

Chapter 8 Management of Service Arrangements and Events

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8.1 Memorandums of understanding

8.1.1 Establishing the key features of a memorandum of understanding

The Service increasingly uses memorandums of understanding to document agreements with other agencies. While benefits can be derived from the documentation of agreements that exist between the Service and other agencies, difficulties may arise when they are not developed or managed correctly.

This policy has been developed to provide procedures and guidelines for all members to follow when memorandums of understanding are being considered, developed or managed.

The terms memorandum of understanding (MOU) and memorandum of agreement (MOA) are interchangeable.

Key features differentiate a memorandum of understanding from other types of arrangements between parties and include:

- (i) a MOU does not have any force in law and is not intended to impose any legally binding obligation on the parties to the agreement;
- (ii) a MOU is evidence in writing of a framework for cooperation:
 - (a) in areas of common interest; and
 - (b) where cooperation is essential to the effective and efficient performance of the parties' respective functions;
- (iii) as a MOU is not legally enforceable, there is no requirement for consideration to pass between the parties and no intention to create legal relations;
- (iv) MOUs are usually entered into between Queensland government departments or agencies;
- (v) parties enter into a MOU with the intention both will give their best efforts to achieve the outcomes sought, notwithstanding the absence of legal relations; and
- (vi) a MOU should be used to cover cooperative arrangements that otherwise cannot be found in any existing policy, procedures or legislation. A MOU is not necessary to restate existing policy or legislation.

8.1.2 Development

Members intending to develop a memorandum of understanding (MOU) should:

- (i) obtain a clear understanding of the agreement that needs to be reached and the agencies involved. This may require 'in principle' discussions with the other agency involved;
- (ii) determine if the situation to be addressed is already covered by other arrangements or policies;
- (iii) submit a report through the chain of command seeking approval from the relevant assistant commissioner or executive director to implement further discussions with the agency directed at the development of a draft MOU;
- (iv) refer to s. 8.1.3: 'Drafting' of this chapter for information on the issues that should be identified during the development of a draft MOU;
- (v) consider consulting, where necessary with key stakeholders such as the Assistant Commissioner, Ethical Standards Command; Executive Director, Legal Division; and Executive Director, Finance Division;
- (vi) forward the MOU to the Executive Director, Legal Division for formal endorsement where necessary. In complex matters, it may be appropriate to informally consult with the Executive Director, Legal Division at an earlier stage; and
- (vii) forward the MOU to the relevant deputy commissioner and/or where appropriate, the Commissioner, for signing.

8.1.3 Drafting

A memorandum of understanding (MOU) should contain the following clauses:

- (i) commencement clause;
- (ii) termination clause;
- (iii) the parties to the agreement;
- (iv) the roles and responsibilities of each party to the agreement;
- (v) a statement of purpose of the agreement;
- (vi) the intended outcome of the agreement;
- (vii) how the outcomes are to be achieved;

- (viii) any matter of particular interest to the agreement e.g. confidentiality;
- (ix) review and variation clause;
- (x) security, confidentiality and exchange of information clause;
- (xi) dispute resolution clause; and
- (xii) interpretation of terms clause.

8.1.4 When a memorandum of understanding does not apply

Internal Service arrangements should not be the subject of a memorandum of understanding (MOU) or service level agreement (SLA).

Unless exceptional circumstances exist, a MOU should not be entered into outside of the Queensland government.

8.1.5 Review period

Every memorandum of understanding should include a review clause requiring this be undertaken at least every 12 months by the originator. The purpose of the review should include not only the operation of the arrangement and whether any variation is required, but also seek to identify whether the arrangement should be incorporated into Service policy.

8.1.6 Management of memoranda of understanding

The respective Assistant Commissioner or Executive Director is responsible for the preparation and management of a memorandum of understanding (MOU) originated from within their region, command or division.

The originator is responsible for the day-to-day operation of the MOU.

8.1.7 Service signatory on memorandum of understanding

The Service signatory on a memorandum of understanding (MOU) should normally be the Commissioner or a deputy commissioner. It may be appropriate for a regional assistant commissioner to sign the MOU on behalf of the Service in circumstances where the other party relevant to the MOU operates only within the boundaries of a particular police region. Legal Division will provide advice as to the appropriate Service signatory for all MOU.

8.1.8 Records retention

The signed memorandum of understanding (MOU) and any relevant attachments are to be scanned and forwarded to Strategic Policy and Legislation, Policy and Performance Division to enable an electronic copy to be placed on the Memorandums of Understanding database, enhance records management and enable simplified search processes to be undertaken by members of the Service. Any memos or administrative documents related to the MOU are to be attached separately with the MOU when it is electronically forwarded to Strategic Policy and Legislation for processing.

The original MOU and all relevant files are to be stored locally in accordance with s. 5.1: 'Records management' of this Manual.

8.2 Service arrangements (non-memorandums of understanding)

The term memorandum of understanding is often used to describe a range of other arrangements that are distinctly different in both purpose and outcome.

8.2.1 Agreement

An agreement is a generic term covering a range of transactions. More specifically, it refers to an act in law where two or more persons declare their consent to an act being done or not being done for the benefit of the other person. The key feature of an agreement is the intention to create legal relations that affect both parties.

An agreement is legally enforceable and should be in writing. Agreements entered into with state government agencies are not legally enforceable as the party capable of suit pursuant to the *Crown Proceedings Act* is the State of Queensland. The State of Queensland cannot sue itself.

An example of an agreement would be a funding agreement establishing a project in which the Service is engaged.

8.2.2 Sponsorship arrangement

A sponsorship arrangement is a particular type of arrangement entered into by members of the Service with external third parties. These are to be in writing and are legally enforceable as they create contractual relations and give rise to legal obligations and rights. (See also s. 8.3: 'Sponsorship – guidelines for management' of this chapter)

8.2.3 Contract

A contract is an agreement between two or more parties that creates rights and obligations enforceable by law. Essential features of a contract are:

- (i) a promise by one person to another person to do or not do certain specified things (an offer);
- (ii) that promise is then accepted by the other party (acceptance); and
- (iii) consideration passes between the parties usually by way of exchange of money, goods or services.

Examples of contracts include consultancy arrangements, the purchase of information technology software or hardware and catering services for academies.

8.2.4 Contract for services

These are special types of contracts. These contracts relate to the engagement of a person as an independent contractor to perform a service for the organisation. Such contracts do not create an employment relationship of employer/employee with the person contracted.

Examples of where a contract for services may be used would include the engagement of a gardener or cleaner for a particular police station.

8.2.5 Contract of service

These are also special types of contracts. A contract of service creates an employment relationship between the parties. The employee falls under the control of the employer and is subject to the terms and conditions of employment.

An example of a contract of service is recruit contracts which are entered into under the *Police Service Administration Act*.

8.2.6 Lease

A lease is a conveyance or grant of possession of property for the duration of a fixed period, a set term of years or for a person's life, usually in exchange for payment of rent or some other benefit. A lease must be in writing and should be executed on behalf of the State of Queensland.

Leases are legally enforceable. Leases do not exist between various government agencies as, pursuant to the *Crown Proceedings Act*, the right to sue and be sued rests in the State of Queensland. Where a leasing arrangement is sought between government agencies, it is usual for some other documentation to reflect the agreement such as an exchange of letters.

Capital Assets and Facilities Management Group, Organisational Capability Command usually administers leasing arrangements for the Service.

8.2.7 Licence

A licence can be contractual in nature and therefore can be enforceable. A licence should be evidenced in writing. A licence is an authority in writing for a person to do something that otherwise would be inoperative, wrongful or illegal.

Licences may be used to govern use of copyright or intellectual property in respect of a product either developed by or seeking to be utilised by the Service, where the intellectual property vests in another party.

8.2.8 Other undefined arrangements

Some arrangements are difficult to define. These arrangements include those that are not intended to be legally enforceable yet do not have an ongoing commitment that may otherwise require a MOA/MOU. The characteristics of these arrangements are that they are generally non-contractual and relate to "one off" transactions.

Such arrangements can be reflected in an exchange of correspondence that sets out in writing the terms and conditions on which the arrangement is entered.

Examples may include arrangements made under s. 10.2: 'Authorisation of disclosure' of the *Police Service Administration Act* by an authorised person to release information to another government agency, or where the Service accepts a donation from a member of the public.

8.3 Sponsorship

Queensland Government Sponsorship Framework

The Queensland Government Sponsorship Framework delivers a coordinated and consistent approach to the way Queensland Government agencies manage sponsorship opportunities.

This framework incorporates the:

- (i) Queensland Government Sponsorship Policy;
- (ii) Queensland Government Guidelines for Providing Sponsorship; and
- (iii) Queensland Government Guidelines for Receiving Sponsorship.

The Service's sponsorship procedures align with these mandatory principles and processes contained within the Queensland Government Sponsorship Policy (QGSP).

Definitions

Sponsorship

The right to associate the sponsor's name, products or services with the sponsored organisation's service, product or activity, in return for negotiated and specific benefits such as cash or in-kind support or promotional opportunities. It involves a negotiated exchange and results in tangible, material and mutual compensation for the principal parties to the arrangement. Sponsorship can take the form of cash and/or in-kind support.

Out of scope

Sponsorship does not include:

- (i) grants or direct funding, which are monies or goods provided to a recipient through a formally recognised program for a specified purpose.
- (ii) monies paid through a bidding process to attract events.
- (iii) endorsements, ex-gratia payments, donations, philanthropic gestures, bequests or gifts, which impose no obligations on the receiver and offer little or no return to the donor. A sponsor expects to receive a reciprocal benefit beyond a modest acknowledgment.
- (iv) purchasing or selling goods or services for value, including advertising space, editorial comment or advertorials.

Sponsorship is not provided to individuals. The provision of funding to enable staff to attend training courses, personal development opportunities or other such activities is also not considered sponsorship.

Service members are advised definitions of 'In-kind Sponsorship', 'Incoming Sponsorship' and 'Outgoing Sponsorship' are also contained within the QGSP.

See also s. 11.4: 'Gifts or benefits offered to members of the Service' of this Manual for matters which are assessed as 'out of scope' of this policy.

Corruption risk

Sponsorship, both incoming and outgoing poses significant reputational risk to the Service due to the potential for fraud or misuse of funds, corruption, bias and inappropriate associations. Compliance with the QPS Sponsorship Framework will be overseen by Ethical Standards Command (ESC), the Queensland Audit Office (QAO) and through on-line financial reporting.

Authorisation prior to commencing or adopting a sponsorship approach

The Service's Sponsorship Responsible Officer (SSRO), ESC Integrity and Performance Group, finance officers within the region/command/division and Legal Division are to be consulted for advice when assessing and drafting sponsorship event proposals, and subsequent sponsorship agreements.

Irrespective of the value, prior to commencing or adopting any incoming and outgoing sponsorship approach on behalf of the Service, in accordance with s. 8: 'Appropriate Authorisation' of the QGSP, the originating member is to:

- (i) conduct and document an assessment of the intended sponsorship proposed against the ten Principles of the QGSP. Where the proposal or opportunity is assessed as holding the necessary standard of alignment and significant value to the Service and the Queensland community, the member will consult with the SSRO, a member of Planning and Performance, Policy and Performance Division, Strategy and Performance (SPP). If concurrence is achieved, the member is to forward correspondence through their chain of command to:
 - (a) report on the alignment of the sponsorship proposal with the QGSP guiding principles, the value to the Service and Queensland community, and the concurrence of the SSRO; and
 - (b) request that if supported, the sponsorship proposal or opportunity be forwarded for consideration and approval of the Commissioner (as the Minister's nominated delegate) for sponsorship commencement;
- (ii) obtain the written authorisation of the Commissioner (as the Minister's nominated delegate) via the chain of command before commencing any further sponsorship related activity. The Minister has delegated this authority to the Commissioner (available from the SSRO), irrespective of the proposed sponsorship value (of cash and in-kind support) or whether the sponsorship is to be given by, or received by, the Service.

Upon obtaining the Commissioner's written authorisation, any subsequent completed Queensland Government sponsorship agreement (within that Commissioner-approved sponsorship proposal or opportunity) may be signed by the appropriate Service executive officer's delegate who has the appropriate level of financial delegation (under ten million dollars).

Planning and Performance, SPP will facilitate progression of appropriate sponsorship opportunities and ensure, in consultation with ESC, that effective strategies are implemented which prevent members of the Service from obtaining personal benefit or advantage as a result.

All sponsorships are to be fully documented and evaluated using the appropriate Queensland Government templates in alignment with the QGSP. However, if substantial reason exists to use another document or template, this is to be documented and explained in sufficient detail to fully justify this deviation.

The Commissioner has the authority to approve commencing sponsorship arrangements (either the giving or receiving of sponsorship) for values up to ten million dollars as authorised by the financial delegation under s. 5.2.3 of the Queensland Executive Council Handbook. Any sponsorship proposal over this value must be approved by the Governor in Council.

Financial Management Practice Manual

The Financial Management Practice Manual (FMPM) provides policies and practices for the Service and other agencies. The FMPM statements which support the Service are available on the FMPM webpage on the Service Intranet. Advice or assistance on appropriate financial management practices can be obtained by emailing Fin HelpDesk[BNE].

All financial transactions associated with the Commissioner-approved sponsorship proposal or opportunity are to be conducted through appropriate cost centre codes, in full compliance with the FMPM and under the guidance and scrutiny of the appropriate region/command/division finance officer.

Members involved in sponsorship that consists of co-ordination and management of events—such as conferences—are to use the Event Management—Financial Considerations Checklist available on the Forms for Finance webpage on the Service Intranet (see also s. 8.4: 'Event management' of this chapter).

Management and reporting

Effective and transparent management and reporting processes must be applied to ensure public value and accountability of Service sponsorship arrangements. The Service's SSRO is charged with Service-wide and interagency coordination of sponsorship proposals or opportunities.

The duties of the SSRO include conducting strategic assurance on behalf of the Service executive for all sponsorship opportunities. The SSRO can advise members on developing their approach proposals, business cases and evaluations as required, ensuring appropriate risk assessment is undertaken by members and is documented, the approach to sponsorship proposals or opportunities is approved, aligns with and supports the Service's goals and objectives, and is appropriately managed.

Queensland Government Sponsorship Network

Where an approach is made to more than one agency for sponsorship, or more than one agency is to provide sponsorship of the same opportunity, a unified whole of government approach must be taken.

Sponsorship activities are to be coordinated across the Queensland Government Sponsorship Network (QGSN) to gain leverage, greater value for money and public benefit and the QGSN exists for this purpose. The Service's representative is a member of Planning and Performance, SPP.

Members receiving Sponsorship requests may encourage the inquirer to seek Sponsorship from the Queensland Government for significant initiatives and events. The inquirer can also be directed to:

- (i) the Queensland Government Sponsorship Request webpage; and/or
- (ii) Best Practice guidelines for event delivery in Queensland on the Department of Premier and Cabinet (DPC) webpage.

Planning and Performance, SPP is to ensure that all cash and in-kind sponsorship, both incoming and outgoing, is reported to the DPC, on request at the conclusion of each financial year. This information is to be published on the QPS internet, Sponsorship Register webpage, hosted within the Right to Information pages, on a quarterly basis, using the template provided on the Sponsorship webpage on the Service Intranet.

Procedure for QPS internet web page publication is to be conducted in a similar manner to the reporting of Gifts and Benefits given that the Queensland Police Sponsorship Register is also collated and published online on a quarterly basis. This should occur in consultation with the Right to Information and Subpoena Unit, Right to Information and Privacy Services.

8.4 Event management

Members who have responsibilities as project or event managers or finance officers should ensure they are aware of all the relevant financial issues prior to the commencement and over the duration of a project or event. The Event Management–Financial Considerations Checklist available on the Forms for Finance webpage on the Service Intranet provides some guidelines and highlights the main issues to be considered by responsible members. The checklist is not a comprehensive list but, instead should be referred to as a guide in conjunction with Whole of Government and Service policies on procurement, corporate cards, travel, and entertainment etc. when managing an event or project.

Any issues or concerns in relation to the checklist should be directed to Financial Resource Services, Finance Division.

Any member who considers that an independent financial audit is required for a specific event, should refer the matter to Ethical Standards Command, so that a proper assessment can be made as to the viability to conduct such an audit after consultation with financial audit partners.

ORDER

Members who manage events—such as conferences—are to use and retain the Event Management–Financial Considerations Checklist available on the Forms for Finance webpage on the Service Intranet.

8.5 Negotiating written arrangements with a foreign government agency

The Service is legally required to comply with the approval and notification requirements in the *Australia's Foreign Relations (State and Territory Arrangements) Act* (Cwth) (AFRA).

The Foreign Arrangements Scheme (FAS) requires Queensland government agencies, including the Service, to notify or seek approval from the Australian Minister for Foreign Affairs (**'Foreign Minister'**) if they propose to negotiate, or enter, or have entered, a foreign written arrangement.

The FAS applies to all arrangements which are in writing, whether legally binding or not. An arrangement can include contracts, agreements, understandings or undertakings, memoranda of understanding and any other written arrangement which represents a commitment between the two parties.

The Scheme covers all countries (including countries with which Australia has close intelligence or law enforcement relationships) and all police written arrangements (including those that are operational, sensitive and classified), with only three limited exemptions. The three exemptions from the FAS are where the written arrangement:

- (i) is for resource/information sharing for declared emergencies, if negotiated and entered during the emergency;
- (ii) deals with minor administrative or logistical matters (such as visa applications or timing of conferences); or
- (iii) is solely dealing with child protection.

There is no exemption for urgent circumstances. The AFRA applies even if an Australian Government agency, such as the Australian Federal Police, is also party to the written arrangement.

The Foreign Minister may refuse to approve any proposed written arrangement if:

- (i) it would adversely affect foreign relations; or
- (ii) it is inconsistent with foreign policy.

Seeking Foreign Minister approval

The AFRA contains strict timeframes and requirements for approval and notification of all foreign arrangements. Failure to comply with these will render the written arrangement invalid and unenforceable. It would be unlawful for the Service to give effect to such an arrangement.

The timeframes and requirements will change depending on the type of foreign entity the Service is entering into an arrangement with. Depending on the type of entity, the arrangement will either be a 'core' or 'non-core' foreign arrangement.

A core foreign arrangement is an arrangement with a foreign national government or a department or agency of that government (e.g. New Zealand Police).

A non-core foreign arrangement is an arrangement with a foreign provincial or local government or a department, agency or authority of that government, or a university that does not have institutional autonomy (e.g. New York Police Department).

Strategic Policy and Legislation, Policy and Performance Division (SPL) will facilitate the approval process. Depending on the type of arrangement, seeking Foreign Minister approval can take a maximum of between 30 days and 60 days. It is important to consult with SPL as early as possible for guidance on how to comply with the FAS.

ORDER

A member is not to negotiate or enter into a foreign arrangement without first receiving advice from SPL that the FAS has been complied with.

Members are to notify SPL:

- (i) before they:
 - (a) begin to negotiate a written foreign arrangement; or
 - (b) enter into a written foreign arrangement on behalf of the Service; and
- (ii) after they enter a written foreign arrangement on behalf of the Service,

the SPL:

- (i) will assist with the notification/approval process and the member is to provide any further information necessary for this; and
- (ii) is to notify the member of the outcome of the notification/approval process.

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