

# Auspicing guide

A guide for organisations offering  
auspicing and those requiring auspicing

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# Part 1

## Introduction

# Introduction



## This part covers:

- ▶ what is auspicing?
- ▶ who is involved in auspicing?
- ▶ common auspicing arrangements, and
- ▶ examples of auspicing relationships



## Disclaimer

This guide provides information on auspicing in Australia. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this guide.

## What is auspicing?

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

The **auspicator** receives funding for a project and enters into an agreement with the **auspicee** about undertaking the project

The incorporated organisation that auspices a person or group is the 'auspicator'

An **auspicing agreement** sets out the terms for how this happens

The group or person requiring support is the 'auspicee'

The **auspicee** receives the benefit of the funding and undertakes the project



An auspicing arrangement is a bit like a sub-contracting arrangement – the auspicor applies for funding or sponsorship for a project, and then sub-contracts the project to the auspicee.

However, in most cases, the auspicee would normally approach an auspicor seeking assistance, rather than an auspicor looking for projects to auspice.

Auspicing has evolved out of the difficulty unincorporated groups can have to obtain funding such as grants. This difficulty is exacerbated because funding bodies generally prefer to deal with an incorporated legal entity (rather than an unincorporated group of people) and some funding bodies restrict grants to organisations with deductible gift recipient (**DGR**) endorsement or tax concession charity (**TCC**) status (most often held by certain types of established organisations).



### Note – the auspicing agreement

When an auspicing arrangement is set up, it's important to have a **written auspicing agreement** so that all parties understand their roles and responsibilities in the auspicing relationship.

An auspicing agreement must be drafted with care because the auspicor is taking legal and financial responsibility for the auspiced project and the auspice agreement will not relieve the auspicor of those obligations.

Every auspicing relationship will be different and there may be specific or unusual issues that need to be covered in any particular auspice agreement to reflect:

- the circumstances of the auspicee
- the project
- the requirements of the auspicor, funding body, donors, and sponsors, and
- the terms and conditions of the relevant funding (or other) agreement

This guide sets out information on some common issues and considerations, and guidance for parties in coming to an agreement on the terms of their arrangement.



For more information on incorporation go to our [webpage – What does incorporation mean, and should you incorporate?](#)

## Common auspicing arrangements

Some common auspicing arrangements include auspicing:

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

**The case studies below illustrate some of the circumstances that give rise to auspicing arrangements.**



## Case study 1 – the study group

'Let's Study', a local study group formed by parents to advance their children's educational development and provide support to each other, only had four children when the group formed. The group grew as other parents heard about it. The parents responsible for running the Let's Study sessions worry about any personal liability they might have as a result of having the children under their supervision and care during the sessions.

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

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

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

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



## Case study 2 – the cycling challenge

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

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

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

The auspicing agreement covers matters such as:

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



### Case study 3 – the water colour exhibition

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

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

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

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

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

## The purpose and structure of this guide

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

While there may be risks associated with auspicing, if appropriate steps are taken, auspicing can be a great way to get a project up and running quickly, or to trial a new idea without committing to incorporating. For an established organisation, auspicing can be a great way to mentor others in the same field and incubate new organisations or initiatives.

**This guide is made up of four parts:**

<b>Part 1.</b>	<b>Introduction</b>
<b>Part 2.</b>	<b>When is auspicing appropriate?</b>
<b>Part 3.</b>	<b>Issues to consider before negotiating an auspicing agreement</b>
<b>Part 4.</b>	<b>The auspicing agreement</b>





## Part 2

When is auspicing appropriate?

# When is auspicing appropriate?

## This part covers:

- ▶ appropriate circumstances for auspicing
- ▶ when auspicing should **not** be considered
- ▶ the advantages of auspicing
- ▶ the disadvantages of auspicing

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

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

## When to consider auspicing

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

**Auspicing is a quick and efficient way to obtain funding and start a project without the auspicee needing to establish an organisation or secure tax or charity endorsements.** It may also give the auspicee access to the management, infrastructure, insurance protection and resources of the auspisor.



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

### Incorporation, tax concessions and endorsements

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

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

### Incorporated groups requiring an auspisor

Sometimes groups that have already incorporated may also seek to be auspiced. An example is where the funding body wants to see the project group establish a track record of successfully implementing projects before providing direct funding to the group. The funding body will provide the funds to the auspisor as it has a proven track record in delivering similar projects.

Another common scenario is when an incorporated organisation wishes to leverage specific services, such as finance, payroll, and insurance services from an auspisor. The financial aspect can be particularly helpful where there are long lead times on grant application and funding decisions, sometimes right through until the project is delivered and acquitted. The auspicee may be dormant, or busy working on other things in the



meantime, but it is part and parcel of the auspicator's business to be able to manage this and there are often economies of scale that can benefit parties.

## When auspicing should not be considered

Sometimes entering an auspicing relationship may **not** be the appropriate solution for a group to carry out a project.

### Long-term ambitions

If the members of an unincorporated group propose to have a long term working relationship, the group should consider whether to incorporate (ie. form a legal entity). If the group incorporates, it may not be necessary to enter into an auspicing relationship.

The incorporation of a legal entity provides a legal structure through which to carry out activity or enterprise and may also make accessing tax concessions easier. The legal entity formed by the group may be able to contract directly with funding bodies.

There are different forms of legal entity. Different factors influence which legal form is most appropriate, such as where the entity's activities will be located and whether the entity will be not-for-profit or for-profit.

Dealing with unincorporated groups and sole traders can also present a substantial risk to an auspicator.



See our website for [information on starting a not-for-profit group](#) and the important decisions to be made along the way.

### Relationships

An auspicing relationship is a collaborative relationship. The parties involved need to be able to work together, trust each other and communicate well.

Before entering into an auspicing arrangement, carefully consider whether the auspicator and auspicee:

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

### Complex or risky arrangements

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

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

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

auspicing will not be appropriate.

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



## The advantages of auspicing

### For the auspicor:

- Auspicing new projects can be an excellent way to:
  - support new projects
  - diversify your activities, and
  - bring a fresh perspective and energy to your organisation
- An auspicing relationship can be a satisfying way to **promote the purposes of your organisation** while **providing mentoring** to a less established group.
- Auspicing a project may assist in **building relationships** with new funders or segments of the community who may otherwise be difficult to engage.

### For the auspicee:

- Being auspiced can be a great opportunity for a group or a person to **benefit from the auspicor's tax status, infrastructure, resources, operational and administrative support**. The auspicor may provide the auspicee with certain insurance and legal protection in relation to its activities.
- Auspicing is especially useful for pilot projects or one-off projects, where the group or person may not yet be ready, or may not even need, to incorporate.
- The auspicee can obtain the benefit of the auspicor's expertise, experience and reputation to successfully obtain funding grants, donations or sponsorships and deliver the project. The auspicee may then be able to build on this experience to consider undertaking future projects on its own.
- The auspicor may broaden the auspicee's network and profile and bring additional public exposure and awareness about the project or the activities of the organisation.
- A person or group may only be eligible for certain funding grants if they have an auspicor.
- Even if a group is incorporated, they may not have a track record of delivering on grants, and therefore can benefit from being auspiced to deliver on their first grants.

## The disadvantages of auspicing

### For the auspicor:

- Auspicing introduces **new risks, new personalities and extra administrative burdens** to your organisation.

Things an organisation can do to manage these risks and burdens include:

  - having an appropriate auspicing agreement, insurance, and risk management protocols in place as well as guidelines and policies around ensuring auspicing agreement terms are consistent with funding agreement terms, and releasing grant funds to the auspicee in segments as the project progresses
  - charging a fee to reflect the additional administrative burden of an auspicing relationship (although the fee may not cover all the costs associated with the auspicing relationship and the relevant project)
- If the relationship between auspicor and auspicee is problematic, this may result in a **negative outcome** for the auspicor, create **extra stress**, and potentially impact the relationship between the funding body, sponsors and the auspicor.
- The auspicor will be **responsible and accountable** to any project funding body funding the auspiced project for the proper use and acquittal of the funding grant.



This means the auspisor may be exposed to additional liabilities and risks associated with the project. This is particularly the case where the auspicee has significant control over the management of the project. The auspisor will need to consider what assurances it must seek from the auspicee under the auspice agreement.

- If the auspicee is formed by **multiple people**, this may make it more difficult for the auspisor to negotiate and manage the auspicing arrangement, particularly where those people have conflicting views or opinions.
- The relationship between the auspicee and the auspisor may, in certain circumstances, give rise to an **employment relationship** which could impose additional legislative burdens on the auspisor.
- The auspicee may be disorganised or lack the necessary resources required for it to comply with its obligations under the auspicing agreement. This may impose a **heavier burden** on the auspisor in respect of the completion of the project or affect the **reputation** of the auspisor if the project is not completed.

### For the auspicee:

- The auspicee will lose a degree of **ownership and control over the project**, especially financial control.

The auspicee will need to comply with the conditions of the auspicing arrangement, which could include administrative burdens such as keeping records, accounts and invoices for acquittals and allowing the auspisor and funding body to inspect its financial records.

- The auspicee may be required to follow certain **policies and procedures** implemented by the auspisor. This may affect the way the auspicee is able to conduct or operate the project.
- The auspicee may need to provide **regular progress reports** to the auspisor. If the relationship between auspisor and auspicee is problematic, this may create extra stress.
- The auspicee may need to agree to certain **terms and conditions** that create new burdens for the group, like risk management strategies or reporting.
- There may be **costs** associated with the project which are incurred by the auspicee and which may not be recovered or reimbursed depending on the terms of the auspicing agreement.

In most instances, the auspicee will be required to justify its spending in relation to the project.

- The auspicee may have **no direct access** to deal directly with the funding body. This may affect the auspicee's ability to develop a relationship with the funding body in circumstances where the auspicee would like to obtain a future funding grant. This may also create delays for the auspicee in obtaining the required permission to undertake certain tasks.
- The auspisor may be disorganised or lack (or dedicate) sufficient resources to provide the level of support required or desired by the auspicee to complete the project. This means investigating the auspisor's organisational style and track record in supporting organisations is important.

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



For more information on deemed employment relationships, see [our guide 'employee, volunteer or contractor?'](#) If you are concerned about ensuring an employment relationship is not created, seek advice from an employment lawyer.



# Part 3

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

# Issues to consider before negotiating an auspicing agreement

## This part covers:

- ▶ finding auspicators and auspicees
- ▶ considerations to address before entering into an auspicing agreement, and
- ▶ common responsibilities in an auspicing agreement

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

This part of the guide sets out considerations the parties should address before entering into an auspicing agreement.

## Finding appropriate auspicing parties

In finding the right auspicing parties, it's important to make sure:

- the objectives, goals, values and ideals of the auspicing parties align, and
- the parties can work together effectively to ensure the project is completed

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

Some organisations, particularly in the arts sector, are specifically set up to provide auspicing services to projects aligning with their purposes, and actively seek projects to auspice.



### Tip – for an auspicator

You could promote your willingness to auspice through a website, your local council, community centres or through a relevant peak or interest body.

## Important considerations



### Caution

A proposed auspicing arrangement may seem like a good opportunity to work with and help another organisation, but you should consider the legal issues that may be relevant to the arrangement (these are discussed further below).

# The parties and their purpose

## Similar purpose

An auspicing organisation will not be able to auspice an auspicee's project unless the project is consistent with the organisation's purposes.



### Tip

You can look up the constitutions of charities on the [ACNC register](#).

In particular, the project must fall within the purposes of the auspicing organisation's constitution and must not be prohibited or limited.

The board of the organisation may not be able to approve entry into an auspicing agreement if the project doesn't fall within the objectives.

The auspicee should ask to see a copy of the auspicing organisation's constitution before entering an auspicing agreement.

And the auspicing organisation should ensure that it is satisfied that the project or activities for which the funding is sought furthers the purposes of the organisation in some way.

If the activities don't align with your organisation's purposes, the auspicing organisation's board doesn't have power to approve the arrangements, and approval could potentially breach legal duties.

In circumstances where a project involves several organisations, the project and activities must fall within the purpose of each respective organisation.

## The auspicing organisation's power to auspice (or no clause prohibiting auspicing)

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

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

## Legal duties of the auspicing organisation's committee or directors

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

A breach of the directors' duties that apply to the management of the auspicing organisation may result if:

- there is excessive risk involved in auspicing a project
- the project doesn't comply with or further the organisation's purposes
- the project may jeopardise its tax concessions, or
- the relevant documents, due diligence or insurance are not given appropriate consideration



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





For more information, see our [webpage on the responsibilities of the board and committee members](#).

## Tax concessions

Some funding is only available to organisations with specific tax concessions (such as Tax Concession Charities or DGR endorsement).



### Tip

You can check the tax concessions that an organisation has access to on the Australian Business Register, by using the [ABN lookup tool](#).

If the auspicing organisation is incorporated, or has a certain tax status (for example, income tax exempt or DGR status), it may be approached by other organisations to enter into an auspicing arrangement.

In some cases, entering into an auspicing agreement may jeopardise an auspicing organisation's ongoing eligibility for tax concessions or endorsements (for example, its TCC or DGR status). The auspiced activities need to align with the requirements of any tax concessions, for example, as to the tax deductibility and use of any donations.

The ACNC and ATO consider an organisation's purposes when making assessments of eligibility. The auspicing organisation should ultimately ensure that its tax concessions are not jeopardised by the proposed auspiced activities.

Before entering into an auspicing agreement and before undertaking any project activities, an auspicing organisation may wish to speak with the ATO or ACNC (or both) to understand any impact on its concessions and status and seek legal advice.

## Should the auspicee be an incorporated structure?

Although a group of people can be auspiced under an auspicing agreement, there are certain risks and disadvantages of remaining unincorporated. For this reason, they may consider incorporating their group.

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

A group may consider incorporating in circumstances where the people will have an ongoing relationship following the completion of the project or where the project will be particularly lengthy or involve a significant amount of risk. Incorporation may also provide a suitable mechanism to allow members to leave the group and for new members to join in the future.

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



For more information on incorporation go to our [webpage – What does incorporation mean, and should you incorporate?](#)

## The auspicee's ability to deliver the project

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

If the project fails to complete, this may damage the auspicator organisation's reputation and leave the organisation exposed under the auspiced project funding agreement. The auspicator organisation may also consider including protections in the auspicing agreement to cover what will happen if the auspicee fails to complete the project.

If the auspicator does not assume any responsibility for the success or completion of the project, and the auspicator's overall responsibilities are limited to assisting the auspicee to procure funding for the auspicee's project, this should be clearly spelt out in the auspice agreement.



### Tip

In considering whether a person or group of people is suitable for auspicing, an auspicator may want to seek advice about whether they can conduct background checks including police checks and Working with Children Checks.



For more information, see our [webpage on background checks](#).

## Factors specific to the project being funded

While responsibilities can be set out differently in different auspicing arrangements, some responsibilities are common to most auspicing agreements.

### Responsibilities common to auspiced bodies (auspicees) are that they will:

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

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



### Generally, at a minimum, auspicing organisations (auspicors) may need to:

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

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

### Insurance

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

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

In this regard, the parties need to determine whether the auspicee will receive the benefit of the auspicor's existing insurance coverage and whether those insurance policies are adequate to mitigate against the potential risks of the project. The auspicor will need to notify its insurance broker and review its insurance policies if it intends to extend its insurance protection to the auspicee.

Alternatively, the parties may agree that the auspicee will purchase a specific policy to cover the auspiced project and that the auspicee will provide to the auspicor a valid certificate of currency for each insurance policy.

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

### Organisational and administrative support

The parties need to determine the level of organisational or administrative support that will be provided by the auspicor to the auspicee. This will depend on the nature of the project and the resources of both the auspicee and the auspicor.

The roles of the parties should be clearly defined before the auspicing relationship begins to ensure that the project can be managed effectively and that an undue or unexpected burden is not placed on one party.

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

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

### Office and project space

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

In some instances, as part of the auspicing relationship, the auspicor will provide the auspicee with access to and the use of its premises and facilities. Before starting the auspicing relationship, the parties should

consider the extent of that access and whether there will be any restrictions placed on the auspicee in respect of the use of those premises. The auspisor will need to ensure that any access it provides to the auspicee to its premises doesn't breach its applicable leasing documents relating to those premises. In some instances, the auspisor will need to obtain the consent of the landlord of the premises.

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

## Grant administration

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

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

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

## Publicity

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

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

## Intellectual property

### Intellectual property created as a result of the project (project IP)

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

In addition, the parties need to determine who owns the intellectual property produced as part of the arrangement and the way that intellectual property can be used by both parties. This should cover the time during auspicing as well as after it has ended. For instance, the auspicee may be entitled to the ownership of the intellectual property, but the auspisor may be provided with a licence to use the intellectual property to promote their involvement in the project.



For more information, see our [webpage on intellectual property laws](#).

### Other intellectual property (background IP)

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

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

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

## Work health and safety

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

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



For more information, see our [webpage on work health and safety laws](#).

## Termination and non-completion

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

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

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

## Unwanted employment arrangements or partnerships

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

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

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



For more information on the employment relationship, see our [webpages on managing people, managing employees](#) and [fixed term contracts](#).

For more information on issues to consider when working with others, see our [guide to working with other organisations](#).



### Checklist to complete before starting the project:

**Insurance:** All types of insurance required are held and extend to everyone and thing involved in the project.

**Governing documents:** The governing documents of the auspisor (and if applicable, the auspicee) permit the auspicing relationship.

**Notification of relevant staff and volunteers:** The auspisor may need to be notified of relevant people for security and insurance purposes.

**Auspicing agreement:** Agreement signed and copies provided to all relevant parties.

**Reporting timeline:** Dates for when money and reporting are due, including who is responsible for each element.

**Project budget:** The parties have set a realistic budget of the income and expenses of the project.

**Project timeline:** The key dates for the implementation, completion and progression of the project have been agreed between the parties.

**Key contacts:** All parties have key contact details for emergencies and for assistance.

**Security and WHS:** Orientation around buildings or equipment is provided and any security including in respect of confidential or personal information.



# Part 4

## The auspicing agreement

# The auspicing agreement

## This part covers:

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

**An auspice agreement sets out each party's obligations. These may vary greatly from one auspicing relationship to another.**

## Negotiating an auspicing agreement

Following the identification of an appropriate auspisor, the auspicing parties will need to consider the terms of their arrangement and relationship.

From the perspective of an auspicee, an auspicing agreement is essential to ensure that the auspicee has a legal right to access and use the funds which are granted to the auspisor by the funding body (or donor or sponsor) for the purposes of the project, or any benefits under any other agreement (for example, a lease).

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

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



### Tip

The auspicee should be encouraged to seek legal advice before entering into an auspicing agreement to make sure it understands the full meaning of the agreement and the impact of its terms.

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

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

However, even though the auspicing agreement may pass these obligations to the auspicee, the auspisor will remain legally responsible to the funding entity for performance of the obligations under the funding agreement.



**In negotiating an auspicing agreement, the auspicator will need to make sure:**

- the terms of the auspicing agreement are consistent with the terms of any relevant funding agreements (so that it doesn't inadvertently breach the funding agreement), and
- the proposed auspicing agreement doesn't impose obligations which are contrary to the auspicator's governing documents (such as its purpose as set out in its constitution)

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

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

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

**Note**

Writing your agreement down is an important step and will ensure that each party is aware of its rights and obligations.

Auspicing agreements often involve the application for and use of third party funds – sometimes themselves involving funding agreements which may require an agreement between the auspicator and the auspicee. Accordingly, having a written agreement is a matter of good contractual governance.

Furthermore – things can change, people can move on, unexpected events can occur, and an agreement can be very helpful in these situations.

## What to include in an auspice agreement

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

Clause in contract	Explanation
<b>Parties</b>	<p>It's important that the agreement clearly names and identifies the correct contracting parties to the agreement so it is binding on the right persons or entities. <input type="checkbox"/></p> <p>For instance, if the auspicee is an unincorporated association, an individual member (or members) of that association will be required to enter into the agreement as representative of, and on behalf of, all the individuals who make up the auspicee.</p> <p>If the auspicee is a legal entity, confirm the ABN/ACN to ensure you have the correct legal reference.</p>
<b>Term</b>	<p>The agreement must have a start date and a termination date or, at the very least, clarify the circumstances in which the agreement may be terminated. <input type="checkbox"/></p> <p>If the start and termination dates are conditional on a particular event occurring, this should be made clear.</p>



	<p>The duration of the agreement should be specified.</p> <p>To account for the possibility of delays, some agreements detail how the agreement can be extended.</p>
<p><b>Details of the relevant funding activities</b></p>	<p>The agreement should clearly set out the scope of the auspice arrangement. <input type="checkbox"/></p> <p>For instance, the agreement should set out the details of the relevant project for which funding is being sought and outline any relevant pre-conditions, timeframes, milestones or budgets in relation to that project.</p> <p>Is the auspisor assuming any responsibility for the success or completion of the project? If not, and the auspisor's overall responsibilities are limited to assisting the auspice to procure funding for the auspicee's project, this should be clearly spelt out in the auspice agreement.</p>
<p><b>Obligations of auspicee</b></p>	<p>The obligations of the auspicee should be set out and may include: <input type="checkbox"/></p> <ul style="list-style-type: none"> <li>• a requirement to assist the auspisor to secure adequate funding for the project or activities</li> <li>• securing insurances, providing financial records, references, etc. for the purposes of getting funding for the project</li> <li>• clauses about how the auspicee will seek the release of funds from the auspisor and account for the spending of those funds</li> <li>• the kind of reporting and documentation the auspicee agrees to provide to the auspisor, and when (for example, progress reporting, financial reporting, copy of insurance policy, financial acquittal documentation, final report)</li> <li>• the extent to which the auspicee will be responsible for securing premises, equipment, staff, any consents or licenses for the project</li> <li>• requirements to comply with any policies of the auspisor or any restrictions placed on the auspicee by the auspisor for the duration of the agreement,</li> <li>• general requirements to co-operate with the auspisor for the purposes of the project, which may include a clause that the auspicee be prepared to undertake any reasonable act asked of it by the auspisor, and</li> <li>• ensuring the execution and completion of the project or activities</li> </ul>
<p><b>Obligations of auspisor</b></p>	<p>The obligations of the auspisor should be set out and may include: <input type="checkbox"/></p> <ul style="list-style-type: none"> <li>• how funding will be applied for, kept (separate bank account) and administered</li> <li>• allocating funds to the auspice as agreed or required</li> <li>• any support the auspisor agrees to provide in terms of things like office space, equipment, and software</li> <li>• the extent the auspisor will commit staff (employee time) to the funded project and whether this will be paid from the funding or from the auspisor's own funds</li> <li>• any financial management services the auspisor will provide for the purposes of funding the project, administration of the project</li> </ul>



	<p>management account and preparing budgets and tracking against the budgets,</p> <ul style="list-style-type: none"> <li>• the extent of the administrative, accounting, HR, fundraising and legal assistance that the auspisor will arrange, and</li> <li>• compliance with the terms of the funding arrangement</li> </ul>	
<b>Funding and fees</b>	<p>The agreement should set out any fees to be paid and the amount (for example, any fee the auspicee may have to pay the auspisor to cover its administration expenses) and circumstances pursuant to which the fee is payable.</p> <p>Consider whether there is a need to specify expectations for the funding of the project and how the parties will cooperate to submit applications for funding. For example, clarify:</p> <ul style="list-style-type: none"> <li>• who will do the research and drafting of funding applications</li> <li>• how many applications are to be made</li> <li>• how long should funding be sought, and</li> <li>• what the approval process is before applications may be submitted to funding bodies</li> </ul> <p>This may not be necessary, as some arrangements don't comprise of cooperation, but rather, on the financial aspects of project funding and how funding will be distributed and accounted for.</p> <p>Also, if the project for which the funding is sought generates fees or some other form of revenue, or may result in a project surplus, the agreement should set out whether the auspisor shares in the revenues or fees and how any project surplus is to be distributed. The terms of the funding agreement must also be adhered to.</p>	<input type="checkbox"/>
<b>Non-completion of project</b>	<p>The agreement should include a clause which determines what will happen if the auspicee does not complete the project or a stage of the project.</p> <p>In particular, the agreement should set out the circumstances in which the auspisor is able to:</p> <ul style="list-style-type: none"> <li>• withhold funds (or even request the remaining funds be returned), and</li> <li>• use the funds to complete the project itself</li> </ul>	<input type="checkbox"/>
<b>Recognition</b>	<p>The agreement may specify how both the auspicee and the auspisor will be recognised in relation to the funded project (including promotion, branding, acknowledgements and public announcements).</p>	<input type="checkbox"/>
<b>Notice</b>	<p>A notice clause will set out in what form and where notices are to be delivered to each party for the purposes of the agreement.</p>	<input type="checkbox"/>
<b>Dispute resolution</b>	<p>Due to the nature of the relationship between the auspicee and the auspisor, it is often best to establish a mutually acceptable approach to resolving disputes at an early stage.</p> <p>The dispute resolution procedure should be set out in detail, so that the relationship does not become unnecessarily adversarial in times of disagreement. The aim should be to avoid expensive and time-consuming options like court proceedings. You may wish to</p>	<input type="checkbox"/>



	<p>include a clause to indicate an intention that both parties will use their best efforts to resolve any disputes.</p> <p>The dispute resolution clause can set out alternative methods of dispute resolution (such as mediation) and require that the parties use those methods in the first instance, rather than court proceedings. You will need to decide whether you want decisions made in these alternative methods to be binding.</p>	
<b>Obligations after termination</b>	<p>The agreement should also set out the parties' obligations after the agreement comes to an end (either because the term has ended or due to termination).</p> <p>The parties will need to think about things such as payment of any outstanding amounts, confidential information, intellectual property and what is to happen to any remaining grant money (bearing in mind the grant agreement may require return of surplus).</p> <p>If the parties are working on a project together, you may like to consider who will bear the burden of any unfinished work.</p>	<input type="checkbox"/>
<b>Confidentiality</b>	<p>It's likely that both parties will be privy to confidential information of the other. For this reason, you should agree and document how each party (and their employees, volunteers and contractors) may (or may not) deal with such information.</p> <p>The agreement may also set out the manner in which parties are to deal with any public announcements or the media.</p>	<input type="checkbox"/>
<b>Intellectual property</b>	<p>A clause dealing with who owns the intellectual property created as part of the funded project should be included. This should cover the arrangement while the agreement is in place and also after it has ended.</p> <p>The agreement should also clarify whether each party has a right to use the other party's intellectual property rights for the purpose of completing the project and if so, on what basis and if such rights persist following completion of the project.</p> <p>For more information about intellectual property rights and the law see <a href="#">our IP webpage</a>.</p>	<input type="checkbox"/>
<b>Liability, insurance and indemnities</b>	<p>The agreement should make clear:</p> <ul style="list-style-type: none"> <li>• who is responsible for any loss or damage to any third (outside) party caused by any activity undertaken in the course of the agreement</li> <li>• whether one party agrees to (wholly or partly) indemnify or compensate the other party for any losses, costs or liabilities associated with the auspiced activities</li> <li>• confirmation of liability arising from contractual obligations entered into for the purposes of the project, and</li> <li>• whether insurance is required and which party is required to take out appropriate insurances</li> </ul>	<input type="checkbox"/>
<b>Warranties</b>	<p>The agreement may include a provision which sets out warranties and representations made by the parties. If a warranty or representation made by a party later becomes untrue or inaccurate, then that party may be in breach of the agreement.</p>	<input type="checkbox"/>



<b>Any employee obligations (such as tax, superannuation, insurance entitlements)</b>	If the project for which funding is sought will (under the agreement) involve hiring employees, the agreement should specify who is responsible for the employment of the employees, and who arranges and pays the employees' legal entitlements.	<input type="checkbox"/>
<b>General provisions</b>	<p>As with any other type of agreement it can often be helpful to include some general provisions to assist with the operation and interpretation of the agreement including:</p> <ul style="list-style-type: none"> <li>• the governing law and jurisdiction applicable to the agreement</li> <li>• whether the agreement is the 'entire agreement' or whether any other project documents set out the terms of the parties' agreement</li> <li>• whether the parties are entitled to assign or subcontract their obligations</li> <li>• who bears the costs of any taxation or stamp duty payable in relation to the agreement or the project, and</li> <li>• which provisions, if any, will continue to bind the parties following the termination of the agreement</li> </ul>	<input type="checkbox"/>
<b>Execution</b>	The agreement should contain appropriate execution clauses that reflect the manner in which the parties are required to sign the agreement in order to make it binding.	<input type="checkbox"/>

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

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

If the group of people working together to carry out a project or some activity or enterprise don't have a formal corporate structure, the auspicee has the legal description of being 'unincorporated'.

### If members are an unincorporated association

The legal status of an unincorporated association is uncertain because people could join or leave the group at any time. As a result, there is always uncertainty about who is a member of the group.

This has legal consequences because an unincorporated association can't enter into contracts in its own name and it creates doubt as to who can enter into contracts on behalf of the association.

Uncertainty about who is a member of an unincorporated association may lead to uncertainty about who is the legal owner of any property of the unincorporated association and uncertainty about whether individual members of the unincorporated association can pass legal title to any purchaser of property.

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

If you are uncertain, seek legal advice.

# What to do when there's a disagreement

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

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

**The most important steps if something goes wrong:**

## Stop and assess

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



## Read your auspicing agreement

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



## Try mediation

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



## Seek advice

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



For more information on resolving disputes, including mediation and going to court, see our [webpage on handling disputes and conflicts](#).

