

Setting up a discretionary trust



Looking to protect your assets, manage profits more flexibly, or plan for the future of your business or family? A trust structure might be just what you need.

Trusts can be incredibly powerful tools—but only when set up and managed properly. This guide gives you a practical overview of how trusts work, why you might use one, and what's involved in getting started.



What is a trust?

A trust is a legal relationship where a trustee (an individual or company) holds and manages assets or runs a business on behalf of beneficiaries.

A trust is not a separate legal entity like a company, but it is a recognised legal arrangement governed by a deed and the trustee's obligations.

Key elements of a discretionary trust structure include...

- ✓ **Appointor:** Holds the power to appoint or remove the trustee.
- ✓ **Settlor:** Establishes the trust by giving a small initial sum to the trustee. The settlor should have no ongoing involvement, benefit, or connection to the trust.
- ✓ **Trustee:** Manages the trust's assets and decisions in line with the trust deed. This can be a person or a company—and may also be a beneficiary.
- ✓ **Trust Deed:** The legal document that outlines the rules and powers of the trust.
- ✓ **Beneficiaries:** Receive income or capital from the trust. They may be named specifically or belong to a broader class. The trustee can distribute profits at their discretion (in a discretionary trust) or in fixed shares (in a unit trust).



How do I setup a trust?

- ➔ **Have the trust deed prepared** – Typically drafted by a lawyer or accountant.
- ➔ **Appoint the key roles** – Settlor, trustee, appointor, and beneficiaries must be documented in the deed.
- ➔ **Execute the deed** – The settlor provides a nominal sum (usually around \$10) and signs to create the trust.
- ➔ **Apply for a TFN & ABN** – Usually in the name “The Trustee for [Trust Name]”.
- ➔ **Register a business name** – If you won’t trade under the full legal trust name.
- ➔ **Open a bank account** – In the name “The Trustee for [Trust Name]”.
- ➔ **Store the deed safely** – It may be required for loans, asset purchases, or professional reference in the future.



Benefits of a trust for your business...

- ✓ **Asset protection** – Assets owned by the trust are separate from your personal holdings.
- ✓ **Tax flexibility** – You can distribute profits to beneficiaries in tax-effective ways.
- ✓ **Family planning** – Useful for protecting income or assets for children or vulnerable family members.
- ✓ **Succession planning** – Allows for flexible changes to beneficiaries or trustees.
- ✓ **Credibility** – Many investors, lenders and suppliers are familiar with trusts.



Key considerations & responsibilities

- ➔ **Establishment costs** – Higher than a sole trader or partnership.
- ➔ **Complexity** – Trusts require legal setup and ongoing professional advice.
- ➔ **Trustee obligations** – You must follow the deed strictly and act only in the best interest of beneficiaries.
- ➔ **Profit distribution** – If trust income is not distributed via resolution by 30 June, the ATO will tax it at the highest marginal tax rate (currently 47%).
- ➔ **Losses** – Cannot be distributed; they stay in the trust until it can be offset by future profits.
- ➔ **Compliance requirements** – Includes maintaining accurate records, lodging annual returns, and retaining all amendments to the deed.

Ongoing compliance checklist...

- ➔ Lodge annual trust tax return and financial statements.
- ➔ The income/profit distribution must be resolved before 30 June each year (and not just documented afterward).
- ➔ Keep the original trust deed and all amendments up to date and accessible.
- ➔ Maintain clear records for all trust activities & decisions.



When is a trust a good fit for your business...

A trust might suit your business if:

- ✓ You want the option to pay yourself a regular wage from the trust for work performed, not just receive distributions.
- ✓ You're expecting consistent profits from the outset.
- ✓ You want flexibility in profit distribution to family members.
- ✓ You're seeking asset protection or income separation.
- ✓ You don't need to retain earnings in the business (as all profits must be distributed at the end of each financial year).
- ✓ You want a structure that supports family legacy and succession planning.

While this guide is designed to give a general overview, it does not constitute legal or financial advice. For help setting up a trust tailored to your needs, we recommend locking in a time to discuss this in more detail with Wingr.

Reach out to us today to start the conversation
wingr.com.au/contact-us