Introduction

Sole Traders, Partnerships, Companies and Trusts are commonly used farm business structures in Australia. Associations and Co-operatives are sometimes used.

It is important to select the right business structure for your farming enterprise.

Some of the key considerations for deciding the best business structure for your situation include:

- the legal nature of the structure
- who controls the business structure and makes decisions
- the taxation implications
- asset protection and separation
- establishment and compliance costs.

It is recommended that you consult an accountant, solicitor, tax professional or other advisors before deciding which business structure is best suited to your business.

Sole Trader

This is the simplest business structure, as this is a one person organisation. All business decisions are made by the owner. The business is generally not a separate legal entity from the owner.

Partnership

A partnership is when 2 or more people enter into a business. The partnership can be made up of individuals or companies. A partnership is not incorporated. The rights and obligations of the partnership are governed by a partnership agreement which may be made in writing, verbally or by implication. It is also governed by the Partnership Act. It is recommended a written agreement is made to avoid disputes in the future. A partnership agreement includes:

- partnership shares
- partnership property
- duration
- capital
- profits and losses
- drawings
- meetings and voting
- holidays and absence
- car and other policies
- accounts and records
- business bank account
- restrictions to protect other partners
- expulsion
- comprehensive termination provisions to protect ongoing partners
- other partnership terms as required.

Normally, each partner is jointly liable for the obligations under the agreement. This means that each partner is liable for the debts of the partnership. It also means that profit is distributed to the partners and has implications for the individuals’ tax. Partnerships are relatively simple and normally have modest compliance costs each year.

Key Messages

It is important to select the right business structure for your farming enterprise.

This information sheet provides an overview of a number of commonly used farm business structures in Australia.

Every farmer has a different personal situation and it is recommended that professional advice is obtained to make the right decision concerning a business structure that will meet their needs.
Companies

Companies are separate legal entities from the shareholders (owners) and are incorporated under the Corporations Act 2001. The Corporations Act governs the activities of companies and is administered by Australian Securities and Investments Commission (ASIC).

The company directors control operations and shareholders can have control over major decisions and appoint directors. Companies are an independent legal entity that can:

- enter into contracts in the company name
- sue and be sued in the company name
- have perpetual succession
- hold, acquire and dispose of property and incur debts in its own name.

A company is taxed at the company rate (currently 30%) on its taxable income. Income is retained within the company until the directors declare a dividend to the shareholders. Tax losses can be carried forward (subject to conditions).

There are three types of companies:

1. Proprietary company limited by shares
2. Public company limited by shares
3. Public company limited by guarantee

A proprietary company limited by shares is the most common type of company.

A company can be expensive and complex to establish and maintain and they have a high level of regulation, yet there are benefits of asset protection and some taxation advantages. A company is appropriate to a larger scale of business with multiple owners.

Trusts

Trusts are a business structure where a ‘trustee’ holds property or income for the benefit of others called the ‘beneficiaries’. A solicitor draws up the trust deed. Trusts do not need to be in writing but generally they are. The trust deed governs the operation and administration of the trust. A trust is a complex legal structure that must be set up by a solicitor or an accountant. Operation of the business is limited to the conditions outlined in the trust deed. There are also extensive regulations with which a trust must comply. Trusts are useful to separate ownership and protect assets.

Incorporated Associations

Incorporated associations are clubs or community and other groups, operating not for profit, whose members have decided to give their organisation a formal legal structure. You can recognise an incorporated association by the word ‘Incorporated’ or the abbreviation ‘Inc.’ after its name.

Associations are incorporated under State and Territory associations’ incorporation legislation, which is administered by the state and territory authorities. An incorporated association is also a legal entity separate from its individual members and can hold property, sue and be sued.

The associations’ incorporation legislation in each State and Territory provides a simple and more affordable means of creating a separate legal entity for small groups with limited resources. This legislation imposes less onerous conditions than the Corporations Act governing the activities of companies (and administered by ASIC).

An incorporated association may need to:

- have a committee, responsible for managing the association
- have a public officer and notify any changes in that position
- have a registered office in its State of incorporation
- act in accordance with its objects and rules
- hold an annual general meeting once every calendar year
- lodge an annual statement every year
- keep proper accounting records and, in some States, prepare, have audited and lodge financial statements
- keep minutes of all committee and general meetings
- keep registers of members and all committee members
- have a common seal.

In Tasmania more information about incorporating an association and post-incorporation obligations, can be obtained from the Office of Consumer Affairs & Fair Trading. The web address is www.consumer.tas.gov.au.

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Co-operative

In Australia there are legislative provisions established under State and Territory laws for the operation of co-operatives. In 2007, these governments agreed to implement nationally uniform legislation for co-operatives. The objectives of the Co-operatives National Law (CNL) are to ensure that there are no competitive advantages or disadvantages for co-operatives when compared to corporations by providing:

- freedom to operate on a national basis;
- better access to external capital funding;
- simplified reporting for small co-operatives; and
- an accessible modern legislative environment.

In February 2012, the States and Territories signed the Australian Uniform Co-operatives Law Agreement. This agreement is a commitment by the States and Territories to develop and implement a nationally consistent regulatory regime for co-operatives. The new legislative regime, the Co-operatives National Law (CNL), has been developed by the Legislative and Governance Forum on Consumer Affairs. All States and Territories are working towards passing the relevant legislation by May 2014. Click here for further information: www.consumer.tas.gov.au.

In Australia co-operatives are required to have a minimum of five members (individuals or corporations) and must be registered. There are a set of regulations that must be followed when operating a co-operative. Further information can be obtained from the Department of Justice http://www.consumer.tas.gov.au/business_affairs/cooperatives. Advice can be obtained from solicitors and accountants to assess whether this structure is the best one for the business that you are operating.

The most common form utilised by the co-operatives is one that represents the best interest of its members in respect to their particular industry, while at the same time normally providing benefits to its members. Generally members have one vote in regard to the control of the business. Co-operatives are useful for large numbers of growers buying or selling together.

Further Information

- Department of Economic Development, Tourism and the Arts – “Choosing an ownership structure for your business”
- Cooperatives Victoria http://www.victoria.coop/

Summary

Historically, the most common business structure used by farming businesses has been a partnership as they were cheap to establish and administer. Asset protection is becoming a more important factor when choosing a business structure for farming businesses. A proprietary company limited by shares is an option that provides a separate legal entity and limited liability for the shareholders.

Every farmer has a different personal situation and it is recommended that professional advice is obtained to make the right decision concerning a business structure that will meet their needs.

Tools and further resources

Further resources available that may be useful to consider business structures include:

- Increasing Productivity - Achieving economies of scale in vegetable production
- Scale of Vegetable Production - Profit calculator
- Collective Marketing - Selling vegetables profitably!
- Land Leasing
- A New Business Structure - The options and benefits
- Collaborative Business Models

Disclaimer

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