

Memorandum of Understanding (MOU)

Legal information for community organisations



This fact sheet covers:

- ▀ What is an MOU and when should an MOU be used?
 - ▀ What issues will an MOU cover?
 - ▀ What are my obligations under an MOU?
 - ▀ Is an MOU a legally binding document – like a contract?
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This fact sheet explains the main circumstances in which a memorandum of understanding is suitable to document an arrangement between two parties.

This fact sheet is legal information only and your organisation may need to seek legal advice for its particular circumstances.

What is a Memorandum of Understanding (MOU)?

An MOU can be described as 'an agreement to agree'. It is sometimes an agreement to enter into a more specific and comprehensive contract or agreement at a later time or when particular circumstances arise, after further negotiations.

An MOU will often establish a framework for the collaboration between the organisations and set out the common goals or vision of the parties to the MOU. In general, an MOU will not deal with the specific details of particular projects. An MOU therefore tends to be more of a 'high level' document.

When should an MOU be used?

The not-for-profit sector will typically use an MOU when organisations wish to co-operate and/or share information with each other, allowing each to make the most of the other's specialist skills or knowledge.

EXAMPLE

XYZ is a not-for-profit organisation that is set up to help sufferers of a particular disease and their carers. XYZ set up a website about the disease. They are aware of a hospital that has a specialist centre which has published a lot of research about the disease. XYZ approach the hospital about their work. The two organisations agree to promote each other's work on their respective websites and to work towards co-hosting an international researcher to visit. To formalise the relationship, the two organisations write and sign an MOU.



In general, an MOU is not a legally binding document (that is unless certain things are established, see further below) so it is not appropriate to use if your organisation wants to be able to enforce anything contained in it. If you need to rely on the other organisation taking certain actions and/or if your organisation stands to lose money or reputation if the other party doesn't act, then an MOU is not appropriate – your organisation should enter into a contractual arrangement.

EXAMPLE

Grassroots Community Inc is a homelessness organisation which operates shared housing facilities for homeless people in the western suburbs of Melbourne. Grassroots leases some office space nearby, and it is far bigger than what they need. Another homelessness organisation, Welcome Home Inc, operates housing units in the same area, which it rents out to homeless people. Welcome Home needs office space, and they have contacted Grassroots to see if they could share their office space. Welcome Home offered to enter into a short MOU with Grassroots, while they formalise the arrangement by drafting a contract.

A contract is desirable in this example as Grassroots wants Welcome Home to pay them rent each month, contribute to the bills, and to restore the office to its original state when they decide to get their own office space in the future. Grassroots wants to be able to rely on a contract which will set out the specifics of the office sharing arrangement, and, if Welcome Home ever stop paying rent, or do something which wasn't originally agreed, Grassroots want to rely on a termination clause in a legally binding document. Grassroots had a lawyer draw up a contract, which the organisations both signed.



What issues will an MOU cover?

This will depend on the nature of the collaboration you want with another organisation. Typically an MOU document may set out:

- details of the organisations entering into the MOU
- objectives of the arrangement and goals or expected benefits
- agreed actions, services and areas of support
- strategies and mechanisms for dealing with common issues
- the term of the MOU (an agreed start and review/end date) and the circumstances in which it may be ended early
- the agreed roles of each organisation

- the naming of a position (or person) in each organisation as a central point of contact for the MOU
- a communication plan, and
- dispute resolution statement.

What are my obligations under an MOU?

Your obligations under the MOU will be outlined in the document and may include obligations to:

- share information (which may or may not include confidential information)
- work in co-operation with the other party on particular types of projects
- actively promote events/activities of the other party
- refer clients to the other party, and
- jointly host events/seminars/workshops.

Your obligations under the MOU should set out what your organisation has agreed to do. You should read an MOU very carefully before signing it, to make sure it reflects what you have agreed.

Is an MOU a legally binding document – like a contract?

Generally, MOUs are written in a way that indicates they are not contractually binding, and are more a statement of intent or an 'agreement to agree'. This is because the courts will generally not recognise agreements to enter into contracts as binding contracts themselves. However, whether an MOU is binding or not will be highly dependant on the terms of the MOU.

CAUTION

An MOU will be legally binding if it satisfies the formal requirements of a contract. For further information on those requirements read Not-for-profit Law's Guide to Understanding Contracts at www.nfplaw.org.au/contractsoverview.



EXAMPLE

The following MOUs are not likely to be legally binding:

- an MOU that says the parties will enter into a contract later on
- an MOU that says the parties intend to negotiate a particular project
- an MOU that says the parties are going to “work together” to achieve a particular outcome, without explaining how the parties will work together, or setting out in detail what the particular outcome is
- an MOU that says “this document is not intended to create legally binding obligations”, or
- an MOU which has not been signed.



The following MOUs might be legally binding:

- an MOU that details how one organisation is going to provide specific services to the other organisation, sets out in detail what those services are, sets out how and when the other organisation will pay for those services, and sets out what will happen if one or both organisations doesn't fulfil their obligations, or
- a detailed MOU which states that it is intended to create legally binding obligations.

Generally, if an MOU is quite detailed and includes a number of important terms (for example, about the exchange of money) it may well be considered a contract in its own right. If the MOU is relatively high level and leaves the specifics of particular projects or arrangements for later negotiation between the parties, it is unlikely to be enforceable as a contract against either party.

If your organisation wants to enter into an arrangement that is legally binding and enforceable, an MOU is not the most suitable arrangement. Your organisation should consider entering into a legally binding contract with the other party.



TIP

To help avoid any uncertainty about whether an MOU is legally binding, make sure the MOU contains a specific statement to the effect that it is not intended to create legally binding obligations.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub (www.nfplaw.org.au) has further resources on the following topics:

- Auspice agreements – www.nfplaw.org.au/auspicing
- Joint Venture agreements – www.nfplaw.org.au/partnerships
- Understanding contracts - <https://www.nfplaw.org.au/contractsoverview>
- A base template non-binding MOU – www.nfplaw.org.au/MOU

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