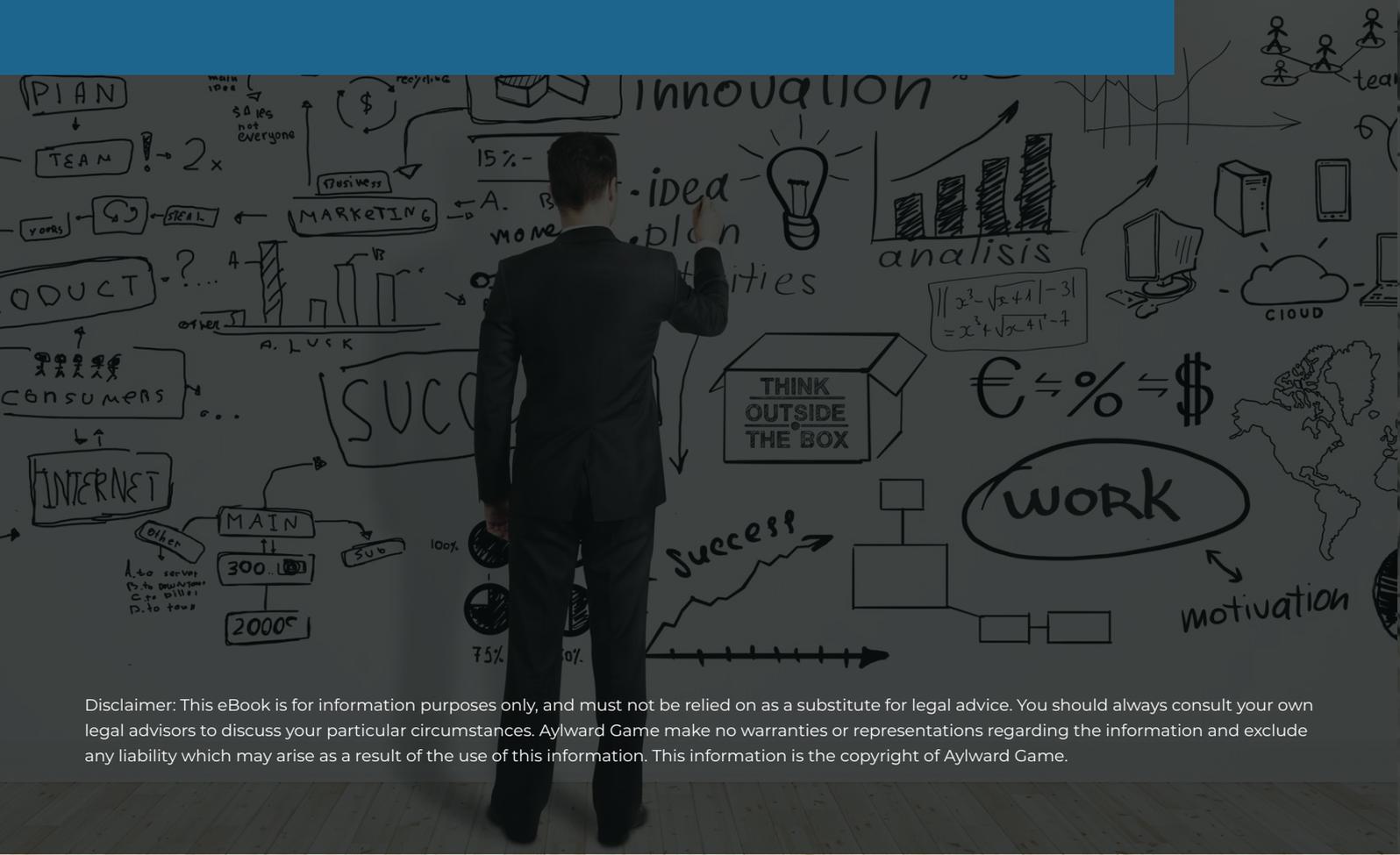


7 LEGAL OBLIGATIONS TO START A BUSINESS

A guide to understanding Business Structures, Company Registration, and what you should do before you get started in business.



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To start a business?

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7 LEGAL OBLIGATIONS

TO START A BUSINESS

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INTRODUCTION

Before you begin any new venture that requires investment, it is important that you keep a check on the hurdles. Not that you need to be scared off on the first go but being fully aware of the legal burdens your company might come under is nothing but a precaution. It is also critical that you get the right advice early since the consequences of missing the mark is often expensive and rather damaging to your pet venture.

In Australia, the legal system is a coagulation of common law and statute, as seen in other countries like the United Kingdom, European countries etc. As per common law, Australia encourages judicial independence. Meaning, any court decision is made after due enquiry and process and are made keeping in mind financial market developments. As a result, all companies and individuals, domestic and foreign, have the same standing before law.

BUSINESS STRUCTURE

Before starting a business, consider the advantages and disadvantages of each type of business structure and decide which is best. Your business structure can affect the safety of your personal assets and taxation obligations

The most common forms of business structure below:

Sole trader

A sole trader is a type of structure where the business has no separate legal existence from its owner. As a sole trader, you'll be responsible for the liabilities of your business. You need to report your business income on your personal income tax return along with any other income.

Partnership

A partnership is a type of structure where two or more people start a business and can legally share profits, risks and losses according to terms and conditions. You must lodge a separate partnership income tax return.

Trust

A trust is a relationship where a business is transferred to a third party who has legal control and has a duty to run that business to benefit someone else. You must lodge a separate trust income tax return

Company

A company is a legal entity separate from its members (shareholders). A director of a company has additional legal and reporting obligations. You must lodge a separate company income tax return. Visit ASIC for more information about registering a business name for a company.



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COMPANY REGISTRATION

All business owners in Australia MUST register their business name. In addition to this, they need to also file annual returns on a variety of concerns such as

- **Australian Business Number (ABN):** The **Australian Business Number (ABN)** is a unique identifier issued by the Australian Business Register (ABR) which is operated by the **Australian Taxation Office (ATO)**.
- **Goods and Services Tax (GST):** **Goods and services tax (GST)** is a broad-based **tax** of 10% on most **goods, services** and other items sold or consumed in **Australia**.
- **Tax File Number (TFN):** Your tax file number (TFN) is your personal reference number and it must be kept secure at all times.

- **Pay as you go (PAYG) withholding:** Pay as you go (PAYG) is a withholding tax which requires you to pay incremental amounts which accumulate towards your expected end of year income tax liability. Before you lodge your tax income tax return, It is important to finalise your PAYG instalments.

Other registrations include, registering a domain name or a trade mark that is applicable to your business. If you are not operating as an individual, a partnership or a trust but as a company, then you might have to follow a different registration process. If you are going into business with others, make sure that you document the whole process. Both parties involved should know all rights and obligations in the event of success or dispute. Documents such as Partnership Agreements and Shareholder Agreements could also be drawn with adequate advice from solicitors.

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WHAT SHOULD YOU DO BEFORE YOU START A BUSINESS?

Just like you need a license to get your car out on the road, you definitely need a license to operate your business, as part of your legal obligations. To start with, follow [Australian Business Licence and Information Service \(ABLIS\)](#) so that you can get a hang of all the permits and registrations required to run your business. Also search ABLIS to find government licenses, permits, approvals, registrations, codes of practice, standards and guidelines that you need to know about to meet your compliance requirements. As the site says, this is definitely the best way to reduce the run-around involved.

Once you go through ABLIS, you will realize that there are specific permits for products or services. Meaning, you and your friendly next-door neighbor owning two businesses can have two different kinds of permit. If the product is food, you would need a Food Business License. Basically, research well on the product you are selling so that you know what the permit is. Also, when you cross state boundaries, permits change. So find out if you have any changes based on geographical locations as well. Do not see this lightly when we say that you NEED to get your LICENSE. Nothing else can make your business legit other than the permit you hold.

Privacy Act, because Data Matters.

Privacy Act covers personal information. It is based on privacy principles, which were introduced in March 2014, to cover threats of data theft/loss etc. Central to the regime established by the Privacy Act is the definition of 'personal information'. The current definition of personal information is the same as that found in the original 1988 Act, that is: "Information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

All companies are asked to maintain an air of confidentiality while handling personal information. It also covers handling and processing of personal information, use of personal information for direct marketing purposes and disclosure of personal information to people overseas.

To know more about Privacy Act 1988 obligations, log on to the [Office of the Australian Information Commissioner \(OIAC\)](#) website.

Doing Business with Employees

Employees in Australia are generally employed on one of the following bases:

- (a) full time (38 hours or more plus reasonable additional hours)
- (b) part time (less than 38 hours per week)
- (c) casual, being irregular and non-systematic hours, generally with no expectation of continuing employment or
- (d) fixed task or fixed term, being employment for a specified time period or for a particular task

Independent contractor arrangements are also a common legal structure used in Australia for workers. Independent contractors negotiate work on their own. They generate their own payments and work for a range of clients at any given time. Before you enter into a contract with them, make sure that they are classified as independent. In other words, let them know that they are on their own in a certain way and the status of being independent could also affect some of their rights. It's possible for them to work with you and as an independent contractor elsewhere. You CANNOT fire or threaten to fire, if they disagree to work as a contractor.

The Commonwealth Fair Work Act 2009 (FW Act) regulates employment relationships in Australia. The FW Act applies to most corporate entity employers in Australia and contains detailed entitlements and protections for employees. Failure to comply with the FW Act can attract penalties of up to AUD 51,000 per breach. Any disputes regarding employment matters regulated by the FW Act are heard in Commonwealth courts and tribunals including the Fair Work Commission, the Federal Court of Australia and the Federal Circuit Court of Australia.

In addition to the FW Act, a number of state and Commonwealth statutes regulate other matters relevant to employment relationships in Australia such as anti-discrimination, long service leave, compulsory workers compensation insurance, superannuation and work health and safety.

- **Enterprise agreements:**

Employers and employees have the option of bargaining collectively for an enterprise agreement. That is, employers may agree with a group of employees (or their representative) to create an agreement that provides for terms and conditions in excess of the minimum terms and conditions of employment. An enterprise agreement will apply to all employees in a particular class or category. For example, an enterprise agreement may apply to all employees of a company, or alternatively, to groups of employees based on geographical or trade classifications. The group of employees subject to an enterprise agreement must be “fairly chosen” (that is, they cannot be selected for an improper nor illegal reason). For genuinely new enterprises where employees will be employed who have not been employed by the employer previously, there is also the option to create what is known as a “greenfields agreement”. The terms and conditions of employment for all employees to be covered by a “greenfields agreement” are negotiated between the employer and any relevant trade union(s) prior to the new enterprise commencing and prior to employees being employed.

- **Work health and safety:**

All persons involved in a workplace in Australia (including companies, workers and senior officers of companies) are required to take all reasonably practicable steps to ensure workplaces are safe and without risk to health for workers and others at the workplace.

- **Workers compensation:**

Each Australian state and territory has a compulsory statutory workers’ compensation scheme in respect of injuries suffered by workers in the course of their employment. Through the workers compensation system, injured workers may be entitled to either regular or lump sum payments for permanent or temporary impairment, the payment of medical bills and assistance with rehabilitation expenses

- **Anti-bullying:**

Bullying is defined as any untoward behavior (aggressive, passive aggressive, insulting, sexual or any other unfavorable interaction) towards an employee by a colleague or group of persons at the workplace. This is a common concern faced by many at the workplace. Seen to be a deterrent to the company, bullying must be discouraged at all levels. So, make sure that you make your employees apply at Fair Work Commission. Ensure that your company has all the necessary structures at work to help someone who is being bullied. A grievance cell is a must so that you can be sure that you have your bases covered in case of making sure that the work life of your employees are good.



DEALING WITH DISMISSAL

There are very clear grounds on what could possibly merit a dismissal. Most of the time, dismissal is regarded as the final step as far as an employee is concerned. It can only be evoked for grave offences and not to settle petty disputes. Compared to small businesses, large businesses have different laws when it comes to unfair dismissal. Most small businesses (those with fewer than 15 employees) fall under the Small Business Fair Dismissal Code. [The Small Business Fair Dismissal Code was declared on 24 June 2009 pursuant to subsection 388\(1\) of the Fair Work Act 2009.](#) According to which, "It is fair for an employer to dismiss an employee without notice or warning when the employer believes on reasonable grounds that the employee's conduct is sufficiently serious to justify immediate dismissal. Serious misconduct includes theft, fraud, violence and serious breaches of occupational health and safety procedures. For a dismissal to be deemed fair it is sufficient, though not essential, that an allegation of theft, fraud or violence be reported to the police. Of course, the employer must have reasonable grounds for making the report." If you are planning to terminate an employee, it's important you follow the rules outlined in the Code.

To know more, go through: <https://www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.pdf.aspx?Embed=Y>

WHAT ELSE?

This eBook is intended as a guide to Commercial and Business law and simply gives you a list that you could follow. If it seems a bit too complicated then fear not. Come and meet us. Advice can be obtained from the experienced Aylward Game Solicitors lawyers who will make you feel comfortable so you can talk about your situation.

[AYLWARD GAME SOLICITORS BRISBANE](#) are a modern and dynamic firm of Brisbane solicitors and Brisbane family lawyers who are strongly committed to traditional professional values of the legal practice in Australia.

[AYLWARD GAME SOLICITORS BRISBANE](#) were established in 1998 and are based in modern and attractive (and we think quite unique) offices in Brisbane's CBD, providing high quality legal advice and representation to clients throughout Queensland and more widely around Australia.

The graphic features a dark blue background with a subtle geometric pattern of light blue lines. On the right side, there is a large, stylized letter 'A' composed of several overlapping triangles in various shades of blue and teal. On the left side, the text is arranged vertically: 'WE'RE ALL THE SUITS YOU NEED' in white, uppercase letters; 'AYLWARD GAME' in a larger, bold, white, uppercase font; and 'aylwardgame.com.au' in a smaller, white, lowercase font.

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