



Doing business in Australia

Foreign Owned Subsidiaries make up a substantial part of the Australian economy, with around a third of Australia's top 2000 companies foreign owned. Australia's stable political environment and rule of law have made it an attractive platform to base operations but with stability comes a highly regulated market.

Consider this your insider's guide to the state of play in the land down under.

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Macpherson Kelley acknowledges the Traditional Custodians of the land on which we live and work. We recognise their strength and pay our respects to Elders past, present and emerging.

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Australia at a glance

Introduction

Australia is home to 27 million people, comprising individuals from over 200 countries. Australia is amongst the most developed nations, with a nominal GDP per capita of US\$64,711.80.

Australia is comprised of six states and two territories, with a total area of approximately 7.7 million square kilometres. The political capital, Canberra is located in the Australian Capital Territory. The other remaining territory is the Northern Territory. Of the six states, New South Wales is the most populous, followed by Victoria, Queensland, Western Australia and South Australia.

The state and territories' capital cities are as follows:



Australian culture

Australia is home to many cultures from all over, including Indigenous Australians who are one of the world's oldest cultures and the original sole inhabitants of the continent. Due to Australia's history of immigration and multiculturalism, over 300 languages have been identified as language spoken in Australian homes. After English, the top languages spoken by a person at home are Mandarin, Arabic, Italian, Cantonese, Vietnamese, Greek and Hindi.

Australian climate

Australia's seasons are at opposite times to those experienced in the Northern Hemisphere with Summer occurring between December and February, Autumn between March and May, Winter between June and August, and Spring between September and November.

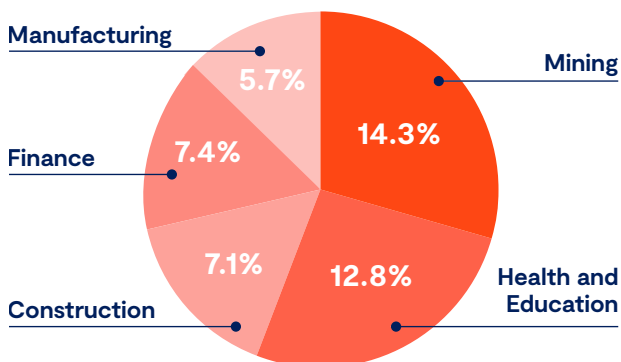
Due to the large land size of Australia, different parts of the country experience different climates, ranging between temperate, subtropical, dry mediterranean and desert climates. For example, the tropical north (Queensland and Northern Territory) experiences a wet season from November to March and a dry season from April to October. Whereas the southern regions of Australia experience the traditional seasons as referred to above.

Economic drivers and key industries

Australia is a highly developed country that boasts one of the most competitive, open, and flexible economies in the world, ranking as the world's 13th largest economy.

Australia consistently outpaces other advanced economies in economic growth. During the period of 2019 to 2024, the Australian economy displayed growth of 11.1%, exceeding the 7.8% average for advanced economies in the same period. Over this period Australia's growth matched the US, tripled the expansion of the Euro area, and recorded five times the growth of the UK.

Australia's current economic growth is driven by the following key industry output sectors:



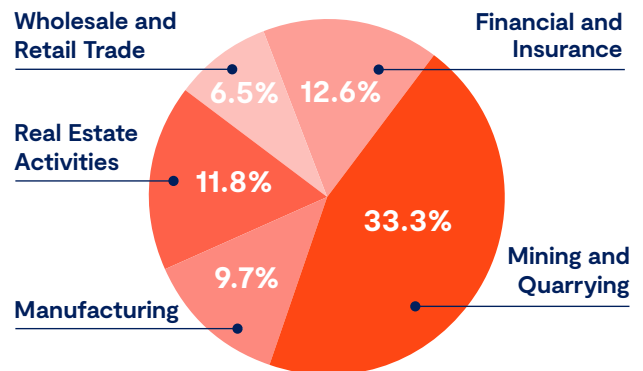
The Australian financial system is highly efficient, advanced, and large, with Australian financial institutions managing US\$8 trillion in assets. The Australian dollar is the 6th most traded currency worldwide, which is partly due to its role as a significant exporter of resources and energy.

Australia's economy is primed to continue its rapid growth, with its large-scale access to natural resources and potential in renewable energy looming as a new 'gold rush' for Australia. For example, Australia is already the largest producer of solar energy per person in the world and has the potential to become the largest producer on mass, as the continent receives the highest level of solar radiation per square meter globally.

Trade and inbound investment

Australia is as an attractive country for foreign investment and new ventures, with its world leading AAA credit rating an incentive for investors. Other areas of Australia's economy that invite inbound investments are its high global rankings for its macroeconomic environment, number of days required to start a new business, and strong contract enforcement.

As of June 2024, the industry areas that attract the most foreign direct investment in Australia are:



Australia has an open market economy with minimal restrictions on the import of goods and services, ranking 6th in the world for low tariff barriers, reflecting Australia's commitment to open trade and facilitating a high volume of foreign investment across these varied industries.

Australia's dynamic trading environment and position as a major regional exporter is augmented by the prosperity of its major trading partners.

Australia's major trading partners include China, Japan, India, the US, the EU, Korea, and the Association of Southeast Asian Nations (ASEAN) economies. Australia is a significant exporter of natural resources, food items, and energy, utilising its abundance of natural resources (e.g. coal, copper, natural gas, uranium, and renewable energy sources) and considerable agricultural production base to fuel its prosperous exportation regime.

Setting up business in Australia

Company structures

There are several business structures available to establish a presence in Australia. Deciding on the most appropriate structure requires consideration of legal compliance obligations, funding requirements, operational needs, tax, liabilities and risk exposure.

A foreign company looking to carry on business in Australia will most commonly elect to register either:

- an Australian subsidiary company, or
- a branch office by registering itself as a foreign company.

Some other business structures used in Australia (but which are less commonly adopted by foreign companies doing business in Australia) include trusts, joint ventures and partnerships.



Trusts



Joint Ventures



Partnerships

1. Proprietary Company Limited by Shares

In Australia, companies are regulated by the *Corporations Act 2001* (Cth).

A proprietary company limited by shares is the most common business structure adopted when foreign entities establish a business in Australia. Companies are separate legal entities created by law.

A company operates as a distinct legal entity separate from its members. Liability is of members limited to the amount of their capital contribution in the company and shareholders are not otherwise responsible for the company's debts and other obligations.

A company is responsible for lodging its own tax return and must have its own Tax File Number and (subject to exceptions) its own Australian Business Number. Companies are subject to a flat tax rate of 30%, although a reduced corporate tax rate of 25% applies to companies meeting certain thresholds. Profits in Australian companies may be accumulated and re-invested by the company without the need for distribution to members as dividends.

A company structure also provides a variety of exit opportunities such as a sale of shares by the member, sale of business/assets held by the company, or initial public offerings.



The process for incorporating an Australian company is relatively straightforward. The registration of companies is governed by the *Corporations Act 2001* (Cth), and accountants and lawyers can assist as acting as an agent to register a company.

Australian companies are required to set out the company's internal management procedures. Broadly, this can be done by either adopting a prescribed set of "replaceable rules" which are set out in the *Corporations Act 2001* (Cth) or by adopting its own written constitution.

A company's internal management procedures will usually include the following:

- Meeting and voting procedures
- Powers of the directors
- Procedures for the appointment, removal, resignation and termination of directors
- Classes of shares and rights attaching to each class of shares
- How shares in the company are to be transferred from one member to another.

At least one director of the company must be an Australian resident director. Once registered, each company is given a unique Australian Company Number and a certificate of registration.

All directors of Australian companies are required to hold a Director Identification Number (DIN). The DIN is a 15-digit identification number which is unique to each director and remains attached to that director for life, even if the director moves from one company to another, changes their name or relocates offshore.

More information about DINs can be found on our [DIN Information Sheet](#).

2. Branch office

A branch office is a means by which a foreign company can trade in Australia. There are a few relevant considerations to setting up a branch office.

The annual return of a branch office (which must be made available to the public) must include the worldwide financial accounts of the company of which it is a branch, unless exempted by the Australian Securities and Investments Commission (ASIC). Disclosure is not limited solely to the local branch's operations, so if a foreign company elects to establish a branch, it may need to report its global financial data to ASIC in Australia.

The use of a branch has practical limitations in

dealing with Australian government organisations, financiers or other third parties. For example, financial institutions in Australia generally require audited financial statements relating to the Australian operations of the applicant which may not be readily available in an acceptable form in the case of a branch. Also, third parties (such as landlords, suppliers, employees) dealing with a branch may also need to be satisfied as to the nature of the foreign corporation's legal standing and the means by which it is able to bind itself to obligations in Australia.

3. Trusts

A trust is a relationship between a trustee and one or more beneficiaries, pursuant to which the trustee controls and deals with certain assets or property for the benefit of the beneficiaries. The trustee will hold legal title to all the trust assets and will deal with those assets according to the trust deed and trust law.

Trusts are commonly used to run Australian businesses by local owners but are not as prevalent or suitable for foreign owned companies. Trusts generally take the form of either a unit or discretionary trust.

A unit trust is managed by a trustee (generally a corporate trustee) and the beneficiaries hold units in the trust which provides fixed rights to income or capital proportional to their unit holding. The trust deed sets out the powers and duties of the trustee and outlines the rights and benefits attached to units.

Discretionary trusts (often referred to as family trusts) provide the trustee with broad discretion to determine how and when income and capital is to be distributed among a defined class of beneficiaries.

Certain trusts can be listed on the ASX, such as listed property trusts or equity trusts. Some trusts which are designed to allow a group of 20 or more investors to pool their funds together may fall under the managed investment scheme regulations under the *Corporations Act 2001* (Cth), requiring registration and the appointment of a responsible entity. These types of trusts are very highly regulated.

Trusts are more commonly used in the context of smaller local enterprises and family owned businesses. The major reasons for establishing a family trust are the asset protection benefits afforded by separation of ownership (by the beneficiaries) and control (by the trustee) and favourable tax outcomes in certain circumstances.

As noted, trusts are very rarely used by foreign companies seeking to establish a business presence in Australia.

4. Joint ventures

Joint ventures are collaborative arrangements under which parties contribute specific skills, assets, and/or finance to pursue a common business project. They are often used for specific projects, such as property developments and mining operations, involving multiple stakeholders like tenement holders, off-takers, financiers, and operators.

Joint ventures can either be incorporated or unincorporated. Incorporated joint ventures are established by creating a special purpose company where the joint venturers hold their interests as shareholders. This special purpose company is a separate legal entity from its shareholders, offering the advantage of limited liability. These ventures are typically governed by a shareholders' agreement that outlines the rights and obligations of the parties involved. An incorporated joint venture is taxed in the same manner as any other company.

Unincorporated joint ventures, conversely, do not form a separate legal entity. Instead, the joint venture parties appoint a manager or agent (often an entity associated with one of the parties) to hold the assets for their benefit as tenants in common. Governance of the relationship is based on a joint venture agreement as well as common law principles, such as the laws of agency.

In unincorporated joint ventures, each party files their own tax returns, handling their expenditures, gains and income independently.

5. Partnerships

Partnerships are established when individuals, companies or trusts (or a combination of these) agree to run a business together with the aim of making a profit. Unlike a company, a partnership is not a separate legal entity. Rather, it exists through its partners, and actions taken in the partnership's name bind each partner personally.

All assets of the partnership are jointly owned by the partners, and all partners are jointly and severally liable for the partnership's obligations, liabilities and debts. A partnership must file annual tax returns detailing each partner's share of net income gain or loss.

Partnerships are rarely used by foreign companies seeking to establish a business presence in Australia.

Setting up business in Australia

Capital raising for foreign companies

Sourcing the right funding is a key part of the journey when doing business in Australia. Most business operators know the basics – a solid business idea and plan, strong management team, opportunities to expand, good operating systems and the like. However, the fundraising process can also be fraught with hidden risks and may damage your business if something goes amiss.

Foreign companies which make offers of securities received in Australia are principally regulated by Part 6D.2 of the Corporations Act 2001 (Cth) (**Corporations Act**). Securities includes both shares and options over shares in a body, including in foreign companies. Offers includes both offers to issue securities and offers to sell securities (which are regulated in a more limited way).

Disclosure unless an exemption applies

Foreign companies which propose to make an offer of securities received in Australia must ensure that the offer complies with Part 6D.2 of the Corporations Act. The Act requires the person making the offer to provide disclosure to investors unless a relevant exemption applies.

Disclosure is usually in the form of a prospectus, which is a comprehensive document aimed at providing all information that investors would reasonably require to make an informed decision regarding the offer and which is lodged with the Australian Securities and Investments Commission (ASIC). Short form disclosure documents may also be prepared for certain offers.

Exemptions from disclosure

Notwithstanding the disclosure requirement, it is common for foreign companies seeking to make an offer of securities in Australia to seek to apply an exemption from disclosure.

The key exemptions applied are found in section 708 of the Corporations Act and include:

Small-scale offerings	Offers made on a rolling 12-month basis to no more than 20 investors and which raise no more than AUD\$2 million.
Sophisticated investors	Offers to investors who meet certain financial criteria (gross income of at least AUD\$250,000 in the last two financial years, or net assets of at least AUD\$2.5 million), or where the minimum amount payable for the securities is at least AUD\$500,000.



Professional investors	Offers to financial services licensees, pension funds, persons who control gross assets of at least AUD\$10 million, and experienced investors as determined by a financial services licensee.
Senior managers	Offers made to senior managers of a company or a related body, which can include directors and other persons concerned in or taking part in management, or their immediate relatives.
Share and employee plans	Offers under dividend reinvestment plans, bonus share plans and some employee share plans.

Notes for foreign companies

Foreign companies should note that even where an exemption applies, the offeror must ensure that all documents and information are not misleading or deceptive or contain false statements. A breach can carry both civil and criminal penalties.

Proprietary Australian companies (including Australian subsidiaries of a foreign company) are widely prohibited from conducting any activity that would require a disclosure document to be prepared. They must either fall within an exemption from disclosure or convert to an Australian public company.

Part 7.9 of the Corporations Act contains analogous disclosure provisions and exemptions for offers of financial products, as opposed to securities.

Crowd-sourced equity funding

In recent years, Australia has implemented a regulatory framework for crowd-sourced equity funding (CSF) which enables smaller Australian proprietary and public companies to raise up to \$5 million in any 12-month period from retail investors with a reduced regulatory burden.

Foreign companies purchasing shares from Australian shareholders

Division 5A of Part 7.9 of the Corporations Act regulates unsolicited offers to purchase financial products off-market (which for this purpose includes shares, including in foreign companies).

Foreign companies who wish to make an offer to purchase shares from shareholders located in Australia (for example, as part of a foreign takeover bid) must prepare a compliant offer document unless exempted. For this purpose, ASIC has issued a legislative instrument to facilitate foreign takeover bids from certain jurisdictions.

Setting up business in Australia

Land ownership and leasing

Obtaining a property to run your business is a necessity and understanding the relevant terminology, sale process and tax implications of a purchase or lease will make the process easier. Obtaining expert advice is the best way to ensure a smooth transaction.

Foreign Investment Review Board (FIRB) approval

Foreign investors (including foreign persons and foreign corporations) wishing to acquire 'Australian land' must, in most cases, obtain the approval of the FIRB. The rules vary depending on the type of property and the buyer's circumstances.

Generally speaking:

1. Residential property:
 - a. **New properties:** Foreign investors can purchase new dwellings (i.e. newly built homes or apartments) without restrictions, but they still need FIRB approval.
 - b. **Existing properties:** Foreign investors are typically not allowed to purchase existing residential properties unless they are intending to redevelop the property or make substantial renovations. In most cases, FIRB approval is required.
2. Commercial property
 - a. Foreign investors can generally purchase commercial property in Australia without specific restrictions, but they must still apply for FIRB approval for investments above certain thresholds.

3. Agricultural Land

- a. Special rules apply to agricultural land, with foreign ownership of agricultural land being more tightly regulated. FIRB approval is usually required for foreign investors purchasing agricultural properties.

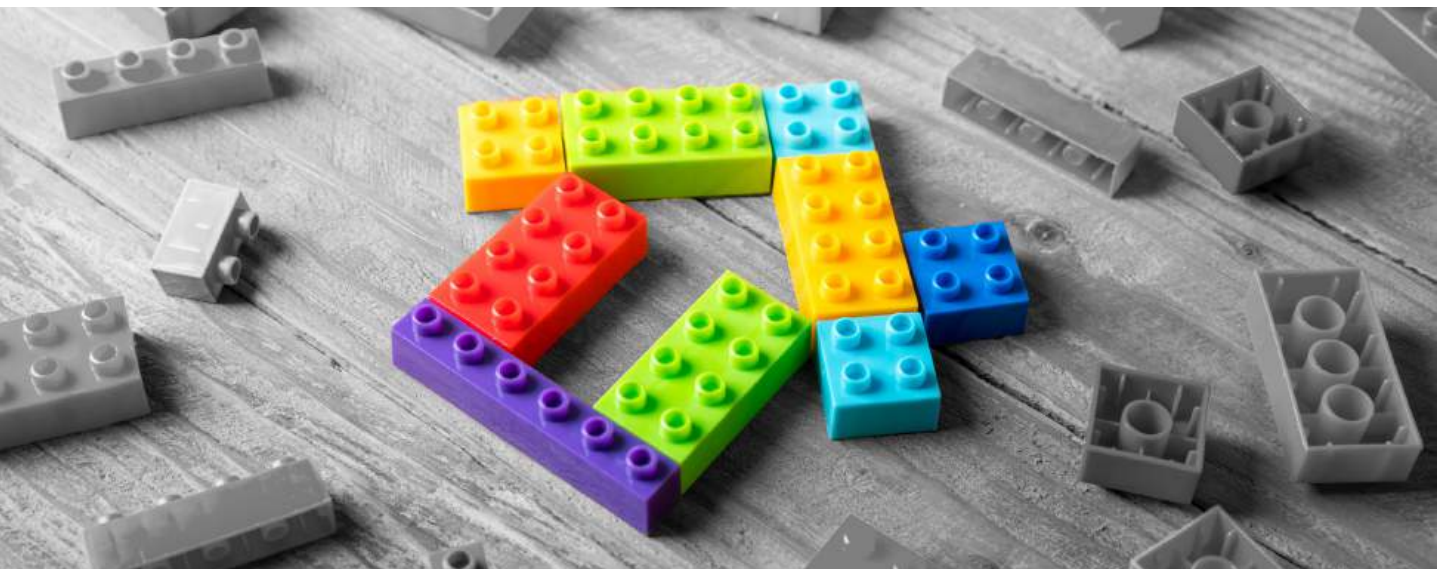
The policy behind FIRB approval is so that the Australian Government can monitor and control foreign investment in real estate, ensuring it aligns with the national interest.

Fees are typically associated with FIRB applications and the approval process can take several weeks.

Foreign resident Capital Gains Tax (CGT) withholding regime

The foreign resident capital gains tax withholding regime is a tax measure designed to ensure that foreign residents who sell certain real estate assets pay the capital gains tax (CGT) applicable to the sale. This regime was introduced in 2016 as part of efforts to combat tax avoidance and ensure that foreign investors fulfil their tax obligations when selling residential property.

This regime now applies to all sales of all real estate, regardless if the property is new or existing.



Other aspects of the regime:

1. Withholding tax:
 - a. If a foreign seller disposes of a real property, the buyer is required to withhold a percentage of the sale price and remit it directly to the Australian Taxation Office (ATO): the current withholding rate is 15% of the sale price and applies to any contracts for sale of property entered on or after 1 January 2025. This amount is treated as an advance payment toward the foreign seller's capital gains tax liability.
2. Exemptions:
 - a. Australian residents: If the seller is an Australian resident for tax purposes, the withholding tax does not apply.
 - b. Certain property types: There are some exemptions, such as those used for certain purposes like primary residences, subject to meeting the exemption tests.
3. Seller's responsibility:
 - a. Foreign residents deemed Australian residents for tax purposes must apply for a clearance certificate from the ATO before the sale takes place. The clearance certificate shows that the seller is either not subject to the withholding tax or that the withholding tax is lower than the standard 15% rate.
 - b. Individual foreign residents and non-individual entities (eg. companies, trusts, etc) will have different tests applicable to working out their tax residency status.
4. No clearance certificate
 - a. If no clearance certificate is obtained if the ATO is not satisfied with the seller's tax status, the buyer is required to withhold 15% of the price and send it to the ATO.
 - b. Foreign resident vendors (those that are not residents for tax purposes) are not entitled to apply for a clearance certificate and the buyer is required to withhold 15% of the price and send it to the ATO.
5. After the Sale:
 - a. The withheld amount is credited against the foreign seller's capital gains tax liability when they complete their Australian tax return. If the withholding exceeds the actual tax liability, the seller can apply for a refund.

State vacant residential land tax

In Victoria, foreign owners, like Australian residents, are subject to the vacant residential land tax (VRLT) if the property is left vacant for a certain period for properties. Other states and territories may not have similar laws however this issue should factor into a foreign buyer's consideration.

1. Applicability
 - a. VRLT applies to residential properties in metropolitan Melbourne that are left vacant for more than six months during a calendar year (i.e. from 1 January to 31 December).
2. Foreign owners
 - a. Foreign owners, like Australian residents, are subject to VRLT if their property is vacant for more than the allowable period. This tax applies regardless of whether the property is owned by a foreign person or foreign corporation.
3. Exemptions
 - a. There are a few exemptions to VRLT, including if the property is being renovated or under construction, uninhabitable for a period due to damage, or the primary residence of the owner (for Australian residents).
 - b. These exemptions can be more limited for foreign owners, and the VRLT is more likely to be applicable.
4. Tax rates
 - a. The VRLT for foreign owners is 1% of the property's unimproved land value (i.e. the value of the land excluding any buildings and improvements).
 - b. The tax is levied annually and is designed to be a disincentive for foreign buyers to leave properties vacant.

Director's Duties

Complying with Director's Duties

Directors of Australian companies are subject to statutory duties under the Corporations Act 2001 (Cth) and fiduciary obligations at common law.

Director's duties include the following:

Good faith	A director must act in good faith and in the best interests of the Company and for a proper purpose. This is also a fiduciary duty imposed by the common law.
Conflicts of interest	The duty of good faith also enshrines a duty to avoid conflicts of interests and to reveal and manage any conflicts when they arise. A director must disclose matters relating to affairs of the Company where that director has a material personal interest in the matter.
Duty not to fetter discretion	A director must retain all its discretions, whether conferred by the Corporations Act or the Constitution. Essentially, where a power is conferred upon a director, they must not fail to exercise this discretion because of the interests of a shareholder.
Skill and diligence	Exercise position with a degree of care and diligence that a reasonable person might be expected to show in the position of director. This includes reviewing financial statements and considering contracts and transactions to assess the benefit that they may bring to the Company.
Proper use of position	A director must not improperly use their position to gain a personal advantage or an advantage for someone else at the detriment of the Company.
Proper use of information	A director must not improperly use the information that they gain in the course of their directorship to gain an advantage for themselves or someone else to the detriment of the Company.
Tax duties	A director must ensure that the Company meets its taxation obligations. A director must be aware of all the taxation and superannuation obligations of the Company and make all reasonable attempts to minimise liabilities.
Occupational health and safety (OH&S)	A director must exercise due diligence to ensure the Company complies with all obligations under the relevant OH&S provisions. A director has a duty of care and must ensure, within reason, the health and safety of workers while engaged in work.
Environmental law	A director must be aware of the applicable local council, state, and federal rules with regard to the Company's environmental obligations to protect the environment. In addition to statutory obligations, directors and senior executive officers will also be subject to common law or general law duties. Broadly these duties include a duty of loyalty and a duty of care.

These duties may be modified by any contract of service or employment contract that may exist between the individual and the Company. Each director will need to be mindful of these obligations when exercising their decision-making powers, particularly if they are also engaged in senior executive positions.

Director's Duties

Defending breach of Director's Duties

There are limited defences available for a breach of directors' duties.

The defences available are detailed below.

1. Expert advice

The director has made the decision or entered into the arrangement in reliance on expert advice.

2. Business judgement rule

The director must prove that the decision or arrangement was entered into:

- in good faith and for a proper purpose
- in circumstances where the director had no personal interest in the subject matter of the decision
- in circumstances where the director informed themselves about the subject matter of the decision/s to the extent they reasonably believed appropriate
- rationally believed that the decision was in the best interests of the Company.

3. Delegated power

The director has delegated the decision-making power to another person, believing that the person was reliable and competent for power to be delegated to them.

The Board owes these duties to the Company in all circumstances and a director can be found personally liable for a failure to adequately discharge them.

When making decisions, each of the directors must act in the best interests of the Company irrespective of what their interests might otherwise be in the affairs of the Company.



Establishing business in Australia

Intellectual Property and Technology

Intellectual Property (IP), including trade marks, designs, copyright, trade secrets, and patents, are all protectable in Australia. While national regimes apply to the registration of trade marks, designs, and patents, there is currently no registration system in place for copyright, or trade secrets.

Due diligence

When acquiring a business, or expanding your business to Australia, it's important to know what IP assets the business already owns. These can include:

- **Patents:** Protect inventions and new processes.
- **Trade Marks:** Protect logos, brand names, slogans, and signs
- **Copyrights:** Protect creative works like music, art, and literature
- **Designs:** Protect the visual appearance of products
- **Trade Secrets:** Protect know how and confidential information of the business

Auditing your assets should form part of your due diligence into the acquisition or expansion of the business. In addition to considering the presence or ability to secure protection of the above IP, due diligence needs to be undertaken to determine the following.

1. Can you operate using your business name?

It is important to note that trade marks are jurisdictional and it isn't uncommon for a business to have to trade using a different name where an Australian company already has IP rights in the same or a similar name; or adopt a strategic plan for building use of their business name in Australia in a non-infringing way.

2. Ownership of intellectual property rights

These are determined by reference to both statutory law and the common law.

For example, if a trade mark is not filed by the correct entity, the ensuing trade mark is invalid and unenforceable, which will significantly affect the value of any business being acquired; and copyright can only be assigned in writing.

3. Prevention of parallel importation and importation of grey goods

Parallel imports (sometimes referred to as grey goods) are usually genuine products, but not always intended for sale in the particular country where they end up. This can lead to issues with distribution arrangements, warranties, after-sales service, or even the legality of the sale.



4. Validity of IP assets

This is a paramount consideration as there are a raft of potential issues that may cause IP to have expired, become invalid, or be unenforceable.

For example, if a patent or design wasn't novel when protection for it was sought, it may be invalid; or patent annuity fees may not have been paid and so it is now unenforceable.

5. Freedom to operate

This is particularly important when expanding your business into Australia. Australians are quite inventive and there is an ever-increasing trend for businesses to secure IP rights in Australia. Accordingly, it is always recommended to engage an IP lawyer to conduct a freedom to operate search in Australia if you plan on launching a new product or invention to ensure it doesn't infringe a third parties' rights. Additionally, it isn't uncommon for Australian businesses to identify successful products overseas and implement them in Australia under the same brand.

Protecting your assets

There has been a significant increase in the copying of entire products or components and spare parts of unprotected products in Australia, through replication by and importation from overseas manufacturers.

If there are no IP rights on products, there are limited remedies available to the manufacturer.

There has been a growing awareness of how to protect and prevent copying, in particular through increased searching of Australian IP registers.

Over the last few years we have seen several actions taken to prevent copying of products.

- **Australian Border Force (ABF)**

By registering the product with the ABF and supplying key details relating to how authentic products arrive into Australia, the ABF's IT systems are able to identify potentially infringing products entering the country (though note, while this is of assistance, it will not prevent the importation of all counterfeit goods).

- **Take downs**

Utilising social marketplace rules enables businesses to have counterfeit products removed from third party online marketplaces e.g. Amazon, eBay, Gumtree, Facebook Marketplace.

- **Domain name actions**

Having registered trade mark rights enables businesses to have third party 'copycat' websites transferred to them or cancelled.

- **Brand registration with marketplaces**

By registering your trade marks as verified brands, it enables your products to be sold on e-marketplaces as verified products, and will also assist in having counterfeit goods not listed on the third party online marketplaces e.g. Amazon, Alibaba, Temu, etc.

Artificial Intelligence (AI)

The use of AI in Australia has been adopted by almost all businesses. While there are no laws or regulations in Australia regarding AI, the Australian Government has signed the Bletchley Declaration, which establishes a shared understanding of the opportunities and risks posed by frontier artificial intelligence with a view to work with the international community to ensure AI is developed with the right guardrails in place.

To this end, the Australian Government has overseen the development of the voluntary AI safety standard, being ISO 42001 - the AI Management System Standard which also complies with the mandatory requirements of the EU AI Act. Businesses entering Australia are encouraged to develop an AI policy that complies with ISO 42001.

Business compliance in Australia

Tax

Australia's federal income taxes are regulated by the Australian Taxation Office (ATO) with the federal tax year from 1 July – 30 June. A taxpayer may apply to the ATO to use a different year (substituted accounting period).

Resident individuals and entities are taxable in Australia on their worldwide income, regardless of source. While **non-resident individuals** and entities are taxable on their Australian-sourced income only.

The tax system requires self-assessment, whereby the relevant taxpayer will self-calculate their tax and take responsibility for filing the return.

Under the self-assessment system, only limited information is required to be provided in income tax return forms. However, taxpayers are required to retain extensive reporting records.

Australia's principal income tax legislation is:

- *the Income Tax Assessment Act 1936, and*
- *the Income Tax Assessment Act 1997.*

FY25 Income tax rates and sources

The corporate tax rate is 30% or 25% for base rate entities. Individual tax rates operate on a sliding scale and depend on whether or not you are resident or non-resident for tax purposes.

Taxable income AUD \$	Rate – Resident individuals	Rate – Non-resident individuals
0–\$18,200	0	30c for each \$1
\$18,201 – \$45,000	16c for each \$1 over \$18,200	30c for each \$1
\$45,001 – \$135,000	\$4,288 plus 30c for each \$1 over \$45,000	30c for each \$1
\$135,001 – \$190,000	\$31,288 plus 37c for each \$1 over \$135,000	\$40,500 plus 37c for each \$1 over \$135,000
\$190,001 and over	\$51,638 plus 45c for each \$1 over \$190,000	\$60,850 plus 45c for each \$1 over \$190,000

These rates do not include additional surcharges or levies which may also be applicable – but which generally only apply to resident taxpayers.



Income includes both **ordinary income** (such as salary and wages) and **statutory income** (such as capital gains).

If you are operating in Australia through a branch or permanent establishment, the business profits attributable to the Australian branch will be taxable here unless a tax treaty between Australia and the relevant foreign country determines otherwise.

A non-resident's liability to:

- capital gains tax will depend on whether the gain is from the sale of Australian property, and
- passive sourced income (such as interest, royalties and dividends) will be generally only subject to withholding tax.

The withholding tax obligation will lie with the Australian based payor and is a final tax. The withholding rate will depend on whether or not there is a tax treaty with the resident country of the recipient. In the absence of a treaty, the relevant withholding rates are:

- Dividend – 30% (unless the dividend is 'franked')
- Royalty – 30%
- Interest – 10%

Capital gains tax applies when a 'CGT event' occurs. The tax rules contain a list of CGT events that potentially give rise to CGT. The most common of which cover disposals, or the change in ownership of a CGT asset. Generally, the capital gain or loss from a disposal is calculated as the difference between the capital proceeds from the disposal and the asset's cost base.

Tax residence

1. Company

A company is an Australian resident for tax purposes if:

- It is incorporated in Australia, or
- If not incorporated here, has its control or central management in Australia.

A company can retain its profits at its applicable corporate tax rate. It is only once it makes a distribution to its members that further tax obligations (to the members) will arise.

2. Individual

An individual's residency in Australia for tax purposes is subject to whether;

- the person resides in Australia
- is domiciled in Australia
- is in Australia for 183 days or more of the year, or
- is an eligible employee under particular Commonwealth superannuation legislation.

3. Cross-border dealings

Australia's taxation regime contains several mechanisms designed to control cross-border related party dealings.

In particular, we have a transfer pricing regime which aims to ensure that related party transactions are priced appropriately to prevent the erosion or movement of Australian sourced profit out of the Australian taxation net.

In addition, the thin capitalisation rules can operate in certain circumstances to prevent certain interest deductions from being available where the amount of debt used to finance Australian operations exceeds certain limits.

Business taxes

In addition to individual or corporate tax rates, Australia has several additional federal and state-based tax regimes that impose additional taxation obligations on businesses.

Goods and services tax

GST is the Australian equivalent to a value added tax. A flat rate of 10% applies to the value of 'taxable supplies' of goods and services and to 'taxable importations'. An entity must register for GST with the ATO if it carries on an enterprise and its GST turnover meets the registration turnover threshold.

The registration turnover threshold for a profit enterprise is AUD\$75,000 or higher. A company must file a GST return if it is required to be registered.

It files quarterly tax returns and remits quarterly payments to the ATO for quarterly tax periods that end on **31 March, 30 June, 30 September** or **31 December** on or **before the 21st day of the month** following the end of that period.

State taxes

1. Duties

Each state and territory of Australia has a duties regime which levies 'duty' on certain transactions that give effect to 'dutiable transactions'.

The following are examples of transactions which may attract a duty liability in the states and territories of Australia:

- land transfers
- business transfers (Queensland and Western Australia only)
- registration or transfer of registration of motor vehicles

- transfers of landholder entities (eg companies/trusts with landholdings).

The rates of duty that apply will depend on the value of the transaction. Many of the states and territories also impose additional foreign surcharges in respect of transactions involving non-resident individuals and entities.

2. Payroll tax

Each state and territory imposes a payroll tax when an employer's Australian taxable wages exceed a particular threshold. The standard rates across the states range from 4% to 6.85% of an employers taxable wages.

3. Land tax

Land tax is not uniform between each state and territory. Each state and territory imposes land tax on the owner of the land, subject to meeting certain thresholds. Land tax is again also subject to additional surcharges where ownership of the land is 'foreign'.

Foreign investment into Australia

The acquisition of an Australian business, company shares or real estate by a foreign person (i.e. natural person, corporation or other foreign resident entity) is regulated by the Foreign Investment Review Board (FIRB).

Prior to undertaking particular transactions, 'foreign persons' must apply for approval from FIRB and pay the associated transaction fee.

Whether or not the FIRB approvals process is engaged will depend on:

- The type of transaction being undertaken (business acquisition, share acquisition, land acquisition for example – noting each category has various subtypes that must also be considered).
- The value of the transaction and whether this falls within the applicable monetary thresholds.
- The profile of the foreign person (e.g. private entity, government entity, whether the foreign person comes from a country with which Australia has a free trade agreement).
- The industry involved – noting that lower (or zero) value thresholds apply for investments in a 'sensitive business' such as transport, telecommunications, media, defence, military and security enterprises.
- Whether any exemptions ought to apply.

Monetary thresholds

The [monetary thresholds](#) are indexed annually on 1 January, except for the \$15 million (cumulative) threshold for agricultural land and the \$50 million threshold for agricultural land for Thailand investors, which are not indexed.

Applications for approval

If an acquisition requires approval, it may still be possible to enter into the transaction documents provided that the closing of the transaction is conditional on FIRB approval being obtained.

If a proposal is allowed, you will receive a no objection notification, and this may have conditions attached. Some conditions are ongoing.

The fees payable upon application generally depend on the value and kind of investment you intend to make. Fees start at A\$4,300 and can be as high as A\$3,514,800.

Register of foreign owned assets

All acquisitions of interests in Australian land, water and interests in Australian entities (and some interests in Australian businesses) by foreign persons, and subsequent actions in relation to those interests, must be registered on the Register of Foreign Ownership of Australian Assets (Register), regardless of whether FIRB approval was required for the acquisition.

An Australian entity that holds interests in Australian assets at a time when it becomes a 'foreign person' under the FIRB rules, must also set up an account on the Register and record all of its relevant assets on the Register.

Business compliance in Australia

Trade

Australia is one of the most highly regulated markets in the world. It can be a surprise to multinationals moving to Australia, resulting in a balance between adopting overseas policies and management practices against local regulation compliance.

While not exhaustive, the key laws in relation to or that impact trading are:

Competition and Consumer Act

The Competition and Consumer Act (CCA), in relation to trade regulates and protects competition, whether that is as between competitors or as between suppliers and their customers who resell, distribute. It also encompasses the Australian Consumer Law (see below).

In relation to competition, the CCA covers:

- Prohibition of cartel conduct (price fixing, market sharing, bid rigging, restricting output or supply) between competitors
- Prohibits resale price maintenance
- Prohibits arrange of conduct that is likely to result in a substantial lessening of competition in a market, such as exclusive dealing, concerted practices, anticompetitive agreements
- Regulates mergers and acquisitions that are likely to result in a substantial lessening of competition in a market

Various industry codes have also been enacted, under the CCA, including for franchising, horticulture (as between growers and sellers), dairy (milk production and supply) and petrol/diesel supply.

Australian Consumer Law

The Australian Consumer Law (ACL) imposes obligations on businesses in relation to their dealings with consumers, including:

- ✓ to avoid engaging in conduct that is misleading or deceptive or likely to mislead or deceive
- ✓ to comply with consumer guarantees, which are non-excludable obligations with respect to goods and services
- ✓ to avoid incorporating unfair contract terms into the parties' dealings in specified circumstance,
- ✓ not to act unconscionable in making or enforcing an agreement; and
- ✓ to take relevant actions with respect to product safety and circumstances in which products are or may be unsafe.

Misleading and deceptive conduct

Misleading or deceptive representations (or representations that are likely to mislead or deceive) by a person in trade or commerce or in connection with the supply of goods or services is prohibited under the ACL.



Consumer guarantees

Consumer guarantees apply in relation to the supply of goods and services to consumers, and among other things require that the goods and services supplied in applicable circumstances must:

- conform to their description
- be of acceptable quality
- be reasonably fit for the purpose which the consumer makes known to the supplier
- comply with any sample given, and
- the supplier must have proper title to the goods being sold

Consumer guarantees cannot be contracted out of and any attempt to do so may constitute misleading and deceptive conduct.

Unfair contract terms

A term in a standard form contract will be unfair if it causes a significant imbalance in the parties' rights and obligations, is not reasonably necessary to protect a legitimate interest of the party advantaged by the term, and would cause financial or other detriment to a party if relied on.

Where an unfair term is incorporated into a standard form agreement, such term is liable to be declared void (such that it cannot be relied on) and exposes the parties to significant penalties (see below).

Product safety

The ACL provides safety standards in relation to a range of goods and services which must be complied with.

The ACL sets out the regime for when personal injury or property damage is suffered as a result of defective goods that are ordinarily acquired for personal, domestic or household use or consumption.

Penalties

The maximum penalties for a contravention of the ACL are based on the higher of:

- AUD\$50 million
- 3 times the value of any benefit obtained that is attributable to the breach, or
- if the value cannot be determined, 30% of a company's adjusted turnover during the breach turnover period of the contravention.

Key trading documents

There are a number of key trading documents that must be adopted when doing business in Australia. These are, but are not limited to:

- Terms and Conditions
- Warranty Statements
- Franchise, Distribution and Agency Agreements
- Licence Agreements
- Personal Guarantees

Business compliance in Australia

Privacy laws

In Australia, subject to some exceptions, the Privacy Act 1988 (Cth) (Privacy Act) applies to businesses with a turnover of greater than AUD\$3million, or which are related to an entity with a turnover of greater than AUD\$3million. The Privacy Act sets out the obligations of businesses to protect individuals' personal information.

In addition to the Privacy Act, there are circumstances where state and territory laws (including health and privacy laws) will apply.

The Australian Government is currently reviewing the Privacy Act.

Privacy

The Privacy Act is regulated by the Office of the Australian Information Commissioner (OAIC). The Privacy Act contains 13 Australian Privacy Principles (APPs) that set out a minimum standard as to how personal information must be collected, used, disclosed, and stored, as well as giving individuals who the personal information relates some rights (e.g right to access and correct personal information).

Personal information is defined under the Privacy Act as “*any information or opinion about an identified or reasonably identifiable individual.*”

Sensitive information, being “*such information or an opinion about certain characteristics of an individual, including racial or ethnic origin, political opinions, membership of professional or trade*

association, criminal record, health and health status, and biometrics used for the purpose of biometric verification and identification”, is subject to high levels of regulatory protection under the Privacy Act.

Australian Privacy Principles (APPs)

The APPs follow the personal information lifecycle from collection, to use, to disclosure, to retention, and finally to destruction or de-identification.

The APPs include:

APP 1	Open and transparent management of personal information
APP 2	Anonymity and pseudonymity
APP 3	Collection of solicited personal information
APP 4	Dealing with unsolicited personal information
APP 5	Notification of the collection of personal information



APP 6	Use or disclosure of personal information
APP 7	Direct marketing
APP 8	Cross-border disclosure of personal information
APP 9	Adoption, use or disclosure of government related identifiers
APP 10	Quality of personal information
APP 11	Security of personal information
APP 12	Access to personal information
APP 13	Correction of personal information

Mandatory data breach notification

- Under the Privacy Act, an entity is required to notify the OAIC and affected individuals if they experience an eligible data breach.
- An eligible data breach occurs where a reasonable person would conclude the breach is likely to result in serious harm to the individual(s) concerned.

Penalties

In 2022, the Privacy Act was amended to increase penalties from AUD\$2.2million for corporations to the greater of:

- AUD\$50 million
- 3 X the value of any benefit obtained that is attributable to the breach or
- If the value cannot be determined, 30% of a company's adjusted turnover during the breach turnover period of the contravention

Key privacy compliance documents

Including but not limited to:

- Privacy Statement
- Privacy Policy
- Access, Corrections & Complaints Policy
- Data Breach Response Policy
- Data Retention and Destruction Policy

Business compliance in Australia

Environment, Sustainability and Governance

Environment, Sustainability and Governance (ESG) is emerging as a key disclosure issue for doing business in Australia. ESG is the framework used by investors, analysts and stakeholders to gauge a company's sustainability, ethical and responsible business practices. Companies that excel in these areas are often seen as better long-term investments. As explained below, mandatory reporting obligations are being implemented.



Environment

- Biodiversity loss
- Climate change
- Renewable energy
- Green building
- Deforestation
- Native title
- Pollution
- Reduced waste
- Reduced carbon emissions



Social

- Supply chains
- Anti-discrimination
- Bullying, harassment
- Data security
- Human rights, modern slavery
- Diversity and inclusion, race, gender
- First nations people, cultural heritage
- Health and safety practices



Governance

- Risk mitigation
- Shareholder activism
- Accountability
- Decision-making
- Board independence, diversity
- Anti-bribery and corruption
- Leadership



Climate-related financial disclosures

As of January 2025, the first group of businesses are required to report on their company's environmental impact following the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024* (Act) becoming law on 17 September 2024.

Over time, three groups of entities will be required to report. These businesses must prepare a sustainability report in line with the standards set by the [Australian Accounting Standards Board \(AASB\)](#), using the [International Sustainability Standards Board \(ISSB\)](#)'s framework as a baseline.

1. Large entities required to report under Chapter 2M of the Corporations Act
2. Entities required to report under the *National Greenhouse and Energy Reporting Act 2007* (Cth); and
3. Asset owners with over \$5 billion in assets under management.

The entities that are required to report are broken up into three separate groups, with each of the groups operating on staggered reporting timelines. The definition of the entity groupings and their reporting obligation timelines are detailed below.

First annual reporting periods starting on or after	Large entities and their controlled entities meeting at least two of three criteria:			National Greenhouse and Energy Reporting (NGER) Reporters	Asset Owners
	Consolidated revenue	EOFY consolidated gross assets	EOFY employees		
1 July 2024 Group 1	\$500 million or more	\$1 billion or more	500 or more	Above NGER publication threshold	N/A
1 July 2026 Group 2	\$200 million or more	\$500 million or more	250 or more	All other NGER reporters	\$5 billion assets under management or more
1 July 2027 Group 3	\$50 million or more	\$25 million or more	100 or more	N/A	N/A

The focus of these disclosures is on financial materiality, emphasising the financial impacts of climate-related risks and opportunities on an entity's performance and prospects.

False environmental (greenwashing) and social claims

In addition to the above, the Australian Competition and Consumer Commission (ACCC) regulates the use of misleading and exaggerated claims pertaining to a business' products or services.

The ACCC has released a [guide for businesses](#) on making environmental claims. The guide explains the obligations under the Australian Consumer Law which businesses must comply with when making environmental and sustainability claims.

Similarly, false or misleading claims relating to social benefits, alliances or credence are actionable.

Managing employees in Australia

Employment

Most Australian employees are covered by national legislation in addition to a ‘modern award’ or ‘enterprise agreement’ which together specify minimum terms and conditions of employment. State and territory legislation also regulates important subjects including workplace health and safety, long service leave and discrimination.

Key sources of regulation and entitlements

1. *Fair Work Act 2009* (Cth) (FW Act)

The FW Act is the most significant piece of employment legislation, which applies nationally to most private-sector employees. In some cases, state or territory legislation applies to public sector employees instead of the FW Act.

It incorporates the National Employment Standards (NES), which prescribe 12 minimum workplace entitlements applicable to all employees covered by the FW Act on matters such as notice periods required for termination of employment, paid and unpaid leave entitlements and redundancy pay.

2. Modern awards

Industry or occupation-based instruments which set out additional mandatory, minimum conditions of employment, on top of the National Employment Standards applicable to specified classifications of employees to whom they apply.

Where an enterprise agreement applies to employees, a modern award cannot also apply

(although an enterprise agreement may incorporate terms of modern awards). Typically, senior managers and some other specific professions and occupations are not covered by modern awards.

The employment standards contained in modern awards are frequently reviewed and amended by the national employment law tribunal, the Fair Work Commission (FWC).

3. Enterprise agreements (EA)

Provided for by the FW Act, an enterprise agreement is a collective agreement between employees and one or more specific employers, which may also include trade unions as a party.

Employers cannot refuse to bargain with employee bargaining representatives (which may include trade unions) in relation to negotiations concerning enterprise agreements.

Once approved through a rigorous statutory process, these agreements have a quasi-legislative status.

EAs generally replace any modern awards which would otherwise apply to covered employees, but for an enterprise agreement to be approved, employees



must be better off overall under the enterprise agreement than they would be under any applicable modern award.

The FW Act, enterprise agreements and modern awards collectively impose the majority of minimum terms and conditions of employment for most Australian employees, such as:

- minimum rates of pay
- ordinary working hours
- overtime rates, sick leave
- holiday leave and entitlements on termination of employment (including in cases of redundancy).

Federal superannuation requirements and state or territory-based long service leave, workers' compensation and workplace safety laws are also significant sources of obligations for employers in Australia.

4. Contracts

Contracts (whether written, verbal or both) may confer additional benefits for employers or employees, but they cannot contradict, lessen or remove entitlements provided by the FW Act, modern awards or enterprise agreements (where applicable).

Certain key terms are implied into most employment relationships, including:

- reasonable notice of termination (where the parties do not make express provision for notice of termination)
- employees' duty of good faith and fidelity to employers
- employees' obligation to maintain confidentiality of confidential information.

While the terms of written employment contracts are constrained by many legal minimum standards, they are still a very important tool for employers to set expectations, reduce the scope for disputes, protect their legitimate business interests and manage ambiguity that may result in unfavourable applications of legislation, modern awards and enterprise agreements.

5. Policies and procedures

Employers can implement written policies and procedures relating to various workplace obligations, entitlements and processes.

These policies and procedures (if lawful and reasonable) will generally bind all employees to whom they apply. They can provide additional protection for both employers and employees, including those relating to inappropriate workplace behaviour, and grievance and complaints procedures.

6. Labour hire

Qld, Vic, SA and the ACT have all implemented labour hire licensing schemes which aim to protect labour hire workers from exploitation by ensuring that businesses in these states obtain labour hire licenses if they wish to supply workers to other business. Businesses must also ensure they engage labour hire from licensed providers.

Large penalties apply for businesses who do not comply with the relevant state and territory-based legislation.

7. Modern slavery

Modern slavery describes situations where offenders use coercion, threats or deception to exploit victims and undermine their freedom, including practices such as forced labour and child labour. The Modern Slavery Act 2018 (Cth) establishes a national modern slavery reporting requirement for Australian entities with an annual consolidated revenue of at least AUD\$100 million.

8. Whistleblowing

Federal legislation, including the *Corporations Act 2001* (Cth), provides protection to a person who makes a "protected disclosure", which may relate to things such as unlawful conduct of an employer. Whistleblowers are protected against various forms of civil or criminal liability in relation to such protected disclosures.

Employee litigation and dispute settlement

Unfair dismissal claims

An employee earning at or above the high-income threshold (AUD\$175,000, as of 1 July 2024, updated annually) who meets the minimum period of employment requirement (generally six months) can file this claim. The available remedies include reinstatement with or without backpay, or compensation of up to six months' wages.

General protections claims

An employee (including prospective, current or dismissed) can file this claim, most commonly by asserting that a business has taken adverse action against them in relation to a workplace right (such as a right to correct payment of wages, a right to not being discriminated against, or a right to join a trade union). The available remedies include uncapped compensation and statutory penalties.

Unlawful termination

An employee who is not entitled to make a general protections application can file this claim where they have been terminated for a reason prohibited by the FW Act.

Industrial action

Only lawful if conducted in strict accordance with the FW Act ('protected action'), with severe penalties for all engaged in 'unprotected action'.

Discrimination, harassment and bullying

Legislation prohibiting discrimination, harassment (including sexual harassment), and bullying exists both at the federal level and in each Australian state and territory.

Subject to slight jurisdictional variations, discrimination may be unlawful where it relates to age, sex, sexual orientation, race, colour, religion, physical or mental disability, marital status, family or carer responsibilities, pregnancy, political opinion and national extraction or social origin.

Sexual harassment is unlawful under state-based legislation and the FW Act contains laws governing sexual harassment in the workplace. There is also a positive duty imposed on employers to take reasonable and proportionate measures to eliminate sexual harassment as far as possible.

Workers can apply to the FWC for a stop bullying order where they experience bullying in the workplace. Workers subjected to bullying in the workplace may also be entitled to make other claims such as a workers' compensation claim.

Workplace Health and Safety (WHS)

Largely uniform 'harmonised' legislation is in place at the federal level and in all states and territories, except for Victoria.

WHS legislation requires employers to ensure, as far as reasonably practicable, the health and safety of workers, customers, visitors, and suppliers. Criminal prosecutions are conducted by the relevant state regulator for failures of business to prevent or ameliorate the risk of injury or illness resulting from the workplace and/or system of work. In all jurisdictions an injury does not need to occur for there to be an offence or prosecution. Directors and officers can face personal liability (both civil and criminal), and the financial penalties for businesses can range from thousands to millions of dollars. Prohibition and Improvement Notices issued by regulators can also prevent or restrict the operation of businesses until safety improvements are made.

Workplace injury rehabilitation and compensation

Each state and territory, and the Commonwealth, has a legislative scheme requiring employers to have workers compensation insurance to fund compensation to employees who are injured or become sick due to their employment. The insurance premium is calculated on the basis of various factors such as the size of payroll in the relevant jurisdiction, claims history and industry-related risk factors.

Key tips for employing workers in Australia

- Have a written employment contract, and keep it updated for any new role, variation, or promotion.
- Know whether a modern award applies, and which one.
- Have clear policies and procedures for discrimination, harassment and bullying, workplace safety, performance, misconduct and redundancy, and follow them.
- Check the migration status of a potential employee and whether they are permitted to work in Australia.
- Keep detailed records of all employee meetings regarding performance, misconduct, workplace safety, discrimination, bullying or harassment – it may well be the difference between winning or losing a dispute.
- Know the issues in your industry, and whether a union is active in the industry.
- Keep on top of changes in the law which relate to employment and ensure your employment documentation, and processes and procedures reflect these changes.

Employer taxes

1. Pay As You Go Withholding

- Withhold tax from payments made to employees.
- Paid to Australian Taxation Office.

2. Superannuation

- Minimum contributions must be made to an eligible fund on behalf of employees in respect of “ordinary time earnings” subject to the applicable superannuation legislation.
- Superannuation can be payable on behalf of independent contractors in some cases.

3. Payroll Tax (State Based)

- Levied on wages in cash or in kind.
- Tax is paid for Australian wages above the threshold (differs between states).
- In most states, monthly returns must be lodged.

4. Fringe Benefits Tax (FBT)

- Payable on the value of certain benefits provided to employees or their associates in place of, or in addition to, salary or wages e.g. car for private use.
- Generally, employers can claim an invoice tax deduction for cost of providing fringe benefits and for the FBT and GST credits for items provided as fringe benefit.



Managing employees in Australia

Migration

Australia's migration program allows for businesses and overseas employees to enter on temporary and permanent visas, making valuable contributions to the Australian economy. The requirements for entering on these visas vary, so knowing how to navigate the bureaucracy of immigration in a timely and efficient way is to key securing visas.

Skills in Demand Visa (subclass 482)

Australia's Skills in Demand Visa (SID) has been implemented to assist Australia's workforce demand by attracting highly skilled professionals, that are being employed in Australia, to fill skills shortages over the medium to long term. The SID visa can be granted for up to 4 years and has a pathway to permanent residence. The SID visa is the primary skilled work visa in Australia.

The SID visa introduces three distinct streams:

1. The Specialist Skills Pathway

For foreign nationals earning over the new \$135,000 threshold (excluding high salary trades workers, machinery operators and labourers). This visa will receive expedited processing.

2. The Core Skills Pathway

For applicants earning over the \$73,150 threshold in an occupation identified as critical by Jobs and Skills Australia. Occupations must be listed in the new Core Skills Occupations List. The core skills income threshold remains aligned with the former temporary skilled migration income thresholds from the previous

TSS visa.

3. Labour Agreement Stream

For specialised agreements with employers, which carry over existing settings from TSS.

Sponsoring workers through the SID requires the business to be approved as a visa sponsor. This sponsorship permits the business to sponsor visa-holding employees over a five-year period. The Department of Home Affairs maintains a Consolidated Skilled Occupation List for occupations that may be used for the SID visa programme.

Several criteria must be satisfied to sponsor a non-citizen on a SID visa. These include:

- Adequate testing of the Australian labour market
- Minimum salary requirements
- An assessment of the terms and conditions of employment
- Genuineness of the position
- Financial capacity of the business
- The skills, experience and qualifications of the non-citizen
- Health and character criteria.



The Australian Government, consistent with the commitments made in its migration strategy realised in late 2023, is developing **The Essential Skills Pathway**. This pathway will be for foreign workers in critical industries earning less than AUD\$70,000, with a higher focus on regulation and compliance focused on combatting worker exploitation. We eagerly await details on this stream to assist Australia fill acute skills shortages in semi-skilled roles.

Other skilled visas

For short term assignments (less than 6 months) the Short Stay Specialist visa may be an option. This visa is for non-ongoing, highly specialised work. The non-citizen must be outside of Australia at the time of lodgement and at the time the visa is granted.

Global companies may be able to access the Temporary Activities (subclass 408) Exchange visa. This visa permits the international exchange of employees between the offices of a business operating both in Australia and overseas. This visa provides more flexibility to employers and is significantly cheaper than the SID visa.

National Innovation Visa (subclass 858)

A number of visas for business owners were discontinued in 2024. The only option for business owners to access the Australian migration programme is now the National Innovation Visa.

The National Innovation Visa is an invite-only visa that uses a subjective set of criteria to attract high-calibre talent from overseas.

The National Innovation Visa is targeted at four main sectors, in which the applicant must demonstrate 'an internationally recognised record of exceptional and outstanding achievement' in one of the following areas:



Academia and research:

For example, those with a high calibre research background, notable publications, or evidence of awards and recognition within their field.



A profession:

For example, successfully established entrepreneurs or emerging entrepreneurs, in fields targeted by Australian Government.



The arts:

For example, high-performing creatives, such as musicians or artists.



A sport:

For example, top-tier athletes who have excelled or are emerging stars in their chosen sport.

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