

Setting Up a Company in Australia: Benefits and Tips



Setting up your business under a company structure can not only help you grow your business, it also has many other benefits. Read about them here.

Introduction

Many businesses aren't sure when the right time to [register a company](#) is. Whether you're starting a new business or you think you might be ready to change business structures, registering at the right time is important. There can be a lot of complexities around registering a company, which this guide will navigate you through. It can also be hard to know what your revenue should be to change to a company structure and what kind of risks you have associated with your business. In this article we'll discuss the process of setting up a company in Australia at the right time – and the right way



Business structures in Australia

There are signs that can indicate that it's time to change business structures. In Australia, there are three main types of business structure – sole trader, partnership and company. A sole trader means that one person owns the business and is directly responsible for the finances and liabilities of the business. The second is a partnership, which is two or more people that run a business together and share the same responsibility for it. The other main type of business structure is a company, which is its own legal entity. This means that the company itself is responsible and is liable (except if you sign a director's guarantee). Taxation is also different for each structure. If you're a sole trader or in a partnership, you'll be taxed individually under your [Tax File Number \(TFN\)](#). As a company, your business's profits will be taxed under corporate tax rates.

Trusts

Contrary to popular belief, trusts are not a type of business structure. However, a trust is actually a relationship, where property is held for the benefit of another. Trusts are often associated with business as they are commonly set up by business owners, but are also a vehicle through which to organise ownership of a business. A trust itself cannot own a business, but the shares can be held by the trustee on behalf of the trust.

Signs you should register a company

If your business is generating revenue

A lot of company owners start out as sole traders. As a sole trader, you would have applied for and received an [Australian Business Number \(ABN\)](#). However, you're still being taxed on your individual income, which is why as revenue from your business grows, registering as a company can be a great option. This is because individual tax rates are significantly higher than company tax rates. If you want to hold on to more of the profit your business generates, operating as a company is the best way to do it. Doing this means you could save as much as 18.5% in tax.

If you want to minimise risk

Business deals and new ventures always carry an element of risk. If there are any current or new risks emerging in your business, it is wise to register as a company. This is because liability attaches to you and your assets personally as a sole trader or partnership. Under the [Corporations Act](#), companies are separate legal entities, so if anything goes wrong, you won't bear any personal responsibility.



Example

You've started a new business and you are entering into a relationship with a supplier to offer services. There are risks involved in that contract, such as freight and shipping turnaround times. If you don't deliver the services by the deadline stated in the contract, the other business might be entitled to damages.

In this case, because there is a legally binding contract involved, being personally liable is extremely risky because you may end up having to pay those damages. If a company enters into that agreement, it's the company that is liable for those damages. This also applies to all other types of contracts your business enters into, such as employment and contractor agreements. Further, if you want to take out any loans for your business, registering your business as a company is the best way to protect yourself. It is also important not to sign any director's guarantees at this stage.

If you want to protect your brand

Often as an early stage business or a startup, it's your idea that is the most valuable asset. Before you've hired employees, started working out of a commercial space or generated revenue, it's your idea that will make your business successful. You can protect this idea by [registering a trademark](#) for your business name, logo or other brand assets. If you do this under a company structure, then you will be assuming less risk as your brand becomes more valuable. Further, you will be able to choose your company name rather than having to register a separate business name and trademark under a sole trader structure.

Benefits of registering your company

Limited liability

One of the largest legal benefits of setting up a company in Australia is that you have limited liability and won't be personally responsible if things go wrong. There are limited circumstances where you may be liable, but that is only where you have breached your duties as a director of the company. However, this doesn't happen often due to the separation between the company itself, and the individuals running it. This is known as the 'corporate veil'.

You can distribute ownership

Companies often have multiple owners who hold shares in the company. The number of shares in a company itself differs – there can be 5 shares, or millions of shares. Once a company is broken down into shares, it's easy to have multiple owners in that company.



Example

You and your colleague have decided to start a company with a mutual friend. However, the mutual friend does not want to own as much of the company as you and your colleague. To account for this, you could distribute ownership in your company as being 40 percent to you and your colleague, and then 20 percent to your mutual friend.

There's an easier exit strategy

The other advantage of setting up a company in Australia and having shares is that if somebody wants to leave the company, they can easily sell their shares on to somebody else or sell their shares on to the person already in the company.

You can manage disputes

When there's multiple owners of a business, disputes may arise. However, you can resolve this by having a shareholders agreement. A [shareholders' agreement](#) is a document that stipulates the relationship between the shareholders of that company. It talks about things such as who can buy and sell shares, when you can buy and sell shares. Most importantly, it talks about how disputes are settled and how decisions are made. For example, 75% of the shareholders can make a large decision on the company. Smaller decisions to do with the day-to-day running of the company could be made by one person actively involved in the company. However, larger decisions need to be agreed upon by the majority of shareholders.

It can help with launching new products

Launching new products for your business inevitably carries an element of risk. Of course, you'll test your products to ensure they're viable and safe to use, but things can go wrong at any time on the production line. Setting up a company in Australia means that you'll be minimising your liability. In addition, if you've got an idea or have recently invented a product, starting a company before you release your products on the market is an extra (and necessary) layer of security.

You'll be more likely to attract investors

After you've started your business and put your product or service on the market, you might be [seeking investment](#). Investors will help you scale the product and grow your business into the large successful company that you want it to be. For most businesses, the idea of getting investment into the business happens a little later on in a business's life cycle. Investors tend to only invest in business's which are under a company structure. There's a couple of reasons why investors only go for legally registered companies, being that:

- It's more practical because investors will normally purchase shares in the company
- Investors understand that a company structure is more adaptable to changing circumstances e.g. if you decide to bring in a new CEO to run the company

If the company is made up of shares, it is very easy to sell those shares to somebody else, to transfer those shares to somebody else, or to bring new people into the business. If you're looking for investors, or you think you're looking for investors in the future, you're going to need to be a company.

Government grants

The Australian government has a lot of [grants](#) on offer small to medium- sized businesses. One important grant on offer is the research and development grant. If you are a new business and are in the technology space, you can actually receive up to \$0.48 in the dollar back for any type of research and development that you do on a new good or service. If you are a new business and you are creating a new product, and you are doing research and development in building that product, you can make a claim the following tax year and receive up to half the money that you spent on that back from the government. This is often a huge benefit to new businesses and startups that spend a lot of money on development and coding. To claim this however, your business must have spent over \$20,000 in the year. To claim these costs, you must also be under a company structure.

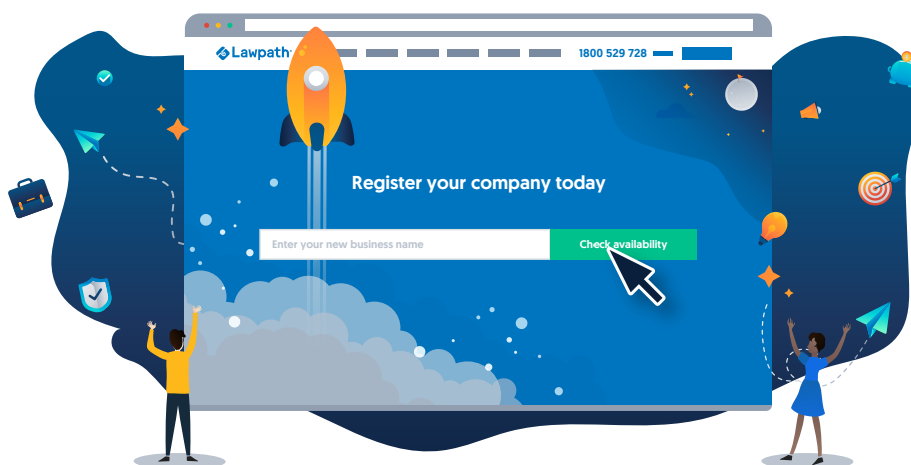
Another grant available is the government's Minimal Viable Product (MVP) grant. This can be a great option for very early-stage businesses. This is because to be eligible for this grant, you must be in the first 10% of executing your business concept or idea. Further, you don't need to have built anything yet. You just need to have had a really good idea and be ready to build. The government will give you up to \$25,000 to validate and build that idea. This grant works on a dollar-for-dollar basis. For example, if you spend \$25 in the year, the government will also match that and give you \$25,000. Similar to the Research and Development Grant, you will need to be in a company structure to be eligible.

How to register your company

Choosing how you'll register

Setting up a company in Australia is done through the Australian Securities and Investment Commission (ASIC). There is a government fee to becoming a company, which is \$495. However, the way you can actually register your company differs. However, there are a number of ways to register a company. One way is to consult with an accountant or lawyer who will prepare and file the paperwork on your behalf. This is lodged with ASIC and you are charged professional fees along with the government fee. After this is done, you can expect to receive all your documents and be ready to trade in about 2 weeks.

A simpler and more effective way of setting up a company in Australia is by doing it online. You can complete a form online and you can have your company registered within a couple of minutes. If you want to get your business moving and register your company, you can do this on [our website](#). We also have consultants on hand to help you with any questions you have.



Choosing your name and legal element

When you're registering a company, the first thing that you will have to list for the government is the company name. This company name can be whatever you choose, but you can't choose one that's already been registered by another business. Another thing you'll often see after a company name is the suffix 'PTY LTD'. You might also see PTY.LTD or proprietary limited after a company name. These terms legally all mean the same thing, the only thing that matters is how they appear next to your name.

Adding your company details

You will need to nominate an office address when registering a company. This can be any address aside from a PO box address. Many companies nominate a [virtual office address](#) to accept documents on your behalf. This is a way to avoid providing your personal address to ASIC or an address you're not comfortable with nominating on a public register.



Adding your directors

At this point, you will also need to put in the details of your company's directors. Directors are those who will control and manage the company. By contrast, shareholders own the company and normally only oversee larger decisions. Often with smaller companies, the shareholder and the director will be the same person. This means that they both own and control the company.

As a company grows, the directors and shareholders in the company become distinct. For example, a publicly listed company will have thousands of shareholders who own small stakes of the business. However, there's only a few directors that actually control the company.

Issuing shares

Another part of setting up a company in Australia is issuing shares. The number and cost of shares you issue is up to you. For example, you may register 100 shares at \$1 each. If this is the case, the nominal value of the company will be \$100. It's important to note here that the nominal value is by no means the actual value of the company.

After registration

Documents

There's a number of documents you'll need after setting up a company in Australia. Firstly, you'll receive a company certificate from ASIC which records the identifying details of your company. You'll also need to draft a constitution for your company, which stipulates the rules between the company and the shareholders. This is different to a shareholders' agreement, which deals with the relationship between different shareholders. A constitution sets out all the rules around the company. The shareholders in the company should also each receive a [share certificate](#) to confirm the amount and value of the shares they own.

Other registrations

As a company, you will need a new ABN. This is not to be confused with the personal ABN that you already have. You need a new ABN for each company as the Australian Tax Office requires each legal entity to have its own ABN. You will also need a tax file number for your company. Further, if you have revenue over \$75,000, you will be required to [register for GST](#).

Conclusion

There's many reasons why setting up a company in Australia can be the best way to grow your business. Beyond tax advantages and lower liability, incorporating your business will also serve to legitimise it. If you're unsure whether starting out as company or changing business structures is right for you, a [business lawyer](#) can advise you further.

How Lawpath can help?

Unsure where to start? Contact a Lawpath consultant on 1800 529 728 to learn more about customising legal documents and obtaining a fixed-fee quote from Australia's largest legal marketplace.

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