



A GUIDE TO AN AUSPICE AGREEMENT

**Community Capacity Building Team
Parramatta City Council**

Prepared by Sparke Helmore Lawyers

2012 Auspice Project



The **Community Capacity Building Team of Parramatta City Council** works with internal and external stakeholders to build strong and resilient communities.

Strong communities are:

- Trusting
- Connected
 - to place
 - to services
 - to people and each other
- Engaged
- Empowered
- Creative users of resources
- Respectful of differences
- Innovative
- Willing to donate their skills and times to others.

The things we do to build strong and resilient communities are:

- Demonstrate innovation
- Professional development
- Advocacy
- Organisational development
- Network enabling
- Information provisions
- Partnership building
- Increasing resources
 - social resources
 - environmental resources
 - economic resources.

Disclaimer

This publication can only be a guide to the issues you should consider and is intended to encourage best practice in auspicing for small grants of \$10,000 or less. It is not legal advice or exhaustive of all the issues that need consideration for auspicing or for the negotiation or drafting of an auspice agreement. Whether or not you should enter into an auspicing arrangement for your community project, whether you need an auspice agreement, and what aspects of the relationship may need to be included in a written agreement, is a complex case-by-case decision and independent legal and/or financial advice may be required for all parties involved.

Throughout this guide, we refer to a case study to help explain some of the legal issues of auspicing. The case study is a fictional scenario and any resemblance to real persons, organisations or events is purely co-incidental.

Auspice agreement provisions in this guide are specific to the needs of the case study scenario and are not intended for use as they may not suit your particular community project or legal interests. This guide is intended for persons and organisations residing/operating in NSW, Australia and is current at 1 March 2012.



This work was prepared by Sparke Helmore Lawyers (www.sparke.com.au). The work was assisted by a pro bono contribution through 'Share', Sparke Helmore's community engagement scheme.



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Capacity Building Team of Parramatta City Council
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WORDS AND TERMINOLOGY USED IN THIS GUIDE

'**ABN**' means Australian Business Number.

'**ASIC**' means the 'Australian Securities & Investments Commission'.

The individual, unincorporated group (which the law may consider an "unincorporated association"), incorporated association or other entity undertaking a community project to be auspiced is called '**THE AUSPICED PARTY**'.

The incorporated community organisation auspicing the project is called the '**AUSPICING BODY**'.

'**DGR**' means 'deductible gift recipient'.

'**FUNDING BODY**' means the giver of a grant.

'**LIABILITY**' is a legal responsibility, duty or obligation to provide compensation or other consideration to a person or entity that has suffered damage or harm by the doing or not doing of something by another party (e.g., failure to comply with a requirement of a contract or failing to do something reasonable to satisfy a duty of care to prevent injury to a person).

'**TCC**' means 'tax concession charity'.

'**NSW**' means New South Wales.

Things you should know for the auspicing of your community project

Sometimes individuals, unincorporated groups or even incorporated associations with great community project ideas partner with existing non-profit organisations to help a project happen in our community. This type of relationship is often called 'auspicing'.

Auspicing can be a relatively quick and efficient way to secure funding and get a community project started, in some cases, without establishing your own organisation or seeking the tax or charity endorsements that you might need to attract funding. It also enables you and your community project to benefit from the skills, infrastructure, resourcing, legal and insurance protection and management of an existing organisation that, depending on what is agreed, can also benefit from the relationship.

Indeed, the auspicing body may benefit

from charging an auspicing fee, from the experience of seeking and managing the grant funding, and even sometimes from tangibly helping the implementation of the community project by mentoring people involved. A lot of organisations that auspice gain satisfaction from doing so because their contribution builds community capacity, often in areas of community activity relevant to their own vision and mission.

As with any partnership, however, it's important to clarify the nature and expectations of the relationship from a legal perspective, such as who will be responsible for what aspects, and how it will progress.

This guide is designed to help you be more aware of the legal aspects of the auspicing relationship so you can build a strong partnership for the success of

your community project. It highlights the need for a written agreement that can help avoid disputes by defining responsibilities and procedures for the relationship from the outset. Using a case study to illustrate issues, posing helpful questions for your and the Auspicing Body's consideration, and giving examples of Auspice Agreement provisions, this guide can help you look at the essentials you need to consider for any written agreement between you and the community organisation.

Getting the legal issues sorted can be a great start to a community project and can be the foundation of a successful auspice experience. We hope this guide will be helpful to you and in the achievement of your community objectives.

An introduction to our case study – “Family to Family Parramatta”

Three people in Parramatta have met regularly to help new migrants and refugees through the settlement process with the benefit of their own experience and networks, themselves having arrived in Australia within the last 3 years. They haven't established any incorporated association or other corporate entity for their work because the members have been happy so far to guide new arrivals through such practicalities as job search, selection of accommodation and schools, and helping parents with language skills. They mainly become aware of families to assist through local schools.

One recurring issue for many of the refugees assisted is stress

and anxiety, especially for those who have been in immigration detention for lengthy periods and who have had limited language skills and social support.

They find that 'family to family mentoring' (i.e., where one established family helps a newly arrived family transition to life in Australia) was helpful to many within the first 12 months of settlement. The group therefore calls themselves 'Family to Family Parramatta'.

A NSW Government agency called 'FamilyActive NSW', focusing on family functioning, health and welfare projects, advertised their community small grants program and one member of 'Family to Family Parramatta',

named Asad, brought this to the group's attention. They think it would be a great idea to seek \$10,000 to improve, formalise and help evaluate their community project through the 'Family to Family Mentoring Pilot Program'. If demonstrated to be effective, their hope is that the project will attract further funding for a co-ordinator and expand the number of families that could be mentored. If this is successful, it is also anticipated that 'Family to Family Parramatta' will one day operate as a charity in its own right.

Finding an Auspicing Body

As with any partnership, a critical factor is finding a partner that you can work with and can meet your auspicing needs. This usually involves some research and contact with possible auspicing bodies so you can make a proposal and see whether it's feasible for them.

In order to do this with confidence, you need to be clear:

- What your community project will involve.
- What auspicing the project will require.
- What outcomes or protections you need from the auspicing arrangement.
- Who you need to speak to. Often the board or management committee of a prospective Auspicing Body will need to give approval for auspicing arrangements, so it's important for you to be sure that you are dealing with people who have authority to

represent the board or committee concerned, before you invest a lot of time and effort discussing a possible relationship.

- What the requirements of the funding body are. It is important for you to be aware of your likely funding sources and check their requirements as this may impact on the type of organisation you need the Auspicing Body to be. Some organisations providing grants for community projects can only give to community organisations with 'deductible gift recipient' (DGR) and 'tax concession charity' (TCC) endorsement. DGR endorsement allows a donor to claim a tax deduction for making their donation so long as the donation is \$2.00 or more. TCC endorsement allows a charity to access tax concessions such as income tax, fringe benefits tax and/or goods and services tax (GST) concessions because of their status as a charity.
- An Auspicing Body with DGR and TCC endorsement will need to be sure that your community project is consistent with what they already do for the community and would be compliant with the regulations and requirements for holding these endorsements.
- What type of organisation you are looking for. You will also need to ensure that the Auspicing Body is the type of entity that you need to partner with. For example, usually funding bodies will want to contract with organisations that are legal entities in their own right, such as a company limited by guarantee, an incorporated association or a registered co-operative. It is also important for them to be legal entities in their own right because you may wish to rely on their insurances and limited liability.

Case Study – “Family to Family Parramatta”

Asad checks with 'FamilyActive NSW' about their funding conditions and is advised that they can grant money to charities with both DGR and TCC endorsement, but that these endorsements are not essential, and that community projects must meet certain criteria. He obtains their grant application kit and, with the support of others involved with “Family to Family Parramatta”, writes a brief proposal on what they hope to do with more resources, how they might pilot their “family to family mentoring” program, and over what period of time they would do so. They also consider how they would comply with the funding conditions of 'FamilyActive NSW'.

Asad obtains letters of support from people who have benefited

from 'family to family mentoring'. He then approaches several charities in Parramatta to see whether they are interested in supporting their plans. He concentrates on charities that do similar work by providing welfare support, counselling and assistance to people in need. He asks each one whether or not they had received grant funding from 'FamilyActive NSW' previously and briefly explains why they intend to seek grant funding, what they hope to achieve with the funds, and that he is seeking an Auspicing Body to take on the project.

After speaking to a few charities, only one was keen to look into it a bit more and asked for a brief overview of their activities and plans. The organisation that is interested to know more is

a Public Benevolent Institution called “Parramatta Welfare Solutions Incorporated” and Asad speaks to their General Manager, Jillian. Luckily, Asad and his colleagues have already worked on some of the details and he forwards their proposal for Jillian's consideration.

Jillian replies that she will submit the information to her Board of Management and get back to Asad with their thoughts. If auspicing of the project is acceptable, Asad explains they will need some help in drafting the grant application to 'FamilyActive NSW'. Jillian suggests it might also be helpful to apply to other funding bodies as well, in case the application to 'FamilyActive NSW' doesn't work out.

Helpful questions at this stage for the Auspiced Party

- What are the funder's requirements for making a grant or other disbursement for your community project? Does the prospective Auspicing Body and your community project meet those requirements?
- What will an auspicing arrangement mean to the way you operate your community project?
- What benefits are you seeking from the auspice arrangement? Is the prospective Auspicing Body able to meet those requirements? Example issues are outlined later in this document.
- What are the possible disadvantages of an auspice arrangement for your community project? Can you accept those disadvantages in proceeding with an auspicing arrangement?
- Should you consider establishing your own legal entity, in preference to an auspicing arrangement?
- Do you need legal, financial or strategic advice to be informed of your options for the best way to proceed?

Helpful questions at this stage for the Auspicing Body

- What are the funder's requirements for making a grant or other disbursement? Does the Auspiced Party's community project meet those requirements?
- What impact will an auspicing arrangement have on your existing operations and is the community project consistent with your objects and purpose?
- What benefits are you seeking from auspicing the community project? Are funding realities and conditions, as well as the Auspiced Party, able to meet those requirements?
- What are the possible disadvantages and risk management issues for you of an auspice arrangement? Can you accept those disadvantages and risks?
- Are there other options reasonably available to the Auspiced Party that might avoid the necessity of an auspice arrangement?
- Do you need approval of the Board or Management Committee of the Auspicing Body to proceed with such an auspicing arrangement?
- Do you need legal, financial or strategic advice to be informed of your options for the best way to proceed?

Negotiation phase

Once you have identified the preferred Auspicing Body, then it's time to negotiate what the auspicing relationship will mean. It's a good start to look at the issues in this guide under 'The Auspice Agreement', starting on page 7, and simply talk with the Auspicing Body and work out issues to a point where both of you are satisfied. It's often a good idea to write a record of your meetings about the proposed auspicing arrangement, so it's clear what was discussed and agreed upon. Sometimes face-to-face negotiations don't really happen and the negotiation process is more about considering the draft Auspice Agreement, communicating what needs to be changed from your perspective, and asking the Auspicing Body to consider your changes.

You will also need to work out who will be primarily responsible for drafting the Auspice Agreement. Sometimes the Auspicing Body will have access to their

own documents or legal advisers that can draft an agreement. Sometimes you may need to draft the agreement yourself and give it to the Auspicing Body for consideration. You may need to obtain legal advice for drafting the agreement, especially if the arrangement raises complex issues.

If you don't understand aspects of any agreement given to you, ask that it be explained to you and obtain your own legal advice. It's often a good step to set aside some resources for legal expenses and obtain legal advice about a contract before you sign it or to try and secure pro bono legal advice. Some Auspice Agreements are really simple and you may be confident to proceed without obtaining legal advice. Others can be quite complex and sometimes involve considerations that are not immediately obvious to people who are not used to dealing with contracts or where English is not their first language.

An agreement given to you by the Auspicing Body may not protect your interests in the same way it will protect theirs. Some provisions may have the interests of the Auspicing Body foremost in mind and a legal review of the agreement can contribute a lot to your confidence that your particular interests are taken into account. Some people worry that consulting a lawyer might suggest you don't trust the Auspicing Body and that this might affect your relationship with them. Getting legal advice is not about trust – it's about making sure you are aware of the nature, risks, and other implications of the relationship. This is especially important if you are an unincorporated group, in which you are operating without the benefit and protection of a separate identity (i.e. the limited liability of an incorporated association or a non-profit Company).

Case Study – “Family to Family Parramatta”

Jillian meets with Asad to tell him that the Board of Management of “Parramatta Welfare Solutions” is supportive of auspicing the project, subject to funding and an Auspice Agreement. She says they are prepared to assist in drafting and submitting the grant application to ‘FamilyActive NSW’ and to two other funding bodies. Jillian explains that her organisation has provided a lot of assistance to migrant families over the years and is excited about “family to family mentoring” as a form of extra support. She anticipates “Parramatta Welfare Solutions” will have no problem promoting mentoring opportunities to migrant families who are well established.

As “Parramatta Welfare Solutions” have auspiced community projects from time to time, they already have an Auspice Agreement for Asad’s consideration. Jillian gives Asad a copy of the draft Auspice Agreement and asks that he get back to her with any concerns or proposed changes. She says once the terms of the agreement are satisfactory, they will work together on submitting grant applications. Jillian explains that much of the Auspice Agreement will depend on them successfully securing funding for the project.

Asad takes the draft Auspice Agreement and discusses it with the others who volunteer for “Family to Family Parramatta”.

They don’t understand some parts of the agreement and also Asad is worried he and the other members of the group might bear personal liability because they are listed individually as a party to the agreement. He wants to get some legal advice on what that might mean for them and generally check that the agreement is in their interests.

As ‘Family to Family Parramatta’ doesn’t have any operating funds, Asad contacts a law firm that promotes its pro bono program on its website and is able to secure some free legal advice about the draft Auspice Agreement. He meets with a lawyer, David, who explains the agreement to him.

Helpful questions at this stage for both parties

- Do you need an Auspice Agreement and who will be responsible for drafting it? Are legal costs or other expenses of the agreement going to be shared?
- Who will sign the Auspice Agreement for each party and, if the Auspiced Party is an unincorporated group and one person is to sign, have all the members agreed to give that person authority to do so?
- Do you understand the draft Auspice Agreement given to you? Or do you need a lawyer to draft the Auspice Agreement?
- Is the draft Auspice Agreement consistent with your discussions and/or previous correspondence?
- Does it cover all the issues it needs to?
- Do you need legal advice to understand the draft Auspice Agreement and/or to make it more appropriate or comprehensive?
- Is there a need for a further meeting to discuss any questions or concerns?
- Do you understand your obligations, are they acceptable to you and can you comply with them. Are you personally liable if something goes wrong?
- Do you understand your own and the other party’s obligations and are they sufficient?

The Auspice Agreement

It's important that the auspice relationship is well managed. Sometimes auspicing fails when one or both parties don't understand the implications of the relationship or take tangible steps to comply with their respective responsibilities. Auspicing is a legal relationship. It's not just a technical issue for grant funding or insurance coverage. Problems can occur when the Auspiced Party's expectations are different to the Auspicing Body. That's why an agreement can be so helpful. It should make everything clear from the start.

You will also need to decide when would

be the best time to enter into a formal agreement with the Auspicing Body. Sometimes the parties leave formal agreement until funding is secured for the community project. However, that might not be the best approach as by that time the auspice relationship has clearly started and could already be based on different subjective understandings. Ideally, formal agreement should occur before steps are taken by the Auspicing Body to apply for funding.

The Auspice Agreement between you and the Auspicing Body should be catered to the needs of both parties

and the overall auspice arrangement. It's therefore not possible to provide a standard agreement that can be used in all cases. However, it's helpful to point out some of the issues that should be addressed in coming to an agreement with the Auspicing Body and to use our case study, 'Family to Family Parramatta', to illustrate how some of the issues can be expressed. However, it's important to note that these provisions are specific to the needs of the case study scenario and are not intended for use as they may not suit your particular community project or legal interests.

The parties

It's important that any Auspice Agreement correctly names the parties involved to ensure that it's binding on the right persons or entities. If the Auspiced Party is, for example, an incorporated association, the name of the association should be specified and the person who has authority to enter into contracts on behalf of the association should then be a signatory to the agreement. The same would apply to the Auspicing Body as it would normally be an incorporated association, a company (usually a company limited by guarantee), a registered co-operative or even a trust fund. Internet searches (e.g. an ABN or ASIC search) can be conducted to ensure that correctly named entities are specified.

The situation is not so clear, however, when the Auspiced Party is an unincorporated association because it is not a separate legal entity and does not have the capacity to enter into a contract on this basis. Any contract

naming the unincorporated association is at risk of being unenforceable, so an Auspicing Body may not wish to enter into an agreement unless an individual or individuals from the unincorporated association accepts responsibility. The approach will depend on what risk the Auspicing Body is prepared to accept as some are not so concerned about this technical issue.

Also, depending on the nature of the agreement, there may also be risks for the Auspiced Party. For example, if the Auspiced Party is an unincorporated association, the individual members may bear personal liability if something goes wrong, particularly if the Auspice Agreement doesn't address or displace liability (see 'Insurance' below for further information about this). This is because the unincorporated association doesn't benefit from the very advantage of operating as a separate legal entity like an incorporated association or company limited by guarantee, that is,

the limitation of liability of its members to the value of their membership fee or a nominated amount as specified in their Constitution.

If there is a hesitancy to proceed to agreement because of the above, whether in the Auspicing Body or in members of the Auspiced Party, it may be better to incorporate first (e.g., become an incorporated association) before entering into the agreement. Whether this is an attractive option is a case-by-case decision and may impact on the very needs or motivations of entering into an Auspice Agreement in the first place. For example, some organisations that act as an Auspice Body have conditions on their insurance that prevents them from auspicing groups that are already incorporated. So, incorporating may limit the number and type of organisations who are able to auspice you.

Case Study – “Family to Family Parramatta”

The beginning of the draft Auspice Agreement between ‘Family to Family Parramatta’ and ‘Parramatta Welfare Solutions Incorporated’, mentioning the parties, looks like this:

Auspice Agreement

1. PARTIES:

- 1.1 Parramatta Welfare Solutions Incorporated (ABN 99 253 122 9999) of 16 Huxtable Avenue, PARRAMATTA, NSW, 2300, a Public Benevolent Institution, endorsed as a deductible gift recipient and being exempt from income tax (the “Auspicing Body”); and
- 1.2. Asad DeLonga of 22 Geymar Street, Parramatta, Mila Svenovich of 32 Fedwin Close, North Parramatta, and Gela Solamay of 45 Elkin Avenue, North Parramatta, the membership of ‘Family to Family Parramatta’, an unincorporated association (the “Auspiced Party”).

Asad’s lawyer, David, does an ASIC and ABN search and confirms that the Auspicing Body, ‘Parramatta Welfare Solutions Incorporated’ is an incorporated association, is mentioned correctly by name and operates as a Public Benevolent Institution, with both DGR and TCC endorsement. Asad notes these endorsements are not necessarily required to receive a grant from ‘FamilyActive NSW’, but the DGR endorsement would help for the donations the Auspicing Body intends to seek as an additional source of funds. The signing page at the end of the Auspice Agreement looks like this:

EXECUTION OF Auspice Agreement:

By executing this Auspice Agreement, each signatory accepts all its terms and conditions and represents that he or she is duly authorised to sign on behalf of their entity. The date of this agreement will be the date it has been executed by both parties.

AUSPICING BODY

Signed by (Print name) JILLIAN MATHERS)
Signature

and (Print name) NATHAN PILLGER)
Signature

as authorised representatives for and on behalf of:

PARRAMATTA WELFARE SOLUTIONS INCORPORATED

Witnessed by (Print name))
Signature

DATE:)
Signature of Witness

AUSPICED PARTY

Signed by:

(Print name) Asad DeLonga)
Signature

(Print name) Mila Svenovich)
Signature

(Print name) Gela Solamay)
Signature

As the membership of:)
Signature

FAMILY TO FAMILY PARRAMATTA, an unincorporated association

Witnessed by (Print name))
Signature

DATE:)
Signature of Witness

David confirms that it isn’t unusual for the members of the unincorporated association to be individually mentioned in the agreement and be asked to sign it because they aren’t operating as a separate legal entity. All three members will need to sign the Auspice Agreement or agree in writing that a particular member can sign on their behalf. Asad says he is worried about personal liability and David says he would need to read the rest of the agreement to know what risks would be involved if they proceed with the Auspice Agreement as drafted.

Helpful questions for this issue for both parties

- Are the right entities or persons mentioned as parties to the agreement? Do they have authority to sign the agreement?
- Are the parties and the community project compliant with prospective funding requirements?
- By signing the agreement, do you bear any personal liability if something goes wrong?

Helpful questions for this issue for the Auspiced Party

- If an unincorporated association:
 - o Would it be better to establish an entity such as an incorporated association to contract with the Auspicing Body to limit liability?
 - o Are all members going to sign the agreement or is authority to be given to one member to sign?

Introductory statement

It is usual practice to have a statement at the beginning of the agreement to ensure that the purpose and background of the agreement is clear to the parties. This introductory statement is called the 'Recital' and is not the operative part of the agreement. It is an opportunity to express the context of the agreement, such as what led to the agreement being made, and establishes from the outset the intention of the parties.

Case Study – “Family to Family Parramatta”

The Recital in the draft Auspice Agreement as given to 'Family to Family Parramatta' looks like this:

2. RECITALS:

- 2.1 The Auspiced Party designed a community project called the 'Family to Family Mentoring Pilot Program' (the Project – see Clause 4 for definition);
- 2.2 At the Auspiced Party's request, the Auspicing Body has offered to auspice the Project and apply to small grant funding bodies in consultation with the Auspiced Party for co-operative implementation of the Project in accordance with this agreement.

Helpful questions for this issue for both parties

- Is the background to the agreement accurate?
- Is the intention of the agreement clear from the outset?
- Should any additional details be included to clarify the intention of the parties?

Duration of the agreement

Defining the duration of the agreement is a good way to create clear boundaries for the relationship. Usually, an Auspice Agreement must have a commencement date and a termination date or, at the very least, clarify the circumstances in which the agreement may be terminated (which we'll discuss a little later). Usually, an auspice arrangement has a life cycle – the parties may co-operate to enhance/modify the community project, co-operatively work on funding applications, deal with

funding bodies, co-operate as agreed on implementation and reporting, evaluate project implementation and outcomes, account for expenditure, and then undertake steps to disengage from the relationship. Depending on the community project, this process can take a long time. It's therefore very important to specify a term of agreement that is practical for the parties – for example, it would be problematic if the agreement concluded before the cessation of the Project or before funding obligations

have been complied with. Indeed, some Auspice Agreements expressly link duration of the agreement to funding obligations and might specify that termination of the agreement occurs when funding acquittal documentation is submitted (which is usually the final obligation to the funding body). Finally, to account for the possibility of delays, some agreements contemplate how the agreement can be extended.

Case Study – “Family to Family Parramatta”

The draft Auspice Agreement given to Asad of 'Family to Family Parramatta' specifies a 'term of agreement' ceasing on the last date of acquittal for funding, or until the expiry of 18 months, or until the agreement was otherwise terminated, whichever comes first. Asad looks at his implementation plan for the Project and, considering the time it would take to secure funding, considers 18 months to be a reasonable period. He also finds it reassuring that the term can be extended by agreement of the parties.

OPERATIVE PART

3. TERM OF AGREEMENT:

- 3.1 This Auspice Agreement commences on the date on which it is executed by both parties and continues until compliance with the last date of acquittal for any funding secured for the Project, upon the expiry of 18 months from the commencement date, or until it is otherwise terminated in accordance with this agreement, whichever comes first.
- 3.2 The parties may extend the agreement by consent for whatever period is considered necessary, but the extension must be confirmed in writing.

Helpful questions for this issue for both parties

- Is the duration of the agreement practical, considering the nature of the community project and the logistics of funding and implementation?
- Is duration of the agreement linked to the completion of funding obligations?
- In case there are delays, is there provision for extension of the agreement?

The community project

The community project to be auspiced needs to be well defined so it's clear what the auspice arrangement is about. Usually at the beginning of the Auspice Agreement there is a statement that describes the community project, sometimes referring to an attachment (i.e. an Annexure) that details the community project and its budget, outlining the milestones of the project and giving a timeline for their implementation. It's a good idea to specify in the implementation plan which party is responsible for specific implementation milestones, so

boundaries and contributions are clear. It is also appropriate at this stage to indicate which of the parties authored the community project, or whether it was indeed a co-operative process, as this records the origins of the community project because sometimes this issue can be a source of disagreement if not settled from the outset.

Disagreements can also arise if the scope and specific responsibilities of the community project are not explained well and if it does not match details of the community project for funding

purposes and/or its implementation budget. For example, a significant aspect of the community project not described in the Auspice Agreement or in funding applications may be considered by the Auspicing Body as outside the scope of the agreement and funding arrangements. Indeed, it may be a breach of funding agreements to use funds on activities that were not part of the original funding proposal without the permission of the funding body.

Case Study – “Family to Family Parramatta”

Asad and the other volunteers work on the details of the community project, called the ‘Family to Family Mentoring Pilot Program’, before approaching ‘Parramatta Welfare Solutions Incorporated’ with a proposal. He has a detailed project proposal, with milestones and timelines, which is included as ‘Annexure A’ in the draft Auspice Agreement and which will subsequently be used to help make applications for funding. It helps a lot to define the community project as can be seen in the relevant section of the draft Auspice Agreement given to Asad.

4. THE PROJECT

- 4.1 The Project referred to in this agreement, called the ‘Family to Family Mentoring Pilot Program’, is a 12 month pilot program designed by the Auspiced Party that aims to provide 25 newly arrived refugee and migrant families, residing in the Parramatta Local Government Area, with psychosocial support through holistic family mentoring activities delivered with the assistance of participating mentor families who themselves have a refugee or migrant background and who have lived in Australia for at least 5 years. Details of the Project’s Implementation Plan and Project Budget are provided in Annexure A.
- 4.2 The parties agree to seek funding for the Project as specified in the Implementation Plan and, subject to sufficient funding being secured of at least \$12,000.00, accept and will carry out their respective additional responsibilities for the Project as specified in the Implementation Plan and to comply with the Project Budget in doing so.
- 4.3 The parties warrant that:
 - 4.3.1 They will comply with the law in discharging their obligations under this agreement for the effective administration and implementation of the Project; and
 - 4.3.2 That each has the necessary qualifications, skills, expertise and experience to achieve the Implementation Plan and to do so in compliance with the Project Budget.

Asad’s original implementation plan is amended to include feasible timeframes and, reflecting his discussions with the Auspiced Body, refers to the Auspiced Body in the achievement of specific milestones. A section of the implementation plan is given below. In this case, the Auspicing Body, a public benevolent institution in its own right, wanted to be involved in particular aspects of the community project’s delivery as can be seen in the implementation plan.

Excerpt from Annexure A

IMPLEMENTATION PLAN

Milestone	Key Performance Indicator	Start Date	Completion Date	Responsibility for implementation
Draft up to 3 Funding Applications to funding bodies of small grants for review by Auspicing Body*	Submission of the draft funding applications to Auspicing Body	August 2012	September 2012	Auspiced Party
Consider and finalise draft Funding Applications and submit mutually acceptable applications to funding bodies with Auspicing Body as applicant	Submission of mutually acceptable funding applications to funding bodies, including relevant supporting documents	September 2012	October 2012	Auspicing Body in consultation with Auspiced Party
SHOULD SUFFICIENT GRANT FUNDING BE SECURED:				
Establish administrative base, advertise and recruit casual pilot Project Co-ordinator, and complete training for position	Physical office within premises of Auspicing Body, function of new casual co-ordinator	March 2013	June 2013	Auspicing Body
Create collateral and content for “Family to Family Mentoring” activities and timeline for program and identify up to 25 participant families and 25 mentor families	Existence of materials, activities and timeline for pilot program implementation, commitment of participants	March 2013	June 2013	Auspiced Party, together with casual Project Co-ordinator
Draft induction and training content for participant families and deliver training	Existence of content for delivery, completion of training and induction process	April 2013	August 2013	Auspiced Party, together with casual Project Co-ordinator
Delivery of Weeks 1 -12 of ‘Family to Family Mentoring’	Family participation and completion of Weeks 1 - 8 of ‘Family to Family Mentoring’	August 2013	November 2013	Auspiced Party, together with casual Project Co-ordinator
Etc.	Etc.	Etc.	Etc.	Etc.

* If unsuccessful with small grant application to ‘FamilyActive NSW’, additional small grant applications will be submitted to at least 2 other Local or State Government funding bodies for \$5,000 each.

The original budget compiled by Asad and the others is amended by the Auspiced Body as they are more familiar with costs of the proposed community project, having secured funding and implemented their own community projects, and auspiced other projects, from time to time. A section of the budget is given below. Asad reviews the amended budget closely to check that it was within his expectations as the draft Auspice Agreement, at clause 4, requires the parties to implement the community project ‘within budget’.

Excerpt from Annexure A

PROJECT BUDGET

Budget item	Expenditure	Income
Salaries and on costs	2,500	
Family Participant Costs	2,100	
General Project Activities	1,000	
Camps / Special Events	2,400	
Vehicle & travel	500	
Phones	500	
Evaluation	800	
Office / Administration	1,000	
Management & Overheads, including Auspice Fee	1,200	
'FamilyActive NSW' (To be requested)*		10,000
Corporate Donations (To be requested by Auspicing Body)		1,500
Public Donations (To be requested by Auspicing Body)		500
TOTAL	\$ 12,000	\$ 12,000
In-Kind Contributions		
Waiver of venue costs		\$1,440
Catering expenses – donated		\$5,000
TOTAL		\$6,440

* If unsuccessful with small grant application to 'FamilyActive NSW', additional small grant applications will be submitted to at least 2 other Local or State Government funding bodies for \$5,000 each.

Asad is concerned that if there were unanticipated expenses or delays that draw on the community project's funds, he and his colleagues might be asked to pay the shortfall. He thinks that the Auspicing Body will be in a better position to do that with their own operating budget, than the Auspicing Party that has traditionally relied on volunteers and personal donations. David, his lawyer, notes that clause 7.3 of the agreement (see below) attends to this very issue and is protective of Asad and his colleagues if the budget blows out.

Helpful questions for this issue for both parties

- Is the Project and its scope described accurately?
- Would it be helpful to include more comprehensive information in an Annexure to the agreement, such as an implementation plan?
- Is it clear in the implementation plan what timeframes are applicable and which party is responsible for each implementation milestone?
- Is the budget specified a realistic expectation of the income and expenses of the Project?
- Where appropriate, is it clear in the description who authored the Project?

Funding the community project

The Auspice Agreement should

- Specify expectations for funding the community project and how the parties will co-operate to submit applications for funding. Issues to clarify include:
 - o who will do the research and drafting of funding applications
 - o how many applications are to be made
 - o how long should funding be sought
 - o what the approval process is to before applications may be submitted to funding bodies.
- Refer to the Auspicing Body's acceptance of funding for the community project and how it will deal with those funds to benefit the community project
- Refer to the Auspiced Party's delivery of the project
- Refer to the Auspicing Body's own contribution to the project, and what fee it will charge (if any) for the auspicing arrangement or, if applicable, deal with fees generated from the implementation of the project.

Some auspicing arrangements don't embrace co-operation for project delivery and focus exclusively on the financial aspects of project funding and how funding will be distribute and accounted for. It really depends on what your needs are for the community project and what you have been able to negotiate with the Auspicing Body. The nature of the arrangement is likely to impact on the the auspicing fee that may be charged by the Auspicing Body and you should check the Auspice Agreement to be clear on the fee that is proposed, consider whether the fee is reasonable in the circumstances, and ensure that, if acceptable, it has been taken into account in funding applications and the community project budget.

Case Study – “Family to Family Parramatta”

During negotiations, Asad explains that he needs assistance to draft funding applications and encourages the Auspicing Body's active contribution to the grant and project delivery process. This is then reflected in the implementation plan outlined earlier and the clauses of the draft Auspice Agreement dealing with funding applications, the auspicing fee, and the Auspicing Body's financial administration of the project's funding and budget.

5. FUNDING APPLICATIONS & CHARITABLE FUNDRAISING

- 5.1 The Parties agree to work co-operatively on the submission of grant applications to funding bodies listed in the Project Budget of Annexure A and in a manner specified in the Implementation Plan.
- 5.2 The parties agree, where appropriate, to secure donations from the corporate sector and the public to provide additional funding for the Project as listed in the Project Budget. The parties agree that the Auspicing Body, as a Deductible Gift Recipient, is responsible for all administrative and regulatory requirements of such charitable fundraising.
- 5.3 All grant funding and donations made for the benefit of the Project will be accepted by the Auspicing Body and managed in accordance with this agreement.

6. AUSPICING FEE

In consideration of the services provided by the Auspicing Body under this agreement, the Auspiced Party agrees that the Auspicing Body may deduct an Auspicing Fee of 10% of total grant funding from the funding bodies listed in the Project Budget of Annexure A or from other grant funding made for the Project for which an application process was required. However, no Auspicing Fee is to be deducted from the additional sources of funding specified in clause 5.2.

7. FINANCIAL ADMINISTRATION

- 7.1 In consideration of the Auspicing Fee specified in this agreement, the Auspicing Body agrees to receive and hold funds in a separate bank account established specifically for the financial accountability and administration of the Project and to distribute and apply funds in accordance with this agreement for the exclusive benefit of the Project and its implementation by the parties.

- 7.2 The Auspicing Body agrees to pay the Auspiced Party, less the Auspicing Fee, funds secured for the Project on the production of accounts and receipts for reasonably incurred expenses within the scope of the Project Budget of Annexure A.
- 7.3 The Auspicing Body acknowledges and agrees that the Auspiced Party is not liable for any deficit in funds not received from any grant funding body or for expenditure beyond the Project Budget of Annexure A that has been incurred for the benefit of the Project and in accordance with this agreement.
- 7.4 The parties agree to comply with, and enable the compliance of, all financial accountability requirements of grant funding or any additional sources of funding secured for the Project.
- 7.5 For 12 months after the end of this agreement, a party must permit access to its accounts and records, relating wholly or in part to the Project, and to any of its offices or buildings where that information may be held, to the other party and its duly authorised agents and employees, for the purpose of verifying the income and expenditures of the Project and to take copies of all such information.

Helpful questions for this issue for both parties

- Is it clear what steps are to be taken to secure grant or other funding for the Project and who will undertake those steps?
- Is it clear who will accept funding for the Project, how funds will be distributed, and who is responsible for compliance with grant funding conditions and applicable regulations for the funding?
- Is an Auspicing Fee specified and, if so, is the fee reasonable in the circumstances?
- Are financial administration standards well defined?
- What happens if there is a budget shortfall and who will be responsible for it?
- Are the parties bound to comply with, or enable compliance, of grant funding financial obligations?

Obligations of the Auspicing Body

It is essential that the particular obligations of the Auspicing Body be expressed in the Auspice Agreement. The scope of the Auspicing Body's obligations will depend on the funding body's requirements and the community project demands, what has been negotiated between the parties and simply what the Auspicing Body wishes or doesn't wish to contribute to the community project and the overall auspicing arrangement. Some auspicing bodies and Auspice Agreements are protective of auspiced parties, especially if they are unincorporated groups and the community project is consistent with

their core work and services and there is a lot of existing infrastructure within the Auspiced Body to assume responsibility for certain obligations and to facilitate the sharing of resources. Sometimes Auspice Agreements specify significant sharing of resources (e.g., administrative capacity, fundraising capabilities, networks, human resources, accounting system etc.), and co-operation between the parties to achieve community project implementation. However, other auspicing bodies and Auspice Agreements seek to displace both obligation and liability onto the Auspiced Party, especially when the relationship is

more about grant funding administration than community project co-operation and delivery. When reviewing the Auspice Agreement, it is important for you to take the time to fully understand the Auspicing Body's obligations and think what those obligations actually mean to the implementation of your community project and to your own obligations for the project. For example, one important issue for the Auspice Agreement is to clarify which party is responsible for the hiring, training, and supervision of employees to be engaged for the community project and who will pay their entitlements.

Case Study – “Family to Family Parramatta”

Fortunately for Asad and ‘Family to Family Parramatta’, the Auspicing Body is prepared to accept overall financial responsibility of the community project and directly employ a co-ordinator, assist at an early stage to submit funding applications, share resources for the benefit of the project, and contribute tangibly to aspects of Project implementation. The Auspicing Body’s obligations in the draft Auspice Agreement looks like this:

8. OBLIGATIONS OF AUSPICING BODY

The Auspicing Body will:

- 8.1.1 Be the applicant in all applications for grant funding, contract directly with funding bodies for the receipt of grant funding, and comply with all grant funding contractual obligations, including the provision of progress reports, final reports and financial acquittal documentation;
- 8.1.2 Be the entity that will accept all grant funding and other sources of funding for the Project and administer the funding in accordance with this agreement;
- 8.1.3 Disburse grant funding and other sources of funds to the Auspiced Party in accordance with this agreement and not unreasonably withhold funding from the Auspiced Party for the implementation of the Project;
- 8.1.4 Provide the Auspiced Party with an itemised financial statement on expiry or termination of the agreement which clearly identifies how grant funding and other sources of funds were spent for the benefit of the Project;
- 8.1.5 Contribute to implementation of the Project as specified in the Implementation Plan of Annexure A, including:
 - (i) The drafting and submission of grant funding applications for the Project;
 - (ii) The recruitment, direct employment and supervision of a Project co-ordinator for a period of 12 months and:
 - (a) Acceptance of all responsibility and liability with respect to that employment, including payment of taxes, superannuation, workers compensation insurance and employee entitlements; and
 - (b) Require the Project co-ordinator to co-operate with, and accept reasonable direction from, the Auspiced Party for the implementation of the Project;
 - (iii) The provision of office space and workstation, including computer, internet, telephone and facsimile access, for effective administration of the Project by the Project co-ordinator;
 - (iv) The identification and recruitment of mentor families for participation in the Project;
 - (v) Assistance with the development and delivery of training for the Project co-ordinator and participating families; and
 - (vi) Delivery of ‘Family to Family Mentoring’ activities for agreed periods of the Project as specified in the Implementation Plan.
- 8.1.6 Not alter the Implementation Plan or Project Budget without the prior written consent of the Auspiced Party and, where obligated, grant funding bodies; and
- 8.1.7 Not represent in any manner that they are an agent for the Auspiced Party or that they have the capacity to bind the Auspiced Party in any respect.

Helpful questions for this issue for both parties

- Are the obligations of the Auspicing Body appropriate and workable?
- Are resources to be provided or other contributions to be made by the Auspicing Body clearly identified?
- Is financial accountability and obligation to disburse funds for the benefit of the Project clearly explained?
- If staff are to be employed by the Auspicing Body, is it clear that they are the employer and bear responsibility for that relationship? Are employees required to co-operate with the Auspiced Party in a productive manner?
- Is there anything that should be mentioned as an obligation that is not specified?

Obligations of the Auspiced Party

Your obligations under an Auspice Agreement can sometimes be greater than you would initially anticipate. It's therefore critical that you understand the scope of the obligations being created by the Auspice Agreement, assess whether those obligations can be complied with and, if you have any concerns, discuss them with the Auspicing Body before signing the agreement. As the Auspicing Body is usually the party directly responsible to grant funding bodies, they will normally require that:

- you provide information that will assist their compliance (e.g. provide drafts of progress and financial reports as required by grant funding bodies)
- you follow certain procedures for reporting to the Auspicing Body (e.g. a monthly report to their Board of Management) and their disbursement of funds (e.g. provision of tax invoices for payment, no further release of petty cash unless prior petty cash disbursements are accounted for etc.). You will need to factor in those requirements as you implement the community project.
- you contribute to the implementation of the community project and seek that you comply with their policies and procedures in doing so.
- you refrain from dealing with grant funding bodies directly, or without including them in the correspondence.

It is also prudent to be mindful of what the practical effect of certain obligations might be for you as the Auspiced Party and what liabilities might flow from non-compliance. For example, if your community project involves giving a cash payment to disadvantaged persons for basic necessities, you may require recipients to sign a receipt in order to seek reimbursement from the Auspicing Body. If no receipt is obtained without reasonable justification, your Auspice Agreement may not permit reimbursement of the expenditure and the Auspiced Party may have to bear the cost.

Case Study – “Family to Family Parramatta”

As agreed with the Auspicing Body, Asad and his two colleagues are to implement the community project in co-operation with the Project co-ordinator, who is to be employed by the Auspicing Body when funding is available. Nevertheless, the draft Auspice Agreement specifies their specific obligations as an Auspiced Party to co-operate and comply with the Auspicing Body to facilitate the implementation of the community project and to do so in a manner that is consistent with the policies, procedures, financial and contractual obligations of the Auspicing Body. The agreement also clarifies that Asad and his colleagues are not employees of the Auspicing Body. The particular obligations of the Auspiced Party are expressed as follows:

9. OBLIGATIONS OF AUSPICED PARTY

The Auspiced Party acknowledges that this agreement does not create any relationship of employment between the parties.

The Auspiced Party will:

- 9.2.1 Not deal directly with grant funding bodies for the receipt of grant funding for the Project;
- 9.2.2 Provide sufficient information and take all reasonable steps to enable the Auspicing Body to comply with all grant funding contractual obligations, including the provision of progress reports, final reports and financial acquittal documentation;
- 9.2.3 Accept grant funding and other sources of funds from the Auspiced Body in accordance with this agreement and provide accounts and receipts for all expenditure on at least a fortnightly basis for financial accountability of the Project and the generation of accurate itemised financial statements regarding Project expenditure and acquittal documentation;
- 9.2.4 Provide Tax Invoices for payment at least 7 days before the payment due date stated in the Tax Invoice;
- 9.2.5 Not seek petty cash disbursements from the Auspicing Body in excess of \$500.00 at any one time or request additional petty cash from the Auspicing Body unless any previous petty cash disbursements have been accounted for by the Auspiced Party's production of valid accounts and receipts;

- 9.2.6 Contribute to implementation of the Project as specified in the Implementation Plan of Annexure A in a professional and business-like manner, including:
- (i) The drafting of first version grant funding applications for the Project for the Auspicing Body's consideration, amendment and submission to grant funding bodies;
 - (ii) Work with, and provide reasonable direction to, the Project co-ordinator employed by the Auspicing Body for the co-operative implementation of the Project;
 - (iii) Draft Project collateral and content for "Family to Family Mentoring" and a timeline for delivery of the mentoring program;
 - (iv) The identification and recruitment of families for mentee participation in the Project;
 - (v) Assistance with the development and delivery of training for participating families in consultation with the Auspicing Body; and
 - (vi) Delivery of 'Family to Family Mentoring' activities for agreed periods of the Project as specified in the Implementation Plan;
- 9.2.7 Inform the Auspicing Body in writing of proposed changes to the Project, its Implementation Plan or Project Budget in a timely manner and not alter the Project, the Implementation Plan or Project Budget without the prior written consent of the Auspicing Body;
- 9.2.8 In a timely manner inform the Auspicing Body if it does not have the capacity to undertake the Project or Implementation Plan activities at any time; and
- 9.2.9 Not represent in any manner that they are an agent for the Auspicing Body or that they have the capacity to bind the Auspicing Body in any respect.

Helpful questions for this issue for both parties

- Are the obligations of the Auspiced Party appropriate and workable?
- Are there any restrictions on the Auspiced Party that of concern or you disagree with?
- Are the Auspiced Party's contributions to the Project clearly identified?
- Are financial accountability procedures for the Auspiced Party clearly explained and practical?
- Is there anything that should be mentioned as an obligation that is not specified?

Liability, insurance & indemnity

It is important for the Auspice Agreement to manage risk arising from the auspicing arrangement. For example, if a client of a community project injures themselves whilst visiting the premises of the Auspicing Body, who is responsible? If an employee working on the community project is injured, who will pay their medical expenses? If a member of the Auspiced Party accidentally damages premises leased for the Project, who is responsible for the repairs? If an employee of the Auspicing Body commits fraud and steals grant funding, who will make good the loss?

The following are essential matters for discussion between the parties and for

possible clarification in the Auspice Agreement:

- The liability of a party for any claims by third parties (i.e., parties other than the Auspiced Party or the Auspicing Body).
- The necessity to secure insurance and to substantiate insurance coverage.
- The confirmation of liability arising from contractual obligations entered into for the purposes of the community project.
- The provision of an indemnity to protect or compensate a party for any loss or liability arising from

the community project and the auspicing arrangement.

Often Auspice Agreements drafted in the interests of an Auspicing Body require the Auspiced Party to obtain insurances such as Public and Products Liability Insurance, Professional Liability Insurance, Workers Compensation insurance and Personal Accident (Volunteers) Insurance to provide what are called 'Certificates of Currency' from the relevant insurers to evidence coverage, to accept responsibility for all claims and losses arising from the implementation of the Project and the Auspice Agreement generally, and to indemnify the Auspicing Body from

all claims and losses. This can be very expensive, so it is important to factor in the requirement to obtain insurances in grant funding applications and as an item of expenditure in the community project budget. Other auspicing bodies might absorb the risk of liability, pay for insurance coverage requirements or extend their existing insurances to

cover the risk of the Project, and provide indemnities to benefit the Auspiced Party, especially in circumstances in which the Auspiced Party is an individual or an unincorporated association and the Auspicing Body is already bearing the same risks for their usual operations and they are confident of effective supervision of the Project.

However, sometimes the Auspice Agreement might include a 'liability cap' to ensure that total liability does not exceed the value of the auspicing fee, which may be so disadvantageous to the Auspiced Party to necessitate the procurement of their own insurance coverage.

Case Study – “Family to Family Parramatta”

In this case, the Auspicing Body agrees to accept the risk of liability, pay for insurance coverage requirements, and provide indemnities to benefit the Auspiced Party as specified in clause 10 of the draft Auspice Agreement (see below). The effect of clause 10 is explained to Asad by his lawyer David, in particular the extensive indemnification which they may rely upon should loss or damage be incurred and a claim made. The Auspicing Body does not seek to rely on a 'liability cap'.

10. LIABILITY, INSURANCE & INDEMNITY

- 10.1 The Auspiced Party has no liability whatsoever to the Auspicing Body or any third parties [including, but not limited to, direct, indirect or consequential losses, liabilities, costs (including legal costs), charges (including bank charges), expenses (including taxation), actions (including actions in negligence), proceedings, claims and demands, fines and damages, and/or interest payments] in the event of any failure, inaction, or damage from or associated with the implementation of the Project.
- 10.2 It is the responsibility of the Auspicing Body to ensure that it has current insurance policies in place with respect to workers compensation, public and products liability, professional liability and personal injury (volunteers) insurance and to provide to the Auspiced Party valid Certificates of Currency for each policy before commencement of the Project. The Auspicing Body must also provide written confirmation to the Auspiced Party that insurances will extend coverage to the Auspiced Party and to the implementation of the Project. The Auspicing Body accepts liability for any premiums or excess to be paid in relation to any of the insurance policies specified in this clause.
- 10.3 It is the responsibility of the Auspicing Body to comply with all taxation laws with respect to the receipt and utilisation of grant funding, including liability for, and payment of, any taxes or charges. In addition, the Auspiced Party is not liable at any time to reimburse the Auspicing Body for any additional tax or other liability arising from the receipt and utilisation of grant funding by the Auspiced Party.
- 10.4 The Auspicing Body indemnifies the Auspiced Party from and against any and all loss, damage or liability suffered, whether criminal or civil, and legal fees and costs incurred resulting from or in any way connected with this agreement and the implementation of the Project, or any other contractual obligation of the Auspicing Body, and any act, neglect, or default of the Auspiced Party or any claim made against it with respect to the Project and its implementation. This indemnity is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this agreement. It is not necessary for the Auspiced Party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

Helpful questions for this issue for both parties

- What are the risks and potential liabilities of the Project? Who bears the cost of any loss, damage or claim?
- What insurances will be necessary for the Project and who is to bear the cost and burden of those policies?
- Are there any provisions that intend to exclude liability? In whose favour are the provisions operating? Is the exclusion of liability adequate?
- Is any indemnification required from you or being offered by the agreement? Is it extensive? Is it in your interests? Does a 'liability cap' apply?

Intellectual property & confidentiality

Another essential issue to consider for the Auspice Agreement is the ownership of ‘intellectual property’, which basically refers to the ownership of copyright, original publications, names and logos, marketing collateral such as pamphlets and posters, designs and images, program and training design and content, records and databases, original website design and content, confidential information, original computer software,

whether ownership was purchased and assigned or the material created specifically for the purposes of the community project by either party. The important issue for clarification in any Auspice Agreement is who owns this property while the agreement is in force and after it has ended? Without clarification, this issue can potentially be a real source of disagreement. Sometimes grant funding agreements seek to

affect the intellectual property rights of parties involved in the implementation of a community project, so the Auspice Agreement may require the Auspicing Body’s agreement not to enter into such agreements. The Auspice Agreement should also cover the necessity for confidentiality of information, be it in relation to the parties or beneficiaries of the project.

Case Study – “Family to Family Parramatta”

Depending on the success of the pilot program, Asad and his colleagues plan to establish a charity based on their concept of “Family to Family Mentoring”. It is therefore very important that they retain ownership of the community project materials, whether those materials are created by them or the Auspicing Body (e.g., by the Project co-ordinator employed by the Auspicing Body) or in co-operation with each other. In this case, the Auspicing Body is prepared to maintain the Auspiced Party’s ownership of all intellectual property as confirmed in the clause given below. As an unincorporated association, the Auspiced Party is unable to own the intellectual property in its own name, but Asad and his colleagues can hold the ownership as individuals or on trust for the charity to be established.

11. INTELLECTUAL PROPERTY & CONFIDENTIALITY

- 11.1 The parties warrant that anything done by the parties, including the actions of their employees, contractors or agents, will not infringe the intellectual property rights of any person or breach the privacy of persons, families or organisations participating in the Project.
- 11.2 Each party will respect the confidentiality of the other party, their operations and administration of the Project, will keep the terms of this agreement confidential, and make all reasonable effort to guard the reputation and good name of the other party.
- 11.3 The Auspicing Body acknowledges that the Auspiced Party retains all intellectual property of the Project, and its materials, including copyright of documentation, data, records, and information, including confidential information, stored by any means (whether as originals or copies), trademarks or patentable or patented material, whether registered or unregistered, computer software, goods, and images, whether created before, during the operation of this agreement, or after its expiry or termination.
- 11.4 Any agreed use of the name, logo or other intellectual property of the parties, including such property licensed to the parties, must be in a manner and on terms that a party may notify to the other party and be permitted without affecting the relevant party’s intellectual property rights in the used materials.

Helpful questions for this issue for both parties

- What is the intellectual property of the project? What are your rights in that property?
- What contributions are being made by other parties that may impact your intellectual property rights?
- What intellectual property rights are required to be maintained, confirmed or assigned by the Auspice Agreement?
- Are there any obligations or concerns about confidentiality that require inclusion in the agreement?

Acknowledgement & public relations

The Auspice Agreement should canvass how the parties and grant funding bodies are to be recognised in published material of the Project, during community project events, and in media releases. Often grant funding

bodies require the display of certain logos and statements to acknowledge the source of funding. This obligation, usually of the Auspicing Body, should be reproduced in the Auspice Agreement to ensure the Auspiced Party is aware of the

requirement and complies accordingly. The parties to the auspice arrangement may also wish to agree on how their relationship and co-operation is to be described and promoted.

Case Study – “Family to Family Parramatta”

As can be seen from clause 12 of the draft Auspice Agreement, the agreement requires the parties to consult each other and exchange information to offer acknowledgement and expressly requires compliance with grant funding body expectations in this regard.

12. ACKNOWLEDGEMENT & PUBLIC RELATIONS

- 12.1 The parties must acknowledge the assistance of grant funding bodies and each party’s respective involvement in any published, presentation or display material or any announcements referring to the Project in a manner compliant with grant funding agreements and in a manner that is mutually acceptable to the parties. A party must disclose to the other party all circumstances in which such acknowledgement is intended and the manner in which it is to be achieved. A party must submit this information to the other party (or where required, a grant funding body) in writing, including final drafts of any intended acknowledgement, for the review and approval of the other party (or grant funding body). At least 14 days notice must be given for such review and approval before publishing any website, marketing collateral, including any promotional footage or trailers, or other collateral, presentation or display materials containing an acknowledgement.
- 12.2 The parties agree for the exchange of information, as may be considered appropriate by the parties during the implementation of the Project, and within 12 months of its conclusion, to enable accurate reference to the Project for the issue of joint media releases and other (including internet) communications and the holding of joint events, as may be agreed by the parties from time to time, to promote the Project, any grant funding body support of the Project, and the promotion of Project outcomes

Helpful questions for this issue for both parties

- What are the requirements of grant funding bodies with respect to acknowledgment and public relations and are they reflected in the agreement?
- Are exchange of information and approval procedures optimal for timely finalisation of acknowledgement and public relations matters?
- Is co-operation and exchange of information necessary for acknowledgement and public relations matters after the agreement’s expiry or termination?

Termination & non-completion

The Auspice Agreement must deal with the issue of termination and the circumstances in which a party may terminate at its option. The termination clause can be quite extensive and it's important to take the time to review all

the justifications for termination of the agreement and determine whether they are acceptable to you. The termination clause, or another part of the agreement, may also prescribe what will happen if, for example, the Auspiced Party cannot

complete the Project or an aspect of it, and the circumstances in which the Auspicing Body can withhold funds or complete the Project itself when the Auspiced Party is unable to do so.

Case Study – “Family to Family Parramatta”

Asad's lawyer, David, notes that the termination clause considers the issue from both sides, which he considers was a fair approach, as most Auspice Agreements are drafted predominantly with the Auspicing Body's needs foremost. However, David alerts Asad to one concern. David notes that the Auspicing Body was permitted under the agreement to continue with the Project without the consent of the Auspiced Party, if the Auspiced Party was unable to comply with its obligations and continue with the Project. David is concerned that the consent of the Auspiced Party should be obtained, particularly in circumstances where the continuation of the Project is reliant on the Auspiced Party's intellectual property. The clause in the draft Auspice Agreement that addresses termination and non-completion is given below.

13. TERMINATION & NON-COMPLETION

13.1 The Auspiced Party may terminate the agreement in the following circumstances:

13.1.1 By notice in writing to the Auspicing Body if the Auspicing Body is more than 4 weeks late in making payment to third parties of reasonably incurred expenses or in reimbursing the Auspiced Party of reasonably incurred expenses. Unless stipulated otherwise in any agreement with grant funding bodies, the Auspiced Party is entitled to receive and retain all payments made under this agreement up to the date of sending notice to the Auspicing Body pursuant to this clause.

13.1.2 Immediately in the event that the Auspicing Body is declared bankrupt, has a liquidator appointed or goes into voluntarily administration or otherwise.

13.1.3 If the Auspicing Body is in breach of any of its obligations under clauses 4, 5, 6, 7, 8 or 10 of this agreement. The Auspiced Party must give written notification of the breach to the Auspicing Body who shall have 4 weeks, or such other time as agreed by the Auspiced Party and the Auspicing Body in writing, within which to remedy the breach.

13.2 The Auspicing Body may terminate the agreement or withhold payments to the Auspiced Party in the following circumstances:

13.2.1 If the Auspiced Party is in breach of any of their obligations under clauses 4, 5, 6, 7 or 9 of this agreement. The Auspicing Body must give written notification of the breach to the Auspiced Party who shall have 4 weeks or such other time as agreed by the Auspicing Body and the Auspiced Party (and, where necessary, any grant funding body) in writing within which to remedy the breach;

13.2.2 If the Auspiced Party is not in a position to complete its obligations pursuant to the agreement; and

13.2.3 If a grant funding agreement is terminated or if grant funds are withheld by a grant funding body.

13.3 The consequences of termination, withholding of payment or non-completion by a party are as follows:

13.3.1 If this agreement is terminated, refunding of grant funding by either party will be determined by the terms of the relevant grant funding agreement;

13.3.2 If the grant funding agreement places no requirements on either the Auspicing Body or the Auspiced Party to refund grant funding on termination, the Auspicing Body may in its discretion pay all remaining monies in its control, less the Auspicing Fee, to the Auspiced Party in accordance with the terms of this agreement or utilise the funds itself to complete the Project independently without reference to, or involvement of, the Auspiced Party;

13.3.3 The termination of this agreement or the grant funding agreement, or independent completion of the Project by the Auspicing Body pursuant to clause 13.3.2, does not remove or diminish the right of the Auspicing Body to deduct the Auspicing Fee from funds in its possession.

Helpful questions for this issue for both parties

- Are the circumstances and consequences of termination fair and satisfactory?
- Is refunding of grant money required on termination or non-completion? What risks does this pose?
- Is a party permitted to proceed with the Project if the other party is unable to complete its obligations and what are the implications for you if that occurs?

Dispute resolution

Disagreements can arise in auspice arrangements from time to time. One way to establish a mutually acceptable approach to resolving disputes at an early stage, and avoid adversarial, expensive and time consuming options like Court proceedings, is to have a dispute resolution clause in the Auspice Agreement. The intention of the clause

is to establish an understanding that the parties should apply their best efforts to resolve the dispute and, at least in the first instance, proceed to mediation or other alternative dispute resolution methods to see if the disagreement can be resolved. Sometimes dispute resolution clauses specify the mediation process to be followed and where

mediation is to be undertaken. The clause does not prevent the parties from commencing Court action, but requires them to consider mediation or other means to resolve the dispute before asserting their rights in this way. This requirement does not apply, however, if a party needs to commence Court action urgently to protect their interests.

Case Study – “Family to Family Parramatta”

Asad’s lawyer, David, notes that the dispute resolution clause of the draft Auspice Agreement was very much a standard provision. The clause is reproduced below.

14. DISPUTE RESOLUTION

- 14.1 If a party considers that a dispute exists in connection with the agreement, that party must give the other party a written notice detailing the nature of the dispute (Dispute Notice).
- 14.2 Within 14 days after service of a Dispute Notice, the nominated representatives of the parties must confer at least once in good faith to attempt to resolve the dispute. Failing such resolution within 14 days of that conference, either party may commence mediation to resolve the dispute by serving notice on the other party and referring the matter to a Community Justice Centre (CJC) for mediation.
- 14.3 If a dispute has not been settled by mediation within 60 days after the mediation commences, either party may discontinue the mediation and, subject to any other terms of this agreement, commence legal proceedings.
- 14.4 Nothing in this agreement prejudices the right of a party to institute legal proceedings against or involving the other party to seek urgent injunctive or declaratory relief in relation to any matter arising under this agreement.

Helpful questions for this issue for both parties

- Are dispute resolution mechanisms clear and appropriate for the parties, considering the nature of their relationship?
- Are there any additional obligations for the resolution of disputes that you would wish to include?

General provisions & survival of obligations

Auspice Agreements, as with any other form of contract, include some general provisions that assist the operation of the agreement, like the procedure for the serving of notices, clarification of what in fact constitutes ‘the entire agreement’ and the jurisdiction that applies to the agreement, who bears the costs of the agreement, and what provisions of the agreement continue to bind the parties even after it has ended

(i.e., which obligations ‘survive’ the end of the agreement whether because the community project has ended or the agreement terminated). These provisions usually include

- The keeping of confidential information
- Access to financial records
- Protection of intellectual property

- Insurance coverage and indemnity for claims and losses
- Co-operation for public relations purposes
- Dispute resolution procedures.

It is essential that each party be aware of their continuing obligations to avoid problems in their relationship even after the formal agreement has ended.

Case Study – “Family to Family Parramatta”

Below are the general provisions of the draft Auspice Agreement given to Asad. You will note that the agreement seeks to impose continuing obligation on any new entity that Asad and his colleagues may establish, considering their plans to eventually incorporate ‘Family to Family Parramatta’ as a charity in its own right.

15. GENERAL PROVISIONS & SURVIVAL OF OBLIGATIONS

- 15.1 This agreement is governed by, and construed in accordance with, the laws of New South Wales, and, where relevant, of the Commonwealth of Australia. Subject to clause 14, the parties irrevocably submit to the jurisdiction of those Courts and waive any objection to proceedings in any such Court on the ground of venue or on the ground that proceedings have been brought in an inconvenient forum.
- 15.2 This agreement comprises the entire agreement of the parties and no amendment of it shall have effect unless it is in writing and signed by, or on behalf of, the Auspicing Body and the Auspiced Party.
- 15.3 All notices, claims and demands in connection with this agreement must be in writing and must be addressed to the recipient party at the address given in this agreement.
- 15.4 This agreement is personal to the parties and no party may assign, transfer, subcontract or delegate its rights or obligations in whole or in part under it without the prior written agreement of the other party.
- 15.5 Except as specifically provided in this agreement, each of the parties will bear their own costs and expenses incurred in the negotiation and execution of this agreement and any agreements or documentation associated with it.
- 15.6 All communications between the parties must be in English and if, for any reason, this agreement is required to be translated into any other language, the English language version prevails.
- 15.7 Unless stated otherwise in this agreement, clauses 7.5 and 12.2 survive the termination or expiry of this agreement for a period of 12 months;
- 15.8 Unless stated otherwise in this agreement, clauses 7.3, 7.4, 8.1.1, 8.1.4, 8.1.7, 9.2.9, 10.1–10.4, 11.1–11.4, 13.3.2, 13.3.3, 14.1–14.4, and 15.2 perpetually survive the termination or expiry of this agreement.
- 15.9 The survival of obligations specified in clauses 15.7 and 15.8 binds any future incorporated entity established by the Auspiced Party that seeks to implement “Family to Family Mentoring” in the community or a similar community service to the Project.

Helpful questions for this issue for both parties

- Are procedures for the issue of notices appropriate in the circumstances?
- What procedures will be required to ensure that surviving obligations are complied with? Are surviving obligations appropriate in the circumstances? Will they unduly restrict your operations into the future?
- Do you have sufficient funds to cover costs arising from the negotiation and execution of the agreement?

Proceeding with the agreement

After you have raised amendments to any draft Auspice Agreement for the Auspicing Body's consideration, it will decide whether to agree, to compromise with an alternative suggestion or to reject your request. It's then a matter for

you to decide whether you are prepared to accept the response or not proceed with the agreement and the auspicing arrangement. Often the Auspicing Body is in a stronger bargaining position and it might simply say you must accept the

agreement without amendment or not proceed. Once again, legal or financial advice can be of considerable assistance to you in arriving at a decision that's in your interests.

Case Study – “Family to Family Parramatta”

Asad and his colleagues consider their lawyer's advice and have their lawyer, David, approach the Auspicing Body to seek amendment of the draft Auspice Agreement in two respects. Firstly, with respect to the Auspicing Body's ability to proceed with the Project should the Auspiced Party be unable to meet their obligations. David says that the Auspicing Body should only be able to do so if the Auspiced Party's agreement was obtained for the use of the Project's intellectual property. Secondly, David expresses concern about the provision that binds any future entity of the Auspiced Party to the agreement and asked that it be deleted from the agreement. The Auspicing Body agree to the amendments.

The parties now co-operate to submit grant funding applications and Asad and his colleagues look forward to making 'Family to Family Mentoring' available to more people in the community. The Auspicing Body is also very happy to incubate such a creative and innovative response to the needs of newly arrived migrants and refugees who are living in disadvantaged circumstances.

Helpful questions for this issue for both parties

- Do you have policies and procedures in place for your activities that help you to comply with the Auspice Agreement?
- Are all persons working with you aware of the legal obligations of the Auspice Agreement and the consequences of non-compliance?
- Is there a routine established to exchange necessary information and talk over issues that need to be addressed so that the auspicing arrangement is most effective?

If you sign and proceed with the Auspice Agreement, both the Auspicing Body and Auspiced Party should communicate regularly and establish procedures to ensure that the routine of their relationship complies with their respective obligations. It's good practice to regularly review how the arrangement is progressing independently and together and to raise any issues of concern at an early stage to prevent problems in the relationship from getting worse and becoming a formal dispute.

In most cases, auspicing arrangements

go well and achieve considerable benefit for the community projects concerned, for the participating people and organisations and for the community generally. Unfortunately, sometimes things don't go well, but with a formal agreement there are usually clear procedures for dispute resolution, termination or other consequences of a failed relationship.

It's not unusual to seek changes to the auspice arrangement because of how the community project progresses or for other practical reasons. Usually

the Auspice Agreement will specify how the agreement can be changed - amendments are normally required in writing and need the consent of both parties. If you maintain a good standard of communication with the Auspicing Body, show you have met your obligations so far, and demonstrate how changes can be of benefit, the Auspicing Party may be open to enhancing or modifying the arrangement and consent to your changes.

Need more information or assistance?

We hope this guide has been of assistance to you in better understanding the legal issues of auspicing, particularly in relation to the Auspice Agreement. We wish you every success as you consider this form of arrangement for the implementation of your community project. Below are some useful links that may give you further information about the legal issues and assistance available.

For more information about Parramatta City Council's Community Capacity Building Team's initiatives, contact Council at ccb@parracity.nsw.gov.au or by phone on (02) 9806 5138.

Useful links:

National Names Index - www.search.asic.gov.au

ABN Lookup - www.abr.business.gov.au

National Pro Bono Resource Centre - www.nationalprobono.org.au

Public Interest Law Advocacy Centre - www.pilchnsw.org.au/

PILCH Connect – legal help for community groups - www.pilch.org.au/community_org/

NSW Council of Social Services - www.ncoss.org.au