



Trainer Manual & Assessment

Establish Legal and Risk
Management Requirements
of Small Business

BSBSMB401

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BSBSMB401
Establish Legal and Risk Management
Requirements of Small Business

BSB Version

Current	Release 2
Previous	Release 1

Precision Group Updates

Current	V1	Mar '16
History		

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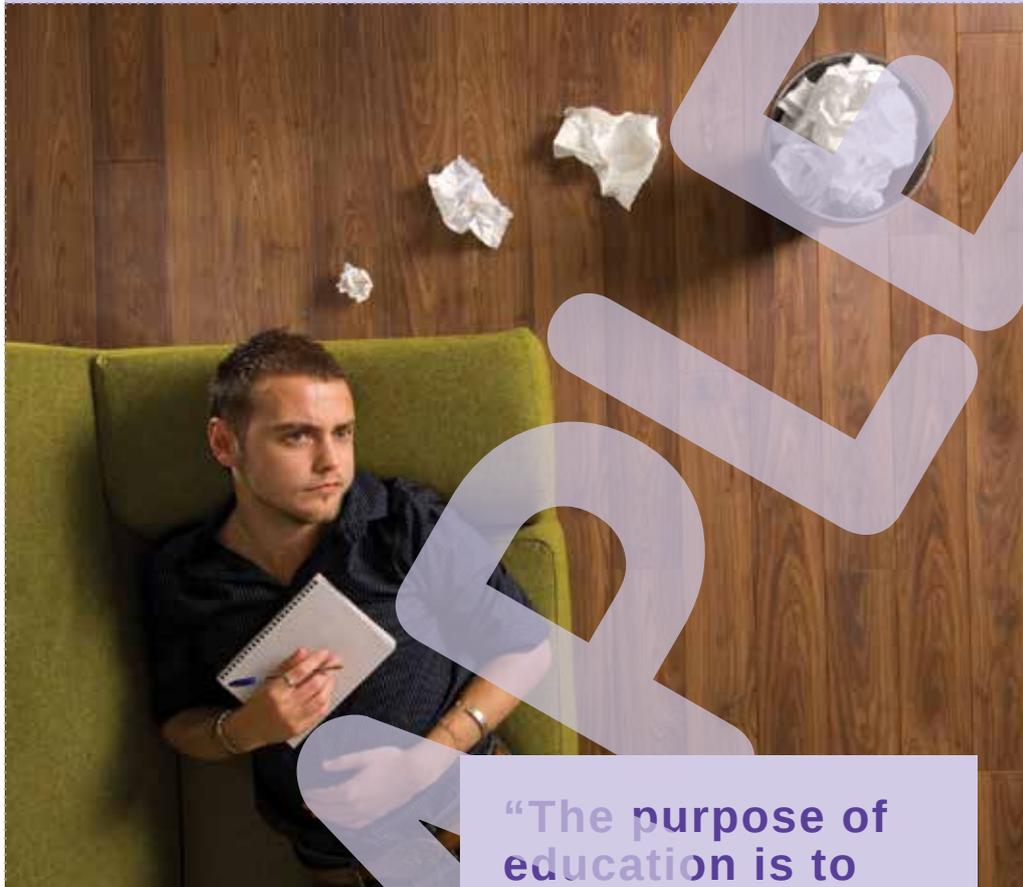
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About BSB Business Services Training Package



“The purpose of education is to replace an empty mind with an open one.” Malcolm Forbes

About the Business Services Industry

The BSB Business Services Training Package covers a diverse range of industries and occupations. Business Services covers a range of cross-industry functions and services supporting the commercial activities of all industries.

Defining Qualifications

When units of competency are grouped into combinations that meet workplace roles, they are called qualifications. These qualifications are aligned to the Australian Qualifications Framework (AQF). Each qualification will have 'packaging rules' which establish the number of core units, number and source of elective units and overall requirements for delivering the qualification.

Delivery and Assessment of Qualifications

RTOs must have the qualifications (or specific units of competency) on their scope to deliver nationally recognised training and assessment. RTOs are governed by and must comply with the requirements established by applicable national frameworks and standards. RTOs must ensure that training and assessment complies with the relevant standards.

Qualification Training Pathways

A pathway is the route or course of action taken to get to a destination. A training pathway is the learning required to attain the competencies to achieve career goals. Everyone has different needs and goals, and therefore requires a personalised and individual training pathway.

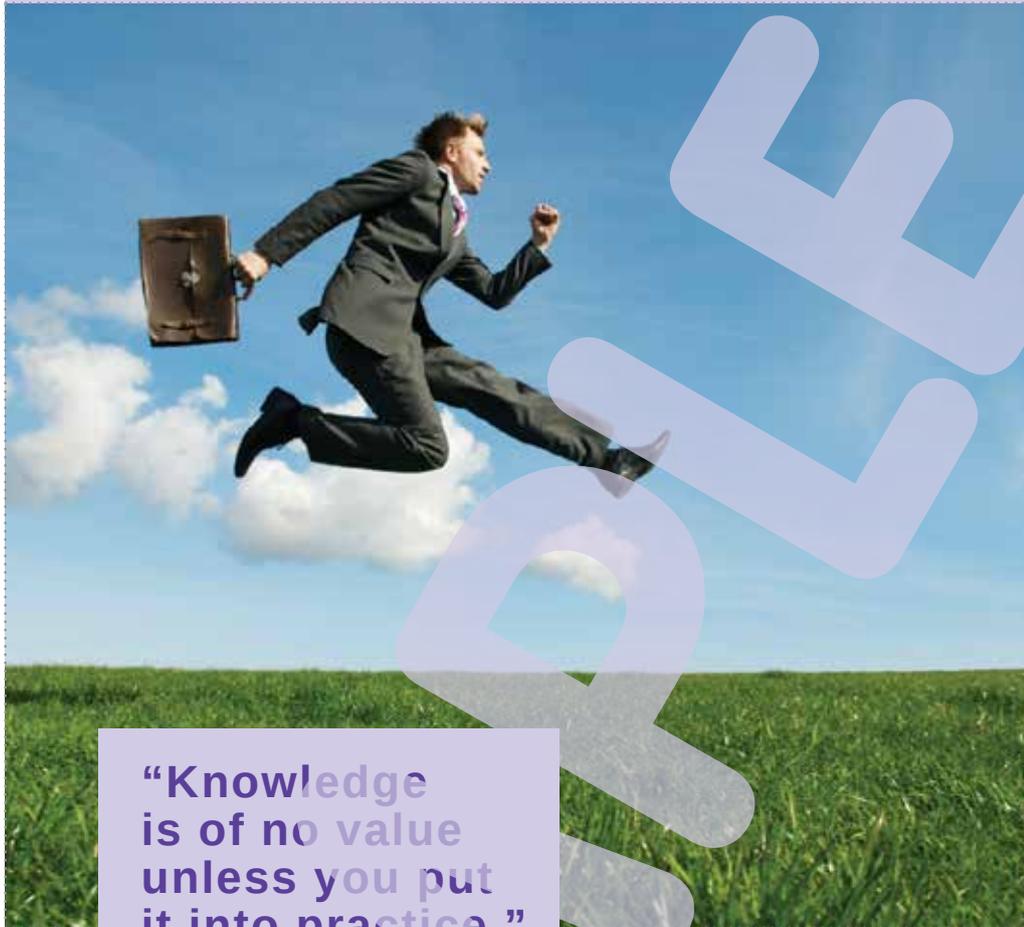
Foundation Skills

Foundation Skills are the non-technical skills that support the individual's participation in the workplace, in the community and in education and training.

Australian Core Skills Framework (ACSF)

This Assessment meets the five ACSF core skills as described in the Foundation Skills mapping.

Introduction



“Knowledge is of no value unless you put it into practice.”

Anton Chekhov

This unit standard, BSBSMB401 Establish Legal and Risk Management Requirements of Small Business, describes the performance outcomes, skills and knowledge required to identify and comply with the regulatory, legal, taxation and insurance requirements, and risk management needs of small business.

Specific legal requirements apply to the management of a small business.

This work is undertaken by individuals who operate a small business.

The unit is suitable for existing micro and small businesses or setting up a new business or a department in a larger organisation.

This manual is broken up into four Elements. They are:

- 1. Identify and Implement Business Legal Requirements**
- 2. Comply with Legislation, Codes and Regulatory Requirements**
- 3. Negotiate and Arrange Contracts**
- 4. Identify and Treat Business Risks**

There are activities throughout this workbook. These require the Learners to think about their experience or reactions, or to try and complete some research through reading or accessing the Internet. The activities will also help prepare Learners for their Assessment Tasks as they think through the issues raised.

Learners will then be asked to complete an Assessment Pack for this unit of competency. The information contained in this workbook will assist them. These tasks can be completed as they work through the workbook, rather than leaving it all to be completed at the end of their study.

Finally, at the end of this workbook you will find a list of useful resources that you may use for further information. You will need to have access to an Internet terminal. Throughout the text, there are references to websites for further information and for some activities.

This unit contributes towards the attainment of nationally recognised qualifications.

Thousands of people set up their own businesses every year. Some do it because they want to work for themselves, others because they have a great idea and have spotted a gap in the market. And of course there are those that think they can make lots of money.

These are all valid reasons for starting a business. Commitment and motivation are vital character traits of successful business owners.

Although enthusiasm is important, good planning is a must. Without a good business plan you could struggle to make a go of it. Having the correct licenses and registrations along with understanding and compliance with legislative requirements are fundamental to your business. They allow you to operate without fear of closure from non-compliance and are the foundation to successful business.

Compliance is the topic of this unit of competency.



ELEMENT 1:

Identify and Implement Business Legal Requirements



Performance Criteria Element 1

- 1.1 Identify and research possible options for the business legal structure using appropriate sources
- 1.2 Determine legislation and regulatory requirements affecting the operations of the business under its chosen structure
- 1.3 Develop and implement procedures to ensure full compliance with relevant legislation and regulatory requirements.

Identify and Implement Business Legal Requirements

Identify and Research Possible Options for the Business Legal Structure Using Appropriate Sources

Establishing a new business requires a great deal of planning and one of the most important aspects is the way that the business is structured. The types of ownership impact the function and the legal requirements of the business in different ways and in the demands that are made on the business.

One of the first steps is to work out if you are actually operating a business, or if your activity is really a hobby because this affects what income you need to declare, and the deductions and losses you can claim.

Considerations in Forming a Business

Before you can start up a business, you need to carefully consider the advantages and disadvantages of different business structures and determine which one will best suit your needs. In making this decision, you will need to think about factors such as:

- Size and type of your business
- Number of business stakeholders and their preferences
- Current and future personal and business financial needs
- Requirements of financial lenders and investors
- Exposure to risk and liability
- Taxation, superannuation and legal compliance issues, and
- Succession planning.

To begin with, you need to figure out what type of business you're going to be operating and then design a structure to suit that business type. When making a decision about the type of business to form, there are several criteria you need to evaluate.

- **Legal Liability**

To what extent does the owner need to be insulated from legal liability? If there is to be a large investment in equipment, and the contracts for work substantial, then avoiding personal liability for potential losses associated with the business may be important. If you can't personally afford the risk of that liability, a sole proprietorship or partnership may not be the best way to go.

- **Tax Implications**

The method by which tax liability is calculated for each of these structures is different. Taxation rate considerations include tax on profits, land tax, municipal and water rates, payroll tax and other forms of taxes and levies.

Based on the individual situation and goals of the business owner, there are the opportunities to minimise taxation. There are many more tax options available to companies and corporations than to proprietorships or partnerships. An example is where business losses can help reduce personal tax liability, particularly in the early years of a company's existence.

- **Cost of Formation and Ongoing Administration**

The costs involved in establishing a business structure and also the on-going costs of maintaining it are relevant factors to take into account. Generally, corporate structures are more expensive to set up and run than a sole trader or a partnership. Generally speaking, the characteristics of a good business structure are:

- Flexibility so that the structure will be able to accommodate changing circumstances with minimum consequences
- Provision of adequate asset protection for the owners of the business
- Minimisation of costs, in particular tax
- Efficient distribution of profits.

- **Flexibility**

Your goal is to maximise the flexibility of the ownership structure by considering the unique needs of the business as well as the personal needs of the owner or owners. Individual needs are a critical consideration. No two business situations will be the same, particularly when multiple owners are involved. No two people will have the same goals, concerns or personal financial situations.

- **Future needs**

When you're first starting out in business, it's not uncommon to be 'caught up in the moment'. You're consumed with getting the business off-the-ground and usually aren't thinking of what the business might look like five or ten-let alone three-years down the road. What will happen to the business after you die? What if, after a few years, you decide to sell your part of a business partnership?

- **Confidentiality**

How much information do you want to be publically available? Large proprietary companies, public companies, disclosing entities and registered investment schemes must provide Australian Securities and Investments Commission (ASIC) with their financial reports within four months of the end of the financial year.

These entities must also provide a copy of the financial report to their members by making it available on their website or by sending a copy to each member.

- **Contractual Requirements**

These are stipulations defined in a contract's terms and conditions, statement of work, and other associated documents. A business contract is a legally binding agreement between two parties for an exchange of services that are of value. For a contract to be valid, an offer must be made and accepted. Using a contract in business dealings helps ensure an agreement is acted on, insofar as a broken contract could result in a lawsuit or out-of-court settlement and the payment of damages caused by the breach. The best way to avoid a dispute or potential litigation, however, is to craft a solid agreement in which you're confident you've negotiated the best terms for your business. Are you comfortable guaranteeing whatever the contract states?

- **Family/Community/Cultural Expectations**

These expectations of others impact most commonly on partnerships, trusts, not-for-profits, cooperatives and government-owned enterprises. In these situations, the entity is likely to face numerous critical challenges in responding to the growing expectations of their stakeholders in an increasingly complex operating environment. Under these conditions, well-governed organisations have proven to be more effective, and more likely to succeed, than poorly governed ones. Can you operate within these expectations?

- **Ownership Transfer**

At some point you may want to transfer part or all of your ownership of a business to your children or bring in a new business partner. The main advice many small businesses require relates to the tax implications of the transaction-based events associated with selling or closing their businesses. This advice may involve separating business and property assets to facilitate the transfer of trading businesses.

How many restrictions on the transfer or disposal of the business do you want? The more complex the structure, or number of individuals with voting rights, the more complicated a transfer may become. Will this work for you?

- **Partnership Considerations**

When one partner starts generating more revenue, problems may begin. The identification of fixed expenses and how they will be split for payment and who has decision-making authority needs to be determined.

The more issues you can address up front, the better the chances of developing a lasting relationship. Are you prepared to meet each other's expectations?

- **Preferences of Owners/Stakeholders**

Again, governance can be an issue here. What if the shareholders vote to remove you, the one who established the company? Likewise if you are managing the business for the owners, how much influence should they have over finance, staffing and marketing? Are you comfortable with this?

- **Protection of Stakeholders and Assets**

The assets of a business are impacted by its structure. Every business involves risk and as an owner, it is in your interest to minimise your personal liability. Generally, sole traders incur the greatest personal risk as they are personally liable for all debts of the business. Partners are generally jointly and separately liable for certain acts of the partnership. There are many variations of the corporate structure and of those, a feature of the limited liability company is that the shareholders' liability for the debts of the business is limited by their share in the equity of the business. However, the downside of limiting risk is that suppliers and lenders may be less inclined to advance credit to your business.

- **Requirements of Financial Backers**

A necessary aspect of running any business is the injection of capital from time to time. Generally, it is more difficult for sole traders and partnerships to raise capital from external sources. These business operators will often have to provide the funds themselves or from debt financing. Where your business needs large amounts of capital, it may be necessary to use a public company structure and to list it on the stock exchange.

A corporation's capital can be expanded at any time in a private offering by issuing and selling additional shares of stock. This is especially helpful when banks are being tight with money.

- **Superannuation**

You must make super contributions for an employee if you're considered an employer for super guarantee purposes and your employee is entitled to the super guarantee. You're an employer for super guarantee purposes if you employ a person under a verbal or written employment contract on a full-time, part-time or casual basis.

You'll need to think about the premises from which you're going to run your business, as well as the most appropriate billing, paying and record-keeping systems for it.

The structure you choose may affect:

- Asset protection
- Ongoing costs
- Your clients – for example, some prefer to deal only with companies.

Another important question to ask yourself is, "What do I want to happen to the business when I'm no longer around to run it?" While a sole proprietorship or partnership may dissolve upon the death of its owner or owners, a corporation can be readily distributed to family members.

Business Names

Each state or territory has its own laws about business names. You can register at the Australia Securities and Investments Commission (ASIC) at <http://asic.gov.au>. If you plan to expand your business interstate, you will need to register the name in that state or territory. A business name does not mean your business is a registered company. If structuring as a company you must register the company.

A business name cannot be sued; however the proprietor behind the name can be sued. Registering your business name is designed only to provide public information on the ownership of the registered business. Registering your business name does not give you any exclusive rights or entitlements to it. You can stylise and register your business name as a trade mark if you want a legal entitlement to it.

Australian Business Numbers (ABNs)

All businesses should register for an Australian Business Number. The ABN is a unique 11 digit identifying number that businesses use when dealing with other businesses. You generally need to put your ABN on your invoices or other documents relating to sales. If you don't, other businesses may withhold 46.5% from any payment to you for tax purposes.

You also need an ABN in certain dealings with the Australian Taxation Office (ATO) and other areas of government.

Registering for an ABN is not compulsory, but you will need one to register for the GST. Your ABN allows you to:

- Facilitate a single Business Activity Statement
- Confirm your business identity to others when ordering and invoicing
- Avoid PAYG tax on payments you receive
- Claim GST credits
- Claim energy grants credits
- Purchase an Australian domain name.

There are also certain taxation implications if you have not registered for an ABN. You can register for an ABN online at the Australian Business Register <https://abr.gov.au>

Licenses and Permits

- **Professional registration**

Some tradespeople (e.g. plumbers, electricians) as well as professionals (e.g. accountants, pharmacists, doctors and other health practitioners) require registration in order to operate.

- **Licences of premises**

Some businesses (e.g. restaurants) need a licence or permit to operate. They also have to comply with the food and safety handling regulations. Each council has its own rules and regulations and you need to check with your local council office.

- **Permits**

A permit may be required if you wish to operate a business from home.

- **Liquor licensing**

Licences are required to sell liquor. The level of liquor licensing required and your ability to obtain a liquor licence will depend on the size, location, staffing and services of your business.

- **Dangerous goods**

Businesses manufacturing, storing, transporting or selling dangerous goods require a licence.

- **Other registration and licences**

Pawn brokers and second-hand dealers require registration. Travel agents, estate agents and motor car traders require licences.

The Australian Business License and Information Service (ABLIS) is a free online service that allows Business owners to find business information on licences, registrations and permits using this one national service. They provide an online tool that allows you to complete a form and have all relevant government licences, permits, approvals, registrations, codes of practice, standards and guidelines you need to know about to meet your compliance responsibilities emailed to you. More information at <https://ablis.business.gov.au>.

Options for the Business Legal Structure

If you're a sole proprietor, you own 100 percent of the business, and you're in a business where a good umbrella insurance policy could take care of potential liability problems, a sole trader business may be the best. There's no real reason to encumber yourself with all the reporting requirements of a corporation unless you're benefiting from tax implications or protection from liability.

Many businesses – small ones in particular – make the decision to seek some type of legal and liability protections, as well as special tax treatment. This is typically done through adopting a business organisation structure that will effectively separate the business owner(s) from the business itself. In doing so, the obligations and liabilities of the business become the responsibility of the business entity, and not its owners.

- **Sole trader**

A sole trader is the simplest business structure because the trader trades on their own. The structure is inexpensive to set up because there are few legal and tax formalities.

Operating as a sole trader means you trade on your own and control and manage the business. You are legally responsible for all aspects of the business - debts and losses cannot be shared.

The business name will need to be registered if a trading name is used that is not the owner's own name.

There is no division between business assets or personal assets, which includes your share of any assets jointly owned with another person (such as your house or car). Your liability is unlimited which means that you can be forced to pay business debts from your personal assets including your home.

This is the most common form of business organisation. It's easy to form and offers complete managerial control to the owner. However, the owner is also personally liable for all financial obligations of the business.

- **Partnership**

This is an association of up to 20 people running a business together, but not as a company. It usually involves sharing profits and losses in an agreed percentage which will usually correspond to their original investment.

Partnerships can be formed verbally but it is a good idea to seek the advice of a solicitor and have the agreement committed to writing. This can include how it will be managed, financed and dissolved.

The management may be shared but all partners are liable or responsible for all partnership debts, a primary disadvantage. A primary advantage is that the partnership does not bear the tax burden of profits or the benefit of losses-profits or losses are 'passed through' to partners to report on their individual income tax returns.

- **Limited Partnerships**

Effectively these are silent partners who invest funds but do not participate in management and have no control or liability for debts incurred. This is a complex situation and requires the input of solicitors to draw up agreements.

- **Company**

A company is a legal entity. A legal entity is an association, corporation, partnership, proprietorship, trust or individual that has a legal standing in the eyes of the law.

A company has legal capacity to enter into agreements or contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and to be held responsible for its actions.

The company is separate from its shareholders which means that shareholders, directors, managers and employees are not liable for any debts incurred unless those debts are the result of obvious recklessness, negligence or fraud. However, banks and those offering finance may require that security or guarantees are provided. This usually includes the personal assets of the Directors or owner.

Directors manage the company and in a small business they may also be the shareholders.

Companies may be formed as either private, also known as proprietary, or public companies that are listed on the stock exchange.

- *Proprietary Company*

A proprietary company has no more than 50 non-employee shareholders and is generally not permitted to offer shares or securities to the public. It must have at least one shareholder and one director, and at least one director must ordinarily reside in Australia.

- *Public Company*

A public company may have more than 50 non-employee shareholders, can offer shares and securities to the public, and may seek listing on the Australian Stock Exchange.

A company's operations are controlled by its directors and the company is owned by its shareholders. A company provides some asset protection but directors can be legally liable for their actions and, in some cases, the debts of a company.

Companies must have a separate bank account to the directors and managers, lodge an annual company tax return showing the company's income, deductions and income tax to be paid. They must also pay PAYG instalments.

Tax advantages exist for companies but these may not offer enough benefits to offset other costs of conducting business as a corporation. Another reality is the high cost of record-keeping and paperwork, which all takes time and therefore creates costs for the business. The costs associated with establishing the company may make the options of sole trader or partnership more attractive.

- **Corporation**

These are usually large and diversified companies. Corporations are owned by their stockholders (shareholders) who share in profits and losses generated through the operations of the business and have three distinct characteristics:

1. *Legal Existence*: a firm can (like a person) buy, sell, own, enter into a contract, and sue other persons and firms, and be sued by them. It can do well and be rewarded, and can commit offence and be punished.

2. *Limited Liability*: a firm and its owners are limited in their liability to the creditors and other obligors only up to the resources of the firm, unless the owners give personal guaranties.
3. *Continuity of Existence*: a firm can live beyond the life spans and capacity of its owners, because its ownership can be transferred through a sale or gift of shares.

The corporation becomes an entity separate from those who founded it and that handles the responsibilities of the organisation. Like a person, the corporation can be taxed and can be held legally liable for its actions. The corporation can also make a profit. The key benefit of corporate status is the avoidance of personal liability. The primary disadvantage is the cost to form a corporation and the extensive record-keeping that's required.

- **Professionals**

Doctors, lawyers, accountants, pharmacists and other such professionals are not permitted by law to form a company. This prevents them from avoiding their professional liability by hiding behind a corporate body.

- **Cooperative**

A cooperative is also a legal entity. It is a business that is owned by at least five members with a common interest. Each member has equal voting rights regardless of the investment made or degree of involvement. Each shareholder is expected to help run the cooperative. Cooperatives promote the concepts of sharing resources and delegation to increase competitiveness. They are managed using a democratic style of management. Cooperatives usually only allow a limited distribution of profits to members/shareholders (some don't allow any). They are formed primarily to provide a service to members rather than any financial gain.

Cooperative societies are incorporated under special legislation known as the *Co-operatives Act*. Legal advice is necessary to establish this structure.

- **Government-Owned Enterprise**

These are also called *Government Business Enterprises (GBEs)*. A GBE has three characteristics:

1. Its principal function is to engage in commercial activities in the private sector
2. It is controlled by government.
3. It has an independent legal existence from government and the executive.

The legal independence of GBEs has two consequences. On the one hand it offers the advantage that a GBE can operate with some degree of organisational, operational and budgetary independence from government. On the other hand it creates a barrier to the usual mechanisms of parliamentary accountability and control, necessitating the creation of special accountability mechanisms. This applies whether the GBE is a statutory corporation or company incorporated under the Corporations Law.

Some examples of GBEs include:

- Australian Government Solicitor
- Australian Postal Corporation
- Australian Rail Track Corporation Limited
- Defence Housing Australia
- Medibank Private Limited.

- **Profit or Not-For-Profit Legal Structure**

A non-profit organisation is an organisation that is not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect. This applies both while the organisation is operating and when it winds up.

Any profit made by the organisation goes back into the operation of the organisation to carry out its purposes and is not distributed to any of its members.

Non-profit organisations examples include:

- Church Schools
- Churches
- Community Child Care Centres
- Cultural Societies
- Environmental Protection Societies
- Neighbourhood Associations
- Public Museums And Libraries
- Scholarship Funds
- Scientific Societies
- Scouts
- Sports Clubs
- Surf Lifesaving Clubs
- Traditional Service Clubs.

- **Trust**

A trust is not a separate legal entity. Trusts are often used in connection with running a business for the benefit of others or to minimise taxation. A trust is a structure where a trustee (an individual or company) carries out the business on behalf of the members (or beneficiaries) of the trust.

Family businesses are often set up as a trust so that each family member can be made a beneficiary without having any involvement in how the business is run.

A trust is set up through a trust deed. There are two main types:

- *Discretionary Trusts*

The trustee has discretion in the distribution of funds to each beneficiary. The most common example is the family trust.

- *Unit Trusts*

Unit trusts are recommended when more than one family is involved. The interest in the trust is divided into units, similar to shares. Each unit holder may have a number of units in the trust. Distribution from the trust is determined according to the number of units held.

Importantly, trustees are legally liable for the debts of the trust. They can use the assets of the trust to meet those debts. However, if there's a shortfall, they are responsible for covering the difference from their own resources.

This structure requires the advice of both an accountant and solicitor to establish.



**“Success is
the sum of
small efforts,
repeated day
in and day
out.”**

R Collier

Making the Decision

Each structure has advantages and disadvantages. There are different tax concessions and reporting issues, which will vary by structure, by state and by industry. And they keep changing. Speak with an accountant or financial advisor to understand which structure is the most suitable for you and to help you manage the issues for each one.

Keep in mind that the business structure you start out with may not meet your needs in years to come. Many sole traders evolve into some other form of business such as a partnership or corporation as the company grows and the needs of the owners change.

Don't take this very important decision lightly, and don't make a choice based on what somebody else has done. Carefully consider the unique needs of your business and its owners, and always seek expert advice, before settling on a particular business format.

Whichever structure you choose, make sure you understand the responsibilities that go with that structure. Typically, costs and complexity increase as you move from a sole trader to a partnership, a company or a trust.

You are not locked into any structure and you can change the structure as your business changes or grows. If you aren't sure which structure to choose, talk to an adviser. Professional advice can be useful at any stage of business - whether you're starting, growing or ending a business. But it's not always practical or cost-effective to get professional advice for all business decisions.

Appropriate sources of advice may include:

- **Business Advisors**

Different types of advisors are available to help you with your financial, legal and other business needs. Professional advisors are bound by certain laws and registration requirements.

- *Business Bankers*

Good business bankers will have a thorough understanding of your business needs and can provide advice. This may be a service offered by your banker without cost as part of your banking package.

- *Insurance Brokers*

Getting the right insurance is an important part of managing your business's assets, employees and legal liability. Many businesses consult insurance brokers to help them make the right insurance choices. Qualified brokers understand the insurance market and can negotiate competitive policies on your behalf. They can put together a comprehensive and cost-effective insurance package for your business.

Insurance brokers in Australia must hold an Australian financial services (AFS) licence. You can check an insurance broker's licence using ASIC's professional registers for AFS licensees or AFS authorised representatives.

Recommendations may be offered at no cost by some agents if you insure through them. Their fees are reimbursed through the policy cost and the insurer.

- **Financial Planners**

A financial adviser – also called a financial planner – can help you develop an overall financial strategy for your business. Your financial adviser's job is to collect detailed information about your financial situation and provide advice on investing, superannuation, retirement and succession planning, risk management, insurance and tax.

The *Corporations Act 2001* requires financial advisers to hold an Australian financial services (AFS) licence. You can check a licence using the Australian Securities and Investments Commission's (ASIC's) professional registers for AFS licensees or AFS authorised representatives.

Your banker may offer this kind of service as part of your banking package, but primarily Financial Planners are employed independently by the business. Their fees may be tax deductible in some circumstances. Always clarify this before signing up for the service.

If your business is struggling for any reason, investing in professional advice may allow the business to survive.

- **Government Agencies**

There is a broad range of business information, advice, support and resources offered by the Australian and State Governments that business owners can take advantage of. The website <http://www.business.gov.au> is an online government resource for the Australian business community. It offers simple and convenient access to all of the government information and services a business owner may need and provides essential information on planning, starting and growing a business. State-based websites that offer useful information for business owners include:

Victoria

- Business Victoria <http://www.business.vic.gov.au/>
- Victorian Government advice for businesses <http://www.vic.gov.au/business-industry.html>
- Small business mentoring program <https://www.sbms.org.au/>
- Consumer Affairs Victoria – Small business <http://www.consumer.vic.gov.au/businesses>

NSW

- NSW Government Small Business Toolkit <http://toolkit.smallbiz.nsw.gov.au/>

Queensland

- Queensland Government Business and Industry portal <http://www.business.qld.gov.au/business>

Other state-based government resources can be obtained through a Google search.

- **Industry/Trade Associations**

All industries offer advice to their members and usually, the general public. A Google search for your particular industry body will allow you to make contact. Advice may be free or there may be a fee-for-service depending on the needs of the person making the inquiry. For example, the Master Builders Association or the Real Estate Institute provide advice to their members.

- **Mentors**

Mentors are others with experience in business management. The Federal and State governments all offer such services but this can also be gained privately. A Google search will list those in your location or required area of expertise.

- **Professional Advisors (e.g. Solicitors, Accountants)**

- *Accountants*

Accountants are one of the most common business advisors. Businesses will usually seek advice from an accountant at least once a year.

- *Legal Experts*

At some point all business owners are going to need legal advice. Solicitors have different areas of expertise and can help you with a range of issues at any stage of your business lifecycle.

There are always risks involved in a new business. It's really important, though that you draw the distinction between risk and irresponsibility. In a nutshell, risk is not usually terminal. Sure the business itself might fail, but the possibility of loss will have been foreseen and personal disaster will generally have been avoided. Irresponsibility on the other hand generally indicates that pitfalls have been blatantly ignored.

Seek advice and minimise the risk rather than being irresponsible.

Determine Legislation and Regulatory Requirements Affecting the Operations of the Business under its Chosen Structure

You must consider your legal requirements when starting your business. Compliance with legislative requirements and regulations is essential to avoid serious penalties. A range of legal requirements may affect your business.

Some of the information in this section may not be relevant to your business and there may be other legislation that applies instead. You may have to conduct some research yourself to find this out.

- **Legislation**

This is the act of making or enacting laws. When people talk about 'the legislation', they mean a law or a body of laws. The legislation in a state or territory are all the laws enacted specifically to control and administer the state or territory.

Further information can be obtained at <http://www.comlaw.gov.au/>

- **Regulations**

Regulations are the way that the legislation is applied. They are generally very specific in nature, and are also referred to as 'rules' or 'administrative law'. These are administrative 'rules' that describe rights and allocate responsibilities. They can take many forms such as being legal restrictions established by a government authority, a self-regulating mechanism for an industry such as a trade association, social regulations such as 'norms', co-regulation or market regulation. They are actions of conduct imposing sanctions such as a fine. These are available for your industry from your industry body.

An example of a regulation is that applying to food handling. Food safety regulations apply to each stage of food and beverage production, from processing and manufacture through to distribution. If you are considering starting a business in the food and beverage industry, make sure you are aware of the food safety regulations. You need to understand how your business can meet your obligations and comply with these regulations, or you may face fines or prosecutions.

- **Codes of Practice**

These are sets of guidelines and regulations to be followed by members of some professions, trades, occupations, organisations etc. A Code of Practice may include explanatory information, recommendations for best practice, or references to occupational safety and health laws. A Code of Practice does not have the same legal force as a regulation and is not sufficient reason, of itself, for prosecution under the Act. An example of a Code of Practice is The Cash in Transit (CIT) Code of Practice 2011. This document provides practical advice for companies, businesses and people who are required to carry valuables in armoured and non-armoured vehicles as part of their job.

Further information may be obtained at the Codes of Practice website <http://codes.bli.net.au/>

- **Standards**

Standards are published documents that set out specifications and procedures designed to ensure that materials, products, methods or services are fit for their purpose and consistently perform the way they were intended to. An example of a Standard is the Telemarketing and Research Calls Industry Standard which sets out rules for when and how telemarketers can contact people. For instance, it specifies when calls cannot be made and information that must be provided during a telemarketing or research call.

These will be available from your industry body, manufacturers or others related to the product or service.

There are a great number of laws and regulatory requirements that may apply to your situation, so it is important to seek professional legal advice if you are unsure about your obligations.

Legislation and regulatory requirements may include:

- Local, state/territory, commonwealth and international legislation, regulations and codes of practice affecting business operations such as:
 - Relevant Acts and regulations
 - Industry and WHS codes of practice
 - Business registrations and licences
 - Planning and other permissions
 - Environmental legislation
 - Industrial law, agency law, property law, consumer legislation and standards, Torts Law and duty of care
 - Equal employment opportunity (EEO) and anti-discrimination legislation, anti-competition regulations.

In Element 2 we will cover many of the more generic legislation, but it is your responsibility to ensure that you have a clear understanding of all the rules and regulations that apply to your individual circumstances prior to starting to operate your business.

Complying with Regulations

To ensure that you are able to comply with all the regulatory requirements and obligations that apply to your business, you will need to identify and implement policies and procedures to prevent, identify and resolve potential breaches and other legal issues.

Policies are written by organisations to ensure that personnel and stakeholders act responsibly and make rational, well-informed decisions. They help it to be consistent in its approach to decision-making and problem-solving across the organisation's locations if appropriate. In order for personnel and stakeholders to understand their responsibilities within the organisation, it is very important that policies and procedures are adopted and clearly communicated to everyone.

Procedures are developed from the policies to assist and guide members in the workplace in relation to policy implementation. Procedures are also intended to complement the development of local workplace policies and protocols. The complexity of these procedures will differ depending on the size and type of your business; however, there are some simple guidelines you can follow:

1. Research

Conduct research into your regulatory requirements and obligations and develop a better understanding about how they apply to your business.

2. Seek Advice

Consult a legal professional such as a solicitor who has experience in your industry. They will advise you on your legal rights and obligations and other relevant legislation or information.

3. Develop Procedures

Design and develop comprehensive procedures relating to compliance issues and implement them as a part of your business' code of conduct. Ensure all of your employees understand and work in accordance with these guidelines.

4. Provide training

Provide ongoing training for employees on their legal rights and obligations and monitor their compliance with the relevant regulations.

5. Be proactive

You should always try to identify compliance issues and take action before they become a serious problem. Always thoroughly investigate any compliance failures to determine their cause and take appropriate corrective actions to ensure that they don't happen again.

6. Monitor and review

Regularly review your regulatory obligations to keep on top of any changes or new developments. You should update your policies and practices in line with any changes to your legal obligations.

Taking the time to carefully develop clear procedures will minimise the risk of legal breaches and help to ensure that your business is protected against unforeseen circumstances.

Many of the government websites that relate to Acts and regulations allow you to enter your email details to be kept informed when challenges are implemented. This will help ensure your policies and procedures remain current.

The Australian Business Licence and Information Service (ABLIS) can help you find licensing information at <https://ablis.business.gov.au>.

Develop and Implement Procedures to Ensure Full Compliance with Relevant Legislation and Regulatory Requirements

Once you have obtained the information needed to ensure your business is legally compliant, these rules and regulations must be adhered to. Developing policies to clarify your intention of being compliant and then establishing procedures is a good start. If you engage an accountant and solicitor, they will, in many cases forward information in their field to you as regulations change. Keeping in close contact with your industry body will also help ensure you receive updates relating to your industry.

As mentioned earlier, there are a number of websites that email regular newsletters including changes forecast and established. Of course, if you do not read them all, note changes and take action (all part of your responsibilities as a small business owner) you will not remain current and able to meet your responsibilities in the compliance area.

However, even accessing this information is not enough. There needs to be a system in place to actually make and apply the changes. If you use Microsoft Outlook, deadlines for payments with early alerts can be set which will give you time to prepare whatever paperwork or payments are required in order to meet the deadlines.

Engaging a professional such as an accountant to undertake these tasks carries a monetary cost, but in the long-term will free you to manage the actual business.

Finally, if neither of these options is your choice, a large planner calendar in a prominent position with appropriate dates marked may be of use.

Regardless of the method, regular monitoring is the responsibility of every small business owner and must be attended to as a priority.

GST and superannuation payments may be boring and tedious, but the ramifications of not attending to these in a timely manner could jeopardise the whole undertaking.



Activity One

This table lists the four main legal structures under which a small business can be operated. Write a brief description of each of the business structures including any advantages and disadvantages that you are aware of.

Sole Trader	
Partnership	
Company	
Trust	



Trainer's Notes for Activity One

You may care to share Learners suggestions after completing this activity. Some points the Learners might identify include:

Sole Trader

Definition – an individual trading on their own.

Advantages

- The owner has a high level of autonomy to run his business
- There are no other owners to divide profits with



Trainer's Notes for Activity One (continued)

- Company funds can be used in any manner
- Simple to set up and operate
- The owner retains complete control of their assets and business decisions
- Fewer reporting requirements
- The owner is not considered an employee of their own business and is free of any obligation to pay payroll tax, superannuation contributions or workers' compensation on income they draw from the business
- Relatively easy to change the legal structure if the business grows, or if the owner wish to wind things up.

Disadvantages

- Unlimited liability which means the owners personal assets are at risk if things go wrong
- Little opportunity for tax planning – the owner can't split business profits or losses made with family members and is personally liable to pay tax on all the income derived
- Lack of liability protection for the business owner (i.e. he/she has a personal responsibility to pay every business debt and obligation).

Partnership

Definition – an association of people or entities running a business together, but not as a company.

Advantages

- Ability to collaborate
- Partners share the responsibility of managing the company and share ideas with other partners
- Partners are not required to file income taxes as a business entity, meaning each partner reports his share of business profits and losses on his personal income tax return
- Simple and inexpensive to set up
- Minimal reporting requirements
- Shared management/staffing responsibilities
- More opportunities for tax planning (such as income splitting between family members) than that of a sole trader
- Combined skills, experience and knowledge can provide a better product/service.



Trainer's Notes for Activity One (continued)

Disadvantages

- A partnership offers no personal asset protection for partners of the business
- A partner may be liable for the negligent acts of another partner
- Relatively easy to dissolve or exit and recover your share
- Access to capital
- Partners are not employees. Superannuation contributions and workers' compensation insurance are not payable on partners profits or drawings
- Potential for disputes over profit sharing, administrative control and business direction
- Each partner is fully responsible for debts and liabilities incurred by other partners – with or without their knowledge
- Changes of ownership can be difficult and generally require a new partnership to be established.

Company

Definition – a legal entity separate from its shareholders.

Advantages

- Limited liability for shareholders/owners
- Company structure is commercially well understood and accepted
- Ability to raise significant capital
- Profits can be reinvested in the company or paid out to the shareholders as dividends
- Easy to sell and pass on ownership
- Company can carry forward losses indefinitely to offset against future profits.

Disadvantages

- Significant set-up costs and maintenance costs
- Limited or no control of company affairs
- Complex reporting requirements
- Company can't distribute losses to its shareholders.



Trainer's Notes for Activity One (continued)

Trust

Definition – an entity that holds property or income for the benefit of others.

Advantages

- Reduced liability - especially if corporate trustee
- Asset protection
- Flexibility of asset and income distribution.

Disadvantages

- Can be expensive and complex to establish and administer
- Difficult to dissolve, dismantle, or make changes once established particularly where children are involved
- Any profits retained to reinvest into the business will incur penalty tax rates.
- Cannot distribute losses, only profits.

Key Points Element 1



- Possible options for the business legal structure must be identified and researched using appropriate sources.
- Legislation and regulatory requirements affecting the operations of the business under its chosen structure must be determined.
- Procedures to ensure full compliance with relevant legislation and regulatory requirements must be developed and implemented.

Element 1 – ‘True’ or ‘False’ Quiz

		True	False
Q	The types of ownership impact the function and the legal requirements of the business in different ways and in the demands that are made on the business.	✓	
Q	A non-profit organisation is the simplest business structure because the trader trades on their own.		✓
	A sole trader is the simplest business structure because the trader trades on their own.		
Q	Before you can start up a business, you need to carefully consider the advantages and disadvantages of different business structure and determine which on will best suit your needs.	✓	
Q	A cooperative is a business that is owned by at least five members. Each member has equal voting rights regardless of the investment made or degree of involvement.	✓	
Q	Corporations are the simplest business structure but inexpensive to set up because there are few legal and tax formalities.		✓
	Corporations are owned by their stockholders (shareholders) who share in profits and losses generated through the operations of the business.		
Q	The costs involved in establishing a business structure and also the on-going costs of maintaining it are relevant factors to take into account.	✓	
Q	A business contract is a legally binding agreement between two parties for an exchange of services that are of value.	✓	
Q	Every business involves risk and as an owner, it is in your interest to minimise your personal liability.	✓	
Q	Non-profits are organisations that are operating for the profit or gain of its individual members, whether these gains would have been direct or indirect.		✓
	A non-profit organisation is an organisation that is not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect.		
Q	Establishing a new business requires a great deal of planning and one of the most important aspects is the way that the business is owned.	✓	