

CGC Law

A Guide To

BUSINESS LEGAL ESSENTIALS

Fundamental Legal Documents Every Business Needs



Business Legal Essentials

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ARE YOUR LEGAL DOCUMENTS UP TO DATE?

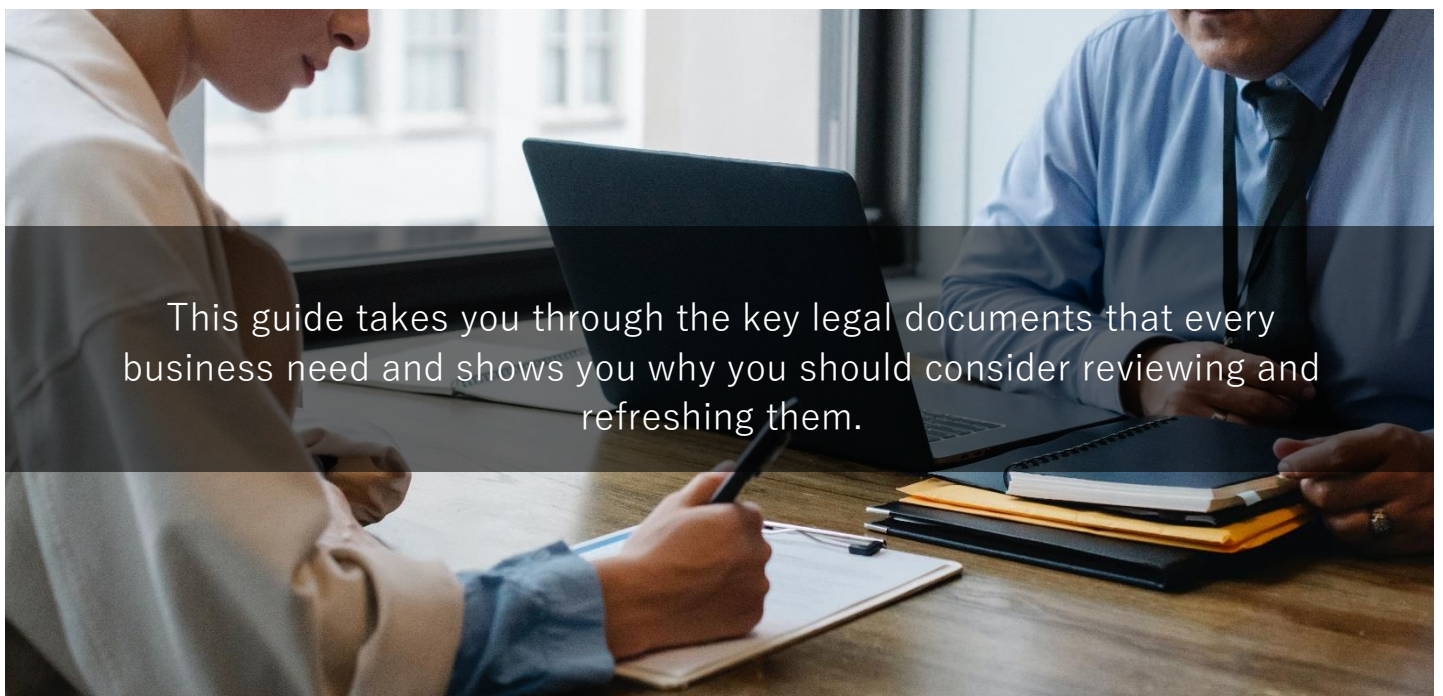
As your business changes, so should your legal documents.

The law changes. Best-practice changes. The economy changes. Your business changes, and your personal circumstances change. Your legal setup needs to be reviewed regularly to ensure that it keeps up.

In the rush to get their businesses up-and-running, many people overlook putting in place the essential legal documents addressed in this guide.

As your legal documents age, they might not be protecting you the way they once did. For this reason, every business should regularly check and update its legal documents to ensure compliance with new laws, and protection against new threats, as the business grows.

[Contact us to discuss.](#)



This guide takes you through the key legal documents that every business need and shows you why you should consider reviewing and refreshing them.

SHAREHOLDERS' AGREEMENTS

As soon as your business has more than one owner, you need one of these, and this may turn out to be the most important contract you ever enter into. A proper Shareholders' Agreement will govern how vital business decisions are made, how the company will raise further capital in the future and how the investors will ultimately exit – all crucial matters about which there should be clear agreement in advance.

Of particular importance are pre-emption rights on new issues of securities, which help to prevent investors from being diluted by future capital raisings, as well as pre-emption rights on transfers of securities to give the investors certainty about the particular individuals with whom they are going into business. Tag-along and drag-along rights can also prove to be crucial when one or more of the owners are seeking to exit the business.

Creating a shareholders' agreement for your business will force you and your co-investors to sit down together and address these vital points upfront.

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KEY QUESTIONS

- Who are the equity stakeholders?
- What are their voting rights?
- Who gets to appoint a director?
- How will important business decisions be approved?
- What restrictions should apply to selling shares and raising more equity capital?
- How will disputes be resolved?

COMPANY SECRETARIAL

Legal Housekeeping

When the time comes to sell your business or raise further funding, potential purchasers and investors will undertake due diligence and ask to inspect the books of the company. Presenting them with a company register that is a shambles is not a good look, so doing your legal housekeeping now will prove to be worthwhile.

Nobody likes paperwork, but certain legal record-keeping requirements are mandated for all companies by the Corporations Act 2001 (Cth). Failure to comply with these requirements can lead to ASIC (Australian Securities and Investments Commission) fines, as well as potential disputes amongst the investors.

All too often, businesses are not aware of these legal obligations, and the company's fundamental documents are thrown together with little thought if any. This may cause serious issues down the track.

Important company secretarial documents include:

- register of members (i.e, shareholders) and option holders;
- share certificates evidencing the shareholdings;
- application forms when investors subscribe for shares;
- transfer forms when shares are bought and sold;
- board resolutions approving all issues and transfer of shares and other key decisions of the company (e.g, entering into major contracts, paying dividends, etc.);
- consents to act as directors;
- company constitution; and
- power of attorney authorising key executives to sign documents on behalf of the company.

KEY QUESTIONS

- Who are the directors, and have they been properly appointed?
- Do all investors have proper evidence of their shareholdings?
- Are the company's registers accurate?
- Are all ASIC filings up to date?
- Are all of the company's records in order?

[Contact us to discuss.](#)

EMPLOYMENT CONTRACTS



Hiring, incentivising, and managing employees is often the biggest challenge faced in running a business. Choosing the right individuals to employ is, of course, most important, but all too often businesses bring in employees without putting a proper employment contract in place. That can lead to big problems for the business down the track.

In particular, it is absolutely vital that employees within the business are not able to lay claim personally to any of the company's valuable intellectual property. Confidentiality provisions will also be extremely important, as you will be exposing the inner workings of your business to your employees.

Also, consider putting in place reasonable non-solicitation and non-compete provisions for staff who will have access to the company's proprietary know-how and key suppliers/customers.

Navigating through the minefield that is Australian employment law is a daunting task for any business. A proper employment contract should be viewed as essential for every employee.

[Contact us to discuss.](#)



THE IMPORTANCE OF CONFIDENTIALITY

Prudent business practice means putting in place the customary legal protections of a properly drafted confidentiality agreement.

You may be able to pique the interest of customers, suppliers, investors and partners without giving away too much of your business's confidential information. Still, their questions will inevitably become more probing and, sooner or later, you will need to delve into details that are sensitive to your business.

Trust is important in every relationship, including business relationships. Still, prudent business practice adopting a properly drafted confidentiality agreement (otherwise referred to as a "non-disclosure agreement" or "NDA") before disclosing your business's valuable confidential information.

[Contact us to discuss.](#)

KEY QUESTIONS

- What information is sensitive to the business?
- To whom will that information need to be disclosed?
- How will the confidentiality of that valuable information be protected?

WEBSITE TERMS OF USE



Nowadays, every business needs a website, which means that every business needs a set of Website Terms of Use. Website usage terms lay down the rules for people using your website, including what conduct is prohibited. Importantly, they also include disclaimers and limitations of liability to protect you in case things go wrong.

Your website usage terms need to be customised to suit your business and the particular ways in which your website will be used. For example, if you sell products through your website, you will need provisions regarding pricing, payments, delivery and returns (if you are selling physical goods), refunds, etc. It is advisable to include a separate returns policy if you are selling physical goods.

[Contact us to discuss.](#)



PRIVACY POLICY

Although small businesses (i.e, with turnover less than \$3 million) are not mandated to include a Privacy Policy under the Privacy Act 1988 (Cth), it is customary for all websites to include a Privacy Policy where personal information (e.g, name, address, date of birth, credit card details, etc.) may be provided by website users. Customers expect to see this when transacting online, so we suggest including a formal Privacy Policy alongside your website Terms of Use.

The General Data Protection Regulation ("GDPR") of the European Union may also apply to Australian businesses and has harsh penalties for non-compliance.

[Contact us to discuss.](#)

KEY QUESTIONS

- Does the website sell anything? If so, does it sell products and/or services?
- If products, are they physical goods needing postage, or digital goods (e.g, mp3s, videos, etc.)?
- Does the website contain user-generated content (e.g, comments, forum posts, etc.)?

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Should you require legal advice, please [Contact us to discuss.](#)

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