

# 10 Legal Mistakes Businesses Make and How to Avoid Them



**Get your business off to the best start possible by reading about 10 common mistakes businesses make and how you can avoid them.**

# Introduction

There's a lot of things you have to think about when starting a business, and often, important things can fall to the wayside. In this article, we'll discuss the 10 most common legal mistakes businesses make, and give you tips on how you can avoid them. It's important to launch your business on a strong foundation when you're first starting off. This is because as your business grows, so will your legal responsibilities.

## 1. Not doing the right searches

When you start a business, there's a number of searches you should do to make sure that you don't run into any legal trouble later on. Some of the things you should check online are:

### Your business or company name

If you've come up with a brilliant name for your business, one of the first things you should do is check that it hasn't already been taken by another business. You can search for both registered business names and company names online. You'll want to settle on a name that's available before you start designing any logos or brand assets. Business names can also be trademarked, so you'll want to also search your proposed business name on IP Australia's [online trademark search](#).

## Your logo and other brand assets

You can search images and other brand assets on the IP Australia website.

By doing this, you'll find out if there are any business logos that use the same colouring or design as what you have in mind for your business. If you don't check first, your [trademark application](#) will likely be rejected or you may even get into legal trouble for infringing on a registered trademark.

## Your domain name

Starting a website for your business is one of the most important things you can do to get your business off the ground. However, you also need to make sure you come up with a website name which your customers will recognise. To register your domain name, you need to purchase it and renew it before it expires.



## 2. Not protecting your information

A [Non-Disclosure Agreement \(NDA\)](#) is a legal document which will safeguard your confidential information. There are in fact, many instances where you will may be relaying sensitive information about your business to another party and it's wise to protect it.

### Types of Non-Disclosure Agreements (NDAs)

There are two types of NDAs, one-way and mutual. [One-way](#) means that the receiver of the information must keep the information confidential. A mutual NDA means that the discloser and the receiver must both keep the information confidential. Some examples of when you'll want to use an NDA are:

### When you're looking for investors

If you're talking to people about your idea and are hoping to secure investment in your business, an NDA can help ensure that the information you provide to these people is secure. However, if you're talking to Venture Capitalists using an NDA is not common practice. This is because Venture Capitalists look for ideas and businesses they can invest in and will likely refuse to sign such a document.

## When you're talking to potential Co-Founders

Co-founders are important to brand-new businesses. Starting your business with a co-founder means you won't be launching your brilliant idea on your own. However, it's important that co-founders are on the same page when it comes to how the business is found but also the general vision for the business. before you start with negotiations, you ask them to sign co-founders agreement. Using an NDA will keep your information safe in the event that your co-founder leaves the business.

## If you're hiring employees

When it comes time to start hiring for your business, you'll want to make sure that any information your hires are exposed to is protected. If you have employment contracts in place, your business will also be protected under the confidentiality clause.



### 3. Not using a Co-Founders Agreement

Using an NDA when talking to potential co-founders is one thing, but once you're ready to formalise your partnership you should have a [co-founders agreement](#) in place.



#### Example

Ronald Wayne was the third co-founder of Apple. He bought 10% of Apple in the 1970s for \$800. Two weeks later, Ronald sold his stake for \$800 because he wasn't happy with how the company was going. These days, that 10% stake would be worth \$95 billion.

This example demonstrates what can happen when co-founders aren't on the same page and don't have a shared vision for the business. Later on when the company is registered, you can also distribute ownership in the company by using a shareholders agreement.

## 4. Copying and pasting your online terms from another website

You'll probably notice that a lot of websites have the same documents or terms on their website. These include privacy policies and terms of use. It may be tempting to find a business that's similar to yours and copy and paste their terms over, but this is ill-advised. This is because your business idea is unique and therefore your terms and conditions will need to be unique as well.



### Example

You've placed a terms and conditions on your site by copying and pasting another company's Ts and Cs. You forgot to change the names in some parts on the document (which were hidden in the fine print). The business you lifted it from is now suing you for copyright infringement.

## Privacy policies

It's inevitable that your website will be collecting information about your site's visitors. Consumers take their privacy very seriously, and it's important that businesses reflect this. [Privacy policies](#) are not compulsory for businesses which turn over less than \$3 million per year, but no matter the size of your business, they're always recommended. Your policy should cover what information your site will collect and how it will be handled.

## Website terms and conditions

Your website's [terms and conditions](#) is a legal document which will cover how your business operates and more importantly how you sell goods and services. These cover things such as how payments, refunds, and deliveries work. Your business is required to inform customers about this under Australian consumer law.

Further, if you're operating an online marketplace business, then you'll need two sets of terms and conditions – one for sellers and one for buyers.

## Online terms of use

A terms of use is important for websites that create content, for example blogs and other information sites. This document will inform users how they can use your site and will help you avoid your site or content being misused.



## 5. Failing to protect your intellectual property

When you're starting a brand-new business, often your idea or your processes are the only thing you have of value. Your idea is the most valuable asset your business has at this point which is why it should be protected. Intellectual property describes any kind of intangible asset such as an invention, a brand, a design, or a process.

A common instance where businesses can run into trouble is where a website, graphic or other content has been developed by someone externally. The issue with this is that a business may fail to make sure that they actually own this asset. This is why when outsourcing creative jobs for your business, you should either have a term in the services agreement which confirms your business owns the intellectual property or have the assets assigned to your business by using an [intellectual property assignment agreement](#).



## The moonlighting problem

A common problem can be if you're looking to start a new business whilst still working for another employer. This is because a lot of employees will have a clause in their contract which automatically gives the ownership of any intellectual property they create to the employer. To alleviate this, you should check that there's an assignment of intellectual property clause in your contract, that you're not working on your idea during office hours and that any work you do for your new venture isn't done on your employer's property (i.e. your work computer).

## The Zuckerberg problem

Facebook is one of the most popular websites in the world, however the original idea for a social networking site apparently came from someone other than Mark Zuckerberg. He allegedly stole the idea after being hired to program a similar site called 'ConnectU'. When Facebook launched a few short months later, the founders of ConnectU sued Zuckerberg. However, all the founders of ConnectU had to rely on was a couple of emails and the oral contract made between them. This is actually a surprisingly common problem, which further illustrates why it's so important to have the right legal documents in place, such as a website development agreement or contractor agreement.

## 6. Incorporating at the wrong time

It's vital that you incorporate your business at the right time. It's unwise to register your company too early, but also detrimental if you do this too late in the piece. This is especially the case where you're entering into contracts and taking on risks, as you need to make sure these fall to the company and not you individually. Once you start taking on risk and entering into contracts, it's usually time to incorporate your business. There are also many benefits when you register as a company which include:

### Tax

If you run your business as a sole trader or a partnership, you will be taxed as part of your personal income. Companies pay a flat [corporate tax rate](#) of 30%. As your business becomes more profitable, being taxed on an individual rate will become excessively expensive.

### Investment

Investors normally don't invest in a sole trader or partnership. The reason for this is that they want to invest in a company. A company is made up of shares and they can very easily purchase a percentage of those shares.

## Disputes

Often disputes in a company are governed by what is called a [shareholder's agreement](#) and there are very stringent rules set which set out how disputes should be handled. If the business is involved in any other disputes, the company will be liable and party to the proceedings. If the business is a sole trader or partnership, you will be personally involved in the proceedings.

## 7. Not vesting

Imagine you have two founders who start a business. They each get 50% of the business. However, after six months one decides to leave and wants nothing to do with the business anymore. What happens? The problem is that that person just walks away with 50% of the business and the other person is stuck doing 100% of the work. So what's the solutions? Vesting can prevent this. If you are starting a new business, it's crucial that you have vesting in place.

Vesting means that co-founders will earn their merit or their shares over a certain period of time. For example, none of you earn any equity in the first year. After the first year, you get 25%. In this case, if you are splitting the business 50/50, it would be 25% of your 50%. Over time, this equity vests and your share will increase.

## 8. Not having an advisory board

It's important to have people around that can guide you, which is where an advisory board can assist you. Having an advisory board means you can surround yourself with people that have done it before or have experience in the industry. Your advisor may sit in on some high-level, strategic decisions. It's fantastic for you to bounce ideas off of them. It's also great for networking and can lead to you being introduced to your first investor.

## 9. Not using the right employment documents

It's important to have the right documents when it comes to hiring employees. You may be hiring a contractor and not know which document to use, or you may think using a permanent [employment contract](#) is suitable. It's important to clearly set out the employment type and terms to avoid confusion and potential legal disputes.

## 10. Using the wrong lawyer

The law is a huge area and it's really important to engage a lawyer that has expertise in your specific area. There's no point hiring a criminal lawyer to issue equity under an employee share scheme or shareholder's agreement. This is because the lawyer won't have sufficient expertise and won't know what they're doing. Hiring the right lawyer will save you a lot of money in the long run and you can [find one easily online](#).

The early stages of your business will set the tone for how the rest of your business' journey will go. Knowing how to start your business on the best foot possible will help you set your business up for success in the future.



# How Lawpath can help?

Unsure where to start? Contact a Lawpath consultant on 1800 529 728 to learn more about customising legal documents and obtaining a fixed-fee quote from Australia's largest legal marketplace.

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