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GUIDE

YOUR NEW FINANCIAL YEAR BUSINESS TOOLKIT

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The new financial year, and now is a good time to reflect on the year that has been and start looking to FY21/22.

There are many aspects to your business that could use a bit of a tune-up, especially if you have not taken the time to do so over the past 12-18 months.

Your business situation may have changed, and with that, how your business looks, feels, and operates. The business landscape is constantly changing, and it is important that your business does too.

We want to help! To make life just that little bit easier for you, we've prepared a detailed toolkit that details some of the aspects of your business that you should consider looking at.

- When was the last time you looked at your business structure? Is it the right fit for your business now?
- If you have business partners, is your Shareholder's Agreement up-to-date and fit-for-purpose?
- Have you registered all of your intellectual property and claimed the assets you need in the day-to-day operations (website, social media, etc)?
- Are your licenses, policies and procedures current and reflective of your current operations?
- If you have employees, do you have the correct workplace agreements in place, and do you have up-to-date contracts?
- Are your terms and conditions correct?
- Are your insurance policies up-to-date and reflective of your current operations?
- Have you been proactive with your debt recovery and what is your current debtor list looking like?

Our informative guide will give you some of the key steps you need to start taking before New Financial Year and right at the start to ensure your business is on solid foundations for the year ahead.

We will also be offering a no-obligation half-an-hour consultation where we can discuss some of your most pressing issues and how to manage them.

Disclaimer: The contents in this guide do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

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1 IT'S TIME TO UPDATE YOUR BUSINESS PLAN (OR IF YOU DON'T HAVE ONE, PREPARE ONE)!

It goes without saying that failure to research and plan is one of the leading causes of business failure. As lawyers advising small and medium businesses, we always stress the importance of research and planning on an annual basis to ensure you're adapting to an everchanging business climate.

It doesn't matter what type of business you're in, having a business plan that reflects your current business operations is vital.

The new financial year has arriced! Now is a good time to look at your existing business plan and determine whether it needs to be updated to reflect any changes in your circumstances or the business environment.

If you don't have a business plan, now might be the time to get one prepared as it can give you more visibility on your business, as well as detailing your short and long-term objectives.

Writing a business plan will help you consider all critical and peripheral operational and financial considerations that impact on the short and long-term viability of your business. Your business plan should not only cover your overall proposal and objectives but also specific matters such as:

- A marketing plan
- Strengths, weaknesses, opportunities, threats
- Employment and labour requirements
- Pricing
- A profit and loss forecast; and
- An expected cashflow analysis

Your business plan won't be static, you will need to review it regularly, but it is still recommended to be as detailed as possible.

Contact us for your free half-an-hour consultation.

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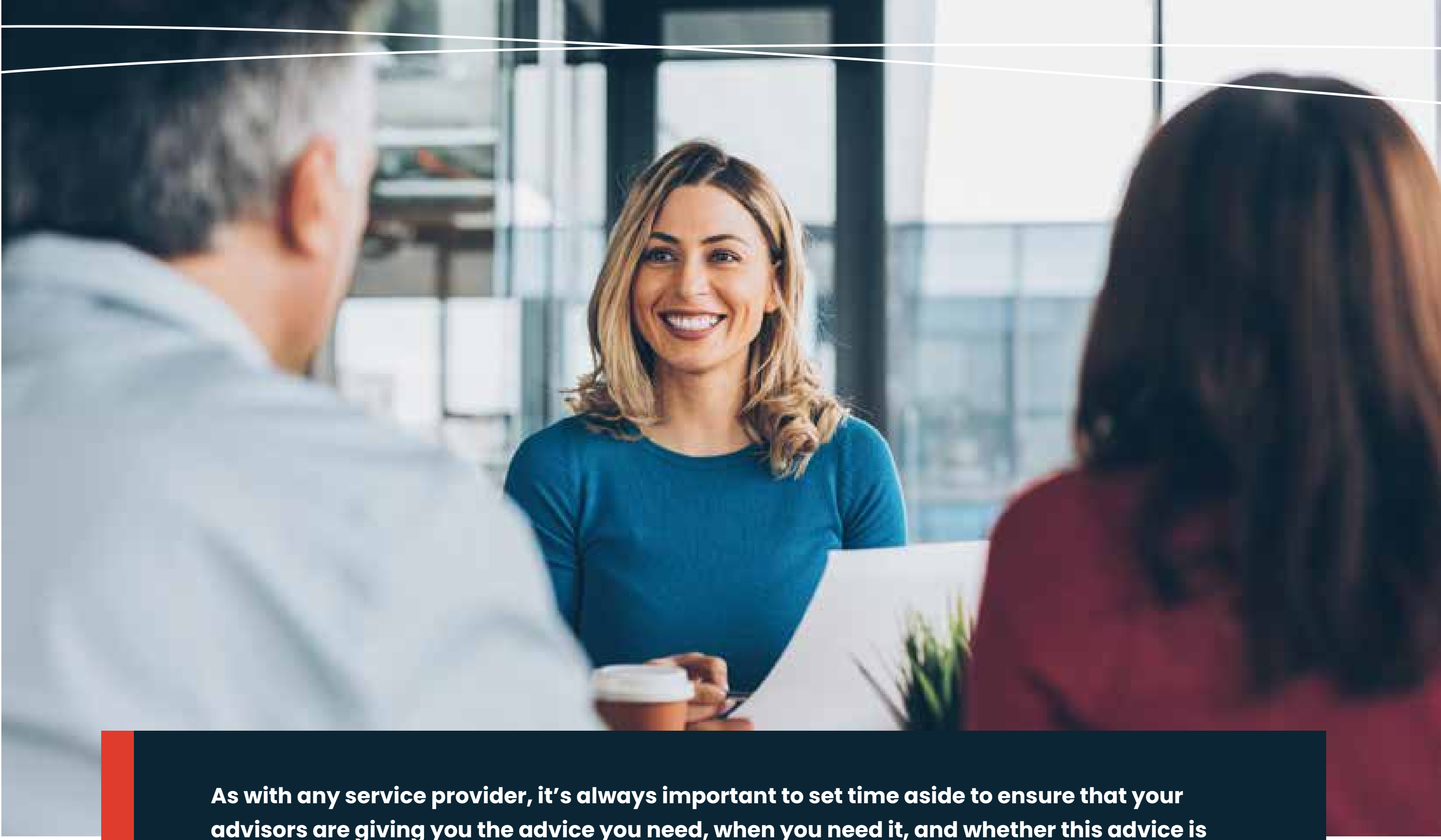

As with any service provider, it's always important to set time aside to ensure that your advisors are giving you the advice you need, when you need it, and whether this advice is being delivered in a timely, correct, and cost-effective manner.

2 ARE YOUR ADVISORS DOING THE JOB YOU PAY THEM TO DO?

We find the new financial year is a good time to do an 'audit' on the performance of your advisors – these could range from your bookkeeper and accountant through to your lawyer.

Set some time aside to review their work, cost, service, and quality and rate them accordingly. This can be an easy exercise by

- Have you found them to be responsive or not?
- Have you found them to be expensive or not?
- Is their advice correct and have you had issues understanding it?
- Has their service adapted to your changing business needs?

By taking the time to understand your advisors, and the value they add to your business, you can determine if they are delivering to the standard you need or not. At the end, you can decide to look elsewhere, or raise your concerns with them and what they need to do if they're to retain your business.

If you haven't got advisors yet, but you're looking to, it's essential you undertake the necessary due diligence.

When choosing advisors, it's useful to ask for recommendations from family and friends, but this should not be your only consideration. We recommend that you conduct some due diligence and choose advisors, including lawyers and accountants, that fit your requirements and have the requisite experience in their industry or the field of expertise that is required.

Your lawyer will assist you with matters such as:

- Establishing your business structure;
- Ensuring you have the appropriate licenses and policies in place;
- Drafting your terms and conditions; and
- Other matters addressed in the following sections of this guide.

Your accountant will advise you on matters of tax and ensure you comply with your PAYG and BAS obligations.

There may be other advisors that you should also consult, such as licensing consultants and marketing consultants. Engaging professional advisors may appear costly but will give you peace of mind and ensure your business has the best chances of success.

A valuable tool for researching lawyers is Queensland Law Society's Find a Solicitor page. You can also find useful information on the Choosing an accountant page on ASIC's MoneySmart website to help find the right accountant for your business.

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3

IS YOUR BUSINESS STRUCTURE THE RIGHT ONE FOR YOUR BUSINESS?

The new financial year presents a good opportunity to assess whether the current structure of your business is correct. Over the past 12 months, your business may have grown and added more employees, or your turnover may have increased significantly – either way, having a business structure in place which reflects your current situation is important.

The common business structures available include:

SOLE TRADER

This arises where a person obtains an ABN in their own name. It is the simplest structure. The money earned will directly add to your taxable income and you will be personally liable for any debts you incur. Although simple to manage, it doesn't afford much asset protection or flexibility of income and capital distribution.

PARTNERSHIP

This is where two or more persons elect to conduct a business in partnership. All partners have an equal share in the profits of the partnership, and all are equally responsible for its liabilities. Be careful when working with a business partner without an agreement in place, as a partnership can arise in certain cases by operation of law, with unintended consequences.

COMPANY

This is where one or more persons hold shares in a company which carries on the business as an independent legal entity. The shareholdings can differ in percentage. The shareholders are not ordinarily liable for the debts of the company, which means that, if the business fails, investors usually can't lose more than their initial capital unless they are also a director and breached their directors' duties or have provided a personal guarantee. Companies are taxed at a fixed rate of 27.5% irrespective of how much the company earns.

TRUST

In this structure a trustee, usually a company, operates the business for the benefit of the beneficiaries of the trust, which may be family (in the case of a discretionary trust) or investors with fixed percentages (in the case of a unit trust). Trusts provide a good degree of asset protection and flexibility of income classification and distribution for tax purposes.

It is important that the decision as to which structure to use is made after proper consideration of the current and future requirements of the business and that it is made as soon as possible, as there can be transfer duty and other adverse consequences to changing a structure once it's in place.

Contact us for your free half-an-hour consultation.

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Disputes between business partners can arise at any time for any reason and can be crippling to a business. If you haven't got a shareholder's agreement in place, and you have partners, it's important to consider putting one into place. If you do, and it has not been updated in a long period of time, the start of a new financial year represents a good opportunity to review and update it.

4 SIGNING A SHAREHOLDER'S AGREEMENT

Once a structure is established, and particularly if it involves more than one business partner, it is imperative that a comprehensive governing document is put in place, and that if any business circumstances change, it is update accordingly.

Most structures involving multiple partners will have a base governing document such as a partnership agreement, company constitution or trust deed. However, in some cases, this document may be a standard form document not intended to cover all that is necessary and may contain terms that are actually contrary to what you require. There is therefore a second step necessary, which is to obtain legal advice on the terms of the governing document and have an additional governing agreement or a variation prepared if necessary.

Companies, for example, should have a shareholder's agreement in addition to their constitution. The shareholders agreement supplements the constitution by addressing matters not commonly addressed in a constitution, such as:

- types of decisions requiring special majority resolution or unanimous resolution; and
- good leaver and bad leaver provisions including buyout rights.

The shareholders agreement may also vary certain parts of the constitution such as how directors may be appointed or removed, which is usually of key importance to emerging businesses.

All companies including those with only two shareholders should still have a shareholder's agreement in place. It forces the shareholders to discuss and agree on how they will run their business and plan for all likely and unlikely events, such as illness or an unexpected desire to retire, providing for transition arrangements and an agreed process for dealing with disputes, which may include forced buyout provisions. In the absence of buyout provisions, buyouts may not be enforceable, and the only remedy may be liquidation of the company.

Many of the disputes we routinely see in corporate businesses, including family companies, could have been avoided, or at least better resolved, if a shareholder's agreement was in place.

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5 HAVE YOU REGISTERED YOUR INTELLECTUAL PROPERTY – IT'S TIME FOR AN AUDIT!

Intellectual property is an area that many businesses do not understand, and one we commonly find to be misunderstood. It's usually something that is easily forgotten but can be very costly to rectify if not managed properly.

It's very important to note that there are many forms of intellectual property – ranging from registering your business name right through to securing your Facebook page. When was the last time you took the time to audit this intellectual property? The new financial year represents a good time to check if you have secured all of your relevant intellectual property, and if you haven't, take the time to secure it.

Intellectual property assets you should look at either securing, or ensure are up-to-date, include:

- Your business name
- Patents and Trademarks
- Social media – Facebook, LinkedIn etc
- Designs
- Website domains
- Logos and livery

It goes without saying that you should also check if anyone is operating under your business name or logo, and you should never attempt to operate under a business name, logo or idea that's deceptively like or a spin-off on someone else's. Although it might sound smart or quirky, you are putting yourself squarely in the line of fire and IP litigation can be extremely costly.

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6 ENSURING YOUR BUSINESS LICENSES AND POLICIES ARE UP-TO-DATE

Have you got all your businesses' licenses, policies, and permits in place, and if so, are they up-to-date?

During your business research and planning you will have hopefully discovered any licenses, permits and other requirements that you will need.

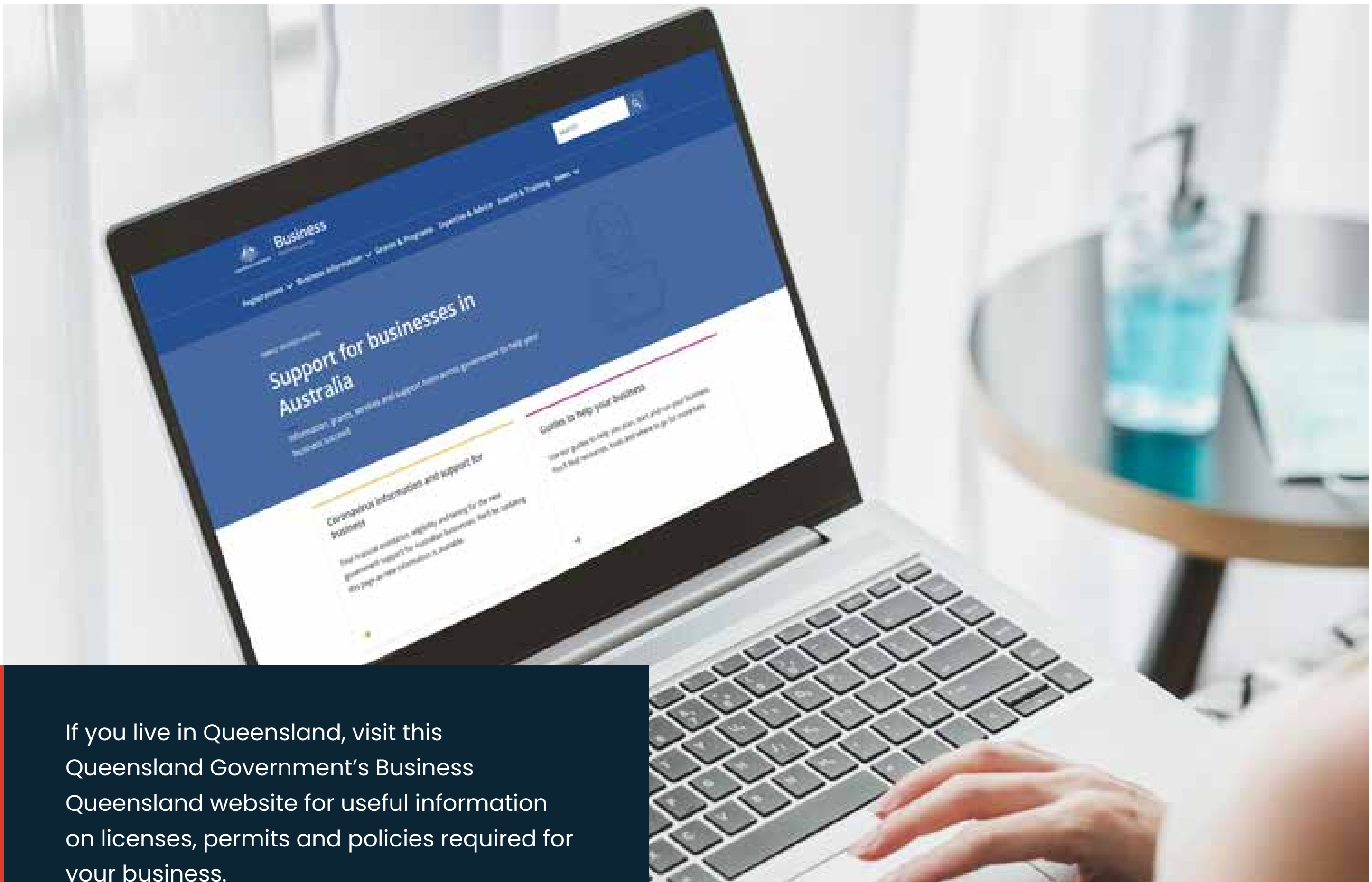
If you live in Queensland, a good starting point is to use the Queensland Government's Australian Business Licence and Information Service which contains a guided questionnaire on your proposed business designed to identify any possible licenses, permits and other requirements you may require. You should also enquire with any industry association in your industry, membership may provide you with access to industry services and compliance advice.

Most Government departments offer hotlines designed to assist customers with general information. However, you should consider engaging a qualified industry consultant to give yourself the best chances of success in applying for Government licenses and permits, particularly if you are applying for licenses in specialist areas such as environment, liquor and gaming.

Most businesses are legally required to have a number of standard policies in place, such as a privacy policy and workplace health and safety policies. If your business turnover is likely to exceed $3m per annum, if you will be obtaining credit information or reporting to a credit reporting body, or if you are providing goods or services on credit exceeding 7 days, a basic privacy policy is not sufficient. There are more complex privacy requirements and disclosure material that you will need.

If you will be collecting personal information, credit information or tax file numbers, you may be the subject of data breach reporting obligations and you will need a data breach response plan.

Your lawyer can assist you with the formulation of policies and practices for your business. If you are engaging a business consultant, they may also advise you on these matters and provide you with pro-forma policies, but make sure that you review them and that they are satisfactory for your business. Policies should be reviewed regularly with your business plan and actively implemented with your staff.



If you live in Queensland, visit this Queensland Government's Business Queensland website for useful information on licenses, permits and policies required for your business.

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The start of the year is always a good time to review your internal systems and processes to ensure they are reflective of your current business set-up and operational needs.

7 IT'S TIME FOR AN EMPLOYMENT AUDIT

Taking the time to review these allows you to not only identify any incorrect, obsolete or inadequate documentation but also determine if you are missing any key documents that could come back to bite you throughout the year.

It is also essential to consider if you are across changes to a dynamic and rapidly evolving industrial relations and employment landscape. It's quite easy to miss important updates and amendments to workplace instruments and/or legislation when you're busy running your business.

For example, have you got casual employees working in your business? How many hours are they working each month? It's important you know this because if they come to you asking to be converted into part- or full-time employees, and are successful, your business may be liable for annual leave entitlements (amongst other entitlements).

This was a result of the WorkPac v Skene (Skene) decision where a new clause was added into modern awards giving casual employees the right to request conversion to full or part-time employment.

To ensure that you are compliant, you should be assessing your current workforce, how many hours are being worked by team members, and determining whether any casual employees (if you have any) may request a conversion.

Taking time to understand awards and to ensure you are paying employees their correct entitlements will minimise the chance of underpayment (wage theft) and dealing with the associated financial repercussions (fines and reimbursement) as well as reputational harm.

To get you started, we've prepared some short questions that you should consider. By answering them, you'll get a better picture of your current workforce, and if your current approach to managing it is fit-for-purpose.

KEY QUESTIONS TO ASK YOURSELF

1. How many employees do you have now?
2. Is your workforce a mix of casual, part-time and full-time employees?
3. Have any casual employees requested conversion to become part or full-time employee?
4. Do you have formal employment contracts?
5. Do you have required policies and procedures in place and are you actively communicating these and enacting them (including but not limited to):
    a. Bullying & Sexual harassment
    b. Discrimination
    c. Disciplinary procedures & termination
6. Have you got performance management processes in place for under performing employees?
7. Are you paying your employees in line with their legislated award rates?

Finding a few gaps when answering the above? If so, it might be time to talk to an experienced employment law practitioner who will take the time to understand your business and discuss strategies you can use to mitigate the risks of any employment-related matters.

This could include a review of existing contracts through to the drafting of new contracts, procedures and policies aimed at protecting your business, now and into the future.

Contact us for your free half-an-hour consultation.

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8 WHEN WAS THE LAST TIME YOU LOOKED AT YOUR TERMS AND CONDITIONS? THAT'S IF YOU HAVE SOME!

We often find that many businesses either don't have any terms and conditions, or if they do, they have not looked at them for a very long time and they're usually out-of-date and incorrect – potentially leaving you exposed to costly litigation.

The temptation to buy a set of terms and conditions online is strong, as legal drafting can be expensive. However, many T&Cs available online are simply not worth the paper they are written on.

Many online T&Cs come from foreign sites and do not reflect Australian law. Additionally, these documents almost never marry up with the way the subject business operates, which means that they won't be any help when you need them most. Here are four simple ways to tell if your T&Cs need review:

THERE IS NO DEFINITION SECTION

This is an indication that your T&Cs are poorly drafted. Generally, comprehensive T&Cs will have a definition section, either at the start or the end. We recommend you have your terms reviewed by a lawyer.

YOU CAN SEE THE WORD 'ARTICLE' IN REFERENCE TO LEGISLATION OR FOREIGN LEGISLATION IS CITED

If you Google legislation cited in your T&Cs and find that is its foreign legislation (usually USA), this means the T&Cs were taken from a foreign site and are not suitable for Australia. This is a serious issue plaguing Australian businesses who buy low cost documents online. You need new terms immediately because they could be unenforceable.

YOU CAN SEE REFERENCES TO THE 'TRADE PRACTICES ACT'

This is the old version of the Australian consumer law which was replaced by the Consumer and Competition Act 2010 (Cth). It means your terms are outdated and need an urgent update as a lot has changed since 2010.

YOU CANNOT FIND ANY REFERENCE TO THE 'PERSONAL PROPERTY SECURITIES ACT' OR 'PPSA' OR 'PPSR'

This is recent legislation that revolutionised the way we deal with retention of title in unpaid goods and taking security over personal property including against debtors. If your T&Cs do not address this legislation, chances are that they are outdated. You need to update them in order to take advantage of this new law and implement any other updates required.

Be careful of using a competitor's T&Cs as they could be outdated or ineffective.

Usage of someone else's terms and conditions could also constitute an infringement of their intellectual property rights, which could lead to your business potentially defending a law suit which could be very expensive.

Taking the time to engage with a lawyer to draft your own custom T&Cs will mitigate risk, and protect your business properly.

We strongly recommend that you invest the money required to have a good tailored set of T&Cs prepared for you by a business lawyer, it will be the best money you've ever spent.

Contact us for your free half-an-hour consultation.

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9 NECESSARY AND CIRCUMSTANTIAL INSURANCE OPTIONS FOR YOUR BUSINESS

One of the most common issues we discover when working with businesses is that they do not have the appropriate insurances needed for their operations, or, they have insurances that are no longer required. Not having the appropriate insurances in place can expose your business to unnecessary risk or be very costly if the insurances are not required.

The new financial year represents a good opportunity to audit your current insurances and determine if they are needed, if they are up-to-date, and to cancel any policies that may no longer be relevant. It's also a good time to check if you are getting the best deal for your policies, and whether it might be time to try and negotiate something better.

There are some forms of insurance that are compulsory for many businesses such as:

- **Workers compensation insurance**- Compulsory if you have employees.
- **Public liability insurance** - Mandatory for certain companies and usually required under a premises lease.
- **Plate glass insurance** - Usually required under a premises lease.

Other types of insurance that you should consider depending on your circumstances include:

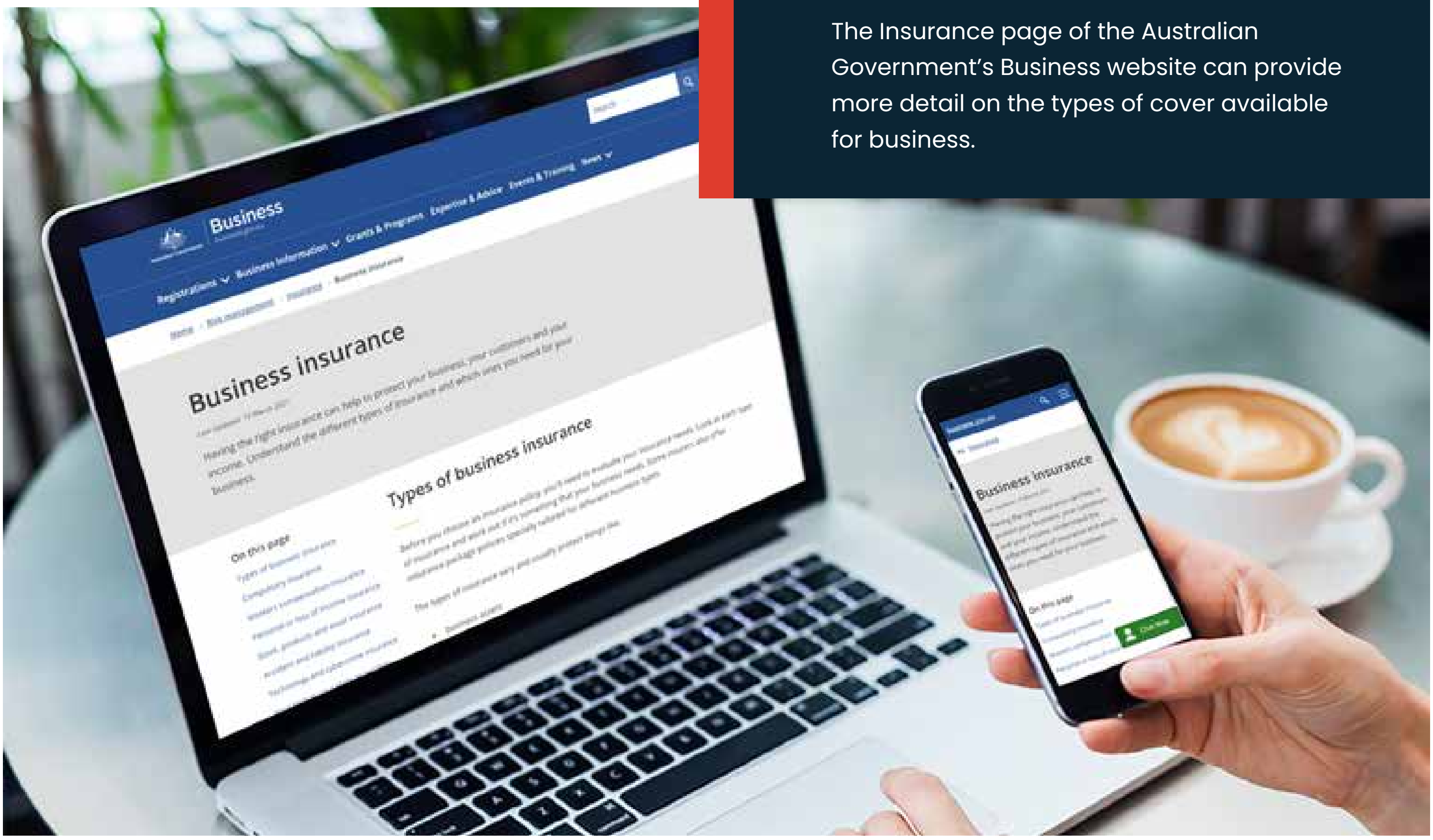
- **Contents insurance** - This is important if you are leasing premises, as the landlord is not liable for and will not insure your contents.
- **Business interruption insurance** - If you are renting, and the premises are damaged for any reason, there may be a period you cannot access the premises and won't be entitled to compensation from the landlord.
- **Management liability insurance** - May cover directors' liabilities, employment practices liability, government fines and tax audits.
- **Professional indemnity insurance** - Important if you will be acting as a professional advisor in your business.
- **Products liability insurance** - Vital if you will be manufacturing products.
- **Transport insurance** - Relevant if you are transporting goods, or importing or exporting product.
- **Motor vehicle insurance** - Compulsory third party (CTP) insurance is included in the registration fee but this is injury cover only. It does not cover damage to the other party's vehicle or your own vehicle. You must insure for these separately.

In addition to the above, there are some other kinds of insurance that you may not have heard of and which could be of interest to you, such as:

- **Privacy and cyber insurance** - Insurance against loss of data or liability due to a data breach.
- **Intellectual property insurance** - Insurance to cover costs of intellectual property claims against you or by you.
- **Contract liability insurance** - Insurance to cover liability or loss arising from third party contracts.

It is important to consider what your needs are and select the right policy and level of cover. You should seek the advice of a broker when sourcing business insurance. A lawyer can also review a policy to confirm if it addresses any specific items of cover that are of concern to you.

The Insurance page of the Australian Government's Business website can provide more detail on the types of cover available for business.



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10

DEBT RECOVERY – HAVE YOU GOT IT UNDER CONTROL?

Unpaid debts can have significant impacts on your business and its cash flow. It leaves you exposed to many risks and can also impact on relationships you have with your employees, suppliers, and customers.

Now is an ideal time to look back and reflect on how you've managed the payment of invoices, as well as assessing how effective your debt recovery strategies have been to date. We also find that having proper credit application and guarantees, preferably drafted by legal professionals, can faciliate better management of debt recovery collection activities.

Also, taking the time to understand this part of your business, and address its weak points, can help you build good foundations for the new financial year, and place your business in a much better position as far as payment terms, on-time payments, and ultimately, debt recovery are concerned.

ARE YOUR PAYMENT TERMS AND PROCESSES DOCUMENTED?

One of the most important aspects you can look at to best position yourself to successfully manage debt recovery is to get your payment terms and associated processes in order. We find that many businesses do not take the time to get their payment terms right from the outset, which leads to longer delays and issues when collecting debts.

Having solid payment terms with strict payment deadlines and methods of payment, as well as an overview of your payment and debt collection process, ensures your customers are very clear of your expectations and the ramifications of not adhering to them.

GETTING PAID PROMPTLY

We are strong advocates of ensuring payment is made promptly, and there are ways that you can do this in addition to the above, including sending the invoice as soon as the work is completed, keeping in regular contact with your customers, and offering a small discount for on-time or early payment.

The best way to manage debt recovery is not to let it get to that stage in the first place, and the abovementioned strategies will go a long way in preventing outstanding debts from blowing out. However, even if you do take the time to implement the above recommendations, you're likely to experience issues being paid given your clients' financial situations are outside of your control.

WHAT HAPPENS IF YOU ARE HAVING ISSUES RECOVERING A DEBT?

We always encourage our clients to try and send a friendly payment reminder as a first step. This gives the client a chance to remedy the situation amicably. It's important to note that sometimes it can be as simple as forgetting or an auto-payment not being processed. Maintaining a positive relationship with your client should always be your focus. If the client chooses to ignore the initial reminder, send an overdue payment reminder, and follow up with a call. If there is no response, send another letter or try and call them again. Should they not respond, it's time to look at sending a final notice.

If all of your attempts to collect the debt have failed, it may be time to send a formal letter of demand. This should always be a last resort as it may damage the relationship with your client.

If the client ignores this, you should consider the assistance of professionals who will assist in navigating the collections process and attempt to help your business claw back as much of the outstanding amount possible. These professionals have experience in commencing proceedings, obtaining judgments, enforcements, caveats, negotiations, and ultimately, bankruptcy.

ARE YOU OWED MONEY NOW? DON'T DELAY!

Have you looked at your outstanding debtor list? How long have the amounts been owed? It's vital that you sit down with your accountant and review your aged debtor list. You can then formulate tailored approaches for how you will attempt to claw back the amounts owed to you.

It's important to note that the longer you let these amounts stay overdue, the less likely you are to claw back the full amount. You'll also expose yourself to the debtor looking to negotiate a settlement with you for a fraction of what is owed.

IF YOU ARE BEING CHASED FOR OUTSTANDING PAYMENTS

Have you found yourself in the position where your business owes money? If this is the case, it's important you look to remedy the situation by either a) contacting the creditor, and looking to negotiate a payment plan or b) offering to pay a certain percentage of the outstanding amount that the creditor may be amenable to.

We also recommend talking to a debt recovery professional who may assist in the negotiations process. and formulating a solution that benefits both parties and closes the matter before extreme actions are taken (winding up/bankruptcy).

Contact us for your free half-an-hour consultation.

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ABOUT BENNETT & PHILP

Established in 1984, Bennett & Philp is a mid-tier law firm based in the heart of Brisbane offering end-to-end legal solutions for both business and individual clients.

Our team offers a broad range of services to support both Australian and international clients across every stage of business and life.

We provide personalised service across six core areas of specialisation:

- Business Advisory Services
- Disputes & Litigation
- Intellectual Property
- Property & Real Estate
- Compensation Law
- Wills & Estates

MEET OUR TEAM

With 15 Directors and over 70 team members across six different service areas, you can rest assured that our experienced team can give you the practical and solutions-oriented legal advice you need for any occasion.

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