

Joint Ventures

Legal information for community organisations

This fact sheet covers:

- ▶ what is a joint venture?
- ▶ when a joint venture is appropriate
- ▶ obligations under a joint venture agreement



This fact sheet explains some of the main features that characterise a joint venture, and when this kind of agreement may be suitable for a not-for-profit community organisation.



Disclaimer

This fact sheet provides general information about joint ventures. This information is 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 fact sheet.

What is a joint venture?

Australian courts have made it clear that no specific legal meaning attaches to a 'joint venture'.

Joint ventures are generally created by agreement (a joint venture agreement) between two or more organisations to participate in a project or undertaking together.

When two organisations enter into a joint venture, they don't merge together, or stop existing. Instead – they separately agree to work together for a particular purpose or project. Depending on what is agreed between the organisations, the organisations forming the joint venture might each contribute money, skills, knowledge or other resources to the joint venture.

A joint venture agreement is a legally binding agreement which is enforceable like the terms of any other contract. In the not-for-profit sector, quite often, the two organisations will establish a separate, new legal entity to run the joint venture.

A joint venture agreement should be carefully drafted and customised to set out the terms of the joint venture clearly.

A joint venture is **different from**:

- a partnership
- a merger
- an amalgamation, and
- a 'fee-for-service' arrangement

Although the term '**partnership**' is often used loosely in the community sector, it has a technical legal meaning. Partnerships can be formed with little formality and in some cases do not require a written agreement, which can lead to unforeseen and undesirable outcomes.

In particular, in a partnership the two or more organisations have joint interests in the project and, without a formal written agreement, are jointly and separately liable for the expenses of the project (that is, they are both liable for the expenses together but can also be liable separately for the entire amount of the expenses if the other party, for some reason, can't pay).

In a joint venture, the organisations usually have defined interests and are liable only for their own debts, which they incur individually. Joint ventures don't give rise to partnerships unless the organisations involved can be seen to have clearly intended to enter into a partnership arrangement. This means that it is possible for a joint venture to also be a partnership. You should seek legal advice before negotiating a joint venture agreement to ensure that the right type of relationship is created.

Community organisations **merge** when they join forces permanently to become one legal entity. The organisations may combine to create a new organisation (similar to an **amalgamation**) or one organisation may take the assets, operations, and employees of another (usually smaller) organisation.

In a joint venture arrangement, the organisations remain separate legal entities and combine their resources for a particular (often temporary) project

In a **fee-for-service arrangement** one organisation provides a service or product to the other for a fee or some form of fixed outcome (such as property). In a joint venture arrangement the organisations agree to work on a project together, and then to share in the product or benefits when it is completed.

Joint ventures can be structured in various ways, such as unincorporated (purely contractual) or incorporated (through a new company or other entity). For not-for-profit organisations, an unincorporated joint venture may be preferable to avoid creating a taxable entity, but this depends on the project's nature.

When a joint venture is appropriate

A community organisation may use a joint venture agreement to work with other organisations for the purposes of fundraising, service delivery or advocacy.

The combined resources of the parties are intended to produce a more effective outcome than the organisations working separately to the same purpose.

Advantages of a joint venture agreement may include:

- expansion of the organisation's ability to provide products or services
- access to resources or staff
- a temporary commitment
- sharing risks and costs associated with the project
- enhanced credibility or reach through association with another organisation

Disadvantages of a joint venture agreement may include:

- the potential to lose your income tax-exempt status (see the tip below)
- a risk of conflict
- not seeing eye to eye with the other organisation
- complexities in governance and decision-making
- potential for unequal contributions or benefits



Note – seek legal advice

As there is no settled legal definition of a joint venture, and a joint venture agreement may cover many arrangements, the collaboration must be carefully considered before entering into an agreement and you should seek legal advice about whether a joint venture is a suitable arrangement for the project.

If your organisation is income tax exempt, your activities, including those performed as part of a joint venture must be consistent with your purposes and depending on the nature of the activities involved, becoming a party to a joint venture agreement may jeopardise your income tax-exempt status, your status as a deductible gift recipient or any tax concessions you are entitled to. You should seek legal advice about this.

Depending on the circumstances, you may be advised:

- not to enter into a joint venture arrangement, or
- that the arrangement will be appropriate if the joint venture agreement is drafted in a way which complies with tax and other laws

Obligations under a joint venture agreement

If, after obtaining advice, you decide that a joint venture arrangement is appropriate for your circumstances, your obligations will arise from two main sources.

Because a joint venture is formed when two or more organisations enter into a joint venture agreement, the parties will have obligations under the joint venture agreement itself. Each organisation will also have more general (common law) obligations towards the other organisation (or organisations) in the joint venture.

Specific obligations

A joint venture agreement is a legally binding contract. Your obligations under the joint venture agreement are likely to be relatively clear and mechanical.

The joint venture agreement will typically set out terms about:

- what each organisation will initially contribute to the joint venture
- what the duration of the joint venture is
- the acts each organisation will perform throughout the duration of the joint venture
- each organisation's reporting obligations to the other parties to the agreement
- governance, decision making and control of the joint venture including who is responsible for day-to-day management
- intellectual property rights and how they are managed or shared
- confidentiality and data protection requirements, taking into account privacy laws
- the dispute resolution process that the parties will follow if there is a disagreement or dispute, and
- what happens at the end of the joint venture or if one organisation decides to leave

The details of these obligations will depend on the particular terms of the joint venture agreement.

General obligations

Organisations involved in a joint venture are also expected to exercise their rights and powers in good faith to benefit the joint venture (in addition to the duties and obligations described in the joint venture agreement).

General obligations towards the other organisation (or organisations) in the joint venture may not be as obvious as those included in the agreement. These obligations can arise from common law and the special nature of the relationship between those involved in the joint venture.

In particular, a joint venture agreement can create a special relationship of trust and confidence, known as a fiduciary relationship.

If there is a fiduciary relationship, special duties can arise, including, the duty to:

- exercise your rights and powers in good faith to benefit the joint venture
- not withhold information from the other organisations in the joint venture where the information is relevant to the joint venture
- not put yourself in a position of conflict without the other organisation's consent (such as, enter into business in competition to the business undertaken by the joint venture)

These duties may arise before you enter into a formal joint venture agreement, and continue after the agreement ends. Whether these duties arise may depend on the nature of the relationship between the parties, the form of the joint venture (for example, its significance and length) and the agreed obligations. Because these duties may arise before you enter into a formal joint venture agreement, it is important to seek legal advice early if your organisation is considering entering into a joint venture.

There are serious consequences for breaching these duties, so, it is important to ensure that you consider whether these duties are appropriate for your joint venture. If they are not appropriate, then the joint venture agreement must be carefully worded to exclude this type of relationship.



Example

Organisation A and Organisation B entered into a joint venture to purchase a property. The joint venture broke down and came to an end. Organisation A used the information they gained from the joint venture to acquire a property.

The court considered that there was a fiduciary relationship between Organisation A and Organisation B. By using the information gained from the joint venture, Organisation A breached its fiduciary duty to Organisation B, and Organisation A was required to pay compensation to Organisation B.

Disctronics Ltd v Edmonds; Kingston Links Country Club Pty Ltd v Disctronics Ltd [2002] VSC 454