



Legal health check for start-ups and early stage businesses

Getting your business 'legals' right from the start is the easiest way to avoid disputes down the track and ensure its long term success.

Thankfully, it is now easier and less costly than you might think to implement the documents start-ups most commonly need to protect their intellectual property, manage their website, and underpin their business structure.

How your business will be structured and managed

Choosing the right business structure for your business is important as it will impact on the way you run your business. This includes how tax applies, to what extent your assets are protected, your operating costs, and even how other businesses deal with you.

Running your business with no plan or rules of operating is a recipe for disaster and future disputes between partners. It can mean the business is built on fractured foundations, limiting its attractiveness to potential acquirers, and destroying its ability to generate wealth for its owners.

The table below outlines the 4 most commonly used business structures, the legal documents you may need and what they do.

Structure	What do I need?	What it does
Sole Trader	No formal agreement required.	Since it is only you who manages and owns the business no formal documentation is necessary.

Partnership	Partnership Agreement (Recommended)	While you can set up a partnership without an agreement, formally documenting the rules of how the business will be managed as well as what happens if the business is dissolved will reduce the risk of disputes between partners.
Company	Company Constitution and a Shareholders Agreement (Recommended)	Creating a Company Constitution and a Shareholders Agreement ensures that how the business is managed is agreed between the owners right from the start.
Trust	Trust Deed (Required)	A Trust Deed sets out the rules and lists the beneficiaries of the Trust and must be formally established.

Intellectual Property (IP)

Your brilliant business idea is probably the most valuable asset your business owns. It should be properly protected and managed. The following legal documents are commonly used to protect IP.

Document	What it does
<p>Founders' Deed of IP Assignment A Founder's Intellectual Property Assignment Deed allows the Founders of a Company to assign the Intellectual Property ('IP') you have developed to set up a company, without cost.</p>	By assigning the developed IP to a company you preserve the future value of company and protect it from disputes between participants. Not establishing ownership of IP exposes the company to losing a part of the IP if a founder walks away (along with their slice of the IP).
<p>Non-Disclosure Agreement The NDA sets out the terms on which you and the other party have agreed, to respect each other's IP and confidentiality while you discuss the potential of a business venture.</p>	It protects the confidential information you and the other party might disclose to each other whilst exploring the possibilities for the Project. It makes open discussion and exploration of options possible.

Website

Most businesses will have a website. This is often the first point of contact between the business and the outside world, which means it is the first potential source of liability. There are some key documents that manage this liability.

Document

What it does

Privacy Policy

A Privacy Policy sets out how an organisation will deal with personal information. It explains how an organisation may collect, hold, use and disclose personal information from individuals and how they may deal with personal information.

Organisations that have annual turnovers exceeding \$3 million are required to have a Privacy Policy under the Privacy Act 1988 (Cth) ('the Act').

Small companies are exempt from the Act but having a Privacy Policy assures their customers that their personal information will not be misused. However, it's not only there to protect your customers, it's also there to protect your business. The Privacy Policy helps you to manage customer expectations.

Website Terms & Conditions

Website Terms and Conditions set out the terms under which people use your website and commonly include things like refund and exchange policies, security, IP rights, warranties and limitation of liability.

Your Terms and Conditions play an important part in avoiding nuisance lawsuits by making sure everyone understands their rights and obligations.

Website Terms and Conditions therefore should reflect the products or services offered through your website as well as any liability limits and time limits. For example, a web developer might specify that any problems need to be reported within 30 days. Website terms and conditions for a business that sells goods will be different from one that sells subscriptions.

Users often are required to agree to the Terms of Sale online before the payment occurs.

Getting Help

A careless beginning can cause you a world of future pain. Getting it right up front can avoid business crippling disputes.

Obtaining legal advice in the traditional way can be expensive and new businesses often try to avoid incurring these costs for as long as possible.

Chamberlains Law Firm offers a number of cost effective options that cater to those who want to do it themselves, those who need a bit of guidance and those who want someone to do it for them.

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