

Bean Ninjas

Choosing a Business Structure (Australia)

The choice of business structure can have a large impact on your bookkeeping, tax and legal liability, so it's important to think about your options carefully.

This document gives an overview of the benefits and drawbacks of each business structure in Australia, as well as the common details when setting them up.

Tip: check out our blog post [Business Structure Case Study: John Smith](#) for more examples and less technical details.

'Business' isn't the same as 'company', and other picky points

A company is a type of legal entity. A 'legal entity' or 'business structure' can own things, run a business, sue and be sued.

Each business structure can run multiple businesses, but accountants and lawyers generally advise against that.

Common Registrations for Every Business Structure

When starting a new business, there are a few government registrations that are common to all the structures.

Australian Business Number (ABN)

Your business structure should apply for an ABN if it carries on a business.

If you don't have an ABN, your customers are supposed to withhold tax from any payments made to you. While you can claim this back when you lodge your tax return, it's better to apply for an ABN.

The application is a 15-30 minute online form at the [Australian Business Register](#), or you can ask your tax accountant to apply on your behalf.

The ABN may be cancelled voluntarily or automatically, if the business structure stops carrying on a business.

Tax File Number (TFN)

Each legal entity must have a TFN so that it can lodge income tax returns and deal with the [Australian Taxation Office](#) (ATO).

The TFN remains the same for the life of the entity and doesn't expire.

You can apply for a TFN at the same time as applying for an ABN.

Goods & Services Tax (GST)

GST is a tax on the sale of most goods and services, like the VAT in other countries. The rate is 10% of the GST-exclusive price, or 1/11th of the total price, which means that paying \$5.50 for a diary includes \$0.50 GST.

If you are registered for GST, the GST on your sales must be paid to the ATO, but you can claim back the GST on your purchases.

You are required to register for GST if your annual revenue/turnover/sales (not profit!) is over \$75,000 (\$150,000 for non-profit organisations), or if you are a taxi or limousine driver. You can voluntarily register at any time, but must be registered for at least 12 months.

This is just an overview. We will add more detail in a future blog post, or you can [visit the ATO website](#).

You can register for GST at the same time as applying for an ABN.

Pay-As-You-Go (PAYG) Withholding

If you employ staff, and they earn over a certain minimum amount, you must withhold tax from their wages and send this amount to the ATO.

You can register for PAYG Withholding at the same time as applying for an ABN.

Business Names

If you want to run a business using a name that is different to the legal name of the entity, you must register a business name.

For example, your company might be called ABC Pty Ltd. That's boring, so you register a name like "Ron's Rugs". You can use either of those names on your signs, letterhead, advertisements, and so on. You can't use "Ron's Umbrellas" without registering that name, even if your name is Ron.

Think of it as the difference between the name that is on your birth certificate, and the nickname that your friends called you in school. You could have multiple nicknames, and they can change, but they don't change the name on your birth certificate.

Business names can't be too similar to another business name or company name. However, business names do not offer any protection for intellectual property rights like with a trademark.

Business names cost \$34 for one year and \$79 for three years. They must be renewed or someone else could register that same name.

For more information on business names, visit [the ASIC website](#).

You can apply for a business name at the same time as the ABN application.

Sole Trader (you)

This is the easiest and cheapest business structure to set up and run. All you need to do is register for an ABN.

Great for when you first start and you don't want to deal with complicated rules. Bookkeeping is very simple, but make sure to [use separate bank accounts and credit cards](#) for your business income and expenses.

The problem with being a sole trader is that you are personally liable for the debts of the business, an unlimited liability. Any asset you own, including your house and car, is at risk if you can't pay the business' debts.

Partnership

A partnership is two or more legal entities that act together. They are one way of operating as a 'joint venture' type of business structure.

This business structure is also very simple to set up, just get an ABN and TFN. However, a partnership agreement should be drawn up to save arguments later.

Partnerships are technically not a separate legal entity. The downside to partnerships is exponentially worse than sole traders: each partner has unlimited liability for anything that any other partner does in the name of the partnership. If another partner signs up to a mountain of debt in the partnership's name, your personal assets are at risk for the whole debt.

Traditionally, legal and accounting firms were required to operate as partnerships. Now, they are usually combinations of companies and trusts, though they still retain the title “Partner”.

The other problem with partnerships is that they end if a partner leaves or a new partner is admitted.

Company

A company is a separate legal entity, like another person. It can own assets, incur debt, sue and be sued.

The company has a constitution and is owned by shareholders, who own one or more shares of the business. Any legal entity can be a shareholder.

The shareholders vote to appoint or remove directors, who can be shareholders but must be a real person. Directors run the company, sign documents, hire staff, and so on. Directors have legal obligations to the company.

The simplest and most common type of company for small businesses is a Proprietary Limited (Pty Ltd) company. ‘Proprietary’ means there are simpler regulations than a ‘public’ company, such as those listed on stock exchanges. ‘Limited’ means that the shareholders have limited liability for the company’s debts, allowing protection for their personal assets.

The main benefits of companies as a business structure are the limited liability of shareholders and the ability to change owners while the company continues to operate. Profits can be paid to shareholders as dividends, based on the number of shares they hold. Voting rights are usually related to the number of shares held.

Companies are more expensive to set up than sole traders or partnerships, and have higher ongoing administrative costs.

Ask your accountant or lawyer for more details, especially once your business is earning \$200,000 or more in annual sales/revenue/turnover, or visit [the ASIC website](#).

Trust

A trust is a business structure where a trustee holds assets (including businesses) for the benefit of the beneficiaries.

A trust deed sets out the rules imposed on the trustee, and lists the trustee and beneficiaries. Trusts can be expensive to set up, if a customised trust deed is prepared. If a template is used, trusts can be cheaper than companies to set up and run.

The trustee is legally responsible for operating the trust in accordance with the trust deed, so often a company is the trustee for a little extra legal protection.

There are two types of trust: fixed (or 'unit') and discretionary. In a fixed or unit trust, each beneficiary is entitled to a set percentage of the trust's profits and assets. In a discretionary trust, the trustee can determine the percentage of profits and assets allocated to each beneficiary, subject to the restrictions in the trust deed. A family trust is a type of discretionary trust, with a few special rules and benefits.

Discretionary trusts can be useful for tax minimisation (speak to your tax accountant!). Trusts are based on state law (except for tax) and the rules can be complicated. Speak to your lawyer for more details.

Self-Managed Superannuation Fund (SMSF) or Deceased Estate

These are special types of trusts, and they're a little too complicated to cover in this blog post. However, it is possible to run a business using these entities. Speak to your tax accountant and/or lawyer for more details.

Business Structure Combinations and Groups

Companies have shareholders, trusts have beneficiaries, and partnerships have partners. These roles can be filled by any business structure type.

Larger businesses are often a group of legal entities connected together as shareholders, beneficiaries, or partners. This is more complicated and expensive to administrate, but there are benefits: legal protection, tax minimisation, and for sales/acquisitions of part of the business.

For example, a family trust could own the shares of a company. The company runs a business and distributes profits as dividends to the shareholder, the family trust. The family trust then distributes the profits among the beneficiaries.

Another example: ABC Pty Ltd runs a web hosting business, while XYZ Pty Ltd is a web design business. AtoZ Pty Ltd is the shareholder of both companies. XYZ Pty Ltd is sued, but the assets of ABC Pty Ltd are protected. Years later, AtoZ Pty Ltd sells ABC Pty Ltd to a competitor, but keeps XYZ Pty Ltd.

Definitely get lawyer and/or tax accountant involved if you are interested in combining multiple business structures.

Where to from here?

There's a lot of information here, but we hope it is a useful guide on the various types of business structure in Australia.

Found this document a little dry? Check out our blog post [Business Structure Case Study: John Smith](#) for a more story-based example of the conversations John Smith had with his accountant over the 5 years of running his business.

If you have general questions or feedback, please [contact us](#). We also run paid [consultation calls](#) if you want to discuss your personal situation.

Bean Ninjas