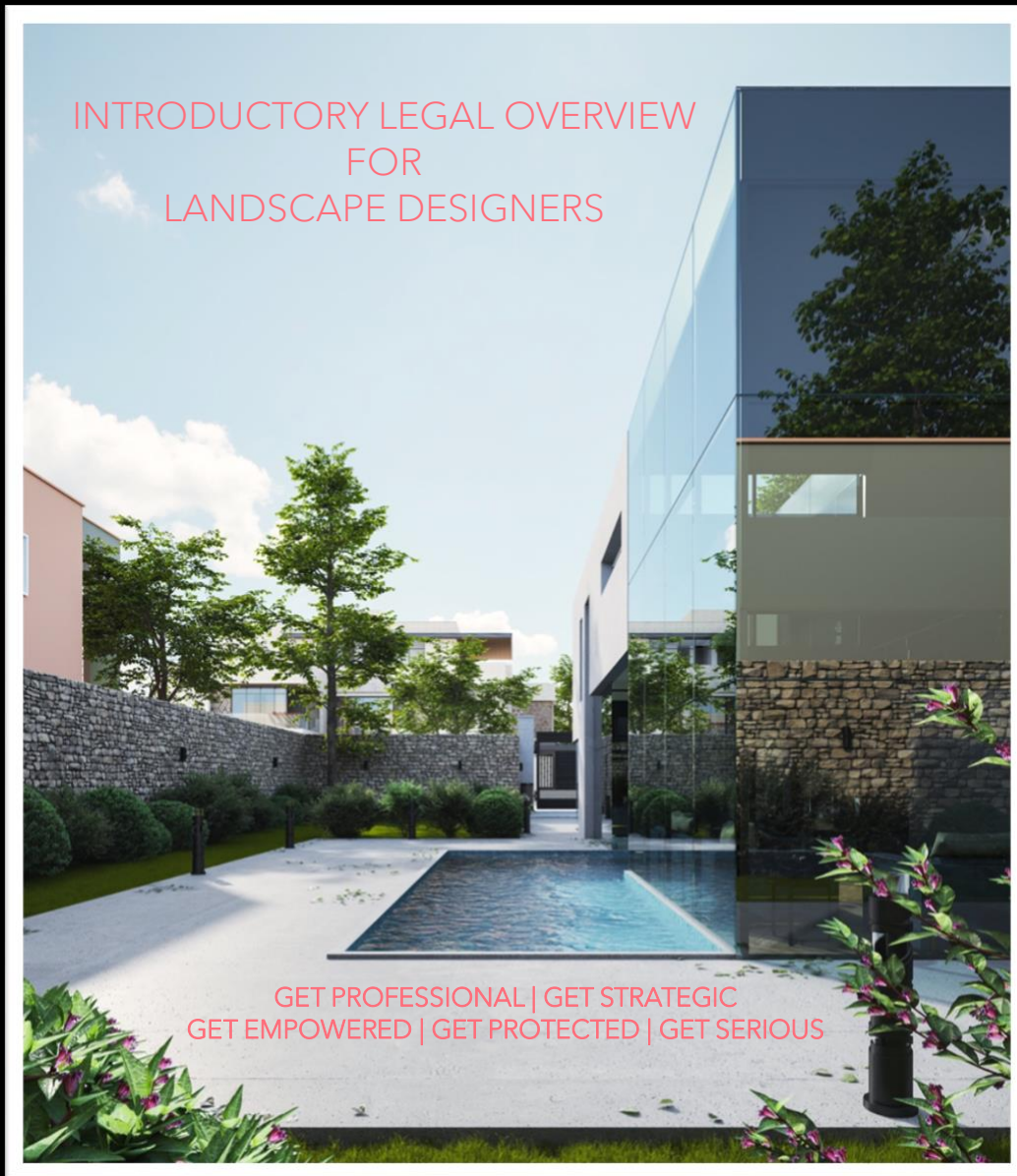


LAW





INTRODUCTORY LEGAL OVERVIEW
FOR
LANDSCAPE DESIGNERS

GET PROFESSIONAL | GET STRATEGIC
GET EMPOWERED | GET PROTECTED | GET SERIOUS

We are truly thrilled to be given the opportunity to offer our support and assistance to LDI and its members.

By way of introduction, we have prepared this essentials guide and checklist for you. It is by no means exhaustive, but it will give you some relevant points to consider as designers and business owners.

We cannot emphasise enough how important investing in having the correct documents, professional contracts, and legal protections are, regardless of the size, structure, turnover, or amount of time you have been trading, no business should operate without them. Aside from your liability, protecting your designs, and getting paid properly, minimising your risk to maximising your ROI, from a strategic and professional perspective, it is a game changer on every level, it's just a case of you cannot and do not know, what you don't know.

Accordingly, it is our pleasure to offer all members the opportunity to either submit their current working document for a complimentary express (brutally honest 😊) review. In addition, if there is anything we can assist you with or answer any questions you have, please don't hesitate to get in touch.

We look forward to connecting with and supporting you.

Yours faithfully,

Dari Levy BA.LLB.LLM (Spec.Intl.Law)
Director | Principal Solicitor

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BUSINESS SET UP

It is important to decide what business structure you're going to operate under.

Consider whether it matches your business plans and best reflects your goals for the future. You may need to consider changing your structure to accommodate the growth of your business at a later stage.

There are 3 main options; companies, partnerships and sole traders each with disadvantages and advantages. You should consider factors such as asset, tax, debt and practical operations. It is important to discuss with a lawyer or accountant about what is best for you.

	SOLE TRADER	PARTNERSHIP	SMALL PROPRIETARY COMPANY
KEY FEATURES	<ul style="list-style-type: none">• Simplest and most inexpensive form of business structure.• A sole trader operates under their name or another name.• If the name registered under another name it should be registered under Business Names Registration Act 2011 (Cth)	<ul style="list-style-type: none">• Two or more people going into business together to earn a profit.• The partners agree to contribute labour, skills or money to the business.• Partners share the business management responsibilities, profits and losses.• Partners in partnership work in a relationship no as a separate legal entity.	<ul style="list-style-type: none">• A company is a separate legal entity that has assets in its own name.• Company owned by shareholders and managed by directors.• Shareholders can be directors.• Company can sue and can be sued.• Directors can be held legally liable for negligence for the actions and debts of the company.• For a company to be created, it must be incorporated as an entity under the Corporation Act 2001. And to registered with ASIC.• A company can be registered as proprietary or public.• Proprietary companies: have 50 or less non-employee, shareholders and not allowed to offer shares to the public. At least one shareholder and one director must live in Australia.• Public companies: have over 50 non-employee shareholders and can offer shares on the stock exchange.

	SOLE TRADER	PARTNERSHIP	SMALL PROPRIETARY COMPANY
KEY ADVANTAGE	<ul style="list-style-type: none"> • Complete control and full flexibility for management • The owner receives full profits • The owner can easily change the business structure • Few legal and tax formalities required when setting up 	<ul style="list-style-type: none"> • Easy and inexpensive to set up. • Easier to raise capital for the business. • Management responsibilities are shared. • The combination of knowledge, skills and finances can contribute to a better product or service. • The partnership is easy to exit, dissolve and recover the share 	<ul style="list-style-type: none"> • Easy to raise a lot of capital for the business. • Shareholders own assets are protected and can't be used to pay company debts. • Profits can either be reinvested in the company or divided between shareholders. • Easy to sell. • Easy to pass on ownership. • Can carry forward losses indefinitely to offset against future profits. • A company is good for high-risk business ventures.
KEY DISADVANTAGE	<ul style="list-style-type: none"> • The owner is personally liable for any debt incurred by the business • The owner's assets such as the owner's home could be under threat 	<ul style="list-style-type: none"> • Partners are personally and equally liable for any debt incurred by the business. • The partners' assets such as their home could be under threat. • If the business fails and one of the partners can't afford to pay their share of the debts, the other partner is responsible to cover the shortfall. • The partners are equally liable for debts which they may not even know about that incurred by the other partner. • Ownership is hard to be changed. • Disputes over managing the business and profit sharing may arise. 	<ul style="list-style-type: none"> • Hard and expensive to set up and to maintain. • Shareholders have limited or no control over company affairs. • Shareholders are required to provide a complex reporting. • Losses cannot be distributed between shareholders.
LIABILITIES INCOME TAX RATE	<ul style="list-style-type: none"> • The owner's use his own tax file number to lodge the income tax return however, the owner can apply for an Australian business number to use for the business. • The tax rates are the same to the owner personal income. After claiming a deduction for business expenses, the owner has to include the total business income alongside any other income in the owner individual tax return. • The owner also has to pay quarterly instalments that contribute to the amount of tax that the owner expects to pay at the end of the financial year. 	<ul style="list-style-type: none"> • The partnership will have its own tax file number as well as an Australian Business number • Partners needs to lodge an annual partnership tax return alongside their personal tax return • Partners must prove all income earned by the partnership however they can claim deductions for expenses related to the business. • The partnership is not a separate legal entity therefore, it does not pay income tax on any income earned, the partners to pay the tax that is calculated based on the share that they each received from the net partnership income. 	<ul style="list-style-type: none"> • The company is totally liable for its own tax income and It is not connected to any individual income tax. • Any profit earned belongs to the company • Companies required to lodge annual company tax returns which provide in detail: the company's income, deductions and income tax. • Companies pay a standard 30% in come tax on the company profits. • Company has no tax-free threshold. • Company need an Australian Company Number (ACN) Alongside a Tax file number and Australian Business Number. • The company's ACN must appear on every document issued.

LEGAL DOCUMENTS

Having professionally drafted agreements is by far the most underrated business asset, in fact, most business owners don't even regard a brilliant contract as an asset, not believe that drafting one requires a specialist trained skill.

However if someone offered you to invest in a business asset which paid itself off over the life of your business at around fifty cents per client; that would protect your business, mitigate your exposure to risk; ensure you don't waste valuable time and stress dealing with issues; ensure you don't have to write off your time or costs to resolve disputes; prevent you from being liable for things you are not even the slightest bit responsible for; deter clients from late payment, non-payment or no payment; charge for additional time and services with ease; retain the rights to your IP, including access to images, and being credited correctly; were able to execute and deliver your services in a streamlined and systematic process, with inbuilt solutions so you didn't have to think on your feet every time something went wrong; that you were not accountable after the fact; or for other people's mistakes; you could prevent bad reviews on-line; being sued; and that there were repercussions a client terminating or breaching the contract leaving you out of pocket; that gave you the upper hand, empowered you in your business dealings; providing peace of mind and confidence to take those more sophisticated jobs or higher value clients..... would you do it?

Moreover, does this sound like something you should know how to, or could put together yourself?

Saving money on your business's legal work is like choosing to save on a cheap set of breaks for your car, albeit fitting them yourself.

A proposal consisting of a fee schedule and scope of works is not a contract.

Copying and pasting from other people's agreements is also not the solution.

You are breaching copyright laws by copying someone else's intellectual property, or worse the IP of the lawyer who drafted it.

Templates are less costly, yes, but unless it's drafted by a sophisticated lawyer, it will not be tailored to your business.

Regardless, how would you determine it is a good, legally sound document that would serve your business; how do you know what terms you absolutely require to be in that agreement; how would you ascertain which provision are not beneficial or appropriate for you and what the implications of including them are; how do you know what to add in or take out so that you are completely covered, or so that it won't bite you in the ...

The answer is you couldn't know.

The question is why you are gambling? It is true some people have more luck in business, they cruise through with no major issues and debunk my arguments but, without wishing ill on anyone, it will only ever take one bad job, or one bad client for the tables to turn. It is without doubt that in every court room, every legal issue and every lawyer's job is to sort out the messes that could have largely been prevented with sound documents or good advice. In the end it's just not worth the risk, the costs and the investment in stepping up is worth its weight in gold. This is not a sermon; it's a message directly from years working firsthand on that factory floor.

Client Engagement Agreement

This document should be your business blueprint. It defines the relationship between you and your client, sets out the terms and conditions under which you provide your services as well as covering the extent of your relationships with third parties. The agreement should include but not limited to; the nature of the services, transparency of services, the delivery of services (including digital), and the limitations to what you will assume responsibility for, especially in relation to third party suppliers and contractors and supervision or management. It should cover additional fees for additional services (including revisions, consults, site visits, and anything outside of the original scope of work) procurement processes, hourly rates, commissions, trade discounts and product warranties. The agreement should stipulate the client obligations, working hours, a communication, variations, delivery, delays, completion, disputes, termination, insurance, confidentiality, privacy, liability, consumer warranties, indemnity and the standard regulatory commercial terms. In addition your fee structure, fees, and payment terms must be set out clearly, consistent with lead times, the work undertaken, and the invoicing system you use and any failures to meet these obligations.

It should include strong protections for your intellectual property, acquiring images of your work and authorisation for the use of;

Disclaimers

It is important to have a legal disclaimer to protect your liability for any advice or recommendations you make during a consultation (as well as the copyright in any materials provided), prior to entering into an agreement for your services.

Your designs document should include a visible professional disclaimer and copyright notice to protect your intellectual property and liability and a short-form version for your schedules, digital documents.

For emails with clients, suppliers and anyone whom you deal with on behalf of your business, you should have an email disclaimer to protect the privacy, copyright in your professional communications.

Website Legal Notices

Where the client agreements are between you and the client, the website legal notices are essentially the agreement between you and the public. It is therefore important your business website has professional terms and conditions (T&Cs) which have references to commercial and consumer legislation, and the correct digital protections, which also extend to any social media platforms linked to the website. The T&Cs also include disclaimers for content; to protect your on-line information, or that you share via social media, as well as to ensure any references to products, third parties and testimonials are classified correctly; a services disclaimer; and a regulatory disclaimer with the relevant parts of the legislation and other regulatory and statutory provisions, such as the building and construction regulation, work health & safety, fair trading.

For intellectual property that you display on the website (such as images or designs) you should have a stringent copyright notice to protect people from copying your designs and content, and to acknowledge you are not breaching the copyright of others. In addition, a privacy policy is now mandatory for the use of forms and contact messaging via the website, as well as other forms of data collection, including the client's personal details for the project.

Employment

Employees

By law, employees are required to have employment contracts which meet the legislative provisions for casual, part-time or full-time workers. Notwithstanding, it is extremely important you to protect yourself against intellectual property theft, termination, confidentiality and restraint of trade, including taking clients from the business.

Contractors

Contractors are independent providers who run their own business. If you are engaging a contractor the key provisions of the agreement cover the nature of the relationship, the working arrangement, remote and in-office hours, responsibilities, deliverables, specifics regarding the project, intellectual property protection, privacy and confidentiality, insurance, tax, super, payment and invoicing.

If you contract your services out as a contractor to another designer, the most important provision is to limit your liability only to the design work provided to the designer and to meet any obligations to the client or for the finished product.

Outsourcing agreements are an agreement usually used for a specific project between a business and a service entity for the provision of a once off service in exchange for a fee such as virtual services or IT or social media. Often the more casual the arrangement the more likely that things will go wrong, so deliverables and key terms are essential. These agreements are especially important when you provide the outsourced entity with your company intellectual property or access to confidential information.

A Non-Disclosure Agreement should be used with anyone who you have not entered into an agreement with that you share your ideas, such as collaborations. You can also have a disclaimer on your brief or proposal when sending to clients to protect them from saving a copy of your work without engaging you.



PROTECTING YOUR BRAND

Trademarks

Do you have a brand, business name and/or logo you want to protect?

When it comes to protecting your business name (essentially your brand) having a registered ABN is not enough. Neither is trademarking a logo. The only way you can truly protect your brand is by trademarking the name or "wordmark." Once you have secured that, then you can also trademark the logo. If you plan on trading internationally you need to look at other jurisdictions to see whether you can use that name there, having the trademark in Australia does not give you the inherent right in another country if someone has already registered it or has been using it for some time (market recognition). If this is important to you, before spending any money on trademarks it is recommended:

- when deciding on your business name – use a unique name like your given name or a made up word (like Google);
- get a lawyer to advise you and do a proper trademark (not Google) search

Your Copyright

Your IP is an asset, and protecting it, especially as a designer, is extremely important, because without it you don't have a business!

In Australia we do not require registration of copyright, however there are still a number of things you can do to protect it.

- Use a copyright symbol on all your designs and work.
- Have a copyright disclaimer on your briefs, proposals, marketing or other materials.
- Display a copyright notice on your website to protect the content and materials published on your website and social media. A copyright notice can deter others from using your website's content or images and using it as their own and protect your brand's intellectual property (IP).

You can also protect your IP by having licence agreements for people who you allow to use it for certain purposes and confidentiality and non-disclosure agreements in place for people who have access to your IP.

BREACHING COPYRIGHT

Breaching copyright is an offence and is something that you should always be aware of avoiding.

- Are you aware if you are breaching anyone else's copyright by the use of font, images, and/or content?
- Are you using open source software and if so, have you checked to make sure your use of that software license does not infringe someone else's IP rights?
- Have you made sure that you do not link to or embed any website or marketing content that may infringe someone else's copyright (ie hyperlinks)?
- If your website or platforms allow for user-generated content (UGC), have you taken steps to ensure that you minimise any liability for IP infringement or otherwise unlawful content?



DIGITAL MARKETING AND SOCIAL MEDIA

The internet provides vast opportunities for promoting your business online, but with it also comes a range of legal issues and risks.

Email Marketing

Email marketing can help you engage with your customers or clients about special offers and changes to your business, however the laws have changed and it is important that you are aware of your obligations under these new regulations and that your email marketing activities comply with the requirements.

You are required to:

- Obtain the recipients consent to contact them for marketing purposes.
- Identify your business and how recipients can contact you.
- Include an unsubscribe function in all your communications.
- Make sure your privacy policy refers to this method of contact.
- Do not pass on email details without consent.

Social Media

Key points:

- You are responsible for the content on your accounts.
- You are responsible for all content posted on your social media accounts (user generated content).
- The content must be original and accurate, or credit someone appropriately, though this is hard to always determine, as not every image or quote comes with guidelines.
- Caution must be taken to avoid someone suing you for breach of copyright, potentially defamatory material or misleading or deceptive advertising.
- Be careful to check what your social media manager does as they are acting as you and therefore you are ultimately responsible for their content.
- Have a social media policy in place for content and responses.
- Ensure your Terms & Conditions apply to all your digital platforms.
- If you promote your business on a social media platform, and engage in marketing to consumers in different countries, you will have to ensure that you comply with all local consumer laws. It is where your customer resides that determines your requirements, not where your business is located.
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Blogs

- Be aware of the language you use, ie that this is your opinion
- Have a disclaimer to ensure the reader is aware of the capacity of the advice

Paid Endorsements

- When paying such 'influencers' to promote your business, you need to be aware of consumer laws that apply and ensure that your business remains legally compliant.
- You must ensure that your influencer discloses that they are being paid to promote your product or brand, because a failure to do so may constitute misleading or deceptive advertising.
- Even though you are paying the influencer to promote your business, it must also be an honest opinion or review, otherwise it could be misleading.
- It is best to have a professionally drafted agreement with the paid influence outlining these requirements and deliverables.

Reviews and Testimonials

Reviews and testimonials are a great way to promote your business, and many customers or clients often look to reviews when deciding whether or not to engage a business or not. There are several legal issues you need to keep in mind when publishing testimonials.

- If you publish testimonials on your website (as opposed to customers doing it themselves), you must ensure that they are factually correct and not misleading, otherwise you may be in breach of consumer protection laws.
- Selectively removing or amending negative posts is also considered misleading! Instead, if you find negative reviews on Google, Facebook or another online platform, it is recommended that you thank the customer for their feedback and let them know how they can contact you to resolve their issues.

Media Consent and Releases

If you publish a testimonial, quote, image, video or other content for marketing or promotional purposes that identifies a person, you must ensure that have written consent, even if it is in an email .For professional images of your work or content you will use in relation to your business, it is always prudent to have clients complete a media consent and release form prior to publishing photographs of their private home or their review etc.

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