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 that has an uncertain outcome and, at the end of the project, the organisations proportionately share in the project or undertaking outcome.

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 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 arrangement
- 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

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.

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

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

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.

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, that 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
- 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
- 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 owe each other the duties and obligations described in the joint venture agreement, and are also expected to exercise their rights and powers in good faith to benefit the joint venture.

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 in the joint venture.

An inadequately drafted joint venture agreement can create a special relationship of trust and confidence (known as a fiduciary relationship). So it's important to ensure that the joint venture agreement is carefully worded to exclude this type of relationship, while maintaining contractual obligations, otherwise both will arise.

Additional duties can include a duty to act for the common good – one organisation should not put themselves in a position of conflict without the other organisation's consent (such as, enter into business in competition to the partnership).

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 form of the joint venture (for example, its significance and length) and the obligations you agree to.

Case example

In the case of *Edmonds v Donovan; Disctronics Ltd v Kingston Links Country Club Pty Ltd* [2005] VSCA 27A, a joint venture made up of six parties formed to acquire a commercial property, install an operator on a long term lease, and then sell the property with the lease in place for a profit.

Two of the parties felt they were being shut out of the potential profit they could make from the joint venture in the form of commissions from professional services they contributed to the venture, so they dissolved the joint venture. The remaining joint venturers made it clear they would pay the departing members for the professional services they had performed to date, and they would continue to pursue the opportunity.

Without informing the remaining members, the departing members used the information they had obtained because of their involvement in the joint venture to successfully outbid the remaining members to acquire the property.

Both at trial and on appeal the courts found that parties to a joint venture owed each other fiduciary duties. The courts found the departing members had breached the fiduciary duty they owed the remaining members and ordered the successful bidders to compensate the remaining joint venturers for the proportion of profit they would have made if the joint venture had not come to an end.