

# Memorandum of Understanding

## Quick Guide & Template

### Disclaimer

This guide provides information on collaborating with other organisations. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal question, you should seek legal advice before deciding about what to do.

### Contents

What is a Memorandum of Understanding?.....	2
When is a Memorandum of Understanding used? .....	2
How long can a Memorandum of Understanding be used? .....	2
Who can use a Memorandum of Understanding?.....	2
Is a Memorandum of Understanding legally enforceable?.....	2
The general rule – a MoU is not enforceable. ....	2
Exception one – when a MoU can become enforceable. ....	2
Exception two – when part of the MoU can become enforceable. ....	3
How is a Memorandum of Understanding different to a contract? .....	3
Drafting a Memorandum of Understanding.....	3
Terms and conditions to consider .....	3
Template Memorandum of Understanding .....	4

## What is a Memorandum of Understanding?

A Memorandum of Understanding (MoU) is a legal document between two or more parties that aims to express their common goals and/or vision for their collaboration.

## When is a Memorandum of Understanding used?

A MoU is commonly used during the negotiation process between two or more parties. It aims to express the party's intention to collaborate and to outline the general nature of their agreement prior to the execution of a written contract. As a result, it is usually not considered legally enforceable, unless its content is detailed enough to resemble a contract (see further information on the legal enforceability of a MoU below).

## How long can a Memorandum of Understanding be used?

Although there is no fixed duration for a MoU, it is typically valid for a period of two to three years. Following this, the MoU may be renewed or renegotiated as needed.

## Who can use a Memorandum of Understanding?

Both incorporated and unincorporated entities can enter a MoU.

## Is a Memorandum of Understanding legally enforceable?

*The general rule – a MoU is not enforceable.*

The general rule is that a MoU is not intended to be legally enforceable as the nature of the agreement is too high-level (i.e. it lacks sufficient detail) to create binding terms on its parties.

In saying that, it is still encouraged for parties to explicitly state their intention to not be legally bound within the MoU. E.g., *'this MoU is not intended to create legally binding obligations.'*

*Exception one – when a MoU can become enforceable.*

Although a MoU is usually not legally enforceable, if the intent, language and/or detail of the MoU suggests that parties intend to be legally accountable for their promises, they will be held to that. E.g., if the parties intend to exchange money, if the MoU includes details on what, how and when an organisation will provide services in exchange for money, or details consequences if one party fails to deliver on their promises.

### *Exception two – when part of the MoU can become enforceable.*

Sometime parties entering a MOU may wish for some clauses to be legally enforceable. This commonly includes clauses on confidentiality, intellectual property, safety and child protection. This can be achieved through a hybrid agreement that clearly states this intention. E.g., *‘for the purposes of this agreement, the parties intend only for Clause X to be legally binding.’*

Alternatively, parties may wish to enter an MoU that is non-legally binding and create a separate legally binding agreement to address those issues.

### **How is a Memorandum of Understanding different to a contract?**

A MoU provides a basic framework for how you will work together, whereas a contract provides specific details about the terms and conditions of your collaboration. As a result, typically only a contract will be legally binding on its parties.

### **Drafting a Memorandum of Understanding**

#### *Terms and conditions to consider*

A MoU will typically include:

- The name of each party.
- Contact details for each party.
  - *E.g., key person, email, office address, Australian Business Number (ABN), etc.*
- Duration of the MoU.
  - *E.g., start date, end date, review date, any termination processes.*
- Statement declaring the party’s intention to be (or not be) legally binding.
- Context to the agreement and/or the individual intention/purpose of each party.
  - *E.g., Organisation A aims to provide administrative support to Community Leadership Group B.*
- The broad purpose of the agreement.
  - *E.g., the parties wish to develop and implement a justice reinvestment approach within X community.*
- Any shared expectations.
  - *E.g., core values, guiding principles, commitments to First Nations Data Sovereignty, confidentiality requirements etc.*
- Any agreed actions or processes.
  - *E.g., dispute resolution processes, delivery of services, communication plans (such as weekly meetings), etc. Be mindful to keep these sections ‘high-level’.*

## Template Memorandum of Understanding

*Start of template*

**Tip:** Once you have inserted relevant details within the square brackets below, remove the highlighting, square brackets, and these tip boxes. Any text currently placed in bold should remain bold after you remove these details.

### Memorandum of Understanding

**Date:** [insert date]

This is a Memorandum of Understanding (**MoU**) between:

[insert Party 1 name] ABN: [insert ABN or ACN number, if you have one] of [insert address] (referred to in this document as [‘the 1<sup>st</sup> party’s abbreviated name’]) and

[insert Party 2 name] ABN: [insert ABN number or similar, if you have one] of [insert address] (referred to in this document as [‘the 2<sup>nd</sup> party’s abbreviated name’])

#### 1 Duration of the MOU

1.1 This is a non-binding Memorandum of Understanding (MoU) between [the 1<sup>st</sup> party’s abbreviated name] and [the 2<sup>nd</sup> party’s abbreviated name].

1.2 The MoU will apply from [insert date] and will continue to apply until [insert date / certain milestone is achieved / termination by either party on the giving of 1 month’s written notice to the other].

**Tip:** Numbering each provision is optional, however, it will assist you with referring back to relevant parts of the MoU easily within future communications.

#### 2 Scope

2.1 [1st party’s abbreviated name] and [2nd party’s abbreviated name] are committed to maintaining a positive and cooperative working relationship.

2.2 [1st party’s abbreviated name] and [2nd party’s abbreviated name] are committed, where practicable to work collaboratively to deliver [insert project details].

2.3 As part of the parties’ mutual commitment, [1st party’s abbreviated name] and [2nd party’s abbreviated name] will act in accordance with the spirit and intent of this MoU, even though neither party intends that it be legally binding.

### 3 Goals and objectives

3.1 [insert details of what the parties are agreeing to work together to achieve. E.g The parties wish to develop and implement a justice reinvestment approach within X community.]

3.2 [insert details of any timelines to achieve these goals and objectives. If this is not relevant, you can delete]

### 4 Roles and responsibilities

4.1 [insert details of the roles each party, or positions in each party, which will be required to achieve the goals and objectives. This should include details of any equipment or other resources each of the parties will be required to provide.]

#### Example:

4.1 Organisation A aims to provide administrative support to Community Leadership Group B. This will include:

- coordinating meetings
- supplying a venue and catering for meetings
- setting and distributing an agenda for meeting
- taking and distributing minutes from meetings
- maintaining an action register
- Etc...

4.2 Community Leadership Group B aims to advice on the strategic direction of the justice reinvestment approach in community X. This will include:

- convening fortnightly to discuss the strategic direction of justice reinvestment in X community
- providing advice to Organisation A on the strategic direction of justice reinvestment in X community
- engaging members of X community to discuss justice reinvestment
- engaging in advocacy opportunities which promote justice reinvestment in X community
- Etc...

4.3 The parties will nominate [insert number] members each to form an advisory group, which has the following responsibilities:

- To plan, implement and evaluate obligations under this MoU.
- To develop procedures and guidelines to support the implementation of this MoU.
- To meet monthly to discuss and review implementation of this MoU.
- Etc...

### 5 Meetings

- 5.1 Meetings in relation to this MOU will be held [insert frequency] at [insert location / can be held by telephone or video conference / can be removed if not required].
- 5.2 Meetings will be chaired by [insert name/position/organisation of Chair].
- 5.3 A quorum will be [insert number of people and required position of those people – for example, ‘five members of the advisory group’ or ‘three representatives of each party’].
- 5.4 Meeting agendas and minutes will be prepared by [insert name/position/organisation].
- 5.5 Meeting agendas will be circulated to [insert parties to receive agenda – for example, ‘the advisory group no later than two days ahead of a scheduled meeting’].
- 5.6 Meeting minutes will be circulated to [insert parties to receive minutes – for example, ‘the advisory group within three days of the meeting’].

## 6 Reporting

- 6.1 [insert any details of any reporting requirements or how the parties will assess whether the goals and objectives are being met – for example, ‘a written report no more than two pages will be drafted by each party every six months. This report will provide a summary of the activities undertaken by that party over the previous 6-month period and will be distributed at least two days prior to the next advisory group meeting’.]

## 7 Procedures and guidelines

- 7.1 The parties agree to comply with and direct their staff members to comply with all procedures and guidelines developed under this MoU.
- 7.2 [insert additional procedures and policies as required].

**Tip:** You may adopt procedures and policies relating to things like consent to data collection, data storage, child protection and workplace safety. Whether you want to include this clause will depend on the relationship between the parties set out in the MoU. If you include this clause in the MoU, make sure it fits the needs of the parties.

## 8 Advertising and announcements

- 8.1 Unless required by law, an announcement, circular or other public disclosure including promotional materials such as newsletters, brochures, flyers or annual reports, referring to the contents or subject matter of this MoU, must not be made or permitted by a party without the prior written approval of the other party.

## 9 Confidentiality

9.1 The parties acknowledge that information disclosed by one party to the other (the disclosing party) during the period of this MoU may be confidential and unless required by law must not be disclosed to a third party except with the prior written consent of the disclosing party.

**Tip:** If you are concerned about confidentiality, you should seek legal advice to consider:

- entering into a hybrid agreement which clearly states which provisions of the MoU will be legally binding, or
- entering into a separate and legally binding confidentiality agreement (sometimes called a non-disclosure agreement).

If entering one of the above agreements, it is also important to seek legal advice to determine who in your organisation should sign these agreements and to ensure the document is signed in accordance with signing requirements (otherwise it may not be legally-binding).

## 10 Dispute resolution

10.1 If a dispute or difference arises between the parties out of or in connection with this MOU, either party may give the other a written notice specifying the dispute or difference.

10.11 Within [insert number] days of the date of the notice, a person holding a position of senior management of each party must meet and undertake negotiations in good faith [and by reference to the goals and objectives / roles and responsibilities set out above] and on a without prejudice basis with a view to resolving the dispute or difference.

## 11 Variation

11.1 The parties may agree to vary any of the requirements of this MOU. Such agreement must be in writing and signed by both parties.

## 12 Signatures

Signed for [insert Party 1 name] by its authorised representative in the presence of [name of witness].

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Signature of authorised representative

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Name and position of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Date

Signed for [insert Party 2 name] by its authorised representative in the presence of [name of witness].

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name and position of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Date

*End of template*