What is the nature of the project for which funding or any other agreement (for example, lease) is sought?

What is the auspicee's business plan, timeline and budget? Is the scope of the project clearly outlined?

- Who** – Specify in relation to each party, which people are:

- **The parties**

The parties to the agreement will need to be clearly set out and reflect the true identity of the auspisor and the auspicee. The auspicee and auspisor will need to consider who the appropriate parties to the agreement will be. They will also need to determine who has appropriate delegation to sign the agreement.

- **The project managers**

Who is responsible for managing the implementation of the project?

Who will be making the decisions as to how the project is to be carried out?

- **The financial controllers**

Who is responsible for authorising payments?

What is the process the project managers must follow to obtain approval for entering into financial commitments?

- **The managers responsible for responding to requests for information about the project or grant**

As the auspisor has the legal and financial responsibility to account to the funding body, it may expect to either control the process of responding to requests for information about the project or grant or be informed about, and involved in, communications between the auspicee and the funding body.

The response processes could differentiate between project related communications (that deal with creative and other project issues such as changes to key creative personnel) and grant related issues (that deal with financial matters and issues related to compliance with the terms of the grant including changes in the budget; or changes to start or end dates of the project).

- **The managers responsible for responding to media releases about the project or grant**

The auspicee and the auspisor may want to have a process of consultation related to the preparation of media releases or other promotional materials.

- **The managers responsible for the preparation of progress reports and acquittal reports**

As the auspisor will have responsibility for providing progress reports and acquittal reports, it may expect to control the process of preparing progress reports and acquittal reports; although the input from the project managers and other members of the auspicee will be necessary to complete the reporting to the funding body.

- What if?** – However unlikely some events may be, it is crucial to plan for them:

- **Requirements not met**

What kind of sanctions apply if a party does not meet its obligations?

- **Termination**

What conditions apply if a party wishes to terminate the agreement?

- **Dispute Resolution**



Should a dispute arise, how will the parties deal with it? Will alternate dispute resolution (such as mediation) be mandated?

- **Failure to complete the project**

How should the parties manage a failure of the project to complete?

- **Funding not obtained**

How should the parties manage a failure to obtain sufficient funding to complete the project?

Do the members of the project need an agreement between themselves?

Separate to the agreement with the auspicee, there is a benefit in having a formal agreement between the members of the group that form the auspicee, which clarifies the rights and responsibilities of the members.

Where a group of people are working together to carry out a project or some activity or enterprise without a formal corporate structure, the auspicee has the legal description of being 'unincorporated'.

The legal status of an unincorporated association is uncertain because people could join or leave the group at any time so there is always uncertainty as to who is a member of the group. This has legal consequences as an unincorporated association can't enter into contracts in its own name and it creates doubt as to who can enter into contracts on behalf of the association. If there is uncertainty as to who is a member of an unincorporated association there may also be uncertainty as to who is the legal owner of any property of the unincorporated association and uncertainty as to whether individual members of the unincorporated association can pass legal title to any purchaser of property.

Operating as an unincorporated association may also have the unintended consequence that the members are considered to be a partnership. A partnership is a relationship between persons who carry on a joint enterprise or business in common for profit, which usually has an element of continuity or repetition of activities. Although a 'one-off' project might not be sufficient to create a partnership, a partnership can arise through conduct as well as the result of an oral or written agreement to form a partnership. A possible consequence of being determined to be in a partnership is that partners are jointly liable for debts that any partner incurs in carrying out the joint enterprise. If you are uncertain, you may need to seek legal advice.



Part 8

Auspicing checklist



Checklist – Issues to cover in an auspice agreement

The following table sets out issues to consider when preparing an auspice agreement.

Issues to consider

Your organisation may wish to check any agreement for the following clauses:

Clause in contract	Explanation	
Parties	It's important that the agreement clearly names and identifies the correct contracting parties to the agreement. For instance, if the auspicee is an unincorporated association then an individual member (or members) of that association will be required to enter into the agreement on behalf of the auspicee.	<input type="checkbox"/>
Term	It should be clear when the agreement starts and whether the commencement is conditional on any particular event occurring. The duration of the agreement should be specified.	<input type="checkbox"/>
Details of the relevant funding activities	The agreement should clearly set out what the auspice arrangement is about. For instance, the agreement should set out the details of the relevant project for which funding is being sought and outline any relevant milestones or budgets in relation to that project.	<input type="checkbox"/>
Obligations of auspicee	The obligations of the auspicee should be set out and may include: <ul style="list-style-type: none"> • a requirement to assist the auspicator to secure adequate funding for the project or activities • securing insurances, providing financial records, references, etc. for the purposes of getting funding for the project • clauses about how the auspicee will seek the release of funds from the auspicator and account for the spending of those funds • the kind of reporting and documentation the auspicee agrees to provide to the auspicator (for example, progress reporting, financial reporting, copy of insurance policy) • the extent to which the auspicee will be responsible for securing premises, equipment, staff, any consents or licenses for the project • requirements to comply with any policies of the auspicator or any restrictions placed on the auspicee by the auspicator for the duration of the agreement, and • general requirements to co-operate with the auspicator for the purposes of the project, which may include a clause that the auspicee be prepared to undertake any reasonable act asked of it by the auspicator. 	<input type="checkbox"/>



Clause in contract	Explanation	
Obligations of auspicator	<p>The obligations of the auspicator should be set out and may include:</p> <ul style="list-style-type: none"> • how funding will be applied for, kept (separate bank account) and administered • any support the auspicator agrees to provide in terms of office space, equipment, software, etc. • the extent the auspicator will commit staff (employee time) to the funded project and whether this will be paid from the funding or from the auspicator's own funds • any financial management services the auspicator will provide for the purposes of funding the project, administration of the project management account and preparing budgets and tracking against the budgets, and • the extent of the administrative, accounting, HR, fundraising and legal assistance that the auspicator will arrange. 	<input type="checkbox"/>
Funding and fees	<p>The agreement should set out any fees to be paid and the amount (for example, any fee the auspicee may have to pay the auspicator to cover its administration expenses) and circumstances pursuant to which the fee is payable.</p> <p>Also, if the project for which the funding is sought generates fees or surplus, the agreement should set out whether the auspicator shares in the fees or surplus.</p>	<input type="checkbox"/>
Non-completion of project	<p>The agreement should include a clause which determines what will happen if the auspicee does not complete the project or a stage of the project. The clause should set out in what circumstances the auspicator is able to withhold funds and in what circumstances the auspicator is able to use the funds to complete the project.</p>	<input type="checkbox"/>
Recognition	<p>The agreement may specify how both the auspicee and the auspicator will be recognised in relation to the funded project (including promotion, branding, acknowledgements and public announcements).</p>	<input type="checkbox"/>
Notice	<p>A notice clause will set out in what form and where notices are to be delivered to each party for the purposes of the agreement.</p>	<input type="checkbox"/>
Dispute resolution	<p>Due to the nature of the relationship between the auspicee and the auspicator, it is often best to set out the dispute resolution procedures in detail, so that the relationship does not become unnecessarily adversarial in times of disagreement. You may wish to include a clause to indicate an intention that both parties will use their best efforts to resolve any disputes.</p> <p>The dispute resolution clause can set out alternative methods of dispute resolution (such as mediation) and require that the parties use those methods in the first instance, rather than court proceedings. You will need to decide whether you want decisions made in these alternative methods to be binding.</p>	<input type="checkbox"/>
Obligations after termination	<p>The agreement should also set out the parties' obligations after the agreement comes to an end (either because the term has ended or due to termination).</p> <p>The parties will need to think about things such as payment of any outstanding amounts, confidential information, intellectual property and what is to happen to any remaining grant money (bearing in mind the grant agreement may require return of surplus).</p>	



	If the parties are working on a project together, you may like to consider who will bear the burden of any unfinished work.	
Confidentiality	<p>It's likely that both parties will be privy to confidential information of the other. For this reason, you should agree and document how each party (and their employees, volunteers and contractors) may (or may not) deal with such information.</p> <p>The agreement may also set out the manner in which parties are to deal with any public announcements or the media.</p>	<input type="checkbox"/>
Intellectual property	A clause dealing with who owns the intellectual property created as part of the funded project should be included. The agreement should also clarify whether each party has a right to use the other party's intellectual property rights for the purpose of completing the project and if so, on what basis and if such rights persist following completion of the project. For more information about Intellectual Property rights and the law see Not-for-profit Law's IP webpage .	<input type="checkbox"/>
Liability, insurance and indemnities	<p>The agreement should make clear:</p> <ul style="list-style-type: none"> • who is responsible for any loss or damage to any third (outside) party caused by any activity undertaken in the course of the agreement • whether one party agrees to (wholly or partly) indemnify or compensate the other party for any losses, costs or liabilities associated with the auspiced activities, and • whether insurance is required and which party is required to take out appropriate insurances. 	<input type="checkbox"/>
Warranties	The agreement may include a provision which sets out warranties and representations made by the parties. If a warranty or representation made by a party later becomes untrue or inaccurate, then that party may be in breach of the agreement.	<input type="checkbox"/>
Any employee obligations (tax, superannuation, insurance entitlements etc.)	If the project for which funding is sought will (under the agreement) involve hiring employees, the agreement should specify who is responsible for the employment of the employees, and who arranges and pays the employees' legal entitlements.	<input type="checkbox"/>
General provisions	<p>As with any other type of agreement it can often be helpful to include some general provisions to assist with the operation and interpretation of the agreement including:</p> <ul style="list-style-type: none"> • the governing law and jurisdiction applicable to the agreement • whether the agreement is the 'entire agreement' or whether any other project documents set out the terms of the parties' agreement • whether the parties are entitled to assign or subcontract their obligations • who bears the costs of any taxation or stamp duty payable in relation to the agreement or the project, and • which provisions, if any, will continue to bind the parties following the termination of the agreement. 	<input type="checkbox"/>
Execution	The agreement should contain appropriate execution clauses that reflect the manner in which the parties are required to sign the agreement in order to make it binding.	<input type="checkbox"/>



Part 9

When things go wrong

When things go wrong

This section covers:

- ▶ steps to take when things go wrong, and
- ▶ where to go for more help

If you are concerned that things are going wrong, it's important to try and solve the problem early!

What to do when there's a disagreement

If in doubt, always seek advice before proceeding further. If you receive a letter of demand, or court documents, speak to a lawyer immediately.

The most important steps if something goes wrong are:

Stop and assess

- Sometimes issues can be bigger than they seem, and a little flexibility from those involved is all that is needed to solve a problem.
- It may also help to involve a neutral party if people are emotional or angry.

Read your auspicing agreement

- If you have followed the steps set out in this guide, then hopefully your group will be able to resolve any disagreement by referring to the auspicing agreement.
- However, agreements can't cover every possible scenario. Where it is unclear whose responsibility it is to take a certain action, or what is permitted under the agreement, you may need to seek advice.

Try mediation

- Mediation can be a good option to sort through disagreements.
- There are free mediation services available to assist not-for-profit organisations.
- An auspicing agreement can be drafted so that the parties refer any disputes to mediation.

Seek advice

- If you think the issue is serious, involves going to court or potential criminal liability, or if alternate dispute resolution (eg. mediation) has failed to resolve your issue, you may need to seek the help of a lawyer or, if you are concerned about safety or potential criminal behaviour, the police.



Not-for-profit Law resources

Not-for-profit Law has more information on resolving disputes, including mediation and going to court at our [Disputes webpage](#).

Resources

Related Not-for-profit Law resources

The [Not-for-profit Law website](#) has further resources on the following topics:

▶ [Getting started](#)

This page sets out the things you need to consider when deciding whether to start a not-for-profit organisation, including links to helpful resources.

▶ [Working with other organisations](#)

This section covers auspicing, memoranda of understanding, joint ventures and partnerships and amalgamation and mergers.

▶ [Tax](#)

The Tax section covers information on Deductible Gift Recipient Endorsement, Fringe Benefits Concessions, Goods and Services Tax, income tax exemptions and state tax laws.

▶ [The People Involved](#)

This page lists the various types of not-for-profit legal structures, so you can work out the best structure for your group.

▶ [Rules or Constitution](#)

This page provides information on the steps involved in changing an organisation's rules or constitution.

▶ [Disputes and conflict](#)

This section features information on resolving disputes, including mediation and going to court.

Arts Law Centre of Australia

▶ [Auspicing Agreements](#)

Arts Law Centre provides an information page on auspicing agreements, particularly relevant to arts groups.

▶ [Sample auspice agreement](#)

Groups can purchase a sample auspice agreement from the Arts Law Centre of Australia.

NSW Department of the Arts, Sport and Recreation

▶ [Auspicing fact sheet](#)

Create NSW has produced a fact sheet on auspicing and requirements for groups seeking NSW government funding.

