

## ASSET PROTECTION

### EVERY BUSINESS NEEDS AN ASSET PROTECTION STRATEGY

As bankruptcy trustees and official liquidators, we have seen business owners enjoy enormous benefits when they successfully implement even the most basic asset protection strategies.

The good news is that simple, affordable asset protection strategies do exist.

Our guidebook is the perfect introduction to this complex area of law. It's written in plain English and based on our combined 40 years of experience of investigating and analysing business failure. With plenty of real-life examples of how bankrupts and directors have failed to take simple steps to protect their assets, it contains simple tips and tricks to help you figure out what to do and what not to do to safeguard your assets.

In short, this guidebook is a must-read for every new business owner.

### 50% OF NEW BUSINESSES FAIL

What happens if you don't have an asset protection strategy?

We have worked with thousands of business owners who failed to heed this golden rule: it is negligent for business owners not to research and build an asset protection strategy.

As a result, they lost everything. Not just their businesses, but their homes and personal assets, their marriages, their families and their health.

None of these people expected to be our clients, but the fact is that the success rate for new businesses is extremely low. According to ABS, ASIC and AFSA statistics:

- 25 per cent of new businesses will cease trading within 12 months
- 54 per cent of new businesses will fail within three years
- 10,000 companies are forced into liquidation or external administration each year
- 30,000 people go bankrupt (or enter into a debt agreement) each year.
- About 50,000 couples will divorce each year (about 40 per cent of all marriages).
- We have seen, through the bitter experience of our clients, that money spent on asset protection strategies is more reliable than insurance and more valuable than physical security protection.

We care about our clients, and want to assist small business owners. We have seen 100's of people lose their homes, in circumstances where a simple asset protection strategy could have saved it. Trading a business via a company is a concept that was developed in the 1800's. It is a wonderful asset protection device. Registering a security interest, just like a bank registers a mortgage is another very old, but very effective asset protection tool that allows a business owner to be repaid before the ATO and unsecured trade creditors if the company fails.

Often the greatest losses from financial failure are the long-term emotional and personal consequences. This types of trauma can be avoided by prudent planning and a good asset protection strategy.

Effective asset protection requires a unique blend of accounting and law. A complete asset protection strategy requires experts in tax, family, succession and insolvency law to design and implement. That's four experts, not one.

There might be 70,000 lawyers and 50,000 accountants in Australia, but there are only 200 bankruptcy trustees.

We understand asset protection better than other professionals because it's our statutory duty to set aside asset protection strategies.

We also understand that most small businesses won't have the desire or resources to spend \$5000-10,000 to design a complete asset protection strategy. Instead, they need simpler, more cost effective options that might not be perfect but are still highly beneficial.

## KEY FACTORS OF ASSET PROTECTION

Asset protection strategies should be determined with regard to:

1. Taxation obligations
2. Matrimonial risk and family law
3. Debt and equity capital requirements
4. Business failure risk and insolvency law
5. Set up and annual compliance costs
6. Plans to distribute profits.

The problem with these variables is that they result in contradictory requirements. For example, minimising tax generally increases the risk of your assets being exposed to claims by creditors and family members. And as you increase your asset protection, you materially increase your set-up and annual compliance costs.

With so many variables to consider, the right asset protection strategy needs to be tailored to individual risk profiles.

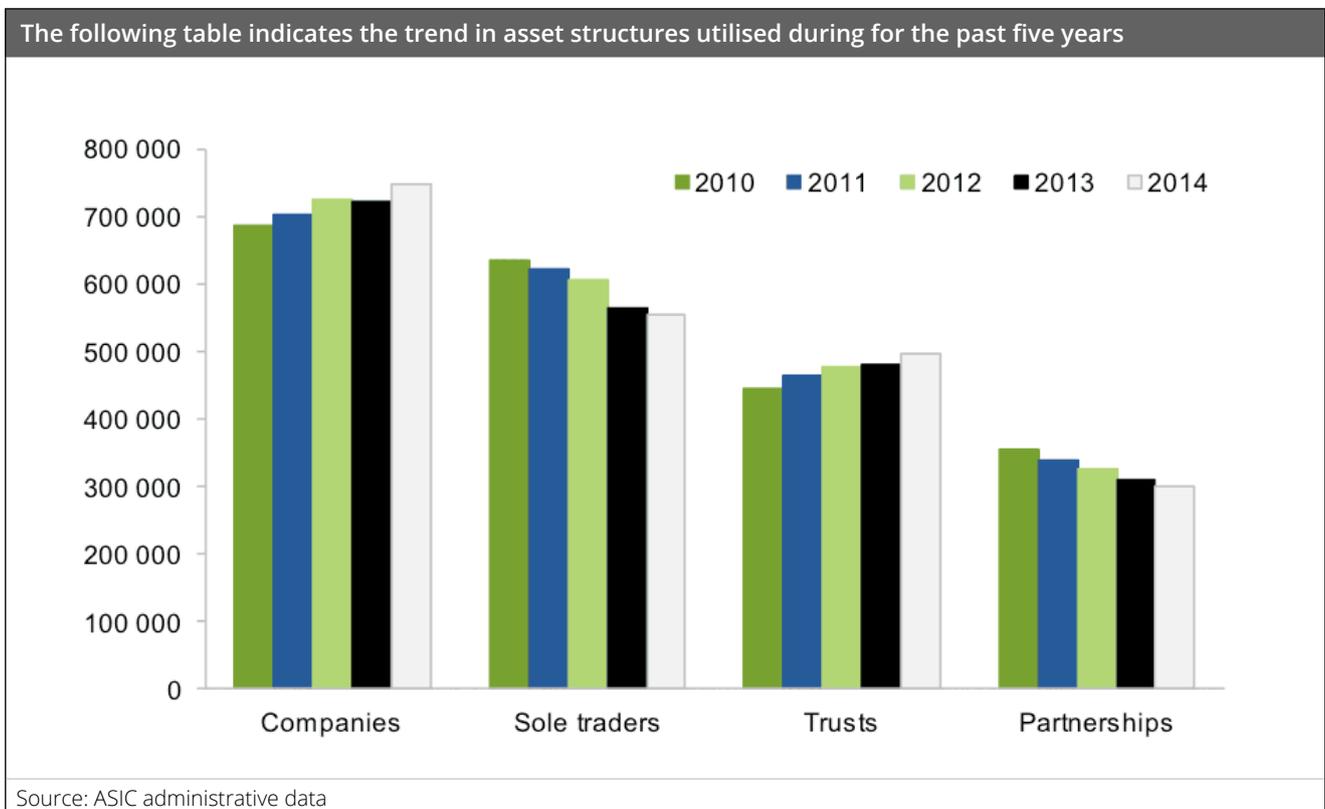
The best time to implement an asset protection strategy is before or shortly after a business has started trading when it is far cheaper to set up.

Australia has about 2.6 million businesses, according to the ABS. The owners of these businesses have chosen to trade via the following structures:

- Companies 36%
- Sole Traders 26%
- Trusts 24%
- Partnerships 14%

Note: The above statistics exclude the 460,000 micro business that trade as sole traders but are not registered for GST.

Summary of key features of different entity types	
Entity type	Key Features
Sole Trader	<ul style="list-style-type: none"> <li>▪ Simplest business structure, indistinct from owner</li> <li>▪ Business income or losses included with other income in individual's tax return and taxed at personal tax rates</li> <li>▪ Individual is personally liable for business debts</li> </ul>
Partnership	<ul style="list-style-type: none"> <li>▪ Similar to sole trader, but with two or more people (or other entities) as co-owners</li> <li>▪ Share of business income or losses from partnership included in each partner's individual tax return and taxed at their personal tax rates</li> <li>▪ Partners are joint and severally liable for business debts</li> </ul>
Company	<ul style="list-style-type: none"> <li>▪ Distinct legal entity</li> <li>▪ Company profits are taxed at the flat corporate tax rate</li> <li>▪ Profits can be passed through to shareholders as dividends (where they are taxed at marginal personal tax rate, less franking credits)</li> <li>▪ Losses cannot be distributed to shareholders, but are retained and offset against future profits</li> <li>▪ Shareholders' liabilities are limited, although there are duties imposed on directors</li> </ul>
Trust	<ul style="list-style-type: none"> <li>▪ Obligation imposed on a trustee to hold assets for the benefit of others (the beneficiaries) - established by a trust deed</li> <li>▪ Earnings are passed through to beneficiaries, added to their individual tax returns and taxed at their personal income tax rates</li> <li>▪ Losses are not passed through to beneficiaries</li> <li>▪ Earnings retained in the trust are taxed at the top marginal tax rate</li> <li>▪ In a discretionary trust, the trustee can choose how earnings are distributed between beneficiaries</li> </ul>



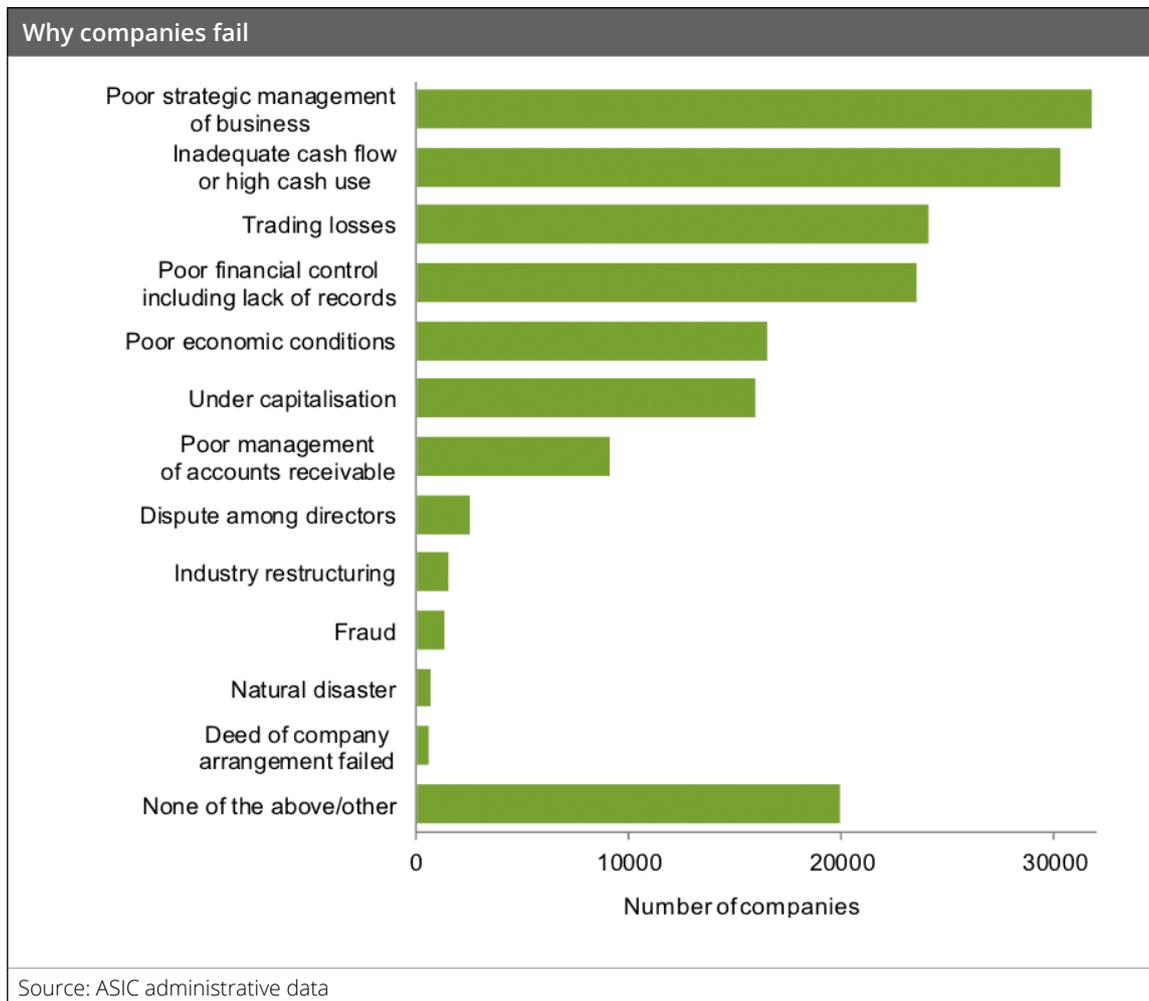
There are two questions we like to ask most business owners:

What happens if somebody is seriously hurt at your business? Australia ranks just behind the US in terms of litigation per capita. Will your business survive material litigation or even a material change to its inherent business risks?

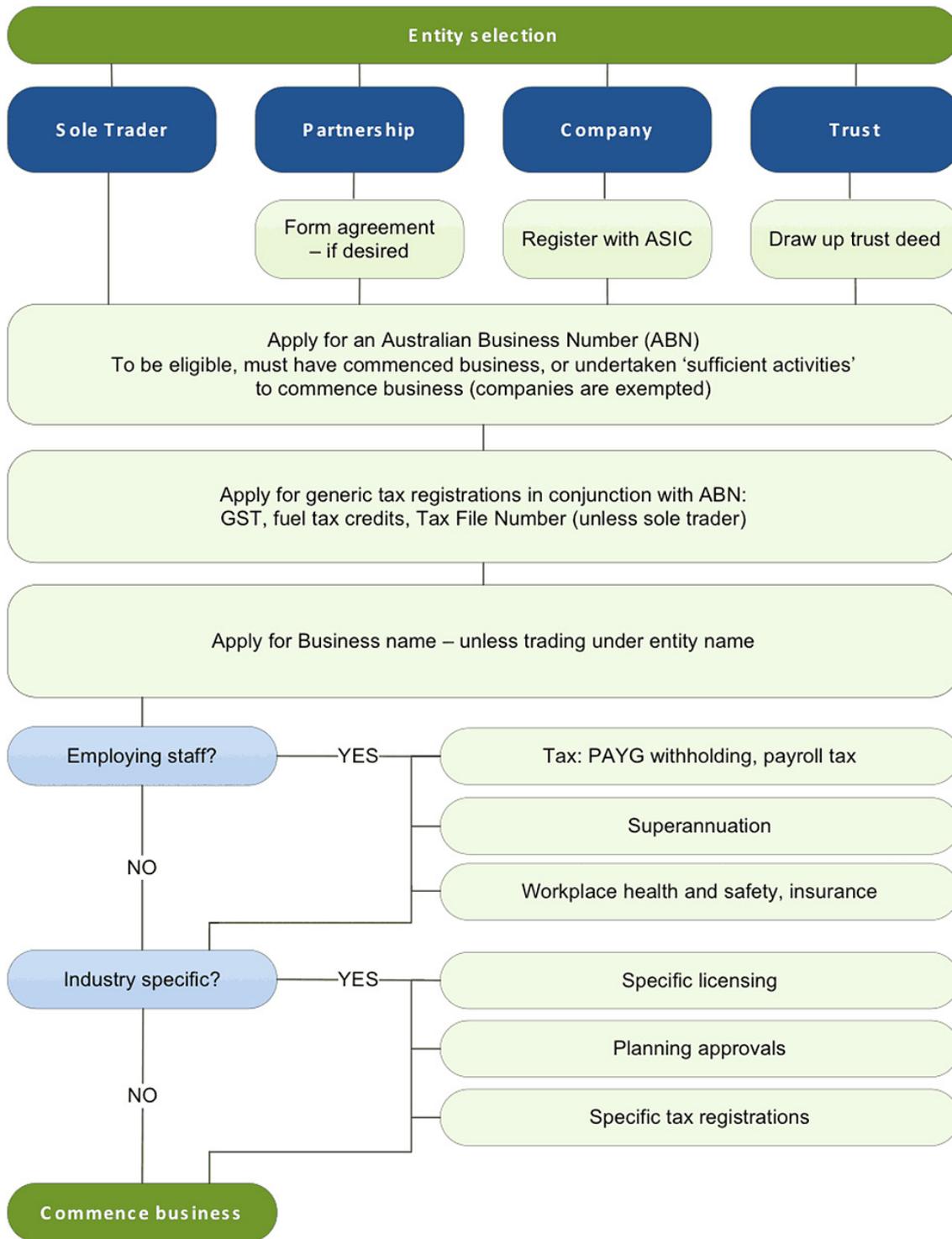
If your business fails, do you have personal assets at risk?

If you're not sure how to answer both questions, it might be a good idea to read our guidebook to asset protection.

The reasons for business failure, based on ASIC findings, can be broadly summarised as follows:



Regulatory steps for setting up a business



Source: Productivity Commission

## THE ASSET PROTECTION KIT CONTENTS

1. Asset Protection Guidebook
2. "Prenup" checklist
3. Power of Attorney
4. Last Will and Testament
5. Purchase of business checklist
6. Business Sale Agreement
7. Loan Agreement checklist
8. Security Interest (Mortgage) checklist
9. Guarantee and Indemnity
10. Contract for Services
11. Contract for Goods
12. Contract for Sub Contractor
13. Employee – Letter of Engagement
14. Employee Contract – Full-time and Part-time
15. Employee Contract – Casual
16. Employee Pay Slip
17. Employee Weekly Time and Wages Record
18. Employee Leave Record
19. Employee Record of Personal Details
20. Employee Unsuccessful Probation
21. Employee First Warning Letter
22. Employee Termination of Employment
23. Employee Termination of Employment for Misconduct
24. Employee Redundancy
25. PPS Registration tutorial – creating a registration
26. PPS Registration tutorial – creating a secured party group
27. Tax – TFN Application
28. Tax – ABN Registration
29. Registration GST
30. Checklist for Partnership Agreement
31. Discretionary Trust Checklist

## DO YOU NEED HELP?

We invite you to give us a call, all initial discussions are free of cost or obligation. Talk to our in-house liquidators, bankruptcy trustees, lawyers or accountants about your circumstances and options.

We have offices in Sydney, Melbourne and Byron Bay together with affiliated offices in each capital city. Our nationwide network lets us service our clients' needs throughout Australia.