

Getting Your Business Started - Checklist

1. Business Structure

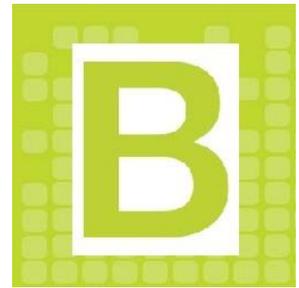
- Consider which business structure will best suit your new business needs. For example, is it better to operate as a sole trader, in partnership or as a company?
- If providing independent contractor services, ensure you are aware of your legal obligations
- If proposing to franchise your business or enter into a franchise agreement, consider what your obligations as a franchisor or franchisee are and whether the disclosure documents best protect your business needs

2. Business Requirements

- Consider which Federal, State and/or Local Government laws will apply to your business
- Ensure all requisite business registrations have been lodged
- Ensure all relevant licenses, permits and/or certificates required for your business to operate are obtained
- Consider whether the Federal and/or State fair trading laws will affect your business operations
- If lease arrangements affect or will affect your business, an understanding of retail leasing laws may assist in negotiating your lease agreements.
- If entering into a lease agreement, consider whether the terms of the agreement reflect the current and future needs of your business

3. E-Business

- Consider the online legal and consumer obligations that may apply to your business
- Ensure your intellectual property rights are adequately protected
- Consider how Privacy Laws affect your business



- Ensure that adequate processes and record keeping arrangements are in place to comply with SPAM laws

4. Intellectual Property

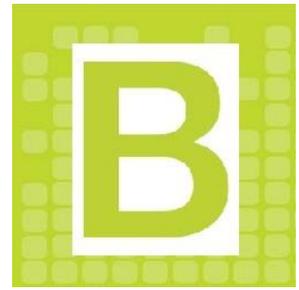
- Consider how best to protect your intellectual property. For example; patent, trademark and/or copyright protection
- Ensure your intellectual property rights are adequately protected nationally and internationally, if relevant
- Consider the processes you have in place, or will need, to maintain and if necessary enforce your intellectual property rights
- If entering into confidentiality agreements, consider whether the terms and conditions adequately protect your intellectual property rights and that you understand any intellectual property obligations
- Ensure that in the conduct of your business you avoid infringing the intellectual property rights of others

5. Insurance

- Ensure that all compulsory insurances are in place
- Consider your risk identification and risk management strategies that may assist in running your business
- Determine whether other insurance arrangements might protect against the risks to your business. For example, income protection, professional indemnity and directors and officers insurance cover
- Consider whether other insurance arrangements are required to be in place pursuant to any existing contractual arrangements

6. Superannuation

- Consider what superannuation support you are required to provide to your employees
- Determine the availability of salary sacrifice entitlements for your employees
- Consider whether your employees will be eligible for Choice of Fund



7. Taxation

- Ensure that you are familiar with the various taxation obligations that apply to your business
- Consider what taxes will apply to your business circumstances. For example, excise duty, stamp duty, capital gains tax or business income tax
- Consider whether you are required to be registered for GST purposes

8. Managing Employees

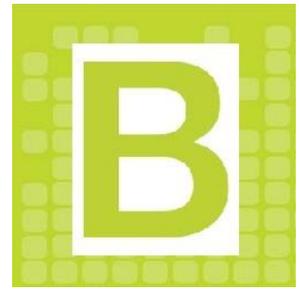
(Please see our Employment Checklist for a comprehensive guide to legal requirements for employers)

- If entering into a contract of employment, consider whether the terms of the agreement best suit your business needs
- Ensure that you are familiar with your EEO, anti-discrimination and WH&S obligations
- Consider your termination obligations and the processes in place to protect and enforce your rights post-termination

9. Protecting your Business

- Ensure that with respect to any verbal or written contract you enter into you understand your rights and obligations
- Consider whether legal advice may be beneficial in best negotiating and protecting your business needs and circumstances with respect to your contractual arrangements. For example; service, distribution, agency, custodian and supply contracts
- Ensure that you have adequate systems in place to satisfy your report and record keeping obligations and requirements
- Determine what mechanisms are in place to best identify, minimise and resolve conflict or disputes that may arise from time to time in the running of your business

Please see attached explanatory notes for more detail.



NEW BUSINESS CHECKLIST

EXPLANATORY NOTES

1. Business Structure

- The structure of your business will have different legal and taxation implications and different advantages and disadvantages from a business perspective.
- A sole trader consists of an individual trading on their own. This differs from a partnership relationship which involves an association of people who carry on business as partners or receive income jointly. A company is a distinct legal entity which may be limited or unlimited.
- An independent contractor has distinct legal obligations from an employee. For example, a contractor usually deals with his/her own tax and a different tax rate may apply. It is possible to be an employee for some work and a contractor for other work. It is important to establish whether you are, or your worker is, an independent contractor in your employment/service relationships in order to ensure that you are satisfying your legal obligations.
- The Independent Contractors Act 2006 aims to protect the flexibility of working as an independent contractor. This includes preventing state laws from requiring independent contractors be treated as if they were employees when they are genuine contractors.
- Buying a new or existing franchise attracts certain franchising rights and obligations. The *Franchising Code of Conduct* protects the rights of franchisees and sets out the obligations of franchisors. As a franchisee, it is important to be aware of your rights and that these are protected or reflected in any agreement. Similarly, it is important that any agreement protect and meet your franchisor obligations.

2. Business Requirements

- The nature of your business and business structure will determine the various Federal, State and/or Local Government laws that will apply.
- If the business structure you have chosen is as a sole trader, partnership or a trust, and not as a company, then you are required to:
 - (i) register your business name in the state or territory in which you will operate.



(ii) You may also need an ABN in certain dealings with the Tax Office and other areas of government.

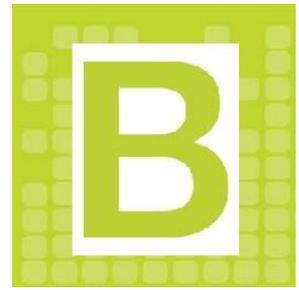
- Federal, state and local governments are responsible for different licenses, permits, registrations and certificates. The nature of your business will determine the relevant licenses or permits you require.
- Fair trading laws regulate trading operations in areas such as mergers and acquisitions, unconscionable conduct, warranties and refunds, pricing, customer service and product safety and standards. The application of the Federal *Trade Practices Act* and the State fair trading laws will need to be considered and complied with in your business operations.
- Retail leasing laws are state based and an awareness of these laws and how they impact upon your rights and obligations in business will assist in negotiating your lease arrangements.

3. E-Business

- E-business can be effective for reaching a wider market and can be a more cost and time effective method for carrying on business. It is however important to ensure that your intellectual property (see 4. below for further details), is properly and adequately protected from being stolen, damaged, corrupted or destroyed.
- The *Privacy Act 1988* regulates the way that businesses can collect, use, keep secure and disclose personal information. An awareness of privacy laws will help to ensure compliance in your business dealings.
- Under the *Spam Act 2003* it is illegal to send unsolicited commercial electronic messages. Your business messages should only be sent when you have the consent of the receiving party, clearly identifying who is responsible for sending the message and should include an unsubscribe facility.

4. Intellectual Property

- Intellectual property is the general name given to the laws covering patents, trade marks, copyright, designs, circuit layouts, and plant breeder's rights.
- A patent is a right granted for any device, substance, method or process, which is new, inventive and useful. You have to apply for a patent in order to protect your invention.
- A trademark is something that distinguishes your goods or services from others in the marketplace such as a letter, logo, word or phrase. A registered trade mark gives you



the exclusive legal right to use, license or sell your goods or services in Australia. It distinguishes your goods and services from others in the marketplace.

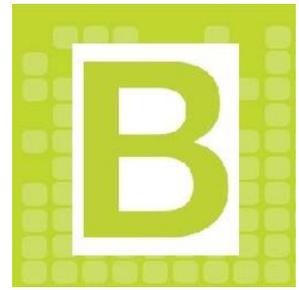
- Copyright refers to certain legal protection afforded to people who express ideas and information in certain forms that include writing, music, visual images, moving images and computer programs.
- Depending on the nature of your business, registration of your intellectual property rights can be arranged nationally or on a world wide basis. Intellectual property laws vary from country to country so consider where your intellectual property rights need protection and what registration requirements apply with respect to the countries your business is concerned with.
- It is important to ensure that your intellectual property rights are adequately protected when entering into confidentiality agreements or with respect to contracts that contain confidentiality clauses. Consider whose intellectual property rights are being protected, who retains intellectual property ownership and how such rights and ownership can be enforced.

5. Insurance

- Certain insurances in business are compulsory. For example, workers compensation insurance will be required in respect of your employees.
- There are standard procedures and processes to identify and manage risk in business. Standards Australia has developed a Standard that outlines procedures and processes to implement in determining your approach to risk management.
- A risk analysis and assessment may help you to determine the appropriate insurances to minimise the risks faced in business. For example, income protection insurance may ease any financial burden during periods of sickness or illness. Property or ISR policies may protect your stock or equipment in the event of, for example, fire or water damage.
- Contractual arrangements may require that certain insurances are in place including specified levels of cover such as indemnity or liability insurances. Review any existing contractual arrangements to ensure such cover requirements are met and consider the insurance clause requirements when entering, amending or renewing new agreements.

6. Superannuation

- Starting up a business is likely to involve superannuation obligations. As an employer you will be required to make superannuation guarantee contributions on behalf of your



eligible employees at least once each quarter. Penalties may be imposed at law for failing to comply with your superannuation obligations.

- If salary sacrifice arrangements are made available to your employees, certain criteria must be satisfied for such arrangements to be considered 'effective'. For example, all the terms of the salary sacrifice arrangement should be clearly documented, it must be entered into before an employee is entitled to payment and the salary being sacrificed must be permanently foregone.
- Choice of superannuation fund was implemented on 1 July 2005 and gives eligible employees the right to choose which superannuation fund will receive their employer superannuation guarantee contributions. Employees must be provided with a Standard Choice Form within 28 days of their employment start date.

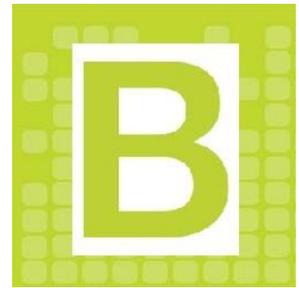
7. Taxation

- Depending on your business structure, various taxation obligations will apply with respect to the day to day conduct and maintenance of your business, your employees, your superannuation and the records and reports of your business. A familiarity with your taxation obligations can help to maximise your exemption eligibility and save you time and money.
- You must register for GST if your business has an annual turnover of \$75,000 or more or if you provide taxi travel as part of your business, regardless of your annual turnover. The advantage of registering for GST purposes is an entitlement to claim input tax credits.
- Certain agreements you have entered or propose to enter in the course of your business, may stipulate a requirement to be registered for GST purposes.

8. Managing Employees

(Please see our Employment Checklist for a comprehensive guide to legal requirements for employers)

- The contract of employment will generally govern the rights and obligations of the parties. It is therefore important that such a contract adequately reflects and protects your business needs. Certain clauses can be negotiated to best facilitate this, such as confidentiality and intellectual property protection or termination consequence and restraint of trade.
- Equal employment opportunity, anti-discrimination and workplace health and safety laws regulate aspects of your day to day business operations and employee management. It



is important that you are familiar with your obligations under these laws in order to prevent any possible breach.

9. Protecting your Business

- Clear communication and an understanding of your rights and obligations in all contractual relationships will help minimise conflict and dispute.
- Negotiated contracts that best reflect and protect your business needs will assist in your day to day business operations and enforceability rights should the need arise.
- Problems arise every day between businesses, their employees and their consumers. Establishing a process to resolve complaints may assist in satisfying your legal responsibilities as an employer and business provider.

This checklist is intended as a guide only and does not replace specific legal advice. Should you wish to discuss any information in this toolkit please contact us.

