

## Joint Working Agreement (JWA) Guidelines

### Purpose

Family and Community Services (FACS) has developed this guide for service providers, to provide clarity on Joint Working Agreements (JWAs) and subcontracting for Homelessness Services.

This document has been developed with input from the homelessness peak organisations (Homelessness NSW, DVNSW and Yfoundations), Justice Connect and relevant business units within FACS.

### This guide is no substitute for legal advice

FACS strongly advises that all service providers obtain legal advice to ensure the agreement you devise meets the specific needs of your collaboration and sufficiently covers your organisation in risk areas.

### What are Joint Working Arrangements and Agreements?

The term 'Joint Working Arrangement' does not have a set legal definition but is a broad concept used to describe two or more organisations working together for a variety of reasons, including to deliver services. JWAs are essentially structures for collaboration between organisations for the provision of services and can range from informal alliances, through to the joint delivery of a project.

A Joint Working Agreement is the document that covers the roles and responsibilities of each party in a Joint Working Arrangement.

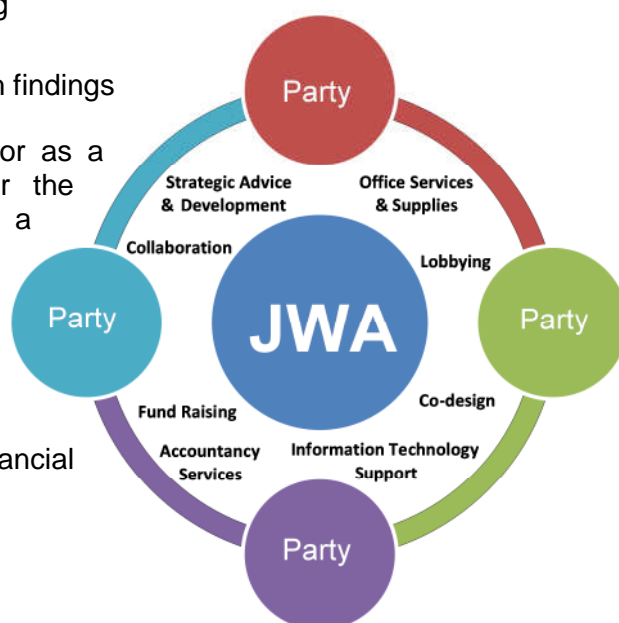
Organisations may decide to work together for a range of reasons, including:

- Increased efficiency
- Shared overhead costs
- Increased reach or broader service offering
- Improved outcomes for clients
- Shared knowledge, learnings and research findings

Organisations can collaborate for a fixed time or as a permanent arrangement. Generally, the closer the collaboration, the more important it is to have a formal agreement in place, such as a contract or deed.

Less formal arrangements can use a memorandum of understanding, which is usually not contractually binding.

Agreements may be non-financial and/or financial depending on their purpose.



A **non-financial agreement** (for services provided without funding provision) may be formed for parties to increase their knowledge pool, share and contribute to more effective services, and lobby or work collaboratively with government on the co-design of services.

A **financial agreement** (for services provided through receipt of funding) may explore ways to lower overheads and reduce red tape, lower procurement costs, lower input costs, and achieve other cost savings as a means for funding to be directed to frontline service delivery. For example, an agreement may improve buying power through joint purchasing of goods and services, such as accounting services, IT support or office supplies.

An agreement may also be formed for the purpose of contracting with government agencies. The three types of working arrangements most commonly seen with homelessness service providers are:

- **Alliance:** a network or informal arrangement between agencies that agree to work together to share knowledge, learnings and research findings. Generally there may or may not be a written agreement, steering group or other governance body. For example, an alliance may serve as a local advisory or consultation network, or develop an agreement to provide referral pathways between agencies. Under these arrangements, agencies contract with FACS independently.
- **Consortium:** similar to an alliance, though often with more structure and shared specific objectives or shared activity. A consortium allows two or more not-for-profit organisations to combine their capabilities when responding to a government tender. This can help them meet geographic coverage requirements, or to provide the scope of services required by the tender. A consortium is not a legal arrangement in-and-of-itself. It can be formed using a number of legal structures, such as a memorandum of understanding, joint venture or sub-contracting arrangement. For example, three agencies agree to tender for a FACS contract but one is appointed the lead to contract with FACS for SHS service delivery and, by agreement, the lead sub-contracts part of the services it is required to deliver to the other two agencies.
- **Joint venture:** a contractual arrangement where two or more organisations agree to formally work together on a specific project for a common goal. When organisations agree to enter into a joint venture, they do not merge but separately work together for a particular purpose or project. There are two main types of joint ventures:
  - (a) *unincorporated joint ventures* – where the joint venture is based on a formal contract signed by each of the organisations; and
  - (b) *incorporated joint venture* – where the joint venture is incorporated as a separate legal entity of which the participating organisations are members or shareholders. For example, an incorporated joint venture entity which is a company or an association contracts directly with FACS for SHS service delivery and then subcontracts the services to the organisations that are members of the new entity.

### Why is an agreement a good idea?

Some arrangements create enforceable rights and obligations. Others do not. Trust plays an important part in relationships between organisations. However, even where there is trust on which to build, a written agreement can help avoid misunderstandings. It

provides a common reference point, and is useful for guiding collaboration on a daily basis as well as if/when confusion arises. If staff change or disputes arise, the agreement can be crucial to maintaining mutual understanding and expectations between the parties.

So that all parties are clear, it is good practice to define roles and responsibilities, and the boundaries that separate joint work from the ongoing operations of each party. The process of discussing what goes into an agreement is a good way to build relationships between the parties, and to develop joint 'ownership' of collaborative work.

The agreement could also be used to explain to funders/commissioners how your collaboration works. It can describe whether agreements are non-financial for collaboration, strategy or policy development, etc., and/or financial for contracting with FACS for SHS service delivery.

### Making your agreement work for you

Use your agreement as a practical reference tool. It can help you review how well the collaboration is working, and how you should manage your risks.

The agreement should be a living document. It should include set dates to assess how well it reflects the way that the parties choose to work together, and how well the relationship is going. Any changes made to the agreement should be discussed and agreed, using the same process as for the original document.

### What you should include in your agreement

- **Parties** – accurately name all of the parties to the agreement including listing the ABN and address of each organisation.
- **Purpose and intent** – provide a brief but clear outline of what the agreement is about and what you are aiming to achieve together. This section of an agreement is usually referred to as the 'Recitals' or 'Background', and is not necessarily binding.
- **Term** – the agreement should clearly set out date that the arrangement will start and when it will end.
- **Roles and responsibilities** – clearly outline what each organisation's responsibilities are under the arrangement.
- **Statement of work** – define the work that each party intends to perform, how work is allocated and required resources.
- **Costs and assets** – who will source or provide and pay for facilities or support used by the collaboration, for example, premises, equipment, phone lines, consultants, employees?
  - Will these assets then become the property of the collaboration, jointly owned, or remain owned by one party?
  - If jointly owned, can each party use them?
- **Funding** – if the agreement is about the delivery of SHS funded services, set out clearly which organisation will be responsible for administering the funding and how funding will be allocated between the parties:
  - What proportion of the funding will each party get?

- Will any administration fee be payable to the Lead Entity for administering the funding? The agreement should address this.
- **Fundraising** – will one party take responsibility for identifying funding sources and securing future grants or contracts? How will you co-ordinate this work? Will time spent on this be incorporated into payment made to the party responsible?
- **Intellectual property** – what intellectual property (such as copyright and trade marks) will be created as a result of the collaboration? The agreement should clearly set out who owns any existing and future intellectual property and on what terms the other parties can use it.
- **Communicating with collaborating parties** – how will you:
  - Communicate with the other parties about the progress of your collaboration?
  - Share additional information as a commitment to learning from each other or in relation to any funded project?
  - Make referrals between the collaborating parties?
- **Disputes** – the agreement should have provision for dispute resolution between the parties and the Lead Entity and FACS. *Note: as per Section 20 of the Funding Deed – any dispute that arises between the collaborating party and the Lead Entity that impacts on the Funding Deed/PLA, FACS would manage the dispute directly with the Lead Entity.*
- **Tenders** – the agreement may want to consider provision for tendering for future government funding as a joint entity, or individually as stand-alone entities.
- **Termination** – the agreement should be clear about when and how the agreement can be brought to an end. Usually agreements are able to be terminated early if one party fails to fulfil its obligations. You should also consider what will happen when the parties' relationship ends and what aspects of the agreement need to continue to apply after termination for example confidentiality obligations and intellectual property rights.
- **Liability, insurance and indemnities** – the agreement should make clear:
  - Who is responsible for any loss or damage to any third (outside) party caused by any activity undertaken in the course of the agreement.
  - Whether one party agrees to (wholly or partly) indemnify or compensate the other party for any costs or liabilities associated with the activities to be performed under the agreement.
  - Whether insurance is required and which party is required to take out appropriate insurances.

### Some risks you should consider

- **Assess the viability and sustainability** of the collaboration, including its capacity to meet the required objectives. Prospective collaboration parties should incorporate the potential impacts of the proposed collaboration on their organisation into its risk management plan.

- **Differing expectations and loss of identity** – take your time getting to know the other parties before entering into anything formal. When small organisations collaborate with larger ones, there is a risk that the approach and culture of the smaller organisation may be overwhelmed. If you are a large organisation, be clear about your objectives to allay any fears the smaller party may have.
- **Change of key personnel** – if your relationship is based solely on contact between a few senior personnel, it may be vulnerable when these people leave the organisation. You can mitigate this risk by developing a formal agreement to add longer-term certainty and encourage regular interactions between other staff in your organisations.
- **Compliance** – ensure that any work you agree to undertake complies with all legal and organisational policies and procedures of the funding agency and you are aware of, and comply with, all professional and regulatory codes.
- **Performance** – understand the performance obligations between yourselves and any contracts you may have with government funding agencies.

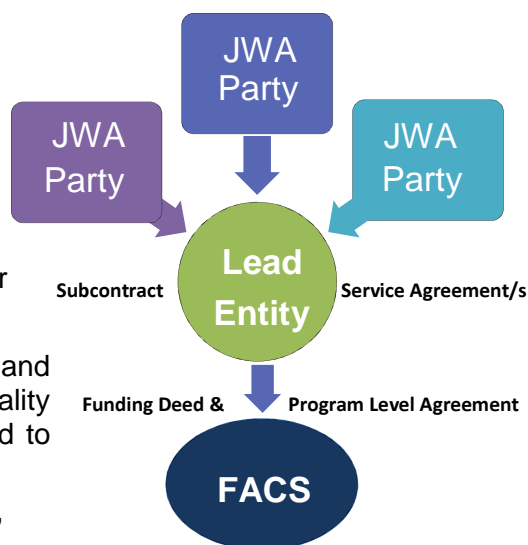
## Working with FACS and your JWA parties

### Benefits of Joint Working Agreements

Joint Working Agreements provide a mechanism for FACS and sector organisations to collaborate on service delivery to:

- improve the overall capacity of the collaborating organisations and the sector for better outcomes for beneficiaries
- share a workload and resources, lower overheads and reduce red tape around contracting and quality systems; this means more funding can be directed to frontline service delivery
- allow for diverse thinking, increase knowledge pool, share and contribute to more effective services
- foster levels of trust where organisations have a common culture focused on need and quality of service
- create the environment for taking risks in developing new service models
- create the motivation for people to pull together, which in turn drives and sustains the collaboration.

There are different levels of collaboration or approaches to working together that services will establish to facilitate access for their clients. Formal mechanisms such as case coordination groups can be an effective approach. However, in some circumstances informal arrangements between services can be effective where only a phone referral is



required to access a service. Service providers understand their service systems and can determine the level of formality they need to put in place to facilitate the most effective response for their clients.

## Subcontracting

Where a JWA has been established to tender for a FACS contract, the collaborating parties will choose a Lead Entity (primary or principal contractor) to contract directly with FACS. With FACS' agreement, the Lead Entity may in turn subcontract the delivery of some or all of the FACS services to its collaborating parties (subcontractors), e.g. delivery of specialised services for a target group in the subcontractor's area of expertise.

Clause 21.1 of the FACS Funding Deed states that a service provider may sub-contract part of a Program Level Agreement (PLA) to a sub-contractor with prior written consent from FACS. FACS may refuse to consent to the service provider sub-contracting the service.

## The contract – between the Lead Entity and FACS

FACS and the Lead Entity will negotiate a Funding Deed and Program Level Agreement/s. The Lead Entity will have a direct contract relationship with and receive funding from FACS. The Lead Entity is responsible for the acquittal of all services.

## The subcontract(s) – between the Lead Entity and subcontracted organisation(s)

Where the Lead Entity has negotiated a subcontract/s, they will be responsible for:

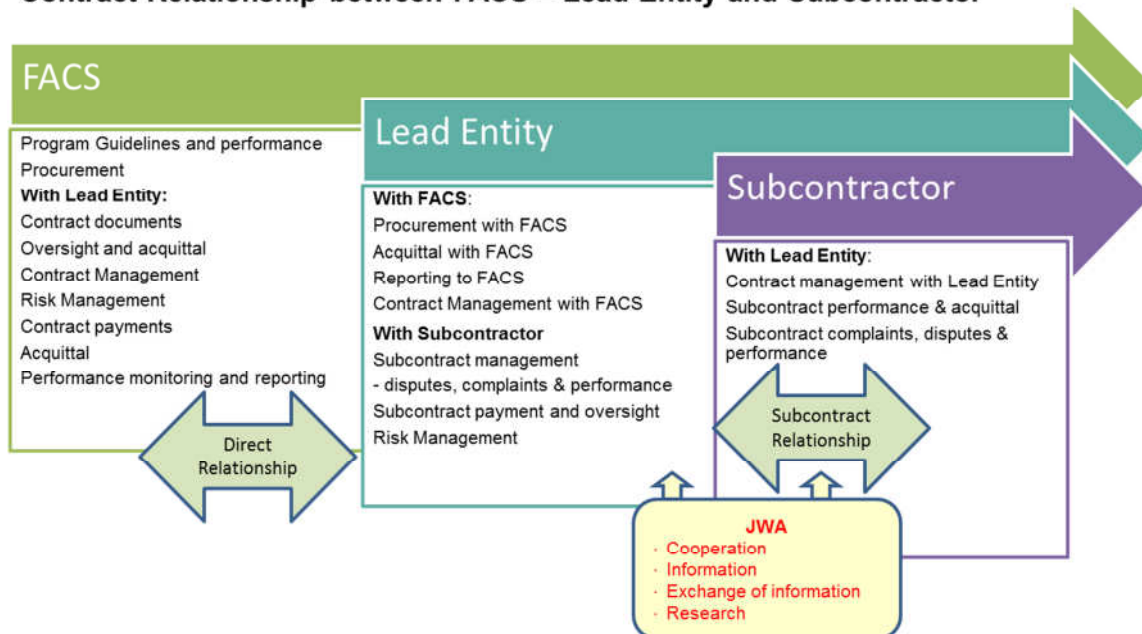
- overall contract performance and payments to subcontractor/s
- the management of complaints or disputes with its JWA subcontractor
- ensuring subcontractor/s comply with all laws, regulations, accreditations and policies; and that they have adequate governance and financial controls, policies and procedures for the delivery of FACS-funded services
- ensuring personnel are properly authorised, accredited, trained and experienced
- ensuring the highest professional and ethical standards are maintained
- ensuring performance risks are minimised.

## Who is responsible for managing subcontract performance issues, complaints or disputes?

Where a performance issue, complaint or dispute arises between the Lead Entity and its subcontractor, or where these matters have been raised directly with FACS, the department may oversee and/or provide advice or guidance directly to the Lead Entity. The department will not engage directly with subcontractors on any contract performance matters.



## Contract Relationship between FACS – Lead Entity and Subcontractor



## Contact details

### Community, Homes and Place (Homelessness Branch)

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### Peak organisations

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