Fact sheet – First Nations startups

#3 Co-founders, shareholders & their obligations

As the owner of a startup, you and your co-founders will find yourselves working hard towards the goals of your business from the outset. However, all too often disagreements and financial pressures eventuate, challenging the relationship between co-founders and leading to tension between shareholders.

Taking the time to work out how you and your business partners will interact with one another as the owners of your startup is critically important. As is having a clear understanding of your legal rights and responsibilities, which can help manage expectations and reduce the possibility of disputes in the future. Importantly, once you all have a clear understanding of your rights and responsibilities, that understanding should be recorded in a legally binding shareholders' agreement.

Shareholders

The most common type of corporate structure used by a startup is a proprietary company. In a company, the co-founders are likely to become shareholders with each share in the company representing part ownership in that company. Refer to **fact sheet #2 Key positions within a private company** for a summary of the duties and responsibilities of shareholders.

Whilst shareholder rights and obligations are outlined in the *Corporations Act 2001* (Cth), they are primarily dictated by the class of shares and associated share rights; the company constitution; and any applicable shareholders' agreement.

Share rights

Ordinary shares are the most common class of shares on issue in Australian proprietary companies. The general position is that an ordinary share allows the holder to vote on decisions of the company and participate in any dividends declared by the company.

Other classes of shares may exist to allow flexibility in capital raising, the declaration of dividends on a particular class of shares, or to retain strategic control in a company. Some proprietary companies may issue shares of another class that lack the right to a vote to achieve these objectives.

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Company constitution

A company constitution will set out the rights that attach to each individual class of shares, what decisions shareholders are responsible for, and the process by which further shares may be issued (among other things). The following are matters commonly addressed by a company constitution:

- **Shareholder rights** – these are an important consideration for co-founders given they will dictate how shareholders will interact with the company and in what ways.
- **Processes for meetings** – a company constitution would ordinarily set out the key processes for shareholder meetings including the notice requirements, quorum, voting rights and proxy arrangements.
- **Other procedural issues** – a company constitution may also deal with other procedural issues such as the issue and replacement of share certificates and the maintenance of the company register.

Shareholders agreement

The interaction of shareholders is critically important for any company, especially for startups as the business begins to grow. It is important that proper legal documentation is in place from the outset of your startup to reduce the risk of adverse situations (such as disputes) impacting your startup and disrupting your business. At its core, a shareholders' agreement sets out the obligations of the shareholders to one another and, alongside a company's constitution, can help manage a range of matters including:

- **How the company is controlled** – the key issues here are how the board is appointed, the voting rights of the board members and the voting threshold for decisions to be made, whether at a board level or shareholder level.
- **Funding the company** - if the co-founders are required to provide further funding, the terms of the funding (particularly in relation to interest and repayment) may be agreed. If the company is to raise further capital by issuing further shares, a procedure to protect the co-founders from being diluted by the issue of further interests in the company may be agreed.
- **Disposal of shares** – without a contractual obligation requiring a co-founder to deal with their shares in the company in a particular way, the remaining co-founders could end up in business with third parties that they do not know. To avoid this situation, a right may be provided for in the shareholders' agreement that requires a co-founder wishing to leave the company to offer their shares to the remaining co-founders before offering their shares to any third parties.
- **Death or incapacity** – in the event of the death or permanent disability of a co-founder it is useful to both the remaining co-founders and the affected co-founder that a mechanism is in place to allow the remaining co-founders to purchase the interest from the affected party at a certain value calculated by an agreed mechanism or, if the remaining parties choose not to acquire the affected party's interest, the affected party can require the remaining parties to purchase it. Insurance policies are often used to assist with the payment of the value in these circumstances, or alternatively the Shareholders' Agreement could provide for a vendor finance mechanism.
- **Restraints** – one of the most important things a Shareholders' Agreement should include is a restraint of trade or non-compete clause. This ensures that the goodwill generated by co-founders in the company is retained and protected.

Please see our other Fact Sheets for First Nations startups here.

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Disclaimer

The content of this fact sheet is current at September 2026 and is intended to provide a general guide to the subject matter only. The fact sheet does not constitute legal advice. Obtaining specialist advice about your specific circumstances is strongly recommended.