



**DURAL LEGAL  
CENTRE**

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# WHAT DO I NEED TO KNOW ABOUT BUYING A BUSINESS?

Many Australians dream not only of owning their own home but also their own business. There are several forms of business structure, each having its own legal, accounting and tax requirements, and you will need to choose the right one if you want to achieve maximum benefits.

## **What business structure should I choose?**

There are several forms of business structures, each having its own legal, accounting and tax requirements. The form of organisation of a business determines many things, including how tax is paid and how profits are disbursed, and it should be geared to help you achieve maximum benefits.

The types of structures you may ask your solicitor to discuss with you include:

**Sole Trader:** With this structure you intend to conduct your business on your own or with employees but no joint owner. As a sole trader you are responsible for all debts and may have to mortgage your personal assets when borrowing for your business.

**Partnership:** Up to 20 people may form a business partnership. A larger number is possible for some professions, such as accountants. If no formal partnership agreement exists, partners are deemed by law to be equal owners. Liability for all debts may fall on any of the partners jointly and severally - if one absconds or dies the others are left with the liabilities.

**Limited Liability Company:** If you form a company, you will as a shareholder have limited liability. You may become an employee and also a director but with certain duties and strict responsibilities set out in the Corporations Law, and subject to tax, record-keeping and reporting obligations.

## **How Important is my Lease?**

The location of your business is often vital to success and you must ensure that your lease is properly drawn up so that you do not have to move or change some important aspect of your operations. Before moving into leased premises obtain a copy of any proposed or existing lease and discuss with your solicitor each clause in it and its implications.

Remember that your occupancy may be subject to the NSW Retail Leases Act 1994 and the conditions under which you occupy the premises must be contained in the lease you sign.

It ought to allow you to make any alterations necessary to your business and, if the business is in a shopping centre, you would be wise to have a restriction on other businesses which may compete with yours.

Be careful of any restrictions or requirements relating to hours of access or carrying on business.

Most leases make the lessee responsible for keeping the premises fittings in good repair and may require you to pay all or a proportion of costs of rates, maintenance and so on. Make sure all these are clearly stated. In some cases the rent may vary according to a fixed percentage or some formula such as the Consumer Price Index or the turnover.

The Lease will also refer to the only business permitted on the property and is usually interpreted strictly; this could restrict you from diversifying and make it difficult for you to sell the business. It must be clearly worded with the future development of your business in mind.

### **What do I get when I pay for Goodwill?**

Goodwill is a way of describing a special asset of a business and for which a purchaser can be called upon to pay. It arises for a variety of reasons, for example, the location of the premises, the quality of the products sold, the performance of the staff, the absence of competition, etc. It is generally reflected in earning power but can be destroyed quickly by changes over which the owner had no control, for example, zoning, widening of roads or cancellation of a supply agreement.

The real value of goodwill should be thoroughly assessed by your accountant as capital gains tax issues may arise.

### **How does my sale or purchase affect staff entitlements?**

In many instances, the staff are the most vital single asset when you buy a business, but no-one can be prevented from leaving. It can be important to many businesses to ensure that any staff who leave or even the previous owner, do not set up in opposition using special knowledge or confidential information which has been gained from the business you bought.

It is important that the purchaser of a business does not take on the entitlements of staff for which the vendor is responsible, for example, long service leave, sick pay or holidays. Provisions for these obligations should be clearly settled with the previous owner in negotiations before the sale.

You should be aware, too, of the effect of fringe benefits tax on any benefits given to valuable staff to induce them to stay on.



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