

## Article Information

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## Wanting to collaborate with another NFP? Is a Head Agency Agreement right for your arrangement?

**In the second in a series of Insights on structures to assist not for profits working together, Sarah Johnson considers head agency arrangements.**

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Even before COVID-19 began to have a profound impact on the Not-for-profit sector, NFPs faced increasing complexity in terms of legal compliance, attracting donor and government funding and the need for diversification of their service offerings. COVID-19 has exacerbated these factors by significantly increasing demand for services provided by NFPs and compliance costs whilst, in many cases, simultaneously reducing public donations.

Collaboration with other NFPs allows organisations to work together on a particular project, pool knowledge and resources, broaden the range of services they offer or the persons to whom they offer services and/or more easily attract government or donor funding.

A Head Agency arrangement involves one party taking responsibility for managing the distribution of funds received from government or a significant donor and for delivery of services to recipients on behalf of one or more smaller organisations. The head agency may either receive the funding up front and then seek the co-operation of smaller specialist organisations in relation to specific aspects of the service provision (such as provision of services to Aboriginal and Torres Strait Islander communities) or may collaborate with the smaller agencies in tendering for funding for the services.

Although a Head Agency arrangement is not a recognised legal relationship like a partnership or a joint venture, the arrangement is usually supported by one or more agreements, typically in the form of “back to back” contracts whereby the head agency passes through various obligations it owes to the funder or donor to the participating smaller organisation(s).

As the Head Agency is usually responsible not only for its own actions but also the actions of the smaller organisation(s), the “back to back” contract will often contain indemnities from the smaller organisation in relation to matters for which the Head Agency may be liable to the funder or donor and a right for the Head Agency to terminate the agreement and/or cease provision of funding if the smaller organisation does not comply with the relevant passed-through obligations. The contract will also usually include obligations for the smaller organisation to provide key information to the Head Agency to assist it to perform its reporting obligations to the funder or donor.

Head Agency arrangements have a number of advantages and disadvantages. They may allow both the smaller organisation and the Head Agency to access funding and/or provide services they would not otherwise have been able to access or provide. For example, a Head Agency may be a leading provider of disability services but not have experience in providing services to persons with a particular disability or particular attributes.

A key drawback of a Head Agency arrangement is that the smaller organisation usually has less control over the arrangements and the funding than they would otherwise have had if the services had been funded directly. The Head Agency also takes on significantly more obligations in this type of arrangement than it would have had if it were the sole service provider as it is usually also responsible for the actions of the smaller organisation(s) and the outcomes arising from all of the services, rather than just the services it provides.

Head Agency arrangements provide an important tool to assist NFP organisations to access funding which might not otherwise be available to them but need to be carefully documented to ensure the rights and obligations of the respective parties are clearly defined.

If you are planning on collaborating with another NFP and would like advice regarding the optimum structure for your arrangement, please contact [Sarah Johnson](#).

*To read about whether a Memorandum of Understanding or Heads of Agreement is right for your arrangement? [click here](#)*

*To read about whether a Joint Venture or Consortium is right for your arrangement? [click here](#)*