LEGALVISION®

HOW TO START AN ONLINE BUSINESS

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ABOUT THIS MANUAL

LegalVision has assisted thousands of online businesses to launch and grow. We learn so much from our clients and we have created this manual to share these insights with you. This manual will help you understand how the law intersects with the growth of your online business.

Business owners, marketing managers and sales teams should treat this manual as a 'how-to' guide. We hope you will refer back to different sections as you move forward with launching your product or service, and draw inspiration from other businesses that started online.

Special thanks to the contributors who have offered invaluable insights and lessons to include in this manual: Rebecca Licciardi (NAB), Levi Aron (Deliveroo), Elissa Hudson (Hubspot), Simon Reynolds (Airtasker), Tom Walenkamp (The Wine Gallery), Anna Fitzgerald (Prospa), Matt Jones (Honee) and Gretta Van Riel (Hey Influencers).

Kirstin McKnight
Practice Leader

The Journey Of An Online Business

From a legal perspective, the journey of an online business can be divided into six phases:

1. **Structuring your business**
2. **Financing your business**
3. **Building your brand and protecting your intellectual property**
4. **Marketing your product or service**
5. **Scaling your business**
6. **Managing relationships with customers and suppliers**

GETTING STARTED

It's now easier than ever to start a business online. But growing and sustaining an online business requires a great deal of attention and planning.

Poor planning hinders an online business' potential for success. Unsuccessful business owners often don't invest enough time understanding their customer base, their competitors, or their business model. This can reduce cash flow because you sell something people don't want, or someone is already selling a better version of your product or service.

Some other important questions that you should ask yourself before launching your product or service include:

- Is there a demand for my product or service?
- What gap is my product or service looking to fill?
- How can I make money from my product or service?

WHO ARE YOUR IDEAL CUSTOMERS?

Your product can't meet a customer's need if you don't understand how and why that need arises.

A ***buyer persona*** is a fictional representation of your ideal customer that describes their common characteristics and behaviours. Buyer personas will help you shape your business' web design, content, sales strategy and messaging.

HOW TO CREATE A BUYER PERSONA

Quick Tip:

'Interviewing' family, friends, colleagues and others who would need your product or service can provide a good source of information about your ideal customer. Asking these questions will help you gain an insight about your prospective customer's lifestyle and purchasing habits.

Your Business: A monthly fashion subscription service aimed at women in professional jobs. Women pay $50 each month and can select five items of clothing to rent, wear and then return.

Background

Name: Emily
Age: 32
Gender: Female
Relationship status: Single
Education/Career: Account Manager
Location: Melbourne

Consumption Habits

How does she spend her time?
Emily travels for work across Australia and is rarely home during the week because of her busy schedule. She spends most of her work day meeting with clients and prefers to shop online. On the weekend, Emily enjoys having brunch and pilates.

What are her favourite brands?
Emily's professional wardrobe consists of Cue, Country Road and SABA. Her weekend wear is Lorna Jane and Gorman.

How does she make purchases?
Emily browses for workwear on her mobile when commuting to and from work, and makes final purchases on her desktop.

Goals and Aspirations

What are her professional goals?
Emily aspires to be a Marketing Director for her current organisation. She understands she will need to start bringing in new customers to achieve this goal.

Challenges

How can you help solve those problems?
Emily has a wardrobe full of clothes but agonises each morning about what to wear. An online subscription box would allow her to 'rent' five items of clothing each month. A stylist would select the garments and suggest how Emily could 'mix-and-match' with her existing wardrobe.

WHO ARE YOUR COMPETITORS?

When building an online business, your key focus should be your customers but it's also important to think about what your competitors are doing. Conducting competitor research and analysing what's working or not working for them can provide insight into defining your customers' needs.

A good starting point is to compare your business' product with a competitor's, focusing on the quality, price and customer experience. In other words, conduct a ***competitor analysis***. Two businesses can both operate a fashion subscription service but one may be aimed at professionals and another at athletes. You can also use online competitor analysis tools such as SEMRush and Ahrefs to reveal competitors' top keywords and high traffic pages.

Quick Tip: How to Conduct Competitor Analysis

When browsing the websites of your competitors, pay attention to the following:

- What are the distinguishing features of their product? How does it compare to yours?
- What price do they charge? Does the price represent value for the customers? How do they accept payment?
- What did you enjoy about the business' web design, social media presence or blog? For example, the layout or colour scheme.
- What didn't you like? Did the shopping cart timeout after five minutes or was there no way for you to save your details for a repeat visit?
- How will you improve the customer's online experience? This is particularly important if you are selling a product or service that already exists.

BUSINESS MODEL

Which business model you choose will depend on your business idea. 'Business model' refers to how you engage and serve customers and how you monetise that service. Each business model requires a different set of legal documents to protect your interests and the customer's interests.

Business Model	How It Works	Examples	Legal Documents
Subscription Model	Customers sign up and make regular payments to access your product or service. Customers choose the subscription level depending on the number of features or support they will receive.	Netflix, The Wine Gallery.	• Business Terms and Conditions, including subscription payment terms • Privacy Policy • Website Terms of Use
Direct Sales of Single Products	Business sells each product or service directly to the end customer for a fixed price.	The Iconic, StyleRunner.	• Sales Terms and Conditions • Privacy Policy • Website Terms of Use
Marketplace	Marketplace operator provides a platform for party A and party B to buy and sell goods and services to one another.	Uber, Airbnb, Expert360.	• Marketplace Terms and Conditions. These may include a template agreement between the service provider and the customer • Privacy Policy • Website Terms of Use
Software as a Service (SaaS)	Services that are delivered over the internet rather than provided locally or on-site.	Xero, Atlassian, SalesForce.	• Software as a Service Agreement • Privacy Policy • Website Terms of Use

SETTING UP YOUR ONLINE BUSINESS

Before launching an online business, you'll need to decide what business structure you're going to operate under. The structure you choose will significantly affect your business' legal and operational risk, asset protection, tax obligations, legal costs and clientele.

There are four common business structures in Australia:

1. Sole Trader
2. Partnership
3. Company
4. Trust

You should think carefully early on about which structure is right for your online business and best reflects your goals for the future. Although you can change your business structure to accommodate the growth of your online business, it can be a costly process.

CHOOSING THE RIGHT BUSINESS STRUCTURE

Choosing the right structure for your business depends on a number of factors including cost, risk management and tax planning. The table below summarises how each structure stacks up against these factors. Please obtain tax advice to assist you to decide your business structure.

Most small businesses in Australia are set up as sole traders. A sole trader can work well for simple businesses without significant growth plans. However, the structure is not very flexible and doesn't allow the business to have more than one owner. Business owners can choose to set up their online business as a partnership or trust, and these structures do have certain advantages. But starting an online business can be risky, so we recommend that you use a company structure to limit your personal liability and for tax planning.

	Cost to Establish	Risk of Liability	Tax
Company	High — you must register a TFN, ABN and GST/PAYG if applicable, establish a new company with ASIC and draft a shareholders agreement.	Limited liability — if the company goes out of business, the company's shareholders are not personally responsible for the business' debts. Company directors have *directors' duties*, and may be personally liable for a breach of duties.	A company can retain profits, while paying the company tax rate (30% for larger companies, and 27.5% for smaller companies).
Sole Trader	Low — you must set up an ABN and register for GST/PAYG if applicable.	You are personally liable for any debts the business incurs.	Profits will be taxed at the sole trader's marginal tax rate.
Partnership	Low — you must register a TFN and ABN, as well as GST/PAYG if applicable, and draft a partnership agreement.	Partners are *jointly and severally* liable for the partnership's debts.	All profits from a partnership structure will be taxed at each individual partner's marginal tax rate.
Trust	High — you must register a TFN and ABN, GST/PAYG if applicable, choose a trustee (this may involve incorporating a corporate trustee), create the trust deed and settle the trust.	If a trust has an individual trustee, the trustee will be personally liable for the trust's debts. If a trust has a corporate trustee, the company's shareholders will be protected by the company's limited liability.	Income that is distributed to trust beneficiaries is taxed at each beneficiary's marginal tax rate. Income that the trust holds is taxed at the highest marginal rate.

HOW SHOULD I OWN MY SHARES IN THE COMPANY?

If you've decided to run your online business through a company structure, you've got one last decision to make: how will you own your shares in the company? There are two main options:

1. Own them personally
2. Own them through a discretionary trust

Owning your shares through a discretionary trust is common for tax planning and asset protection.

If you choose to distribute ***dividends*** from your online business, or if you sell your business and make a capital gain, a trust can be more tax efficient than owning the shares personally because the trustee has the discretion to distribute the trust income. So, the trustee can distribute to beneficiaries with lower marginal tax rates (e.g. a partner who isn't working) for tax planning reasons.

In the event of a personal bankruptcy (something all business owners work to avoid), assets owned by a properly-established trust will be, in most circumstances, protected.

Benefits of a Discretionary Trust

- Asset protection from creditors
- Flexibility in distributing income and capital
- Flexible for tax planning
- Beneficiaries of a trust are generally not liable for the trust debts
- Entitled to a discount on capital gains where available

CASE STUDY: TOM WALENKAMP, CEO OF THE WINE GALLERY

Starting an Online Business

Starting an online business with no previous experience can feel like you are a character in a video game. In the beginning, you have few skills but as you move through the different levels and tackle new challenges, you power-up and gain new skills and experience.

Level 1 — Ideation

Staring up at thousands of wine bottles on a bottle shop's shelves, or being offered discounts online for bottles we knew nothing about wasn't a great experience for us.

We started The Wine Gallery because we felt that wine retailers were not catering for a large section of the market – wine drinkers that wanted to learn about and discover great bottles of wine in a non-pretentious way. At the very least, we wanted to build a business that we would be customers of.

Level 2 — Building a presence online

We understood that our potential customers were learning about wine through friends and social media, so we invested considerable time building a community on Instagram. In twelve months, we grew from 500 to 30,000 followers and became one of the largest Aussie wine companies on the platform.

We realised that there was no silver bullet for building an audience online. It took research, time and effort to uncover what our audience found engaging. Humour worked, but we couldn't roll out the same, tired wine jokes. We have even seen international brands with millions of followers using our posts on their accounts months later!

Level 3 — Focus on the MV(D) or 'minimum viable design'

We hacked our site together on Shopify with no tech or design knowledge. After gaining traction with the first iteration of our store, we decided to invest time and some cash on improving the design and messaging.

We had listened to and learned from our early customers, and knew what we needed to build to reach the next level of engagement. It wasn't until we launched our new site that we saw real growth. We had read that founders often focus on building a minimum viable product, and can neglect the design. If you want to sell something online, it's worth investing in quality photography, copywriting and web design. Don't underestimate the importance of looking the part.

SELLING YOUR BUSINESS

If you plan to sell your online business and are operating through a company structure, you can choose to sell via a *share sale*, or a *business (asset) sale*. A share sale means that the entity holding the shares in the company — whether an individual or trust — can benefit from the 50% Capital Gains Discount for assets held longer than 12 months.

What is the difference between a share sale and a business (asset) sale?

	Share Sale	Business (Asset) Sale
What is being sold	Shares that the seller holds in the trading company which carries out the business.	The business' key assets such as goodwill, intellectual property, stock, key contracts and client lists.
What the purchaser owns	If the purchaser has bought 100% of the shares in the company from the seller, the purchaser owns everything in relation to the company. This includes all of the business' assets as well as the debts and liabilities the company has incurred.	The purchaser can choose which assets that it wants to own, and whether it wants to take on any liabilities. Usually the purchaser will require liabilities over assets to be paid by the seller. The purchaser is not responsible for the business' debts or liabilities in relation to the period before the sale, and after the sale, is only responsible for debts or liabilities that it agreed to take on.
What the seller retains	Unless specifically set out out in the sale agreement, the seller has sold the trading company, which includes all the assets and liabilities in the trading company. The seller will be required to give detailed warranties about the company. The purchaser can sue the seller if any warranties are incorrect, this is a risk for the seller, the seller needs to make full disclosure of issues, and can negotiate to cap the warranty amount and period.	All assets that were not sold to the purchaser, and all liabilities that the purchaser did not take on. Which liabilities the purchaser will take on, and which liabilities are excluded from the sale, will be negotiated and set out in the sale agreement. The seller will be required to give warranties about the assets. These are less extensive than for a company (share) sale. The purchaser can sue the seller if any warranties are incorrect. The seller needs to make full disclosure of issues and can negotiate to cap the warranty amount and period.

FINANCING YOUR BUSINESS

Launching an online business has a low cost-barrier to entry. Even if you don't have engineering expertise in your founding team, the cost of hiring a team of developers and launching a ***Minimum Viable Product*** is low. Online businesses can use platforms like Shopify and BigCommerce to launch almost overnight.

But online businesses will still need access to capital to grow and scale. There are three ways in which you can finance the growth of your online business:

1. Profits from sales to your customers
2. Raising equity finance
3. Raising debt finance

Financing Growth through Sales and Profits

The best way to grow an online business is by making sales. There is a great deal of talk in the startup community about raising capital. But some of Australia's most successful startups have not raised external funds, for example, online fashion retailer Showpo. They simply built a product that customers wanted, made lots of sales, and reinvested the profits into growth.

If you are looking to build an online business that will generate enough revenue to support your lifestyle, raising external capital does not make much sense. Focus on selling your product and keeping complete control of your business.

Equity Finance

If you are looking to scale quickly and are spending significant amounts of capital on growth and development, then you are likely to be running your business with a ***burn rate*** (i.e. losing money on a monthly basis) for a substantial period until you become profitable. To do this you'll generally need to raise external capital. One way to raise capital, in a way that does not affect your cash flows, is equity finance which is issuing new shares in your company to investors. The investors will become shareholders in your company.

Most entrepreneurs will raise the first round of equity capital from their friends and family before looking to angel investors and then venture capital funds. If you are considering raising equity capital, please download the LegalVision Startup Manual. It covers all the tips and tricks you need to know about capital raising.

Debt Finance

Many small businesses approach banks or non-bank lenders such as Prospa or Sail for debt funding. Debt finance can be a good option if you are:

- looking to raise a small amount of capital;
- purchasing an existing profitable online business; or
- willing to provide a personal guarantee (i.e. secure the loan against some of your assets).

The obvious benefit of debt finance compared to raising equity is that you can retain 100% ownership of your company. The downside, of course, is that you must repay the loan as well as make interest payments. Only take on debt that you can afford to repay, even if trade slows down.

NAB: Rebecca Licciardi (Head of Product, Small Business Lending)

How to Finance a Growing Business

There are two common ways to finance a growing business: debt finance and equity finance. Whether you choose debt or equity depends on your business' cash flow and the amount of capital you need to grow your business.

Debt Finance vs Equity Finance

Debt financing is where you borrow an amount from a lender, such as a bank or credit union, and repay the amount plus interest over a period of time. The 'price' to access the capital is the interest payments.

Equity financing is where you trade shares in your company for cash. The 'price' to access the capital is some number of shares in your company. Providers of equity finance include angel investors, venture capital funds and private equity funds.

Which Should I Choose For My Business?

Equity finance is advantageous because you share the risk of your business with your investors — if your business is

unsuccessful, you don't need to pay your investors back. In exchange for accepting this risk, investors share in the company's profits. Also, equity finance does not put a strain on your cash flow, because there's no need to make interest payments. But equity capital can be hard to come by because there are far fewer equity investors than debt financiers.

Debt financing is easier to access for most businesses, and you retain ownership of your business. Some lenders require you to provide security for their loan — you give the lender the right to seize certain assets if you default on the loan. Take care when providing a security — although it will reduce your interest payments, it also puts your assets at risk.

There are different debt finance options, depending on your growth goals. If a small business aims to conduct business in overseas markets, trade products (such as letters of credit and open account terms) work well as they help to manage fluctuating exchange rates and credit risk. If a business needs to buy inventory and equipment or wants to expand its team, a simple term loan is the most flexible and the best option for small businesses. Typically, you can choose a fixed or variable interest rate. The choice depends on your risk appetite.

Most businesses will finance their business through a combination of debt and equity to balance the pros and cons of each option.

Practical Tips When Assessing Debt Financing Options

Understand your business' accounts

Cash flow issues can arise when businesses take on excessive amounts of debt. Limiting your business' debt will also help with your credit rating, and your ability to apply for further funding.

Plan for the future

Work with your lender to achieve the cash flow requirements of your business. For example, if your business experiences fluctuations in sales during the holiday season, ensure your debt financing solution will help you manage any seasonal cash constraints.

Keep the lines of communication open with your lender

If you expect that adverse business conditions will affect your ability to make loan repayments, communicate with your lender early to avoid defaulting on your loan. Lenders can often relax repayment conditions for short periods, but only with prior warning.

HOW TO BUILD AND PROTECT YOUR BRAND

Brands like Apple, Nike and Lululemon are instantly recognisable — we know from their name and logo what they sell. Your brand is your most valuable asset and will be a key driver in attracting and maintaining customer engagement with your online business.

BUSINESS NAME AND LOGO

A ***trade mark*** is a sign used to distinguish one person's goods or services from those of others. A trade mark exists whether it is registered or not, but registration provides you with stronger rights that you would not otherwise have. For example, it is easier to license your registered trade mark and take action against someone who infringes your mark.

? What's the Difference Between Registering a Business Name and a Trade Mark?

Different legal rights attach to a business name and trade mark, and it's important for business owners to know what each type of registration protects.

Registering a business name simply shows that you are operating your business under that name. On the other hand, registering a trade mark gives you the exclusive right to use the name and stop others from trading under the same name.

A business name and logo are two different trade marks. This means you will submit two applications to IP Australia and pay two sets of fees.

When you register a ***word trade mark***, for example, your business name, you are protecting the word or phrase. If you choose to register your logo, you are protecting the image and its overall impression, taking into account the shape, orientation and configuration. If your logo is just a stylistic representation of your name, then you may be sufficiently protected by registering the name or phrase only as a trade mark. However, if your logo has a distinctive appearance that is key to your branding, you should also consider registering the image to ensure maximum protection of your intellectual property.

When it comes to protecting your brand, you can't register generic words that are commonly used to describe a type of business such as "online grocery store". You are also prohibited from registering geographical names, the names of international organisations and offensive marks. Once you've picked a name that you like, and that isn't in use or registered by someone else, apply for the trade mark.

Trade Mark Registration Process

File application with IP Australia

Submit an application to IP Australia that includes your trade mark details, ownership and the types of good and services associated with your trade mark.

Examination (Approximately 13 weeks)

IP Australia reviews your application to see if it meets the requirements. They will compare your trade mark to pending and registered trade marks.

Acceptance

If your trade mark meets the requirements, IP Australia sends you a Notice of Acceptance, informing you that your trade mark has been approved.

Advertisement (Approximately 5 months)

IP Australia publishes the details of your trade mark in the Trade Marks Journal.

Opposition (Approximately 2 months)

Once advertised, third parties have the opportunity to oppose your trade mark if they believe it should not be registered.

Registration

IP Australia will update the status of your trade mark on the register. It will remain registered for ten years from your filing date.

ENFORCING YOUR TRADE MARK RIGHTS

After registering your trade mark, it is important to monitor trade mark infringement by searching for identical or similar trade marks. Here are some tips on how to monitor for infringement.

Search for your trade mark online

A search of identical or similar words and images can help determine whether someone has infringed your trade mark (assuming it hasn't been registered before yours!).

Search ASIC

ASIC's online database service allows you to search for businesses in Australia and find information on organisations and companies.

Use the Australian Trade Mark Search

Searching the Australian Trade Mark Search gives you an indication of whether an existing application or registered trade mark is similar to yours.

WEBSITE CONTENT

Creating content for your target audience — whether it's a blog post, video on Facebook Live or photo on Instagram — can help search engines discover your website and ultimately, generate interest in and sales for your business. When producing content for your website, it is important to keep in mind copyright law and draft a ***website terms of use***.

COPYRIGHT

Copyright is an automatic right in Australia and attaches to the material immediately after it is created. Unlike in the United States, you do not need to register the copyrighted work. At the idea stage, there is no copyright; it is only once the idea is expressed in some sort of creative or artistic work that copyright applies.

As the content creator, the onus is on you to actively protect and enforce your right. If you find someone else is using your material, and they question the ownership of that material, it's useful to keep a record of the process you undertook when creating the content.

A copyright notice can help you clearly communicate your copyright ownership to others. Place copyright notices on any of your material, including your website.

WEBSITE TERMS OF USE

Another way to protect your content online is to have a website terms of use. This legal document sets out the permissible and prohibited conduct in the use of the website. A well-drafted website terms of use document will include clauses to protect copyrighted material, website content and Intellectual Property rights. It will tell visitors who owns the copyright material and what they can do with content or information. It also limits your liability for the information it contains, through disclaimers.

? What's the Difference Between a Website Terms of Use and Business Terms and Conditions?

These two documents can sound similar but they apply to different people and serve a different purpose.

A website terms of use tells those who visit your website, whether it is a customer with the intention of making a purchase or a competitor looking into what products you sell, how they are allowed to interact with your site.

This legal document is unlike *business terms and conditions*, whose application is limited to customers. Your online business needs both legal documents.

PRIVACY POLICY

Online businesses can now easily promote their products and services to their target markets through digital marketing, including blog posts, social media and online reviews.

If your website collects personal information, such as email addresses and contact details from newsletters or loyalty programs, you will likely be required to have a privacy policy. Your privacy policy states what personal information you collect, and how your business will deal with the personal information it collects.

There are various laws that regulate different sized businesses and what size you need to be before you're required to provide a privacy policy to visitors and users. However, it's easier just to draft one from the start — they are rarely complicated and should not be costly.

ONLINE MARKETING CHANNELS

Depending on your budget and which stage of the business lifecycle you are in, the online and digital marketing channels you choose will differ. If you are starting an online business, you want to focus on the channels that will bring the best return on investment (ROI) from your advertising spend. To determine this ROI, you will first need to consider the most important goals for your business.

Common business goals for digital marketing include:

- increasing sales revenue
- generating more leads
- increasing website traffic
- improving lead quality
- improving brand awareness

Once you determine your most important goals, concentrate on specific channels that will most effectively generate returns and achieve these goals.

Common online marketing channels include:

- **Website and Conversion Rate Optimisation:** Improving the path from a customer visiting your website to purchasing your product or service.
- **Email:** Collecting email addresses from potential customers and marketing to them via email.
- **Social Media:** Leveraging social media platforms to earn visibility and traffic.
- **Organic Search and Search Engine Optimisation (SEO):** 'Optimising' online content to earn more quality and higher-volume traffic in organic (or free) search results of major search engines. Organic search results appear below paid advertisements on the results page.
- **Paid Search or Pay-Per-Click (PPC):** Paying a publisher or search engine to list a sponsored advertisement promoting your product or service. The amount of you pay is determined by the competitiveness of the keyword you bid on.
- **Display Ads:** Placing ads on third-party websites to create brand awareness and generate traffic.
- **Online Public Relations:** Generating media from online outlets to build brand awareness and increase traffic to your website.

CASE STUDY: SIMON REYNOLDS, VP MARKETING AT AIRTASKER

How to Hack Content to Get People Talking About Your Business

Airtasker is a two-sided marketplace — customers who post tasks, and Airtaskers who complete them. Maybe you've used Airtasker for odd-jobs around the home or office, like weeding the garden or assembling IKEA furniture. Because Airtasker doesn't limit the types of tasks that people can post, we have seen some unique requests crop up, including flying to Paris to pick up sunglasses and hosting the Hit107 breakfast radio show.

When we were creating our content strategy, we wanted to write content that would help our users better understand the platform. But finding interesting stories that connect with your community, hiring content writers, and optimising your content for search engines to rank can be a drain on resources for small business.

Here's how we created engaging content to get people talking without a heavy time or cost commitment.

Use your customers' experiences for content inspiration

We realised that our own community was generating a trove of content with fun and creative posts. We just needed to surface these stories.

Creating content around the tasks people post on our platform is a great way to showcase how people use our services. And, most importantly, earning money by using their unique skills — whether it's radio jockeying, puppy sitting, or simply being a trustworthy individual to escort gold sunglasses to the fashion capital of the world. Leverage the experiences of your customers as case studies, testimonials and social media campaigns. The best stories are true stories — from your customers!

Systematise content creation

When our team sees an interesting task being published, we post it to a channel on Slack, which is automatically inserted into a Google Sheet for our content team to review. We then publish these tasks and syndicate the content through our social networks, blog, newsletter and if it's interesting enough, PR! This has enabled us to create a content machine, which is constantly generating new interesting stories (even as you are reading this manual).

Quick Tips

- Growing a business with a limited marketing budget is a hard ask. Think of how you can use the content your users are creating to your advantage.
- Airtasker is a great way to find writers on demand. You'll receive offers from local content writers ready to work for you.
- Images are key, make sure you've got some great images to capture the viewer and give them some quick context about what the content is about.
- Case studies are great for PR, create a Customer Relationship Manager of interesting stories or people using your service, as this shows how real people are using your service. And then you have a database you can call on if you ever get approached for a case study.

MARKETING COMPLIANCE

DIRECT MARKETING

Email marketing campaigns can help your business engage with customers about special offers and receive real-time feedback about your product or service. But you should make sure that you comply with your obligations under the Spam Act 2003 (Spam Act) when crafting your campaign. The Spam Act protects customers from receiving unsolicited electronic marketing, including emails and SMS messages, that advertise the sale of goods or services.

Campaign Compliance Checklist

To comply with the Spam Act, business owners must answer yes to three questions:

- ☐ **Have I obtained the recipient's consent?**
- ☐ **Have I identified my business and how customers can get in contact?**
- ☐ **Have I included an unsubscribe function in all my communications?**

A prominent unsubscribe function is important not only to comply with legal obligations but also to maintain trust in your brand (no-one likes an inbox overflowing with irrelevant offers!).

CONSENT

Consent can be either:

- inferred (e.g. from the customer's behaviour and actions or the relationship between the sender and the customer); or
- express (e.g. through a tick box, or customers completing an online form, or otherwise consenting to online terms such as a ***Privacy Policy***, which includes that the person consents to their personal information being used for electronic marketing).

Quick Tip

The Australian Communications and Media Authority recommends managing a subscriber list through a double opt-in process:

- the customer signs up to an email marketing list; and
- the retailer sends the customer a confirmation email, including a link they can click to confirm they consent to receive emails.

Doing so will help you prove that a customer's request to receive marketing material came from their email address.

COOKIES

Many online retailers collect information through ***online cookies*** (for instance, the number of times an individual visited a webpage). Cookies help retailers customise a visitor's experience, particularly at checkout. If a customer abandons their cart for whatever reason, cookies make it possible to retrieve their selection next time that customer is on the page.

If the cookies on your website collect personal information, you may have obligations under the Privacy Act. Information like how many times a user visited your page will not be personal information under the Privacy Act unless you can reasonably identify the individual. It is best practice for online retailers to state in their privacy policy that they use cookies to collect information, for transparency with the users of their site.

START SELLING

BUSINESS TERMS AND CONDITIONS

Business Terms and Conditions protect your online business and ensure your customers understand what product or service you are providing. Your business terms and conditions will be one of your most important contracts and it will cover:

- how your customers or clients will pay for your product or service;
- the refund, repair or replacement process;
- how you will deliver the product or service;
- information and disclaimers about the product or service; and
- how parties will resolve a dispute.

Your business terms and conditions will differ depending on the type of business you run. If you sell goods online, like most e-commerce businesses, you'll need a set of sale terms and conditions for your customers. This would generally be provided online through a clickwrap agreement (i.e. the customer must click-to-agree before proceeding to purchase).

If you provide services, you'll need a ***client agreement*** or ***service terms*** which set out what you will and won't do for the customer as part of any engagement.

If your business is a marketplace, you'll need ***marketplace terms and conditions*** which set out your relationship with each side of the marketplace (i.e. buyers and sellers) as well as the relationship between the two sides.

AUSTRALIAN CONSUMER LAW

Consumers often purchase goods that, for one reason or another, may be unsatisfactory. The Australian Consumer Law (ACL) contains a number of consumer guarantees, which are mandatory promises that businesses automatically make to consumers, regardless of any terms of sale or warranties the business provides. The ACL also includes a clear set of rules outlining what a business is required to do if it falls short of the consumer guarantees.

The key consumer guarantees that apply to retailers include:

- the goods or services are of acceptable quality;
- the goods or services match any description provided; and
- the goods or services match the sample or demo model.

A retailer must provide a consumer with a remedy or solution if the goods or services don't meet these guarantees.

Types of Business Terms and Conditions

Business Type	Legal Document
Service Business	Client Agreement
Shop/E-Commerce Store	Sales Terms and Conditions
Marketplace	Marketplace Terms and Conditions

Warning

Under the ACL, you are considered to be the 'manufacturer' if the real manufacturer is located overseas without an Australian office. This means that you must give a remedy to a customer, even if the issue seems to be a manufacturing fault.

The type of solution a retailer must provide to a customer depends on the severity of the problem with the product – and whether or not the problem is a "major failure". A "major failure" includes when the product:

- has a defect that would have prevented someone from purchasing it;
- is dangerous;
- doesn't match the product description; or
- lacks the functionality it should have.

If the problem with the product is something major, a consumer has a right to ask for either a replacement or a refund. Whereas if the problem is minor enough that the retailer can fix it within a reasonable time (for example, a missing cable or power adapter), the retailer may choose to repair, replace or refund the item.

A business cannot exclude, restrict or modify the consumer guarantees when they sell goods or services to the public.

Quick Tip

Make sure your front-line sales team, whether they are handling enquiries over the phone or through online chats, understand the basics of the consumer law and consumer rights.

REFUND POLICIES

A business is not obligated to offer a refund to a consumer if they change their mind. But just because retailers are not legally required to offer change-of-mind returns, doesn't mean that they can't choose to do so. Outside of the statutory requirements, retailers can create their own return policies as long as they do not breach or override the consumer guarantees. A number of major retailers offer change-of-mind returns within a specific time period, provided the item is still in a saleable condition and the consumer provides a proof of purchase.

How long does a consumer have to return a product?

A consumer cannot demand a refund if the problem with the product is minor and the retailer can repair the product within a reasonable time. A retailer may take into account the following factors when determining what's 'reasonable':

- the type of product;
- how a consumer would use the product;
- price paid for the product;
- length of time a consumer would use the product; and
- how often a consumer would use the product before a problem appears.

REVIEWS

Customers are increasingly relying on online reviews to help make their purchasing decisions, and so positive reviews are valuable currency for your business. If you collect online reviews from satisfied customers, make sure you don't fall foul of Australia's consumer watchdog, the Australian Competition and Consumer Commission (ACCC). Try to follow these simple rules:

Don't edit or remove bad reviews.

If it's on a social media platform, we recommend thanking the customer for taking time to let you know their concerns and letting them know that you will send them a private message to resolve the issue.

Disclose any commercial relationship.

It's not illegal to pay social media influencers to review your product as long as your customers know about the endorsement. Businesses and bloggers should disclose any commercial relationship in clear and unambiguous language.

Locate and delete fake reviews on your website.

Online business owners should weed out any fake and misleading reviews about their business. Look for reviews that use similar language to other reviews, are from the same email or are written in an overly positive tone.

Quick Tip

The ACCC has provided some practical guidance about how diligent a business should be when monitoring its social media pages:

- If your business has 300 staff, the ACCC will expect that you have the systems and resources to detect promptly and remove misleading posts.
- Similarly, if your business has only ten staff, but 50,000 friends on Facebook, the ACCC considers that the potential risks to consumers of a misleading post are high. So, these posts should be removed in a short space of time.
- On the other hand, if your business has 12 staff and 80 friends on Facebook, the ACCC would not expect you to monitor your social media pages rigorously and remove posts as quickly as the other two companies.

CASE STUDY: GRETTA VAN RIEL, FOUNDER OF HEY INFLUENCERS

Case Study: How to Use Influencer Marketing to Promote your Business

Influencers are social media users who have an established credibility and audience. They ask questions to better understand what their audience likes and curate content that provides value to their followers. Engaging an influencer aligned with your marketing goals can help promote your business to thousands of potential customers and increase your brand awareness and reach. There are three common strategies when working with influencers.

1. Thunderclap

Creating a thunderclap on social involves working with a large number of influencers to promote your product at the same time. For example, when launching our watch brand, ***The 5th***, we engaged 30 fashion influencers to post a photo and call to action at the same time. This increased the demand for our watches and in 2015, we hit a staggering USD$1 million in a day. To achieve a thunderclap, you need to provide a brief to your influencers with details on what to post and most importantly, when to post (keep in mind time zone differences if your influencers are located around the world). Thunderclaps work well for product launches.

2. Trendsetter

When you are creating demand around your product or brand and looking for conversions rather than awareness, you should look to engage ***micro influencers***. Micro influencers have audiences between 10,000 to 100,000 followers but their posts usually have higher engagement. You can identify micro influencers by following these three steps:

1. Search relevant popular hashtags and identify popular accounts to follow and engage with. Where possible, identify specific hashtags relevant to your niche, for example, #sydneybrunch instead of #food.
2. Create a shortlist of influencers to contact. Usually the same communities follow the same influencers.
3. Offer micro influencers exclusivity to incentivise them to post first. You can also offer exclusive samples or custom-made products with the influencer's name.

Remember to respond to any questions you receive from potential customers who see your product on Instagram. This includes not only your email account, but also your Instagram Direct Message inbox as well as Instagram notifications when a user comments.

3. Social Proof

Social proof involves unboxings or photos of your product being used. Seeing an influencer using a particular product builds trust and credibility. You can expand this strategy with giveaways and competitions. Consider using one unique hashtag for the campaign so anyone can find your brand and see how customers are using your product.

Quick Tip

- **Get to know the influencer:** Work to create a personal relationship first with an influencer by sending them a simple message introducing yourself.
- **Factor their cost into your marketing spend.** As a guide, you can expect to budget:

  <20,000 followers = $50 to $100 a post.
  50,000 followers = $100 to $200 a post.
  100,000-plus = $200 to $500 a post.
  500,000 followers = $1,000 (minimum).
- **Provide a mood board or brief:** Avoid giving an influencer exact specifications unless you're certain about what you're doing with your post. The influencers know what will best work for their audience – that's why you're relying on them.

GETTING PAID

When selling products or services online, providing customers with the option to purchase your goods or services using a credit card is one of the quickest and easiest ways to get paid.

You will likely have come across a variety of payment processors available to help you, but before selecting a payment processor for your business, it's a good idea to understand the legalities involved with accepting credit card payments online.

The best option available to help you easily accept credit card payments is by using an all-in-one third-party payment processor (e.g. Stripe, PayPal or Braintree). Alternatively, you may choose to use a merchant bank account in conjunction with a payment gateway or processor (a third-party service that authorises payment processing on your behalf).

Picking either one of these options may mean you need to comply with Australian privacy laws, the PCI DSS and the terms of service of the merchant bank or payment processor.

What is the PCI DSS?

The PCI DSS is a set of standards developed by major credit card companies to protect against credit card scams and fraud. While third-party payment providers will provide reasonable security measures, you have ultimate responsibility for complying with the PCI DSS. This makes it all the more important that you implement industry standard security measures, such as firewalls, encryption software and antivirus software, to protect sensitive credit card information. If nothing else, make sure any operating system software is up to date.

THIRD PARTY PAYMENT PROCESSORS

All-in-one third-party payment processors such as Stripe, Braintree, PayPal and Pin Payments provide:

- **the payment gateway** for you to accept credit cards online (customers can enter their credit card details on your checkout page)
- **credit card processing services** (Stripe contacts Visa or Mastercard to authorise the relevant transaction and once received, ensures that funds enter the correct bank account)
- **an aggregated merchant bank account** (Stripe processes the transactions on your behalf through its own merchant account, and then distributes the funds into your regular business account)

Third-party payment processors are a cheaper option than personal merchant bank accounts if your business doesn't handle a large volume of transactions. The need for a personal merchant bank account is minimised by using a third-party payment processor, as they have their own aggregated merchant bank account.

MERCHANT BANK ACCOUNTS

Merchant bank accounts are similar to regular bank accounts, except they exist for the primary purpose of holding funds collected from credit and debit card sales. They still require a payment gateway to transmit the customer's credit card information between the website and the merchant account. Once the funds are in the merchant account, they are transferred out to a regular business bank account.

Using a merchant bank account means that you are likely to have greater control over when funds from credit card payments are sent to your standard bank account. This can help with managing cash flow. If you are processing a higher volume of transactions, you may be able to negotiate lower transaction fees with your merchant bank account.

CASE STUDY: ANNA FITZGERALD, CORPORATE RELATIONS AT PROSPA

How to Maintain Steady Cash Flow

An online business' success depends on positive cash flow. Making sales should be your primary focus, but ensuring you have sufficient cash to finance your inventory and pay your team members is also essential. Whether you are opening a brick-and-mortar or click-to-order store, here are five tips to help you maintain your cash flow.

1. Automate your invoices

Staying on top of your invoices is critical to keeping your cash flow steady. Cloud-based accounting software can help you automate your invoicing process. Platforms like Xero can

notify you when payments have been received, send invoice reminder emails to customers and notify you when invoices are overdue. This will reduce the cost of collecting invoices and reduce your accounts receivable.

2. Manage your inventory effectively

Holding too much inventory can tie up cash – especially if you are trading goods that are highly priced. It can also increase associated costs such as insurance and storage costs. Inventory management software like Zoho can help you keep track of your bestselling and most profitable products. It will also keep you up-to-date on stock levels and can automate the re-ordering process.

3. Get paid promptly

Unfavourable payment terms lead to countless cash flow issues for small business owners. To free up vital cash for your business, you should request that your customers make payment within 7 or 14 days.

At the same time, negotiate with your suppliers to extend payable terms to 30 or 60 days. These are common payment terms, so they should be acceptable, but take care to maintain positive relationships with your customers and suppliers.

4. Monitor your cash flow closely

Make sure you check your cash flow on a weekly basis to stay on top of potential challenges such as seasonal downturns in sales and tax or superannuation payments. It's also a good idea to review your business performance against forecasts on a monthly basis.

If cash flow is tight, experiment with solutions such as offering discounts for early payment or negotiating longer terms with suppliers.

5. Financing options

Securing access to funding before you encounter cash flow issues is a good way to ensure your cash flow needs are managed.

GROWING YOUR TEAM

Although your team may begin with just you, you'll soon bring on board team members. When hiring new team members, the first thing you need to consider is whether they are an employee or contractor. Taxation, superannuation and employment law obligations differ for each and this issue can get business owners into trouble. Some factors that determine whether a worker is a contractor or employee are set out below.

Control: Does the hirer have the right to exercise detailed control over the way work is performed or does the worker have full autonomy?

Advertising the business: Is the worker required to wear a uniform or display material that associates them with the hirer's business?

Provision and maintenance of significant tools and equipment: Is the worker required to supply and maintain any tools or equipment (especially if expensive)?

Right to delegate or subcontract work: Is the worker free to work for others at the same time? Can the worker subcontract the work or delegate work to others?

Income taxation deductions: Is taxation deducted by the hirer from the worker's pay?

Remuneration: Is the worker paid according to task completion, rather than receiving wages based on time worked?

Sham Contracting

You can't call a worker a contractor while treating them as an employee (also known as 'sham contracting'). There are possible ATO and Fair Work penalties if you mischaracterise workers to avoid employment law obligations. If you are unsure, use the employee/contractor decision tool on the ATO's website to determine whether your team member is an employee or a contractor.

EMPLOYMENT AGREEMENTS

Employees all need ***employment agreements.*** Your employment agreement should address a number of standard issues including:

- intellectual property;
- non-compete provisions; and
- leave requirements.

CONTRACTOR AGREEMENTS

Contractors need ***contractor agreements.*** Your contractor agreement should address a number of standard issues including:

- scope and delivery of the project;
- ownership and use of intellectual property;
- non-compete provisions; and
- confidentiality.

SCALING YOUR BUSINESS

Scaling Process

If you're looking to build a large business, there will come a time when you have to invest in growth. But first, you will need to reach product/market fit — are you selling a product that enough people in the market want to buy?

SCALING A SAAS BUSINESS

With an online, digital service, SaaS businesses are global from day one. Your online business can sell to customers all over the world. Scaling often involves using digital marketing to acquire lots of customers globally. Search Engine Marketing (SEM), Search Engine Optimisation (SEO) and working with affiliate programs are all examples of marketing techniques SaaS businesses use to scale.

SCALING AN E-COMMERCE BUSINESS

E-commerce businesses are harder to scale than SaaS businesses because you are dealing with a physical product. E-commerce businesses usually start in a particular country or city. Scaling then requires a founder to set up overseas operations. If you want to expand your business by growing it overseas, you should ask:

- Do I have good relationships with my suppliers and can they cope with increases in demand?
- Do I already have a substantial number of overseas customers or has thorough market research shown that my product or service would get traction in a particular foreign market?
- Is entering a foreign market the best way to scale the business? Is selling a complementary product or service to existing customers and leads more efficient?
- Do I have sufficient capital to fund foreign marketing spend, and operate my business at a loss for a significant period of time?

Answering these questions will give you a good idea whether you should consider expanding overseas.

CASE STUDY: LEVI ARON, COUNTRY MANAGER AT DELIVEROO

How to Reach Product/Market Fit

16,000 restaurants

20,000 riders

200 cities

12 countries

Deliveroo was founded in 2013 to shake up the online on-demand food delivery space.

We launched in the Australian market in November 2015, and have since expanded into nine Australian cities. In achieving our rapid growth, there are three key lessons online business owners and founders can apply from Deliveroo's expansion efforts.

1. Think hyperlocal marketing

Australia is a foodie nation, and Deliveroo has played an integral role in changing the way Australians think about food.

Hyperlocalising our marketing was key to tapping into the Australian market. Hyperlocal means that we work with restaurants in the area to market Deliveroo. Instead of a generic Facebook ad that says 'Get food delivered', our campaigns say 'Get a burger from Bondi Relish delivered in 10 minutes'.

Think about how you can geotarget your customer base to personalise the experience and make them more likely to choose your service.

2. Carefully choose your partners

We partner with restaurants that do not have existing delivery services, giving them everything they need to provide one, from drivers to a logistics platform. We are committed to ensuring the food delivery experience is second-to-none — if a delivery takes longer than ten minutes, the food quality suffers greatly, and that ruins the customer experience.

In Australia, the app will only show restaurants in a 2.5km radius. Doing this allows us to focus on building meaningful relationships with our partner restaurants and helps get their name out there. Be strategic about choosing your partners. Their success is your success. Invest time in building meaningful partnerships early on.

3. Don't forget the customer experience

I have made hundreds of orders using Deliveroo's platform. Nothing beats receiving your favourite meal at your front door after a few taps on your phone. An exceptional customer experience has been key to our success. In the UK, we achieved our first million orders, not because of paid marketing, but largely through word-of-mouth and focusing on the customer experience. From the second a customer opens the mobile app, to the moment their meal arrives, every interaction should reinforce the brand and experience.

Remember to think about the customers you want to attract. Do you want to distribute coupon codes and attract one-off bargain hunters? Or build a loyal customer base that returns on a regular basis and interacts with your brand? Communicate with your customers honestly about your service or product — this is more important than achieving short-term wins.

CASE STUDY: ELISSA HUDSON, SENIOR MARKETING MANAGER AT HUBSPOT

How to Use Facebook Messenger to Engage with Your Customers

Email marketing has transformed how marketers connect and engage with potential customers. But with crowded inboxes, email is failing customers who want to receive personalised, quality content.

Hubspot recently experimented with Facebook Messenger in our marketing and found a 242% difference in open rates. Facebook Messenger can be a useful channel for the following:

Update customers about their purchase

You can set up the Messenger bot to notify your customer when their order has been created, confirmed, packed shipped and delivered. You should also connect Facebook Messenger to your CRM and set up a workflow that requests a product review one or two days after a purchase.

Sell exclusively through the app

Facebook Messenger can automate the purchasing process after a customer comments on a post.

Help users easily search for information

You can build a Facebook Messenger bot that answers frequently asked questions, reducing the time a user would spend navigating FAQs on your website and allows you to communicate quickly with your customers.

Marketers know that events are a great way to meet prospective clients face-to-face and create an offline experience for their audience. We used Facebook Messenger for event registration through to event management with positive results. From an attendee's point of view, they could engage directly with presenters by asking questions, network with other attendees and revisit the event's presentations afterwards.

We were able to initiate a conversation with the event registrant through a chatbot we had built. This is a more unique way to ask for the same details as you would in an event registration form, but maintain engagement with your user.

During the event, you can use pop-ups and notifications so that attendees can check their event agenda. Registrants can also receive notifications from Facebook Messenger about session start times, or equally important, where the coffee is.

Registrants can also submit questions to a panel through Facebook Messenger. This addresses the common problem of people avoiding asking questions because they're embarrassed.

You can even connect Facebook Messenger to sales representatives and your calendar so people can request meetings or live chat with a sales representative.

CASE STUDY: MATT JONES, CEO OF HONEE

Expanding Overseas After Finding Product Market Fit

Honee is a discovery and booking platform for wellness, beauty and fitness services in Melbourne — think Zomato for the beauty and wellness industry. When we first started approaching service providers to sign up to our platform, we realised more than 60% of venues had no web presence.

Before we could even consider international expansion (which was crucial to our growth plan), we had to first validate our product and create a playbook for the local market.

Market Validation in Your Home Country

When determining product-market fit, you should ask – *do enough people in the market want my product?* We embedded ourselves in salons, attending team meetings and speaking with their customers to understand how the business worked. For Honee, venues saw us as an essential partner to promote their business. There was a need that our platform was directly addressing in the beauty and wellness industry.

Prepare for International Expansion

After you have tested your product and recorded some success in a local market, international expansion may be a suitable option depending on your model, budget and growth ambitions. It is important not to assume that a product or service offering in one geographic market can be easily replicated to operate in another market.

Because Honee works with beauty and wellness providers, we have to recognise that different markets will have different ideas of beauty. For instance, in Kuala Lumpur, high-end salons rarely take bookings.

Hire Locally to Develop Product-Market Fit in International Markets

Avoid relying on fly-in-fly-out talent to build your business locally. Each city is different, with its own customers and early-adopter clients. This means that product-market fit will look different in Sydney compared to Singapore.

If you are considering breaking into the Asian market, there is no substitute for getting on the ground. Get to know local talent by visiting incubators like MaGIC in Kuala Lumpur and meeting with founders of companies like Gojek in Jakarta.

Fortunately, Australians can rely on the support of a huge expat community in Singapore and Hong Kong, as well as take advantage of the government grants offered to new startups. There are no excuses for overlooking Australia's closest neighbours when considering expansion.

If you launch overseas, take every opportunity to collect feedback from your customers. Sending short surveys to customers on your email lists can help you tailor your product offering in a new market. If you are an e-commerce business, you may also need to establish warehouses abroad and engage local couriers to ensure timely delivery of your product.

Quick Tip: Managing Risk Overseas

Managing an overseas operation from Australia can seem daunting — what if the manufacturer doesn't deliver or the goods are poor quality? You can help avoid this scenario by taking these steps:

- Meet suppliers in person to assess the quality of the product. If this is not possible, order the product yourself to check quality and order times.
- Make sure your contracts include a clause that states that you own the rights to any intellectual property that the manufacturer creates before the start date of the contract. Any intellectual property created as part of the contract should be assigned to you.
- Specify quality and delivery. If the quality of the good is poor or the delivery is slow, you should be entitled to a refund, redelivery or the right to terminate the contract.
- Your contracts should also include a clause stating that when dealing with faulty products in Australia, the overseas manufacturer agrees to refund you or pay the cost of any damage you suffered.

RESOLVING A DISPUTE

Unfortunately, even if your business has a great product which customers love, there may come a time when you find yourself in a dispute with someone that you are working with or for. These types of disputes can be tricky for a number of reasons:

- you may lose a customer and the potential future revenue that the relationship might have generated;
- there are risks to your reputation and brand, which are particularly challenging if your business has a social media presence;
- if the dispute is with a supplier, you may need to find a new organisation to work with, which can come at a significant cost;
- if the dispute is very serious, you could get sued or find yourself needing to sue someone; and
- a dispute will take time away from the most important thing for any business owner — running your business.

Disputes commonly arise because of a difference in expectations between you and your customers. A customer may be upset because the product quality or delivery speed didn't meet expectations. In this context, it is unlikely that disputes will begin with a letter threatening legal proceedings. Rather, dissatisfied customers are likely to ask for a refund or for you to fix the problem.

The reasons that a dispute with a customer may arise will depend on what your business does. For example, if you have a SaaS business, customers may be unsatisfied when your service isn't available, is operating too slowly or has glitches.

Quick Tip

Ensure your business terms and conditions include suitable warranties, disclaimers and limitations of liability as to the level of service or quality of product you provide to manage and limit your risk. Doing this can provide you with some measure of protection if a customer tries to sue you for damages they claim to have suffered because of a failure in the product or service you have provided.

It's easy to find stories of business woes where a manufacturer based overseas has failed to deliver, stolen intellectual property, or manufactured poor quality goods. You can avoid this scenario by taking two steps:

1. **Pick trustworthy suppliers:** If you already have a connection with a trusted supplier, ask them for recommendations. Meet suppliers in person, if possible. Phantom order the product for yourself first to check quality and order times, and seek samples before you place a full order.
2. **Ensure legal contracts are in place to protect your interests:** Your manufacturer's agreement should set out the responsibilities and rights of both parties. For example, a well-drafted intellectual property clause should not only protect the intellectual property you created, but also should assign (i.e. transfer) any intellectual property created by the manufacturer as part of the contract.

DISPUTE RESOLUTION

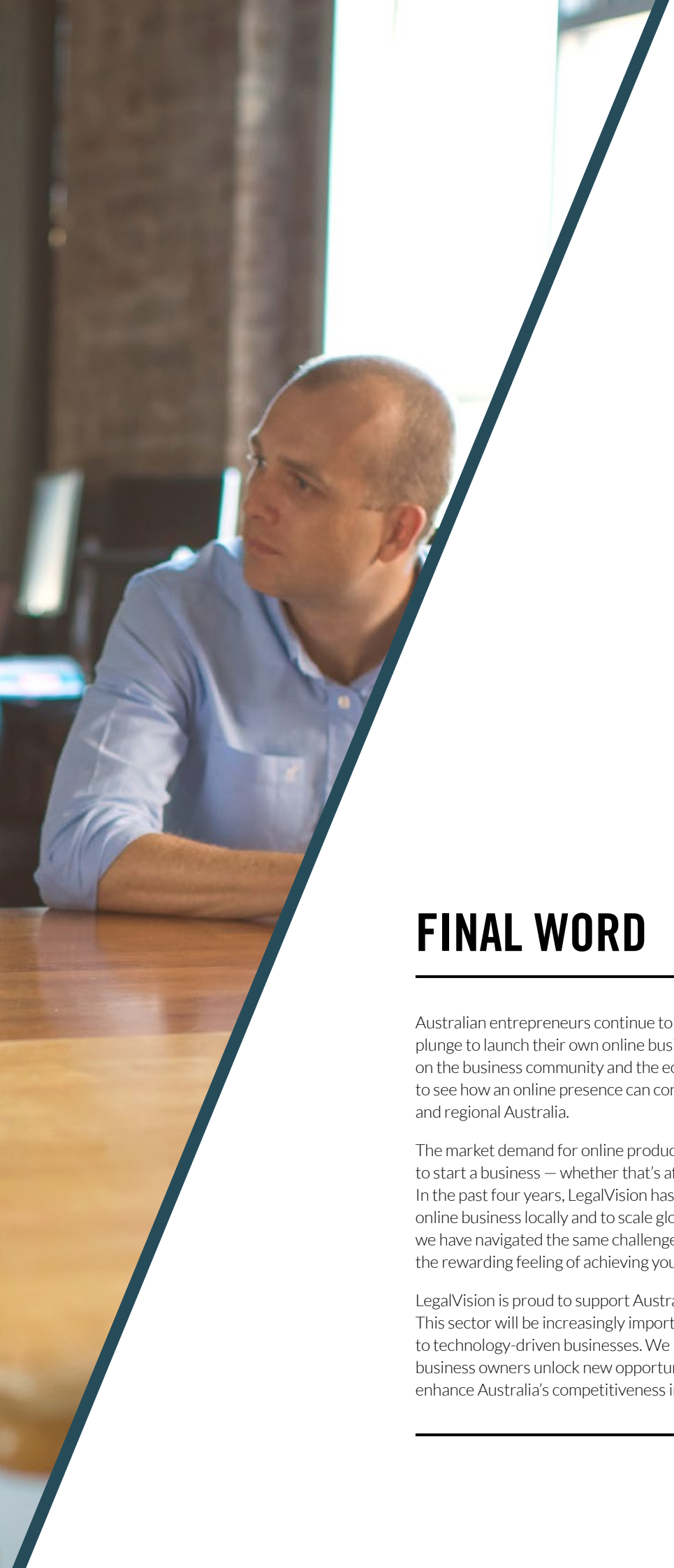
If you want your online business to succeed in the long term, most disputes will require a customer-centric approach. Offering discounts, free services and other commercial resolutions will build customer goodwill and your reputation for service. Therefore it's sensible to think about your approach to respond to dissatisfied customers. For example, Uber employs teams of 'customer happiness officers' who won't hesitate to refund a user for anything less than stellar service. If the worst-case scenario does happen, and you find yourself in a situation where a customer is threatening to commence proceedings against you, you have two options:

1. settle on commercial terms (ideally recorded in a formal deed of settlement); or
2. go to court.

Court proceedings are very expensive, can take years to finalise, and can be disastrous to your reputation and brand. If you're considering going to court, make sure you're doing so for the right reasons and that you have spoken with a lawyer about your prospects for success.

A CUSTOMER CENTRIC APPROACH

- Offer a discount
- Refund the service or good
- Offer a free upgrade
- Train staff on dispute resolution processes
- Make it easy for customers to contact you
- Give personalised attention
- Resolve quickly



FINAL WORD

Australian entrepreneurs continue to identify unmet market needs and take the plunge to launch their own online business. This undoubtedly has a positive impact on the business community and the economy-at-large. We are especially heartened to see how an online presence can connect customers with online businesses in rural and regional Australia.

The market demand for online products and services is growing, so it's a good time to start a business — whether that's after work on the side or quitting your day job. In the past four years, LegalVision has helped hundreds of clients to launch their online business locally and to scale globally. As an online business ourselves, we have navigated the same challenges set out in this guide and know first-hand the rewarding feeling of achieving your first online sale.

LegalVision is proud to support Australian innovation and entrepreneurship. This sector will be increasingly important as the nation shifts away from resources to technology-driven businesses. We look forward to seeing entrepreneurs and business owners unlock new opportunities, deliver new value for customers and enhance Australia's competitiveness in the online space.

GLOSSARY

Australian Business Number (ABN)	Any entity, including individual persons and companies will have an ABN if they are operating a business.
Australian Competition and Consumer Commission (ACCC)	The Australian Competition and Consumer Commission is the national regulatory body which protects consumer rights.
Assets	The assets of a business include goodwill, intellectual property, machinery, stock, cash, key contracts and client lists.
Asset Sale	The act of selling the business' key assets such as goodwill, intellectual property, machinery, stock, key contracts and client lists.
Australian Communications and Media Authority	The government authority responsible for media and online communications regulation, including receiving and acting on complaints about breaches of the Spam Act.
Burn Rate	The rate at which a startup spends its cash to pay its expenses. Used in finance forecasting to determine how much capital will be required in each round.
Business Terms and Conditions	The legal agreement between a business and its customers, including payment methods and dispute resolution. May be referred to as 'sales terms and conditions' (e-commerce stores), 'client agreement' (service businesses) or 'marketplace terms and conditions' (online marketplaces).
Buyer Persona	A fictional representation of your ideal customer, including their goals, challenges and consumption habits.
Capital Gains	The profit gained from selling assets such as shares.
Capital Gains Tax	Tax which is to be paid on a profit made from the sale of property or other assets (such as shares).
Clickwrap Agreement	A way of presenting the business terms so that a customer must click-to-agree before purchasing the product or service.
Conversion Rate Optimisation	The act of improving how website visitors turn into paying customers for your goods or services
Cookies	A piece of data sent from a website and stored on a the user's computer to collect information about the user's action on a website.
Copyright Notice	A statement on a website or advertisement that states which person or business owns the copyright in an original work (e.g. website content or an image), and in what year it was created.

Customer Relationship Manager (CRM)	Software that records all interactions your business has with customers and potential customers. A CRM allows you to tailor the shopping experience to each customer.
Debt Financing	Raising capital for your startup by borrowing money in return for the payment of interest (rather than receiving money in return for shares).
Dividend	There is no requirement for the company to pay a dividend, funds can be reinvested back into the company for growth.
Double Opt-in	A two-step consent process used to ensure that a specific person has given you permission to send them promotional emails.
Employment Contract	A legal agreement between your business and its employees that addresses issues such as role, salary, superannuation, intellectual property, non-compete and leave requirements.
Equity	Share ownership in a company.
Equity Financing	Distinct from debt financing, equity financing involves the issuance of shares to investors in return for capital.
Express Consent	A way in which a person consents to receiving promotional emails from your business. Express consent usually happens when the person completes a double opt-in that gives you permission to put them on an email list.
Formal Deed of Settlement	A legal agreement between a business and a customer that records the terms reached to settle a dispute over its products or service.
Goods and Services Tax (GST)	A 10% tax applied to goods and services sold in Australia.
Inferred Consent	A way in which a person consents to receiving promotional emails from your business. For example, when a person or business makes an email address conspicuously public (e.g. in a directory or online advertisement).
Intellectual Property (IP)	Intangible property which is generally created as a result of creativity or knowledge, such as copyright, trade marks and patents.
Joint and Severally Liable	All partners in a partnership business are liable for the full extent of the business' debts. A creditor can recover the debt against any one partner, and the partners must then decide between themselves who is responsible for paying what proportion of the debt.

Liabilities	The debts a business is legally responsible to pay.
Major Failure	A problem with a good or service that cannot be fixed and which entitles the consumer to a refund.
Minimum Viable Product (MVP)	The bare minimum product you need to start selling to customers. The MVP enables your business to enter the market as soon as possible.
Pay As You Go (PAYG)	How a business meets its tax obligations. Under PAYG, tax is paid in regular installments through the year towards the expected end-of-year taxation amount.
The Payment Card Industry Data Security Standard (PCI DSS)	A set of standards developed by major credit card companies to protect against credit card scams and fraud.
Personal Guarantee	A guarantee that you will personally pay the debts of the business (or other entity that you are providing a guarantee for, if the business fails to pay.)
Pay per click (PPC)	PPC ads appear at the top of search engine results and in social media. You pay a small amount to the advertising platform (e.g. Google) every time a person clicks on the ad.
Privacy Act	National legislation that governs how business' handle their customers' information. Applies to any business with an annual turnover of more than $3 million, those that work in sensitive areas such as healthcare, and those that opt-in.
Privacy Policy	A statement published on your website that describes what personal information you collect, and how you will use the personal information collected from leads or customers.
Proof of Purchase	A receipt provided to a customer after purchase that allows the customer to seek a refund.
Restraint of Trade	A term in an employment agreement that prevents the employee from operating a similar business while they are an employee or for a period of time after leaving the business.
Software as a Service (SaaS) Business	A SaaS hosts software online that customers use directly from their web browser, without installing it on their computer.

Search Engine Optimisation (SEO)	Any work that improves your business' position in search engine results. For example, by publishing new content or building backlinks.
Share Sale	The act of selling shares in the trading company that carries out the business.
Spam	Unsolicited promotional communications received by people who have not consented to receiving a business' email marketing.
Spam Act 2003	The *Spam Act 2003* (Cth) protects customers from receiving unsolicited emails that advertise and promote the sale of goods.
Third-party Payment Processor	A service such as Stripe, PayPal or Braintree that allows your business to easily accept credit card payments.
Trade Mark	A distinctive sign used to distinguish a business' goods or services from others. Can include both words, such as the business name, and images, such as the logo.
Trading Company	In the context of a share sale, the trading company is the company that carries out the business and owns the shares to be bought.
Website Terms of Use	Terms included on your website that help protect your website and tell those who visit your website how they are allowed to interact with your site.

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LegalVision is a market disruptor in the commercial legal services industry. Our innovative business model and custom-built technology assist our lawyers to provide efficient, high-quality and cost-effective legal services. LegalVision is a leader in delivering legal services in Australia and has assisted more than 50,000 businesses and startups.

We encourage readers to draw on the insights in this manual wherever useful. If you would like any further information, please call us on 1300 544 755.

ABOUT THE AUTHOR

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Kirstin is a Practice Leader in LegalVision's IT law team. She worked for over eight years at Norton Rose Fulbright in Paris specialising in corporate and banking and finance law. She specialises in drafting and negotiating contracts involving software development, licensing and distribution, e-commerce and marketplaces, data privacy and security issues and IT intellectual property.

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