

A young child with long blonde hair, wearing a white long-sleeved shirt and a light-colored patterned dress, is crouching on a wooden floor. The child is holding a wooden roof piece to a white wooden toy house. The house has two dark circular openings and a small wooden handle at the bottom. In the background, there is a white cabinet with several woven wicker baskets. On top of the cabinet, there is a framed picture of various animals with Cyrillic letters, a globe, and a small figurine of people. The scene is brightly lit, suggesting an indoor setting.

Partnering for Success Factsheets

Acknowledgements

This suite of partnership factsheets and accompanying tools has been commissioned and designed to support the sector to build effective partnerships for tendering and service delivery.

The toolkit will provide organisations with practical skills and strategies to build and develop transparent and equitable organisational partnerships to participate in and deliver against programs such as Core and Cluster.

These factsheets and tools have been prepared by Homelessness NSW in partnership with Domestic Violence NSW, Aboriginal Community Housing Industry Association, Connect Consulting and Purpose Accounting.



We acknowledge the traditional owners and custodians of this land as the first people of this country. Always was, Always will be Aboriginal land.

Disclaimer: The information in these fact sheets is not legal or financial advice. Seek advice that is specific to your organisation and situation as needed when making Agreements, signing contracts or joining partnership/consortium arrangements.

Contents

<i>Fact Sheet 1: Partnering Agreements</i>	<i>Page 4</i>
<i>Fact Sheet 2 Choosing the Right Partnership Agreement</i>	<i>Page 9</i>
<i>Fact Sheet 3: Building a Consortium</i>	<i>Page 14</i>
<i>Fact Sheet 4: Due Diligence</i>	<i>Page 21</i>
<i>Fact Sheet 5: Lessons Learned</i>	<i>Page 25</i>
<i>Fact Sheet 6: Assessing Financial Capacity and Readiness for New Projects</i>	<i>Page 28</i>
<i>Fact Sheet 7: Principles of Project Budgeting and Reporting</i>	<i>Page 31</i>
<i>Fact Sheet 8: Assessing and Managing Project Financial Risk</i>	<i>Page 33</i>

Fact Sheet 1: Partnering Agreements

Purpose

This Fact Sheet outlines the considerations for organisations in making Agreements to work together with others in partnerships.

The Fact Sheet is designed to support organisations to consider and review the purpose, scope and development of Agreements.

1. Understanding Partnership Agreements

There are a range of Agreement types that might be used to support a partnership between organisations. The type of Agreement should be matched to the scope of activities that are being explored or delivered together.

Agreements should be proportionate to the depth and complexity of the activities being delivered – that they should reflect the level of commitment, complexity, risk and any financial implications of the agreement. For example, an Agreement with a focus on working together broadly for a common cause or setting principles for shared referrals may not require extensive details on how that will be achieved and would generally not be legally binding. This might be called a 'Heads of Agreement' that sets out expectations and shared principles or might be contained in a Memorandum of Understanding.

An Agreement that commits the organisation to investing in new equipment, new premises, staffing or other financial arrangements to deliver services that will be paid for by another organisation should be clear, detailed and legally binding. This would usually be put in place with a contract or subcontract, covering all the relevant information.

Developing partnerships might require several Agreements over time, for example a Memorandum of Understanding might be an appropriate Agreement type during the exploratory phase of a tender process, a Consortium Agreement or Deed of Agreement might be needed where a formal Consortium bid is submitted, a Partnership Agreement might support a shared project and a range of contracts or subcontracts may be required to implement delivery of a project if a tender is successful.

2. Developing Partnership Agreements

There are a range of issues to consider in making Agreements. Exploring the why, what, who, when and how of the Agreement prior and during the development of an Agreement can be helpful.

Key Questions

Why

- Why will this Agreement support your organisation's mission, purpose and strategic plan?
- Why this partner/ group of partners?
- Why use this type of Agreement – is it proportionate to the type of activities it covers, does it allocate responsibilities appropriately?
- Why are roles and responsibilities allocated in the way outlined in the Agreement – are those clear and have decisions been transparent?

What

- What are the benefits of making a formal Agreement versus working together informally?
- What is the purpose of making a formal Agreement versus working together informally? Identify the pros and cons of having an Agreement or working informally.
- What are the critical areas to be covered?
- What are implications of the Agreement
 - for your organisation: what are you signing up for and can you deliver?
 - for other organisations - Does/do the organisation/s you are making the Agreement with show that they understand the implications and requirements of the Agreement?
- What risk assessment and risk management processes has your organisation undertaken to understand and manage risks associated with the Agreement?
- What, if any, are the consequences if you do not deliver on your commitments under the Agreement?
- What, if any, are the penalties for non-delivery, performance issues or non-compliance?
- What financial matters are included: have these been agreed?
- What is the legal enforceability of the Agreement: what will your organisation be held responsible for? If you wish the Agreement to be legally enforceable, does it meet the requirements¹?
- What does the Agreement need to cover information/data sharing, especially confidential information? What are the privacy implications of this?
- What legal and financial advice is required?
- What, if any, conflicts of interest need to be addressed either in the organisation or between the parties?
- What are the consequences, if any, for parties who do not comply or deliver with the Agreement?
- What reporting is required? How is it conducted? What information management systems need to be built/acquired and what processes need to be adopted to capture relevant quantitative and qualitative data?

¹ To understand what makes an Agreement legally enforceable (that is, a contract), this document has a simple explanation *Understanding Contracts*. <https://www.nfplaw.org.au/free-resources/important-agreements/understanding-contracts>

Who

- Who are the participating organisations? How well do you know and understand them? For example, their mission, values, expertise and approach to service delivery. What is their reputation?
- Who in your organisation needs to be involved in developing, reviewing and approving the Agreement?
- Who in your organisation is authorised to develop and negotiate the Agreement?
- Who is authorised/ has delegation to sign an Agreement on behalf of the organisation?
- Who are the nominated contact people in each organisation? What is their role and how much decision making power do they have?
- Who will share information if required under the Agreement?
- Who is liable for delivery and legally enforceable aspects of the Agreement? For example, the organisation and its' Board?²

When

- When does the agreement commence?
- When does the Agreement conclude?
- When are the review points?
- When will any payments be made and have the terms of those arrangements been clearly agreed?

How

- How will the Agreement be operationalised? Will additional contracts/ subcontracts be required?
- How will performance or delivery be monitored and managed?
- How will any conflicts/ compliance issues will be documented and addressed?
- How will decisions be made about the Agreement and finalising the details?
- How will the relationship be managed?

How will any conflicts or disagreements between partners be managed?

3. Getting the Right Advice

The cost and time taken to seek and obtain professional advice is often seen as a barrier to getting formal legal or financial advice. However, legal advice can help mitigate risks and provide input into decision making about whether to authorise an Agreement.

Choosing the right time to seek advice can also assist in limiting the cost and time issues associated with seeking advice. Broad legal advice on any structure or constitutional issues may be of assistance early in the project, but once the Agreement is in drafting stages, it may be less costly to wait until the Agreement is in the later stages of development. Where one party is accessing legal advice to draft an Agreement, it is advisable for other parties to engage independent legal advice before formally approving and signing/authorising the Agreement.

² In the case of an unincorporated organisation, the individuals who signed the contract may be personally liable for any Agreements.

Regardless of the scope of an Agreement, it is always worth considering what Advice would support the organisation to make good decisions or address any risks and concerns.

The table below suggests some areas to consider in deciding when and what kind of advice to obtain and the areas that advice might cover.

AREAS TO CONSIDER	TYPES OF ADVICE
<p>Scope of the Agreement Does the Agreement match the organisation's role? Are you held responsible only for matters/services you have some control over? Does the Agreement type match for the level of risk and complexity of the project?</p>	<p>Legal</p> <ul style="list-style-type: none"> - Is the Agreement, or part thereof, legally binding? - Are the obligations in the contract in line with the level of responsibility/decision making you have under the contract?
<p>Strategic & Reputational Risk Does the Agreement include clear information that supports:</p> <ul style="list-style-type: none"> - Agreement purpose - The details of all participating organisations - Management of confidential information - Management of conflict of interest - Privacy - Data Security - Reporting and management of complaints and critical incidents - How any public information/statements relating to the activities of the Consortium or other partnership are made/released - Accreditation or performance standards are set by the Agreement – how will compliance be managed - Does the Agreement cover legal and staff checks required (eg. Working With Children Checks?) - How to end the Agreement - How to manage conflict 	<p>Legal</p> <ul style="list-style-type: none"> - Are there any legal risks associated with the Agreement? - Are there any strategic risks to areas such as tax status, not for profit status, constitution, governance? - What are the provisions for leaving the partnership/consortium? - Are the Agreement termination provisions fair and adequate to assist in risk management? - Are all partners properly established legal entities that are authorised to enter into an Agreement of this type? - Are performance standards/accreditation requirement reflective of legal or policy requirements? - How are conflicts of interest identified and managed? <p>Financial</p> <ul style="list-style-type: none"> - Are appropriate provisions for meeting financial management and auditing requirements covered in the Agreement?
<p>Agreement Legal Status Should the Agreement, or part thereof, be legally binding? Does the Agreement meet the requirements to be considered legally binding?</p>	<p>Legal</p> <ul style="list-style-type: none"> - Assess if the Agreement is appropriately designed for compliance - Establish if the document, or part thereof is legally binding. - Identify if there are any legal responsibilities in the Agreement that are not aligned with organisation responsibilities - Identify legal risks to be addressed
<p>Data security and privacy Does the Agreement protect the privacy and data security of the organisation and its clients? Does the agreement align with the appropriate privacy legislation?</p>	<p>Legal</p> <ul style="list-style-type: none"> - Review adequacy of data security and information sharing provisions - Review whether the Agreement aligns with relevant Privacy legislation and requirements
<p>Financial Risk Will the project/service have an impact on the organisation's current and longer term financial position?</p>	<p>Financial</p> <ul style="list-style-type: none"> - Current financial position and capacity to absorb or manage any financial risk or establishment costs

<p>How will the project manage establishment costs, how will these impact the organisation and will these be reimbursed?</p> <p>What payment terms does the organisation require to support solvency? Is this supported by the Agreement?</p> <p>How will any financial arrangements be managed and reviewed?</p>	<ul style="list-style-type: none"> - Cashflow processes to manage payment cycles - Calculation of staffing/delivery costs in line with agreed amounts - Any agreements regarding how CPI will be managed <p>Legal</p> <ul style="list-style-type: none"> - Is the financial risk proportionate to the level of responsibility/control of the organisation? - What protections are in place in the event of fraud, mismanagement or financial errors? - Have appropriate insurances been obtained and does the Agreement reflect roles and responsibilities?
<p>Consequences for non-compliance/ non-performance</p> <p>What, if any, are the penalties for non-delivery, performance issues or non-compliance?</p>	<p>Legal</p> <ul style="list-style-type: none"> - Drafting/understanding legally binding clauses and consequences of non-compliance - Implications of non-compliance
<p>Pricing and ongoing financial matters</p> <p>Is the pricing structure fair and appropriate? Can the organisation fund any out of pocket costs associated with project establishment? Can the organisation provide the services for the amounts agreed? Are there any hidden costs?</p> <p>How will providing the service impact the organisation's financial position now and in the future?</p> <p>Is the budget adequate and has it covered off all key items?</p>	<p>Financial</p> <ul style="list-style-type: none"> - Pricing structure for services is appropriate and can be managed - Project budgeting has been undertaken - Set up costs - one off costs are addressed - Management costs are included on an ongoing basis - Provision is made for CPI changes <p>Legal</p> <ul style="list-style-type: none"> - Are financial matters are dealt with appropriately and in line with all legislation/ other tender requirements - Financial terms are not inappropriately favourable to any one party
<p>Managing conflict between the parties</p> <p>Does the Agreement make appropriate provisions to manage any perceived or actual conflict that emerges in the delivery of the Agreement and associated services?</p> <p>Are the provisions for managing conflict fair and equitable? Are any associated costs divided fairly?</p>	<p>Legal:</p> <ul style="list-style-type: none"> - Draft/review dispute resolution clauses in agreements - Reviewing protections for each party - Managing conflicts over financial arrangements - Review Agreement termination clauses so that these are fair and manageable

Resources

- Justice Connect: *Legal issues to consider when working with other not-for-profit organisations* (August 2021) <https://www.nfplaw.org.au/free-resources/working-with-others>
- Justice Connect: *Understanding Contracts* <https://www.nfplaw.org.au/free-resources/important-agreements/understanding-contracts>

Fact Sheet 2: Choosing the Right Partnership Agreement

Purpose

This fact sheet includes information on the types of Agreements and models often used to support partnership arrangements in the non-government sector.

It covers:

- Information about the most common Agreement types
- Considerations for choosing the right type of Agreement for the relationship/partnership
- Resources for more information

1. Understanding Partnership Agreements

There are a range of Agreement types that might be used to support a partnership between organisations. The type of Agreement should be matched to the activities that are being explored or delivered together. Agreements should be proportionate to the depth and complexity of the activities being delivered – that means that they should be reflective of the level of commitment, risk and financial implications of the Agreement.

Developing partnerships might require several Agreements over time. For example a Memorandum of Understanding might be an appropriate Agreement type during the exploratory phase of a project or tender, a Consortium Agreement or subcontracting deed might be needed where a formal Consortium bid is going in for tender and a range of contracts or subcontracts may be required to implement delivery of a program if the tender is successful.

2. Making Agreements

Agreement type and content will vary based on the partnership/program being developed.

A critical first step is to understand:

- The purpose and focus of this Agreement: Why this relationship/partnership/ project at this time?
- Strategic alignment: How will this Agreement support your organisation's purpose, mission and strategic plan?
- The partners: Is/ are these the right organisation/s for you to be in partnership with?
- Risks and benefits: What are the risks and benefits of the Agreement for the organisation?
- The implications of the Agreement for your organisation: what are you signing up for? How long will the Agreement last? What projects/activities does it cover? What is the Agreement contingent upon (eg, tender being successful)?
- Consequences:

- What are the consequences if you do not deliver on your part of the Agreement? What are the penalties for non-delivery or non-compliance?
- What are the consequences for your partner if they do not deliver on their part of the Agreement?
- Legal enforceability of the Agreement: is it enforceable and what will your organisation be held liable for?
- Approval and sign off: Who can approve the Agreement and who is authorised to sign the Agreement on behalf of the organisation?
- Managing conflicts or issues: How will any conflicts/compliance issues will be addressed?
- Options for changes of circumstance:
 - What provisions are in place to change the Agreement or manage changes in circumstances (eg delays in delivery)
 - What provisions are in place to end the Agreement?

3. Types of Agreements

3.1 Memorandum of Understanding (MOU)

An MOU is used between two or more Parties that are interested in working together, sometimes on a particular project or to reflect a common adoption of a broader partnership approach. It is often a starting point for deeper partnerships. It often sets out preliminary understandings, principles of the approach/work, general Agreements. It might outline broader goals and confirm a commitment to act in good faith.

Parties may sign an MOU outlining some general Agreements, and then make further investigations before working out the finer details of a project/ contract arrangement

An MOU is not usually legally binding (you may not know what you can agree to) but many Parties feel compelled to comply with it anyway because it describes what they intend to do and it links to professional reputation and ongoing relationships.

An MOU or part thereof, can be made legally binding if required through drafting, although often these Agreements don't contain a high level of detail. If the Agreement or part thereof is required to be legally binding the Agreement needs to include:

- (a) sufficient detail about any legally enforceable provisions,
- (b) clear information on the timeframes and requirements of the Agreement,
- (c) clear information about financial and data sharing arrangements,
- (d) management of non-compliance or performance issues,
- (e) how conflict between the parties will be managed, and
- (f) how to end the Agreement.

3.2 Partnership Agreement

A Partnership Agreement, sometimes referred to as a business partnership contract or general partnership Agreement, is a contract used to govern a business relationship between at least two (or more) organisations that are working together.

A Partnership Agreement may be specific to a set of activities or establish a broader set of ways the organisation will work together.

A Partnership Agreement will be tailored to meet the needs of the relationship and can be made legally enforceable or not depending on the circumstances.

3.3 Consortium Agreement

A consortium is an association of two or more individuals, companies, organisations or governments (or any combination of these entities) with the objective of participating in a common activity/tender/project or pooling their resources for achieving a common goal.

Each party retains their separate legal status and the consortium's control over each organisation is generally limited to activities of the joint endeavour (that is, not how the organisation conducts other aspects of its business³).

A consortium is formed by contract, which delineates the rights and obligations of each member.

Consortium Agreements are generally more structured than partnership Agreements and include activities relating to a specific project/areas of work.

In government funding environments, Consortium Agreements are usually led by a Lead agency who contracts directly with government to deliver on the project overall, with other Agreements (usually subcontracts) in place with consortium members to deliver on the consortium structure.

3.3 Subcontract

A subcontract is a document that enables an organisation that holds a contract to outsource some of the obligations and tasks associated with the contract to another party, the subcontractor.

Subcontracts should include information including:

- roles and responsibilities of all parties
- the scope of tasks and obligations being transferred via the Agreement
- contractual requirements/standards that must be met by the subcontractor

³ There may be exceptions to this, for example the consortium requires that a member meets compliance obligations (eg. accreditation, criminal record checks) that might have an impact or cost beyond the scope of the project.

Where a consortium Agreement requires agencies to conduct themselves in a certain way or comply with standards and there is a breach of agreed conduct (eg. allegations of abuse or mistreatment) this could impact the Agreement whether these breaches occurred in the operation of the activities governed by the consortium or otherwise.

- performance requirements, how performance will be managed and reported against, and how any performance issues will be addressed
- financial arrangements including pricing, payment timing, agreed payment form and other terms
- any specific terms regarding governance, staffing requirements etc
- how conflicts regarding the subcontract Agreement will be managed
- how the subcontract can be terminated and reasons for termination (as well as penalties, notice periods etc)

4. Choosing the Right Type of Agreement

What Does Your Agreement Need to Achieve?	MOU	Partnership Agreement	Consortium Agreement	Subcontract
Explore the possibilities of working together/ statement of intent	X	?		
Identify shared goals and principles	X	?	X	
Allow for confidential info/data sharing to enable partnership		X	X	X
Support working together co-operatively (No financial or delivery arrangements)	X	X	X	
Legally enforceable	?	?	X	X
Make financial arrangements		?	?	X
Provide certainty (eg. for hiring/ purchases/ financial decisions)		?	?	X
Outsource aspects of a contract to another party to enable delivery of contract obligations.				X
Manage risk	?	X	X	X

Fact Sheet 3: Building a Consortium

Purpose

This fact sheet provides a definition of a consortium and outlines how to create, develop and manage a consortium bid for tender.

1. What is a Consortium?

A consortium is a formal way to build an association of two or more individuals, companies, organisations or governments (or any combination of these entities) with the objective of participating in a common activity or pooling resources to achieve a common goal.

A consortium model is often used where the parties are not able to deliver all aspects of the service by themselves, need to deliver in areas where they do not have a footprint, or require specialist expertise (e.g. to deliver appropriate services to a specific target group).

In a consortium, each party/entity usually retains their own, separate legal status. It does not usually result in the creation of a new legal entity⁴ or a merger of the parties⁵.

Usually, legal agreements that underpin a consortium arrangement are focussed on managing activities related to the joint area of work, not the broader operating of each entity.

⁴ When organisations want to form a separate legal entity to deliver a project/ program, they would generally create another organisation (sometimes known as a Joint Venture) with a range of agreements around governance and operations that enable joint operations.

⁵ From time to time a consortium arrangement may lead to a merger where there is a close link between the organisations, or other issues are impacting on the viability of one of the parties. It is not usual for this to be an objective of a consortium arrangement.

2. Risk and Opportunities of Consortium Arrangements

It is worthwhile to undertake a risk and opportunity analysis for a consortium approach. The table below provides examples of the types of opportunities and risks that organisations might consider in building or joining a consortium.

Benefits (examples)	Risks (examples)
<ul style="list-style-type: none"> • Increasing service impact through partnership • Accessing new areas/ service delivery models that are outside of each organisation's current capacity/capability • Simplicity of structure for tendering • Reducing overheads and sharing capacity • Sharing risk • Learning from each other and sharing complementary skills and expertise • Service improvements and value for money • Increased profile and synergies for each organisation • Improved community connections and relationships 	<ul style="list-style-type: none"> • Differing expectations of roles and responsibilities • The direct and opportunity costs of set-up and operation. • Joint decision making generally takes more time. • Reputational risk: each organisation is, to an extent, trusting its reputation to others. • Differing values and cultures may introduce tensions. • Fear of loss of independence – especially for a smaller organisation working with a larger organisation as consortium lead • Capacity and capability of the organisations – will all the partners be able to deliver to the expected quality standards/ requirements?

Once the opportunities and risks are understood, consider how best to make use of the opportunities and mitigate any risks.

This information provides important context when seeking management or Board approval to proceed with developing or joining a consortium or signing a Consortium Agreement.

3. Establishing a Consortium

Establishing a consortium is more than bringing a group of organisations together to jointly write a tender bid. If the tender is successful, the organisations will need to be able to work together with trust and clarity to deliver a program of work.

If the consortium is set up without a strong process and transparency around responsibilities, the risks to delivery could be significant.

3.1 Understanding the Activity/ Tender/Project

Building a consortium requires a strong understanding of the purpose of the activity/tender being addressed or delivered.

Some elements of the activity that might indicate that a consortium may be a suitable approach include:

- Capability - It is beyond the current capacity and capability of the organisation – the project is large, complex or requires additional capability
- Scale – it is a large project, possibly extending beyond the organisation’s current geographic area or service mix and would require an increase in services or expansion of capability that is out of scope of one organisation or increases financial scale significantly
- Financial Scale – the scope of the project introduces financial growth, complexity or risk that would be better managed by a consortium approach
- Complexity – the project has complex elements, for example construction, complex pricing models
- Requirement – the tender requires a partnership approach or specifies a particular mix of services/organisation types
- Community connection – the tender requires a connection to a community or community segment that a partnering organisation doesn’t have or would like to better understand so as to improve their service offering

3.2 Identifying the Right Partners

- Identify the capabilities and capacity needed, such as:
 - Purpose and strategic alignment to tender and partner
 - Location and footprint
 - Specialist skills/ staff capability
 - Community relationships and connections
 - Required services to meet tender specifications
- Use your networks, skills and information to identify organisations that might be aligned to the opportunity and the focus of the consortium
- Discuss purpose, values and approach up front – explore the differences and similarities of the organisations and how they might help or cause challenges in working together
- Approach organisations openly and transparently – be clear about aspects such as:
 - your vision, purpose and strategy
 - your organisation and how it works
 - the size and scope of the tender
 - timing and deadlines

- who else has been approached/ is already involved
- the alignment and skill set you are hoping for
- why you are approaching them and any unique contribution they bring
- consortium structure options or any limitations to the requirements for consortium structure (eg. prescribed by the tender)
- how you envision working together or developing the model for the project/tender/ activity or any other decisions that have been made and/or constraints that are already known (for example lead organisation consortium approach)

3.3 Working Together

During the phase where organisations are exploring whether they want to and can create the consortium, they may put in place a Memorandum of Understanding to set out initial agreements and the intent to work together. Usually this MOU would not be legally enforceable, but creates a way to underpin work together and ways that this preparatory work might be done.

Some practical strategies to support working together:

- Identify a key organisational representative from each partner who will be the 'go to' person on the consortium – as much as possible, this person should be consistently involved throughout the process
- Develop an MOU or other Agreement to outline ways of working and how information (especially confidential organisational or consortium information) will be shared in the group and outside the group
- Make time and space to work together and build relationships – explore each organisation's purpose, organisational culture, skills and approach
- Bring other Subject Matter Experts from each organisation into the process as needed
- Be clear on any 'bottom lines' and share them with the group – know what the most important elements for your organisation and anything else that might impact your ability to participate
- Explore expectations regarding areas such as:
 - how/what information will be shared
 - how decisions negotiated/made
 - how available parties will be and expectations regarding response times
 - expectations regarding regular meetings and attendance
- Be clear about the timing of when the organisations are moving from exploration to commitment

3.5 Pricing and Budgeting

Each organisation needs to be involved in the design of the tender budget and the pricing model, regardless of the size of their part in the tender delivery. Where possible, all organisations should review the pricing structure to ensure it meets all costs and can be delivered.

There should be open and transparent discussion about all aspects of the pricing and broader budget for the consortium. This might include:

- Pricing – what is the unit cost of delivery? Does the price reflect the commitments in the tender to service delivery?
- Staff costs – what are the underpinning assumptions about the costs of staff, do these align with the Award, your organisation's policy and procedure or any Enterprise Bargaining Agreements that may be in place?
- Travel – how are travel costs decided and allocated
- How overhead (direct and indirect) costs will be treated in the budget
- If there is a lead organisation, what, if any additional costs will they incur to manage the consortium and how will they be allocated and managed within the tender budget
- Impact of inflation on budget over time and how this will be treated. This might include changes to costs such as wages, construction materials, transport etc and how these will be managed (with reference to government contracts, where these are relevant)

3.6 Consortium Structure

Deciding on a consortium structure is a critical part of the process.

While a tender opportunity may specify a consortium structure (often a lead agency model), it is important to discuss and agree the structure and allocation of roles and responsibilities.

Government tenders often require a consortium to allocate a lead agency. Sometimes there will be a requirement for a specific type of organisation to be the lead (eg. community housing provider).

Regardless of these requirements, it is critical for a consortium to discuss and agree the role of the lead agency, how tasks will be shared and allocated and how decision will be made.

A lead agency usually has the following types of responsibilities:

- Managing contractual Agreements among the consortium members.
- Overall responsibility for the consortium grant application
- Monitoring partner signoffs
- Submitting the grant
- Signing the final contract Agreement and other documents (note that government projects may include a range of Agreements to be signed, including between the government and the lead agency and government and consortia members)
- Liaising with the funder and consortium members
- Receiving and distributing funds in line with the Consortium Agreement

- Managing the contract
- Overseeing and submitting reporting

3.7 Consortium Contract Agreements

A Consortium Agreement is a contract that outlines the rights and obligations of each member of the consortia.

A consortium is formed by a contract, the Consortium Agreement, which clearly states the rights and obligations of each member.

A Consortium Agreement (or Agreement that states the intent to work together in a consortium) may be required as part of a tender process or may be put in place after the tender has been awarded, particularly depending on any special requirements that might result from procurement decisions (eg. locations, pricing etc).

The Agreement should reflect decisions made about the purpose, structure, governance and financial arrangements of the consortium that have been agreed.

Some areas that should be covered include (this list is not comprehensive for all Agreements):

Governance

- The purpose of the consortium and the activities covered by the Agreement (and any limitations of the coverage of the contract)
- Any agreed Codes of Conduct or other agreed ways of working (would generally be an attachment)
- Timeframes – when the Agreement starts and ends, expected response times
- The structure and governance of the consortium (eg. lead agency)
- The roles and responsibilities of each party:
 - Set out clear expectations decision making process,
 - Articulate any specialist review/consultation required in the project
- Information sharing, confidentiality and privacy provisions
- Data security
- Agreement termination: how parties may leave/ be removed from the consortium and any financial or legal arrangements

Agreement management

- Required insurances (and payment details)
- References to any associated Agreements or intention to make Agreements (eg. subcontracts)
- Any specific requirements of consortium partners (eg. accreditation, legal arrangements)
- Critical incident and complaints reporting and management

- Provisions for review of consortium arrangements (eg. annual review of Agreement)
- How conflict will be managed within the consortium
- How breaches of the Agreement will be managed

Performance

- What services are covered and the associated roles and responsibilities
- Performance standards/ Performance Indicators/ Accreditation expectations
- Performance management provisions
- Client data sharing and data security arrangements
- Reporting requirements and how these will be managed

Financial

- Pricing structure
- Financial and payment arrangements/terms
- Establishment costs
- Management costs
- Treatment of inflation/ pricing changes
- Other costs

Resources

- Justice Connect *Working with Others (Cth). Legal issues to consider when working with other not-for-profit organisations* (August 2021) <https://www.nfplaw.org.au/free-resources/working-with-others>

Fact Sheet 4: Due Diligence

Purpose

This fact sheet defines 'due diligence' and provides a high level overview of the areas organisations should be considering in undertaking due diligence to support partnership, consortium and other types of arrangements (for example mergers).

1. Understanding Due Diligence

Due diligence is the process used to prepare for going into a relationship/ partnership with another organisation.

It gives organisations the opportunity to make an informed decision about working together or exploring options such as major investment/ contracts, mergers and amalgamations.

Due diligence involves:

- 'Investigating' each organisation (including your own). This may be informal, or in some cases (usually mergers/ amalgamations but also in partnership agreements which apportion significant risk, financial and legal responsibilities between parties) include requesting certain information from one another (including corporate, financial, contractual and insurance documents) in a formal way, with a clear process
- Reviewing and analysing that information, sometimes with the assistance of professionals such as lawyers and accountants
- Organisations should particularly consider any risks or liabilities that may attach to an organisation or that may impact on the organisation's capacity to deliver on their commitments.
- Due diligence activities should match the level of risk the organisation is exposed to and the impact of the Agreement/ relationship on the organisation
- The Boards of all intending partnering organisations should be engaged in the due diligence discussion and in actively considering the information and making decisions
- Be clear about the purpose of the tender/project
- What resources/advice do you need to undertake good analysis? How will you get access to those resources?

Using Due Diligence to Support Decision Making

The table below sets out questions and areas to investigate for your own organisation and organisations that you are considering partnering with.

This process provides an opportunity to reflect on whether the partnership is right for you and whether the partner you have chosen is the right one for this project, with your organisation at this time.

The level of analysis and effort put into due diligence should reflect the scope, impact and scale of the contract. But a process that looks at the alignment of values, purpose and capabilities should be a part of every partnership process no matter how broad or narrow.

2. Due Diligence: A Summary

Areas to Review	Your Organisation	Your Proposed Partner
Purpose and values	<p>Are you clear on your purpose and values? Does/do the project/ partner(s) align? Can you work collaboratively with a partner?</p>	<p>Are you aligned with each other? Do you respect and understand their purpose & values? Have you determined how you will mitigate differences in purpose and values and what this looks like in practice?</p>
Strategic Plan	<p>Do you have a strategic plan? Does the project align with your strategy? Does/do this project/partner(s) help you achieve your strategic objectives?</p>	<p>What is the focus of their strategic plan? How does the project align with this? How important is to the project to the organisation is meeting its strategic objectives?</p>
Capacity & capability	<p>Can you deliver on the project? Does/do your partner(s) add capability to your organisation's skills and capabilities, service reach and scale? How?</p>	<p>Does/do the partners(s) have the expertise and capability that is needed? Do your organisation's skills complement/ overlap? Does/do the partner(s) recognise where your skills complement/ overlap their skills?</p>
Governance	<p>Has your Board been informed and engaged in the project? Are there appropriate risk management, reporting and approvals in place to support the project or Agreement?</p>	<p>Is the constitution available? What is the organisation's governance structure? Who is on the Board? What risk management processes does the organisation have in place? Are all ACNC/ other audit requirements met?</p>
Organisational Culture	<p>What are some of the characteristics of your organisational culture? What are the organisation's values and how are they implemented? Areas to consider:</p> <ul style="list-style-type: none"> - Hybrid/office/WFH - Supervision and management structure - How does the team communicate and how does management share information ? 	<p>How do they describe their organisational culture? What are the organisation's values and how does management implement them? Other areas to consider:</p> <ul style="list-style-type: none"> - Hybrid/office/WFH - Employee communication/ meeting processes - Supervision and management structure - Use/take up of technology? (Which platforms/systems?)

	<ul style="list-style-type: none"> - Are you technology enabled? What is the take up of technology? Which platforms/systems do you use? - Formal/informal approach to organisational policy and procedure - Social style at work (is there any?) - How does conflict between staff emerge and what is the most effective response? 	<ul style="list-style-type: none"> - Formal/informal approach to organisational policy and procedure - Social style at work (if there is one?) -
Finance (See Fact Sheet 6,7,8 for more detailed information on financial management and due diligence for projects)	Are you financially project ready? Will the pricing structure allow you to deliver on what you have agreed to do, and do you understand how it works? Are you clear on your financial position and how the project will impact the organisation over the contract period? How will you monitor and assess project financials?	Is/are the partner(s) financially sound? Are they financially well managed? Have they submitted all financial information to the ACNC? Are there any issues of concern? What is their current financial position and how will this project impact their position?
Risk	Have you done a risk assessment on the project and its impact on organisation? Do you have a plan to mitigate and manage any risks? Who will monitor risks and check in that they are being managed? Does your agreement match the level of risk?	Has the organisation you assessed risks of the partnership/project? Are there any issues/ previous incidents related to the organisation that may continue to impact them? Would association with this organisation have any implications for your organisation's good standing and reputation? If so, how would this be managed?
People	Who do you have available to work on the project/ support project development? What are the decision making arrangements for the project and is everyone clear on them? What employment arrangements are in place that might be relevant to the partnership (eg. special leave provisions, flexible working arrangements etc.) What skills do you need to recruit/ train for to deliver on the partnership? Can you meet your policy and procedure for staffing arrangements (eg. pay, leave, flexibility. Training) under the terms of the agreement and the pricing structure?	Whoa is the key contact on the project and what level of decision making authority do they have? How many staff are employed/ allocated to this project? What employment arrangements (eg. contracts, Enterprise Bargaining Agreements etc.) does the organisation use to employ staff? What arrangements are in place for leave – are there any special arrangement, excessive leave entitlements? What qualifications and experience will the team bringing to the project? What capacity/capability gaps are likely to emerge in implementing the project and what plans have been made to address them?

	Are there any likely issues to arise between staff engaged in this project and other staff?	
Agreement type	Is the Agreement at the right level/type for the size and scope of the project?	Does/do your partner/s understand the roles and responsibilities and their deliverables?
Financial arrangements	Does the Agreement make clear: <ul style="list-style-type: none"> - Payment arrangements - Pricing 	Does/do your partner/s understand and agree to these arrangements? Are payment arrangements agreed?
Agreement Management	Does the Agreement make clear: <ul style="list-style-type: none"> - How decisions are made - How performance is managed - How to manage disagreement/conflict - Breaches of contract - End of Agreement 	Does/do your partner/s understand and agree to these arrangements?
Advice	Where appropriate – have you sought legal/financial advice on the Agreement?	Has/have your partner/s sought appropriate advice? What access to independent advice do they have?

Fact Sheet 5: Lessons Learned

Purpose

The purpose of this fact sheet is to summarise reflections from the community services sector on their learning from developing partnership arrangements to deliver on projects and tenders for service delivery.

Lessons Learned

Know Your Organisation and Stay True to your Purpose

- Know your values, understand your 'bottom lines' – don't compromise on what makes your organisation unique or on values that are central to your culture, brand and credibility
- Partner with organisations that align, enhance and build capacity
- Know why you are getting involved in the project/tender and how it will support your organisation's strategy
- Get involved in opportunities that support growth but don't expect a single project to 'save' your organisation financially or strategically

Engage with Integrity

- Disclose conflicts of interest early and identify how these can be addressed – be honest if you are engaging with several different groups on a tender
- Observe confidentiality agreements
- Don't waste time – if the project/tender/consortium is not the right fit, move on
- Be a contributor – engage with discussion, bring ideas, share your expertise
- With appropriate protections and Agreements, share information that is required
- Be timely and responsive – read and review material in the time agreed, send representatives with the right level of decision making authority to meetings, get advice and approvals in a timely fashion
- Know your organisation's delegations policy and who is able to make commitments or approve the decision to join a consortia, sign Agreements or agree budgets.

Be Clear and Direct

- Be clear about expectations: from the macro – eg. what are we trying to achieve and program design; to the micro – eg. how often we will meet and who will distribute minutes of meetings and who will attend meetings
- Be clear on roles and responsibilities; document these clearly and review regularly
- Discuss performance requirements and expectations and how these will be measured
- Document meetings and conversations – check that the actions and decisions of meetings reflect shared agreement

- Talk about what each organisation wants to achieve and how the project/tender contributes to their organisation's purpose and strategy
- Don't expect that all parties will agree all the time – be robust in discussions and explore your differences. Understand and learn from other perspectives and be clear on what other organisations want from the process as well as you understand your own.

Recognise and Address Power Dynamics

- Be upfront about power asymmetry and how that will be managed
- Know your organisation's contribution – be clear about what you bring to the table and make sure it is valued in discussion, project/tender design and financial arrangements. If it is not, seek to have this addressed and if that's not possible, review whether the project is an appropriate match to your purpose and strategy and will add value to your organisation
- Take steps to address your organisation's resource/knowledge/skills gaps – get advice and support, bring in external advice if needed, mobilise the Board if they have the skills you need.
- Don't stay silent or be intimidated by organisations or individuals with different or higher levels of knowledge or more resources - ask questions, be heard!
- Don't assume that size, history or reputation means that one organisation should be the lead – understand the skills and capabilities that all organisations need to deliver better services or be more effective
- Consider requesting external project facilitation to balance and negotiate power issues where required

Choose the Right Type and Scope of Agreement

- Make Agreements that are proportionate to the project and reflect the level of risk your Board is comfortable with and willing to tolerate
- Make sure you understand all the elements of the Agreement and clarify anything that seems to favour one party over others. Get advice if you are unsure.

Be Financially Aware

- Get information on the over-arching detail of the project and its costings – even if your organisation is not delivering all or even the largest part of the components
- Understand financial risks and opportunities the project/tender presents – explore all sides and don't assume an optimistic picture
- Be involved in developing and monitoring project budgets
- Think long term on issues such as inflation, price increases, salary costs, leases

Get Good Advice

- Get legal advice on contracting, consortium arrangements etc. If other organisations are drafting an Agreement using their in house or consultant lawyers, seek an external review by a reputable legal advisor commissioned by your organisation to ensure your interests are addressed
- Get financial advice on pricing, unit costs, management costs and project budgeting
- Seek external business/ management advice and support when negotiating Agreements if there are power dynamics, competing priorities, time pressures or new skills needed
- Subject Matter Experts are useful and can add deep content knowledge that can be invaluable in shaping establishment, and provide good foresight on issues that can arise in early operational and consolidation stages of the project.
- Use external tender writers, program design specialists and others as needed

Keep the Board Informed and Involved

- Inform the Board of the opportunity, proposed approach and possibilities
- Discuss the alignment of the project with the organisation's purpose and strategy
- Engage the Board in due diligence and risk assessment exercises and/or review
- Where appropriate, engage Board members with specialist skills to support the process (usually where that skill is not available in the staff team or cannot be obtained externally)
- Provide the Board with all Agreements and seek Board approval as required in line with financial and management delegations

Read Everything!

- Make sure you see and read all final version of the tender and other key documents before they are submitted
- Read all Agreements to understand your organisation's project/tender commitments, risks and legal responsibilities. Don't assume that Agreements developed by other organisations will address your organisation's interests.

Address Endings at the Beginning

- Get clear on how non-compliance for performance or other breaches will be managed up front
- Discuss how a partner can end their role and why – include an agreed exit process in documentation of the Agreement
- Discuss and agree at the beginning on how a consortium can act to remove a partner – discuss questions such as required performance, what happens in changed circumstances etc.

Resources

- Justice Connect provide legal information and templates to support working with other organisations. nfplaw.org.au/free-resources

Fact Sheet 6: Assessing Financial Capacity and Readiness for New Projects

Purpose

This fact sheet provides guidance on how to assess the financial capacity and readiness of your own non-profit organisation, as well as that of your project partners when developing new projects, tenders and working together.

1. Assessing your Own Organisation's Readiness

Assessing financial capacity and readiness for projects, funding or strategic organisational change requires looking at two distinct elements of the organisation.

1.1 Financial Capability & Resourcing

- Personnel - both capacity (i.e. FTE) and capability (i.e. technical expertise and experience)
- System resources and efficiencies - i.e. whether your financial systems can cope with:
 - increased complexity such as new funding streams, reporting requirements, compliance with grant conditions; and
 - increased volume of transactions and associated reporting / queries
 - If more finance (or other back office) resourcing is needed, this should be factored into your project budget and/or broader organisational overhead costs.

1.2 Financial Position

- Consider how a new program (and associated income / expenditure) will impact cashflow, by modelling / forecasting cashflow with and without the new funding
- Assess your organisation's reserves and whether the buffer they provide is adequate if increased grant funding brings associated increase in risk (and higher levels of expenditure).

Key measures

- **Working capital:** in weeks: this measures the number of weeks an organisation could operate if all income ceased immediately. It's calculated as current assets, less current liabilities, divided by core weekly expenditure. Reserves of greater than 13 weeks is generally considered healthy in the non-profit sector, though each organisation will differ.
- **Current ratio:** this is current assets divided by current liabilities. This shows how much money is available to pay for each \$1 owed. A ratio of between 1.5 to 2 is considered healthy.

Consider whether these measures have been stable or volatile over recent years, as well as how accurately your organisation has been able to predict its results (through forecasts and budgets).

Being able to rely on your figures is important for managing risk and growth, especially if your funding and financial results are highly changeable from year to year.

2. Assessing Your Project Partners' Readiness

It is equally important to understand whether your proposed partner(s) is/are financially ready for the project and to address any concern prior to signing any Agreements.

2.1 Financial Due Diligence on Project Partners

Important steps to assess the financial status and capacity of your partner(s):

- Find your partner organisation's annual audited accounts (available on the ACNC website) and assess their financial position through the same process as the previous section.
- Consider whether their income is growing or declining, whether they are reporting net surpluses or deficits, and how changeable this has been in recent years. Growing or declining at a rapid rate can indicate a range of management challenges – consider if this could impact your project's delivery.
- Assess how material this new funding would be to the partner, i.e. the size of the potential share of funding, compared to its current turnover. If this proportionality is very high, then questions arise regarding capacity to deal with this level of new funding.
- Ascertain whether the potential partner has handled grants of a similar size - having received funding from the same departments in the past (and recurrently) is a good indication of past delivery, and obtain references or letters of support.

2.1 Consortia, Grant Partnerships & Sub-Contracts

Partnering on funded projects can take many legal forms and risks will differ across these forms.

- A **consortium** will usually require an organisation to act as lead and receive funding from a single funder, which is then disbursed to other members of the consortium. The expenditure on disbursed funds will usually need to be reported back to the lead, who consolidates reporting and acquits back to the original funder. This lead role requires more resourcing, experience and complexity in finance functions and systems than being a non-lead member of the consortium. How underspends or overspends will be dealt with is key to managing risk, and the approach to grant reporting should be agreed in advance.
- **Grant partnering** with another organisation requires clarity on who is responsible for components of project delivery and how decisions affecting all funded organisations will be made. How grant funding will be received and acquitted by each partner needs to be understood from the outset, and discrete funding agreements between each partner and the funder will help to reduce risk to all partners.
- **Sub-contracting** is a more straightforward approach, and commercial in its nature – usually consisting of funding or payment for specific delivery of an outcome or service (often milestone based). Potential risk areas relate to penalties for non-delivery or late delivery and whether payment will be made in advance or arrears.

For all these examples, the key is to raise questions in advance of agreeing the approach and document the agreed approach. Ideally, the funding contracts or grant agreements will stipulate all key deliverables and responsibilities. Where they don't, other key documents (such as MOUs or

meeting minutes) can act as guides. Engaging legal assistance is always a good idea, particularly for large scale or potentially punitive contracts.

Resources

- You can find out more information about your partners via the ACNC website:
<https://www.acnc.gov.au>

Fact Sheet 7: Principles of Project Budgeting & Reporting

Purpose

This fact sheet outlines the basic principles of good budgeting and financial reporting for your not for profit organisation and in managing projects and partnerships.

1. Project Budgeting Principles

Basic principles of good project budgeting are the same for any type of project. They include:

- Loading staffing costs in proposals with all possible oncosts – this is essential to ensure that you fully recover the cost of employment, and that you are not inadvertently subsidising programs. Your Accountant should be able to give you a percentage of oncosts that covers the total cost of employment including super, leave loading and leave provision expense, workers comp, etc.
- In direct staff costs, include middle management or other staff who cover for leave taken by project staff, or who can be justified as contributing to the program
- Directly allocate costs wherever possible and don't assume that all non-staff costs are included within the overhead charge or admin fee. Your Accountant should be able to advise what needs to be included as a direct cost, and what is covered by overhead charges.
- Ensure you have quotes for big ticket items, so you know you are allocating enough in the budget to cover the cost. Costs of certain goods, services and transport have significantly increased in recent years.
- Ensuring management / overhead / admin fee is included and is calculated / applied correctly within the budget. Your Accountant should be able to advise what this needs to be – every organisation's overhead charges will differ because of structural factors like the location/cost of their rent.
- Include contingency where possible – some general contributory factors are outlined below:
 - Supply prices are currently highly inflationary and volatile
 - Remote / regional areas also carry a premium for shipping/removal/construction costs, particularly in these times of high fuel prices
 - Get quotes before budgeting if you can but remember they are highly changeable
- Remember inflation in multi-year budgets:
 - In August 2022, the RBA published its CPI outlook for the next 2 years. For FY23 CPI is predicted to be 7%; for FY24 it is looking to be 3.9% This may still worsen.

2. Project Reporting Principles

- At a minimum, project financials need to show:
 - Year to date (YTD) budget against YTD actual
 - The full year or project budget totals
- Reports should be prepared on an accrual basis – i.e. recognise costs incurred but not yet paid, and include other non-cash items like administration fees
- Reports will not usually show committed but unspent funds – i.e. contracts entered into but not yet invoiced by the supplier. If your organisation has a purchase order system, then you may be able to get reporting on these commitments alongside your financial reports, however these will still only reflect approved purchase orders. Other conceptually committed/earmarked costs will need to be mentally accounted for when viewing your reports.
- Large variances warrant potential budget reforecasting, and it's important to consider phasing spending (i.e. month by month spend) so you can get an accurate picture of expenditure against budget

Reviewing your Reports

Key considerations:

- Frequency of reporting and review is key – more regular engagement with reports (e.g. monthly) will produce better results and enable you to get a sense of developing trends.
- Reflect on whether the report shows expected amounts (and reflects the “on-the-ground” situation) or if something seems too low or too high.
- Speak to your accountant regularly to keep across the issues and trends

Resources

- RBA inflation forecast: www.rba.gov.au/publications/smp/2022/aug/forecasts.html

Fact Sheet 8: Assessing & Managing Project Financial Risk

Purpose

This fact sheet provides guidance on assessing and managing financial risk in projects. It covers how to quantify the potential outcomes, considering both the impacts and probabilities of the risk.

1. Assessing financial risk in projects

A useful way to assess risk is **Impact x Probability**. For financial risk, we can quantify the potential outcomes of things going wrong, or deviating from the budget/plan, and prioritise their mitigation.

1.2 Impact of the risk

- Consider how significant a potential cost overrun could be, and what a worst-case scenario might look like. For example, a \$1 million project that overruns by 20% looks like a \$200k gap.
- Reflect on how this amount compares to your organisation's working capital or reserves – a significant proportion might be 10-20%.
- Price increases should be considered, particularly in a high inflation setting. Some goods (e.g. construction materials) can be exposed to higher than average inflation risks, and this can be highly volatile. Looking at changeability over time and speaking to suppliers can give a sense of potential risk around price changes. Remote areas can experience higher than average prices across many categories, and transport costs also need to be considered.

1.3 Probability of the risk

- Assess how likely an overrun might be. If your organisation has experience in budgeting for, and delivering to budget, on similar projects or services in the past, then a significant overrun may not be likely.

The nature of the work matters when it comes to financial risk:

- Some projects will involve only fixed or predictable costs, for example a staff member or members carrying out a funded support service. The costs will be staff salaries (predictable, where your organisation is a “price maker”) and other oncosts like occupancy, and overheads.
- Another project might include refurbishment of a premises, which can throw up many unforeseen and unquoted costs. Overruns in renovation works are very common, due to structural defects found or changes in supply availability (where your organisation is a “price taker”).

2. Financial risk mitigation / management

- Once risk assessment has been undertaken, consider some practical ways to limit financial risk. From a cost control perspective, these can include
 - **Agreeing fixed price quotes**

- **Otherwise limiting contractual costs** (for example, with fixed term contracts for project staff)
 - **Milestone-based payments to partners/subcontractors**, and/or otherwise ensuring break or termination clauses are effectively in place
 - **Budgeting for contingencies** (additional 10-20% of total cost for unforeseen issues)
 - **Managing inflation risk**, by ensuring that inflation is built into costings, especially if the project is due to run over a long period of time (greater than 12 months). Allowing for some time delays in your budgeting is also advisable, which potentially increases inflation exposure.
- Ensuring funding is received in advance where possible can limit cashflow challenges OR alternatively, ensuring your organisation has sufficient cash reserves to fund the purchases required until it receives payment from the funder.
 - Earmarking reserves for potential overruns is another way to internally put funds aside, where a funder will not accept contingencies in the budget. This would effectively represent co-funding if the funds are indeed needed.
 - Management of financial risk is also ongoing, and should include:
 - High quality and frequent project reporting against budget
 - Close monitoring and internal controls (i.e. appropriate approvals) over expenditure
 - Early intervention in overruns
 - Frequent communications and reporting between project partners