

## other legal requirements

When you begin operating your business, you will need to consider a variety of potentially applicable laws. For example:

<b>Insurance</b>	Businesses must deal with risk on a daily basis, regardless of their size or industry type. Insurance is an essential part of managing these risks, and for small business owners uninsured at the time of an accident, the resulting costs can often lead to closure of the business. If you're operating a small business, having insurance can help reduce your risk and allow you to succeed in the future.
<b>Competition and Consumer Act 2010 (formerly known as the Trade Practices Act 1974)</b>	The Australian Consumer Law (ACL) which is contained in a schedule to the CCA, prohibits business conduct that is misleading or deceptive, provides product safety standards, makes manufacturers and importers liable for defective goods and prohibits unconscionable conduct by businesses in their dealings with consumers.
<b>Retail Shop Leases Act or Leases generally</b>	It will be necessary to consider this Act if you are entering into a retail lease. More generally if you are entering into a lease, it is important to have this reviewed by a lawyer as there can generally be a lot of hidden costs within leases in terms of make good, lease reviews etc which you should be aware of before signing. It should be particularly borne in mind that often landlords will negotiate on lease terms so more favourable terms may be possible.
<b>Planning</b>	Does your business comply with planning regulations?
<b>Privacy Laws</b>	Your company may need to comply with privacy laws when it collects, uses, secures and discloses personal information.
<b>Australian Standards</b>	Different standards apply to different industry sectors. Your business may be required to follow mandatory safety laws, including construction, performance, testing and labelling and information requirements. These standards can be found in the CCA, which is enforced by the Australian Competition and Consumer Commission (ACCC).
<b>Codes of Practice</b>	Provide a minimum standard of protection to consumers in particular industries. Businesses should already adhere to mandatory codes of practise under the state and territory fair trading laws.

## protecting your 'intellectual property'

Intellectual Property (IP) is a legal concept which refers to creations of the mind such as inventions, literary works, designs, names and images used in commerce. Some IP is protected by the common law and legislation (for example, copyright). However, some IP rights require a formal process of registration in order for the owner to be granted protection (for example, patents, trade marks and designs).

Ways to protect your IP include:

<b>Trade mark</b>	A trade mark provides you with ownership rights of your business name and logo. You may enforce, sell or licence these rights. <ul style="list-style-type: none"><li>· Your trade mark is the means by which you can distinguish your goods and services from those of another trader.</li><li>· Trade marks are essential to protect your business and ideally should be registered prior to your business commencing trading.</li></ul>
<b>Trade mark warning</b>	If another business trade marks your name or logo before you do, even if you have been using the name or logo for a longer period of time, you will immediately be infringing the trade mark rights of your own name or logo! This is particularly common in overseas jurisdictions, which is why it is important registering your trade mark in the countries which you expect your business to trade.
<b>Patents</b>	If you have created a device, substance, method or process that is new, inventive and useful.
<b>Designs</b>	If you own a new and distinctive design, you can register it to prevent other from using it without your permission.

## employment issues

### Compliance with the Fair Work Act 2009

As an employer you have certain obligations to your employees pursuant to the Fair Work Act 2009. Employers and employees on the national system have the same workplace rights and obligations, regardless of the state they work in.

### Are your employees Independent Contractors or Employees?

- You should also consider whether people you engage are independent contractors or employees.
- Note: You need to treat your contractors differently to your employees for tax and superannuation purposes. Some contractors may be treated like employees under the law. Just having an ABN does not mean a worker is an independent contractor.
- Although you may have created or contributed material to products and ideas as a contractor, you may not be entitled to IP ownership of these items. This will depend on the contract you sign.
- Do you know what to include in a contract? Avoid disputes and misunderstandings with your employees by entering into written contracts. Getting your contract right in the first place means you will have fewer problems down the track especially in terms of post-employment restraints.

Macpherson Kelley can advise your independent contractors and employees and can assist with drafting appropriate employment or independent contractor agreements. Macpherson Kelley can also advise you about leave entitlements.

## registering your business name

<b>What is a business name</b>	<ul style="list-style-type: none"><li>· This will be the name that your business will trade under.</li><li>· You should register your business name with the Australian Security and Investments Commission (ASIC)</li></ul>
<b>When you need to register a business name</b>	<ul style="list-style-type: none"><li>· If you operate as a sole trader, partnership or trust; or</li><li>· If you register for Goods and Services Tax (GST). You will need to register for GST if you expect your business to turn over more than \$75,000.00 per annum.</li></ul>
<b>When you do not need to register a business name</b>	<ul style="list-style-type: none"><li>· If you trade as a company; or</li><li>· If you trade under your first name and surname.</li></ul>
<b>When registering your business name, please make sure you consider the following</b>	<ul style="list-style-type: none"><li>· Trading under a registered business name does not create a separate legal entity.</li><li>· The holder of a business name is legally responsible for the business. For example, if you run your business under a company structure, the company is the owner of the business name and is legally responsible for the business.</li><li>· Registering a business name does not give you exclusive rights over the use of that name. In order to protect your business name, you must register the business name as a trade mark (see the section below on Intellectual Property for further information).</li><li>· Your business name must not conflict with an existing registered trade mark.</li><li>· You will not have to register a business name if you trade as a company or under your first name and surname.</li></ul>

## other ways that your business may be identified

<b>Australian Company Number (ACN)</b>	If you operate your business under a company structure then, when you register your company, ASIC will issue your company with a 9 digit number.
<b>Australian Business Number (ABN)</b>	If you are registered for GST, you will be issued with an ABN (as well as an ACN, if applicable), which is an 11 digit number that identifies you to governing agencies, other businesses and customers.
<b>Domain Name</b>	You should register your business domain name. This is your internet address which is your business' online identity.
<b>Tax File Number (TFN)</b>	Sole traders can use their existing personal TFN when in business, but partnerships, trusts and companies will need their own. In order to receive a TFN you must apply to the Australian Tax Office.

Macpherson Kelley can assist you by registering your company name, business name, trade marks and domain name. Please let us know if you would like a fee estimate.

# the macpherson kelley start up business kit

this guide is designed to assist business owners navigate key legal issues when embarking on a new business venture.

## choosing a 'business structure'

Before you start your business, you need to decide on the most suitable business structure for your business. Your business structure will have a direct influence on the security of your personal and business assets and your taxation obligations.

Types of business structures include:

<b>Sole Trader</b>	<p>The business has no separate legal existence from its owner. Therefore, you will be personally responsible for the liabilities of the business.</p> <p>You need to report your business income on your personal income tax return.</p> <p>The advantage is that it is relatively easy, cheap and fast to set up.</p>
<b>Partnership</b>	<p>This is a type of business where two or more people start a business together and share the profits, risks and losses personally of the business.</p> <p>The terms of the partnership should be recorded in a legal document called a 'partnership agreement', which covers key issues of the partnership.</p>
<b>Trust</b>	<p>A trust is a relationship where a business is transferred to a third party who has legal control and has a duty to run that business for the benefit of someone else.</p> <p>In most cases, the third party with legal control will be a company of which the beneficiary is a director.</p>
<b>Company</b>	<p>A company is a legal entity that is separate from its owners (shareholders).</p> <p>A director of a company has additional legal and reporting obligations. For example, you must lodge a separate company income tax return.</p> <p>It is relatively more expensive and complex to set up.</p>

Each structure has a number of advantages and disadvantages relating to tax, employment, superannuation and legal liability, among other things.

Macpherson Kelley can assist you by:

1. Advising on the most appropriate structure for your business;
2. Draft various agreements that you may require to set out the rights and obligations of you and your business "partners" – for example, shareholder agreements, joint venture agreements and partnership agreements.