

Choosing the best structure for your business

Main topics

- Is a business name a legal business structure?
- What's the best structure for my business?
- Common business structures
- Protecting yourself with a trade mark and web address
- Further information

Did you know?

What is the difference between a business name and a trading name? The answer is none. A business name is also a trading name.

Tip

You are not locked into any one structure. It is common for a business to change its structure as it either grows or changes direction.

Step-by-step guides

New business starters can get help by using Business Victoria online guides.

Go to:
www.business.vic.gov.au/stepbystep



The basics:

- registering a business name does not set up a legal business structure
- all businesses use a Tax File Number and lodge an annual tax return, and most also have an Australian Business Number for Goods and Services Tax
- the Business Licence Information Service will show you which registrations, permits and licences your business is legally required to have
- if you have staff you need to register with the Australian Taxation Office for superannuation and Pay As You Go withholding
- if your wages go over a certain amount, you pay pay-roll tax to the State Revenue Office and WorkCover insurance to WorkSafe Victoria

Is a business name a legal business structure?

Just registering a business name with Consumer Affairs Victoria does not create the legal structure for a business. It is simply a way to identify the business to the public. If you want the business to operate in other states or territories, you need to consider your options for the business structure first. This information sheet covers the options available and registrations required. For more specific advice about your business needs, consult with your financial or legal adviser.

What's the best structure for my business?

When you set up or buy a business, you need to choose one of six main business structures. Business structures range from a single-person sole trader to a cooperative. Your choice depends on your type of business, if and how others are involved, how profits are shared, who is legally liable, the tax implications, and your future business goals. To work out which business structure suits you, read the following table and look for the most 'yes' matches.

	Sole trader	Partnership	Company	Cooperative	Trust	Association
Some answers are marked yes or no — the answer depends on how you set the business up						
You'll have full control	yes	no	yes ⁽¹⁾ or no	no	no	no
It is cheap to set up and simple to administer	yes	yes	no	no	no	no
You can set it up with one or more other people and share personal liability with them	no	yes	yes or no ⁽⁴⁾	yes	yes	yes
Gives you as much protection from personal liability as possible	no	yes ⁽²⁾ and no	yes	yes	no	no
Income is added to your personal income	yes	yes	no	no	no	no
The business is a separate legal body ('entity') with its own tax return, ABN and TFN	no	yes or no ⁽³⁾	yes	yes	yes	yes
You can trade interstate or overseas	yes	yes	yes	yes	yes	yes
Outside investors are easy to attract in the future	no	no	yes	no	no	no
Selling the business in the future is usually easy	yes	yes	yes	yes ⁽⁴⁾	no	no
Closing down (or 'dissolving') the business and recovering your share is straightforward	yes	yes	no	yes ⁽⁴⁾	no	no
Allows you to employ staff or subcontractors	yes	yes	yes	yes	yes	yes
Notes: (1) Yes if a one-person company. (2) Yes if a 'limited' partnership. (3) Yes and no: Partnerships do lodge their own tax return, but they're not a separate legal 'entity'. (4) No if other factors complicate this.						

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Common business structures

Sole trader

Further action

When you have registered your business name, it must be displayed outside your business address, and on all public documents like letters, invoices and receipts.

Checklist for sole trader

? = possibly

Task	To do
Investigate best sole trader structure	✓
Check the business won't infringe on a trade mark	✓
If using a business name, check it isn't already taken and register it with CAV	✓
ABN	✓
GST	?
TFN (use your own)	✓
PAYG	?
Personal income protection insurance	?
Check licences and permits (BLIS)	✓
Organise other insurances	✓
<i>Other (see last page)</i>	
Apply for trade mark	?
Buy a web address	?

Description This is the simplest form of business structure. A sole trader runs the business in their own right as the only proprietor, using either their own name or a registered business name.

If you trade under your personal name only (e.g. John Citizen), you are not required to register it as a business name (but you can if you like *). However, if you add anything to your own personal name (e.g. John Citizen Mowing), it must be registered as a business name as 'mowing' is not part of your name.

*A little-used option is to register a personal name as a business name, e.g. for a brand of clothing. In such a situation you might also register a trade mark.

Ownership and liability The sole trader owns all the business assets and is responsible for the liabilities of the business. Liability is unlimited and includes all personal assets, including any assets the owner shares with another person. For example, if the owner is married or in a de-facto relationship, they might own a house or have money in a joint bank account.

Taxation A sole trader is taxed as an individual, so their personal Tax File Number (TFN) is also used for income tax purposes. They add the income from the business to their personal tax return, or deduct business losses from their personal tax return. Income tax is paid at personal tax rates.

A sole trader must also register to collect Goods and Services Tax (GST) when gross income passes \$75,000. (Some businesses register for GST when they first set up to simplify bookkeeping as the business grows.) The Tax Office's 'personal services income' rules may apply if you're a consultant or contractor. Contact the Tax Office (ATO) to get your sole trader Australian Business Number (ABN). Support is also available from a Victorian Business Centre (VBC) in your area. For VBC contact details see the last page.

Setting it up legally If you want to use a business name, register it with Consumer Affairs Victoria (CAV). If you want to operate in another state or territory, you need to investigate the options with the other states and consult your business adviser. To trade Australia-wide, some businesses register a company with the Australian Securities and Investments Commission (ASIC) instead. Some also register a trade mark to identify the brand.

Cost of registration? It costs \$77.10 to register a business name at Consumer Affairs Victoria, payable every three years. Fees change regularly, so you should check them at www.consumer.vic.gov.au to be sure.

Advantages

- structure is simple and cheap to set up
- registration lasts for three years
- full control and ownership of the business
- personally entitled to profits and capital
- fairly easy to close the business down
- business losses can be written off against your PAYG tax from another job

Disadvantages

- often hard for the sole trader to think about improving the business, as they spend so much time just running it
- full personal responsibility for business debts and other liabilities
- if the owner gets injured or sick, there could be difficulties with transferring ownership or trying to sell the business

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Partnership

Watch out!

Some people have become partners in verbal partnership agreements because their actions 'implied' they were a partner, e.g. they paid a bill for the partnership. In such a situation, the implied partner can become liable for the debts of the partnership.

Checklist for partnership

? = possibly

Task	To do
Investigate best partnership structure	✓
Check the business won't infringe on a trade mark	✓
If using a business name, check it isn't already taken and register it with CAV	✓
Register a limited partnership or incorporated limited partnership with CAV	✓
PAYG	?
ABN	?
GST	?
TFN	✓
Personal income protection insurance	?
Check licences needed using BLIS	✓
Organise other insurances	✓
<i>Other (see last page)</i>	
Apply for trade mark	?
Buy a web address	?

Description A partnership is formed when two or more people go into business planning to make a profit. The business may be run under the personal names of the partners, or as a registered business name.

Recommendation It is recommended a formal Partnership Agreement is drawn up by an accountant or lawyer so the following is clear: • roles and authority of each partner • who owns what share • who contributes funds and how much • who has limited liability • how the partnership will be closed down and assets distributed • how disputes will be dealt with.

Limited Partnerships Another option is for one or more partners to have limited liability, if at least one other partner has unlimited liability. The limited liability partner invests in the business but doesn't actively manage it. They're liable for financial debts in proportion to their investment. The benefit of a limited partnership is that the business can attract capital investment.

Incorporated Limited Partnerships An incorporated limited partnership is a form of partnership for high-risk venture capital projects. Get expert legal advice.

Ownership and liability Apart from partners with limited liability, all partners are liable for financial obligations. This applies even if one partner incurs debts without the other partner's knowledge or consent. Unless there has been a prior agreement, debt is not always equally distributed among partners.

Taxation A partnership lodges its own, separate tax return. However, once the Tax Office (ATO) assesses this, the partnership's profits are divided among the partners as set out in the partnership agreement. Each partner then adds their share of the profit (or loss) to their personal income tax for assessment by the ATO. The partnership has its own Tax File Number (TFN), and usually an Australian Business Number (ABN). If operating as a business enterprise, the partnership registers to collect GST when annual turnover passes \$75,000 (payable monthly, quarterly or annually). The ATO's 'personal services income' rules may apply if you are a consultant or contractor in a partnership.

Setting it up legally A solicitor can prepare a written partnership agreement, although some partnership agreements are verbal. If you're planning to use a business name, register it with Consumer Affairs Victoria (CAV). Limited partnerships and incorporated limited partnerships **must be registered separately** from the business name with CAV. General partnerships, also referred to as 'partnerships', do not need separate registration.

Cost of registration? It costs \$551.00 to register a partnership with Consumer Affairs Victoria, payable every three years. Fees change regularly, so you should check them at www.consumer.vic.gov.au to be sure.

Advantages

- partnerships are not expensive to set up
- tax advantages where the partners are in the same family, such as a husband and wife
- access to more capital
- pooling of knowledge, experience and skills
- ability to take time off
- easy to dissolve and recover share
- limited partnership can attract capital

Disadvantages

- disputes over profit sharing, administration and business development may arise
- personality clashes may arise
- each partner is personally responsible for business debts and liabilities incurred by the other partners
- problems may arise if one partner leaves or sells their share

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Company

Description A company is an independent legal entity able to do business in its own right. A 'memorandum' sets out its powers, and the 'articles of association' detail who can use these powers. A company can also be listed on the stock exchange as a 'public company' to attract investors. All companies are registered with and regulated by the Australian Securities and Investments Commission (ASIC).

Ownership and liability A company has shareholders who own the company and directors who run it. Shareholders may also be directors and employees, as is often the case in a small family business. An alternative structure is the 'one person company' where you are the director and the only shareholder, sometimes used by independent contractors.

Companies have limited liability, but directors and employees are personally liable under the *Corporations Act 2001* if found to be fraudulent, negligent or reckless. The liability of the shareholders is limited, so a company structure may be useful for a high-risk business. In some cases, a director can sign a personal guarantee of security for those who lend the company money. The setting up of a company should be discussed with your financial or legal adviser.

Taxation When annual turnover passes \$75,000, a company must register with the Tax Office to collect Goods and Services Tax (GST), as well as company tax. A company has its own tax return and Tax File Number (TFN), and with few exceptions, its own Australian Business Number (ABN).

A one-person company can pay a salary to its owner. The Tax Office's 'personal services income' rules may apply if you are a consultant or contractor with your own company. The details of such an arrangement should be discussed with the Tax Office.

Setting it up legally An accountant or solicitor usually prepares the documents and applies for registration with ASIC as a corporation. As company structures vary so much, most small business owners investigate their options with an accountant, solicitor or ASIC first. A pre-registered 'shelf' company with all the required paperwork can be bought and quickly adapted to your needs. As well as registering with ASIC, the company can also trade in Victoria using a business name registered with Consumer Affairs Victoria. This is commonly known as 'Trading As', e.g. Mowing Plus P/L Trading As John Citizen Mowing.

Cost of registration? It costs \$400 to register a company with ASIC, payable every year. Fees change regularly, so you should check them at www.asic.gov.au to be sure.

Further action

With registration you are also given an Australian Company Number (ACN). Your ACN must be on all documents, like invoices and receipts.

Checklist for company

? = possibly

Task	To do
Investigate best company structure	✓
Check the business won't infringe on a trade mark	✓
Register with ASIC	✓
Register a business name	?
ABN	?
GST	?
TFN	✓
PAYG	✓
Superannuation	✓
Apply for WorkCover	?
Check licences needed using BLIS	✓
Organise other insurances	✓
<i>Other (see last page)</i>	
Apply for a trade mark	?
Buy a web address	?

Advantages

- shareholders (owners) are not responsible for company debts unless they sign a personal guarantee
- can be owned and run by one person
- directors, managers and employees are not liable for debts unless they are reckless
- easier to attract capital because of limited liability
- operators can use titles like Managing Director or Chairperson
- can expand globally

Disadvantages

- expensive to establish and register, although a 'shelf company' service usually costs less
- compliance costs are generally higher than other structures, and record keeping requirements are more strict
- shareholders may have difficulties in recovering their investment because of limitations on who can buy shares

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Cooperative

Further action

Download *The Cooperative Start Up Manual* – the essential field guide for starting cooperatives in Victoria. Visit www.australia.coop and go to Top Downloads.

Description A cooperative is a democratic structure owned and controlled by the people (at least five) it serves, who join together for a common benefit. The structure can be used to help people gain purchasing and marketing power. A cooperative is a separate legal entity which has the general aim of providing services for its members rather than making profits.

Anyone can apply to be a member of a cooperative, but members must be active to stay members; that is, they're expected to share in the running of the organisation. Members can nominate as directors and can also elect directors. Cooperatives appeal to those with a long-term interest in a service or product, rather than making a profit on an investment.

Several kinds of cooperative are available. The most common varieties are trading, non-trading and government guaranteed. Some cooperatives issue (non-public) shares. Cooperatives must abide by the *Victorian Cooperatives Act 1996* and the *Cooperatives Regulations 1997*.

Ownership and liability Cooperatives are owned by the members and each member has one vote, no matter how many shares they own. The cooperative's directors, managers and employees have no legal liability unless they've been negligent, fraudulent or reckless. All members have limited liability.

Taxation A cooperative is a separate legal 'entity' and has its own tax return, Tax File Number (TFN), and in most cases an Australian Business Number (ABN). Any profit may go to members depending on how the cooperative is set up. If operating as a business enterprise, the cooperative registers to collect Goods and Services Tax (GST) when the annual turnover passes \$75,000 (payable monthly, quarterly or annually). Go to the Tax Office website for more detailed information.

Checklist for cooperative

? = possibly

Task	To do
Investigate best cooperative structure	✓
Register cooperative with CAV	✓
ABN	?
GST	?
TFN	✓
PAYG	?
Apply for WorkCover	?
Check licences needed using BLIS	✓
Organise other insurances	✓
<i>Other (see last page)</i>	
Apply for a trade mark	?
Buy a web address	?

Setting it up legally Kits of standard (model) rules make registration easier with Consumer Affairs Victoria (CAV). For specific information and advice, you should speak with an accountant, solicitor, CAV or the Cooperative Federation of Victoria (CFV). Contact details for CAV and CFV can be found in further information on the last page.

Cost of registration? It costs \$551.10 to get a cooperative registered, payable every three years. When making this payment at Consumer Affairs Victoria, you will also be issued with a set of standard rules and the disclosure statement. If you use non-standard rules, the cost is \$578.60. Fees change regularly, so you should check them at www.consumer.vic.gov.au to be sure.

Advantages

- shareholders (owners) are not responsible for company debts unless they sign a personal guarantee
- can be owned and run by one person
- directors, managers and employees are not liable for debts unless they are reckless
- easier to attract capital because of limited liability
- operators can use titles like Managing Director or Chairperson
- can expand globally

Disadvantages

- expensive to establish and register, although a 'shelf company' service usually costs less
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- shareholders may have difficulties in recovering their investment because of limitations on who can buy shares

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Trust

■ **Description** A trust is a business structure where a 'trustee' holds property or income for the benefit of others, called 'beneficiaries'. A solicitor draws up a trust deed, which formalises the powers and administration of the trust. Trusts have various complex structures, each with their own set of financial and legal obligations. For specific advice on a trust business structure, you should see an accountant or lawyer who has experience in this area.

Incorporated association

■ **Description** Many clubs and special interest groups become incorporated associations to benefit their members, and protect them from the debts and liabilities of the association. Incorporation (in this case meaning to register with Consumer Affairs Victoria to be legally recognised) is voluntary, simple and cheap. The incorporated association is often referred to as a non-profit organisation. Profits are put back into the association and not to be used for the benefit of individual members.

■ **Incorporated Aboriginal Associations** Another form of association is the Incorporated Aboriginal Association. This form of association must be registered with the federal Department of Families, Community Services and Indigenous Affairs, and all association members must be aboriginal.

Protecting yourself with a trade mark and web address

■ Did you know?

You will save money by making an online application for a trade mark. However, the process from start to finish takes at least 6 months.

■ **Your trade mark** To protect your business, product name or service, and to stand out from your competitors, you should consider registering a trade mark at the IP (Intellectual Property) Australia website (www.ipaustralia.gov.au). IP Australia will screen your trade mark application to make sure it can be used across Australia and not be confused with other trade marks. If your application is accepted by IP Australia, a registration fee must be paid before the trade mark can be registered. Overseas registration is an extra step. The 'Madrid Protocol' allows you to register in several countries at the same time.

■ **Your web address** To protect your business name on the internet, you should also consider registering a web address ('domain name') for your business. To check if your preferred name is available, go to the Australian Domain Name Administrator website (www.auda.org.au). Once the availability of your name has been confirmed, you should visit some of the wide range of sites which offer registration services.

When registering a domain name there are a few points to keep in mind:

- Just because you have registered a business name, company name or trade mark, does not mean you can automatically use it as a domain name.
- You may not be able to stop someone else using a domain name that is the same as your business name, company name or trade mark.
- If you're a sole trader without a registered business name, you will need to have an Australian Business Number (ABN) before you can register your domain name online. For ABN details, see Further information on last page.
- When registering a domain name other than your own name, your business name will be expected to be similar to the domain name you're registering.

■ Further action

Visit some sites offering domain name registration services. Prices vary and the competition to sell names is fierce, so shop around!

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Further information

All small business enquiries	Office of Small Business Visit the Victorian Consumer & Business Centre Ground Floor, 113 Exhibition Street, Melbourne VIC 3000 Victorian Business Line (VBL) 13 22 15 TTY (telephone typewriter) Service (03) 9651 7596	www.business.vic.gov.au
	For your nearest Victorian Business Centre call the Victorian Business Line (VBL) 13 22 15	www.business.vic.gov.au/vbc
Registrations, permits and licences required by local, state and federal governments	Business Licence Information Service (BLIS) 113 Exhibition Street, Melbourne VIC 3000 Victorian Business Line (VBL) 13 22 15	www.business.vic.gov.au/blis
Register a business name, limited or incorporated-limited partnership	Consumer Affairs Victoria Visit the Victorian Consumer & Business Centre Ground Floor, 113 Exhibition Street, Melbourne VIC 3000 (03) 9627 6200	www.consumer.vic.gov.au
Check online if a business name is already registered in Victoria	Consumer Affairs: Business Licensing Authority 113 Exhibition St, Melbourne VIC 3000 1300 135 452	http://online.justice.vic.gov.au
Register a company	Australian Securities and Investments Commission 485 La Trobe Street, Melbourne VIC 3000 (03) 9280 3200	www.asic.gov.au
Set up a trust	Solicitor or qualified adviser, and ATO for a trust ABN	www.ato.gov.au
Register a cooperative or association	Registrar of Cooperatives, Consumer Affairs Victoria 121 Exhibition Street, Melbourne VIC 3000 Visit the Consumer & Business Centre at Ground Floor, 113 Exhibition Street, Melbourne or call the Helpline: 1300 55 81 81	www.consumer.vic.gov.au
	Also, the Cooperative Federation of Victoria Ltd (03) 9785 6704	www.australia.coop
Register an incorporated aboriginal association	Department of Families, Community Services and Indigenous Affairs Melbourne Office, Level 3, Casseldon Place 2 Lonsdale Street (cnr Spring Street), Melbourne VIC 3000 GPO Box 9820, Melbourne VIC 3001 1300 653 227	www.facs.gov.au
WorkSafe Victoria	WorkSafe Victoria Ground Floor, 222 Exhibition Street, Melbourne VIC 3000 (03) 9641 1444 or 1800 136 089	www.worksafe.vic.gov.au
GST (Goods and Services Tax) PAYG (Pay As You Go tax) ABN (Australian Business Number) TFN (Tax File Number)	Australian Taxation Office (ATO) Casseldon Place, 2 Lonsdale Street, Melbourne VIC 3000 For your nearest ATO office, check the ATO website Business tax enquiries 13 28 66	www.ato.gov.au
Check online if a trade mark or logo is already registered, or register one	IP Australia (Intellectual Property Australia) Level 6, 565 Bourke Street, Melbourne VIC 3000 (03) 9614 4788	www.ipaustralia.gov.au
Check online if a web address (domain name) is available	Australia Domain Name Administrator 114 Cardigan Street, Carlton VIC 3053 1300 732 929	www.auda.org.au

For more information:

- call the Victorian Business Line on 13 22 15
- visit the Business Victoria website at www.business.vic.gov.au
- visit a Victorian Business Centre (VBC). For a list of VBC locations, go to www.business.vic.gov.au/vbc

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