



**Australian Government**

**Department of Education, Employment and Workplace Relations**

# **BSBSMB401A Establish legal and risk management requirements of small business**

**Revision Number: 1**

## BSBSMB401A Establish legal and risk management requirements of small business

### Modification History

Not applicable.

### Unit Descriptor

<b>Unit descriptor</b>	This unit 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.
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### Application of the Unit

<b>Application of the unit</b>	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.
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### Licensing/Regulatory Information

Not applicable.

### Pre-Requisites

<b>Prerequisite units</b>		

## Employability Skills Information

<b>Employability skills</b>	This unit contains employability skills.
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## Elements and Performance Criteria Pre-Content

Elements describe the essential outcomes of a unit of competency.	Performance criteria describe the performance needed to demonstrate achievement of the element. Where bold italicised text is used, further information is detailed in the required skills and knowledge section and the range statement. Assessment of performance is to be consistent with the evidence guide.
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## Elements and Performance Criteria

ELEMENT	PERFORMANCE CRITERIA
1. Identify and implement business legal requirements	1.1. Identify and research possible <i>options for the business legal structure</i> using <i>appropriate sources</i> 1.2. Determine <i>legislation and regulatory requirements</i> 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
2. Comply with legislation, codes and regulatory requirements	2.1. Establish systems to ensure the <i>legal rights and responsibilities</i> of the business are identified and the business is adequately protected, specifically in relation to <i>occupational health and safety (OHS)</i> , business registration and environmental requirements 2.2. Identify <i>taxation principles and requirements</i> relative to the business and follow procedures to ensure compliance 2.3. Identify and carefully maintain <i>legal documents</i> and maintain and update relevant <i>records</i> to ensure their ongoing security and accessibility 2.4. Monitor the provision of products and services of the business to protect legal rights and to comply with legal responsibilities 2.5. Conduct investigations to identify areas of non-compliance with legal and regulatory requirements and take corrective action where necessary
3. Negotiate and arrange contracts	3.1. Seek legal advice on contractual rights and obligations, if required, to clarify business liabilities 3.2. Investigate and assess potential products/services to determine <i>procurement rights</i> and to ensure protection of business interests where applicable 3.3. Negotiate and secure contractual procurement rights for goods and services including <i>contracts with relevant people</i> , as required, in accordance with the business plan 3.4. Identify <i>insurance requirements</i> and acquire adequate cover 3.5. Identify options for leasing/ownership of business premises and complete contractual arrangements in accordance with the business plan

## Required Skills and Knowledge

### REQUIRED SKILLS AND KNOWLEDGE

This section describes the skills and knowledge required for this unit.

#### Required skills

- communication, reporting, record keeping and consultation skills to operate the business
- literacy skills to interpret legal requirements, to develop policies and procedures and to analyse compliance information
- research skills to investigate legal structures, and taxation and insurance requirements
- time management skills to prioritise tasks and to meet key dates.

#### Required knowledge

- business registration and licensing requirements
- commonwealth, state/territory and local government legislative requirements relating to business operation, especially in regard to OHS and environmental issues, equal employment opportunity, industrial relations, anti-discrimination, taxation
- creation and termination of relevant legal contracts
- cultural differences and legal implications
- duty of care imposed by Law of Torts
- legal rights and obligations of alternative ownership structures
- record keeping to meet minimum legal and taxation requirements
- relevant consumer legislation
- relevant industry codes of practice
- relevant insurance requirements and products.

## Evidence Guide

<b>EVIDENCE GUIDE</b>	
<p>The Evidence Guide provides advice on assessment and must be read in conjunction with the performance criteria, required skills and knowledge, range statement and the Assessment Guidelines for the Training Package.</p>	
<b>Overview of assessment</b>	
<b>Critical aspects for assessment and evidence required to demonstrate competency in this unit</b>	<p>Evidence of the following is essential:</p> <ul style="list-style-type: none"> <li>• implementation of a systematic approach to identifying, managing and meeting legal and business requirements within culturally appropriate contexts</li> <li>• interpreting compliance data and formulating appropriate action</li> <li>• knowledge of relevant legislation.</li> </ul>
<b>Context of and specific resources for assessment</b>	<p>Assessment must ensure:</p> <ul style="list-style-type: none"> <li>• access to relevant documentation</li> <li>• candidate's individual circumstances and work in the context of establishing or running a small business, are the basis for assessment.</li> </ul>
<b>Method of assessment</b>	<p>A range of assessment methods should be used to assess practical skills and knowledge. The following examples are appropriate for this unit:</p> <ul style="list-style-type: none"> <li>• portfolio of evidence including contracts negotiated and arranged</li> <li>• oral or written questioning to assess knowledge of relevant consumer legislation</li> <li>• review of procedures developed and implemented to ensure full compliance with relevant legislation and regulatory requirements</li> <li>• review of insurance cover acquired.</li> </ul>
<b>Guidance information for assessment</b>	<p>Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended, for example:</p> <ul style="list-style-type: none"> <li>• BSBSMB402A Plan small business finances</li> <li>• BSBSMB404A Undertake small business planning.</li> </ul>

## Range Statement

### RANGE STATEMENT

The range statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. Bold italicised wording, if used in the performance criteria, is detailed below. Essential operating conditions that may be present with training and assessment (depending on the work situation, needs of the candidate, accessibility of the item, and local industry and regional contexts) may also be included.

<p><b><i>Options for the business legal structure</i></b> may include:</p>	<ul style="list-style-type: none"> <li>• company</li> <li>• cooperative</li> <li>• corporation</li> <li>• government owned enterprise</li> <li>• partnership</li> <li>• profit or not-for-profit legal structure</li> <li>• sole trader</li> <li>• trust</li> </ul>
<p><b><i>Options for the business legal structure</i></b> may be influenced by:</p>	<ul style="list-style-type: none"> <li>• confidentiality</li> <li>• contractual requirements</li> <li>• family/community/cultural expectations</li> <li>• ownership transfer</li> <li>• partnership considerations</li> <li>• preferences of owners/stakeholders</li> <li>• protection of stakeholders and assets</li> <li>• requirements of financial backers</li> <li>• superannuation</li> <li>• taxation</li> </ul>
<p><b><i>Appropriate sources</i></b> may include:</p>	<ul style="list-style-type: none"> <li>• business advisers</li> <li>• financial planners</li> <li>• government agencies</li> <li>• industry/trade associations</li> <li>• mentors</li> <li>• professional advisers (e.g. solicitors, accountants)</li> </ul>
<p><b><i>Legislation and regulatory requirements</i></b> may include:</p>	<ul style="list-style-type: none"> <li>• local, state/territory, commonwealth and international legislation, regulations and codes of practice affecting business operations such as:             <ul style="list-style-type: none"> <li>• relevant Acts and regulations</li> <li>• industry and OHS codes of practice</li> <li>• business registrations and licences</li> </ul> </li> </ul>

**RANGE STATEMENT**

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|  | <ul style="list-style-type: none"><li>• planning and other permissions</li><li>• environmental legislation</li><li>• industrial law, agency law, property law, consumer legislation and standards, Torts Law and duty of care</li><li>• equal employment opportunity (EEO) and anti-discrimination legislation, anti-competition regulations</li></ul> |
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<b>RANGE STATEMENT</b>	
<b><i>Legal rights and responsibilities</i></b> may include:	<ul style="list-style-type: none"> <li>• culturally appropriate processes and protocols</li> <li>• marketing the business in accordance with consumer legislation</li> <li>• obligations imposed by choice of business structure</li> <li>• operating the business with a duty of care (Law of Torts)</li> </ul>
<b><i>Occupational health and safety and requirements</i></b> must include:	<ul style="list-style-type: none"> <li>• complying with relevant OHS codes of practice</li> <li>• establishing and maintaining a system for managing OHS</li> <li>• establishing hazard management arrangements to assess and control the risks associated with workplace hazards including development of written safe operating procedures</li> <li>• establishing OHS record keeping arrangements in accordance with regulatory requirements</li> <li>• OHS duty of care responsibilities</li> <li>• registering with state/territory workers compensation authority if applicable</li> </ul>
<b><i>Taxation principles and requirements</i></b> may include:	<ul style="list-style-type: none"> <li>• relevant taxation requirements/obligations for business</li> <li>• tax file number, Australian Business number, goods and services tax registration, PAYG and withholding arrangements</li> </ul>
<b><i>Legal documents</i></b> may include:	<ul style="list-style-type: none"> <li>• appropriate software for financial records</li> <li>• certificate of incorporation</li> <li>• constitution documents</li> <li>• franchise agreements and financial documentation</li> <li>• partnership agreements</li> <li>• statutory books for companies (register of members, register of directors and minute books)</li> </ul>
<b><i>Records</i></b> may include:	<ul style="list-style-type: none"> <li>• environmental</li> <li>• financial</li> <li>• OHS</li> <li>• personnel</li> <li>• taxation</li> </ul>
<b><i>OHS records</i></b> may include:	<ul style="list-style-type: none"> <li>• accident reports and investigations</li> <li>• first aid and medical</li> <li>• hazardous substances register</li> </ul>

<b>RANGE STATEMENT</b>	
	<ul style="list-style-type: none"> <li>• instruction and training</li> <li>• manufacturers' and suppliers' information</li> <li>• material safety data sheets</li> <li>• OHS audits and inspections</li> <li>• plant maintenance and testing</li> <li>• workers compensation and rehabilitation</li> </ul>
<i>Procurement rights</i> to products and services may include:	<ul style="list-style-type: none"> <li>• any form of licensing</li> <li>• royalties, copyright, patents, trademarks, registered design and applications, intellectual property, software licenses, franchises, agencies</li> </ul>
<i>Contracts with relevant people</i> may include:	<ul style="list-style-type: none"> <li>• any person with whom the business has, or seeks to have, a performance-based relationship</li> <li>• owners, suppliers, employees, landlords, agents, distributors, customers</li> </ul>
<i>Insurance requirements</i> may include:	<ul style="list-style-type: none"> <li>• comprehensive insurance for vehicles/property</li> <li>• professional indemnity insurance</li> <li>• public liability insurance</li> <li>• third party insurance on motor vehicles</li> <li>• workers compensation</li> <li>• other insurance cover as required by state/territory or commonwealth legislation, contractual obligations or as recommended for the industry/type of business</li> </ul>

## Unit Sector(s)

<b>Unit sector</b>	
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## Competency field

<b>Competency field</b>	Management and Leadership - Small and Micro Business
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## Co-requisite units

Co-requisite units		