

# Memorandum of understanding (MOU)

Legal information for community organisations

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## This fact sheet covers:

- ▶ what is an MOU and when should an MOU be used?
  - ▶ what issues will an MOU cover?
  - ▶ what are your obligations under an MOU?
  - ▶ is an MOU a legally binding document – like a contract?
  - ▶ can you have an MOU that is part binding?
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**This fact sheet explains the main circumstances in which a memorandum of understanding is suitable to document an arrangement between two parties.**



### Note

This fact sheet provides information on memorandums of understanding. 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 making a decision about what to do.

## What is an memorandum of understanding (MOU)?

An MOU can be described as 'an agreement to agree'. It's sometimes an agreement to enter into a more specific and comprehensive contract or agreement at a later time or when particular circumstances arise, after further negotiations.

An MOU will often establish a framework for the collaboration between the organisations and set out the common goals or vision of the parties to the MOU. In general, an MOU will not deal with the specific details of particular projects. AN MOU therefore tends to be more of a 'high level' document.

## When should an MOU be used?

The not-for-profit sector will typically use an MOU when organisations wish to co-operate or share information with each other, allowing each to make the most of the other's specialist skills or knowledge.



### Example

XYZ is a not-for-profit organisation that is set up to help sufferers of a particular disease and their carers. XYZ set up a website about the disease. They are aware of a hospital that has a specialist centre which has published a lot of research about the disease. XYZ approach the hospital about their work. The two organisations agree to promote each other's work on their respective websites and to work towards co-hosting a visit from an international researcher. To formalise the relationship, the two organisations write and sign an MOU.

An MOU is not usually a legally binding document (unless certain things are established, see further below), so it's not generally appropriate to use an MOU if your organisation wants to be able to enforce anything contained in it.

However, there may be circumstances where it is appropriate to have an MOU that is part binding, part non-binding. These are sometimes referred to as 'hybrid' MOUs. We discuss hybrid MOUs below.



### Example

Grassroots Community Inc. is a homelessness organisation which operates shared housing facilities for homeless people in the western suburbs of Melbourne. Grassroots leases some office space nearby, but it's bigger than what they need. Another homelessness organisation, Welcome Home Inc., operates housing units, which it rents out to homeless people, in the same area.

Welcome Home needs office space, and they have contacted Grassroots to see if they could share their office space. Welcome Home offered to enter into a short MOU with Grassroots, while they formalise the arrangement by drafting a contract.

In this example, a contract is desirable because Grassroots wants Welcome Home to pay them rent each month, contribute to the bills, and to restore the office to its original state when they decide to get their own office space in the future. Grassroots wants to be able to rely on a contract which sets out the specifics of the office sharing arrangement, and, if Welcome Home ever stops paying rent, or does something which wasn't originally agreed, Grassroots wants to be able to rely on a termination clause in a legally binding document. Grassroots instructed a lawyer draft a contract, which both organisations signed.

## What issues will an MOU cover?

The issues covered in an MOU depend on the nature of the collaboration between the organisations.

Typically an MOU document will set out:

- **details of the organisations** entering into the MOU
- **objectives of the arrangement and goals or expected benefits** – including an intention to proceed to a legally binding arrangement (if appropriate)
- that **the MOU is not intended to be legally binding** – noting that, if it is intended that **certain provisions are to be legally binding** (such as intellectual property or confidentiality), this is clearly drafted and appropriate legal advice is sought to ensure that the terms satisfy the legal requirements of a contract or deed
- **agreed actions, services and areas of support**
- **strategies and mechanisms for dealing with common issues**
- **duration of the MOU** (an agreed start and review or end date) and the circumstances in which it may be ended early
- the agreed **roles and responsibilities of each organisation**



An MOU may also include the following:

- **background to the MOU** – this can serve as a short introduction setting out why and how the parties have come together to create the MOU
- a **communication plan** between parties, such as a regular meeting schedule, any reporting requirements or information sharing
- details on **management of the MOU**, such as nominating a person (or people) in each organisation as a central point of contact for the MOU or establishing an advisory group with representatives from each party to implement the MOU
- an agreed **mechanism to resolve disputes**
- an agreed **mechanism to vary the terms of the MOU**
- how each party will deal with **confidential information**
- how each party will deal with **publicity and announcements** relating to the MOU



### Tip

To prepare an MOU, consider which issues are most important for your organisation and to achieve the purpose of the MOU (such as, to reach a later agreement or continue working together).

Our [template memorandum of understanding](#) provides example clauses.

## What are your obligations under an MOU?

Your obligations under the MOU will be set out in the document and may include obligations to:

- share information (which may or may not include confidential information)
- work in co-operation with the other party on particular types of projects
- actively promote events or activities of the other party
- refer clients to the other party, and
- jointly host events, seminars or workshops

Your obligations under the MOU should set out what your organisation has agreed to do. You should read an MOU very carefully before signing it, to make sure it reflects what you have agreed.

## Is an MOU a legally binding document – like a contract?

Generally, MOUs are written in a way that indicates they are not contractually binding, and are more like a statement of intent or an 'agreement to agree'. This is because the courts will generally not recognise agreements to enter into contracts as binding contracts themselves. **However, whether an MOU is binding or not will depend on the terms of the MOU.**



### Caution

An MOU will be legally binding if it satisfies the formal requirements of a contract. For further information on those requirements see our [guide to understanding contracts](#).



## Examples

The following MOUs are **not likely** to be legally binding:

- an MOU that says the parties will enter into a contract later
- an MOU that says the parties intend to negotiate a particular project
- an MOU that says the parties are going to 'work together' to achieve a particular outcome, without explaining how the parties will work together, or setting out in detail what the particular outcome is
- an MOU that says 'this document is not intended to create legally binding obligations', or
- an MOU which has not been signed

The following MOUs **might** be legally binding:

- an MOU that sets out in detail:
  - how one organisation is going to provide specific services to the other organisation
  - what those services are
  - how and when the other organisation will pay for those services, and
  - what will happen if an organisation doesn't fulfil their obligations, or
- a detailed MOU which states that it is intended to create legally binding obligations

Generally, if an MOU is quite detailed and includes a number of important terms (for example, about the exchange of money) it may be considered a contract in its own right.

If the MOU is relatively high level and leaves the specifics of particular projects or arrangements for later negotiation between the parties, it's unlikely to be enforceable as a contract against either party.

**If your organisation wants to enter into an arrangement that is legally binding and enforceable, an MOU is not the most suitable arrangement.** In these circumstances, your organisation should consider entering into a legally binding contract with the other party or entering into a deed, which is also legally binding.



## Tip

To avoid any uncertainty about whether an MOU is legally binding, make sure the MOU contains a specific statement to the effect that it is not intended to create legally binding obligations.

## Can you have an MOU that is part binding?

If you wish to enter into an MOU that is not legally binding, but are concerned about confidentiality, intellectual property or disparagement and want to make clauses about these issues binding, you should consider entering into:

- a hybrid agreement which states clearly which provisions of the MOU will be legally binding, or
- a separate and legally binding agreement (for example, a non-disclosure agreement)



### Note

If you want to enter into a hybrid agreement, we recommend you seek legal advice as these agreements must be drafted precisely.



### Caution - disparagement

A binding non-disparagement clause or agreement may protect your organisation's reputation by preventing another party from publicly making negative or disparaging remarks about your organisation, however, you should seek legal advice if this is a concern as the validity of such clauses is not universal.



### Caution – signing requirements for a hybrid MOU

The requirements for signing a hybrid MOU (in which some clauses are binding) or a separate agreement (such as a contract or deed) are different from the signing requirements for a non-binding MOU and are more formal.

The signing requirements relevant to your organisation's circumstances will depend on the type of organisations involved in the agreement, as well as what is being agreed.

You should seek legal advice to determine which signing requirements apply to your circumstances and comply with such requirements. You can find more information on signing requirements in our [template memorandum of understanding](#).



# Resources

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## Not-for-profit Law resources

The [Not-for-profit Law website](#) has further resources on the following topics:

- ▶ [auspice agreements](#)
- ▶ [joint venture agreements](#)
- ▶ [understanding contracts](#)
- ▶ [a template MOU](#)