**Partnering for Success**

**Tools**

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.*

# Tool 1: Seeking Advice on Partnership Agreements

## Purpose

This Tool can assist in working through the key questions involved in seeking advice. It should be used in conjunction with **Fact Sheet 1: Understanding Partner Agreements.**

## 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, financial and business advice can help mitigate risks and provide useful 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 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.

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

## TOOL: WHAT DOES YOUR AGREEMENT NEED TO ACHIEVE?

|  |  |  |  |
| --- | --- | --- | --- |
| WHAT DOES YOUR AGREEMENT NEED TO ACHIEVE?  | YES/ NO? | WHY/ WHY NOT? | HOW IMPORTANT IS THIS? |
| Identify shared goals and principles |  |  |  |
| Governance/ management arrangements |  |  |  |
| Allow for sharing confidential information /data  |  |  |  |
| Support working together co-operatively (No financial or delivery arrangements) |  |  |  |
| Support working together for a specified project/ tender or other activity (No financial or delivery arrangements) |  |  |  |
| Support working together with specific arrangements for financial and service delivery  |  |  |  |
| Outsource aspects of a contract to another party to enable delivery of contract obligations |  |  |  |
| Legal enforceability\* |  |  |  |
| Make financial arrangements/ enable payments |  |  |  |
| Cover leasing/ property matters |  |  |  |
| Provide financial certainty for activities such as hiring staff, purchasing equipment, other financial commitments |  |  |  |
| Agree terms and conditions for staff |  |  |  |
| Set service, performance and quality standards  |  |  |  |
| Address/manage risks |  |  |  |
| **Once you understand the priorities for the Agreement, review Fact Sheet 2 and identify the type of Agreement that best reflects your needs and seek legal advice as required.**  |

*\* Contracts/ subcontracts may be legally enforceable if both parties have agreed verbally or in writing with or without a formal contract document. Lack of a detailed, written contract Agreement is a major risk – clear expectations/required should be documented to prevent risks.*

# Tool 2: Choosing the Right Partnership Agreement

## Purpose

This Tool supports decision making about the right type of Agreement for your partnership arrangements. Refer to **Fact Sheet 2: Choosing the Right Partnership Agreement** information about the different types of Agreements.

## 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.

## TOOL: WHAT DOES YOUR AGREEMENT NEED TO ACHIEVE?

|  |  |  |  |
| --- | --- | --- | --- |
| WHAT DOES YOUR AGREEMENT NEED TO ACHIEVE?  | YES/ NO? | WHY/ WHY NOT? | HOW IMPORTANT IS THIS? |
| Identify shared goals and principles |  |  |  |
| Governance/ management arrangements |  |  |  |
| Allow for sharing confidential information /data  |  |  |  |
| Support working together co-operatively (No financial or delivery arrangements) |  |  |  |
| Support working together for a specified project/ tender or other activity (No financial or delivery arrangements) |  |  |  |
| Support working together with specific arrangements for financial and service delivery  |  |  |  |
| Outsource aspects of a contract to another party to enable delivery of contract obligations |  |  |  |
| Legal enforceability\* |  |  |  |
| Make financial arrangements/ enable payments |  |  |  |
| Cover leasing/ property matters |  |  |  |
| Provide financial certainty for activities such as hiring staff, purchasing equipment, other financial commitments |  |  |  |
| Agree terms and conditions for staff |  |  |  |
| Set service, performance and quality standards  |  |  |  |
| Address/manage risks |  |  |  |
| **Once you understand the priorities for the Agreement, review Fact Sheet 2 and identify the type of Agreement that best reflects your needs and seek legal advice as required.**  |

*\* Contracts/ subcontracts may be legally enforceable if both parties have agreed verbally or in writing with or without a formal contract document. Lack of a detailed, written contract Agreement is a major risk – clear expectations/required should be documented to prevent risks.*

|  |  |  |
| --- | --- | --- |
| AREAS TO CONSIDER | PLANNING FOR ADVICE *Review the Areas on Fact Sheet 1 and your own analysis to identify what advice you need to obtain.* | NEXT STEPS*Consider who can provide advice, when would be the best time to seek advice and managing any costs.*  |
| Scope of the Agreement  |  |  |
| Strategic & Reputational Risk   |  |  |
| Agreement Legal Status |  |  |
| Data Security and Privacy  |  |  |
| Financial Risks |  |  |
| Consequences for non-compliance/ non-performance |  |  |
| Pricing and ongoing financial matters |  |  |
| Managing Conflict  |  |  |
| Once you have obtained advice, develop a plan to follow up on advice received:* What issues are critical to your organisation? Are there matters that are low priority and don’t require follow up?
* What issues should be raised with the partner/ consortium?
* What issues are best dealt with internally?
* Are there implications of the advice for other areas of the organisation’s work?

 |

# Tool 3: Assessing Risks & Benefits of Building or Joining a Consortium

## Purpose

This Tool provides guidance on assessing the risks and benefits of building or joining a consortium for a tender/ project or other activity. Refer to **Fact Sheet 3: Building a Consortium.**

## 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 for often used where the parties are not able to deliver all aspects of the service by themselves, or need to deliver in areas where they do not have a footprint or where there are other reasons to join with other organisations to tender for or provide services. 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 entity[[1]](#footnote-1) or a merger of the parties[[2]](#footnote-2).

## Assessing Risks and Benefits of Consortium Arrangements

Use the tables below to undertake a benefit and risk analysis for building or joining a consortium for a tender/ project or other activity. These templates provide a guide – consider the benefits and risks that are relevant to the tender/project or other activity and your organisation. Remove items that are not relevant and add items that are important to the context of the potential consortium.

## Benefit Analysis

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Areas to Consider *Will the consortium* | Yes/No/Maybe | Comments/Notes | How important is this to us?  | Follow up actions |
| … increase our service impact/ reach? |  |  |  |  |
| … help us grow to service new areas or use new service delivery models that we can’t do ourselves? Is this a priority?  |  |  |  |  |
| … improve community connections and relationships |  |  |  |  |
| … have a structure that matches the project scope? Is it simple and understandable?  |  |  |  |  |
| ... potentially reduce project overheads? |  |  |  |  |
| .. increase our capacity to deliver the services required? |  |  |  |  |
| … help share risks of the tender/project? |  |  |  |  |
| … help us learn new skills/ grow our capacity? |  |  |  |  |
| … share complementary skills and expertise |  |  |  |  |
| … support service improvements  |  |  |  |  |
| … provide value for money? |  |  |  |  |
| … increase organisational profile? |  |  |  |  |
| OTHER AREAS (list) |  |  |  |  |

## Risk Analysis

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Areas to Consider | Yes/No/Maybe | Comments/Notes | Can risks be eliminated, mitigated or managed?How? | Follow Up Actions |
| Are we aligned in purpose and values with partners?  |  |  |  |  |
| Are there differing expectations of roles and responsibilities? |  |  |  |  |
| Do we have the capacity to set up/participate in the consortium? |  |  |  |  |
| Is there time to develop the consortium well?  |  |  |  |  |
| Do we know how decisions will be made in the consortium? |  |  |  |  |
| What are the potential reputational risks?  |  |  |  |  |
| Does our proposed role the consortium match our organisation skills and capacity?  |  |  |  |  |
| Would our stakeholders support us joining this consortium? Why/why not? |  |  |  |  |
| Are there opportunity costs associated with the consortium? |  |  |  |  |
| Will all the partners be able to deliver to the expected quality standards/ requirements? What evidence do we have for this?  |  |  |  |  |
| Are there risks in working with other organisations to deliver these services? |  |  |  |  |
| What are the financial risks in building/joining this consortium?(See Fact Sheet 8 for more detailed information on financial risk assessment) |  |  |  |  |
| OTHER RISKS  |  |  |  |  |

## Making a Recommendation for Next Steps

Once the opportunities and risks are understood, consider how best to leverage the benefits/opportunities and manage any risks. This document could be provided to the Board/CEO or other decision maker.

|  |  |  |
| --- | --- | --- |
| Benefit and Risk Assessment | Comments | Next Steps |
| Identified Risks | *Describe Key risks**and risk elimination/mitigation/management strategies*  |  |
| Identified Benefits  | *Describe Key Benefits (include any assumptions)* |  |
| Recommendation  | *Proceed/ Not Proceed with Consortium*  |  |
| Reasons for Recommendation | *Your reasons for the recommendation* |  |
| If Proceeding.. | *What if anything needs to be in place before we proceed?*  |  |

# Tool 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). Refer to **Fact Sheet 4: Due Diligence.**

## 1. Understanding Due Diligence

Due diligenceis 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.

## Undertaking Due Diligence

Use the tables below along **Fact Sheet 4: Due Diligence** to undertake a due diligence review of your organisation and other organisations that you are considering partnering with. These templates provide a guide – consider areas that are relevant to the tender/project or other activity and to your organisation. Remove items that are not relevant and add items that are important to the context of the potential partnership/ Agreement.

## Your Organisation

|  |  |  |
| --- | --- | --- |
| Areas to Review | Your Organisation | Your Comments  |
| Purpose and values | Consider:* Clarity of your purpose and values
* Alignment of project with purpose and values
* Alignment with partner(s)
* Capacity to work collaboratively with a partner(s)
 |  |
| Strategic Plan | Consider: * Your strategic plan focus
* Project alignment with strategy
* How the project/partner(s) helps achieve strategic objectives
 |  |
| Capacity & capability | Consider:* Your organisation’s capacity/capability to deliver
* Partner(s) contribution to your organisation’s skills and capabilities, service reach and scale
 |  |
| Governance | Consider:* Timing for Board engagement and approval
* Risk management, reporting and approvals that are needed to support the project or Agreement
* Compliance with delegations of authority
 |  |
| Organisational Culture | Consider: * The characteristics of your organisational culture
* How values are implemented
* How staff work together
* Management and supervision
* What is ‘special’ about your organisation
 |  |
| Finance(See Fact Sheet 6,7,8 for more detailed information on financial management and due diligence for projects | Consider:* Current Financial Position
* Impact of the project on financial position
* Likely true costs of project
* Assessing and monitoring financial impact
* Long term cost implications
 |  |
| Financial arrangements | Consider:* Payment arrangements
* Pricing
* Costs covered (what is not covered)
* How well this is covered in the Agreement
 |  |
| Risk | Consider:* Project risk assessment
* Risk management plan
* Monitoring risks and risk management
* Agreement(s) type/scope risks
* Other internal risks
 |  |
| Project Staffing  | Consider:* Staff required to work on the tender and project and their availability
* Decision making arrangements
* Availability of internal Subject Matter Experts
* Any additional resources required
 |  |
| People | Consider:* Employment conditions/ arrangements for your workforce?
* Skills required to deliver on the agreement/ project
* Management arrangements/capacity
* Internal issues that might arise between staff about the project
 |  |
| Agreement type  | Consider: * Matching the type of Agreement to the scope and scale of activities covered
* Agreement design
* Legal enforceability of the Agreement and whether this is required
 |  |
| Agreement Management | Consider clarity in the Agreement regarding:* How decisions are made
* How performance is defined and managed
* How to manage disagreement/conflict/ breaches
* Review
* Exit or end of Agreement
 |  |
| Advice | Consider:* Legal/financial/ business advice required for the project/tender design and delivery
* Legal/financial business on any Agreements
 |  |

## Your Potential Partner/s

|  |  |  |
| --- | --- | --- |
| Areas to Review | Your Proposed Partner | Comments |
| Purpose and values | Consider:* What are their purpose and values
* Alignment of project with purpose and values
* Alignment with your purpose/values
* How differences in purpose and values will be managed
 |  |
| Strategic Plan | Consider:* Focus of their strategic plan
* Strategic plan alignment with the project
* Importance of the project to the organisation is meeting its strategic objectives
 |  |
| Capacity & capability | Consider* Whether partners(s) have the expertise and capability required
* Whether your organisation’s skills complement/ overlap?
* Whether partner(s) recognise your organisation’s skills and how they complement/ overlap
 |  |
| Governance | Consider: * Constitution (is this available)
* Governance structure
* Current Board members (conflicts of interest)
* Risk management processes
* Evidence that ACNC reporting/ other audit requirements have been met
 |  |
| Organisational Culture | Consider:* How they describe their organisational culture
* Organisation’s values and how these are implemented
* How staff work together
* Management and supervision
* What is considered ‘special’ about the organisation
 |  |
| Finance(See Fact Sheet 6,7,8 for more detailed information on financial management and due diligence for projects) | Consider:* Their current financial position
* Project
* Impact of project on financial position
* Evidence that they are financially sound and well managed
* Annual report information available on the website
 |  |
| Risk Management | Consider:* Whether the organisation has assessed risks of the partnership/project
* Any issues/ previous incidents related to the organisation that may continue to impact on the organisation
* Compliance with legislation and any adverse reports
 |  |
| Risk of Association  | **Key Question:***What, if any, implications may association with this organisation have for your organisation’s good standing and reputation with key stakeholders*? |  |
| People  | Consider:* Key contacts on the project and authority/ decision making process
* Staff associated with the project
* Employment arrangements and any special requirements
* Staff qualifications and experience
* capacity/capability gaps and plans have been made to address them
 |  |
| Agreement type  | Consider * Understanding or legal enforceability/non-enforceability of the Agreement
 |  |
| Financial arrangements | Consider:* Demonstrated understanding of proposed arrangements and willingness to comply
* Willingness and transparency in discussions
* Whether payment arrangements are agreed?
 |  |
| Agreement Management | Consider:* Willingness to discuss/ negotiate Agreement and how it is managed
* Demonstrated understanding of the Agreement
* Understanding of the roles and responsibilities
* Understanding of deliverables/ performance requirements
 |  |
| Advice | Consider:* Capacity/ intention to seek independent advice as needed
 |  |

## Assessing Due Diligence

Based on the insights from your due diligence review of your organisation and your potential partner(s), use the table below to consider the strengths and/or concerns/constraints of each potential partnership. Tailor this information to your organisation’s needs and the partnership opportunity you are exploring – focus on the areas that are of importance for your organisation. The assessment should include issues raised by your review of your organisation and of your potential partner/s.

**TIP**

*Keep the Board involved and up to date on the due diligence assessment process. Along with the risk assessment, Boards should be notified of due diligence outcomes for projects that require their approval.*

|  |  |  |
| --- | --- | --- |
| Areas to Consider | Alignment and Opportunities | Concerns/ Constraints  |
| Purpose and values |  |  |
| Strategic Plan |  |  |
| Capacity & capability |  |  |
| Governance |  |  |
| Organisational Culture |  |  |
| Finance |  |  |
| Risk |  |  |
| People  |  |  |
| Agreement type  |  |  |
| Financial arrangements |  |  |
| Agreement Management |  |  |
| Advice |  |  |
| Assessment: Does the due diligence process support proceeding with the partnership/consortium? Why? *If there are any areas where you require more information or issues that need to be addressed, document how these will be addressed*. |

1. 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 operation of the entity. [↑](#footnote-ref-1)
2. 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. [↑](#footnote-ref-2)