

To offer a safe, friendly, first class club to your local community, you must first ensure you are operating according to NSW laws and legislations.

When first starting a business there are a number of things you have to consider:

- Decide on a business structure
- Register your business name
- Register your company
- Register your business for taxation purposes
 - Register for an ABN (Australian Business Number)
 - Register for the GST (Goods & Services Tax)
 - Register for a TFN (Tax File Number)
 - Register for PAYG (Pay As You Go) withholding

DESIDE ON A BUSINESS STRUCTURE

When deciding on a business structure it is important to consider factors such as: personal financial liability, tax implications, access to business profits, establishment costs and risk exposure. An accountant or solicitor may be able to assist you with your selection.

There are a number of business structures available of varying complexity, each with advantages and disadvantages. The most common business structures are Sole Trader, Partnership and Proprietary Limited Company.

Sole Trader

A sole trader is an individual who runs the business without partners or a company structure. The sole trader has full control of the business, including ownership of all profits and responsibility for all debts and liabilities.

Advantages

- Easy to set up - less complex structure.
- You are your business and make all decisions.
- Inexpensive to establish and operate.
- Least reporting requirements.
- Your losses may be offset against any other income or future earning.

Disadvantages

- You are your business - often your business will operate only if you work.
- You are personally liable for all business debt.
- You continue to pay tax at personal income tax rates.
- Fewer options to raise finance may limit your business.

Partnership

A partnership involves two or more co-owners participating together in a business. A partner may be an individual or a company and each partner shares in the responsibility and profits of the business.

It is always a good idea to have a partnership agreement to govern the rights of the partnership. In the absence of a formal written partnership agreement, the law will assume that each partner has an equal share in the business. It is advisable to have a solicitor prepare the partnership agreement.

Advantages

- Inexpensive to establish and operate.
- Ability to split income on level of ownership.
- Responsibility for the operation of the business is shared.
- Ability to raise finance for the business is enhanced.
- Capital losses may be offset by other non-business capital gains derived by the individual owners.

Disadvantages

- Each partner is fully liable for the full debts of the partnership.
- There is limited flexibility in distributing profits from property.

Limited Partnership

The *NSW Partnership Act* makes provision for a limited liability partnership structure whereby the liability of a partner contributing capital can be limited to the amount of financial contribution, provided that person does not take part in the management of the business.

The advantage of the limited liability partnership is that it allows an investor to invest in a partnership without being liable beyond the extent of their financial investment, provided certain conditions are met.

Key Items to Include in a Partnership Agreement

- The commencement date and duration of the partnership.
- The treatment of partnership property and leases undertaken for the partnership.
- Conditions under which partners can assign or change their interest in the partnership.
- Apportionment method for profit, capital and losses of the partnership.
- Person/s of authority to make payments on behalf of the partnership.
- Method of valuation of assets upon dissolving or altering the partnership.
- Whether majority decisions of partners govern all matters.
- Agreement to engage an independent accountant.

Proprietary Limited Company

A business may operate as a separate legal entity in the form of a company. This is a more complex form of business structure governed by Corporation Law, which covers how a company operates and the duties of the directors.

The Corporation Law was updated as the Corporations Act 2001. The effect of the Act is to substantially ease the regulatory burden applying to small business. Under the amended legislation proprietary limited companies may have only one director and only one member.

A business operating as a company must register a company name with the Australian Securities and Investments Commission (ASIC). The Commission also publishes information sheets on company requirements and director obligations.

Advantages

- Liabilities of the shareholders are limited to their subscribed share capital and any debts personally guaranteed.
- The company is a separate legal entity which may enter into agreements, can be sued, can sue others.
- Retained profits are taxed at the company income tax rate.
- Ease in attaining ownership in the company by acquiring shares.
- Ease of ownership change.
- Continuity of the company's existence - not dependent on the owners.

Disadvantages

- Set up, administrative and operating costs are high.
- Increased statutory requirements for taxation and Corporation Law.
- Revenue and capital losses must be retained by the company - cannot offset owners' incomes.

Trusts

A trust is a popular structure adopted by family business or for income-splitting purposes. In family trusts the trustee is typically a member of the family and the trust can also be used as a device to split income. Trusts are considered a complex business structure. A trust is not a legal entity; however, the trustee must be a legal entity, such as a person or company, in whose names all assets of the trust are held. Each trust operates under its trust deed, which is like a book of rules for trustee obligations. Tax implications of trust structures must be considered and professional advice should be sought before forming and transferring property into a trust.

Not-For-Profit or Charitable Organisations

Company Structure

Under a company structure, charitable or not-for-profit organisations will generally be registered as public companies that are limited by guarantee. Limited by guarantee means the liability of the company's members is limited to the amount the members undertake to contribute to the property of the company if it is wound up.

Registration of a company creates a legal entity separate from its members. The company can hold property and can sue and be sued.

Companies are registered under the Corporations Act 2001, which is Commonwealth legislation administered by Australian Securities and Investments Commission (ASIC) (see details below). A company's registration is recognised Australia wide.

At the very least a public company must:

- Have at least 3 directors and 1 secretary;
- Have at least 1 member;
- Have a registered office address and principal place of business located in Australia;
- Have its registered office open and accessible to the public;
- Be internally managed by a Constitution or Replaceable rules;
- Maintain a register of its members;
- Keep a record of all directors' and members' meeting minutes and resolutions;
- Appoint a registered company auditor within 1 month of its registration;
- Keep proper financial records
- Prepare, have audited and lodge financial statements and reports at the end of every financial year;
- Send to its members a copy of its financial statements and reports, unless the member has a standing arrangement with the company not to receive them;
- Hold an Annual General Meeting once every calendar year within 5 months of the end of its financial year;
- Receive and review an annual company statement and pay an annual review fee. A charitable or not-for-profit company may be eligible for a reduced annual review fee if it meets the criteria under the definition of 'special purpose company' in regulation 3(a), (b), (c) or (d) of the Corporations (Review Fees) Regulations 2003; and
- Lodge notices whenever changes to its officeholders, office addresses, constitution and its name occur within specified timeframes as determined by the Corporations Act 2001.

A company limited by guarantee may also be registered without the word "Limited" in its name. This is only possible if its constitution:

- a. requires the company to pursue charitable purposes only and to apply its income promoting those purposes; and
- b. prohibits the company making distributions to its members and paying fees to its directors; and
- c. requires the directors to approve all other payments the company makes to directors.

Incorporated Association

Associations are incorporated under State and Territory Associations Incorporation legislation, which is administered by the various state authorities. An incorporated association is also a legal entity separate from its individual members that can hold property, sue and be sued. Incorporating an association in a State or Territory restricts the organisation to operating in its home jurisdiction. Therefore, an association incorporated under the Associations Incorporation Act of New South Wales may only carry on business in New South Wales.

The Associations Incorporation Acts provide a simple and more affordable means of creating a separate legal entity for small, community based groups with limited resources. The Associations Incorporation Acts impose less onerous conditions than the Corporations Act 2001 that governs the activities of companies.

It is difficult to outline detailed requirements for incorporated associations, but basically an incorporated association may need to:

- Have a committee, responsible for managing the association.
- Have a public officer and notify any changes in that position.
- Have a registered office in its state of incorporation.
- Act in accordance with its objects and rules.
- Hold an Annual General Meeting once every calendar year.
- Lodge an Annual Statement every year.
- Keep proper accounting records and prepare, have audited and lodge financial statements.
- Keep minutes of all committee and general meetings.
- Keep registers of members and all committee members.
- Have a common seal.

REGISTER YOUR BUSINESS NAME

A business name is a name or title under which a person, or other legal entity, trades.

If you select a business structure that is a sole trader, a partnership, or a trust, and not a company, you are required to register your business name in NSW under the *Business Names Act 1962*. But you do not need to register a business name if you plan to conduct your business under your or your partner's, FIRST NAME and SURNAME, or initials and a surname only. ANY other words that you may wish to add (Eg. 'Club' or 'the') MUST BE REGISTERED with the NSW Office of Fair Trading (see details below). In NSW you will need to renew your business name every 3 years.

Registering your business name does not in isolation give you any proprietary rights to that name, except within your own state. If you would like this type of protection, a trade mark will offer this, however it is not essential. To ensure you have exclusive use of your name now and in the future throughout Australia you need to register your business as a trade mark at IP Australia (see details below).

A business must display its name prominently on everything according to what it has been registered as.

REGISTER YOUR COMPANY

If you decide to operate as a company (refer to business structures above), then you need to register as a company with the Australian Securities and Investments Commission (ASIC) (see details below). Unlike registering a business name, by registering a company name you have exclusive rights to that name in Australia, without having to register it as a trade mark, or in each state.

To search for existing business and company names, have a look at the National Names Index at <http://www.search.asic.gov.au/gns001.html>.

When you register as a company you are given a number known as the Australian Company Number (ACN). The company name, in legible characters, followed by the expression 'Australian Company Number' (or a permitted abbreviation – see below) and the number itself must appear on:

- The common seal (if any) and every other seal of the company (if any);
- Every public document issued, signed or published by, or on behalf of, the company;
- Every eligible negotiable instrument issued, signed or published by, or on behalf of, the company; and
- All documents required to be lodged with ASIC under the Act.
- This is required under s123 and s153 of the Act.
- The abbreviations set out below may be used:
- Instead of words that the Act requires to be part of a company's name or to be included in a document or on the company's common seal (if any); and
- Instead of words that are part of a company's name; and
- With or without full stops.

Permitted abbreviations are:

- | | |
|---|---|
| • for Proprietary ' Pty ' | • for Number ' No ' |
| • for Limited ' Ltd ' | • for and ' & ' |
| • for No Liability ' NL ' | • for Australian Company Number ' ACN ' or ' A.C.N. ' |
| • for Australian ' Aust ' | |
| • for Company ' Co ' or ' Coy ' | |

REGISTER YOUR BUSINESS FOR TAXATION PURPOSES

Register for an ABN & for the GST

An ABN is a unique number that businesses use when dealing with other businesses. For example, you need to put your ABN on your invoices, or other documents relating to sales you make. If you do not, other businesses may withhold 48.5% from any payment to you.

An ABN is also required in certain dealings with the Tax Office and other areas of Government.

An ABN is not compulsory, however you will need one to register for the GST, as the ABN is part of the GST system. Your ABN will also be your GST registration number. You must register for GST if:

- Your business has an annual turnover of \$50 000 or more (\$100 000 or more for non profit organisations).
- You provide taxi travel as part of your business, regardless of your annual turnover.

An ABN allows you to:

- Facilitate a single Business Activity Statement.

- Confirm your business identity to others when ordering and invoicing.
- Avoid PAYG tax on payments you receive.
- Claim GST credits.
- Claim energy grants credits.
- Obtain an Australian domain name.

If you need or want to register an ABN or for GST, then you need to register with the Australian Taxation Office (see details below). You can do it online with the Australian Business Register (see details below) which is part of the Australian Taxation Office.

Register for a TFN

A Tax File Number is a unique number issued by the Taxation Office to individuals and organisations.

All business structures (see Business Structures above) require their own TFN and may be obtained in exactly the same way as an ABN and the GST (see details above). However, sole traders use their individual TFN in dealings with the Taxation Office. A TFN may be used to:

- Quote to employers (this applies to individuals only).
- Quote to investment bodies responsible for paying interest, dividends and unit trust distributions.
- Quote to government bodies, for example the Tax Office, when applying for an Australian Business Number (ABN) or lodging income tax returns.

Register for a PAYG Withholding

PAYG withholding is a legal requirement to withhold amounts for income tax purposes.

If you have employees, you are required to withhold tax from payments you make to them (Eg. wages). You may also have to withhold tax from payments to other workers that are contracted for a specific time period (Eg. construction worker). Further, you may also need to withhold an amount from payments to other businesses if they do not quote their ABN to you on an invoice or other document if required.

You must send all withheld amounts to the Australian Taxation Office.

You must register with the Taxation Office (see details below) before you withhold from payments to your employees.

LINKS AND RESOURCES

Business.gov.au

The business.gov.au website is an online government resource for the Australian business community. By using business.gov.au businesses are able to comply with government requirements more simply and conveniently.

Website: <http://www.business.gov.au/>

IP Australia

IP Australia is the federal government agency responsible for granting rights in patents, trade marks and designs.

Website: <http://www.ipaustralia.gov.au/>

Telephone: 1300 65 1010 (9am-5pm Monday - Friday)

Email: assist@ipaustralia.gov.au

Address: 1st Floor
45 Clarence Street
SYDNEY NSW 2000

Australian Securities & Investments Commission (ASIC)

The Australian Securities & Investments Commission enforces and regulates company and financial services laws to protect consumers, investors and creditors.

Website: <http://www.asic.gov.au>

Telephone: 03 5177 3988 or 1300 300 630

Email: info.enquiries@asic.gov.au

Address: Level 8, City Centre Tower
55 Market Street
SYDNEY NSW 2000

Postal (lodge forms): Australian Securities and Investments Commission
PO Box 4000
Gippsland Mail Centre VIC 3841

Australian Business Register (ABR)

The Australian Business Register is an extensive database of identity information provided by businesses when they register for an Australian Business Number (ABN).

Website: <https://abr.gov.au>

Telephone: 13 28 66

Email: abr.help@ato.gov.au

Address: PO Box 627
HURSTVILLE NSW 1481

PO Box 1198
NEWCASTLE NSW 2300

Australian Taxation Office

The Australian Taxation Office is the Government's principal revenue collection agency, and is part of the Treasurer's portfolio. Our role is to manage and shape tax, excise and superannuation systems that fund services for Australians.

Website: <http://www.ato.gov.au>

Telephone: 13 28 66

Address: GPO Box 9990, in the capital city of your state/territory

New South Wales Office of Fair Trading

The Office of Fair Trading safeguards consumer rights and advises business and traders on fair and ethical practice. Besides direct services for individuals, the legislative framework we administer sets the rules for fairness in the countless daily transactions between consumers and traders. Unfair practices are investigated and prevented and a licensing system helps ensure unqualified or inappropriate people do not work in a range of NSW industries.

Website: <http://www.fairtrading.nsw.gov.au>

Telephone: 13 32 20

Address: 1 Fitzwilliam St
PARRAMATTA NSW 2150