

Checklist: Working with other organisations

Legal information for community organisations



Before your organisation agrees to work with another organisation, it is important to think about how the arrangement will work in practice.

Depending on the circumstances of the arrangement and the nature of the organisations involved, there may be many legal issues to think about when deciding on an appropriate arrangement, and then implementing that arrangement. It is wise to think about these issues before you agree to formally work with another organisation, so that you are prepared for what lies ahead.

This checklist can help you to spot some key issues which might affect your organisation and the arrangements you are thinking about making with another organisation. Your organisation and its board can then decide whether the risks are acceptable, and identify appropriate risk management strategies. This checklist will also save your lawyer time, and make the process of getting advice more efficient.

TIP

This checklist may be applied to different kinds of circumstances where groups want to work together, such as:

- when two incorporated associations want to amalgamate
- when one (usually smaller) organisation becomes part of another (usually larger) organisation
- when two organisations merge to create a brand new organisation
- when two organisations enter into a memorandum of understanding, and
- when two organisations sign an agreement to work together, such as a partnership agreement or a joint venture agreement.

This checklist should be read together with the other materials in the 'Working with others' section of the Not-for-profit Law website at www.nfplaw.org.au/workingwithothers, in particular the 'Working with other organisations' Guide.

NOTE

Not all the items contained in this checklist will apply to your organisation. You should think about whether issues apply to you. For example, many of the items listed in this checklist are relevant only in merger or amalgamation circumstances.

It may also be worth considering whether issues raised could affect the other groups that you are proposing to work with. For example, your organisation might not have any employees, but if the organisation you are thinking about working with does have employees, and you are thinking about combining with them to create a brand new organisation, then you both need to consider how their employees might transfer over to the new organisation.

CAUTION

Each organisation will usually need the assistance of a lawyer to help with the process of working with another organisation. Organisations may also need the advice of an accountant, and possibly a financial adviser. This checklist is intended to assist you to identify a list of items you and your organisation should think about before entering into any formal arrangements. It does not replace the need for professional advice.



General preliminary questions

Think about the nature of your organisation. How large is it? What are its purposes? Who are its clients, and who are its members?

What is the nature of the organisation you are thinking about working with? How large is it? What are its purposes? Who are its clients, and who are its members?

Are the purposes of the organisation you are thinking about working with the same as the purposes of your organisation? If not, how are they different?

NOTE

If your purposes are different, and you are thinking about merging or amalgamating, then you will need to think about if this is possible (particularly if you are an incorporated association), and if it might affect your tax or charity status (if any). Similarly, if you have different purposes and plan to collaborate, you should only collaborate where your purposes overlap.



Why is your organisation thinking about working with another organisation? Is it for a single project or particular goal, or do the organisations want to work together permanently?

Governance and culture

Think about how the people within each organisation will work together. Will there be a clash of cultures which may be disruptive for your employees, volunteers and clients?

Does your organisation have a constitution or set of rules? What does that document have to say about working with other organisations? Think about how it deals with the board, member meetings, voting, approvals etc.

Do the members need to approve the arrangements you want to make with another organisation? If so, is it likely that they will approve? Think about how you will engage with your members to ensure that they approve your plans.

If you are thinking about merging or amalgamating with another organisation, think about how the newly-combined organisation will be organised. This depends on whether a new organisation is being formed, or if one (usually smaller) organisation is becoming part of another (usually larger) organisation. Will a new constitution or set of rules be required?



Contracts

List the existing contracts or other legal arrangements your organisation has entered into:

-
-
-
-
-
-
-

NOTE

If you are thinking about amalgamating or merging with another organisation, then a lawyer will need to look at these arrangements. If the organisation wants to continue these arrangements after the amalgamation or merger, then they may need to be transferred over to the newly-combined organisation. You might need to talk to the other parties to the arrangements, to make sure your organisation doesn't breach any contracts. If you decide to work with another organisation, particularly if you decide to merge or amalgamate, you will also need to look at the contracts or other legal arrangements that the other organisation has, and how they are affected by the proposal.



Assets and Financials

Think about the financial situation of your organisation and the organisation you are thinking about working with. What funding do they rely on? List what funding is in place for each organisation.

Your organisation	The other organisation



Is the funding for each organisation secure? Has there been any breach of funding arrangements or grant conditions? Is any organisation's funding in jeopardy?

Does either organisation currently receive grant funding? You will need to think about the terms of the grants each organisation depends on. Will working with another organisation jeopardise this funding?

What types of assets does each organisation have? For example: equipment, property, motor vehicles, etc.

Your organisation	The other organisation

Does any organisation have any mortgages or loans? Think about whether any debts will affect your plans to work with another organisation.



Tax and charity status

If your organisation wants to work with another organisation, it is very important to make sure your organisation's charity registration and/or tax concessions are protected. If working together means changing your activities, purposes or objects, you will need specialist advice from a lawyer.

Your organisation

Is your organisation registered as a charity?

- Yes
- No

If yes, what subtype of charity is it registered as?

What is its charitable purpose?

What tax concessions does your organisation have?

- Income tax exemption
- Fringe benefits tax exemption
- GST concessions
- Deductible gift recipient (DGR) endorsement
- Payroll tax exemption
- Other:

Other organisation

Is the organisation you are thinking about working with registered as a charity?

- Yes
- No

If yes, what subtype of charity is it registered as?

What is its charitable purpose?

What tax concessions does the organisation have?

- Income tax exemption
- Fringe benefits tax exemption
- GST concessions
- Deductible gift recipient (DGR) endorsement
- Payroll tax exemption
- Other:



Do you think that by working together, either organisation will be changing its activities, objects or purposes?

Will working together result in one organisation transferring assets or land to another organisation?

NOTE

If one organisation is planning to transfer assets or land, then it may have to pay stamp duty to the relevant State office of revenue. You may need to seek assistance from a lawyer to make sure that stamp duty is not payable through accessing exemptions available to charities and some not-for-profits, or is reduced as much as possible.



Property

Issues relating to real estate are more relevant in the case of mergers and amalgamations, where property and leases might be transferred to a new organisation.

Will your organisation, the other organisation or a new organisation stay in existing premises or move to new premises? If the merger or amalgamation will create a new organisation that intends to stay on in the same premises, how will you deal with any existing lease of the premises? You may need to think about whether the lease can be assigned (legally transferred) from the old organisation to the new organisation. Do the terms of any existing lease allow for this or will you need to get the landlord's consent?



If an organisation is moving out of premises that are being leased, how will you deal with that lease? Will the landlord allow you to terminate the lease before the expiry date? If so, are there any costs associated with early termination of the lease? If the lease is not able to be terminated before the expiry date, will you be able to transfer the lease to someone or will you be able to sublet the space to someone else? What restrictions does the lease place on these activities?

Do any of the organisations own any property such as land? If so, will this property be transferred to the new organisation as part of a merger? Consider any stamp duty implications.

Intellectual property

A. If you are working together but maintaining separate organisations

What intellectual property (IP) will be created by the new project? See the Intellectual Property Guide at www.nfplaw.org.au/ip for examples.

Who will be creating the IP? Employees, volunteers, third parties (eg advertising agencies), your organisation or the other organisation? Have you agreed who will own it?

How will the IP be used? Who will need to be able to use it?



B. If you are creating a new merged organisation

Do you have existing IP which will need to be transferred to the new entity?

- Yes
- No

If yes, list below:

Do you need any ongoing rights in relation to the transferred IP?

- Yes
- No

If yes, list below:

Does the other organisation have any IP which will need to be transferred to the new entity?

- Yes
- No

If yes, list below:

Will the other organisation need any ongoing rights in relation to its transferred IP?

- Yes
- No

If yes, list below:



If you or the other organisation are using a third party's IP, is the new legal entity allowed to use it?
Consider whether you need to obtain new permission from the owner of the IP.

- Yes
- No

Is there any current IP-based litigation against your organisation or the other organisation?

Trade marks, company names and business names

Will you be developing a new brand, name, or logo for your new organisation or project?

- Yes
- No

If yes, list below:

Does your organisation or the other organisation have any relevant trade mark, business name, company name, domain name and/or social media registrations?

- Yes
- No

If yes, list below:

Confidential information

Does your organisation or the other organisation have policies, procedures and agreements for protecting confidential information?

- Yes
- No



Integrating and transitioning backend services

This section is only applicable if you are creating a new merged organisation. You will need to consider whether any of the things listed in this section can be transferred to another organisation, or whether you might breach any of the arrangements referred to in this section by merging or amalgamating with another organisation. This will require you to read the relevant contracts or licences.

Think about your organisation’s business operations. What are the bills your organisation regularly pays? For example: utilities, IT software, equipment leases, council rates, etc.

Think about the different IT systems your organisation has, such as an operating system, email system, word processing and document creation software, data management and accounting software. What systems does your organisation own, licence, or lease?

Do you or the other organisation have any software licences? Can the licences be transferred to a new organisation?

- Yes
- No

If yes, list below:

How does your organisation store its data?



People

If you are working together but maintaining separate organisations

Think about the proposed new project. What sorts of roles will be required? How will you staff the new project?

If you are creating a new merged organisation

What are the organisations' workplace cultures like?

Are there talents and skills within your organisations that you would hope to transfer to a new amalgamated or merged organisation?

How many employees are there? If there are employees whose skills are unlikely to be needed in a new amalgamated or merged organisation, think about how you will manage the redundancy process, and the costs involved.

TIP

Your organisation needs to seek specialist legal advice on this point. For more information, refer to the 'Working with Other Organisations' Guide at www.nfplaw.org.au/workingwithothers.



Think about how employees are employed by your organisation. For example, are they employed under written contracts, a modern award, or an enterprise agreement? See the Employees page of the Not-for-profit Law website at www.nfplaw.org.au/employees for more information.



Are there any volunteers employed by your organisation who may be seen to have an employment relationship?

How long have the existing employees been employed with your organisation? What leave entitlements does each employee have in relation to annual leave, long service leave and personal leave?

Employee name	Length of service	Annual leave balance	Long service leave balance	Personal leave balance

Are there any employees on long term leave, eg. workers' compensation or maternity leave? If so, what arrangements are in place for their return to the workplace?

Are there any current workplace disputes or employment-based litigation against your organisation?



Work Health & Safety

It is vital that organisations make sure health and safety is an important part of all their activities. Policies and procedures should be in place, and organisations need to make sure they are complying with all relevant health and safety laws. For more information see the OHS page of the Not-for-profit Law website at www.nfplaw.org.au/OHS .


What kinds of activities does your organisation do? Who are your clients?

What kinds of activities does the organisation you are thinking about working with do? Who are their clients?

Could the activities you want to do with the other organisation risk the health and safety of your workers, their workers or the public? If so, write down the risks and think about what needs to be done by you and the other organisation to remove or reduce those risks.

NOTE

Depending on how closely you plan to work with the other organisation, you will need to think about whether there are arrangements in place or proposed for the effective consultation, cooperation and coordination of activities between your organisation and the other organisation, to provide for the effective management of health and safety risks.



Do you think health and safety is an important part of the overall governance of the organisation you are thinking about working with?



Does your organisation have a work health and safety policy and a work health and safety management system in place which identifies and manages risks associated with your organisation's activities?

Yes

No

Does your organisation you are thinking about working with have a work health and safety policy and a work health and safety management system in place which identifies and manages risks associated with that organisation's activities?

Yes

No

Does the organisation you are thinking about working with have a history of work-related injuries or incidents?

Privacy and dealing with information

Working with another organisation might involve sharing different types of information.

Will your organisation share personal information with, or receive personal information from, the organisation it is thinking about working with? If so, how will this information be used?

NOTE

Personal information means information or opinions about an identified person, and can include their name, home or business address, telephone number, email address and Medicare number. Member lists, client records and volunteer registers can be examples of personal information. Privacy laws may apply to personal information. See the Privacy page of the Not-for-profit Law website at www.nfplaw.org.au/privacy for more information.



Will your organisation share health information with, or receive health information from, the organisation it is thinking about working with? If so, how will this information be used?



NOTE

Health information means information or opinions about the health or disability of an identified person and includes information about health or medical services provided to that person. Medical records are an example of health information. Special laws apply to this kind of information. See the Privacy page of the Not-for-profit Law website at www.nfplaw.org.au/privacy.



Will your organisation share sensitive information with, or receive sensitive information from, the organisation it is thinking about working with? If so, how will this information be used?

NOTE

Sensitive information means information or opinions about an identified person's race or ethnic origin; political views; religious or philosophical beliefs; union, trade or professional body membership; sexual orientation and criminal record. The results of background checks run on volunteers (such as Working with Children checks) can be an example of sensitive information. See the Privacy page of the Not-for-profit Law website at www.nfplaw.org.au/privacy for more information



If your organisation is required to share confidential information with another organisation, has your organisation obtained the necessary consents and permissions for the transfer of this confidential information from the organisation that initially disclosed this information?

NOTE

If your organisation plans to share its confidential information with the organisation it will be working with, you should consider entering into a contract or a deed of confidentiality in order to protect this exchange of information.

