Establish legal and risk management requirements of small business

Learner Guide

Table of Contents

1. Identify and implement business legal requirements

1.1 – Identify and research possible options for the business legal structure using appropriate sources

Options for the business legal structure may include:	Options for the business legal structure may be influenced by:
➢ Company ➢ Cooperative ➢ Corporation ➢ Government owned enterprise ➢ Partnership ➢ Profit or not-for-profit legal structure ➢ Sole trader ➢ Trust	➢ Confidentiality ➢ Contractual requirements ➢ Family/community/cultural expectations ➢ Ownership transfer ➢ Partnership considerations ➢ Preferences of owners/stakeholders ➢ Protection of stakeholders and assets ➢ Requirements of financial backers ➢ Superannuation ➢ Taxation

Appropriate sources may include:

- Business advisers
- Financial planners
- Government agencies
- Industry/trade associations
- Mentors
- Professional advisers, such as solicitors and accountants

Choosing the best legal structure for your business:

In the first instance, this question and its appropriate answer would be sought through the examples given of the appropriate advisors and qualified experts to provide such advice.

- Business advisers
- Financial planners
- Government agencies
- Industry/trade associations
- Mentors
- Professional advisers (e.g. Lawyers, accountants)

A lawyer would likely be the first person to seek advice on a suitable structure, as any option would be controlled and obligated by the laws of the state or country.

The legal structure that you choose for your business affects the ownership, tax structure, risks and future of that business.

Choosing the right legal structure that suits your proposed organisation's needs may include several key decision making factors:

- Protect you from risks that you can avoid
- Help you to minimise your taxation liability
- Save you time and minimise paperwork and reporting
- Help you to avoid government regulation and unnecessary red tape.

If you choose the wrong legal structure, you may end up:

- Paying more tax than you need to
- Being swamped with paperwork and government fees.

Types of business structure:

- Company
- Cooperative
- Corporation
- Government owned enterprise
- Partnership
- Profit or not-for-profit legal structure
- Sole trader
- Trust.

A business can be legally structured in several ways.

The legal structure in which a business operates depends on many variables including:

1. The number and relationship of the people involved in the business
2. The length of time the business is planning to run
3. The expected income from the business or the activities of the business itself

The three most common legal structures are:

- Sole Trader
- Partnership
- Proprietary Limited company
- You could also operate your business using a trust structure. A trust is an obligation imposed on a person to hold property or income for the benefit of others. These others are known as beneficiaries.

A sole trader:

This is an individual who runs the business without partners or a company structure. This is the easiest and cheapest way of structuring a business. The sole trader has full control of the business, including ownership of all profits and responsibility of all debts.

A partnership:

This involves two or more co-owners participating together in a business. A partnership requires an intention to share profits and an understanding that partners act on behalf of each other in the business. Therefore a decision made by one partner automatically makes the other partner responsible as well. Partners in a partnership are collectively responsible for all business debts and profits, and also have full control of the business.

NOTE: Sole traders and partnerships should consider insuring against unexpected debt.

A Proprietary Limited Company:

This is a more complex form of business structure. It must be established under the Corporations Law which states that Company Directors have certain legal obligations which must be met. A business with a proprietary limited company structure is considered as a separate entity from the business person running it so it has different profit distribution, taxation and legal responsibilities than a sole trader or partnership.

How to make the best choice:

There are advantages and disadvantages to each of these structures.

To make the best choice, it is recommended that you:

- Consult legal advice and that of your accountant
- Consider your personal situation and the nature and objectives of your intended business venture

Some issues that you should discuss with your advisors include:

- The differences between costs and risks are quite different. Find out which structure will best suit your needs and budgets.
- Owning a business takes a broad range of skills and personal abilities. Do you have enough knowledge, determination and experience to succeed by yourself? If not, will this affect how you structure your business entity?
- If you need a partner to share the costs and risks of operating your business, have you considered how much money they should invest in the business and whether they have the right kind of experience that you need?
- If you intend trading as a partnership, you need a partnership agreement that makes sure that each partner has a clear understanding of their rights and responsibilities.
- All business names need to be registered.
- Register for a ABN Australian Business Number with the Australian Tax Office.
- If you decide to register and operate as a Proprietary Limited Company, you must understand your responsibilities and duties as a company director.

Type	Advantages	Disadvantages
Sole Trade	➢ Easy to set up ➢ Inexpensive ➢ Independence ➢ Few government regulations ➢ All profits to sole trader ➢ Easy to close ➢ Total privacy ➢ Non-disclosure of profits to public	➢ Unlimited liability ➢ Few tax concessions ➢ Possible lack of capital ➢ Possible limit of expertise ➢ Lack of continuity – ➢ reliant on one person only – affected by ➢ sickness, holidays, ➢ retirement, death
Proprietary Limited Company	➢ Limited liability ➢ Separate legal entity ➢ Organised control ➢ Shares transferable ➢ Possible tax advantages ➢ Ability to control authority of shareholders through type of shares issued	➢ Government regulations ➢ (includes annual returns to ASIC) ➢ Possible taxation disadvantages ➢ Responsibilities of directors ➢ Charter restrictions ➢ Public Disclosure

1.2 – Determine legislation and regulatory requirements affecting operations of the business under its chosen structure

A brief summary of roles and responsibilities of Company Directors, should the chosen entity be a Company Limited by Guarantee.

Australian Institute of Company Directors

General Duties of Directors

Date: 4 Jan 2011

Directors govern companies on behalf of the shareholder who elect them. All directors must comply with basic legal requirements under the Corporations Act 2001, which specifies four main duties for directors with a number of other areas of key responsibility under this legislation, as well as the consequences of breaking the law.

Role of the Chairman

Date: 4 Jan 2011

The chair acts as an important link between the board and the CEO/company. The role of the chair is not defined in the Corporations Act 2001. Thus many functions of the chair are customary rather than formalised by law. Organisations usually define the role and responsibilities of the chairman both inside and outside the boardroom.

Role of the Board

Date: 4 Jan 2011

Every company must have at least one director and public companies must have at least three directors. Collectively, the directors are known as the Board of Directors and the Board of Directors acts on behalf of shareholders in supervising the company. The board should have the appropriate mix of skills to function effectively.

Role of CEO and MD

Date: 4 Jan 2011

The CEO is the more senior executive in the organisation. The Managing Director is also the most senior executive but sits on the Board of Directors as well. MDs/CEOs roles and the differences between them are usually defined as well as having in place executive service agreements and delegations.

Role of Non Executive Directors

Date: 4 Jan 2011

A non-executive director is a one who is not employed by the organisation in an executive capacity. All directors, whether executive or non-executive, must comply with basic legal requirements under the Corporations Act 2001. The non executive director can add value to the board.

Role of EDs

Date: 4 Jan 2011

Executive Directors are employees of the company as well as being a member of the Board. On top of their full time executive position, they are appointed by the Board. At law they have the same duties and responsibilities as other Directors.

Board Committees

Date: 4 Jan 2011

The boards of larger organisations often establish committees of directors to deal with complex or specialised issues and to use directors' time more efficiently. Committees make recommendations for action to the full board, which retains collective responsibility for decision making. Some committees include audit, remuneration and nomination committees as well as some legal advice committees.

Company Secretary

Date: 4 Jan 2011

Company secretaries traditionally have had the role of administering the affairs of the company and the business of the board. This role has now expanded to include an involvement with corporate governance policies and practices within the company. Secretaries have specific duties under the Corporations Act as well as typical company duties.

What other duties do company directors have?

Directors are subject to statutory and common law duties. Some of these key duties include:

- Duty of care and diligence – Directors have a duty to exercise their powers with a degree of care and diligence of a reasonable person in a like position in a similar company. In this respect, when a director makes a business decision, he or she is taken to have discharged their duty of care and diligence if:

    1. The decision is made in good faith and for a proper purpose.
    2. They do not have a significant personal interest in the decision.
    3. They have informed themselves about the subject matter of the decision.
    4. They believe that the decision is in the best interests of the company.

- Improper use of information – a person who obtains information because he or she is, or has been, a director, officer or employee of a company is prohibited from improperly using that information to gain an advantage for themselves or someone else or to cause detriment to the company.

- Duty to prevent insolvent trading – Directors have a duty to prevent a company incurring a debt while it is insolvent.

- Duty to act in good faith – A director has a duty to exercise his or her powers and discharge his or her duties in good faith in the best interests of the company.

- Improper use of position – A director, secretary, officer or employee of a company cannot improperly use his or her position to gain an advantage for themselves or someone else, or cause detriment to the company.

Legislation and regulatory requirements may include:

- Local, state/territory, commonwealth and international legislation, regulations and codes of practice affecting business operations such as:

    - Relevant acts and regulations
    - Industry and WHS codes of practice

- Business registrations and licences
- Planning and other permissions
- Environmental legislation
- Industrial law, agency law, property law, consumer legislation and standards, torts law and duty of care
- Equal employment opportunity (EEO) and anti-discrimination legislation, anti-competition regulations

What is meant by “law”?

The main sources of the law are:

- Common Law – law developed from court cases
- Legislation or statute law
- Statutory rules, regulations and by-laws

Some basic regulations affecting companies

Australian Securities and Investments Commission (ASIC).	Lodge company documents
Starting	A step-by-step guide to registering your company. By setting up and registering a company you are creating a legal entity for which you are responsible.
Change details	Check and change company details
Running	Your duties as a company officeholder include notifying us of changes to your company and reviewing your annual statement. You can also appoint a registered agent to act on your company's behalf.
Closing	Steps you can take to voluntarily deregister a company including winding up a solvent company. ASIC can also deregister a company in certain circumstances. Once the company is deregistered they control any assets it may still have. You can re-apply to ASIC to have a company reinstated to the register.

Australian Taxation Office	ABN registration for companies, partnerships, trusts and other organisations
	The Australian Business Register (ABR) allows you to apply for an Australian business number (ABN) and other tax registrations such as: ➢ A tax file number ➢ Goods and services tax ➢ Luxury car tax ➢ Wine equalisation tax ➢ Fuel tax credits ➢ Pay as you go withholding ➢ Fringe benefits tax

The type of company, its structure and its activities will determine some of the suggested legislative and regulatory requirements.

- Some companies will need environmental legislation or OH&S codes of practice in more detail than other companies or sole traders who may not have their activities impacted.
- Nearly all companies will need to either have explained by their advisors or understood by the company directors such things as:
- Relevant Acts and regulations, whatever they may be depending on the company's business model
- Codes of practice – licences
    - The Australian Codes of Practice Database provides information about codes of practice, standards, design rules, etc that may be required to operate your business. The database provides information on codes that are referenced by legislation.

By way of example, the many and varied industries that would be applicable under the Codes of Practice and Licenses include:

- Accommodation Cafes & Restaurants
- Agriculture
- Building & Construction
- Communication Services
- Culture
- Education & Training
- Electricity Gas & Water Supply
- Fishing
- Government Administration & Defence
- Health & Community Services
- Manufacturing & Processing
- Mining
- Personal & Other Services
- Property & Business Services
- Retail
- Tourism & Recreation

- Transport & Storage
- Wholesale
- Common to All Industries
- Permissions
    - Copyright, for example would include:
        - The owner of a physical item does not necessarily own copyright. For example, a gallery or museum does not necessarily own copyright in items in its collection.
        - The Copyright Act does not allow you to use material without permission if you can't contact the copyright owner. If you use the material without permission, you will infringe copyright, unless an exception to infringement applies.
        - If copyright is owned by an individual who has died, ownership may have passed to someone else – usually the copyright owner's spouse or children. If a company owned copyright and it has now gone out of business, its assets, which include copyrights, may have been distributed elsewhere.
        - The creator of copyright material is not always the copyright owner.
        - As well as clearing copyright, you need to ensure you do not infringe the creator's moral rights.

- Consumer legislation
    - Australian Competition and Consumer Commission (ACCC)
    - The Australian Competition and Consumer Commission is an independent Australian Government statutory authority. It was formed in 1995 to administer the Trade Practices Act 1974 and the Prices Surveillance Act 1983. The ACCC promotes competition and fair trade in the market place to benefit consumers, business and the community. It also regulates national infrastructure services. Its primary responsibility is to ensure that individuals and businesses comply with the Commonwealth competition, fair trading and consumer protection laws. In fair trading and consumer protection its role complements that of the state and territory consumer affairs agencies which administer the mirror legislation of their jurisdictions, and the Competition and Consumer Policy Division of the Commonwealth Treasury.

- Duty of care
  - Under the NSW (and other States) Work Health and Safety Act, all employers owe a duty of care to all people at the workplace including those people who are not employees. This duty encompasses the welfare of employees.
  - Where that duty is breached and damages (or loss) flow from that breach, the person to whom the duty is owed may bring a civil claim based on negligence.
  - There are a number of examples where the concept of negligence through a breach of duty of care may include:
    - Slipping, tripping and falling
    - Falling objects
    - Collapse of infrastructure
    - Food poisoning
    - Excessive noise or heat
    - Defective products
    - Negligent statements

1.3 – Develop and implement procedures to ensure full compliance with relevant legislation and regulatory requirements

To comply with general reporting and submitting regulatory returns and documents, you should:

- Maintain a register of its members
- Keep a record of all directors and members
- Record all meeting minutes and resolutions
- Appoint a registered company auditor within one month of the company's registration
- Keep proper financial records
- Prepare and have audited and lodge financial statements and reports after the end of every financial year; this requirement does not apply to some companies that are limited by guarantee
- Send to company members a copy of the financial statements and reports, unless the member has a standing arrangement with the company not to receive them
- Hold an annual general meeting once every calendar year within five months after the end of its financial year
- Receive and review an annual company statement and pay an annual review fee; a charitable or not-for-profit company may be eligible for a reduced annual review fee if it meets the criteria under the definition of 'special purpose company'
- Lodge notices whenever changes to its officeholders, office addresses, constitution and its name occur within the specified timeframes as determined by the corporations act

Financial reporting:

Financial reporting for companies, registered schemes and disclosing entities in Australia are governed by the Corporations Act 2001 (Corporations Act).

- Financial reports which have been prepared in accordance with the law help maintain and promote confidence and integrity in Australia's capital markets.
- ASIC runs a financial reporting surveillance program with the aim of improving the quality of financial reporting.
- ASIC regularly review the annual and interim financial reports of selected listed companies and other significant public interest entities to monitor compliance with the Corporations Act and Australian Accounting Standards.
- ASIC also review financial reports based on complaints, other intelligence and through our audit inspection program.
- When a company fails to lodge documents, ASIC may issue a penalty notice to the company secretary.
- Where the document is not lodged after a penalty notice has been issued, ASIC will prosecute the secretary. If a company has more than one secretary, a penalty notice will be issued to each secretary.

Develop and implement procedures to ensure full compliance:

There are many different models of corporate governance procedures. They differ according to the variety of business and areas in which they operate.

Reporting procedure – example template
Section 1 – Introduction ➢ Context ➢ Purpose ➢ Scope
Section 2 -Policy ➢ Principles
Section 3 – Procedure ➢ Process Map
Section 4 – Reference And Supporting Information ➢ Definitions ➢ Supporting Documentation ➢ Policy Performance Indicators ➢ Acknowledgement Of External Sources
Section 5 – Governance ➢ Related External References ➢ Responsibility ➢ Change History

2. Comply with legislation, codes and regulatory requirements

2.1 – Establish systems to ensure legal rights and responsibilities of the business are identified and the business is adequately protected, specifically in relation to occupational health and safety (OHS), business registration and environmental requirements

Legal rights and responsibilities may include:

- Culturally appropriate processes and protocols
- Marketing the business in accordance with consumer legislation
- Obligations imposed by choice of business structure
- Operating the business with a duty of care (law of torts)

Work health and safety requirements must include:

- Complying with relevant WHS codes of practice
- Establishing and maintaining a system for managing WHS
- Establishing hazard management arrangements to assess and control the risks associated with workplace hazards including development of written safe operating procedures
- Establishing WHS record-keeping arrangements in accordance with regulatory requirements
- WHS duty of care responsibilities
- Registering with state/territory workers compensation authority if applicable

Establish systems:

Establishing systems to ensure the legal rights and responsibilities of the business would require those people tasked with that responsibility to implement systems for:

- Recording
- Accounting
- Data storage and retrieval

- Auditing
- Reporting

Office systems would likely include:

- Computer systems
- Software
- Qualified operators
- Updates to legislation and maintain currency

A good 'system' includes a group of interacting, interrelated, or interdependent elements forming a complex whole.

Systems that would operate through a computer software program and monitored by a responsible officer, e.g., CEO, MD or Director:

- Lodgement of documents, forms and notices with the Australian Securities and Investments Commission (ASIC)

(Detailed in Element 1 – Identify and implement business legal requirements)

- ASIC must be notified of changes to the structure of a company or its officers, within certain time limits of the changes occurring. If you fail to notify ASIC within the applicable timeframe, you may face fines and penalties. ASIC has standard forms by which to notify it of any changes. These forms can be obtained from ASIC website at www.asic.gov.au

- All companies are required to submit annual statements to ASIC. Every company has an annual review date, usually the anniversary of the company's registration date. Soon after the annual review date each year, the company will be issued an annual statement by ASIC and an invoice statement for the company's annual review fee. The statement must be reviewed and the review fee paid by the due date.

Company register:

Companies are required to maintain a number of books, registers, accounts and records. These records must be kept for seven years and be available for inspection by any authorised person within certain time limits.

Display of company's details

- If a company's ABN is not used in its name, the company must write with its name the expression "Australian Company Number" or "ACN" followed by the company's ACN. Alternatively, if the last 9 digits of the company's ABN are the same as its ACN, then the company can include the expression "Australian Business Number" or "ABN" followed by the company's ABN. Companies must display their name and ACN or ABN on the common seal and every other seal of the company, every public document and every eligible negotiable instrument (e.g. cheques) issued by the company and all other documents required by ASIC.

Privacy responsibilities:

- The Privacy Act 1988 (Privacy Act 1988 – C2011C00503 Cwth) governs how businesses may use people's personal information that they hold or have collected in the course of their business. The Act contains some very strict restrictions on what can and cannot be done with people's personal information and severe penalties if these restrictions are breached. For more information visit www.privacy.gov.au

Intellectual property protection:

- The protection of your business' intellectual property rights is another area of importance. Your business' intellectual property, for example your company logo or the process that you use to do something within your business that is unique within your industry, may be one of your business' most valuable assets. Information on this can be found at IP Australia at www.ipaustralia.gov.au

Culturally appropriate processes and protocols:

"Diversity Management" is the ongoing process of incorporating the recognition of workforce and customer differences into all core business management functions, communications, processes and services to create a fair, harmonious, inclusive, creative and effective organisation.

- Create awareness of culturally competent practices within the organisation and assist or enhance the level of knowledge and understanding with mixed cultures.

- Put systems in place to identify ways to measure/assess the level of cultural competency

- Identify your workforce and customer cultural diversity

Complying with equal opportunity and anti-discrimination regulations of the business is a major part of the system you will create.

A number of common challenges in which cultural diversity already is or could be a significant factor include:

- Competing for talent and overcoming skills shortages

- Adapting to the realities of increased workforce and labour market diversity
- Managing and developing knowledge and innovativeness
- Managing workplace and customer relationships
- Developing and maintaining good community relations
- Meeting increased workforce expectations of conditions and opportunities
- Marketing to and serving culturally diverse domestic and overseas customers
- Competing in a culturally diverse international business environment
- Ensuring ethical conduct, due diligence and social responsibility

Consumer legislation – ACCC

(Detailed in Element 1 – Identify and implement business legal requirements)

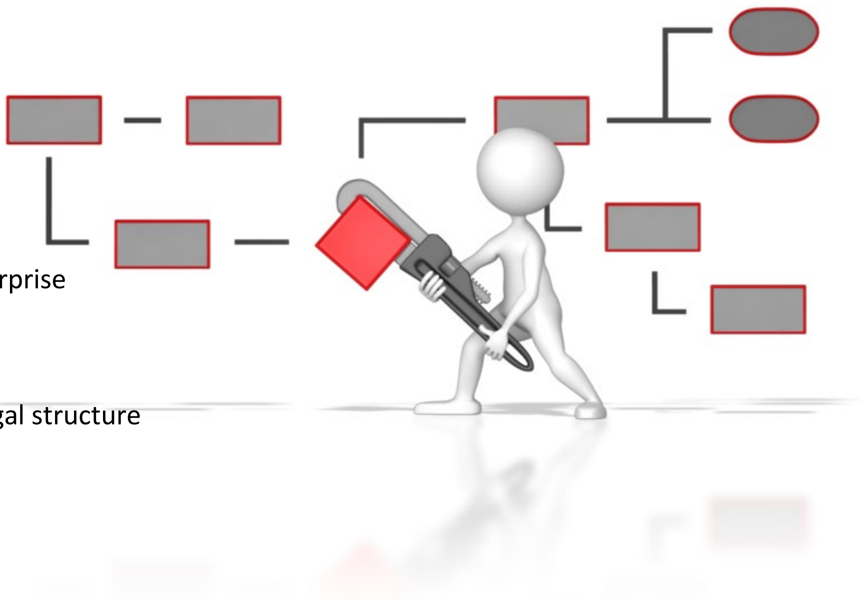
Obligations imposed by choice of business structure

(Detailed in Element 1 – Identify and implement business legal requirements)

Examples

Types of business structure

- Company
- Cooperative
- Corporation
- Government owned enterprise
- Partnership
- Profit or not-for-profit legal structure
- Sole trader
- Trust



Operating the business with a duty of care (Law of Torts)

(Detailed in Element 1 – Identify and implement business legal requirements)

What is a tort?

Civil claims are known as torts and are to be distinguished from criminal wrongs. A tort is not a crime, but rather it is an infringement against a person's individual rights, e.g., a breach of duty of care.

Most legal rights arise as a result of common law, but more recently, civil rights may arise as a result of specific legislative provisions. An example is Section 52 of the Trade Practices Act 1974 (Aust) which prohibits a corporation from engaging in conduct that is misleading or deceptive. A person has a right to bring a civil action against a corporation where that corporation has breached Section 52 of the Trade Practices Act and, in such instances, the aggrieved person may seek damages.

Work health and safety requirements may include:

- Complying with relevant WHS codes of practice
- Establishing and maintaining a system for managing WHS
- Establishing hazard management arrangements to assess and control the risks associated with workplace hazards including development of written safe operating procedures
- Establishing WHS record keeping arrangements in accordance with regulatory requirements
- WHS duty of care responsibilities
- Registering with state/territory workers compensation authority if applicable

Company management templates

Designated Person	Role / Responsibility
Health and safety officers	Health and Safety officers are appointed by: - an employer for the employers workplace or - a principal contractor Workplace Health and Safety Officers provide expert advice to employers to help them meet their obligations under the Workplace Health and Safety Act in the appropriate State.
Health and safety representatives	Health and safety representatives and their deputies represent staff within a designated work group. They should be consulted on: - Proposed changes in the workplace or to materials, equipment or procedures - Risk assessment of materials, equipment or procedures - Development of WHS policy and procedures - Investigation of WHS hazards and incidents - Training, instruction and information on WHS
Supervisors	- Supervisors are positioned within the organisation for employees to respond to needs, problems and safety. - Supervisors are the direct link between management and the work force and can be most effective in developing job training, safety policies, safe working methods and identifying

	unsafe acts and conditions.
Managers	Managers must take the responsibility for the safety of their employees under the terms of the relevant health and safety Act. Additional duties for Health and Safety managers would include the continual review and updating of policies as necessary, carrying out risk assessments and site audits. Health and Safety managers are responsible for reviewing and updating training, carrying out accident investigations, ensuring that the organisation is continually kept updated on any changes within legislation.
Team leaders	➢ Team leaders work to ensure the work systems are safe and do not risk the health of employees within their team or group. ➢ Team leaders monitor procedures for the health and safety of employees for whom they are responsible and encourage their teams to discuss any Work health and safety problems.
Other authorised persons	➢ Work undertaken for an organisation by a contractor is usually covered by a legal contract. ➢ It would be a requirement to include references for health and safety in such a contract, specifically if a contractor has a designated role in the health and safety policy. ➢ However, health and safety responsibilities are defined by the law and cannot be passed on from one party to another by a contract. ➢ In any client/contractor relationship, both parties will have duties under the relevant health and safety Act.

Risks associated with workplace hazards may include any of the following:

1. Potential harm in terms of human injury or ill health 2. Damage to property 3. Damage to the environment 4. Potential harm in terms of human injury or ill health including: 5. Toxic or hazardous materials	10. Potential harm in a medical setting: 11. Blood 12. Breakage / spillage 13. Drug hold-ups 14. Needle sticks 15. Medical emergencies (e.g. falls, bleeding, seizures, fainting, collapses, panic attack,	18. Breakages 19. Contaminated waste 20. Patients with colds, flu and other infectious diseases 21. Sharps (e.g. needles, scalpel blades) 22. Spillage 23. Used dressings, bandages and equipment 24. Unsterilised/poorly

6. Hazardous work processes 7. Unsafe work practices 8. Hazardous equipment 9. Unstable personnel	psychosis) 16. Spread of infection 17. Potential sources of infection:	sterilised equipment and work surfaces 25. Unwashed hands

Workplace procedures and work instructions for controlling risks:

- Workplace procedures and work instructions are statements of principles and practices dealing with the ongoing management and administration of the organisation.

When designing policies such as controlling safety and risk/hazard identification, it is important that these documents are clearly understood and what the organisation expects and is trying to achieve:

- If these policies are already in place, identify them and review the content and application.
- If you are starting from scratch, there are some guidelines to follow.

Policies are a statement of purpose	**A statement of purpose should not be more than one page in length**
A statement should highlight broad guidelines	**Procedures should explain how to perform tasks and duties**
Policies should specify who in the organisation is responsible	**A procedure may be for particular tasks or activities**
Policies should specify how employees should carry out their duties	**Procedures should be consistent with the overall policies of the organisation and any employment agreements in place.**

Sound procedures and policies should demonstrate:

- That the organisation is being operated in an efficient and businesslike manner
- Has in place areas for controlling risks and hazards with sound policies
- Using these policies and procedures can save time when a new problem is identified and can be addressed through your existing policy and procedures
- That controlling risks and hazards is part of your business planning and can be used in assessing performance and establishing accountability

When designing or implementing your new workplace procedures and work instructions, you should involve employees from all levels in developing and implementing these workplace policies to promote awareness, understanding, ownership and compliance.

Workplace Procedures – EXAMPLE ONLY

Name your policy or procedure: ____

	Policies	**Procedures**
Note the difference between policies and procedure	➢ Describe the rules that establish what will or will not be done. ➢ Can range from broad philosophies to specific rules. ➢ Are usually expressed in standard sentence and paragraph format. ➢ Include what the rule is, when it applies and who it covers.	➢ Describe the critical steps undertaken to achieve policy intent. ➢ Are succinct, factual and to the point. ➢ Are usually expressed ➢ Using lists include how to achieve the necessary results.

- Use everyday language that readers will easily and immediately understand
- Keep the structure simple
- Be specific – mean what you say and say what you mean

Environmental requirements:

As previously mentioned, it is impossible to group many of these elements under the banner of "small business" as such areas as the environment will impact all Australian businesses, who, in turn can play a part in environmental management.

However, whether environmental laws affect your business directly will depend on your business activities.

Federal, state and local governments jointly administer the environmental protection laws in Australia through bilateral agreements. A business owner should understand which laws apply.

The federal Environment Protection and Biodiversity Conservation (EPBC) Act , administered by the Department of the Environment, Water, Heritage and the Arts, covers the assessment and approval process of national environmental and cultural concerns.

The Department also administers specific Acts that cover activities relating to:

- The sea
- Importing
- Heritage issues

- Hazardous waste
- Fuel quality

State and territory environment laws apply to specific business activities and are administered by both state and local governments in the form of licences and permits.

Environmental licences and permits:

Approvals for environmental licences and permits can be obtained from federal, state and local environmental agencies. The type of approval you need will depend on the jurisdiction and type of business activity.

Federal:

If your business activity or action is likely to impact on areas of national environmental significance, you can obtain licences and permits from the federal Department of the Environment, Water, Heritage and the Arts (DEWHA). These include areas requiring special protection such as world and national heritage sites, wetlands, habitats of threatened or migratory species, federal marine areas and nuclear actions.

You should also be aware that importing or exporting wildlife products, hazardous waste, ozone-depleting substances or synthetic greenhouse gases may be restricted by quarantine and will require special approval through the DEHWA.

State and local:

If your business activity is likely to impact on the local environment, such as parks, heritage sites, air and water, you can obtain licences and permits through your state or local governments.

Government agencies and industry groups also have a role in developing voluntary codes of practice that address the industry's impact on the environment.

2.2 – Identify taxation principles and requirements relevant to the business, and follow procedures to ensure compliance

Taxation principles and requirements may include:

- Relevant taxation requirements/obligations for business
- Tax file number, Australian business number, goods and services tax registration, PAYG and withholding arrangements

Australian Taxation Principles:

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Tax file number (TFN)	Individuals in business use their individual TFN. Partnerships, trusts and companies need to apply for a

	separate TFN.
Australian business number (ABN)	If you are in business, you can register for an ABN.
Pay as you go (PAYG) income tax instalments (towards your income tax)	You don't need to register
Goods and services tax (GST)	If you are carrying on a business (enterprise), you must register for and collect GST if either of the following apply: ➢ Your annual turnover is $75,000 or more ($150,000 or more if you are a non-profit organisation) ➢ You are otherwise required to register. You can choose to register if your turnover is less than this amount
Wine equalisation tax (WET) and luxury car tax (LCT)	You have to register only if you are in the wine industry or sell luxury cars.
PAYG withholding	You must register for PAYG withholding if you make payments you have to withhold from – for example, payments of salary or wages to employees
Fringe benefits tax (FBT)	You have to register for FBT only if you provide benefits to employees and have to pay FBT
Superannuation guarantee	You don't need to register, but every quarter you must pay a minimum level of super for eligible employees. This includes directors and some contractors you engage. The minimum level is 9% of an employee's ordinary time earnings.
Fuel tax credits	You may be able to claim fuel tax credits for taxable fuel you used in your business. There are some exceptions. To claim, you need in order to: ➢ Register for fuel tax credits ➢ Be registered for GST.

Some specific tax rules for previously identified business types

Partnership Description	For tax purposes, a partnership is an association of people who carry on a business as partners or receive income jointly. TFN: If you operate your business as a partnership, it needs its own TFN that you use when lodging its annual business tax return. You can apply for this on the ABN application form.

	ABN: If you carry on an enterprise as a partnership in Australia, you can apply for an ABN for the partnership and use it for all the partnership's business dealings. Who pays income tax? A partnership is not a separate legal entity and doesn't pay income tax on the income it earns. Instead, you and each of your partners pay tax on the share of net partnership income you each receive.
Sole trader Description	A sole trader is the simplest business structure. If you operate your business as a sole trader, you trade on your own and control and manage the business. TFN: As a sole trader, you use your individual TFN when you lodge your tax return. ABN: As a sole trader, if you carry on an enterprise in Australia, you can apply for an ABN for your business and use this number for all your business dealings. Who pays income tax? The business income is treated as your individual income and you are solely responsible for any tax the business must pay. This means that, after claiming a deduction for all allowable expenses, you include all your business income with any other income and report it on your individual tax return.
Company Description	An incorporated company is a distinct legal entity that pays its own income tax, separate from an individual's income tax. Companies are regulated by ASIC. A company is a complex business structure, with set-up and administrative costs that are usually higher than for other business structures. A company must have a separate bank account. For tax purposes, a company means a body or association, incorporated or unincorporated, but does not include a partnership or a non-entity joint venture. TFN: A company needs to apply for a TFN and use it when lodging its annual tax return. You can apply for a TFN on the ABN registration for companies, partnerships, trusts or other organisations (NAT 2939). ABN: A company registered under the Corporations Act 2001 is entitled to an ABN. A company that is not registered under the Corporations Act 2001 may register for an ABN if it is carrying on an enterprise in Australia. Who pays income tax? If you run your business as a company, the money the business earns belongs to the company
Trust Description	A trust is an obligation imposed on a person to hold property or income for the benefit of others. These others are known as beneficiaries. TFN: A trust must have its own TFN to use when lodging its annual tax

	return. If you are the trustee of the trust, you must apply for a TFN for the trust. You can do this on the ABN application form. ABN: If the trust is carrying on an enterprise in Australia, as the trustee, you must register for an ABN for the trust. Who pays income tax? Whether or not a trust is liable to pay tax depends on what type of trust it is, the wording of its trust deed and if any of the income the trust earns is distributed to its beneficiaries.

2.3 – Identify and carefully maintain legal documents and maintain and update relevant records to ensure their ongoing security and accessibility

Legal documents may include:

- Appropriate software for financial records
- Certificate of incorporation
- Constitution documents
- Franchise agreements and financial documentation
- Partnership agreements
- Statutory books for companies, such as register of members, register of directors and minute books

Records may include:

- Environmental
- Financial
- WHS
- Personnel
- Taxation

All of the above examples will come with both common sense obligations and in some cases statutory and regulatory requirements.

- Appropriate software for financial records
  - Includes Excel spreadsheet software, MYOB or numerous other accounting packages. Stored in house or with your accountant or both.
- Certificate of incorporation

  - Framed, stored or otherwise recorded.

- Constitution documents
  - Stored, filed or otherwise secured as you will need to refer to it.
- Franchise agreements and financial documentation
  - Stored, filed or otherwise secured as you will need to refer to it. Financial documentation – see point 1.
- Partnership agreements
  - Stored, filed or otherwise secured as you will need to refer to it.
- Statutory books for companies, such as register of members, register of directors and minute books
  - Recorded and stored securely as they will need further action.

Laws applying to business records:

The law says you need to keep some records for five or seven years:

- Five years: non-company financial records
- Seven years: financial records for companies, most employee records, and all records of fringe benefits and capital gains.
- If you store financial records electronically, you must be able to produce a hard copy if the Tax Office or ASIC request it

Where there is no specific legal requirement to keep or store a record, it still makes good sense to observe some common sense rules, such as:

- If you sell a business a buyer might ask to see the cash-flow forecast and perhaps past cash-flow reports. Keep in mind some records and information, such as medical records, need to be stored securely to meet privacy laws.
- While all business records are generally considered 'typical', not every business will keep every one. For example, Business A might use a cash register and write the day's sales totals by hand in a cashbook, while Business B makes all its sales online and payment is by direct bank deposit, with the day's totals added to the cashbook in the accounting software. Each business made sales, but used a different method to record them.
- If you organise your records and keep them up-to-date (e.g. file them away or update the electronic version at least once a week) you'll stay on top of the task.
- This reduces stress and other problems such as finding a receipt to prove a claim for a tax deduction when the Tax Office asks you for it.

Record type	Description	5/7 years	best practice
Accounts receivable (or debtors ledger/customers)	Money others owe you, e.g. the tax invoices you give your customers. File by month issued. When paid, move the hard copies to accounts paid. Keep it with a list of your terms of payment for each debtor, e.g. 30 days.	X	
Cash receipts book (or cash receipts journal, or in accounting software, the sales module)	Record of all money coming in, from sales and other sources, including electronic transactions such as bank transfers or customers' credit card purchases, the handwritten cash receipts book, cash register etc. Could also include bank interest or investment returns. Is combined with a cash sales book or kept separate. Some businesses will use a separate cash receipts book for each part of their operation	X	
Cash register Z totals	The total sales at the end of the day (or sales period) from a cash register tape or point-of-sale system (POS). The Tax Office expects you to keep cash register tape for a month before disposing of them and reconcile the records (you must keep the Z totals if you throw the tapes away).	X	
Cash sales receipt book	Used to give your customers a handwritten record of a cash sale. The original book has a copy of each receipt.	X	
Summary cash receipts book	Summarises your monthly and quarterly summaries of all cash Payments ('cash' means all money coming in).	X	
Tax invoices	Issued by you as the seller. Shows the price of a sale, if it includes GST, and the amount of GST. Includes your Australian Business Number (ABN). The tax office has rules for what information you have to put on a tax invoice. Check the Tax Office website for details.	X	

Record type	Description	5/7 years	best practice
Accounts payable (your creditors)	Money you still owe others on credit (i.e. bills, tax invoices). When paid, move hard copies to accounts paid, or to the file for the account used to pay the invoice	X	
Cash payments book and receipts	All purchases, including electronic. Records what you spent and how much GST was added. Can be combined with a cash receipts book or kept separate.	X	
Cheque book butts	Record of the cheques you wrote to whom, for what and when.	X	
Credit card receipts	The receipts or tax invoice you get each time you use your credit card (the ones you sign). These transactions show up in your account statement. Store with your expense	X	

	receipts.		
PAYG withholding and superannuation records	How much was withheld from payments to employees, paid to the Tax Office and superannuation funds.	**X**	
Petty cash book and receipts	Records small cash day-to-day purchases. You should also record where the money came from to fund the petty cash, e.g. a cash cheque paid to petty cash is a simple way to track petty cash.	**X**	
Purchase orders	Copies of your official written order for others to supply you (legal document).		**X**
Summary cash payments book	Summarises the monthly and quarterly summaries of your cash payments (cash in this case means all payments).	**X**	
Tax invoice	A bill paid for by you using cash or credit, e.g. gas, electricity, ISP charges, phone bills, stock. Once paid, file as paid accounts or to the file for the account used to pay the invoice.	**X**	
Wages and salary records	What you paid employees, including any deductions you made on their behalf and passed on to the Tax Office, super funds etc.	**X**	

Update relevant records to ensure their on-going security and accessibility:

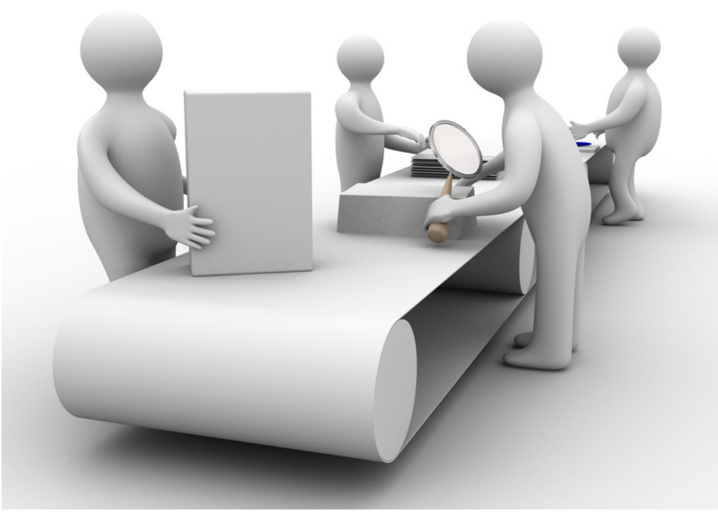
- Environmental
- Financial
- WHS
- Personnel
- Taxation

2.4 – Monitor provision of products and services of the business to protect legal rights and to comply with legal responsibilities

Given the nature of these elements addressing holistic provisions, there is no practical way to adequately cover all the combinations of products and services that require legal rights and compliance.

Monitor the provision of products and services:

Monitoring:



- To review on a continuous basis
- Monitor the provision of products and services of the business to protect legal rights and to comply with legal responsibilities will provide direction for future plans.
- Review the organisations activity or specifics as required, e.g., legal compliance.
- This allows corrective actions to be taken.

Evaluation:

- To analyse established objectives and goals, e.g., to protect legal rights and to comply with legal responsibilities.
- It can be done on an ad hoc, monthly, quarterly or yearly basis.
- It will confirm things such as order status information, initial acknowledgement, regularity, frequency
- Technical support for product information, quotations, repairs
- Stock availability
- Document quality
- Quality of items
- Quality of packaging including damages during transport

Almost everything a business enters into, conducts or performs will require some form of legal protection.

Contracts	**Agreements**	**Copyright**	**Intellectual property**	**Employment**
Shares	**Finance**	**Loans**	**Bylaws**	**Mergers**
Real Estate	**Securities**	**Services**	**Sales**	**Shareholder Agreements**

We won't review every example, but given how contracts are legal agreements and cover almost every other category of products and services, we will look at how contracts are created to protect legal rights and to comply with legal responsibilities.

What is a contract?

A contract is an agreement between two or more parties by which legal rights and obligations are created and which the law will enforce.

A contract can be formed in a number of ways e.g.

- A formal written agreement signed by both parties
- An exchange of letters or documents
- Verbally or partly in writing and part verbally
- By actions

Elements of a contract:

For a legally enforceable contract to be formed, a number of elements must exist:

a) There must be an offer by one party and its acceptance by the other

b) The parties must intend to create a legal relationship with enforceable terms

c) There must be valuable consideration

d) There must be certainty as to key terms

e) The parties must be competent to make a legally binding agreement

f) The matters agreed must be for a lawful purpose.

Protect legal rights and to comply with legal responsibilities:

Unlawful or illegal contracts

- If a contract is established, the purpose of which is unlawful, it cannot be enforced and may even leave the parties open to some form of prosecution.
- For example, a price fixing agreement is likely to be in breach of the Trade Practices Act 1974 (Aust) and may attract penalties.
- In some cases the contract itself may be lawful but there may an unlawful term in the contract. In that case, the unlawful term may be removed from the

contract, provided it is not a fundamental term of the contract.

- A clause providing for the payment of a secret commission may be an unlawful term which can be removed from the contract.

The provision of products and services:

The provision of products and services are often subject to tendering arrangements and in any many cases, councils or statutory bodies are required to issue tenders for contracts over a certain monetary amount.

Many small businesses tender for Government services.

The first stage of tendering often involves seeking expressions of interest and this is done either by public advertisement or by soliciting responses directly from likely organisations, or more commonly, a combination of both.

Expressions of interest do not involve lengthy submissions by proposed tenderers, nor do they usually involve lengthy documentation from the point of view of the organisation.

- Tendering arrangements for contracts often involve setting evaluation criteria, establishing a tendering panel and issues of due diligence, complying with government tendering guidelines and disclosing conflicts of interest.

There are many statutes which impact on contracts entered into for the legal provision of products and services of the business.

For example, at the Federal level in Australia, the Trade Practices Act 1974 contains many provisions which impact on the validity of a contract.

Part IV of the Act deals with restrictive trade practices and some of its provisions deal with the following:

- Contracts, arrangements or understandings restricting dealings or affecting competition (Section 45)
- Contracts, arrangements or understandings in relation to prices (Section 45A)
- Exclusive dealing arrangements (Section 47)
- Resale price maintenance (Section 48)
- Price discrimination (Section 49)

Other examples of legislation which affect terms of contracts are:

- Racial Discrimination Act 1975 (Aust)
- Sex Discrimination Act 1984 (Aust)
- Fair Work Act 2009 (Aust)

- Anti-Discrimination Act (Aust States)
- Fair Trading Act (Aust States)
- Workers Compensation Act (Aust States)
- Commerce Act 1986 (NZ)
- Fair Trading Act 1986 (NZ)

2.5 – Conduct investigations to identify areas of non-compliance with legal and regulatory requirements, and take corrective action where necessary

Encouraging compliance with employees:

A good compliance culture is shown by the promotion of a positive attitude towards legal compliance activity at all levels within an organisation.

It is generally reflected in people proactively seeking to understand and act in compliance with the legal obligations affecting their work.

Senior management needs to recognise that setting the right culture will be a major responsibility for them, in parallel with monitoring and controlling responsibility.

Financial reporting:

- When a company fails to lodge documents, ASIC may issue a penalty notice to the company secretary.
- Where the document is not lodged after a penalty notice has been issued, ASIC will prosecute the secretary. If a company has more than one secretary, a penalty notice will be issued to each secretary.
- ASIC regularly review the annual and interim financial reports of selected listed companies and other significant public interest entities to monitor compliance with the Corporations Act and Australian Accounting Standards.
- ASIC also review financial reports based on complaints, other intelligence and through our audit inspection program.

Develop and implement procedures to ensure full compliance:

Reporting procedure – example template
Section 1 – Introduction ➢ Context

➢ Purpose ➢ Scope
Section 2 -Policy ➢ Principles
Section 3 – Procedure ➢ Process Map
Section 4 – Reference And Supporting Information ➢ Definitions ➢ Supporting Documentation ➢ Policy Performance Indicators ➢ Acknowledgement Of External Sources
Section 5 – Governance ➢ Related External References ➢ Responsibility ➢ Change History

Identify areas of non-compliance:

Given that there is every expectation that compliance will occur following the development of the reporting procedures model above, it would likely be a scenario that one or more aspect has not been allocated sufficient checks and balances.

3. Negotiate and arrange contracts

3.1 – Seek legal advice on contractual rights and obligations, if required, to clarify business liabilities

Seek legal advice:

The information contained in this student and instructor guide does not constitute legal advice, is not intended as a substitute for legal advice and should not be relied on as such. You should seek legal advice in relation to your individual circumstances and any particular matters you may have in relation to the contents of this guide.

- Commercial contracts are the basis of doing business.
- They include purchase orders, supply contracts, exclusive agency agreements, partnership agreements, franchise agreements, or leases
- Small businesses enter into contracts with others on a daily basis

Typically small businesses need to seek advice on contractual rights and obligations when disputes arise or when parties to a contract don't do what they agreed.

It is generally agreed that the better way to handle this is to resolve the dispute without legal advice leading to court action, wherever possible.

At the outset, or at the point of entering into any contract, is where you should seek legal advice to clarify business liabilities:

- First, with or without legal advice, read the contract and associated documents to clarify the rights and obligations of each party to clarify your business liabilities.
- In many cases, a well-written contract will set out what both parties have agreed and the action required will often be obvious.
- Also, check your contract for a clause that outlines a process for dealing with disputes between the parties. If the contract or other associated documents do not clarify the issue, obtain professional legal advice.

Plain English contracts are now common place, which aim to eliminate a host of legalese which may confuse people.

Legalese is characterised by long sentences, many modifying clauses, complex vocabulary, high abstraction, and insensitivity to the layman's need to understand the document's intent.

Legalese arises most commonly in legal drafting,

The Plain Language Movement:

The movement focuses attention on the information needs and the reading abilities of the reader and opposes writer-based prose, which is the tendency to use long sentences, jargon, and a formal style as a way to acquire authority, power, and credibility.

Again, seeking legal advice is the option available to you.

3.2 – Investigate and assess potential products/services to determine procurement rights and ensure protection of business interests where applicable

Procurement rights to products and services may include:

- Any form of licensing
- Royalties, copyright, patents, trademarks, registered design and applications, intellectual property, software licenses, franchises, agencies

The simply explained act of 'purchasing' is buying goods and then transporting them to the organisation or production unit.

The next level is 'procurement'

Definition:
Procurement is the process of identifying and obtaining goods and services. It includes sourcing, purchasing and covers all activities from identifying potential suppliers through to delivery from supplier to the users or beneficiary.

- Purchasing is the specific function associated with the actual buying of goods and services from suppliers
- Sourcing is simply identifying and working with appropriate suppliers:
  - Purchase planning
  - Standards determination
  - Specifications development
  - Supplier research and selection
  - Value analysis
  - Financing
  - Price negotiation
  - Making the purchase
  - Supply contract administration
  - Inventory control and stores
  - Disposals and other related functions

- Procurement goes beyond the purchase, since it takes into account not only the external supply but the internal supply as well

- Procurement requires the good planning of the purchases and delivery, analysing the market after the suppliers of the needed products, quality control on the incoming goods, the payments and so on.

Procurement works like a pivot in the internal supply chain process, turning requests into actual products/commodities or services to fulfil needs. It serves three levels of users:

1. The internal customer
2. Programs in response to emergencies and ongoing programs
3. Prepositioning of stocks, for both internal customers and program needs

Procurement considerations:

(1) obtaining the RIGHT materials

(2) at the RIGHT time

(3) with the RIGHT amounts

(4) delivered at the RIGHT place

(5) by the RIGHT supplier

(6) with the RIGHT service

(7) at the RIGHT price

Example

Obtaining the RIGHT materials	A purchase order would be issued on the supplier (usually by the purchasing/procurement officer). It specifies the product/services required, plus: ➢ Freight method ➢ Required date, ➢ Delivery address, and ➢ Terms and conditions of purchase
At the RIGHT time	If delivery time is the most important factor in a project, this may cause an increase in cost and/or a decrease in quality.

Similarly to contractual rights and obligations, making these assessments would be more practical done within the workplace to examine:

1. Systems in place
2. Procedures
3. Check and balances

3.3 – Negotiate and secure contractual procurement rights for goods and services including contracts with relevant people, as required, in accordance with the business plan

Contracts with relevant people may include:

- Any person with whom the business has, or seeks to have, a performance-based relationship
- Owners, suppliers, employees, landlords, agents, distributors, customers

In any form of negotiation, be it a contract or facing a supplier/employee, there are qualities and personal skills that when employed will tend to assist you in making the right steps towards success.

The other aspect of negotiation to secure contractual rights for goods and services will be contained within the various clauses and additional documents forming the overall agreed contract.

You will need to seek advice from a lawyer.

Your skill as a negotiator may be a way to prevent losses and increase the gains for you and your organisation.

The negotiation experts suggest:

To negotiate and secure contractual procurement rights, you should:

- Prepare effectively.
- Understand and consider the needs and interests of all parties.
- Manage the impact of your personal negotiation style.
- Generate greater value through creativity.
- Successfully address all key elements of the negotiation cycle through optimal preparation, engagement and review.

If these suit your needs and your personality, it may be the right path to take.

Many people involved in purchasing or procurement negotiating will avail themselves of classes and online courses to fine tune those skills.

Modern competitive purchasing tactics have an abundance of positive acclamations such as:

- Prevent disasters – when to negotiate.
- Disasters impacting team negotiations.
- International negotiations.
- Email negotiating smart and foolish.
- Sole source suppliers.

The experts in procurement negotiation and all modern purchasing which requires a higher level of business dealing acumen have also studied the way in which the supplier handles their respective negotiation strategies as well.

- Tell the supplier you are seeking competition.
- Develop of a set of specifications or objectives.
- Make specifications as generic as possible forcing suppliers to use their expertise in finding the best solution for you.
- Consider the supplier's past performance, after sale support and services.
- This includes:
    - Shipping costs
    - Service agreements
    - Potential repair parts and after purchase costs

When initiating the negotiating process for securing contractual procurement rights for goods and services, you should find out as much as possible about the company.

- Ensure the supplier understands your requirements fully and how these requirements may affect prices.
- Make accurate assessments of the costs associated with providing the goods or services you intend to purchase.
- Develop your own negotiation strategy and try to anticipate the strategy of the supplier.
- Make sure whoever you are dealing with has the authority to make offers.

- A successful negotiation is a win-win for both parties.
- Leave enough incentive to make supplying the goods or services attractive.

Relevant people:

Simply put, don't waste your time negotiating or dealing with the wrong person!

- Talking to the right person allows you to reach a decision and progress can then be made.
- If the person you are dealing with needs someone else's approval, it will waste considerable time and likely cause the negotiations to start all over again with a new person.

3.4 – Identify insurance requirements and acquire adequate cover

Insurance requirements may include:

- Comprehensive insurance for vehicles/property.
- Professional indemnity insurance.
- Public liability insurance.
- Third party insurance on motor vehicles.
- Workers' compensation.
- Other insurance cover as required by state/territory or commonwealth legislation, contractual obligations or as recommended for the industry/type of business.

Here are some common types of insurance cover:

- Burglary – theft involving violent, forcible entry, loss or damage to stock, goods held in trust and all contents for which you are responsible within the premises. Does not normally cover theft by employees or others entitled to be on the premises
- Contract Works – covers loss or damage to buildings and other structures while they are under construction. Most contract works policies also include a public liability section which covers personal injury and property damage arising from the construction.
- Corporate Travel – covers medical expenses, loss of baggage, emergency evacuation and various other similar losses which may occur while a director or employee is travelling on company business.
- Directors & Officers Liability – covers claims made against directors and officers of a company for any wrongful acts they commit in their capacity as a director or officer.
- Fidelity Guarantee – covers financial loss to the company arising from theft or dishonest acts of its employees.

- Industrial Special Risks – covers loss or damage to the physical assets of the company, as well as any associated loss of revenue or profit.
- Key person insurance – death or long-term disability of a key person, usually someone vital to the continued running or profitability of the business.
- Machinery Breakdown – covers the cost of repairing plant and equipment which has broken down and any associated loss of revenue or increase in costs.
- Marine Transit – covers loss or damage to goods while they are being transported.
- Motor Vehicle Comprehensive – covers damage to the insured vehicles and legal liability arising from property damage caused through use of the vehicle.
- Public & Products Liability – covers your legal liability for personal injury or property damage to others.
- Personal Accident – covers non-Medicare claimable medical costs and loss of income arising from injuries to non-salaried workers.
- Professional Indemnity – covers claims for financial loss made by a third party against you arising from a service or advice you have provided.
- Workers Compensation – covers medical costs and loss of income arising from injuries to salaried employees.

Question	Possible answer
What to insure and for how much?	Will you insure for every possible risk, or just the most likely? It is your decision.
How much cover do you need?	If you over-insure you waste money, and if you under-insure and then make a claim, the insurance company can reduce what they will pay you.
What if I under-insure?	When you take out a policy for a certain amount of cover and it’s less than the value of what’s being insured, the insurance company can legally reduce what it pays you for any claim, including small claims. Insurance companies use different ways to work out how much they’ll reduce a claim by if you’re under-insured. You would need to seek advice from your insurer and check your policy for details.
What insurance do I need by law?	If you employ staff, by law your business needs insurance cover in case they are injured. If you’re an employee of your own incorporated company, you would need insurance to cover yourself.

	If you’re a sole trader or in a partnership, it is wise to get sickness and accident insurance. Sole traders and partnerships should also consider income protection insurance. Even though not legally required in all cases, public liability insurance for the business is highly recommended.
What policies can I select from?	Insurance policies can be changed to suit your needs or purchased for almost any eventuality. If a policy doesn’t cover a particular risk in your business, you can ask to have a separate clause added to the policy and avoid buying extra policies you don’t need. You should engage an insurance broker or get quotes from several insurance companies.
What is most cost effective?	Packaging several policies together is generally cheaper. Try to buy your insurance from a company normally offering small business insurance instead of one selling mainly domestic insurance. Combined types of insurance (small business ‘packages’) are available. Some examples of these are commercial, shop, retail, industrial, office, trades, and business vehicle insurance.

How to acquire adequate cover:

Insurance brokers — a source of expert advice:

Using an insurance broker who is a professional insurance expert will represent your interests if you have to:

- Make a claim
    - An insurance company may act in their own interests or those of the insurance company.
- Offer you an effective policy at the best price.
    - The more insurance companies your broker has access to, the more likely it is they can be extremely competitive.
- Choose a broker who understands the day-to-day risks of your business.
    - You need to be advised of policies that are common to your business type.

- For example, a customer of a beauty salon may sue the salon after an adverse skin reaction. The insurance company would need to ensure that this type of risk was incorporated into the policy.

- There are businesses that are classed as having “hazardous risks” for the particular types of operation and production they undertake.
  - It is often hard to get insurance cover but an insurance broker who has knowledge of that industry would likely know where to find the most suitable cover. If you go directly to an insurer you will likely be advised that general cover is the only option and at a higher than normal premium or possibly no cover at all.
- How do I choose a broker?
  - Choose a broker who has access to at least several insurance companies and deals with your size and type of business.
- Try to meet and interview several brokers
  - Decide if you want to deal with a small or large firm, ask them to submit a formal proposal (which they would do in any case) and then contact referrals provided and use a check list to rate them.

Sample Checklist
What to ask when choosing a broker:

- Their qualifications
- Who will service the account
- The number of insurance companies they have access to
- What experience they have with your size and type of business
- Their services they offer
- How much they charge
- Referrals – especially those with your type of business
- Ask if they are members of the national insurance brokers association (NIBA) and subscribe to the general insurance brokers’ code

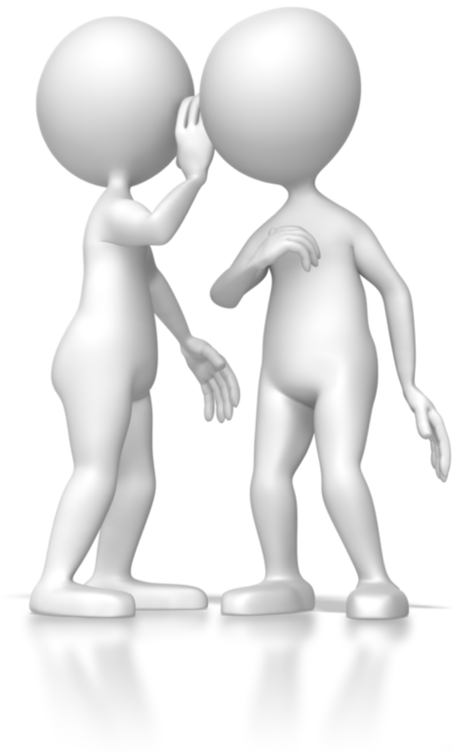
When I have decided, what obligations do I have?

Duty of Disclosure

The responsibilities of both the Insurer and Insured in a contract of insurance are defined by the Insurance Contracts Act 1984. This consumer protection legislation imposes responsibilities on the insurers such as when they are able to decline a claim, refuse renewal and when they must make you aware of unusual policy conditions. The Act also requires that the insurer make you aware of what your responsibilities are under the Act. These are generally referred to as Statutory Notices.

There are a range of other implied conditions under an insured party's duty to disclose.

- Duty of Disclosure and the Effects of Non-Disclosure
- Waiving the insurer's rights of subrogation
- Under Insurance, Average, Co-insurance
- Interests of other parties
- Utmost Good Faith



Duty of disclosure and the effects of non-disclosure:

The Act requires you to disclose to your insurers anything that will affect their decision as to whether they will accept the risk and how much premium they will charge. A test as to what you are required to disclose to insurers is that of the common person – if an ordinary person not associated with your business would be expected to know of the existence of a risk, you are not required to disclose that risk to the insurer. To ensure you comply with this duty it is imperative you tell your insurers everything about your business and how it is run.

At the beginning of the policy year you disclose to your insurer everything about your business. Based on this information the insurer agrees to provide certain cover at a certain price. As the duty of disclosure continues throughout the policy year you are required to tell your insurer if your business has any unusual or hazardous risks of which you have not previously advised. The insurer will then decide if they are willing to provide cover.

Failure to disclose information could result in an insurer declining a claim or cancelling the policy.

3.5 – Identify options for leasing/ownership of business premises and complete contractual arrangements in accordance with the business plan

It is suggested by the experts in this field that you make the choice to either lease or buy before you actually start looking for premises.

That way, you will be prepared for what to expect in terms of financial investment in your business premises.

- Ignore properties that do not fall within your budget or plans
- Save time! – if you decide to lease then you can discard those for sale and narrow your research and inspection to the right premises and an appropriate business location.

Some advantages and disadvantages of leasing and buying premises

Leasing		Buying	
Advantages	**Disadvantages**	**Advantages**	**Disadvantages**
No capital required.	Because you are subject to a lease you are also subject to variations in rent, including increases. This is despite how well your business is doing.	**In times of inflation, real estate is a good investment. Rising rents become an asset rather than a danger to the owner.**	Ownership of premises generally ties up capital which may be better invested elsewhere in the business.
If the business is terminated, the tenant may be able to sublet, so the financial loss is minimised.	The landlord may decide to sell the premises. As a result you may be forced to move your business elsewhere. Disruption and loss of customer base may ensue.	**Any improvements to the premises become the owner's property, and add to the value of the owner's investment.**	You are tied to one spot. You cannot move easily, especially if you find the market isn't there or the area changes.
The tenant may not responsible for property tax, fire insurance, maintenance and repairs.	You do not have an investment in the property.	**Mortgage loans may be used to finance the purchase, so that the actual monthly cash needed from the business may not be that much greater than a lease.**	
If the premises become unsuitable, they can be abandoned on expiry of the lease, with no further commitment.		**An owner may deduct capital costs on the building as well as maintenance and repair expenses.**	

What is a lease?

A lease is a legally binding agreement between a landlord and tenant. Leases are generally the most popular choice when it comes to starting a new business. Leasing premises allows the new business owner to rent a shop or business space based on obligations and conditions outlined by the landlord in the lease agreement, subject to State and Territory government regulations.

Australian State and Territory governments are responsible for regulating commercial tenancies. This legislation is there to protect the tenant. In most states, neither you nor the landlord can enforce anything in a lease that is contrary to the legislation.

Why lease?

Together with legal and financial advice, you should also seek business and property advice in order to ensure the lease is based on sound business and property principles.

- Leasing is not necessarily a long-term financial commitment, which is beneficial if you are just starting out.
    - While you enter into a lease agreement which will have a set time frame, once the lease expires you can leave the property.
    - This may be necessary if the business is failing or you want to relocate to a better location. With leasing you have an escape route if the business is struggling to generate the level of income that will cover all your expenses.

- You can often negotiate the lease terms and conditions offered to you by a landlord.
    - Landlords want an income too and achieve this by having their premises occupied. They value potential tenants for this reason and this is a useful negotiation point. If you accept the terms of the lease without discussion, you have accepted the landlord's conditions.

Note: As the laws and government regulations relating to leases vary considerably from State to State, it is strongly recommended that you obtain **professional legal advice** before entering into any legal agreement.

Carefully consider lease timeframes:

- It is important to carefully consider the time frame in which you agree to have the lease set.
  - If you sign a lease for **xxx** per month for a period of a year, you are agreeing, in essence, to pay **xxx** times 12 months regardless of what happens to your business. This is conceivably many thousands or tens of thousands of dollars!
  - Experienced advisers recommend negotiating the shortest lease term possible until you have established your business and can better identify your long-term premises requirements.

- A one to five year lease with an option to renew for two further terms of, say, five years at an agreed rent is the preferred option for a new business.
  - Lease option periods give you the flexibility to move to other premises at the end of the initial term, or take up a further term in the same premises.
- It may not be possible to rent premises on a short-term basis or on the terms that you would prefer. You should never feel obliged to accept the first lease terms offered to you.
  - If the location suits you, try to negotiate the best terms possible. There are always other locations available.

The advice is simple:

- Do your homework.
- Calculate all the potential costs you could face over the long and short term.
- Insulate your business as much as possible from problems that could arise from being locked into a long term lease.

Buying your premises:

- Buying premises is another option to consider when starting a business. Just as with leasing, it has its advantages and disadvantages.
  - Buying premises is a major financial commitment. Owning your own premises generally ties up capital which may be better invested elsewhere in the business.

- Also, you never know when you are starting a business just how successful you will be. Circumstances can change very quickly and so too can the level of income a business generates.

- Being locked into long-term loan repayments for premises can put pressure on the small business owner. That is why sometimes leasing a property makes more sense.

However, depending on your individual circumstances, you may be in a position to make such an investment.

Buying your business premises will give you increased security and freedom in which to conduct your business, which otherwise may have had some restraining features as part of a lease agreement.

- When deciding whether to buy business premises, one of the major factors to consider is the long term and the possibility of gaining a return on your investment. For example, you should consider buying premises which are larger than you need so you have the option of leasing the vacant space as a source of additional income.

- Another issue worth considering is your business' long term growth.

  - When you lease premises, it is relatively easy for you to relocate your business if the market turns or your business out-grows its premises. However, when you are buying your premises it is not as simple.

  - You will have to plan for any expansion and make sure the premises can cater for the future needs of your business.

- As these premises will become your asset, it is also vital that you make sure you have the necessary building checks conducted.

  - Unlike a lease agreement where the tenant is not always responsible for repairs and maintenance, with your own premises you will be.

  - Repairs and maintenance can be a costly exercise, so make sure you have done your homework when it comes to the condition of the premises.

Remember to consider your options very carefully when deciding to buy business premises.

Make sure you seek the advice of a financial adviser, accountant or bank manager to assess your financial position before entering into any contracts.

Note: As the laws and government regulations relating to purchasing property vary considerably from State to State, it is strongly recommended that you obtain **professional legal advice** before entering into any legal agreement.

References

These suggested references are for further reading and do not necessarily represent the contents of this Learner Guide

- Small Business Management (Book Only) [Hardcover]

  Justin G. Longenecker (Author), J. William Petty (Author), Leslie E. Palich (Author), Carlos W. Moore (Author)

- Effective Small Business Management (9th Edition) [Hardcover]

  Norman M. Scarborough (Author), Thomas W. Zimmerer (Author), Doug Wilson (Author)

- Streetwise Small Business Book Of Lists: Hundreds of Lists to Help You Reduce Costs, Increase Revenues, and Boost Your Profits [Paperback]

  Gene Marks (Author)

- The Complete Book of Business Plans (Small Business Sourcebooks) [Paperback]

  Joseph A. Covello (Author), Brian J. Hazelgren (Author)

- Negotiating Commercial Real Estate Leases [Paperback]

  Martin I. Zankel (Author)