

Student workbook

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**TAFE NSW would like to pay our respect and acknowledge Aboriginal and Torres Strait Islander Peoples as the Traditional Custodians of the Land, Rivers and Sea. We acknowledge and pay our respect to the Elders, both past and present of all Nations.**

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# Icon legends

| Icons | Descriptions |
| --- | --- |
|  | **Practice activity**  Learning activities are the tasks and exercises that assist you in gaining a clear understanding of the content in this workbook. It is important for you to undertake these activities, as they will enhance your learning.  Activities can be used to prepare you for assessments. Refer to the assessments before you commence so that you are aware which activities will assist you in completing your assessments. |
|  | **Collaboration**  Whether you discuss your learning in an online forum or in a face-to-face environment discussions allow you to create and consolidate new meaningful knowledge. |
|  | **Self-check**  A self-check is an activity that allows you to assess your own learning progress. It is an opportunity to determine the levels of your learning and to identify areas for improvement. |
|  | **Readings (Required and suggested)**  The required reading is referred to throughout this Student workbook. You will need the required text for readings and activities.  The suggested reading is quoted in the Student workbook, however you do not need a copy of this text to complete the learning. The suggested reading provides supplementary information that may assist you in completing the unit. |

Topic 1

Business legal requirements

# Introduction

Starting your own business can be one of the most exciting things you can do in your life. But it can also be daunting as there are rules and regulations you have to follow. Knowing what the rules are and where to go get help are crucial to getting you set on your journey to small business success. If you run a small business and don’t abide by the rules there can be consequences. This workbook covers the legal essentials you need to know about setting up and running your small business. The information in this workbook will allow you to:-

* identify legal requirements
* comply with legal requirements
* arrange contracts
* identify and treat risk.

Each topic provides the important information you’ll need, complemented by activities which provide opportunities for practical learning either in the classroom or at home.

# Topic 1 Business legal requirements

## Business structures

An important decision that must be made about a business is its structure. The most common types of business structure include:

1. Sole Trader/Proprietor
2. Partnership
3. Company
4. Trust

The choice of the most appropriate legal form of structure will depend on factors such as:

* the size of the business
* the number of people involved
* the type of business
* taxation considerations
* financial considerations
* management control/independence
* government interference
* exposure to risk
* personal preference.

### Sole trader

This is the simplest form of business ownership.

A sole trader is one who trades as an individual without the use of partners or a company structure. The proprietor is the sole owner of the business and has complete control over it.

Therefore, the individual bears full responsibility for the actions of the business.

The sole trader can trade under their or a business name and therefore is personal responsible for the business.

It is important to note that the sole trader retains all profits, the liabilities in regard to claims by creditors extend to private assets. Therefore, no distinction is made between business and private assets.

A sole trader is the simplest form of business structure. It is also relatively easy and inexpensive to start and maintain.

Many sole traders choose to trade under their own name - for example, Lee Smith, while others opt to register a business name. As a sole trader the owner will retain complete control of the business.

There is no division between business assets or personal assets, which includes the share of any assets jointly owned with another person (such as the house or car). The liability of the sole trader is unlimited which means that personal assets can be used to pay business debts.

Sole traders pay income tax at personal tax rates. Sole traders are taxed as individuals and pay income tax at personal tax rates. This means the business income is declared on the sole trader’s personal tax return along with any other assessable income (such as your salary or wages, interest, dividends).

#### Sole trader: advantages and disadvantages

|  |  |
| --- | --- |
| Advantages | Disadvantages |
| Easy and low cost to set up | Personally liable for all debts - can be sued and lose personal assets |
| Greater freedom from regulation | Liable for taxation as an individual |
| Owner has direct control over the business | Ownership cannot be transferred to another person |
| All profits go to owner | Need to make all decisions and take on all responsibilities |
| Minimum legal requirements | More difficult to raise finance |
| No separate business tax returns required | If sick or injured no one to run business |
| No registration required if trading under own name |  |
| Maximum privacy no government interference |  |

### Partnership

A partnership involves two or more people (but no more than 20, with some exceptions) going into businesses together in order to make a profit.

In most cases a partnership will need to [register a business name](https://www.business.qld.gov.au/business/starting/starting-a-business/working-business-advisers) with the Australian Securities and Investments Commission (ASIC) unless it uses the surnames of all the partners involved. Partners share all business assets and liabilities.

A partnership is a relationship, not a separate legal entity. Each partner jointly owns all the business assets and liabilities. It’s vital that each partner knows their rights, responsibilities and obligations.

It consists of a written agreement and includes details of partner’s relations and specifies how profits and losses will be divided.

The written agreement generally includes the following:

* Names and addresses of the partners
* Name of the company
* Nature of the partnership business
* Initial capital contributed by each partner
* Distribution of profits and losses to partners
* Procedures for partners salaries/personal drawings
* Partners roles within the business
* Bank details
* Extent of each partners authority
* Dispute resolution
* Procedures for dissolution, retirement of a partner, expulsion, incapacity, of a partner.

The agreement should also state each partner’s role and level of authority, their expected financial contribution and a clear procedure for dispute resolution and dissolving the partnership. This is important because personal liability is unlimited for each and every partner in the business.

If the business fails and a partner can’t afford to pay their share of any debts incurred, other partners will be held liable for the shortfall. Partners are also jointly responsible for any debts other partner/s may incur, with or without the knowledge of other partner/s.

Where there is no agreement in place, each partner is deemed to own equal shares of each asset as prescribed by the [Partnership Act](http://www.asic.gov.au/) .

#### Partnership: advantages and disadvantages

|  |  |
| --- | --- |
| Advantages | Disadvantages |
| Simple and low cost to establish and operate | Partners are personally liable for all debts and obligations |
| Additional expertise available to the business | Divided authority and potential incompatibility |
| Additional sources of capital | Limitations on number of partners |
| Shared managerial responsibility and decision making | Lack of flexibility in transferring ownership |
| Limited outside regulation | Each partner is generally liable for the acts of other partners |
| Partnership shares cannot be transferred without the authority of the other partners |  |

### Company

A company is a separate legal entity capable of holding assets in its own name and conducting business in its own right. A company can also sue and be sued.

Shareholders own the company while directors run the company. In many cases company directors are also shareholders, along with company employees.

To become a company, an entity must:

* be incorporated under the [Corporations Act 2001](https://www.ato.gov.au/business/super-for-employers/working-out-if-you-have-to-pay-super/) (Commonwealth Act); and
* be registered with the [Australian Securities and Investment Commission](http://www.ato.gov.au/individuals/content.asp).

#### Australian Company Number (ACN)

Unlike business names, once registered, a company name can trade throughout Australia. Every Australian company receives a unique nine digit [Australian Company Number (ACN)](http://www.asic.gov.au/asic/asic.nsf/byId/PMIDCA256AF60076AF11CA256AF6007E6325?opendocument) which must appear on the company seal (if it has one) and every public document issued, signed or published.

#### The tax requirements for a company

The tax requirements for a company are quite different to the other business structures. It has its own tax income liability which is totally separate to individual income tax. A company pays income tax at a flat rate of 30% on taxable income.

#### Company liability

A company’s assets belong to the company and the company is liable for debts incurred which makes this type of business structure appealing to high-risk business ventures.

Generally, the owner’s assets cannot be accessed to pay for any company debts or liabilities. However, there are some exceptions. Financial institutions may require a personal guarantee against loans or overdrafts. A personal liability may arise if debts are caused recklessly, negligently or fraudulently.

A company can sue and be sued in its own right, but the company director can also be held personally responsible for offences if they are found to have been negligent in performing their duties.

#### Proprietary and public companies

Companies may be formed as either private, also known as proprietary, or public companies that are listed on the stock exchange.

#### Proprietary company

A proprietary company has no more than 50 non-employee shareholders and is generally not permitted to offer shares or securities to the public. It must have at least one shareholder and one director, and at least one director must ordinarily reside in Australia.

#### Public company

A public company may have more than 50 non-employee shareholders, can offer shares and securities to the public, and may seek listing on the Australian Stock Exchange.

#### Company: advantages and disadvantages

|  |  |
| --- | --- |
| Advantages | Disadvantages |
| Limited liability for shareholders/owners | Significant set up costs and maintenance costs |
| Company structure is commercially well understood and accepted | Limited or no control of company affairs |
| Ability to raise significant capital | Complex reporting requirements |
| Profits can be reinvested in the company or paid out to shareholders as dividends | Company cannot distribute losses to its shareholders |
| Easy to sell or pass on ownership |  |
| Company can carry forward losses indefinitely to offset against future profits |  |

### Trust

Unlike a company, a trust is not a separate legal entity. Trusts are often used in connection with running a business for the benefit of others. A trust is a structure where a trustee (an individual or company) carries out the business on behalf of the members (or beneficiaries) of the trust.

Family businesses are often set up as a trust so that each family member can be made a beneficiary without having any involvement in how the business is run.

#### Discretionary and unit trusts

A trust is set up through a trust deed and there are two main types:

**Discretionary trusts**—The trustee has discretion in the distribution of funds to each beneficiary. The most common example is the family trust.

**Unit trusts**—Unit trusts are recommended when more than one family is involved. The interest in the trust is divided into units, similar to shares. Each unit holder may have a number of units in the trust. Distribution from the trust is determined according to the number of units held.

Importantly, trustees are legally liable for the debts of the trust. They can use the assets of the trust to meet those debts. However, if there's a shortfall, they are responsible for covering the difference from their own resources.

A trustee must apply for a [Tax File Number](http://www.humanrights.gov.au?doc=/content/41612.htm&pc=001/002/042/002&mnu=&mfp=&st=&cy=1?doc=/content/41612.htm&pc=001/002/042/002&mnu=&mfp=&st=&cy=1) (TFN) and lodge an annual trust return. The trust is not liable to pay tax; tax is assessed to the trustee or to the beneficiaries that are entitled to receive the trust net income.

#### Trust: advantages and disadvantages

|  |  |
| --- | --- |
| Advantages | Disadvantages |
| Reduced liability - especially if a corporate trustee | Can be expensive and complex to establish and administer |
| Asset protection | Difficult to dissolve, dismantle or make changes once established particularly where children are involved |
| Flexibility of asset and income distribution | Any profits to reinvest into the business will incur penalty tax rates |
|  | Cannot distribute losses, only profits |

### Features of business structures - summary

| **Feature** | **Sole Trader** | **Partnership** | **Pty Ltd Company** |
| --- | --- | --- | --- |
| Examples | Small business & home based business | New business which may grow later | Larger businesses |
| Ownership | One person | 2-20 partners - property and assets belong to partners | 1-50 shareholders -property and assets belong to the company not the employees |
| Legal status | Owner and the business are the same | No separate legal identity - partners and the business are the same | Shareholders are legally separate from the business |
| Management | Sole trader | Joint, as per partnership agreement | Board of directors - shareholder powers are limited |
| Continuity | Ends with death or bankruptcy of sole trader | Limitations as per partnership agreement.  Ends with death or retirement of one partner or bankruptcy | Continuous unless wound up by shareholders or directors |
| Legal documentation requirements | None  Registration of business name desirable | Partnership agreement in writing if partnership is to last more than 1 year  Registration of business name desirable | Australian Company Number (ACN)  Objectives of the company  Certificate of incorporation  Company and business name plus CAN on all documentation |
| Liability | Total | Total | Limited to nominal value of shares held |
| Establishment costs | Cost of licenses  Registration of business name if required | Cost if licenses  Cost of drawing up partnership agreement  Registration of business name if required | Professional fees |
| Advantages | Easy and inexpensive to set up  Few regulations  Independence, privacy, flexibility  Owner gets all profits | Easy and inexpensive to set up  Additional expertise available  Additional source of capital  Possible tax advantages  Limited regulation or interference | Limited liability  Separate legal entity  Shares transferrable  Possible tax advantages |
| Disadvantages | Unlimited liability  Few tax concessions  Ownership non transferrable  PAYG tax  Sole responsibility  Difficulty in raising finance | Unlimited liability  Divided authority and potential conflict/incompatibility  Lack of flexibility in transferring ownership  PAYG Tax | Cost of establishment  Close government regulation  Less privacy |

|  |  |
| --- | --- |
| Practice activity icon | Practice activity 1.1 Research business structure |

*Using your own business or a business you know, research the following:*

Name of business: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Structure: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Number of employees: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Legal status: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Legal documentation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Legal requirements – employees**

When employing staff, there are a number of legal obligations which MUST be met. These can be grouped into three major categories:

* Minimum Employment Conditions and Industrial Awards
* Taxation
* Workplace Health and Safety

### Minimum employment conditions and industrial awards

Every employer is subject to a set of obligations pertaining to workplace conditions and payment of wages with regard to their employees. These are determined by minimum conditions of employment and industrial awards.

Minimum conditions of employment

Federal, state and territory legislation prescribes specific minimum employment conditions. These include:

* Minimum rates of pay.
* Casual loading – casual employees are entitled to receive a loading on their prescribed rate of pay.
* Apprentices/trainees - wages must be in accordance with rates detailed in relevant industrial awards.
* Payment of wages – employees must be paid money unless otherwise authorized by a specific award, employment contract or workplace agreement.
* Annual leave – full time and part time employees are entitled to annual leave. Pro- rata annual leave is paid on termination. Casuals are excluded.
* Sick/injury leave – full time employees are entitled to paid sick leave, part time employee are entitled to sick leave on a pro rata basis. Casuals are excluded.
* Bereavement leave – employees including casuals are entitled to bereavement leave.
* Parental leave – this covers maternity, paternity and adoption leave.
* Public holidays - employees are entitled to payment for unworked public holidays.
* Significant change – employees must be advised of action that will significantly affect them such as restructuring, a change of work location or hours, a need for retraining or a change in skills required by the business.
* Redundancy – an employee who is made redundant is entitled to a notice period dependent on their length of service.
* Time and wage records – an employer’s obligation to keep time and wage records will vary depending upon the applicable agreement, award or legislation. These records must be kept for a minimum of seven years in either written or electronic format and can include:
  + Employee name
  + Hours worked each day and each week
  + The gross and net amounts paid to an employee
  + All leave taken whether paid, partly paid or unpaid
  + Any deductions made on behalf of the employee
  + Details necessary to calculate the employees entitlement to, and payment for, long service leave
  + Details of superannuation contributions made for the employee
  + Taxation details including tax file number, employment declaration form and copies of PAYG summaries.

#### Performance management review

There are various aspects in managing human resources to maximise productivity. One of these is to review the performance of employees.

An important first step in managing human resources is the induction of new employees into the business. Having been explained the organisational structure, business operation, policies, procedures, standards and expectations, there are a number of additional factors that can contribute to the efficient management of human resources. These include:

* Working effectively as a team
* The leadership role
* Communication
* Job satisfaction
* Negotiation

### Taxation

If the business has employees, then the ATO (Australian Taxation Office) requires it to meet the following obligations:

* Register for PAYG Withholding with the ATO before beginning to withhold from employees.
* Obtain tax file number declarations from employees – where appropriate employees must complete this declaration to be entitled to their marginal tax rate. If they do not quote their tax file number they must pay the top marginal tax rate.
* Obtain withholding declarations from employees – where appropriate to entitle them to family tax benefits. Withholding tax declarations are held by the business.
* Withhold the correct amount of tax in line with the ATO’s tax tables and the information given by the employee in their declaration forms.
* Report and pay the withheld amounts to the ATO using the Business Activity Statement.
* Give each employee a payment summary at the end of the financial year by 14 July after the end of the financial year, or when requested in writing. These are a record of the total payments made to the employee and amount withheld. Employees include a copy of their payment summary in their income tax return.
* Report annually to the ATO on the amounts withheld from employees’ wages – this must be done by 14 August after the end of each financial year.
* Make deductions from an employees pay under the child support scheme – this only needs to be done if the child support agency contacts the employer of someone who is liable to pay child support through the employer withholding system.
* Contribute to employee’s superannuation – the minimum contribution (as at 2019 9.5%) of the employees defined earnings base. In most cases this applies to all employees be they full time, part time or casual. However, there are some exceptions - details of which are discussed later.
* Make eligible termination payments (ETPs) - if a staff member has terminated with the business. ETPs include:
  + Approved early retirement scheme payments that exceed the tax free limit
  + Bona fide redundancy payments that exceed the tax free limit
  + Compensation for unfair/wrongful dismissal
  + A ‘golden handshake’
  + Payments in lieu of notice
  + Unused sick leave (if it is company policy to pay it)
* Register for fringe benefits tax (FBT) – this needs to be done as soon as fringe benefits are being provided to staff.
* Report and pay fringe benefits tax on fringe benefits provided to employees. Employers must keep records that show the taxable value of certain fringe benefits provided to individual employees.

### Workplace Health and Safety (WHS)

The National Workplace Health and Safety Commission has developed a code of practice to:

* provide practical guidance to employers in meeting standards, facilities and amenities in the workplace
* prohibit certain activities in the workplace
* maintain the workplace in a safe and healthy condition.

**The major areas covered include:**

* dining facilities, such as dining rooms/dining areas
* change rooms, toilets and washing accommodation
* storage facilities
* drinking water

workplace environment

* cooling
* outside environment
* aisle and passage ways
* workplace cleanliness
* seating
* workstation space.

**Workplace health and safety obligations include:**

* establishing hazard management to identify specific workplace hazards
* establishing and maintaining a system for managing workplace health and safety
* understanding and applying Duty of Care responsibilities
* developing a written safe operation procedure manual
* establishing a workplace health and safety record keeping system
* developing and implementing procedures to evaluate and review the effectiveness of risk control measures.

#### Responsibility for Workplace Health and Safety

|  |  |
| --- | --- |
| Who | Responsibility |
| Employers | * Consult safety and health representatives and other employees on Workplace Health and Safety matters. * Provide adequate protective clothing and equipment where hazards cannot be avoided. * Ensure safe use of equipment and substances and disposal of substances in the workplace. * Ensure individuals not directly employed, such as contractors, members of the public, clients etc., are not exposed to hazards in the workplace or harmed by the work. Warning signs are advised. * Notify of workplace injuries. |
| Employees | * Take reasonable care. * Cooperate with employers. * Follow instructions and training provided. * Do not interfere. |
| Those who control workplaces | Ensure the workplace is safe and anyone can safely enter or leave. |
| Manufactures, importers, suppliers, designers etc. | * Ensure any article designed, manufactured, marketed is used correctly and staff are not exposed to hazards. * Test equipment for hazards and provide information about safe use. * Ensure people are not exposed to hazards. |

#### Workplace health and safety program

|  |
| --- |
| Components |
| **Owner/Management Commitment and Employee Involvement**   * Acknowledge the importance of workplace health and safety. * Hold meetings with employees to communicate policy and any changes in policy. * Set the example by following all safety requirements. * Clearly assign responsibility for each aspect of the program developed. |
| **Worksite Analysis**   * Assess the workplace for any existing or potential hazards. * Establish a system for monitoring the effectiveness of hazard control or prevention. * Provide procedures for employees to notify of any hazards. * Seek expert help in the initial stages of the workplace analysis as necessary. |
| **Hazard Prevention and Control**   * Set up safe work procedures based on analysis of hazards in the workplace. * Provide personal protective clothing and equipment as appropriate. * Provide for regular equipment maintenance. * Plan for emergencies including fire and natural disasters. * Establish an emergency medical procedure for handling injuries. |
| **Training for Owner/Management/Employees**   * Ensure all employees are skilled in handling the materials and equipment they will be using. * Train all workers about potential hazards that they may be exposed to and how to protect themselves. * Do not allow an employee to undertake a task that appears unsafe, or has the potential to become unsafe. |

|  |  |
| --- | --- |
| Practice activity icon | Practice activity 1.2 WHS |

*Using the example business you selected for the previous activity, list five potential workplace health hazards and list the steps the owner has taken to reduce the risks they pose.*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

#### Workers compensation

The Workers Compensation and Rehabilitation Act (2003) makes provision for the compensation of employees who suffer a disability by accident or disease in the course of their employment. It also promotes the injury management of employees to return them to gainful employment.

The act is based on a no fault principle. That is, regardless of whether there is fault on the part of either the employer or employee, compensation will be paid.

A workers compensation claim exists when an employee incurs medical expenses or required time off work due to illness or injury sustained in the course of their employment.

The act specifies that the employee’s employment must have contributed to the disability to a ‘significant’ degree.

A compensable illness or injury may have been sustained from:

* one particular incident or accident
* a gradual onset of symptoms
* a recurrence or aggravation of a pre-existing condition.

It is compulsory for employers to take out a workers compensation insurance policy for their employees. Not having one may result in prosecution with substantial fines payable per employee, and recovery of avoided premiums for the previous five years.

**Note:** In New South Wales if you are a sole trader/proprietor, or member of a partnership, you’re not a worker of your own business and cannot take out workers compensation insurance to cover yourself for injuries.

### Equal Employment Opportunity (EEO)

In 1973, the Australian Government ratified the International Labour Organization (ILO) Convention on discrimination in employment and occupation, which signified a commitment to a policy of Equal Employment Opportunity.

Equal Employment Opportunity means that all employment and management practices operate in a way that gives everyone equality of opportunity in the workplace. It requires decision making to be based on clear, predefined, job related criteria, such as relevant skills, experience, qualifications, aspirations, potential and aptitude, in all aspects of personnel management including:

* recruitment
* remuneration
* conditions of employment
* professional development
* promotion
* termination of employment.

Decisions on such matters **must not** be made on the basis of:

* sex
* pregnancy
* age
* impairment
* political belief and activity
* trade union activity
* marital status
* parental status
* race
* national origin
* religion
* criminal record
* social origin
* lawful disability activity
* any other irrelevant activity.

An Equal Opportunity Commission or equivalent body in each state or territory controls aspects of equal opportunity in the workplace.

The role of these bodies is to deal with complaints of discrimination based on:

* sex
* marital status
* race
* disability or disease
* political or religious beliefs.

On behalf of the Human Rights and Equal Opportunity Commission, these bodies also deal with less favorable treatment due to status in:

* employment
* education
* provision of goods and service
* clubs
* Sport.

The following are for Federal and NSW offices:

* Federal—Human Rights and Equal Opportunity Commission [www.humanrights.gov.au](http://www.humanrights.gov.au)
* NSW—Anti-Discrimination Board [www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au)

### Anti-discrimination

An employer must take all reasonable steps to *“prevent discrimination and harassment in the workplace if they wish to avoid liability”.* Reasonable steps are not defined in legislation, and are determined on a case-by-case basis. Therefore, it is essential that you actively implement measures to minimise the risk of discrimination and harassment occurring. The onus is on the employer to prove that all reasonable steps have been taken.

When developing a strategy, it is recommended an employer consult with relevant parties including employees, unions, employer organisations, industry and professional associations, the human rights and equal opportunity commission, cultural/ethnic organisations, and state and territory anti-discrimination agencies.

The following measures to prevent harassment are based on those recommended by the Human Rights and Equal Opportunity Commission:

* Develop a written policy which prohibits discrimination and harassment, in conjunction with staff and relevant unions.
* Regularly distribute and promote the policy to all involved in the business.
* Ensure that the new policy is accessible to, and understood by all employees, including sensitivity to cultural differences and varying levels of competency in English.
* Provide policy and other information on discrimination and harassment to new staff as a standard part of induction.
* Periodically review the policy to ensure it is operating efficiently and contains up to date information.
* Ensure that the owners/directors/line managers model appropriate standards of professional conduct at all times.
* Include accountability mechanisms in position descriptions for managers.
* Remove offensive and explicit materials (calendars, posters etc.) from the workplace.
* Develop a policy prohibiting the inappropriate use of computer technology.

If discrimination or harassment should occur, then it is recommended that the employers take the following **remedial steps**:

* Implement an internal system for dealing with complaints of harassment, or adapt existing grievance procedures for this purpose.
* Ensure the organisation’s policy on discrimination and harassment provides the employee with advice on what to do if they are discriminated against or harassed.
* Provide employees who have been discriminated against/harassed with access to counselling or employee assistance programs.
* Provide employees who have discriminated or harassed others with information and training to prevent recurrence.

As an employer, it is essential that you follow anti-discrimination law, and promote equal employment opportunity within your business. Not only is this a legal requirement, but it will also contribute to the harmony, creativity and productivity of your working team.

Following anti-discrimination and equal opportunity employment guidelines ensures that:

* Everyone is able to work more productively without the distraction of harassment or discriminating behavior.
* A more positive work environment, which promotes teamwork, is encouraged and facilitated.
* There is the opportunity to link the diversity in the workplace to potential markets with a similar diversity.
* Potentially damaging court actions involving alleged harassment or discriminatory behaviour is avoided.
* The most suitable candidate is awarded the position.
* The most appropriate individual receives training and promotion.

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| Practice activity icon | Practice activity 1.3 Research a case study |

*Access the* [*Anti-Discrimination Board of NSW*](http://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_publications/adb1_newsletter/et_index_cases.aspx) *website and select a case study. Read the material and summarise the key issues in dot points. Be prepared to discuss these in class with your peers and teacher.*

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## Legislation codes and regulatory requirements

Regardless of the type of business or the business structure, there are a number of legal issues to consider. The best source of information in the first instance is the local state small business advisory service.

### Regulations

In general there are regulations governing location of a business, and local government authorities should be contacted concerning, but not limited to the following:

* zoning
* approved business use
* parking requirements
* signs
* health regulations
* licenses/permits.

### Licenses and permits

In addition to regulations governing various aspects of conducting a business, certain businesses require one or more licenses and/or permits before trading can commence. Further, licenses may also be required by a variety of State and Federal government authorities. These may include but not limited to:

* health care practitioners
* pharmaceutical firms
* professional services
* real estate
* tourism.

State governments have introduced business license information services that provide advice about licenses, permits, approvals, registrations and so on. You can search online to identify licensing requirements.

### Intellectual property

Intellectual property is a broad term covering property rights in areas of:

* copyright
* patents
* designs
* trade marks.

It is important to be alert to any possible infringement of another person’s intellectual property rights.

There are two key areas to consider:

* Are there products or services which I have created and/or provided that I wish to prevent other businesses from copying or imitating?
* Is there is any aspect of the business, its products or services, that might be infringing on the intellectual property rights of others?

#### Copyright

The concept of copyright does not involve a system of registering copyright material, but rather the fact that any idea that is expressed in ‘material form’ is copyright protected. For example, the author will generally own the copyright of an idea in a document, pamphlet, drawing, sculpture, DVD, book or sound recording. Copyright protection generally lasts for a period of 50 years following the death of the author/owner of the copyright.

#### Patents

If something is invented, taking out a patent is the way to ensure that no one else can steal the idea and exploit it commercially. Unlike copyright, which automatically exists throughout much of the world, a patent is only valid in the country in which it is taken out and it requires registration.

#### Designs

Design law like patent law is regulated by a system of registration. Designs involve any feature of shape pattern or configuration on a finished article of manufacture.

The design must be new or original to be registered. Only the owner or creator of the original design is entitled to apply for registration.

Once registered, the owner of the registered design retains a monopoly over the design, which may last for 16 years.

#### Trade marks

A trade mark can be a word, phrase, letter, number, sound, smell, shape logo, picture, aspect of packaging, or a combination of these. For example, QANTAS, Tarzans grip, BPay. Any name, signature, distinctive mark or design may be registered as a trade mark.

The three key stipulations are that the mark must:

* not be descriptive of the product
* be distinctive
* not seek to praise the product.

A trade mark may remain on the register for seven years, and this period is renewable.

### Trade practices

Trade practices are governed by the Trade Practices Act, which is administered by the Australian Competition and Consumer Commission (ACCC). The major components of the Act, which relate to Sole Traders, Partnerships and Companies are:

* anticompetitive practice
* unconscionable conduct
* unfair practices
  + product safety information
  + conditions and warranties
* actions against manufacturers/importers.

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| Practice activity icon | Practice activity 1.4 Intellectual Property |

*You are a small business owner and you have been casually browsing the internet when you notice a new competitor has recently come on the scene. Their logo is very similar to yours except for a few minor differences in size and colour. You’re concerned as you have built a reputation and your logo is important to your brand. What would you do? Be prepared to discuss this in class. Refer to the* [*IP Australia website*](https://www.ipaustralia.gov.au/) *to research your answer.*

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### Consumer protection

Anyone running a business that involves selling goods or services to the public must be aware of the requirements of the consumer laws. The all-encompassing act dealing with consumer protection laws in Australia is the Trade Practices Act.

This Act aims to protect the Australian consumer from false and misleading claims and conduct by suppliers of products and services. Such unfair and deceptive practices incur heavy fines.

This is federal legislation and thus applies throughout Australia. However, due to limitations under the Australian Constitution, the Trade Practices Act applies to companies and businesses involved in interstate trade. Therefore, if the business is operating as a sole trader or partnership trading only in one state then they are not subject to the Trade Practices Act.

In NSW, there are the Sale of Goods Act and Fair Trading Act, which mirror the Trade Practices Act and regulate areas such as:

* a system of fair trading
* accurate and reliable information as opposed to false and misleading information
* product standards
* sales techniques
* implied conditions and warranties.

### Superannuation Guarantee (SG) fund

In 1992, the Federal Government introduced the Superannuation Guarantee Fund to reduce the future reliance of the Australian population on age pensions. All employers must provide a minimum level of superannuation cover for employees.

The Australian Taxation Office guidelines for paying the Superannuation Guarantee Fund include the following:

Generally, if you pay an employee $450 or more before tax in a calendar month, you have to pay superannuation on top of their wages.

The key guidelines applicable to the superannuation guarantee (SG) include:

* As at 2019 the SG is 9.5% of an employee’s ordinary time earnings.
* You must pay SG at least four times per year, by the quarterly due dates.
* You pay into a complying super fund. Most employees are eligible to choose which fund you pay into.
* If you don’t pay the SG on time, you may have to pay the super guarantee charge.

If your employee is under 18 or is a [private or domestic worker](http://www.auda.org.au/industry-information/registrars/#DomesticWorkers), such as a nanny, they must also work for more than 30 hours per week to qualify.

You have to pay superannuation for some [contractors](https://www.ato.gov.au/business/super-for-employers/working-out-if-you-have-to-pay-super/contractors), even if they quote an Australian business number (ABN).

As an employer you pay superannuation no matter whether the employee:

* is full time, part time, or casual
* receives a super pension or annuity while still working – including those who qualify for the transition-to-retirement measure
* is a temporary resident – when they leave Australia, they can claim the payments you made through a 'departing Australia superannuation payment'
* is a company director
* is a family member working in your business – provided they are eligible for SG.

You don’t have to pay SG for:

* non-resident employees you pay for work they do outside Australia
* employees paid under the Community Development Employment Program
* members of the army, naval or air force reserve for work carried out in that role
* employees temporarily working in Australia who are covered by a bilateral super agreement. You must keep a copy of the employee’s certificate of coverage to verify the exemption.

## The business name

A business name is a trading name that helps customers recognise your business. There are legal requirements associated with having a business name.

### Registration

You must register your business name with the Australian Securities and Investments Commission (ASIC). Registration of your business name applies nationally, so you do not need to register across different states and territories. You are required to adhere to several legal obligations to avoid fines and the possibility of losing the name you trade under. It is recommended you register your name before you spend money on signage, printed material, name tags or uniforms displaying your business name.

You can apply for an Australian Business Number (ABN) and a business name at the same time. You will use your ABN to manage your tax and deal with other businesses or government departments.

Choosing a name for your business gives you a chance to think about what impression you want to make. While you can be creative with your choice of business name, there are restrictions on what names are acceptable. Consider these restrictions before you apply for your business name to avoid being rejected. If you are using your own name - your given name(s) and/or initial(s) followed by your surname - as a business name, it does not have to be registered.

You need to register your business name with the [Australian Securities and Investments Commission (ASIC)](https://www.worksafe.qld.gov.au/laws-and-compliance/workplace-health-and-safety-laws) if you:

* include other words with your name, such as Joan Smith Party Hire or John Smith & Sons
* are trading under a name that is different from your own name
* are operating a company (Pty Ltd) and want to trade under a different name to your company name.

Registering your business is important because it prevents you from mistakenly using the name of another Australian registered business, company or corporation. It also lets the public know who is conducting a business under the business name, and allows you to open a business bank account under your registered name. You cannot use an unregistered business name, or a name that is different from your own name or company or corporation name.

#### Business name or company name?

A business name (e.g. Acme Trading Services) is different from a company name (e.g. Acme Pty Ltd). A business name is used by consumers to identify the company or persons behind a trading name. A company is a separate legal entity from its directors and shareholders.

Registering a company name prevents an identical business name or company name from being registered by competitors anywhere in Australia. If you want to operate your business as a company, you will need to register with [ASIC](http://www.cpaaustralia.com.au/~/media/Corporate/AllFiles/Document/professional-resources/business/managing-liquidity-risk.PDF).

#### Your rights as a registered business name holder

Registering a business name only gives you certain rights over that name. For example, it does not:

* give you ownership of the name or the exclusive right to use the name
* stop another person from registering a similar name
* prevent the name being registered as a trade mark
* prevent the name being used by someone that has already registered it as a trade mark
* protect you from legal action if the name of your business infringes the intellectual property rights of another (for example, a name which is a registered trade mark).

#### Legal obligations for holding a business name

There are some legal obligations that come with holding a registered business name. You must comply with these to avoid fines and the possibility of losing the name you trade under.

This includes publishing the registered business name on all business correspondence and documents such as business letters, invoices, account statements, publications, official notices, orders and receipts.

#### Displaying your business name

You must clearly display your registered business name outside your business locations if the place of business is open to the public.

You will receive a record of registration when you register or change a business name, or when an owner's name changes. You don't have to display the record at your business premises, but it is recommended that you do. Your bank, as well as your telephone and electricity suppliers, may also request to see your record.

#### Renewing registration

To keep using your business name you need to renew your registration before the expiry date. The minimum registration period is one year. A discount is available if you renew for three years. If you don't renew your registration, your business name will be removed from the register and another business will be free to use it. You could then be stopped from using the name you have been trading under.

#### Changing your details

If you have any changes to business ownership, the names of business owners or your business addresses, you must tell ASIC within 28 days of the change.

If you decide you want to change your business name, or if you have made a spelling error on your application, you will also need to contact ASIC.

#### Closing your business

If you plan to close your business, you must send ASIC a request to cancel your business name at least 28 days beforehand. ASIC will then notify the business name holder (and any other people recorded in the business names register). This prevents unauthorised attempts to cancel a business name.

#### Trade marks and business names

Registering a business name does not give you the same rights as registering a trade mark. You do not own this name or have exclusive rights to use the name or any words in the name, as you do when you register a trade mark.

If you want to protect your business name from use by a competitor, you'll need to register a trade mark. You can then control the use of the name or any part of the name.

#### Tips for creating a business name

A trusted and clearly identifiable business name can be a valuable asset in dealing with clients, lenders and other businesses. It is worth spending some time creating your business name, as a good name adds value to your business, and will be central to your business image and your [branding](https://www.business.qld.gov.au/business/running/marketing/branding-for-business).

Your business name should accurately reflect your business. It should clearly convey to potential clients the type of products or services you offer.

When you are choosing your business name you should make sure that it is:

* not too long
* easy to pronounce
* easy to spell
* memorable
* not likely to date
* logical
* not offensive
* not misleading.

If you think you might want to trade overseas, you should check the suitability of your business name in other countries.

#### Business website and email

You should also check that your business name is able to be registered as a domain name for your website and email. While you might be able to set up a free email address, sending emails from a business address will look more professional to potential clients. Most people will also expect that the website for your business is similar to your business name. You can check if your name is available and locate a [domain name registrar](https://www.business.qld.gov.au/business/starting/starting-a-business/business-name/register-business-name) through the Australian Domain Name Administrator (auDA).

#### Sole traders, partnerships, and trusts

If you plan to operate as a sole trader, partnership, or trust - and not as a company - you will need to [register your business name](https://www.ato.gov.au/business/manage-your-invoices,-payments-and-records/in-detail/tax-related-software-products/) with the [Australian Securities and Investments Commission (ASIC)](http://www.asic.gov.au/for-business/starting-a-company/how-to-start-a-company/). You need to register a business name only if you trade under a name that isn't your own (e.g. John Jones trading as Pacific Wreckers).

#### Companies

If you want to operate your business as a company, you will first need to register with the [Australian Securities and Investments Commission (ASIC)](http://www.ipaustralia.gov.au/get-the-right-ip/trade-marks/search-for-a-trade-mark/) to receive your Australian company number (ACN) and registered company name. If you want your company to trade under even a slightly different name from your registered company name (e.g. Midas Pty Ltd trading as Midas), you will need to register this name with ASIC.

To avoid legal action, it's important to make sure your preferred name isn't already used as an existing trade mark or business name. Check ASIC's [business names register](https://connectonline.asic.gov.au/RegistrySearch/faces/landing/bn/SearchBnRegisters.jspx?_adf.ctrl-state=1o1ticei5_18) for a list of all Australian corporate and registered business names. Search the [trade marks database](https://www.business.qld.gov.au/business/running/managing-business-relationships/resolving-disputes-other-businesses) for a list of trade marks registered with IP Australia.

You need to consider your tax requirements and register your business with the Australian Taxation Office (ATO). Which taxes you pay will depend on the type of business you run and the number of employees you have.

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| Practice activity icon | Practice activity 1.5 Business names |

1. *Using the example business from earlier activities, brainstorm to come up with alternative names. Remember to consider the registration requirements and tips above. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
   Access the internet and locate the online business name check tool to see if any of the names have already been registered.*
2. *Go to the ASIC website at* [*www.asic.gov.au*](http://www.asic.gov.au) *and summarise the steps to register a business name.*

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#### Australian business number (ABN)

An ABN is a unique 11 digit number that identifies your business to the ATO and other areas of government. It lets you:

* lodge business activity statements
* confirm your business identity to others when ordering and invoicing
* claim GST credits
* claim energy grants credits
* register an Australian domain name.

ABN registration is not mandatory. Your business can trade without an ABN, but any businesses you deal with may withhold the current top marginal tax rate from their payments to you and pay this amount to the ATO.

#### Fringe benefits tax (FBT)

If you provide certain benefits to your employees or to people associated with your employees, you may be liable to pay FBT. If so, you must register for FBT with the ATO and lodge a return each year.

#### Goods and services tax (GST)

GST is a tax of 10% on most goods and services sold or consumed in Australia. You must register for GST if:

* your gross annual business turnover is $75,000 or more ($150,000 or more for a non-profit organisation)
* you provide taxi or limousine services - regardless of your gross annual turnover.

GST is discussed in more detail later.

#### Pay as you go tax (PAYG)

PAYG is a system that allows you to pay your expected tax liability in instalments. The ATO will notify you of your PAYG obligations.

PAYG tax is discussed in more detail later.

#### Contractors V employees

Before hiring a worker you need to check if they'll be an employee or contractor.

It's important you get this right because it affects your tax, superannuation and other obligations. If you wrongly treat your employees as contractors you risk having to pay penalties and charges.

## Record keeping for business

Good record keeping can help you protect your business, measure your performance and maximise profits.

Records are the source documents, both physical and electronic, that specify transaction dates and amounts, legal agreements, and private customer and business details.

Developing a system to log, store, and dispose of records can benefit your business by allowing you to:

* plan and work more efficiently
* meet legal and tax requirements
* measure profit and performance
* generate meaningful reports
* protect your rights
* manage potential risks.

Most businesses use an electronic record keeping system to make it easier to capture information, generate reports, and meet tax and legal reporting requirements.

### Basic record keeping requirements

Setting up the right record keeping system for your business will help you work efficiently, meet legal requirements, and strengthen customer and staff relationships.

There are certain record keeping requirements for businesses, and there may be specific laws and requirements related to your industry sector. It's a good idea to protect yourself by [seeking expert advice](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_11851_homepage.html) before setting up a record keeping system for your business.

Laws that apply to your business will determine how long you need to keep records for. If you use an electronic record keeping system, you must also be able to produce a hard copy of a record if the Australian Taxation Office (ATO) or Australian Securities and Investments Commission (ASIC) request it.

Personal financial records must be kept for five years, whereas the following records must be kept for seven years:

* financial records for your company
* most employee records
* all records of fringe benefits and capital gains.

To meet basic legal requirements, you **must** keep the following:

* a cash book or financial accounting program - that records cash receipts and cash payments
* bank accounts - cheque books, deposit books and bank statements
* employment records - hours of work, overtime, remuneration or other benefits, leave, superannuation benefits, termination of employment, type of employment, personal details of workers, employee personal contact and employment details
* occupational training records - for both you and employees to comply with [work, health and safety laws](https://www.business.qld.gov.au/business/employing/staff-development/staff-performance-reviews) including evacuation and emergency training attendance.
* sales records - invoice books, receipt books, cash register tapes, credit card documentation, credit notes for goods returned and a record of goods used by the business owner personally
* proof of purchases - cheque butts (larger purchases), petty cash system (smaller cash purchases), receipts, credit card statements, invoices, any other documents relating to purchases including copies of agreements or leases
* work, health and safety (WHS) records - workplace incidents, risk register and management plan, names of key WHS people (e.g. WHS representative, Trained Safety Advisor (TSA), first aid attendant), chemical storage records, first aid incident register, workplace assessments, Material Safety Data Sheets (MSDS).

It is a good idea to keep personal and business records separate, to simplify business reporting and tax returns. For example, using a dedicated business credit and debit card for business expenses will make it easy to separate business and personal expenses.

### End of financial year records

To meet legal requirements, maximise your tax return or minimise your tax bill at the end of the financial year, keep the following records:

* details of stock on hand - at the beginning and end of the financial year
* a list of debtors and creditors - for the entire financial year
* capital gains details - records of asset purchase dates and agreements, records of sale, disposal and proceeds received, details of commissions paid or legal expenses, improvements made to an asset and any other records relevant to how you calculate your capital gain or capital loss
* depreciation details - original purchase agreements or tax invoices, a depreciation schedule, the cost of transporting the items to your business (if applicable), installation costs (if applicable)
* expense records - cheque butts, receipts, cash register tapes, copies of statements and invoices, credit card documentation, details of payments by cash and log books
* staff and wages details - full details of wages, employment contracts, tax deducted, fringe benefits, superannuation, sick pay, holiday pay
* basic accounting records - stock records, accounts receivable, accounts payable, other records
* agreements - sales and purchase contracts, loan agreements, rental agreements, lease agreements, franchise agreements, sale and lease back agreements, trading agreements with suppliers, legal documentation
* other documents - deposits with utilities, contracts with telephone companies, your business name registration certificate, capital gains records.

### Best practice and record keeping

Depending on your industry, keeping the following records may be a legal requirement, but it is **best practice to keep them for five to seven years:**

* employee accreditation certificates and licences - copies of permits, registrations and licences employees need to do their jobs
* employee resumes and job applications
* performance reviews - including assessments of [staff performance](https://www.business.qld.gov.au/business/starting/starting-a-business/working-business-advisers) and agreements between you and your employees
* position statements and job advertisements
* customer records - personal details, products purchased and product enquiries that are useful for [finding new customers](https://www.business.qld.gov.au/business/business-improvement/finding-new-customers)
* customer complaints - details of [complaints](http://www.asic.gov.au/for-business/registering-a-business-name/) about products, service, staff or anything else, and steps taken to resolve them
* details of any disputes with other businesses - including how you went about [resolving disputes](http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/)
* quotes given and won - specifics of jobs and time spent on them to help with future [quoting](https://www.business.qld.gov.au/business/running/marketing/advertising)
* details of advertising campaigns and success - to make it easier to repeat advertisements and plan future [advertising](https://www.business.qld.gov.au/business/running/customer-service/managing-customer-complaints) campaigns
* insurance policies - regularly review and update your [business insurance](https://www.business.qld.gov.au/business/starting/starting-a-business/business-insurance), especially when your business grows or changes.

### Electronic and manual record keeping

While some business owners prefer manual record keeping systems, most businesses use an electronic record keeping system - making it easier to capture information, generate reports and meet tax and legal reporting requirements.

You should consider a number of issues when setting up an electronic or manual record keeping system as each has certain advantages and limitations.

#### Electronic record keeping

Most businesses use accounting software programs to simplify electronic record keeping, and produce meaningful reports. There are many other advantages to using electronic record keeping, as listed below.

**Advantages**

* Helps you record business transactions, including income and expenses, payments to workers, and stock and asset details.
* Efficient way to keep financial records and requires less storage space.
* Provides the option of recording a sale when you raise an invoice, not when you receive a cash payment from a client.
* Easy to generate orders, invoices, debtor reports, financial statements, employee pay records, inventory reports.
* Automatically tallies amounts and provides reporting functions.
* Keeps up with the latest tax rates, tax laws and rulings.
* Many accounting programs have facilities to email invoices to clients, orders to suppliers, or BAS returns to the Australian Taxation Office.
* Allows you to back up records and keep them in a safe place in case of fire or theft.

#### Choosing accounting software

Your business may require more than one software program to meet all of your tax and legal needs, so it's important to:

* seek advice from your accountant or [financial adviser](http://www.lawlink.nsw.gov.au) before purchasing software for record keeping
* check which accounting software is tax compliant on the [Australian Taxation Office website](https://www.smallbusiness.wa.gov.au/step-3-how-do-i-register-my-business-name/).

#### Electronic backup

Set up a secure electronic backup system to ensure records are safely stored and regularly backed up. Daily backups are recommended, particularly for important records. Make sure the backup copies are stored in a separate location to your business in case of fire, theft or a natural disaster.

For small businesses, the cheapest backup options are CDs and memory sticks. If your business has large amounts of data, external hard drives are a popular backup option.

#### Cloud backup

Cloud computing provides a way for your business to manage your computing resources and records online. The term has evolved over recent years, and can be used to describe the use of a third party for your storage and computing needs.

Cloud backup services are becoming more popular and can be automated for your convenience, but you should make sure the method you choose protects the privacy and security of your business and customers.

#### Manual record keeping

Some business owners may want to use a simple, paper-based record keeping system. There are certain advantages to using manual record keeping, as listed below.

**Advantages**

* Less expensive to set up.
* Correcting entries may be easier with manual systems, as opposed to computerised ones that can leave complicated audit trails.
* The risk of corrupted data is much less.
* Data loss is less of a risk, particularly if records are stored in a fire-proof environment.
* Problems with duplicate copies of the same records are generally avoided.
* The process is simplified as you don't need to be familiar with how accounting software calculates and treats your information.

#### Streamline manual record keeping

* Sort and store all paperwork, receipts and payments in 12 separate months.
* Keep all original documents and date all correspondence.
* Record all transaction dates and payment amounts.
* Save all online financial transactions by month and financial year in your inbox and in a separate folder on your hard drive.
* Backup all electronic records on an external hard drive or other storage device other than your computer's internal hard drive.
* Capture nearly all of your income and expenses in statements from both your bank and credit card accounts.
* Request that all statements and bills be sent on a monthly basis - allowing you to reconcile all financial records each month.

|  |  |
| --- | --- |
| Practice activity icon | Practice activity 1.6 Accounting software |

*What accounting software package is used by your example business?*

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*Why was this package chosen?*

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*List three features of this software.*

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## Taxation

### Australian taxation system

Taxes are levies imposed by the government and are payable to both federal and state governments. State taxes are generally an allowable business expense when calculating assessable income for federal taxes, because federal tax legislation is uniform across Australia, whereas state taxes vary from state to state.

Taxation affects almost every aspect of the business and requires professional advice in order to keep up with ever changing legislation as well as minimising taxation on the business.

### Elements of the taxation system

The taxation system includes the following major elements:

* Goods and services Tax (GST)
* Australian Business number (ABN)
* Australian company number (ACN)
* The “Pay as You Go” system for reporting and paying taxation (PAYG)
* Business activity statements (BAS)
* Tax file number (TFN)

### The GST and how it works

GST is a broad based tax of 10% on the sale of most goods and services and anything else consumed in Australia. GST started in 1 July 2000. Basic foods, exports and some health services are GST free.

GST is paid at each stage of the supply chain. The business is a consumer of goods and services and therefore must pay 10% on items used to conduct the business.

If the business is registered for GST, the amount of GST paid will normally be claimed back from the Australian taxation office (ATO) as *an input tax credit* - this will be discussed later.

Liability to pay GST rests on the supplier of the goods **not** the customer. Therefore, even if the GST is not included in the sale price of the goods/services, the business is still liable to pay the 10% GST.

#### Registering for GST

A business **must** register for GST if it is an entity carrying on an enterprise, and the annual turnover is at or above $75000 (or $150000 for a non-profit organisation). A business is an enterprise for GST purposes. Therefore for business purposes, an enterprise is an activity or series of activities in the form of a business buying and selling goods, an individual, partners in a partnership. An enterprise covers commercial activities but does not include hobbies.However, a business can choose to register for GST if the turnover is below $75000.

An **entity** is:

* an individual
* a body corporate
* a corporation
* a partnership
* a trust
* a superannuation fund.

#### The Australian Business Number (ABN)

The ABN is a unique identifier for business dealings.

**Those who need an ABN include:**

* all registered companies
* all entities carrying on an enterprise in Australia, including sole traders, partnerships, trusts, superannuation funds, etc.

**Those who do not need an ABN include:**

* an employee whose sole income is from salaries and wages
* a hobbyist conducting an activity without reasonable expectation of profit.

It is important to note that **if there is no ABN:**

* Other businesses are unwilling to have dealings with the business. The reason for this is that if they cannot quote an ABN, they may be unable to claim GST input tax credits.
* Other businesses may withhold tax from payments to the business at the highest marginal tax rate (currently 47% before Medicare levy).

#### GST free sales

Some sales that are not taxable are called GST free sales. These include:

* most food (especially fresh food)
* most health services
* most educational services
* most childcare services
* most non-commercial activities of charities
* religious services
* sale of an enterprise as a going concern sales through inward duty free shops
* cars for use of disabled people.

#### Input tax credits

An input tax credit is an amount allowed to offset GST included in the price paid for a purchase if it is for use in the business.

Thus, the business claims back the GST it has paid to a supplier of goods/services because the goods/services are required for the successful operation of the business.

The term ‘purchase’ refers to the goods and services bought by the business as well as other transactions such as obtaining information or advice.

The business is entitled to input tax credits for purchases it has made if the:

* business is GST registered
* GST is included in the price of the items acquired
* items acquired are for a creditable purpose for use in the business.

**Example:**

Mary runs a florist shop and pays $550 (including $50 GST) for flowers that she buys to sell through her shop. Mary is entitled to an input tax credit for the $50 included in the $550 she paid for the flowers.

Mary also buys a fax machine for $1100 (including $100 GST). However, she plans to use the machine 20% of the time for personal purposes and 80% for the business. In this case, Mary can claim an input tax credit of 80% of the GST included in the price of the fax machine, being $80.

#### Business Activity Statement (BAS)

Businesses report their tax obligations and entitlements on a Business Activity Statement.

It allows businesses to use a single form to report and remit their activities for:

* GST
* PAYG instalments and withholding tax
* Fringe benefits tax instalments.

This activity statement requires a summary of GST credits and any adjustments for the tax period. BAS Statements are usually lodged quarterly or monthly.

**Tax invoices for sales of less than $1000**

Detail on such invoices must include as a minimum the following:

* Business ABN
* GST inclusive price
* The words “Tax Invoice” stated prominently
* The date of issue of the invoice
* The name of the business
* A brief description of what has been supplied

Note: GST is 1/11th of the total GST inclusive price

**Tax invoices for sales of $1000 or more**

Detail on such invoices must include as a minimum the following:

* Business ABN
* GST inclusive price
* The words “Tax Invoice” stated prominently
* The date of issue of the invoice
* The name of the business
* The name of the recipient
* The address or ABN of the recipient
* A brief description of what has been supplied
* The quantity of goods or the extent of the services provided
* GST amount

Note: GST is 1/11th of the total GST inclusive price

#### The pay as you go (PAYG) system

The PAYG is a single integrated system for reporting and paying:

* PAYG Instalments: Tax on business and investment income - paying your own tax. These are made through the ‘Instalment Activity Statement’.
* PAYG Withholding: Withholding amounts (withholding means the process where amounts are deducted from payments to others and then remitted to the ATO) or paying an amount to the ATO of amounts withheld from others. These are made through the ‘Business Activity Statement’.

**PAYG Instalments**

PAYG Instalments are a system for the business and individuals to pay instalments of their expected tax liability and investment income.

Entities affected by PAYG Instalments include:

* Individuals (such as sole traders or investors)
* Partners in a partnership
* Beneficiaries (for example in a trust)
* Superannuation funds
* Companies

**PAYG Withholding**

PAYG Withholding means the process by which amounts are deducted from payments to others and to remit these amounts to the ATO. An example of this is income tax deducted from an employee’s wages.

It is important to note that it is a requirement that a business withholds PAYG tax (usually the top marginal rate - currently 47% not including the Medicare levy) from payment to any business that does not provide an ABN

#### Tax File Number (TFN)

A tax file number is a unique number issued by the ATO for each taxpayer.

A small business will need a tax file number if it:

* is lodging its first tax return
* makes payments to an employee or contractor
* receives payments as a contractor
* is a fringe benefits tax payer.

**Keeping tax records**

Under Australian taxation law, a person carrying on a business must keep records that document and explain all transactions. These records include any documents that are relevant for the purpose of ascertaining income and expenditure.

By law, any books of accounts, records or documents relating to the preparation of an activity statement or an income tax return for an individual or business, must be retained for a period of at least **five years**. Records relating to fringe benefits tax must be retained for **seven years**.

Should the business be selected for a taxation audit, the business records will be required. There records may include:

* journals
* invoices
* stock sheets
* creditors’ and debtors’ listings
* cash books
* quote books
* receipts
* cash register tapes
* wage books
* cheque records
* loan/lease agreements
* accountants working papers
* minutes of director’s meetings
* bank statements
* personal financial records
* all banking details
* full details of payments to contractors - name address amounts paid.

#### Personal income and company tax

Everyone who has an annual income of $18200 (rate as at 2019) must pay income tax. Income tax is calculated on a scale - see ATO web site for details.

Company tax however is paid at a flat rate (currently 28.5% for companies with a turnover of up to $2 million and 30% for companies with a turnover of over $2 million.

The formula for calculating taxable income is:

Assessable Income - Allowable deductions = Taxable income

#### Business deductions

Under tax law a person can claim deductions for outgoings which are necessarily incurred in carrying on a business to provide assessable income, provided the expenses are not of a private nature.

The following are a common list of expenses which generally can be deducted from gross income including:

* business premises’ - lease, rent, rates, electricity, phone, office equipment.
* plant and equipment - hire or lease payments
* purchase of stock
* depreciation
* tools - purchase of tools used in carrying out duties the business provides
* business stationery
* subscriptions to business related associations
* advertising - media, radio, pamphlets
* employee expenses - Salaries and wages, WorkCover, superannuation
* registered tax agent fees - administration of tax affairs
* insurance
* interest on borrowed funds
* motor vehicle expenses
* repairs and maintenance.

**Home office business deductions**

There are generally three ways in which a business can be carried out at home.

* The home is the principal place of business.
* The home is not the principal place of business, but there is a room set aside primarily or exclusively for business activities. Known as a ‘home office’.
* The home is not the principal place of business, there is no room set aside primarily or exclusively for business activities, but work is conducted in one of the living areas.

The tax deductions able to be claimed will depend on which of the above options applies.

If the home is the principal place of business, it may be possible to claim a tax deduction for the following including:

* rent, mortgage interest, insurance, council rates generally on a pro rata basis depending on the space used.
* utilities (gas, electricity) on a apportioned basis
* telephone/internet on a pro rata basis
* office equipment.

|  |  |
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| Practice activity icon | Practice activity 1.7 Tax concessions |

*Research the* [*ATO website*](https://www.ato.gov.au/) *and locate the information on* ***small business tax concessions****. Using the example business from earlier activities, list the tax concessions that would be advantageous for the business.*

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### Insurance

Starting a business can be a major risk. Insurance is one way of minimising this risk by providing protection against loss. An insurance policy is a legal contract whereby in return for a payment (premium) a business can obtain cover against loss as a result of an unforeseen event.

Loss can be financial resulting from damage of theft of personal and business assets. This insurance cover is known as general insurance.

Another form of insurance is for accident or injury.

The following overview of insurance cover is by no means exhaustive, but rather an indication of common areas of risk that should be covered by small business owners.

**The main types of insurance relevant to small business can be divided into three categories:**

* compulsory insurances
* essential insurances
* useful insurances.

#### Compulsory insurances

Compulsory insurances are those required by law and include:

* Compulsory third party motor vehicle insurance (CTP) - all business operators who use motor vehicles in the business must have CTP insurance. This insurance covers injury or death to third parties. It does not cover damage to the vehicle while being driven.
* Workers compensation - for all business operators who employ staff. This insurance covers any work related sickness, injury or death at the place of work. By law all full-time, part-time and casual employees must be covered for workers compensation insurance.

**Note:** In NSW if you are a sole trader/proprietor, or member of a partnership, you’re not a worker of your own business and cannot take out workers compensation insurance to cover yourself for injuries.

#### Essential insurances

There are a number of other insurances that could be considered as essential for small business. These may vary according to the nature of the business and may include:

* Fire/storm/tempest - protects buildings and assets against destruction of the premises and assets against disasters such as fire, flood and storm, and is a general insurance policy.
* Public risk/public liability - covers against personal injury or property damage to third parties should the business owner be negligent. This includes any injury to persons while they are on the business premises.
* Public liability claims can take lengthy periods of time to settle.
* Loss of profit - provides payment to assist the business while being re-established following loss or damage to meet ongoing expenses such as wages, loans, rent, periodical payments, etc.

#### Useful insurances

Other insurances considered useful for small businesses include:

* Product liability—covers damage or injury caused to the customer by products made/sold through the business.
* Professional indemnity—covers losses incurred as a result of following guidance given by professional advisors.
* Comprehensive motor vehicle insurance—covers damage to the persons vehicle and for damage to property and/or a vehicle of a third party.
* Tenant liability—covers the business as a tenant for damage resulting from negligent actions by the business owner or staff. For example, leaving a tap running flooding the building.
* Burglary/theft—to cover loss from theft of stock or assets.
* Partnership—covers against death of partner.
* Key person—covers the replacement of key staff who are critical to the operation of the business.
* Personal accident and sickness—as sole traders, partners are not covered by workers compensation insurance, this covers the owner who is unable to work in the business.
* Plate glass—covers breakage of plate glass. The owner of the business premises may require a tenant to have this cover.
* Goods in transit—covers goods being transported to and from the place of business.
* Cash—covers the loss of cash on business premises, in transit of being handled by staff.

Topic 2

Contracts

# Topic 2 Contracts

## The law of contract

A contract is a legally enforceable agreement between two or more parties. It involves obligations on the part of those involved, which may be written, oral or inferred from conduct.

For a contract to be valid, the following elements must exist:

* An intention to create legal relations between parties who have a legal capacity to do so. That is, they must be legally able to do so. Contracts cannot be entered into legally by intoxicated people, people who are not of sound mind, bankrupts and in some cases, minors. If such individuals enter into an agreement, that contract may be considered to be invalid.
* An offer—to the other party to do something, or refrain from doing something.
* An acceptance—by a party. That is they agree to the terms of the contract.
* A consideration—which is the value or a benefit to supply or give up something in return such as a specified item for a sum of money.
* Consent—of both parties to be expressed as a genuine agreement and not made under misrepresentation, undue influence or duress.
* Legality of purpose—a contract cannot be enforced if its purpose is to do something illegal.
* Documented form—where this is required by law.

Small business contracts can include:

* contracts with customers
* contracts with suppliers
* lease of business premises
* lease of plant and equipment
* agency agreements.

### Terms of a contract

The terms of a contract are the specific elements that make up the agreement. Terms will usually include the following:

* the purpose of the goods
* the quantity of goods to be supplied
* when the goods are to be delivered
* when a payment for the goods is to be made.

Terms are points of negotiation. Once these are understood and agreed to by satisfied parties and the contract is signed, it is difficult to have it changed.

An example is for a lease. The lease should include, but not limited to, the following:

* The period of the lease.
* The nature of any options.
* The amount of rent, outgoings and how they are calculated
* Conditions of rent reviews.
* Who pays the insurance and what insurances are required.
* What types of business can be conducted from the business.
* What would constitute default, and remedies available to the owner on default.
* The rights of the owner to rebuild and terminate the lease, or move the business out.

### Rights and obligations within contracts

A contract can be viewed as a legal relationship between two parties. Upon signing a contract both parties have certain rights and commit to certain obligations within the terms of the contract.

For example, signing a contract to purchase goods from a supplier.

* Rights—you have a right to expect the supply of goods/services in the stated quantity, at the stated time, according to the terms of the contract.
* Obligations—the supplier has an obligation to provide goods/services in accordance with the terms of the contract.
* The purchaser—has the obligation to make payment for the goods/services within the terms of the contract.

### Discharge of contract

The usual way for a contract to be discharged is when it is performed according to its terms. That is, when goods/services have been supplied in the agreed quantity at the agreed time and the specified amount has been paid for their supply. The contract has been discharged.

#### Discharge of contract by performance

If both parties perform their contractual obligations promptly, the contract is said to be discharged by performance. It is the ideal method that number of contracts gets terminated in this way.

#### Discharge of contract by breach

Failure in performance of contractual obligation is called breach of contract.

#### Discharge of contract by lapse of time

Limitation refers to the specified duration to perform different contracts. The duration thus specified is called the limitation period. Soon after expiry of the limitation period, the contract is discharged.

#### Discharge of contract by operation of law

This can be as follows:

* By Death—whenever one of the parties dies, contractual relations will come to an end.
* By Insolvency—when one of the parties to the contract becomes insolvent, they forgo capacity to contract and those contracts, which were made by that person will be discharged.
* By lunacy—when one of the parties is deemed to be of unsound mind by lunacy, discharge of contract takes place.

#### Discharge of contract by agreement

This can be as follows:

* By alterations—whenever material alterations in contract are made, then it is said that old contract has been discharged and a new contract has come into force.
* By renewal—at times parties to the contracts may substitute completely new contract in place of the old contract. Now the old contract has been discharged.
* By recession—in case of recession the old contract is discharged and there will be no formation of new contract.

### Examples of common commercial contracts

|  |  |
| --- | --- |
| Contract | Description |
| Client contract | This contract sets out services that will be provided, starting and ending dates for services and associated fees. |
| Sales contract | This contract is used provides evidence that a title to personal property was transferred from a vendor (seller) to a vendee (buyer). |
| Lease | A lease or tenancy agreement is made between a tenant and a property owner. A lease or tenancy agreement can be a fixed-term agreement for a period of time or a periodic agreement set weekly or monthly. |
| Licensing agreement | This agreement is used where the owner of a product or service (licensor) grants a licence to another individual or organisation (licensee) to commercialise (e.g. sell, produce, use) its product or service in return. |
| Franchise agreement | This agreement sets out the obligations and liabilities of a franchisor and franchisee. |
| Partnership agreement | This agreement sets out obligations and liabilities of partners. |

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| Practice activity icon | Practice activity 2.1 Contracts |

*Using your example business, list the areas of the business that require contracts and identify the types of contract required. For example, accommodation lease.*

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### Contracts and your business plan

Every small business should have a business plan. Your business plan provides the focus and direction of your business and will inform your contractual requirements and obligations. Your business plan should include the following components:

**Business profile**

The business profile gives the reader adequate information about the business to be considered when reading your business plan.

**Marketing**

The marketing plan forces you to research and assess what is going on in the market place and how this will affect your business. The marketing plan component of the business plan looks at:

* environmental trends
* industry conditions
* products/services of the business
* competitors
* target customers
* marketing strategies
* marketing controls.

**Purchasing**

The purchasing plan is very specific to the business and the needs of the business. The purchasing plan component of the business plan looks at:

* suppliers
* purchasing policies
* purchasing controls.

**Personnel**

The personnel plan will look at the people within the business. The personnel plan component of the business plan looks at:

* management details
* organisation structure
* staffing strategies
* professional advisors
* personnel controls.

**Financial**

The financial plan will look at the financial requirements within the business. The financial plan component of the business plan looks at:

* personal financial position
* establishment costs
* borrowing requirements
* financial forecasts
* financial records
* business insurances
* financial controls.

**Operational review**

The operational plan prepares an operational review schedule to cover all control actions to be implemented. Detail how often to review, the frequency and by whom.

#### Procurement

Obviously if you are running a small business you need to set up a process for investigating, assessing, and purchasing the goods and or services you will be offering. You may be working with an organisation that already has a procurement policy or you may need to set up your own process. Securing a procurement contract involves negotiating the right deal for your business and may require evaluation of a number of potential suppliers to meet your product quality, pricing, and delivery needs.

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| Practice activity icon | Practice activity 2.2 Procurement |

***Scenario:*** *Imagine you have just signed a lease on a premises and you plan to open a* ***café****. Consider the steps involved in finding a suitable supplier and complete the table below.*

|  |  |
| --- | --- |
| Steps | How would you do this? |
| Identify requirements |  |
| Identify suppliers |  |
| Evaluate suppliers |  |

*Check out the Youtube video* ***Project Management: Negotiating Rates with Suppliers*** *at* <https://www.youtube.com/watch?v=scdUzN4LeLQ>. *List the steps you would take to negotiate a procurement contract for your cafe to align with the objectives in your business plan.*

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*Research the website* [*Business.gov.au*](https://www.business.gov.au/products-and-services/suppliers/resolving-a-dispute-with-your-supplier)*. What action can you take if your contracted supplier decides to supply a competitor instead of your cafe? Bring your ideas to class for discussion with your peers.*

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Topic 3

**Business risks**

# Topic 3 Business risks

## Risk management

Risk management is a structured approach to managing uncertainty and includes actions taken to:

* identify
* assess
* monitor
* [reduce the impact of risks to the business.](https://www.smallbusiness.wa.gov.au/assets/BIZguides/bizguide-risk-analysis-matrix.doc)

Risks are events, situations or circumstances, which lead to negative consequences for the business.

A good risk management plan with appropriate risk management strategies can minimise costly and stressful problems and may also reduce insurance claims and premiums.

### Risk management plan

A risk management plan:

* describes the potential risks
* contains an analysis of the impact of each risk
* includes risk strategies to help the business reduce the consequences if the event occurs.

The risk management plans should be regularly reviewed to ensure they accurately reflect current potential risks to the business.

For additional information about risk management planning [download CPA Australia's PDFs](http://www.asic.gov.au/regulatory-resources/regulatory-index/financial-reporting/) (<https://www.cpaaustralia.com.au/>) for small and medium sized businesses, which include:

* employee fraud
* guide for directors to assess financial risk
* internal controls for small business
* risk management guide for small-and medium-sized business.

To create a plan that's tailored for the business, start with these six steps:

**1. Identify risks**

What are the risks and how likely are they to occur? Some will cause major disruption while others will be a minor irritation. Therefore, make an educated assessment of both the likelihood and potential severity of each risk to prioritise the planning efforts.

|  |  |
| --- | --- |
| Practice activity icon | Practice activity 3.1 Risk identification |

*Using the template below, identify and classify the risks in your sample business. Copy/paste this table to a blank page in MS Word, save your work, and bring to class to discuss.*

|  |  |  |  |
| --- | --- | --- | --- |
| **Risk description** | **Risk cause** | **Risk source** | **Risk category** |
| Clear explanation of the risk | What would make this risk occur? | Internal or external cause? | Financial Service quality Reputation HR Environmental Compliance WHS  (list all that may apply) |
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**2. Minimise or eliminate risks**

Once risks have been identified there is a need to either eliminate or minimise those risks. Therefore, provide specific strategies for minimising risk.

**3. Identify roles should a disaster occur**

One of the simplest and most powerful tools for a speedy recovery from a disaster is a clear picture of, and clear directions about, who has to do what if there is a disaster.

**4. Determine and plan the recovery contingencies**

Determine recovery contingencies by the type, style and size of the business and by the extent of the damage.

**5. Communicate the plan to all the people it refers to**

This stage of planning is all about ensuring that all people within the business (staff, suppliers, contractors, service providers) are aware of the strategies that are in place to either mitigate or recover from a disaster situation. Make decisions about whether the physical communication will be by phone, email, text or other means. Once agreed, create procedural statements and inform the relevant people. The next part is to train staff and ensure everyone practises the procedures so if a disaster occurs the process can take over and guide the staff.

During day-to-day operations, any number of risks can occur in a business so it is important to know how to identify any potential risks before they escalate. This will help develop realistic and effective strategies for dealing with risks if they occur.

**6. Prepare a risk management plan**

A risk management plan can help minimise the impact of cash flow issues, damage to brand and other risks. It will also help create a culture of sensible risk awareness and management in the business.

### Risk assessment

This involves analysing the likelihood and consequences of each identified risk using the measures provided.

* Look at the existing controls for each risk.
* Identify what the business does to control this risk.
* Rate the effectiveness of existing controls in preventing the risk from eventuating or minimising its impact should it occur. Indicate whether existing controls are adequate, moderate or inadequate.

**What is the likelihood of the risk occurring?**

|  |  |
| --- | --- |
| **Likelihood** | **Description** |
| **Almost certain** | Most likely to occur many times a week |
| **Likely** | May occur several times a week— frequent |
| **Possible** | May occur several times per month or less— infrequent |
| **Unlikely** | Could occur but only once per year or less— rarely |
| **Remote** | Could occur, but very unlikely—maybe only once every 10 years |

|  |  |
| --- | --- |
| Practice activity icon | Practice activity 3.2 Risk analysis |

1. *Using the template below, choose one risk and complete a* ***risk analysis*** *for your chosen business and bring your analysis to class for discussion.*

#### Risk analysis table

|  |  |
| --- | --- |
| Risk description |  |
| Potential impact:  *What would happen if this risk was to occur?* |  |
| Existing controls:  *What is already in place to mitigate the risk?* |  |
| Likelihood:  *How likely is this risk to occur? See risk likelihood table above.* |  |
| Consequence:  *If it did occur, what would the consequences be?* |  |
| Notification: | Yes, the manager has been notified in the appropriate timeframe. |

1. *Using the template below, create a* ***risk treatment and action plan*** *for your chosen business and bring your plan to class for discussion.*

#### Risk treatment and action plan

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Risk treatment option:  *Choose one* | |  |  |  |  | | --- | --- | --- | --- | |  | Avoid the risk |  | Reduce the risk | |  | Accept the risk |  | Share the risk | |
| Describe and justify the treatment option chosen:  *How did you decide which treatment option? Why did you chose this one?* |  |
| Action plan:  *What are the actions required to make this happen?* |  |
| Action owner: *Who is responsible for ensuring these actions are carried out?* |  |
| Action target date:  *Date the planned actions are to be completed by.* |  |
| Insurance status: | |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  | Insured |  | Insurable |  | Not required | |

### Risk strategies

The objective of this is to develop cost effective options for treating each risk. Eliminate the risk by discontinuing the activity or removing the hazard such as not undertaking the activity that is likely to trigger the risk.

**Factors to avoid the risk:**

* What will happen if the activity is not undertaken?
* Is the risk level too high to proceed or continue with the activity?
* Is the cost of the required controls higher than the benefit of the activity?
* Will the failure of the activity have critical consequences for other areas of your business?
* Consider the reasons for avoiding the risk. Is the business unnecessarily risk averse?
* Will the risk avoidance increase the significance of other risks or lead to the loss of opportunities for gain?

**Reduce the likelihood of the risk occurring to reduce the negative outcomes**

Consider, have all reasonable steps been taken to reduce the risk but it can’t be completely eliminated?

Can the likelihood of the risk occurring be reduced through preventative maintenance, or quality assurance and management, change in business systems and processes?

Can the impact of the consequences be controlled or reduced if the risk occurs? Consider

* contingency planning
* minimising exposure to sources of risk
* relocation of a business activity and resources.

Transfer of the risk totally, or in part, may be achieved by moving the responsibility to another party or sharing the risk through a contract, insurance arrangements, or partnership/s and joint ventures.

Business continuity planning prepares the business for unexpected events. For example, a natural disaster or loss of key staff. By planning for business continuity the following can be achieved:

* identification of the risks to the business and, where possible, prevent the risk
* prepare for risks which are beyond control
* respond and recover following an incident
* continuation of trading.

### Monitoring and review

Risk management is an ongoing process. Even if the existing control measures are adequate there is a need to regularly review whether anything has changed which may impact on the risk issues that have been identified.

Once the proposed controls are completed there will be a need to reassess the risk by conducting regular risk reviews – and reviewing the progress and effectiveness of your selected risk strategies.

### Risk types

The level and type of risk that will need to be considered will vary with the type of business being operated. However, there are some common categories which can be used to guide thinking and the development of the risk management plan. The most common business risk categories are as follows:

* **Commercial**—includes the risks associated with market placement, business growth, diversification and commercial success. This relates to the commercial viability of a product or service, and extends to retention and growth of a customer base.
* **Compliance / legal**—includes compliance with legal requirements such as legislation, regulations, standards, codes of practice, and contractual requirements. This category also extends to compliance with policies, procedures or expectations, which may be set by contracts, customers or the social environment.
* **Financial**—includes cash flow, budgetary requirements, tax obligations, creditor and debtor management, remuneration and other general account management concerns.
* **Health and safety**—includes the safety of everyone associated with the business. This extends from individual safety, to workplace safety, public safety and to the safety and appropriateness of products or services delivered by the business.
* **Environmental**—includes loss or damage due to accidents or natural disasters such as fire, flood, hail or storms. Can extend to property damage caused by burst water pipes or power failure.
* **Reputation**—entails the threat to the reputation of the business due to the conduct of the entity as a whole, the viability of product or service, or the conduct of employees or other individuals associated with the business.
* **Strategic**—includes the planning, scoping and resourcing requirements for the business, sustaining and/or growth of the business.
* **Operational**— covers the planning, operational activities, resources (including people) and support required within the operations of a business that result in the successful development and delivery of a product or service.
* **Service delivery**—relates to the delivery of services, including the quality and appropriateness of service provided, or the manner in which a product is delivered, including customer interaction and after-sales service.
* **Project**—includes the management of equipment, finances, resources, technology, timeframes and people associated with the management of projects. It extends to internal operational projects, projects relating to business development, and external projects such as those undertaken for clients.
* **Security**—includes the overall security of the business premises, assets and people, and extends to security of information, intellectual property, and technology.
* **Equipment**—extends to the equipment used for the operations and conduct of the business. It includes the general operations of the equipment, maintenance, appropriateness, depreciation, safety and upgrade.
* **Technology**—includes the implementation, management, maintenance and upgrades associated with technology. This extends to recognising the need for and the cost benefit associated with technology as part of a business development strategy.
* **Stakeholder management**—relates to the management of stakeholders, and includes identifying, establishing and maintaining an appropriate relationship. This includes both internal and external stakeholders.

### Risk and insurance

Topic 1 described the types of insurance relevant to small business. Insurance is a common strategy for reducing risk and being insured can reduce the consequence of risk to your business. It’s important to understand the situations that are covered by any insurance policy and policy documents contain a lot of information in the fine print. Seek out advice from a consultant or insurance broker.

|  |  |
| --- | --- |
| Practice activity icon | Practice activity 3.3 Insurance and risk |

*Review Topic 1 and watch the Youtube video* ***Why you need small business insurance*** *at* [*https://www.youtube.com/watch?v=Ey1xO4OK3\_k*](https://www.youtube.com/watch?v=Ey1xO4OK3_k)*. Then complete the table below by identifying which insurance product will protect your café in each of the scenarios.*

|  |  |
| --- | --- |
| Scenario | Insurance product |
| A customer slips and falls on the floor in your café after the floor has been mopped. |  |
| A lit cigarette butt causes a fire in the ladies toilets and one of your staff members is burned while trying to extinguish the fire. |  |
| You drive your café’s delivery van into a parked car. |  |
| One of your baristas forgets to fill the coffee machine with water and the motor overheats causing the machine to break. |  |

|  |  |
| --- | --- |
| Practice activity icon | Practice activity 3.4 Business risks |

*Watch the Youtube video* ***Understanding Market Risks for Small Business*** *located at* [*https://www.youtube.com/watch?v=EINJgjj2obk*](https://www.youtube.com/watch?v=EINJgjj2obk)*. Take note of the key messages and be prepared to discuss these in class.*

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*Using your example business, analyse the main risks and describe how you would monitor and mitigate these.*

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Figure 1shutterstock\_594650312 under licence to TAFENSW