



**JOBS AUSTRALIA**  
NATIONAL CONFERENCE

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AUGUST 2014

Heather Watson  
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Developing alliances and  
collaborations in the NFP sector  
— tricks and traps

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### Overview

- Factors driving a need for change
- What are the options: alliance, collaboration, merger
- Considerations for model to be pursued
- Possible structures
- Risk mitigation strategies



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## Factors driving a need for change

**Global Influences**

- Growth in Asian economy
- Next wave of industries for Australia
  - tourism
  - agribusiness
  - international education
  - wealth management
  - gas
- Communication via technology
- Health and aged care

**External influences**

- Competition in service delivery
  - multinationals
  - for profits
  - sole providers
  - community collaborations
- Changing regulatory environment (increasing complexity)
- Changed government contracting / funding frameworks

**Internal influences**

- mission drift
- business complexity
- lack of board capacity
- diminishing pool of volunteer directors

**Large operators may have advantages**

- For Profits – niche providers with technology and capital
- Large NFPs will demonstrate
  - value proposition
  - outstanding customer relations
  - efficiencies
  - resources
- In many parts of Australia, relevancy to local and regional demands will remain important



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## Context – factors driving a need for change

- New concepts
  - social impact measurement
  - social return on investment (**SROI**)
  - social accounting
  - social impact bonds
- Contestability
- Competition the enemy of survival of NFP
- Does it matter if change is being 'imposed' or led?



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## ALLIANCES AND COLLABORATIONS



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## Why would you?

- Sharing resources
  - staff
  - education and training
  - ‘back office’ function
- Procurement
- Funding / government tendering
- Specific purpose / project
- Future sustainability



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## Procurement / resource sharing

- Significant opportunity savings across all participants
- Examples of possible procurement focus
  - energy, water
  - IT
  - Telstra/telecommunications
  - insurance – self insurance
  - motor vehicles
  - work force
  - accreditation
  - clinical and quality governance frameworks and capacity

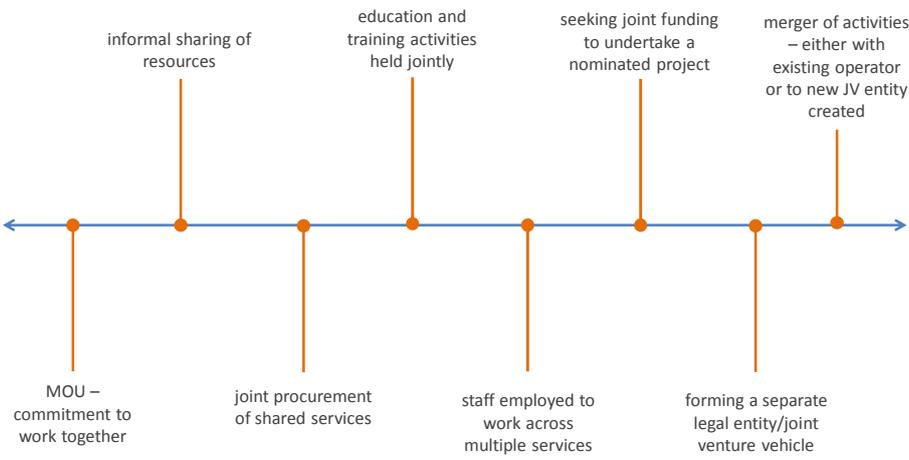

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**Procurement / resource sharing**

- Example Deloitte article
  - [http://deloitte.wsj.com/cfo/files/2013/07/supplier\\_collaboration.pdf](http://deloitte.wsj.com/cfo/files/2013/07/supplier_collaboration.pdf)
- Outsourcing procurement capacity – example Church Resources
  - <http://www.cr.org.au/>


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**Model considerations – collaboration continuum**



	informal sharing of resources	education and training activities held jointly	seeking joint funding to undertake a nominated project	merger of activities – either with existing operator or to new JV entity created
MOU – commitment to work together		joint procurement of shared services	staff employed to work across multiple services	forming a separate legal entity/joint venture vehicle



**Model considerations**

- Does it further your organisation's object or purpose
- Identification of a single purpose
- Mission drift
- Legislative restrictions
  - specific Acts e.g. Aged Care; NRSCH
  - tax concessions
- What structure to use



**Model considerations – principles of approach to structure**

- Understanding the legal and tax structures of each of the participants
  - where are the similarities and where are the differences
- Understanding the variations in governance structures
  - how will this impact on decision making for what we want to do together
  - how will participants enter and exit
- Liability issues for each participant and their directors
  - unincorporated model
  - incorporated model
- Can participants participate in other consortiums



**Model considerations – principles of approach to structure**

- Branding and identity
  - how will incoming and outgoing participant’s interest in branding be provided for
  - what is the risk to reputation of other participants if there is a risk/public profile issue for one of the participants
  - how will costs of branding be shared
- Sharing of income and expense
  - how will this be done



**Model considerations – principles of approach to structure**

- Issues associated with shared staff
  - who is the employer
  - who is responsible in the event of mistake – what will a participant’s insurance company say
  - how are employee costs shared and principles for calculation of cost determined
  - how is the employee held accountable where there is more than ‘employee’
  - are FBT concessions appropriately still available where multiple types of activities (PBI and non-PBI) are undertaken
  - at what point is a shared services legal entity a model that is viable



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**OPPORTUNITY FOR QUESTIONS /  
COMMENTS?**



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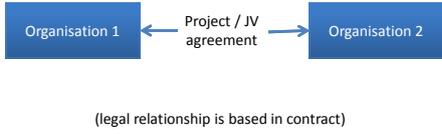


**MODELS**


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**Specific purpose project**

- MOU
  - binding or non binding
- Binding agreement
  - contract
  - joint venture
    - partnership; or
    - separate legal entity



(legal relationship is based in contract)


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**Specific purpose project**

- Governance relationship through separately incorporated entity



(legal relationships in both governance arrangement and contract)


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When does 'joint venture' constitute a merger or acquisition

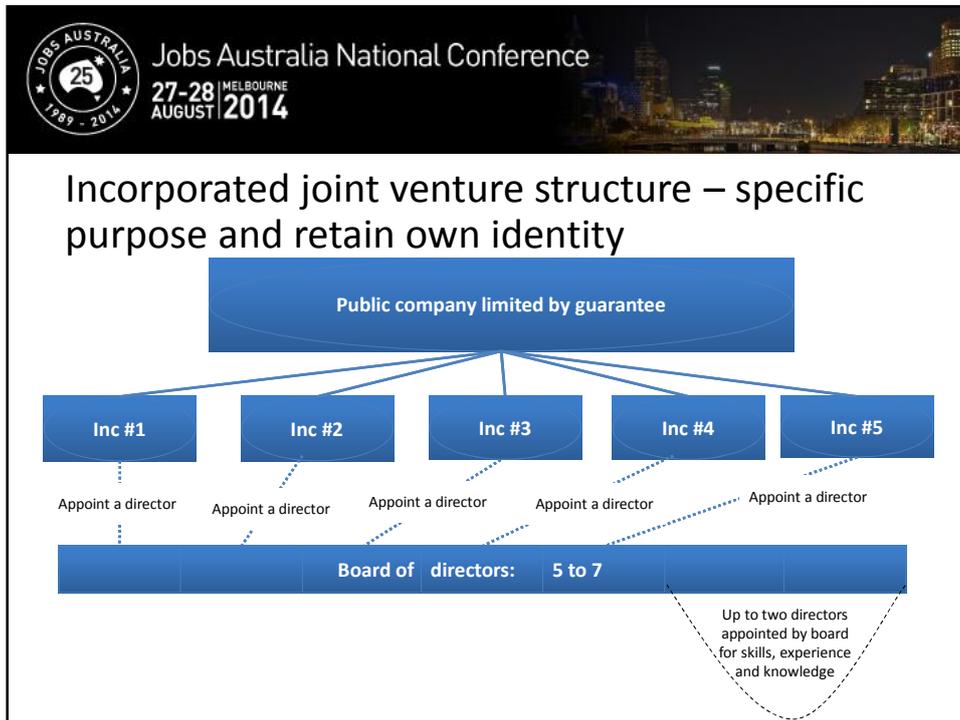



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Incorporated structure

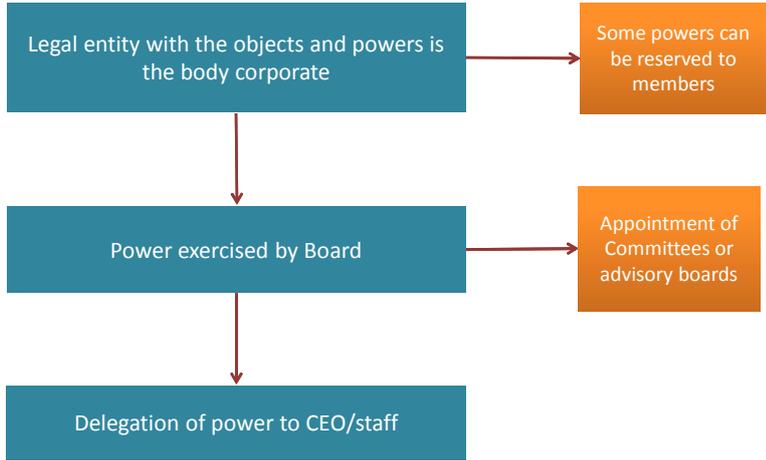
- Why Corporations Act entity?
- For profit or not-for-profit?

**A not-for-profit organisation must not operate for the profit or gain of its individual members.**  
**This does not mean that it can not make a profit.**  
**Any surplus must be used only to further the purpose of the organisation.**  
**This can be compared to a for-profit organisation which is free to distribute profit to its owners or shareholders.**




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### Overview – basic legal structure

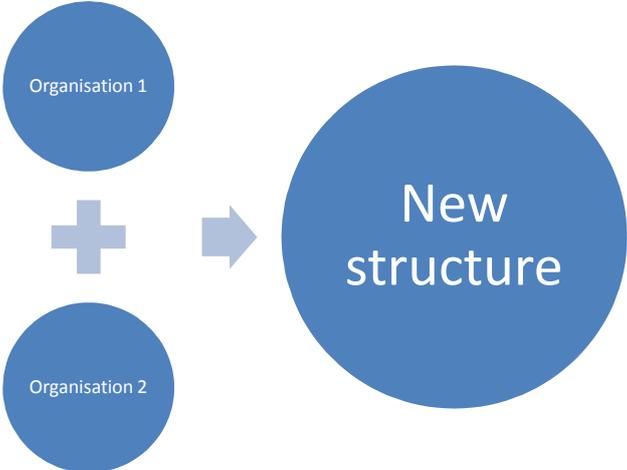


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    graph TD
      A[Legal entity with the objects and powers is the body corporate] --> B[Power exercised by Board]
      B --> C[Delegation of power to CEO/staff]
      A --> D[Some powers can be reserved to members]
      B --> E[Appointment of Committees or advisory boards]
  
```


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### Form one entity and disband existing entity



```

    graph LR
      O1((Organisation 1))
      O2((Organisation 2))
      O1 --- P[+]
      O2 --- P
      P --> NS((New structure))
  
```



This slide features the same Jobs Australia logo and conference details as the previous slide. The main content is a list of bullet points under the heading "Beginning the process – how to start". To the right of the list is a small illustration of four stylized figures holding hands in a circle.

**Beginning the process – how to start**

- Determine the best process
  - facilitated discussions
  - governance committee with representatives of both organisations
- Be clear about what you are offering and what you need from the other party
- Be prepared – think about what the other party needs from the arrangement and take a comprehensive view of the situation
- Set guidelines for the discussion
- Strive for mutually beneficial solutions
- Seek independent legal / financial advice





**Approaching the negotiations**

- Address any power imbalance
- List, rank and value your issues (and then consider concessions you might make)
- Research the market and consult with colleagues and partners
- Allocate sufficient resources to plan (including alternative solutions)
- Set realistic goals and expectations
- Determine what you will do if the negotiation, or a particular outcome, fails



**Approaching the negotiations**

- Understand why you would take this path and revisit that objective throughout process to ensure that it is being achieved
- Boards must be working together – ensure consistent and parallel approaches by boards and management
- Have a framework and a structured approach
- Ensure key stakeholders are involved, ensuring staff from both entities are involved in the planning and execution stages
- Plan well to ensure culture integration



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### Risk mitigation strategies

- Due diligence
- Transparency
- Management of conflicts of interest
- Confidentiality
- Privacy
- Dispute resolution process
- IP
- Warranties and indemnities



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## OPPORTUNITY FOR QUESTIONS / COMMENTS?



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