

A guide to **starting a business in South Australia**



www.statedevelopment.sa.gov.au/smallbusiness




Acknowledgements

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**Good ideas don't always
make good businesses,
and unfortunately, a high
percentage of businesses
fail within their first three
years of operation.**

About this guide

This guide is designed to help you start out on the path to success by getting you to consider some of the main requirements and relevant points for starting and operating a business in South Australia, including if you are looking to buy all or part of an existing business.

The guide will explain why it is important to carefully plan your business negotiations and the types of different businesses you may buy and operate. It includes information about taxation, insurance and employment requirements and provides links to more detail.

The information in this guide is intended to provide an overview only and should not be considered to constitute legal or financial advice. Should you require further information about any of the points in this guide, it is suggested that you consult an accountant or lawyer.

The Government of South Australia provides a wide range of services to support you in setting up and operating a successful business in South Australia. Visit the **Department of State Development** small business website: www.statedevelopment.sa.gov.au/smallbusiness

To find your nearest business advisory service in metropolitan and regional South Australia visit the *Getting advice* section of the **Department of State Development** small business website or enquire via email at: DSDSmallBusinessStrategy@sa.gov.au

Migration information

If you require information about migrating to South Australia, you may wish to engage the services of a registered migration agent. You can locate a migration agent through the

Office of the Migration Agents Registration Authority (OMARA) website: www.mara.gov.au

This checklist has been designed to help you think about the actions you need to take to start your business in South Australia, with links to further information and key contacts (not listed in any particular order). Since businesses are so diverse the list is not definitive and should not be regarded as a substitute for professional business and legal advice.

Starting your business Checklist

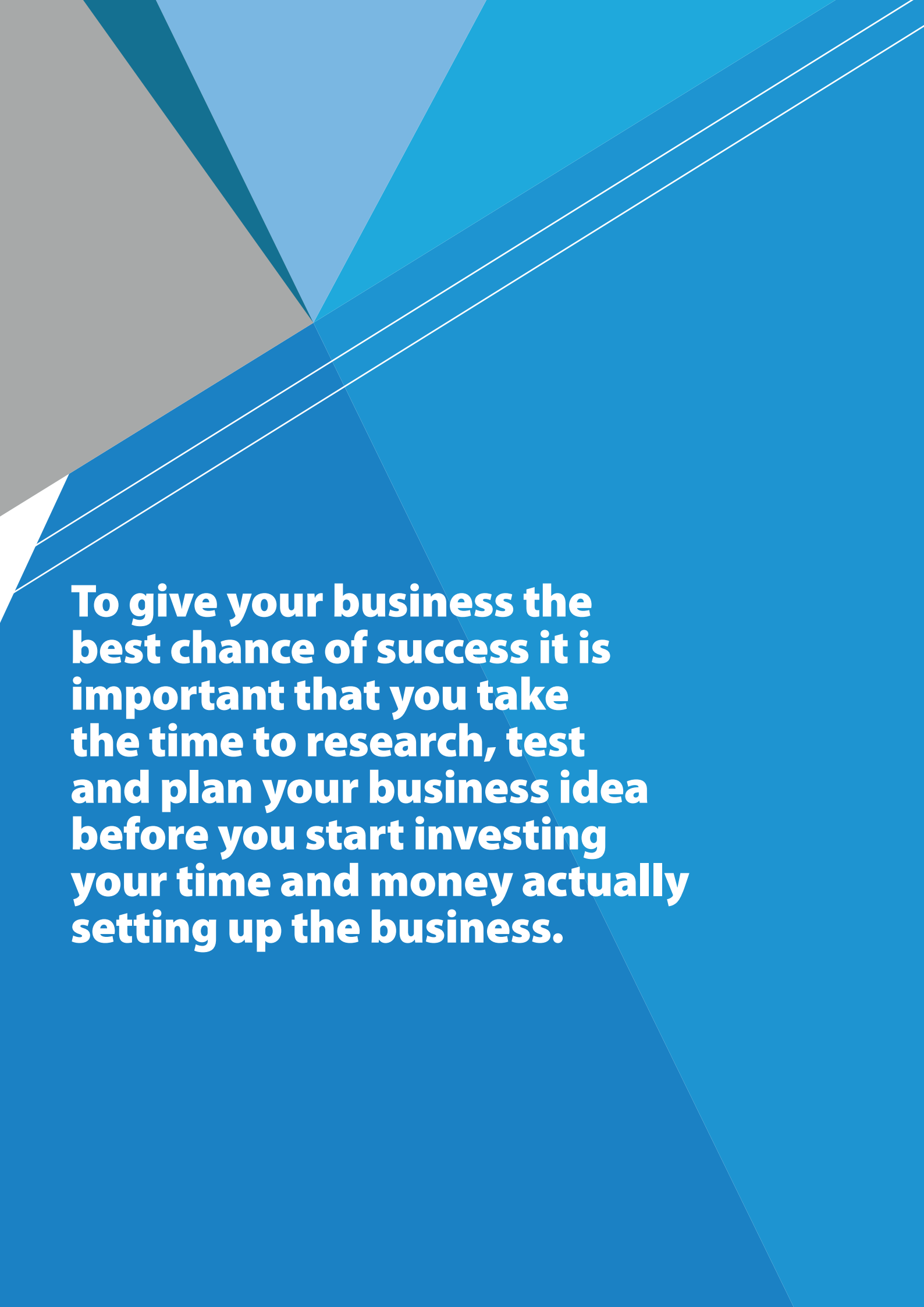
Action	Notes	Further Information
<p>I have researched and tested my business idea</p> <p>Assess and review:</p> <ul style="list-style-type: none"> • Your personal suitability (your character; qualifications, training, business skills and experience; business and life goals; personal considerations i.e. family etc.) • Your market/s (know your industry, product or service, customers, competitors, geography and business location etc.) • Start-up costs (how much do you need to start the business and for living expenses? etc.) 		<p>In this guide: Getting Started (P13)</p> <p>Department of State Development – Start Your Own Business Workbook: Part A: Testing you and your idea for a small business www.statedevelopment.sa.gov.au/smallbusiness</p> <p>Business Adviser / Accountant</p> <p>Business Advisory Centres in metropolitan and regional South Australia www.statedevelopment.sa.gov.au/industry/smallbusiness/getting-advice</p> <p>Skills and Qualifications – WorkReady www.skills.sa.gov.au / Infoline: 1800 506 266</p> <p>Traineeship and Apprenticeship Services www.skills.sa.gov.au/apprenticeships-traineeships Telephone: 1800 673 097</p>
<p>I know where to find advice and support</p>		<p>Department of State Development – Getting professional advice guide www.statedevelopment.sa.gov.au/smallbusiness</p> <p>Business Adviser / Accountant</p> <p>Small Business Contact Service Telephone: 1300 142 820</p> <p>Business Advisory Centres in metropolitan and regional South Australia www.statedevelopment.sa.gov.au/industry/smallbusiness/getting-advice</p>
<p>I am buying a business</p>		<p>In this guide: Buying a business (P15)</p> <p>Business Adviser / Accountant / Lawyer</p>
<p>I am buying a franchise</p>		<p>In this guide: Buying a franchise (P20)</p> <p>Franchise Council of Australia (FCA) www.franchise.org.au / Telephone: 1300 669 030</p> <p>Business Adviser / Accountant / Lawyer</p>
<p>I am developing a business plan</p>		<p>Department of State Development – Business Planning guide www.statedevelopment.sa.gov.au/smallbusiness</p> <p>Business Adviser / Accountant</p> <p>Business Advisory Centres in metropolitan and regional South Australia www.statedevelopment.sa.gov.au/industry/smallbusiness/getting-advice</p>

Action	Notes	Further Information
I have chosen a suitable business structure		In this guide: Choosing a business structure (P25) Business Adviser / Accountant
I know how and where I can obtain finance		Department of State Development - Financing your business guide www.statedevelopment.sa.gov.au/smallbusiness Business Adviser / Accountant
I have decided upon the location for my business I understand the essentials of running my business from home and have obtained council approval Leasing commercial property (I have obtained legal advice before signing)		Department of State Development – Locating your business guide www.statedevelopment.sa.gov.au/smallbusiness Department of State Development – Home business essentials guide www.statedevelopment.sa.gov.au/smallbusiness Your local Council – Local Government Association (LGA) of South Australia www.lga.sa.gov.au/page.aspx In this guide: Leasing commercial property (P31) Office of the Small Business Commissioner (SASBC) www.sasbc.sa.gov.au Toll Free: 1800 072 722 / Telephone: +61 8 8303 2026 Business Adviser / Accountant / Lawyer
Will I/my staff be classed as an employee or independent contractor?		In this guide: Employees and contractors (P39) Business Adviser / Accountant Australian Taxation Office (ATO) www.ato.gov.au/Business/Employee-or-contractor/ Fair Work Commission www.fwc.gov.au / Telephone: 1300 799 675
I have applied for my Australian Business Number (ABN)		In this guide: Taxation (P52) Australian Business Register (ABR) www.abr.gov.au / Telephone: 13 92 26
I have registered my business name		In this guide: Business names, company names, domain names & trademarks (P27) Australian Securities and Investment Commission (ASIC) www.asic.gov.au / Telephone: 1300 300 630
I have a Tax File Number (TFN), have registered for GST and other applicable taxes		In this guide: Taxation (P49) Australian Taxation Office (ATO) www.ato.gov.au / Telephone: 13 28 66 Business Adviser / Accountant
I have the required licensing, registrations and permits		In this guide: Licences and permits (P29) Australian Business Licence and Information Service (ABLIS) https://ablis.business.gov.au/pages/home.aspx Telephone: 1800 188 018
My staff and I are aware of the standards, codes of practice and registrations applicable to the industry		Industry Association Australian Business Licence and Information Service (ABLIS) https://ablis.business.gov.au/pages/home.aspx Telephone: 1800 188 018
I have checked my products meet Australian product safety standards		Australian Competition & Consumer Commission (ACCC) www.productsafety.gov.au
I have arranged insurance/s to cover myself, my business, my employees, my products/services, my suppliers and the public		In this guide: Insurance (P47) Insurance Agent / Broker

Action	Notes	Further Information
I have registered and protected my Intellectual Property (IP) (trademarks, patents, copyrights, logos. etc.)		<p>In this guide: Business names, company names, domain names & trademarks (P27)</p> <p>Intellectual Property Australia (IP Australia) www.ipaustralia.gov.au / Telephone: 1300 65 1010</p>
I have registered my internet domain name (i.e. your internet address)		<p>In this guide: Business names, company names, domain names & trademarks (P27)</p> <p>.au Domain Administration Ltd (auDA) www.auda.org.au / Telephone: 1300 732 929</p>
I understand my legal obligations and the law that applies to my business		<p>Department of State Development – The law and your business guide www.statedevelopment.sa.gov.au/smallbusiness</p> <p>Business Adviser / Accountant / Lawyer</p>
I understand my rights and obligations when employing staff		<p>In this guide: Employing people (P35) / Employees and contractors (P39) / Employment contracts and remuneration (P43)</p> <p>Business Adviser / Recruitment Consultant</p> <p>Australian Taxation Office (ATO) www.ato.gov.au / Telephone: 13 28 66</p> <p>Fair Work Commission www.fwc.gov.au / Telephone: 1300 799 675</p> <p>Fair Work Ombusman www.fairwork.gov.au / Telephone: 13 13 94</p> <p>Equal Opportunity Commission (EOC) www.eoc.sa.gov.au / Telephone: (08) 8207 1977</p> <p>Business SA www.business-sa.com / Telephone: (08) 8300 0000</p> <p>Traineeship & Apprenticeship Services www.skills.sa.gov.au/apprenticeships-traineeships Telephone: 1800 673 097</p> <p>Safework SA www.safework.sa.gov.au / Telephone: 1300 365 255</p> <p>ReturnToWorkSA www.rtwasa.com / Telephone: 13 18 55</p>
I have developed my Marketing plan		<p>Department of State Development – Marketing your business guide www.statedevelopment.sa.gov.au/smallbusiness</p> <p>Business Adviser / Marketing Consultant</p> <p>Business Advisory Centres in metropolitan and regional South Australia www.statedevelopment.sa.gov.au/industry/smallbusiness/getting-advice</p>
I understand business privacy laws and how to manage personal information		<p>Office of the Australian Information Commissioner www.oaic.gov.au / Telephone: 1300 363 992</p>

Action	Notes	Further Information
I understand how to set up and conduct business online safely and securely to protect my business and my customers		<p>Department of State Development – Start Your Own Business Workbook: Part B: Other issues to consider: E-business www.statedevelopment.sa.gov.au/smallbusiness</p> <p>Australian Government Department of Industry, Innovation & Science www.digitalbusiness.gov.au</p> <p>Business Advisory Centres in metropolitan and regional South Australia www.statedevelopment.sa.gov.au/industry/smallbusiness/getting-advice</p>
I have set up record keeping (including customer and employee) and financial accounting systems		<p>Department of State Development – Start Your Own Business Workbook: Part D: Getting started – Records management www.statedevelopment.sa.gov.au/smallbusiness</p> <p>Business Adviser / Accountant</p>
Inventory Control – I understand how to manage my stock		<p>Department of State Development – Managing your cash flow guide www.statedevelopment.sa.gov.au/smallbusiness</p> <p>Business Adviser / Accountant</p>
I have researched applicable business grants / funding		<p>GRANTassist www.grantassist.sa.gov.au</p>
I understand how to manage my cash flow		<p>Department of State Development – Managing your cash flow guide www.statedevelopment.sa.gov.au/smallbusiness</p> <p>Business Adviser / Accountant</p> <p>Business Advisory Centres in metropolitan and regional South Australia www.statedevelopment.sa.gov.au/industry/smallbusiness/getting-advice</p>
I have chosen my supplier/s and documented the terms of trade in a written contract signed by all parties		<p>Department of State Development – Managing suppliers and customers guide www.statedevelopment.sa.gov.au/smallbusiness</p> <p>Business Adviser / Accountant / Lawyer</p>
Risk management process – I have identified, assessed and prioritised the risks (incl: financial, operational and environmental, legal, strategic, privacy and information) and monitor them regularly		<p>Department of State Development – Start Your Own Business Workbook: Part B: Other issues to consider – Managing risk www.statedevelopment.sa.gov.au/smallbusiness</p> <p>Business Adviser / Accountant / Lawyer</p>
I understand my legal obligations and requirements when importing / exporting goods or services		<p>Department of Immigration and Border Protection www.border.gov.au</p> <p>Department of State Development – Trade www.statedevelopment.sa.gov.au/investment/trade</p> <p>Tradestart assistance www.statedevelopment.sa.gov.au/investment/tradestart-assistance</p>





To give your business the best chance of success it is important that you take the time to research, test and plan your business idea before you start investing your time and money actually setting up the business.

Getting started

Key considerations

PART A of the **Department of State Development** *Start your own business workbook* (visit the *Guides and workbooks* section of the Department's small business website: www.statedevelopment.sa.gov.au/smallbusiness) has some useful templates to help you test key considerations for your business idea, including:

- **Your personal suitability** (your character; qualifications, training, business skills and experience; business and life goals; personal considerations i.e. family etc.)
- **Your market/s** (know your industry, product or service, customers, competitors, geography and business location etc.)
- **Financial** (understanding the financial requirements of business is fundamental to success. One of the main reasons small businesses fail is insufficient capital – underestimating how much money is needed to start and operate the business and unrealistic expectations of incoming revenues from sales:

Do your sums

1. You should list all your living expenses to see what you need as a minimum take-home amount to maintain your present style of living.
2. If you have to raise finance to start the business, you should consider the impact of this and whether it poses a risk to your other assets.
3. Could you meet the repayments if the venture fails? How much will you need to set aside for taxation and personal investment for the future?
4. What is your current available capital and can you do better by investing it on the money market? For example, if your current employment gives you \$30,000 a year and you have \$30,000 in capital that you could invest at (say) 10%, then your business would need to provide a taxable income of:

\$30,000
/ \$3,000 (\$30,000 at 10%)
\$33,000

Will it do this?

What volume of sales would you need to support this?

If you can keep 15 cents out of each dollar of sales then you will need a volume of:

\$33,000
÷ 0.15
\$220,000 / year
or \$18,333 / month or \$4,230 / week

Do you predict that your proposed venture will meet these targets?

Other financial considerations

It is important to ensure you have enough capital to establish the business and cover your costs. It may help to consider:

- **How much capital do you have to start the business and is it enough?** Many businesses fail because the owner does not have enough money to start and operate the business.
- **If you have to borrow money, do you know where and at what rates you can get this?** If this is a first-time venture you may find it difficult to raise money unless you have other assets that you can put up as collateral against the loan.
- **Are you obtaining money at the best rates?** Check that you are not buying expensive money. Shop around for the best rates and terms. Ask about overdraft and credit facilities.
- **What is your cash-flow and budget situation?** You must plan, manage and monitor your finances and cash-flow as an on-going fundamental part of your business strategy. Even if you have an accountant, you as the business owner, must understand the numbers, know the difference between cash and profit and be in control of your cash situation. A cash flow budget will help you forecast what cash will be available to meet your business expenses showing the expected flow of cash in and out and predicts the bank balance at the end of each month. This will highlight how well you are doing, help you follow up with your debtors and take corrective action in advance if necessary to avoid/minimise potential problems.

Your accountant can help you determine what financial records you should keep, the information they should contain and in what format (paper and/or electronic).

Taxation

Ask your accountant about allowable deductions when calculating the potential return from your venture. Ask about possible tax liabilities so you can plan for them. Taxation is discussed in more detail later in this guide.

Buying a business

There are a number of factors involved in successfully buying a business. These include:

- Sales figures
- Operating costs for the business
- Profitability of the business
- Business assets and liabilities
- Predictable market trends in the industry.

The questions in this section are provided to help you consider relevant factors in determining your readiness to buy a business in South Australia.

Sales figures	
Is the product or service offered by the business likely to maintain or improve its marketability, or is it in danger of becoming over-sold, out of style or obsolete?	<input type="checkbox"/>
Is the business in a good location or is this the reason it is for sale? Are there any predicted location 'Disrupters' (e.g. major roadworks)?	<input type="checkbox"/>
Are prices competitive? Are competitors gaining strength?	<input type="checkbox"/>
Are there reliable records of sales over a sufficient period to assess business viability? Are the total sales categorised by product line, if applicable?	<input type="checkbox"/>
Are bad debts deducted from sales, or are they still shown as receivables?	<input type="checkbox"/>
What is the sales pattern year by year and month by month? Is the pattern seasonal or related to some business cycle (such as home construction or other uncontrollable variable)?	<input type="checkbox"/>
Are some goods on consignment, with the right of being returned for full credit?	<input type="checkbox"/>
Is there a record of warranty claims? How are warranty replacements accounted for? Are they treated as sales?	<input type="checkbox"/>
Are some fluctuations in sales due to lucky one-shot sales?	<input type="checkbox"/>
Is a particular salesperson critical to success?	<input type="checkbox"/>
Are sales regular or do they fluctuate? e.g. seasonality; in contracting.	<input type="checkbox"/>
Is the business seller's personal role critical to success?	<input type="checkbox"/>
Are you sure all sales are for this business, and that the seller hasn't added sales from another business?	<input type="checkbox"/>
Are there sales to or purchases from another division of the business?	<input type="checkbox"/>
Are you sure that the rate of stock turnover is in line with the industry practice?	<input type="checkbox"/>
Are you sure that the existing stock does not include slow-moving items from another business?	<input type="checkbox"/>
How often is stock genuinely counted? Is there a stock control system?	<input type="checkbox"/>
Will you be able to continue buying the products from existing suppliers?	<input type="checkbox"/>
Can you increase sales with current resources?	<input type="checkbox"/>

Buying a business

Operating costs	
Are all expenses shown?	<input type="checkbox"/>
Will you, as the new owner, have the same level of expenses?	<input type="checkbox"/>
Has the owner delayed some expenses such as equipment maintenance?	<input type="checkbox"/>
Are there annual expenses due soon?	<input type="checkbox"/>
Are there new or increased expenses you should anticipate?	<input type="checkbox"/>
Is an adequate salary allowed for work done by the owner and family in addition to profit margin?	<input type="checkbox"/>
Is interest paid for money loaned to the business by the owner?	<input type="checkbox"/>
Is depreciation claimed for the equipment?	<input type="checkbox"/>
Are staff adequately paid, and/or do staff members expect wage increases soon?	<input type="checkbox"/>
Have you included the ongoing costs of employees' entitlements, e.g. annual leave entitlements, superannuation?	<input type="checkbox"/>
Have you checked the terms and conditions of the lease and discussed these with your solicitor?	<input type="checkbox"/>
What effect would decreased or increased sales have on your costs?	<input type="checkbox"/>
At what level of sales and expenses does 'break-even' occur?	<input type="checkbox"/>
What expenses do similar businesses have?	<input type="checkbox"/>
Do you know what costs are allocated to which product, and how a change in product mix would affect costs?	<input type="checkbox"/>
Are some expenses prepaid by the seller?	<input type="checkbox"/>
Has inventory been accurately shown at true current value, for calculating actual cost of goods sold?	<input type="checkbox"/>
How sophisticated is the stock control, product costing and accounting systems – Modern? Up-to-date versions or manual?	<input type="checkbox"/>

Buying a business

Business Profitability	
How will increased or decreased sales affect profits?	<input type="checkbox"/>
Do you know the minimum and maximum likely sales?	<input type="checkbox"/>
Have you considered what effect inflation will have on sales or costs in coming years?	<input type="checkbox"/>
Are profits adequate to warrant taking the risk?	<input type="checkbox"/>
Have you analysed the financial records for the last three years, including balance sheets, profit & loss statements, tax returns, purchases and sales records and bank statements? Have adequate records been kept?	<input type="checkbox"/>
Has the seller's accountant verified the accounts provided?	<input type="checkbox"/>

Assets	
Have you projected the future cash flow and profitability of the business, based on past financial results?	<input type="checkbox"/>
What is the break-even point for sales?	<input type="checkbox"/>
Do you know exactly what you are buying and not buying?	<input type="checkbox"/>
Is there an asset register and a depreciation schedule?	<input type="checkbox"/>
Are there lists and have you checked them?	<input type="checkbox"/>
What are the book value, the market value and the replacement value of the fixed assets?	<input type="checkbox"/>
Is an independent valuation of assets available?	<input type="checkbox"/>
If inventory or work in progress is to be included, has a value been agreed upon? Have you agreed on how it will be adjusted at time of settlement, and within what limits?	<input type="checkbox"/>
Has any inventory been sold but not shipped?	<input type="checkbox"/>
Have you decided what intangibles you want — mailing lists, business name, exclusive rights, leases, etc? Can they be transferred?	<input type="checkbox"/>
If you need new licences, do you know how to get them?	<input type="checkbox"/>
Are you buying the accounts receivable? Do you have a listing of these accounts by age?	<input type="checkbox"/>
Are you accepting responsibility for any creditor payments?	<input type="checkbox"/>
Is the equipment in good repair? Is it efficient? Is it in danger of becoming obsolete or difficult to service? Could it be sold easily?	<input type="checkbox"/>

Buying a business

Assets (continued)	
Is any equipment leased? Do you know the terms and cost of each lease? Will you get ownership on maturity?	<input type="checkbox"/>
Will you have to build your own accounts receivable? Have you considered how this will affect your cash flow?	<input type="checkbox"/>
If the business is a limited company, are you buying the shares or the assets? Be sure to consult a lawyer or an accountant on this point.	<input type="checkbox"/>
Have you consulted an accountant on how to value the various assets?	<input type="checkbox"/>
Liabilities	
Are the assets you're buying free of debts and liens? If you are assuming some debts, do you know the exact terms of repayment? Is this in writing?	<input type="checkbox"/>
Have suppliers registered their on-going claims to assets/stocks? Personal Property Services Register (PPSR): www.ppsr.gov.au	<input type="checkbox"/>
Are there any contingencies, such as warranties or guaranteed debts or accounts?	<input type="checkbox"/>
Are you assuming any risk of being liable for the previous owner's actions (as might happen when buying a limited company)?	<input type="checkbox"/>
Will you be expected by customers to make refunds on warranties, even though you may not be legally obligated to do so, or risk losing their goodwill?	<input type="checkbox"/>
Has the previous owner received any payments in advance—deposits, etc?	<input type="checkbox"/>
Have you checked the business' credit rating with suppliers? Will you receive an established rating (or be treated as a new account)?	<input type="checkbox"/>
If buying part of a company or entering a partnership, do you know what limits there are on one person making a commitment on behalf of the business?	<input type="checkbox"/>
Will your cash flow from operations be enough to pay your debts?	<input type="checkbox"/>

Buying a business

The seller and you

Knowing more about the seller will help in your decision to purchase the business. The following are some useful questions to ask:

Are you confident you know why the business is for sale?	<input type="checkbox"/>
Is the seller being cooperative in supplying information?	<input type="checkbox"/>
Is the seller willing to sign a non-compete agreement? (Sometimes called a Deed of Restraint)	<input type="checkbox"/>
Will the seller train and help you after purchase?	<input type="checkbox"/>
Is this the type of business you were actually looking for?	<input type="checkbox"/>
Is the type and size of business compatible with your interests, experience, personality and capital?	<input type="checkbox"/>

The purchase agreement

Does the draft agreement cover the assets to be purchased, the liabilities to be assumed and when the business is to be taken over?	<input type="checkbox"/>
Are you ready to negotiate? Remember a business is worth no more than the highest price someone will pay, and no less than the lowest price the seller will accept.	<input type="checkbox"/>
In drafting your offer, have you included appropriate escape clauses covering obtaining finance, allowing full due diligence checking, inspecting all records, receiving necessary licences and rights, and other transfers?	<input type="checkbox"/>

Specialist support

Specialist support can help you understand the value of the business you are purchasing.

For example, an accountant can assist in reviewing the financial statements of the business and determine the value and turnover of the business, and a lawyer can help with legal processes relating to transfer and the legality of the business operation and ownership. Business consultant networks can provide experience based services.

Buying a franchise

Do your homework

If you are considering buying a franchise there are some things you must find out first. A legitimate franchising company is proud of its name and welcomes detailed investigations. A franchise can be a good way of investing, provided you do your homework. Beware of any company that refuses to answer your questions.

You should consult your accountant, your bank, a solicitor or a registered franchise adviser before you sign any contracts.

Franchise Council of Australia (FCA)

Telephone:
1300 669 030
www.franchise.org.au

What is the product or service like?	
How is the franchise's corporate image regarded in the market and by its existing and potential customers?	<input type="checkbox"/>
Would you normally buy the product or service for yourself?	<input type="checkbox"/>
How do you feel about committing yourself to long-term business with the products sold now?	<input type="checkbox"/>
How well does the product perform? Are there steady all-year sales or are there seasonal variations? Could you carry a slack period? Check that the product is not just a fad but will continue to enjoy a good market in years to come.	<input type="checkbox"/>
Can the franchise support a manager or will you be locked into day-to-day productivity?	<input type="checkbox"/>
How long has it been on the market and what is its market share? Can this be improved by your efforts?	<input type="checkbox"/>
Ask how the product or service fares in relation to its major competitors. Does the price and quality stand up to investigation?	<input type="checkbox"/>
Is the product packaged and merchandised well?	<input type="checkbox"/>
Who supports the advertising campaigns (franchisor or franchisee)? Are there commitments to support franchisees irrespective of sales? What are they?	<input type="checkbox"/>

The franchisor's history and reputation	
How long has the franchisor been in business? If the firm is new, ask about the product or concept testing, how long the trials were and any results. You should request annual reports that relate to the franchisor and research data to show how well the company has performed over time.	<input type="checkbox"/>
Is the firm ethical and does it have a good reputation? Does it have a strong record of honesty with its franchisees and customers? Who are the principals, what standing do they have in the community and what is their business experience?	<input type="checkbox"/>
Check the reports to see that the company is adequately financed and what the plans are for expansion. Check the policy on extending franchises in a locality to ensure your market share will be protected.	<input type="checkbox"/>
Take your time to research the background material. Have you been provided with a Disclosure Document? Ask other franchisees about their experience with the company.	<input type="checkbox"/>
Find out how selective the company is in choosing franchisees. Have they asked you for full details of your qualifications, business experience and financial standing?	<input type="checkbox"/>
What are the costs on both entering and exiting the Franchise Agreement? (Exit costs can be high).	<input type="checkbox"/>
Is the company a member of the Franchise Council of Australia (FCA)? www.franchise.org.au	<input type="checkbox"/>

Buying a franchise

What should you ask about the sales area?	
Where is the product or service sold now? What guarantee do you have that it will sell in your area?	<input type="checkbox"/>
How much competition is there from similar products in both franchised and nonfranchised outlets and how much of the market share do they hold?	<input type="checkbox"/>
Check how good trade is in the other outlets and on the quality of their product and service to see if your franchise will be competitive?	<input type="checkbox"/>

Defining the franchise area	
Examine how the franchise sales area is defined on a map and in the contract, and whether you will be given exclusive rights to a particular catchment area. Find out as much as you can about the characteristics of the area in relation to the appeal of your product. Some companies do market research before they offer a franchise. Check if this has been done.	
Does the population match the target market in terms of age, buyer preferences, spending and product image? How much demographic data is available?	<input type="checkbox"/>
Is the locality in a population growth area or in a declining neighbourhood? What are the general characteristics of the residents or those who work there? Are they the same kind of people or a mix of types and ages? What effect will population changes and suburb image have on your customer profiles?	<input type="checkbox"/>
Is there potential for trade growth in this area?	<input type="checkbox"/>
How many sales can you trap from passing trade?	<input type="checkbox"/>

Buying a franchise

The franchise contract

The franchise contract should explain fully all your rights and obligations under the franchise agreement that you make with the company. It should be comprehensive and down to earth. It should be in plain English. You should check the contract with a solicitor and your accountant.

The contract should benefit and protect both parties and you should ask what your rights are to terminate the contract and how much this would cost you.

Would you be able to sell the franchise if the franchisor consents and how much money, if any, from the sale of the business would go to the franchisor?	<input type="checkbox"/>
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A contract should list the terms under which the franchisor is entitled to exercise an option to take back or terminate the contract and the conditions under which this might occur.

If this happens, what compensation will there be for the goodwill that you have built up?	<input type="checkbox"/>
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Does the contract prevent you from establishing, owning or working in a competing business for some years after termination or sale of the franchise?	<input type="checkbox"/>
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Are the payments you have to make to the franchisor fully spelt out—do they include the franchise fee, any advertising levy and renewal fees? What other payments apply?	<input type="checkbox"/>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------

How much merchandise must be purchased from the company and how often? Are there any supplies that you can or must organise for yourself? What supplies from other sources would be prohibited?	<input type="checkbox"/>
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If there is a sales quota, this should be stated. Are you sure that you can make this volume of sales?	<input type="checkbox"/>
--------------------------------------------------------------------------------------------------------	--------------------------

Before signing the purchase contract check if you could establish a similar business more cheaply under another structure. What does the franchise contract offer you that is different? What are you really buying?	<input type="checkbox"/>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------

Buying a franchise

How much assistance will the franchisor offer to establish and maintain business?	
Does the contract spell out what continuing assistance you can expect from the franchisor? Who will provide what? From where? At what cost?	<input type="checkbox"/>
If the company runs a training school for you and the staff, is it properly equipped and does it run acceptable training? Find out about the reputation of the training offered before you enter the contract. What staff training skills will you need to acquire and does the franchisor offer this? Will this be at a cost to you or is it covered in the contract or by levy?	<input type="checkbox"/>
How much do you know about the operating systems that the franchisor uses? If they provide procedural manuals, Codes of Practice, a Quality Service Policy and any form of centrally generated accounting and record-keeping system, are these provided to you under the terms of the franchise? Does the franchisor give you training in the management and operational systems and is this at any cost to yourself? Have you been able to observe a system in full operation before you choose to sign up?	<input type="checkbox"/>
Does the franchise have a recognised Accreditation e.g. ISO 9001?	<input type="checkbox"/>
If there is franchisor finance available you should check the normal money market rates with your accountant and bank manager to make sure that it is competitive and you cannot get a better deal elsewhere.	<input type="checkbox"/>
What feedback does the company provide through centralising accounting and analysis of sales performance that could assist in planning?	<input type="checkbox"/>
Is there a benchmarking system in place?	<input type="checkbox"/>
How is the advertising and sales promotion handled? If there is any media promotion or use of celebrities will you be able to gain assistance through it?	<input type="checkbox"/>

If you are starting out in business or changing the nature of your business, you should be confident that you have chosen a business structure that suits you and your business. Three ways of organising and operating a business are provided to help you compare the advantages and disadvantages of each.

Choosing a business structure

There is no one “right” business structure; your choice will depend on your particular circumstances, so it is important that you make the decision that is right for you in conjunction with your professional advisers.

Sole proprietor

This is a person who owns and manages a business on their own, either under a business name or their own name.

What are the advantages of being a sole proprietor?

As sole proprietor, the owner has total control of the business management, the assets and the profits. The structure is simple and inexpensive to establish, with minimal legal requirements. The business can be discontinued easily or may be sold without needing the consent of others.

Record-keeping and reporting are required for taxation and legal purposes.

What are the disadvantages of being a sole proprietor?

Business development is limited to the expertise, capital resources and capabilities of the owner. The owner is taxed at the marginal personal rate. Unlimited legal liability applies to the owner and this can make other assets vulnerable to loss if the business fails or incurs heavy debts.

Partnership

This is an agreement between at least two, and as many as 20, people to contribute time, money and talent to make a profit from a continuing venture. They may trade under a business name or under the names of the partners. The rights of partners are set out in an agreement or the *Partnership Act*.

What are the advantages of trading in a partnership?

Partnerships are simple and relatively inexpensive to establish and can make more capital available from personal sources and financial services.

A wider pool of expertise is available and it is possible to divide the business operation by specialist roles. Partners can decide how the control of the business and division of profits is to be shared under formal agreements, which can also provide for future or unforeseeable difficulties.

What are the disadvantages of partnerships?

Partnerships have a life that lasts only as long as the original partners agree to trade together. Death or bankruptcy dissolves a partnership. If the venture is to continue it must be re-formed. Partners have both a joint and individual liability for debts and actions and there is unlimited legal liability for all partners.

It may be difficult to operate if personal or partnership problems arise, or there are disagreements over management authority. Transfer of ownership is complicated and taking on a new partner requires the consent of all parties.

Choosing a business structure

Proprietary company

A proprietary company has a separate legal identity from the people who own and manage the business. The Corporations Law governs the setting up and operation of a Proprietary Company.

What are the advantages of a proprietary company?

The liability of shareholders is limited because the company is seen as separate from the people involved. The personal assets of shareholders are not threatened by company losses or debts, except where shareholders are guarantors for the performance of the company.

There may be taxation advantages. Company taxation is at a fixed rate. A company is managed by appointed directors, secretaries and managers—all of whom have set responsibilities. A proprietary company is also able to have employees, who may include shareholders and directors.

Transfer of company ownership may be a simple process and the company does not have to be wound up upon the disability, death or retirement of any one of the people involved.

What are the disadvantages of a proprietary company?

Forming a company is complicated and may be expensive. It may take as long as six weeks to complete the legal requirements.

There is greater regulation by government under the Corporations Act and through the **Australian Securities and Investments Commission (ASIC)** (www.asic.gov.au / Telephone: 1300 300 630). More record-keeping and reporting is required. Formation of a company requires legal and accounting advice.

Business names, company names, domain names & trademarks

What is a business name?

A business name is the name under which a business operates. Registration identifies the owners of that business. Registration is compulsory throughout Australia, and must be completed before a business starts trading. Unlike trademarks, business names do not necessarily provide proprietary rights for the use of the trading name. Business names are administered throughout Australia by the **Australian Securities and Investment Commission (ASIC)**: (www.asic.gov.au / Telephone: 1300 300 630).

What is a trademark?

A trademark can be a letter, number, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or any combination of these. Once you register a trademark in Australia, you have exclusive legal rights to use, license or sell it.

Even if you do not register a trademark, you can still use it. There is protection against unauthorised use of your trademark under the trade practices or fair trading legislation and it is possible to take action under common law. However, trade mark registration is advisable because it can be an expensive and timeconsuming exercise to take action under common law.

Visit **IP Australia** (www.ipaustralia.gov.au / Telephone: 1300 65 1010), the Australian Government agency that administers intellectual property (IP) rights and legislation relating to patents, trade marks, designs and plant breeder's rights.

What is a company name?

A company name, or registrable body, must be registered with the **Australian Securities and Investment Commission (ASIC)**. If a company wishes to trade using a name other than its registered company name, it must register that trading name as a business name. Unlike trademarks, company names do not necessarily provide proprietary rights for the use of the trading name.

ASIC is responsible for the administration of company names (www.asic.gov.au Telephone: 1300 300 630).

What is a domain name?

A domain name is the unique name chosen for your website. It should be intuitive and easy to remember and use.

To register a domain name or to view the rules and policies for registration of domain names in com. au, visit the **.au Domain Administration Ltd (auDA)** website www.auda.org.au (Telephone: 1300 732 929).

You can also register a domain name as a word trademark, provided that it meets the requirements of the Trade Marks Act.

Business names, company names, domain names & trademarks

Choosing a business name

When you choose the name for your new business or company or select an internet domain name you are creating an identity for your business. Your identity distinguishes your goods and services from those of your competitors, so it is important that it is memorable, meaningful and protected.

Business, company and domain names are best protected when they are also registered as trademarks.

Registering a particular business name does not automatically entitle you to the same name as a trademark or domain name.

You should check a variety of registers to determine whether the name you want is available as a business or company name, trade mark and domain name before you begin the process of registering.

When choosing a new company or business name, you should:

- Search the company names and business names registers, which determine whether the name you have selected is in use. For company names and business names, you can search the **Australian Securities and Investments Commission (ASIC)** website: www.asic.gov.au (Telephone: 1300 300 630).
- Then, if you intend to use your company or business name as a trading name you should also undertake a trade mark (TM) check. If your new name is identical or similar to another person's registered trade mark, you could be sued for infringement. Even if you decide to operate without a registered trade mark, you should search the trade marks register to ensure you are not infringing someone else's trade mark. For links to the various IP search databases visit the **IP Australia** website: www.ipaustralia.gov.au (Telephone: 1300 65 1010).

Then, check the domain names registers. For links to the various domain names registers in Australia, visit the **.au Domain Administration Ltd (auDA)** website: www.auda.org.au (Telephone: 1300 732 929).

It is important to understand that if you register a particular business name and then later seek a trademark, you are not automatically entitled to the same name as a trademark. A domain name may not be available to you either. This means you need to check a variety of registers to determine whether the name you want is available as a business or company name, trademark and domain name.

Further information and contacts

IP Australia

Telephone: 1300 65 1010

www.ipaustralia.gov.au

Australian Securities and Investments Commission (ASIC)

Telephone: 1300 300 630

www.asic.gov.au

.au Domain Administration Ltd (auDA)

Telephone: 1300 732 929

www.auda.org.au

IP search firms and IP lawyers may also be able to help you. If you would like further information and forms for trademarks, please ask for a Trade Marks Application Kit from **IP Australia**.

Licences and permits

South Australia has a well-established system you can use to find out what licences and permits you require to start and run your business.

ABLIS website:

<https://ablis.business.gov.au/pages/home.aspx>

**South Australia
ABLIS customer
support desk:**

Telephone:
1800 188 018

**Australian Business Licence and
Information Service (ABLIS)**

If you are starting, operating, growing, or closing a business **ABLIS** helps you find the government licences, permits, approvals, registrations, codes of practice, standards and guidelines you need to know about to meet your compliance responsibilities.

ABLIS maintains direct, ongoing contact with all Commonwealth, state and local government departments and agencies, ensuring licence and associated information is current.

Visit the **ABLIS** website to find out which government licences and registrations apply to your business, and create and download a personalised report containing:

- A summary of state or territory, local and Australian government requirements relevant to your business.
- Information about licence fees, how to apply, periods of cover and renewals.
- How to access application and renewal forms.
- Where to go for more help and information.

Lodging applications

All licence applications and fees must be lodged directly with the department or agency nominated.



Entering a commercial tenancy agreement or lease is a very significant business decision. These are legally binding contracts that affect the value of a business.

Leasing commercial property

You should fully understand the terms and conditions of the agreement and what could go wrong, before you make a commitment. It is recommended that you obtain professional legal and financial advice before signing.

Before you sign

The following information provides some, but by no means all, of the issues that you should consider.

Are the premises suitable or approved for your intended business use?	<input type="checkbox"/>
Have you been offered a written agreement?	<input type="checkbox"/>
Are you dealing with the owner or a tenant?	<input type="checkbox"/>
Have you received sufficient information about the premises, such as a disclosure statement?	<input type="checkbox"/>
Do you know the space available for your exclusive use and access for your customers?	<input type="checkbox"/>
Do you know the duration of the lease?	<input type="checkbox"/>
Does the agreement include an option to renew?	<input type="checkbox"/>
What fit-out is provided and what changes are allowed?	<input type="checkbox"/>
Who owns and insures fixtures?	<input type="checkbox"/>
Is a bond/security required?	<input type="checkbox"/>
How often and on what basis can the rent be varied?	<input type="checkbox"/>
Who pays for repairs and maintenance for your rented area?	<input type="checkbox"/>
Can the lease be assigned to someone else?	<input type="checkbox"/>
What about other outgoings?	<input type="checkbox"/>
Are you also paying for common areas, general property insurance, rates, levies, advertising?	<input type="checkbox"/>
Can you vary your business during the term of the lease?	<input type="checkbox"/>
Is there a dispute resolution clause?	<input type="checkbox"/>
Are you aware of all your obligations to the landlord?	<input type="checkbox"/>
Are you aware of all the landlord's obligations to you?	<input type="checkbox"/>

Leasing commercial property

The agreement will be written in the interests of the landlord, but you should ensure any agreement reflects your interests and expectations. For example, the landlord may calculate rent according to floor space, but you may be interested in rent as a proportion of your turnover. Are the two compatible or is negotiation needed?

The *Retail and Commercial Leases Act 1995* (visit <https://www.legislation.sa.gov.au/index.aspx> for a copy of the legislation (Act and Regulations)) specifies obligations relating to leases relating to business premises at which goods or services are sold or provided to the public, where the rent does not exceed \$400,000 per annum. The Act covers issues such as:

- ensuring the premises are structurally suitable for the intended business purpose
- ensuring the lease is available in written form
- when the lease comes into effect
- reviews of current market rent
- maintenance costs.

Before leases covered by the Act are entered or renewed, the lessee must be given a disclosure statement for the lease. This statement is a written document outlining required information such as the permitted uses of the shop, the lettable area, access arrangements, the basis of the rent and a range of other items.

Do you agree with all the items in the disclosure statement? This will become the basis of your agreement.

If the premises are situated in a retail shopping centre, the disclosure statement must also state further information, including:

- the address of the retail shopping centre
- the number of shops in the retail shopping centre and their total lettable area
- the number of parking bays available for the use of customers of the premises
- the number of parking bays available for use by the lessee and the lessee's employees.

However, some activities may not be covered under the Act, such as wholesale distribution, sporting organisations or charities. The Act also does not cover some exclusions, such as leases of less than one month. If in doubt, you should obtain legal advice to ascertain your status.

Check that the (council) zoning of the property allows for the type of business that you want to operate.

Check that the power, water and other utilities that you will need are adequate to run your business.

Leasing commercial property

Disputes

Even if you have a well-structured lease agreement, disputes may occur. Check the disputes resolution clause in your lease as a priority.

For businesses covered under the *Retail and Commercial Leases Act*, a party (or former party) to a retail shop lease may apply to the **Office of the Small Business Commissioner (SASBC)** for mediation of a dispute arising from, or related to, the lease; or a dispute related to any other matter relevant to the occupation of the premises or to a business conducted at the premises.

In order to proceed, the other party must agree to the mediation process.

A fee is payable on an application under this section. Businesses not covered by the Act should seek legal advice regarding dispute resolution. Legal action in the Magistrates or District Court may be the only course of action. You should ascertain the likely cost of this action before you commence.

Further information

Visit the **Office of the Small Business Commissioner** website to download the *Retail and Commercial Leasing Guide* (includes a Checklist for Lessees and for Lessors):

www.sasbc.sa.gov.au

Toll Free: 1800 072 722


Telephone: +61 8 8303 2026

Email: sasbc@sa.gov.au

The **Law Society of South Australia** may also be able to provide initial legal advice for a small fee.

Telephone: +61 8 8229 0200

www.lawsocietysa.asn.au



Apart from your vision, drive, energy and managerial talents as a business owner, productive employees are perhaps your most valuable asset. But attracting, selecting, recruiting and retaining the right staff can be a major challenge in business.

Employing people

Before you employ someone

Do your homework – there are several things to check and consider before deciding to take on your first employee, such as working out the total costs involved, relative to productivity gains, and the impact on your profits.

Laws change frequently, and as an employer, it is important that you understand and keep up-to-date with legislation to ensure you meet your obligations towards your employees.

Follow the steps outlined in this guide and seek professional advice by consulting a business / recruitment / legal adviser and you will be ready to make the right decision.

business.gov.au www.business.gov.au have an online *Taking on an employee checklist*

What is the legal definition of 'employment'?

A work arrangement is classed as employment if you offer someone work on a full-time, part-time or casual basis and:

- pay the person a salary, wages or some kind of remuneration
- tell them the hours and conditions of work
- give them instructions on how the work is to be done and in what order.

Arrangements that try to get around the obligation of an employer (such as a cash-in-hand situation) could spark a serious dispute in the Industrial Court or under Workers Compensation legislation.

The effect on your bottom line

You should prepare a new operating budget and cash flow projection that takes account of all additional costs you will incur as an employer and which indicates the extra revenue to be generated from sales. Your accountant can help.

Questions and factors to consider:	
It can cost about \$5,000 in recruiting, downtime and training of a base-grade employee.	<input type="checkbox"/>
Will the employee be able to contribute immediately or will there be hidden costs?	<input type="checkbox"/>
Will the projected long-term gain repay the investment in the person? Case studies show that a trained employee is likely to stay with the original employer longer, minimising turnover costs.	<input type="checkbox"/>
How much of your own productive time will be spent on supervising the new employee?	<input type="checkbox"/>
Are you able to take advantage of government subsidies to offset the costs of training by taking on someone who is long-term unemployed, over 50 or with any other subsidy arrangements?	<input type="checkbox"/>
Will the person be taken on as an apprentice or a trainee and what will that mean in training commitments and training subsidies?	<input type="checkbox"/>
What cash reserves do you estimate will be necessary to meet the wages and oncosts until the employee is fully productive?	<input type="checkbox"/>
Are you aware of and have you catered for all the operating on-costs to be added to wage costs, such as employer-funded superannuation, workers' compensation insurance and leave loading?	<input type="checkbox"/>
Does taking on an employee mean that you will have to upgrade your premises to meet Work Health and Safety regulations and codes?	<input type="checkbox"/>
What costs will you have to meet to provide employee accommodation, such as work stations, ramps, plant and machinery, motor vehicle, tools and manuals?	<input type="checkbox"/>

Employing people

Employee skills and training

Once you have decided that you need support through an employee, you should decide what kind of employee your business needs. How you recruit and train a new employee will also depend on the age, experience and professional standing of the person you are looking for. Some employers advertise for an experienced 15–17 year old, not realising that many people stay at school until Year 12 and start work at 18.

Are you overlooking the potential value of an older person in trying to work out a cheap solution? Think of the long-term outcomes you want.

Advertising for an employee

If you have a clear picture in your mind of what you need from the employee it will help you frame your advertisements to attract the right person. To help you do this you should write out a Job and Person Specification that lists all the things you are looking for in your ideal employee.

Doing this will make it easier to talk to an employment agency and to interview prospective employees.

Questions and factors to consider:

What is the level of the work to be done? Do you need a qualified person, a trainee or an apprentice, or can the work be done by an inexperienced person with some training and coaching?	<input type="checkbox"/>
What kind of skills does the person need to do the job? Be realistic—list the technical skills, customer service skills and personal skills of the employee you are looking for.	<input type="checkbox"/>
Are there any special physical characteristics—for example, levels of health or fitness—required for the person to perform as required?	<input type="checkbox"/>
Will they need a health check? This could be important in protecting you from claims under workers' compensation.	<input type="checkbox"/>
What previous training or qualifications will they need to do the work?	<input type="checkbox"/>

Information about taking on apprentices and trainees is available from **Centrelink** and **Traineeship & Apprenticeship Services** (www.skills.sa.gov.au/apprenticeships-traineeships Telephone:1800 673 097).

Employing people

Terms and conditions of employment

If terms and conditions of employment are covered in an industrial award you will have to be sure your advertisement and other information is accurate and appropriate.

Further information and templates are available at:

Fair Work Commission

Telephone: 1300 799 675

www.fwc.gov.au

Questions and factors to consider:

Do you know what award covers the employee that you seek? You should check with your trade association, **Business SA** (www.business-sa.com / Telephone: (08) 8300 0000) or **SafeWork SA** (www.safework.sa.gov.au / Telephone: 1300 365 255) for more information. This information must be given to employees before you take them on.

Are you going to set any special and additional conditions? If you want your employee to meet special conditions you should put these in writing and have the employee sign them before hiring commences. Seek specialist advice when drafting these.

Enterprise bargaining refers to the conditions within an industrial agreement that apply only to that enterprise or business, and which the employer and employees agree to. If the employment you are offering is not covered by an industrial award, or if you want to have special employment conditions built into the arrangements, you should check the principles of enterprise bargaining with your trade or business association.

Business SA may also be able to help.

What about commission only arrangements? These may be applicable to the kind of employment you are offering. Again, seek advice before working out the terms and conditions of this so that both you and prospective employees know and can agree in writing, to the arrangement. This way there is no room for misunderstanding.



A number of matters should be considered when deciding whether a person is an employee or an independent contractor.

Employees and contractors

It is important to be aware that the incorrect categorisation can expose employers to expensive litigation, so if in doubt consult with your legal adviser.

It is not uncommon for some employers to categorise people who were formerly employees as independent contractors in the belief it leads to certain savings—e.g. in payroll tax and other statutory entitlements, which apply to employees but not to independent contractors.

The courts (industrial and civil) can review any written document purporting to set up an independent contractor agreement to discover the facts.

The incorrect categorisation of persons as independent contractors can expose employers to expensive litigation, where the status of a person's 'employment' is challenged, and lead to significant penalties.

How is the work performed?

Employee: An employee is normally engaged to do work on a continuing basis and at the direction of the employer.

Independent contractor: The contract or agreement will require the performance of the work or specific jobs.

Where is the work performed?

Employee: The work is normally performed at one of the places of business of the company or wherever the company otherwise directs.

Independent contractor: The work is normally performed at a place or places identified in the contract or agreement, or as otherwise agreed by the parties.

Employees and contractors

Who provides the plant, equipment and material?

Employee: Plant and equipment is normally provided by the employer, although an employee may provide certain hand tools. An employer usually provides materials necessary for the performance of work by the employee. It would not be usual for an employee to incur significant expenditure on materials, plant or equipment without reimbursement by the employer.

Independent contractor: The contract or agreement will specify who is required to provide the plant and equipment but it is usual for the independent contractor to supply the necessary equipment to enable him/her to carry out the work. The contract may be for the supply of labour only, or both labour and materials.

Who provides the floor space, power, telephone, etc?

Employee: These are not normally provided by the employer. An employee may, in some circumstances, provide a telephone facility for contact after normal working hours, but in this case the employer may reimburse some or all of the costs.

Independent contractor: The contractor is responsible, in most cases, for the supply of floor space, the cost of power and telephone services and other like matters.

Who controls the manner in which the work is to be performed?

Employee: An employer will normally direct, or have a right to direct, the manner in which the work is to be performed. The employee is obliged to obey the reasonable directions of the employer.

Independent contractor: An independent contractor normally has freedom in the way the work is performed, subject to the requirements in the contract, agreement or specifications.

Does the contract or agreement relate to a specified period within which a job is being performed or is it of continuing duration?

Employee: Work is normally performed on a continuous basis unless a fixed term contract is agreed upon, or if the employment is sporadic. It is to be done at times convenient to the employer.

Independent contractor: The contract or agreement would specify the work to be performed and the time within which it is to be completed.

What about leave of absence from work?

Employee: This is normally at the discretion of the employer but will be subject also to the employee's entitlement under an award, statute or enterprise agreement.

Independent contractor: Leave of absence does not apply to independent contractors.

Are there any payment entitlements over and above those relating to the work performed?

Employee: An employee may be entitled to payment for leave and holidays as prescribed by provisions of the relevant award, statute or by an enterprise agreement or contract of service, if one exists. Superannuation payments may apply.

Independent contractor: An independent contractor is not entitled to payment for leave or holidays.

Who has the responsibility for losses caused by poor workmanship or negligence?

Employee: These are the responsibility of employer. The employee may be disciplined for poor workmanship or negligence at the discretion of the employer because the employee has a fundamental obligation to exercise due skill and care.

Independent contractor: An independent contractor is responsible and has to bear any financial loss for poor workmanship or negligence. He/she is responsible for the reasonable performance of the work specified in the agreement.

Employees and contractors

Further information and templates are available at:

Fair Work Commission

Telephone:
1300 799 675

www.fwc.gov.au

There are also tax and super implications depending on whether your workers are employees or contractors. The

Australian Taxation

Office (ATO) has more information on determining the difference at:

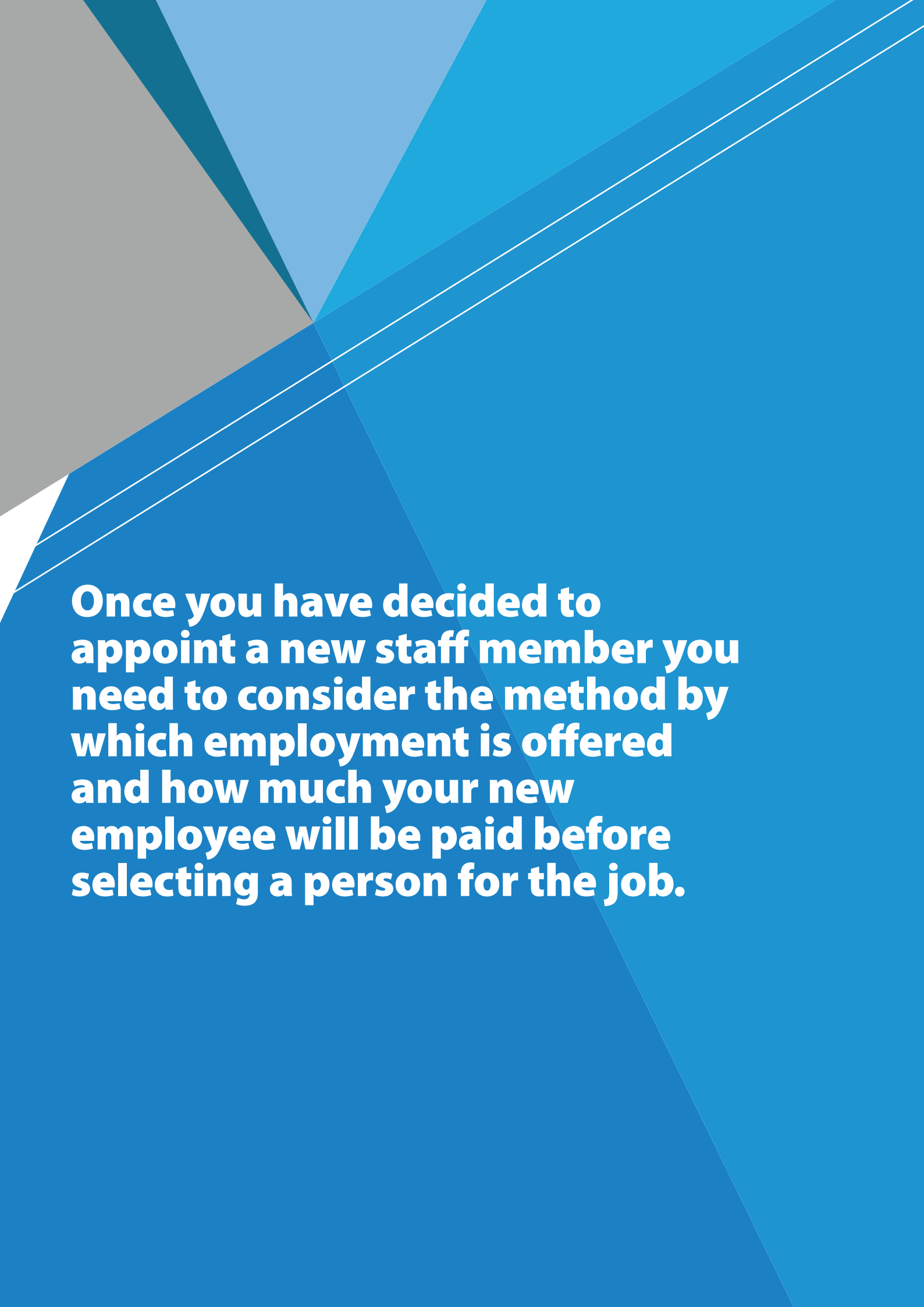
www.ato.gov.au/Business/Employee-or-contractor/

www.ato.gov.au/Calculators-and-tools/Employee-or-contractor/

Other matters to consider	
Is there a written contract/agreement?	<input type="checkbox"/>
Are the terms of the agreement supported by the facts?	<input type="checkbox"/>
Does the contract require work to be performed by a specified person?	<input type="checkbox"/>
Who is responsible for scheduling the work?	<input type="checkbox"/>
Is the relationship a continuing one or does it exist to achieve a specific result?	<input type="checkbox"/>
How is payment to be calculated?	<input type="checkbox"/>
Are invoices required to be submitted by the person performing the work?	<input type="checkbox"/>
How can the contract or agreement be terminated?	<input type="checkbox"/>
What remedy is available if the person performing the services fails to carry out the work in a satisfactory manner?	<input type="checkbox"/>
Is Workers Compensation insurance provided by the independent contractor?	<input type="checkbox"/>
Is the person performing the work, in his/her activities, part and parcel of the employer's business or merely an accessory to it?	<input type="checkbox"/>
Does the person performing the work have the right to refuse the performance of a particular task or job?	<input type="checkbox"/>
Has the person performing the work the opportunity to profit from sound management in performance of the work?	<input type="checkbox"/>

If it is determined by using the aforementioned criteria that the person is an independent contractor, it is advisable to have that arrangement in a written contract/ agreement. That agreement should incorporate at least the following matters:

The independent contractor will supply the necessary equipment, tools and materials, where appropriate, to enable performance of the work under a work program jointly agreed between the parties to the agreement.	<input type="checkbox"/>
The business will pay the independent contractor the amount agreed for the work performed by the independent contractor, and payment will be made upon completion of the work or by appropriate progress payments. The independent contractor will be responsible for payment of all government taxes.	<input type="checkbox"/>
The independent contractor is to start and complete the work at times agreed.	<input type="checkbox"/>
The independent contractor is to take out independently the necessary insurance cover (which may include work and sickness, health or disability insurance) in respect of himself/ herself and any employee.	<input type="checkbox"/>
ReturnToWorkSA (www.rtwsa.com / Telephone: 13 18 55)	
The independent contractor is to keep books, receipts and records where expenditure is outlaid for the work to be performed. Evidence must be produced to the company before the independent contractor is reimbursed for such expenditure.	<input type="checkbox"/>



Once you have decided to appoint a new staff member you need to consider the method by which employment is offered and how much your new employee will be paid before selecting a person for the job.

Employment contracts and remuneration

Employees can be hired on a part-time or full-time basis, in a temporary, casual capacity or as 'permanent' staff, or may instead be offered a fixed-term employment contract. Temporary assignments are generally brief in duration and employment agencies are commonly used to find such staff. Casual employment (where an employee's working hours may be erratic and continuing employment uncertain) may be the best solution if an employer doesn't wish to commit to a permanent arrangement.

A fixed-term employment contract may be used where there is a job of a defined duration to be done, resources are limited, or where other factors make it desirable to agree on the duration of employment at its outset. Fixed, short-term employment contracts can be offered directly to an employee or through an employment agency.

Employment contracts

An employment contract is an agreement (usually written) between an employer and an employee that describes the terms and conditions of employment.

An employment contract may be short or long, simple or complicated, and may be drawn up by a legal advisor. However, it must comply with legislation such as awards.

An award establishes a set of minimum conditions for employers and employees across Australia who work in the same industry or occupation.

A letter of offer of employment may have the force of a contract in that when it is accepted it will bind the employer and the employee to act in certain ways.

What are the benefits of a contract?

A written employment contract can provide benefits such as:

- greater certainty in the event of either party wishing to terminate employment
- greater job security for an employee in the event that there are changes in the status or leadership of the organisation
- a focus to the employee to achieve outcomes in a defined timeframe, such as in a fixed-term contract
- greater understanding of what is expected of employees, including working hours, codes of behaviour and confidentiality issues
- clearly establishing employer and employee rights, responsibilities and entitlements.

Does my business need employment contracts?

If you are not sure whether a written employment contract is the best arrangement for your business, contact a legal advisor or recruitment consultant or visit: www.fwc.gov.au

Employment contracts and remuneration

Hiring workers for the first time:

If you haven't hired workers in your business before, use this checklist to make sure you're ready (this checklist is available on the **Australian Taxation Office (ATO)** website: www.ato.gov.au/Business/Your-workers/Hiring-workers-for-the-first-time---checklist/)

- Check that the workers are legally allowed to work in Australia, and whether they will be employees or contractors.
- Register with the ATO for PAYG withholding straight away if:
 - you're hiring employees, because you'll need to withhold tax from their wages.
 - you'll need to withhold from payments to contractors – for example, because they don't quote an ABN or have a voluntary withholding agreement with you.
- Select a default super fund if you're hiring workers who are eligible for super (most employees and some contractors are eligible).
- Set up a system to manage payments and keep records of your workers.
- Register for fringe benefits tax (FBT) if you'll be providing fringe benefits to your employees or their associates.
- Check if you need to register for payroll tax (www.ato.gov.au/business/payg-withholding/registering-for-payg-withholding/payroll-tax/) with your state or territory revenue office. You'll only need to do this if your total payments to employees and certain contractors exceed the threshold in your state or territory.

Superannuation

Generally, if you pay an employee \$450 or more (before tax) in a calendar month, you have to pay super (on top of their wages). You must also pay super for some contractors (www.ato.gov.au/business/super-for-employers/working-out-if-you-have-to-pay-super/contractors/), even if they quote an Australian Business Number (ABN).

The minimum super you must pay each quarter for each eligible employee is called the super guarantee (SG). Currently the SG is 9.5% of their ordinary time earnings (OTE).

www.ato.gov.au/Business/Super-for-employers/Working-out-if-you-have-to-pay-super/

www.ato.gov.au/Business/Super-for-employers/How-much-to-pay/

You must pay super into each worker's nominated super fund. There are compulsory standards for sending super information and payments (these standards are called "SuperStream"). Small employers (19 or fewer employees) must meet the SuperStream standard by 30 June 2016. The ATO's "Small Business Superannuation Clearing House" is a free service which is an easy way for most small businesses to meet the SuperStream standards.

www.ato.gov.au/super/superstream/employers/employer-checklist--a-step-by-step-guide/

www.ato.gov.au/business/super-for-employers/paying-super-contributions/small-business-superannuation-clearing-house/

Employment contracts and remuneration

What should be included in a letter of offer of employment?

An offer of employment can be a contract that both parties sign, based on agreement on the conditions within the contract.

Whether you decide to offer a detailed employment contract or not, it is a good idea to provide a letter of appointment.

This letter should contain:	
the job title	<input type="checkbox"/>
a brief description of the role or what is expected	<input type="checkbox"/>
details of the agreed salary	<input type="checkbox"/>
hours of work	<input type="checkbox"/>
a reference to any applicable award	<input type="checkbox"/>
superannuation, annual leave, long service leave and sick leave entitlements	<input type="checkbox"/>
any overtime requirements	<input type="checkbox"/>
the notice required in the event of termination by either party	<input type="checkbox"/>
any confidentiality clause	<input type="checkbox"/>
any probation period	<input type="checkbox"/>

Rates of pay

Employers are often unsure how much to pay a new recruit, including a junior recruit. It may be that the role is a new one in the company, or the employer may be concerned about overpaying or underpaying relative to prevailing market rates.

An award or other industrial instrument provides the minimum wages for position classifications. Most employers understand the need to be competitive with remuneration. Paying too little makes it difficult to attract good staff. Paying too much erodes profitability.

Generally any employee must be paid at least the minimum award rates, so an employment contract cannot be used as a way of paying someone a lower rate—even if both of you agree to it at the time.

Tax and super responsibilities for your employees

When you take on employees, you must withhold tax from their wages. In most cases, you will also have to pay super contributions for them. You also need to pay Fringe Benefits Tax if you provide benefits to your employees or their associates.

www.ato.gov.au/business/your-workers/hiring-workers-for-the-first-time---checklist/

Information about award rates and coverage, and appropriate payment for junior employees, is available at:

Fair Work Commission

Telephone: 1300 799 675

www.fwc.gov.au

Employment contracts and remuneration

Attracting and keeping valuable staff

Attracting staff

Methods and tools to attract the type of employee you want include:

- providing information about your organisation, particularly on the internet (and perhaps social media)
- highlighting the benefits of employment with your organisation in advertisements and interviews
- carefully designing and wording advertisements to attract prospective employees
- offering attractive salary packages
- providing training opportunities and a career path
- incentives or commissions for performance or loyalty
- highlighting beneficial terms and conditions
- offering flexibility in where and/or when services can be provided.

Keeping valuable staff	
regularly appraising performance and providing feedback	<input type="checkbox"/>
rewarding with praise, not just money	<input type="checkbox"/>
clearly defining jobs, roles, responsibilities and other expectations	<input type="checkbox"/>
providing new challenges	<input type="checkbox"/>
regular salary reviews	<input type="checkbox"/>
listening to employees' aspirations and ideas	<input type="checkbox"/>
providing ongoing training and development opportunities	<input type="checkbox"/>
offering promotions or internal transfer opportunities	<input type="checkbox"/>
offering a share of profits	<input type="checkbox"/>

Insurance

It is good business management to protect the assets of your business (including you as the owner) against unforeseen events. This protection usually comes in the form of insurance.

An insurance policy may be broadly defined as a contract under which the insurer agrees, in return for a premium, to indemnify the insured for loss suffered as a result of the occurrence of specified events that cause the destruction, loss or injury of something in which the insured has an interest.

This section describes the types of insurance coverage that you may wish to consider in your business.

For detailed advice and information on the type and cost of insurance to best suit your business, you should consult reputable insurance agents or brokers.

Alternatively, your industry association may refer you to an agent who can provide the right insurance.

The final choice of insurance may be made by balancing the costs of the insurance against the risks.

Business insurance

There are many types of business insurance that apply to different businesses and their activities. As a business owner you should ensure you have considered all the forms of insurance that might apply, and take out those you require, as a form of risk management.

Building

Building insurance is generally only required if you own the premises in which your business is located.

If you are conducting a business from your home, the insurer of your home should be notified so that the policy can be noted and the premium adjusted if necessary.

If you are renting your home and using it for business, check that your lease permits this.

It is common for a tenant to be required to insure plate glass against breakage in leased premises.

Contents

Contents insurance should cover all plant, equipment, fixtures and fittings as well as business stock.

Cash

It is possible to insure against theft of cash held on the business premises, in transit or held at home.

Loss of profit

If your business is unable to trade due to the occurrence of an insurable event, 'loss of profit' insurance can—with adequate evidence—provide for loss incurred during the period of non-trading.

Public liability

Public liability insurance provides cover against accidental injury to clients, customers and visitors at or to your business premises. This cover is considered essential to all businesses; cover of up to \$5 million is normal for a small retail operation.

Product liability

Product liability insurance indemnifies you as a manufacturer and/or distributor against injury caused by your product or through the use of your product. It should be noted that if you are an importer or manufacturer you are legally responsible for the products you sell.

Professional indemnity

Professional indemnity insurance covers professionals and experts against negligence in delivering their services, advice and information to clients.

Motor vehicle

Vehicles owned and used by the business should be insured, as would your own personal vehicles. If you are using your personal vehicle in the business, the insurer should be notified so that the policy can be noted.

Insurance

Key person

It is common in small business for the successful operation of the business to hinge on the well-being of one person. Insurance cover can be taken against loss of income, in the event of injury, disability or death to the key person. The money provides financial support until a replacement skilled employee is found and trained which may take many months.

Partnership insurance is also available – life assurance owned by one partner on the life of another may enable the survivor to purchase the deceased's share of the business without having to sell or close the business.

SafeWork SA is the legislative body for all work, health and safety requirements in SA. Their website provides information on your legal requirements for health and safety in the workplace.

For more information visit: www.safework.sa.gov.au (Telephone: 1300 365 255).

Employees – Workers' Compensation

Accident and sickness insurance cover must be provided for employees through an approved insurer.

Self-employed persons should obtain accident and sickness insurance through a private insurer.

ReturnToWorkSA provides insurance that protects South Australian businesses from the costs of a work injury.

In the event of a work injury, you and your worker will be covered for essential support and services to minimise disruption to your business and to help your worker to recover and stay at work or return to work as soon as possible.

For further information contact: **ReturnToWorkSA** (www.rtwsa.com / Telephone: 13 18 55).

Superannuation

It is important for all people to provide for their retirement years, including business owners. Superannuation is generally used to provide for a retirement plan. For information about the best superannuation fund for your industry sector visit **Industry SuperFunds**: www.industrysuper.com

Emergency services

In the event of an emergency within your business:

Ambulance service

In case of a medical emergency: Call 000
www.saambulance.com.au

Fire Service

In case of a Fire emergency: Call 000

Can also provide information about the safety of your premises before signing a lease.

SA Metropolitan Fire Service (MFS)

www.mfs.sa.gov.au

SA Country fire Service (CFS)

www.cfs.sa.gov.au

Police

In case of an emergency: Call 000

If you require assistance from Police: Call 131 444
www.police.sa.gov.au

Taxation

To be an effective business manager and maintain a good relationship with your accountant or business adviser, you need to obtain a working understanding of taxation terminology and become familiar with the records you need to keep and the taxes that affect your business.

For further information on your taxation requirements visit the **Australian Taxation Office (ATO)** website at www.ato.gov.au (Telephone: 13 28 66)

It is recommended that you engage an accountant when buying or establishing a business. There are many suitable companies in South Australia with the relevant experience and that can advise you.

Which taxes affect you

Under Australian taxation law, you are required to keep records for all transactions so that your income and expenditure can be determined. Such records must be kept for at least five years and, in the case of records relating to fringe benefits tax, for seven years.

For capital gains tax purposes, records covering the date and cost of acquisition and disposal of each asset, as well as records of any improvements to the asset, must be kept for five years after the disposal of the asset. These records could include copies of contracts and invoices from lawyers, agents, valuers and other parties.

It is important that you establish a timely and cost-effective accounting system that is appropriate for the nature and scale of your business. Talk to your accountant or business adviser about what arrangements are best for your business and circumstances.

The following checklist identifies the records that may be appropriate for your business. Tick yes or no if applicable to your business.

Checkpoint	Y	N	Notes
Bank statements	<input type="checkbox"/>	<input type="checkbox"/>	
Cash book (written or electronic)	<input type="checkbox"/>	<input type="checkbox"/>	
Cash register tapes	<input type="checkbox"/>	<input type="checkbox"/>	
Cheque butts	<input type="checkbox"/>	<input type="checkbox"/>	
Creditors' listing	<input type="checkbox"/>	<input type="checkbox"/>	
Debtors' listing	<input type="checkbox"/>	<input type="checkbox"/>	
Deposit books	<input type="checkbox"/>	<input type="checkbox"/>	
Invoices	<input type="checkbox"/>	<input type="checkbox"/>	
Journals	<input type="checkbox"/>	<input type="checkbox"/>	
Lease agreements	<input type="checkbox"/>	<input type="checkbox"/>	

Taxation

Checkpoint (continued)	Y	N	Notes
Loan agreements	<input type="checkbox"/>	<input type="checkbox"/>	
Minutes of partners' or directors' meetings	<input type="checkbox"/>	<input type="checkbox"/>	
Quotation books	<input type="checkbox"/>	<input type="checkbox"/>	
Receipts	<input type="checkbox"/>	<input type="checkbox"/>	
Stock sheets	<input type="checkbox"/>	<input type="checkbox"/>	
Wage books	<input type="checkbox"/>	<input type="checkbox"/>	

Maintaining financial records

A range of taxes may apply to your business. Check with your accountant or business adviser to determine which will affect you. Tick yes or no if applicable to your business.

Checkpoint	Y	N	Notes
Capital Gains Tax (CGT)	<input type="checkbox"/>	<input type="checkbox"/>	
Fringe Benefits Tax (FBT)	<input type="checkbox"/>	<input type="checkbox"/>	
Goods and Services Tax (GST)	<input type="checkbox"/>	<input type="checkbox"/>	
Income Tax	<input type="checkbox"/>	<input type="checkbox"/>	
Land Tax	<input type="checkbox"/>	<input type="checkbox"/>	
Pay-As-You-Go (PAYG) withholding Tax	<input type="checkbox"/>	<input type="checkbox"/>	
Payroll Tax	<input type="checkbox"/>	<input type="checkbox"/>	
Stamp Duty	<input type="checkbox"/>	<input type="checkbox"/>	
Superannuation Guarantee Levy	<input type="checkbox"/>	<input type="checkbox"/>	

Taxation

Tax deductions

You can claim tax deductions for most costs you incur in running your business but there are exceptions. You cannot claim private expenses. If you've purchased assets to use in your business, there are special rules for the way you claim a deduction for those costs.

Use the following checklist of common expenses, in conjunction with your accountant or business adviser, to determine which expenditures are likely to apply to your business.

For further details please see: www.ato.gov.au/business/income-and-deductions-for-business/

Tick yes or no if applicable to your business.

Checkpoint	Y	N	Notes
Accountancy fees	<input type="checkbox"/>	<input type="checkbox"/>	
Advertising	<input type="checkbox"/>	<input type="checkbox"/>	
Bank charges	<input type="checkbox"/>	<input type="checkbox"/>	
Computer supplies	<input type="checkbox"/>	<input type="checkbox"/>	
Depreciation of plant, equipment, motor vehicles, etc.	<input type="checkbox"/>	<input type="checkbox"/>	
Electricity	<input type="checkbox"/>	<input type="checkbox"/>	
Hire or lease payments	<input type="checkbox"/>	<input type="checkbox"/>	
Insurance	<input type="checkbox"/>	<input type="checkbox"/>	
Interest payable on borrowed funds	<input type="checkbox"/>	<input type="checkbox"/>	
Motor vehicle expenses	<input type="checkbox"/>	<input type="checkbox"/>	
Postage	<input type="checkbox"/>	<input type="checkbox"/>	
Printing and stationery	<input type="checkbox"/>	<input type="checkbox"/>	
Rates and taxes	<input type="checkbox"/>	<input type="checkbox"/>	
Rental of premises	<input type="checkbox"/>	<input type="checkbox"/>	
Repairs to plant and equipment used in the business	<input type="checkbox"/>	<input type="checkbox"/>	
Salary and Wages	<input type="checkbox"/>	<input type="checkbox"/>	

Taxation

Checkpoint (continued)	Y	N	Notes
Staff training expenses	<input type="checkbox"/>	<input type="checkbox"/>	
Subcontracting costs	<input type="checkbox"/>	<input type="checkbox"/>	
Subscriptions to professional journals and industry bodies	<input type="checkbox"/>	<input type="checkbox"/>	
Superannuation	<input type="checkbox"/>	<input type="checkbox"/>	
Telephone and other communication costs	<input type="checkbox"/>	<input type="checkbox"/>	
Tools	<input type="checkbox"/>	<input type="checkbox"/>	
Travelling and accommodation			

Taxation and business structures

In the case of a sole proprietor, the income tax rate for individuals applies. If your business trades as a partnership, each partner's share of partnership income is taxable. If the partner is a person, individual tax rates apply. The partnership itself is not taxed. Where you elect to trade as a proprietary company, net profits are taxed at the company tax rate and the income tax free threshold does not apply.

Tax File Number (TFN)

A tax file number is a unique number issued by the **Australian Taxation Office (ATO)** for each taxpayer. You will need a tax file number if your business is lodging its first tax return, makes payments to an employee or contractor, receives payments as a contractor or pays fringe benefits tax.

Australian Company Number (ACN)

Every company in Australia has been issued with a unique, nine-digit Australian Company Number (ACN) that must be shown on a range of documents. The purpose of the ACN is to ensure adequate identification of companies when transacting business. New companies are issued with numbers by the **Australian Securities & Investment Commission (ASIC)** (www.asic.gov.au / Telephone: 1300 300 630) upon registration.

Australian Business Number (ABN)

The ABN is a unique number that identifies your business or organisation to government and community. If you are running a business you will need an ABN.

Applying for an ABN is free, but there are requirements you have to meet to be entitled. If you don't have an ABN, other businesses will be required to withhold tax from payments made to you. You can register for an ABN and find out more at the **Australian Business Register (ABR)** website: www.abr.gov.au (Telephone: 13 92 26).

Further information: www.ato.gov.au/Business/Registration/

Taxation

Goods and Services Tax (GST)

Goods and services tax (GST) is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia. Where a business is registered, GST must be added to the invoiced price of taxable supplies. The supplier collects GST from the customer. Only businesses registered for GST purposes can collect GST.

As a small business, you must register for GST if any of the following apply:

- your GST turnover (gross income minus GST) is \$75 000 or more
- you provide taxi or limousine travel, regardless of your GST turnover – this applies to both owner drivers and if you lease or rent a taxi
- you want to claim fuel tax credits.

Further information:

www.ato.gov.au/Business/GST/

www.ato.gov.au/Business/GST/Registering-for-GST/

Pay As You Go (PAYG) Instalments

Pay as you go (PAYG) instalments is a system for making regular payments towards your expected annual income tax liability. It only applies to you if you earn business and/or investment income over a certain amount. The **ATO** will automatically enrol you for PAYG Instalments when your income reaches the threshold. You can also start paying PAYG instalments voluntarily.

Further information:

www.ato.gov.au/general/payg-instalments/

Pay As You Go (PAYG) Withholding Taxation

Pay as you go (PAYG) Withholding is the tax collected or withheld from payments employers make to employees. This is passed onto the **ATO** on behalf of their employee and reported on the employees end of year payment summary.

Further information:

www.ato.gov.au/Business/PAYG-withholding/

Fringe Benefits Tax (FBT)

Fringe benefits tax (FBT) is a tax employers pay on certain benefits they provide to their employees, including their employees' family or other associates. The benefit may be in addition to, or part of, their salary or wages package.

Further information:

www.ato.gov.au/general/fringe-benefits-tax-%28ftb%29/

Capital Gains Tax (CGT)

Capital gains tax is a tax imposed on any gains made on the disposal of an asset. There are special provisions for relief from CGT where the disposal of an asset occurs as the result of restructuring a business into a company. There are also special concessional provisions that relate to the disposal of a small business.

If you have a capital gain, you must report it in your income tax return. The CGT will be calculated and shown in your income tax assessment.

Before you purchase or sell an asset or a business, it is wise to seek professional advice to see if you qualify for any relief provisions. Professional advice should also be sought to help you plan ahead and minimise the tax payable.



Starting a business in South Australia

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