



National  
Disability  
Practitioners

# Business Essentials

## Business Structures



[ndp.org.au/ndis-sole-traders](http://ndp.org.au/ndis-sole-traders)

# Introduction

The NDIS offers a new way of providing individualised support for people with disability, their families and their carers by giving them more choice on what supports they need, and how they are provided.

If you are providing services as a sole trader or in a private practice, it is critical to understand the essentials of operating a small business in the NDIS market.

We know that it is sometimes hard to find the information you need, so we have done the hard work for you! We have worked with accountancy and consultancy firm Nexia Australia to collate publicly available information and resources to support your sole trader journey of working with the NDIS.



## Disclaimer:

The information contained in this handbook is not provided as advice or as recommendations. The information is intended as a general guide only. It does not take into account your personal circumstances and may not be relevant to you or be fully up to date. You must rely solely on your own external and independent advice.

The information provided should not take the place of information or advice available from, or provided directly by, relevant Government bodies, including the National Disability Insurance Agency (NDIA) and the NDIS Quality and Safeguards Commission (NDIS Commission). While we endeavour to keep advice up to date and correct, National Disability Practitioners (NDP), a division of National Disability Services Limited (NDS), cannot be held responsible for the accuracy of the information, or any other matter arising out of the use of the information appearing on the site.

The 'NDIS & Sole Traders' project is funded by the Industry Development Fund, delivered by National Disability Services on behalf of NSW Department of Family and Community Services: Ageing, Disability and Home Care.

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# Common business structures

The below table outlines the most common business structures for micro businesses and small businesses, their key features, and their advantages vs disadvantages. It is important to properly consider these details when deciding on a business structure.

Common Structure	Definition	How to set up	Requires separate bank account	Advantages	Disadvantages
Sole Proprietorship (Sole Trader)	A person trading as the individual legally responsible for all aspects of the business	<u>Register for an Australian Business Number (ABN)</u> that links with your personal Tax File Number (TFN)	Not compulsory	<ul style="list-style-type: none"> <li>• Easiest to set up</li> <li>• Establishing a sole proprietorship is usually free</li> <li>• Flexible to change to a different structure in the future</li> </ul>	<ul style="list-style-type: none"> <li>• Owner is personally liable for business costs and debts.</li> <li>• May not be tax effective when the business makes significant profits</li> </ul>
Partnership	Involves a number of people (at least 2) who carry on a business together	Apply for a TFN for the partnership and register an ABN that links with the partnership's TFN;	Yes (Usually)	<ul style="list-style-type: none"> <li>• Easy to set up</li> <li>• Minimal cost to operate (a separate tax return is, however, required)</li> <li>• May be more tax effective than a sole proprietorship because profits are shared</li> </ul>	<ul style="list-style-type: none"> <li>• Unlimited liabilities for all partners</li> <li>• Potential conflicts due to joint decision-making</li> <li>• May be complicated to add or change partners in a partnership</li> </ul>

Private Company	Legal entity is separate from its shareholders; a private company is also called a proprietary limited company (abbreviated as 'Pty Ltd')	<u>Register a company with Australian Securities and Investments Commission (ASIC) and obtain an Australian Company Number (ACN) from ASIC; then register a TFN and an ABN that link with the company's ACN</u>	Yes	<ul style="list-style-type: none"> <li>• Limited liabilities for shareholders (with exceptions)</li> <li>• Easy to transfer ownership</li> <li>• May be most tax effective compared with sole proprietorship and partnership</li> <li>• Can raise capital through borrowing or equity investment as a separate legal entity</li> </ul>	<ul style="list-style-type: none"> <li>• Cost more to establish and operate</li> <li>• Subject to ASIC regulations and Corporations Act</li> <li>• Usually requires professional assistance from an accountant to ensure compliance</li> <li>• Employer obligations may arise even if only owners are working in the business</li> </ul>
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## Other business structures

In addition to sole proprietorship, partnership and private company structures, other less common business structures may also be considered:

- **Discretionary Trust** A discretionary trust is also called a family trust. Such a structure may be used to distribute profits from the business to family members (limitations apply). For more information, visit [ATO website](#) or consult a qualified accountant or tax agent.
- **Unit Trust** A unit trust is also called a fixed trust. Such a structure may be used to distribute profits from the business to multiple investors who hold fixed interests in the business. For more information, visit [ATO website](#) or consult a qualified accountant or tax agent.
- **Incorporated Association** An incorporated association is usually a not-for-profit entity subject to relevant laws in the state or territory of incorporation. Generally, an incorporated association cannot distribute its surplus (or profit) to members. For more information about incorporating in New South Wales, visit [NSW Fair Trading website](#).
- **Co-operative** A co-operative (co-op) is owned and controlled by its members. Generally, a co-op must have at least 5 members who have equal voting powers. Unlike an incorporated association, a co-op can distribute a part of its surplus (or profit) to members. For more information about registering a co-operative in New South Wales, visit [NSW Fair Trading website](#).
- **Indigenous Corporation** An indigenous corporation can be a suitable structure for Aboriginal and Torres Strait Islander organisations (usually not-for-profit). For more information, visit [Office of the Registrar of Indigenous Corporations website](#).

# How and when to consider changing business structure

The reorganisation or restructure of a business is referred to as a 'business restructure'. Business restructures are typically carried out to improve business profitability or business processes. A business restructure may also be undertaken to adapt to a change in the business's needs. A Business Restructure may involve changing the ownership of the business or adding partners. It may also include changing legal or operational aspects of the business.

The defined structure of the business is often one of the first things that is changed as a business grows and expands. This is particularly true when a business began operating as a sole proprietorship (sole trader) and is looking to involve a partner or register as a company.

Successful management of change and growth within a business is important for its continued success. It is important that business owners are aware of the various changes to their obligations before they undertake a business restructure. Regardless of whether a business has been operating for a long time or if they have just commenced, it is important that businesses are operating under the most suitable business structure for their circumstance.

The business structure may determine a range of obligations including, but not limited to:

- Tax liabilities
- General responsibilities as a business owner
- Personal liability
- Protection of assets
- Amount of administration work required
- Various ongoing costs

# How to change to a company business structure

Follow these steps if you are changing your business structure a company, or if you are wishing to start a company.

Step	Action	Resources
1	<p>Determine if a company structure is the best structure for your circumstances.</p> <p><b>Important:</b> Obtain professional and legal advice before making a choice on a business structure.</p>	<ul style="list-style-type: none"> <li>• Important information on changing from a sole trader to a company - <a href="http://business.gov.au">business.gov.au</a></li> <li>• Differences between a sole trader and a company - <a href="http://business.gov.au">business.gov.au</a></li> <li>• What is a company? - <a href="http://www.asic.gov.au">Australian Securities and Investment Commission (ASIC)</a></li> <li>• Choosing your business structure – <a href="http://www.ato.gov.au">ATO website</a></li> </ul>
2	<p>Understand your changing legal obligations as a company director or officer.</p>	<ul style="list-style-type: none"> <li>• Personal Liabilities of a sole trader vs Company Director - <a href="http://business.gov.au">business.gov.au</a></li> <li>• Your obligations as a company director – <a href="http://www.asic.gov.au">ASIC website</a></li> </ul>
3	<p>Apply for a company name/business name (if appropriate)</p> <p><b>Important:</b> A business restructure (such as a restructure from a sole proprietorship to a company) will require the cancellation of the existing ABN and reapplication under the new business structure type.</p>	<ul style="list-style-type: none"> <li>• Information on Australian Company Numbers (ACN) – <a href="http://www.asic.gov.au">ASIC website</a></li> <li>• Cancelling Australian Business Number (ABN) - <a href="http://business.gov.au">business.gov.au</a></li> <li>• Registering a business name – <a href="http://www.asic.gov.au">ASIC website</a></li> <li>• Registrations and licences - Department of Industry, Innovation and Science's <a href="http://www.dia.gov.au">website</a></li> </ul>
4	<p>Set up the company</p> <p>Read, understand and complete a '201 Application Form'.</p>	<ul style="list-style-type: none"> <li>• 201 Application Form' - <a href="http://www.asic.gov.au">ASIC website</a></li> </ul>
5	<p>Run / Operate the company.</p>	<ul style="list-style-type: none"> <li>• Reminders when running your company – <a href="http://business.gov.au">business.gov.au</a></li> </ul>

## Further information

**Department of Industry, Innovation and Science resources on business structure:**

[www.business.gov.au/info/plan-and-start/start-your-business/business-structure](http://www.business.gov.au/info/plan-and-start/start-your-business/business-structure)



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