



MEMBERSHIP, GROWTH & DIGITAL TRANSFORMATION

Partnership and MOU Governance: The Label That Isn't the Legal Answer

Writing 'non-binding' on a document doesn't make it so. Courts look at substance, not the title

Memoranda of understanding are common across the not-for-profit sector, used whenever two organisations want to formalise a working relationship without entering a full commercial contract. The word most boards attach to an MOU, non-binding, is doing more work than it can actually bear, and treating every MOU as automatically free of legal risk is a governance mistake.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

In this resource

1. [The Label On The Document Is Not What Decides Its Legal Status](#)
2. [The Delegation Question Most Associations Never Ask Before Signing](#)
3. [Why Review Shouldn't Stop At Signing](#)

The Label On The Document Is Not What Decides Its Legal Status

Simply writing memorandum of understanding at the top of a document does not automatically make it non-binding under Australian law. Courts look at what the document says and how the parties actually behaved, not the label chosen, and a document will operate as an enforceable contract if it contains the ingredients of one: offer and acceptance, consideration, sufficiently certain terms and an intention to create legal relations, judged objectively from the words and conduct of the parties (see *Ermogenous v Greek Orthodox Community of SA Inc* [2002] HCA 8). The signatory must also have authority to bind the organisation. An MOU that reads more like a firm commitment than a statement of shared intention can be found binding regardless of what it is titled. The specific trap worth understanding: even where the bulk of an MOU is non-binding, individual clauses within it, confidentiality obligations or exclusivity arrangements in particular, can remain independently enforceable even while the rest of the document carries no legal weight at all. An association that believes its entire MOU is non-binding, while one clause buried inside it is, has not actually avoided legal risk. It has simply not noticed where the risk sits.

The Delegation Question Most Associations Never Ask Before Signing

Precisely because an MOU can carry real legal weight, the question of who has authority to sign one on the association's behalf deserves the same deliberate answer as any other significant commitment, connecting directly to the delegation of authority discipline discussed earlier in this series. A chief executive signing an MOU that commits the organisation, financially, operationally, or reputationally, beyond what their delegated authority covers has created a governance gap whether the document is labelled a contract or an MOU.

Why Review Shouldn't Stop At Signing

MOUs are frequently signed with care and then filed away, unreviewed for years while the relationship and circumstances around it continue to change. A partnership MOU signed for a specific joint program that has since evolved, ended, or changed scope entirely deserves the same periodic review discipline this series has recommended for other governance documents, rather than being treated as a one-time formality that never needs revisiting.

- Treat every MOU as a document requiring legal review before signing wherever the relationship involves real stakes, rather than assuming the label alone protects the organisation from enforceable obligations.
- Identify and flag any specific clause, confidentiality, exclusivity, or otherwise, that may bind the organisation independently even within an MOU intended to be broadly non-binding. Where the parties intend the MOU to be non-binding, say so expressly, list any clauses intended to be binding, and frame the rest as intentions rather than obligations.
- Confirm the signatory's actual delegated authority to commit the organisation before any MOU is signed, connecting directly to the delegation of authority discipline discussed earlier in this series.
- Distinguish clearly between an MOU intended purely as a statement of shared intent and situations where a binding contract is the appropriate document, rather than defaulting to an MOU because it feels lower-stakes.
- Review existing MOUs periodically as circumstances change, retiring or updating those tied to programs or partnerships that no longer reflect the current relationship.

A memorandum of understanding can be a valuable, flexible tool for formalising a collaborative relationship without the weight of a full commercial contract. It is not, by virtue of its name alone, a document without consequence, and a board that treats it that way has simply moved the real governance risk somewhere less visible.

This is one of the practical governance topics built into our Association CEO course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

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BOARDROOM ACTION WORKSHEET

Partnership and MOU Governance: The Label That Isn't the Legal Answer

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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