

This article will discuss setting up your own business in Australia and the requirements for creating a suitable business structure such as a company or a partnership. Different types of business structures, along with their pros and cons, will be addressed.



A. APPROPRIATE BUSINESS STRUCTURE

There are several different structures you can use to establish your business, and the appropriateness of each depends on your personal situation and the purpose of the business. The main structures are set out and explained as follows.

A.1. SOLE TRADER

As a sole trader, you are legally responsible for your own business and can be personally liable for any debts or claims against the business (including being sued personally).

The main benefit to becoming a sole trader is its simplicity and the minimal reporting requirements for business activities (compared to other structures).

A.2. PARTNERSHIP

Similarly, a partnership does not create a separate legal identity and those involved can be personally liable for any debts or claims against the business.¹

This business structure is most suitable to small groups of people who want to work together to create a business – ie running the business jointly (with up to 20 partners).²

Each partner would need to report their share of the income as part of their own tax return – ie partners pay tax on their share of the net partnership income only.

A.3. COMPANY

The main benefit of a company is the creation of a separate legal entity from the individual directors and shareholders. This means that if the business incurs any debts or claims against it, the company, rather than the individuals behind it, would be held responsible (provided the directors have carried on their company business appropriately – for example a director must not carry on the company business if the company is insolvent).

Although this allows greater protection to the directors and shareholders of the company, the creation and maintenance of a company is more onerous.

B. REGISTERING YOUR BUSINESS NAME

After deciding on a business structure suitable to you, a business name should be chosen and registered with the Australian Securities and Investments Commission (ASIC).

¹ *Partnership Act 1892* (NSW) s 9.

² *Ibid* s 52.



The first step is to check whether the business name is available for you to use – this can be confirmed for free online on the Australian Securities and Investments Commission (ASIC) website [here](#).

If you do not already have an Australian Business Number (ABN) you would need to register for this first through the Australian Business Register (ABR). There is no fee for applying.

Afterwards, you can register your business name online using ASIC Connect or the Business Registration Service [here](#).

C. ESTABLISHING A PARTNERSHIP

It is important to set up a written Partnership Agreement that establishes the terms of the partnership, how each partner is to contribute and the profits they will accordingly be entitled to. This document would also include terms such as:

- What the partnership constitutes of and its purpose;
- How profits and losses are to be split between the partners;
- How new partners can be appointed;
- How disputes should be resolved;
- What the duties of the partners are; and
- How the partnership is to be wound up.

The partnership would be established once all partners have executed (signed) and dated the Partnership Agreement.

D. ESTABLISHING A COMPANY

A company is more difficult to establish, although they provide greater protection to owners by being a separate legal identity.

You should engage a lawyer before deciding to proceed with incorporating a company as there are important legal and reporting obligations that must be complied with under the *Corporations Act 2001*(Cth). These include keeping financial records and upholding director's duties.

For more information on related issues, you may wish to read the following articles:

1. [***Starting A Business in Australia***](#): Discusses what issues need to be considered before setting up a business.
2. [***Tax incentives for SMEs***](#): This articles discusses the tax concerns and perks offered to small and medium businesses.
3. [***Financial Reporting Requirements***](#): This article discusses the financial reporting requirements of large proprietary companies and some small proprietary companies under the *Corporations Act 2001*(Cth).

Comasters can advise you on which business structure is appropriate for you, and assist you with creating and registering your business

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